
(2003) 08 PAT CK 0077
In the Patna High Court
Case No : C.W.J.C. No. 6657 of 2003

Shambhu Thakur

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Bihar Choukidari Manual — Rule 35

Citation : (2003) 3 BLJR 1996 : (2003) 4 PLJR 470

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. The petitioner is aggrieved by rejection of his candidature of the post of Choukidar. According to the petitioner, his name had been recommended by the officer incharge of the police station of the particular area for his appointment, but the same has been turned down on the ground that he is the nephew of the erstwhile Choukidar.

3. Placing reliance upon the Rule 35 of Bihar Choukidari Manual, it is contended that immediately on occurrence of the vacancy oh the post of Choukidar the local police station has to report the matter to the District Magistrate or the Sub-Divisional Officer. The concerned Panchayat would also report the matter to the District Magistrate or the Sub-Divisional Officer. They would also recommend the name of a particular person along with the details as prescribed under Rule 35 of the said Manual.

4. Undisputedly, the Bihar Choukidari Manual was promulgated somewhere 100 years back.

5. It appears that certain agitations were made and representations were also submitted to the State Government by the Choukidars and their Society/ Association that such Choukidars should be treated as government servants. After taking into consideration the demands made by the said Association/

Society of Choukidars, the State Government by its memo No. 359 issued a circular on 17th January, 1990. In the said circular it has been clearly mentioned that the State Government after taking into consideration the recommendation made by the cabinet has passed certain orders. The recommendations which have been approved by the State Government are:--

(1) With effect from 1-1-1990, Choukidars and Dafadars would be deemed to be government servants.

(2) Dafadars would be entitled to the revised pay scale of 775-12-955-14-1025 while the Choukidars would be entitled to revised pay scale of 750-12-870-14-940.

(3) Their selection, appointment, superannuation and other service conditions would be similar to the service conditions of the government servant but provided further that their selection and appointment would be at the local level.

(4) Any person who crosses the age of 58 years on 31-12-1989 would not be deemed to be government servant and he would stand removed from the office.

(5) Their duties and responsibilities would be fixed and they would be required to collect information and file the same to the concerned police station or the officer of police. They would also be required to take proper action in the matters of any excesses or atrocities against the Scheduled Castes, Scheduled Tribes Backward Class or the weaker Section of the society and if required would make a complaint of the same to the concerned police station, police officer and the Circle Officer.

(6) Looking to the necessity the posts for Choukidars and Dafadars shall be specially created.

6. From the afore-referred circular specially Clause 3 of the same it would clearly appear that appointment of Choukidars and Dafadars can be made in accordance with the Rules/procedure adopted in case of appointment of the government servants.

7. Undisputedly, a government servant cannot be appointed simply on the recommendation made by the police officer or a Panchayat. If the post falls vacant or a vacancy is available then the vacancy has to be notified and advertisement has to be issued, candidature of the persons have to be invited and after giving all such candidates due opportunity of competing against each other the best out of the lot has to be selected. Rule 35 of the Bihar Choukidari Manual in fact stands superseded by this circular dated 17th January, 1990.

8. At this stage, learned counsel for the petitioner submits that despite circular dated 17th January, 1990 Rule 35 of the Bihar Choukidari Manual is being observed, therefore, the case of the petitioner requires to be considered. In the opinion of this Court, such an argument should not unnecessarily create any complication in the matter. If the State Government after issuing a circular

observed it in its breach then the High Court would not give a clean chit to the State Government to commit the breach of the law propounded by the State itself. Any law made by the State Government not only binds its citizens but also binds the State authorities. If in the circular dated 17th January, 1990 a procedure for appointment has been provided then the said procedure only has to be followed.

9. It is further contended that in December 1995 some circular has been issued by the State Government that the first relation of the deceased Choukidar would only be appointed, therefore, the petitioner is entitled to the appointment. According to the petitioner the said circular is bad because that puts an end to the appointment to all others who are no relation of the deceased Choukidar. Unfortunately, the said circular has not been filed before me, therefore, I am unable to say anything on the said argument. Be that as it may, the circular dated 17th January, 1990 would hold the field and the State Government or the District Magistrate or any other authority would not be entitled to appoint any person as Choukidar unless selection process is completed in accordance with the circular dated 17th January 1990, adopting the procedure as applicable to the government servant appointment. As in the present matter the circular dated 17th January, 1990 has not been followed and the petitioner's name simply has been recommended he would not be entitled even for consideration of his case.

10. The State Government is hereby directed to take care of this judgment and see that no Choukidars and Dafadars are appointed simply on the basis of the recommendation. If they have issued the circular dated 17th January, 1990 then they must respect their own circular.

11. Let a copy of this order be given to G.P. 7.