

Mahadev Paswan Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jul-14-2016

Appellant : Mahadev Paswan

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 1801 of 2015
Mahadev Paswan Petitioner Versus 1. The State of Jharkhand.

2. Deputy Commissioner, Koderma.

3. Additional Collector, Koderma.

4. Deputy Collector (Establishment), Koderma.

5. Superintendent of Police, Koderma.

6. Block Development Officer, Koderma.

7. District Education Officer, Koderma. .. Respondents. ----- CORAM : HONBLE
MR. JUSTICE H. C. MISHRA ----- For the Petitioner : M/s Dr. S.N. Pathak, Sr.
Advocate & Diwakar Upadhyay, Advocate. For the Respondents : Miss Ruchi
Rampuria, J.C. to Sr. S.C.-I. ----- 06/ 14.07.2016 Heard learned counsel for the
petitioner and learned counsel for the respondents.

2. The petitioner has filed this writ application praying for mandamus, directing upon the respondents to appoint the petitioner on the post of Chowkidar, in view of the recommendation of the meeting of Establishment Committee, held on 30.12.2010.

3. The case of the petitioner is that grandfather of the petitioner, late Sukar Dusadh was working as Chowkidar and superannuated on 15.10.1990. There was a prevailing practice to appoint Village Chowkidar for life time, who used to work without any leave or retirement and during his illness or absence, any of his family members used to assist in performing his duties and if he died or become inefficient, usually his family member, as nominated by him would take over the charge and function as Chowkidar, though the post was not strictly hereditary.

4. It is stated that after attaining majority, the name of the petitioner was recommended for being appointed as Chowkidar at the place of his late grandfather by the Establishment Committee, headed by the Deputy Commissioner, Koderma, in its meeting held on 30.12.2010, in which, the cases of other candidates were also considered. So far as the petitioner is concerned, it was found that the petitioner was the grandson of late Sukar Dusadh, and accordingly, it was decided to appoint him on the post of Chowkidar after getting the facts about the superannuation of the grandfather of the petitioner confirmed from the Superintendent of Police, Koderma. In case of the petitioner, it was -2- stated that the appointment letter would be issued after such confirmation. Similarly the case of one Umesh Turi was also considered in the same meeting of the Establishment Committee and in his case, it was decided that the appointment letter would be issued after necessary confirmation about the nomination of the said candidate by his father, who was earlier working as Chowkidar. The minutes of the meeting of the Establishment Committee, held on 30.12.2010, has been brought on record as Annexure-4 to the writ application.

5. It is stated that in spite of the said recommendation, the petitioner has not yet been appointed to the post of Chowkidar, whereas the said Umesh Turi has since been appointed. As regards the reason for not making the appointment of the petitioner, one order dated 17.11.2011 passed by this Court in W.P.(S) No. 2072

of 2007, has been brought on record as Annexure-6 to the writ application, in which, taking into consideration the manner of appointment of Chowkidars, it was held that after the commencement of the Constitution of India in force and specifically as per Articles 14, 15 and 16 of the Constitution of India, public posts cannot be given to the legal heirs of the retired employees. It was directed that the posts of Chowkidars be filled up through public advertisement giving equal opportunity to the eligible candidates.

6. Learned counsel for the petitioner has submitted that due to the aforesaid direction of this Court, all the appointments of Chowkidars have been withheld. Learned counsel has further submitted that withholding of the appointment of the petitioner is absolutely illegal, inasmuch as, the decision for appointment of the petitioner was taken by the Establishment Committee, much prior to the aforesaid decision dated 17.11.2011, passed by this Court in W.P.(S) No. 2072 of 2007, and accordingly, the case of the petitioner cannot be guided with this direction of the High Court. Learned counsel has also submitted that it is a settled principle of law that the service rules etc., do not operate from retrospective effect and in that view of the matter, the decision of this Court, as contained in Annexure-6 to the writ application, cannot be given the retrospective effect in case of the petitioner, particularly when the decision had already been taken for appointment of the petitioner, much prior to the said order of this Court. It is, also submitted that Umesh Turi, whose decision for appointment was also taken along with the petitioner in the same meeting of the Establishment Committee, has since been appointed as Chowkidar, and accordingly, on the ground of parity also, the petitioner is entitled to be appointed on such. -3-

7. Learned counsel for the State on the other hand has opposed the prayer, submitting that after the decision of this Court and in view of the law laid down by this Court in W.P.(S) No. 2072 of 2007, the appointment to the post of Chowkidar can only be made by the public advertisement and after following the due process for the appointment. As regards the appointment of Umesh Turi is concerned, it has been pointed out by the learned counsel for the State that the appointment letter of said Umesh Turi was issued on 22.6.2011, i.e., prior to the date of the order of this Court in W.P.(S) No. 2072 of 2007, and accordingly, it cannot be said that the case of the petitioner is on the same footing.

8. Having heard counsels for both the sides and upon going through the record, I find that the law has been laid down by this Court for making the appointment to the post of Chowkidar strictly in accordance with Articles 14, 15 and 16 of the Constitution of India, giving equal opportunity to all for such public employment. The fact remains that in spite of the decision of the Establishment Committee in favour of the petitioner, vide Annexure-4 to the writ application, no appointment letter could be issued in favour of the petitioner prior to 17.11.2011, when the order was passed by this Court in W.P.(S) No. 2072 of 2007.

9. Since the decision of this Court has now come for making the appointment to the post of Chowkidars, following the due process of law, I am of the considered view that no direction can be issued in favour of the petitioner for appointment on the post of Chowkidar, only due to the fact that the petitioner happens to be the heir of ex-Chowkidar and decision was taken by the Establishment Committee in his favor for his appointment.

10. There is no merit in this writ application and the same is accordingly, dismissed. (H. C. Mishra, J.) Amitesh/-

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