

(2013) 08 JH CK 0014

Jharkhand High Court

Case No: Writ Petition (S) No. 7003 of 2012

Kalimuddin Ansari

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Aug. 5, 2013

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Pravin Kumar Rana and Arvind Kumar Ojha, for the Appellant; Sarvesh Kumar Verma, for the Respondent

Final Decision: Disposed Off

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the petitioner as well as respondent-State. The grievance of the petitioner in the present writ application is that the private respondent no. 4 by manipulating his signature on a blank paper got appointment in place of deceased father of the petitioner as Choukidar in Tundi Thana under the district of Dhanbad. He submits that the concerned respondent be directed to appoint the petitioner as Choukidar in place of respondent no. 4. The petitioner's father is said to have been Chaukidar working in Tundi Thana and he claims to be the only son of his father, who was entitled to the same post after death of his father in 2003. The petitioner has been taken by surprise that respondent no. 4 has been appointed in his place by the order passed by the Deputy Commissioner, Dhanbad. The said order dated 3rd January, 2009 though not part of the writ petition has been annexed to the counter affidavit

2. It is submitted on behalf of the petitioner that a complaint case has been registered against the respondent no. 4 being Complaint Case no. 896/2010 before the Chief Judicial Magistrate, Dhanbad. In such circumstances, he seeks direction upon the concerned respondent to appoint him in place of private respondent no. 4.

3. The respondents have appeared and filed their counter affidavit. It is their considered stand that the petitioner had furnished consent on affidavit in favour of respondent no. 4, Mustakim Ansari, who is cousin of the petitioner sworn on 4th October, 2005 itself. The petitioner's father died on 11th May, 2003 and according to the said affidavit, since the petitioner was handicapped because of some injuries in the left arm, his cousin respondent no. 4 undertook to take care of him on being appointed as a Choukidar in place of his deceased father. The matter was placed before the Committee for considering his case for compassionate appointment presided over by Deputy Commissioner, Dhanbad on 20th September 2006 and thereafter by an order dated 3rd January, 2009 which is annexed as Annexure-1 to the counter affidavit a number of persons were appointed on compassionate ground including the respondent no. 4. It is also indicated in the said letter that the appointees have given undertaking to take care of the family of the deceased and if such employee fails to do so, it would amount to misconduct on their part. Learned counsel for the respondents therefore submits that the appointment has been made in the year 2009 on the basis of consent given in 2005 itself by the petitioner. Now at this stage after appointment of respondent no. 4, the petitioner is disputing his own consent and filed a complaint case which raises disputed question of fact relating to the appointment itself. In such circumstances, this court should not interfere in the writ jurisdiction on disputed question of fact.

4. I have heard learned counsel for the parties and gone through the materials on record. The facts which are borne on record and submitted on behalf of the rival parties show that the father of the petitioner died on 11th May, 2003 and affidavit giving his consent was sworn on 4th October, 2005 in favour of the private respondent no. 4. By the said affidavit, it was also indicated that the petitioner is physically handicapped and he consented for appointment of private respondent no. 4 as Chaukidar as he was taking care of the petitioner. Thereafter the matter was considered by the Compassionate Appointment Committee in the year 2006 and subsequently the respondent no. 4 has been appointed by order dated 3rd January, 2009. The appointment letter also contains stipulation that the appointee shall take care of the family of the deceased employee. It also appears that the petitioner himself has lodged complaint case in 2009 alleging that his signature were manipulated by respondent no. 4. The same complaint is however still pending for adjudication and trial has not concluded in any findings of guilt or otherwise against the private respondent.

5. In such circumstances, therefore, at this stage in writ jurisdiction, this court is constrained from interfering in the matter where such disputed question of facts have been raised. However, if the petitioner has grievance that the appointee private respondent no. 4 is not taking care of the family of the deceased, it will be open to him to bring it to the notice of the respondents authorities for taking proper decision in the matter. Accordingly, the writ petition is disposed of with the aforesaid observations/directions.