

Jharkhand High Court

Mogal Ansari vs State Of Bihar And Ors. on 29 August, 2002

Author: S Mukhopadhaya

Bench: S Mukhopadhaya

JUDGMENT S.J. Mukhopadhaya, J.

1. The writ petition was preferred by the petitioner against Office Order No. 17/94 dated 13th May, 1994 issued by the S.P., Palaraau (now Latehar), in respect of Item No. 7, whereby, the 5th respondent, Sabiran Bibi has been appointed as a Choukidar of Bar-badih Thana Bit No. 1/19.

2. The case of the petitioner is that one Jasmuddin Mian, the first husband of 5th respondent, Sabiran Bibi was Choukidar of Bit, in question, who died in the year 1970. Thereafter, Jalim Ansari, brother of late Jasmuddin Mian and father of petitioner was appointed as substitute (Ewaj) Choukidar in the year 1978 and continued till 1985 when he died. After death of Jalim Ansari, the petitioner being son was appointed as substitute (Ewaj) Choukidar and since 1985 he was working till the impugned order was issued on 13th May, 1994.

3. According to the petitioner, the appointment of 5th respondent is illegal as she could not have been given appointment on compassionate ground having married second time with one Kutubuddin Khan as declared by her on 25th September, 1980, vide Annexure-4.

Further, according to petitioner his father having worked for 17 years as Choukidar and the, petitioner having worked thereafter as substitute (Ewaj) Choukidar since 1985 should have been preferred as per Government decision, contained in letter No. 10129 dated 6th November. 1991, wherein, it was stipulated to prefer those whose ancestors were Choukidars/sub-stitute (Ewaj) Choukidar prior to 1.1.1990.

4. The 5th respondent has denied the allegation that she married one Kutubuddin Khan.

5. It will be evident from the enclosures that Jasmuddin Mian, husband of 5th respondent was the Choukidar till 1978, when he died. His brother, Jalim Mian i.e. father of petitioner was appointed as substitute (Ewaj) by S.R, Palamau (now Latehar). vide Order No. 16 dated 1st April, 1978 for a period of one year so that he may look after the family of the deceased Choukidar, Jasmuddin Mian.

Subsequently, there appears to be no extension of appointment given to Jalim Ansari who stated to have worked till he died in the year 1985.

6. There is a doubt whether the petitioner worked as substitute (Ewaj) since 1985 or the 5th respondent, as it appears that on the recommendation of a Committee, some order was issued in the year 1992 in favour of the 5th respondent.

7. From the facts as pleaded and discussed above, it will be evident that both the 5th respondent and petitioner claimed for appointment on compassionate ground i.e. either on the ground of the death of the husband or death of the father.

8. As admittedly, the husband of 5th respondent i.e. Jasmuddin Mian died in the year 1978, after 26 years of such death, the question of appointment of 5th respondent on compassionate ground does not arise.

Similarly, the father of petitioner having died in the year 1985, no direction can be given to appoint the petitioner on compassionate ground.

9. For the reason aforesaid, the appointment of 5th respondent made by order dated 13th May, 1994 being illegal, is set aside.

10. The case is remitted with direction to the respondent, S.P. Latehar to fill up the post of Choukidar of Barbadih Thana Bit No. 1/19, in accordance with law, if not filled up, preferably within six months from the date of receipt/production of a copy of this judgment. The case of the petitioner and the 5th respondent may be considered along with others without giving any weightage to any of them of any account. However, if one or other is overage, it may be relaxed.

11. The writ petition stands disposed of. There shall be no order, as to costs.