



CIVIL

Hereditary Appointments In Public Service: Bihar's Chaukidari Rule Declared Unconstitutional

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PUBLISHED 8 April 2025

Introduction

In a recent judgment in the matter of Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) vs. State of Bihar & Others^[1], the Supreme Court of India has upheld the Patna High Court's decision to strike down the Bihar Chaukidari Cadre (Amendment) Rules, 2014, which allowed a retiring chowkidar to nominate dependent kin for appointment in their place. The Supreme Court's ruling reaffirms the constitutional mandate of equal opportunity in public employment and upheld that public employment is not a heritable right. The judiciary has not only upheld the principles of equal opportunity in the matters of employment but had also reaffirmed its stance on the power of writ courts to suo motu strike down subordinate legislation that violates fundamental rights and binding precedents.

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Background of the Case

The case originated from the Bihar Chaukidari Cadre (Amendment) Rules, 2014 which allowed a retiring chowkidar to nominate dependent kin for appointment in his place. Devmuni Paswan, whose father was a retired village chaukidar, sought his appointment under this rule. However, his application was rejected because it was submitted after his father's retirement, violating Rule 5(7)(a) of the amendment. Paswan's subsequent writ petition and appeal were dismissed by the Patna High Court. This provision was challenged on the grounds that it violated Articles 14 (equality) and 16 (equal opportunity in public employment) of the Constitution of India. The Patna High Court, exercising its suo motu powers under Article 226 of the Constitution, declared the provision unconstitutional even though no formal challenge had been made against it.

Supreme Court's Rationale

The Indian Judiciary in various occasions has upheld the principals that there has to be equality of opportunity in matters of public employment and the other that, any law, which permits entry into public service without granting equal opportunity to all, would fall foul of Article 16 and is liable to be outlawed unless a reasonable classification, which is also valid, can be shown to exist.

The Supreme Court, in its judgment, emphasized that it is not only the duty of writ courts to enforce the fundamental rights of individuals who approach them, but also to guard against breaches of fundamental rights of others by the three organs of the state. The Court reasoned that in cases where a subordinate legislation is manifestly unconstitutional and in contravention of binding precedents, it is within the power of the writ courts to declare it void. The Court emphasized that allowing succession-based appointments in government service undermines the principle of meritocracy guaranteed under Article 16 of the Constitution.

The Court also relied on various precedents including the case of Gazula Dasaratha Rama Rao v. State of Andhra Pradesh^[2] wherein while addressing the constitutional validity of hereditary appointment of Village Munsif, the Court held that the appointment for the office of Village Munsif is to be considered on merit basis as opposed to hereditary appointment. The court held Section 6(1) of Madras Hereditary Village Offices Act, 1895 which require the Collector to appoint officers from the families that previously held such position as unconstitutional and violative of fundamental rights.

The Court further clarified that while subordinate legislation enjoys a presumption of constitutionality, this presumption is not as strong as that of primary legislation. The level of presumption may vary depending on factors such as the nature of the subordinate legislation, the extent to which it derogates from the Constitution or the parent legislation, the manner in which it is brought into force, and its potential impact on individual rights and public interest.

The Court also emphasized on the continuing archaic models of employment which treats a public service as a hereditary right even after 75 years of our Constitution. Such legislation not only allows hereditary appoint, it assumes that no other person would be interested in obtaining employment in the given post. It infringes fundamental rights of the citizen by not providing them right to equality and equal opportunity for all citizens in matters relating to employment^[3] enshrined under Article 14 and 16 of the Part III of the Constitution. The court upheld that public employment must be based on merit and equal opportunity.

Implications and Precedents

This decision reaffirms the Supreme Court's role as the guardian of the Constitution and the fundamental rights of citizens. It highlights the importance of meritocracy and equal opportunity in public employment, as enshrined in Article 16 of the Constitution. The Court's willingness to strike down subordinate legislation that undermines these principles, even in the absence of a formal challenge, highlights its commitment to upholding constitutional values and serves as a reminder to state governments of the need to adhere strictly to constitutional mandates. Such statues are an attempt to treat public employment as heritable property.

The Court's cautionary note that such suo motu powers should be exercised sparingly and with due care highlights the balance it seeks to maintain between upholding the Constitution and respecting the democratic process.

Conclusion

The Supreme Court's decision in the Bihar Chaukidari Cadre case reaffirms the power of writ courts to suo motu strike down subordinate legislation that violates fundamental rights and binding precedents. This power, while exercised sparingly, is crucial in safeguarding the rights of citizens and ensuring that the principles of equality and meritocracy are upheld in public employment. For more details, write to us at: contact@indialaw.in

^[1] 2025 LiveLaw (SC) 397

^[2] AIR 1961 SC 564

^[3] The Constitution of India, art. 14 & 16