

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (Criminal) No. 1239 of 2023

Smt. Vidyavati

... Petitioner

Vs.

State of Uttarakhand and others

... Respondents

Advocate: Mr. Gaurav Panwar, Advocate, for the petitioner
Mr. Virendra Singh Rawat, Brief Holder, for the State.

Hon'ble Sharad Kumar Sharma, J.

The principle of writ of mandamus and the circumstances under which it could be issued has been dealt with by the Hon'ble Apex Court in catena of following judgments:-

(i) As reported in **2007 (5) SCC 65, State of Manipur and others Vs. Y. Token Singh and Others**, the relevant paragraph 18 is extracted hereunder:-

“18. Moreover, it was for the respondents who had filed the writ petitions to prove existence of legal right in their favour. They had inter alia prayed for issuance of a writ of or in the nature of mandamus. It was, thus, for them to establish existence of a legal right, in their favour and a corresponding legal duty in the respondents to continue to be employed. With a view to establish their legal rights to enable the High Court to issue a writ of mandamus, the respondents were obligated to establish that the appointments had been made upon following the constitutional mandate adumbrated in Articles 14 and 16 of the Constitution of India. They have not been able to show that any advertisement had been issued inviting applications from eligible candidates to fill up the said posts. It has also not been shown that the vacancies had been notified to the employment exchange.”

(ii) As reported in **2006 (12) SCC 561, State of Bihar and others Vs. Amrendra Kumar Mishra**, the relevant paragraphs 15 to 18 are extracted hereunder:-

“15. In *Maruti Udyog Ltd. v. Ram Lal* [(2005) 2 SCC 638 : 2005 SCC (L&S) 308] it was observed: (SCC pp. 654-55, paras 44-45)

“44. While construing a statute, ‘sympathy’ has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.

45. In *A. Umarani v. Registrar, Coop. Societies* [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] this Court rejected a similar contention upon noticing the following judgments: (SCC pp. 131-32, paras 68-70)

‘68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

69. In *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh* [(2004) 2 SCC 130] it is stated: (SCC p. 144, paras 36-37)

“36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

37. As early as in 1911, Farwell, L.J. in *Latham v. Richard Johnson & Nephew Ltd.* [(1911-13) All ER Rep 117 : (1913) 1 KB 398 : 108 LT 4 (CA)] observed: (All ER p. 123 E)

‘We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o’ the wisp to take as a guide in the search for legal principles.’ ”

70. Yet again, recently in *Ramakrishna Kamat v. State of Karnataka* [(2003) 3 SCC 374 : 2003 SCC (L&S) 284] this Court rejected a similar plea for regularisation of services stating: (SCC pp. 377-78, para 7)

“We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularisation and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by Zila Parishads in view of the government orders and that their cases need to be considered sympathetically. It is

clear from the order of the learned Single Judge and looking to the very directions given, a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment.” ‘ ‘ ”

16. In the facts and circumstances of this case, in our opinion, the High Court should not have allowed the respondent herein to join his services only on the basis of sympathy.

17. It is now also well settled that in absence of any legal right, the Court should not issue a writ of or in the nature of mandamus on the basis of sympathy.

18. We, therefore, are of the opinion that the High Court committed a manifest error in allowing the writ petition of the respondent. It is set aside accordingly. The appeal is allowed. However, no recovery shall be made for the period he has actually worked. No costs.

(iii) As reported in **2004 (9) SCC 786, National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others**, the relevant paragraph No. 17 is extracted hereunder:-

“17. We are also in agreement with the view taken by the learned Single Judge that the writ petition which was filed in December 1989 was highly belated as the claim of the writ petitioners had been categorically refuted by the letter dated 7-11-1984 by the Director (Finance) on behalf of National Textile Corporation (South Maharashtra) Ltd. The petition was therefore liable to be rejected on this ground alone. That apart, the prayer made in the writ petition is for issuance of a writ of mandamus directing the appellant herein to supply the goods (cloth). It is well settled that in order that a mandamus be issued to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. The present is a case of pure and simple business contract. The writ petitioners have no statutory right nor is any statutory duty cast upon the appellants whose performance may be legally enforced. No writ of mandamus can, therefore, be issued as prayed by the writ petitioners.”

(iv) As reported in **2003 (12) SCC 627, Union of India and others Vs. C. Krishna Reddy**, the relevant paragraph No. 13 is extracted hereunder:-

“13. It is well settled by a catena of decisions of this Court that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. Therefore, in order that a mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. [See Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145 : AIR 1977 SC 2149], AIR para 15, Lekhraj Sathramdas Lalvani v. N.M. Shah, Dy. Custodian cum Managing Officer [AIR 1966 SC 334] and Umakant Saran (Dr.) v. State of Bihar [(1973) 1 SCC 485 : AIR 1973 SC 964].”

2. Surprisingly, the petitioner, in the present writ petition has invoked a writ of mandamus, thereby praying for that respondent Nos. 1 to 3 may be directed to decide the representation and to ensure that respondent Nos. 4 & 5 may not further harass the petitioner.

3. There cannot be any direction, as such, under a writ of mandamus to the respondent Nos. 1 to 3, for restraining respondent Nos. 4 and 5 not to harass the petitioner because in case if there is any untoward act done by the respondent Nos. 4 & 5, the petitioner would always have to resort to the remedies as provided under the criminal law

and not by way of filing a writ petition for a writ of mandamus.

4. Similar will be the situation for the second relief where he has sought a writ of mandamus commanding respondent Nos. 2 & 3 to register an FIR. In an event if the police authorities declines to register the FIR, the petitioner is not left remediless under law, she should have invoked sub Section (3) of Section 156 of the Code of Criminal Procedure for the redressal of her grievance and she cannot straightway approach to the writ Court for the reliefs as sought for, which are not otherwise sustainable under the governing principles of writ of mandamus.

5. Thus, the writ petition lacks merit and the same is hereby dismissed.

(Sharad Kumar Sharma, J.)

13.09.2023