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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5977 OF 2014**

Suraksha Rakshak and General Kamagar Sena ... Petitioner
Versus
Security Guards Board for Greater Mumbai and Anr. ... Respondents

Mr. Susheel Mahadeshwar i/by Ranjana Todankar for the Petitioner.
Mr. Meelan Topkar for the Respondent No.1.
Mr. V.S. Gokhale, AGP for Respondent No.2.

**CORAM : A.S. OKA &
G.S. PATEL, JJ.**

DATE : 7th DECEMBER, 2015

PC.

1. Heard the learned counsel appearing for the Petitioner. The Petitioner is seeking a writ of mandamus restraining the first Respondent from registering fresh security guards pursuant to the selection process initiated on 24th June, 2014. The second substantive prayer is for directing the first Respondent to allot the work to the registered security guards as per the seniority and in accordance with the date of registration.

2. When we invited attention of the learned counsel appearing for the Petitioner to the fact that in this Petition there is no averment made that before filing this Petition, the Petitioner

approached the concerned authority and sought justice. He states that even though the Petitioner may not have done that still the Writ Petition may be entertained as there is gross illegality.

3. Both the substantive prayers seek writ of mandamus. Apart from the fact that there is no averment made in the Petition that the Petitioner sought justice from the concerned authority and the justice was denied, there is not even a document produced along with the Petition which shows that justice was demanded. The law on the point has been laid down in several decisions including the decision in the case of *Saraswati Industrial Syndicate Ltd. and others vs. Union Of India*¹. Paragraphs 24 and 25 of the said decision read thus :-

“24. As the appeals fail on merits we need not discuss the technical difficulty which an application for a writ of certiorari would encounter when no quasi-judicial proceeding was before the High Court. The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in

1. (1974) 2 SCC 630

England, when a writ of mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd Edn.), Vol.13, p.106):

“As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.”

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution. These appeals must be and are, hereby, dismissed but in the circumstances of the case we make no order as to costs.”

(Underline supplied)

2. Hence, we decline to entertain this Petition and the same is accordingly rejected. However, this order will not preclude the Petitioner from making a representation to the appropriate Authority. In the event the representation is made by the Petitioner, the same shall be decided in accordance with law as expeditiously as possible and preferably within a period of one month from the date of filing of the representation.

(G.S. PATEL, J)

(A.S. OKA, J)