

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (S) No.599 of 2017**

Jhumman Lal Dewangan, S/o Shri Tilak Ram Dewangan, Age 49 years, R/o Village Semra, Post Semra, Tahsil Nagri, District Dhamtari (CG)

---- Petitioner**Versus**

- 1.** State Of Chhattisgarh Through The Secretary, Department of Panchayat and Rural Development, Ministry, Mahanadi Bhavan, New Raipur, District Raipur (CG)
- 2.** The Joint Director, Directorate of Panchayat, 36 C III, Block-II, Second Floor, Indravati Bhavan, New Raipur, District Raipur (CG)
- 3.** The Collector, District Dhamtari, Dhamtari (Rudri), (CG)
- 4.** The Chief Executive Officer, District Panchayat Dhamtari, District Dhamtari (CG)

---- Respondents

For Petitioner	:	Mr.Alok Dewangan, Advocate
For Res.No.1 to 3	:	Mr. Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****13/02/2017**

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India stating that respondent No.4 is not taking a decision on memo dated 3.6.2016 (Annexure P/1) issued by respondent No.2. Therefore, appropriate writ be issued directing the respondents to act upon the said memo.
2. By memo dated 3.6.2016, respondent No.2 has directed respondent No.4 to do the needful to comply with the order

dated 1.7.2010, 6.12.2010 and 9.9.2011 passed by this Court. This memo is dated 3.6.2016 and the petitioner has not made any representation thereafter to respondent No.4 and straightway filed this writ petition under Article 226 of the Constitution of India and submitted that despite order issued by this Court, respondent No.4 is not acting upon to instructions issued by respondent No.2.

3. It is well settled law that in order to issue a writ of mandamus, the petitioner himself has a clear demand as to enforcement of legal right to the officer having requisite authority to perform the said demand and further more the authority against whom mandamus is sought must have rejected the earlier demand, therefore, a demand and its subsequent refusal are necessary to satisfy the Court that the opposite party is determined to ignore the demand of the petitioner with respect to the enforcement of his legal right. This aspect has been considered by the Supreme Court in the matter of **Saraswati Industrial Syndicate Ltd. and others Vs. Union of India**¹. Relevant para states as under:-

“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 proceedings 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.

1 (1974) 2 SCC 630

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 England when writ of Mandamus is asked for could be stated as we find it set out in Halsbury's Laws of England (3rd edition 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 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.

4. In **Amrit Lal Berry Vs. Collector of Central Excise, New Delhi and others**², the Supreme Court stuck similar proposition as under:-

"25. In the petition of K.N. Kapur and others, we do not even find as assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognised by this Court in Kamini Kumar Das Choudhury Vs. State of West Bengal³, that a demand for justice and its refusal must precede the filing of a petition asking for direction or Writ of Mandamus, would also operate against the petitioners.

² (1975) 4 SCC 714

³ (1972) 2 SCC 420

5. In **State of Haryana and Anr. Vs. Charan Mal Etc.**⁴, the Supreme Court observed as under:-

“3. Any petitioner who applies for a writ or order in the nature of a mandamus should, in compliance with a well known rule of practice, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a Court for such an order even where the alleged obligation is established.”

6. In **Dr. G. Sarana Vs. University of Lucknow and Ors.**⁵, the Supreme Court observed as under:-

“16. It is also difficult to understand how the writ petition or for that matter the present appeal before us is maintainable when the recommendation of the Selection Committee has still to be scrutinized by the Executive Council of the University and either accepted or rejected by it and other remedies by way of representation to the Executive Council and an application for reference of the matter under section 68 of the Uttar Pradesh Universities (Re-enactment and Amendment) Act, 1974, to the Chancellor are still open to the appellant and have not been exhausted.”

7. In **Balwant Singh Parhar and Anr. Vs. Union of India and Ors.**⁶, Division Bench of Rajasthan High Court observed as under:-

“19. From the record of the writ petition it appears that the petitioners have neither given any representation to the Pay Commission nor to the Union of India nor Railway Administration nor given any notice for demanded of justice and straightway filed the writ petition for seeking mandamus in the

4 (1977) 1 SCC 340

5 (1976) 3 SCC 585

6 2006 Lab IC 2081

matter of pay parity contrary to the well established principle of law that giving notice for giving notice for demand of justice is sine qua non for seeking writ of mandamus, the writ petition deserves to be dismissed on this ground alone as there was no occasion for the respondents to consider the grievance of the petitioners of claim of parity in pay scale and also consider the objection of the respondents in reply of interference by the High Court under Article 226 of the Constitution of India in such matters. In the judgments cited by the counsel for the petitioners, it is nowhere laid down that the Court should evaluate the job for the purpose of grant of equal pay for equal work. On the contrary, in some of the judgments of the Supreme Court cited on behalf of the petitioners also and in the other judgments, it has been repeatedly held by the Supreme Court that it is not for the Court to make job evolution for the purpose of considering the equation of post and parity in pay scale and it is for the Government to consider and decide. Thus it would not be proper for this Court to make an enquiry in the matter of equation of post as well as grant of equal pay scale in absence of any representation to the respondents or pay Commission and findings thereon. Therefore, we may observe that it is open for the petitioner to make a representation to the respondents/Pay Commission as and when it is constituted in the matter of parity in pay scale and it is further expected from the respondents/Pay Commission to consider the same and pass the appropriate order.”

8. Similar is the position in **Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond & Gem Development Corporation Limited and Another**⁷, wherein the Supreme Court observed as under:-

“21. 14. It is evident from the above, that

⁷ (2013) 5 SCC 470

generally the court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus, is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justiceiae*). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with

respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand."

9. It is not in dispute that the petitioner has not approached respondent No.4 seeking enforcement of legal right before approaching this Court by way of this writ petition. In the light of principle of law laid down by the Supreme Court in the above-stated judgments, straightway approaching to this Court for a writ of mandamus without prior approach to the respondents the writ petition is not maintainable. Unless and until the petitioner made approach to the respondents by way of representation and if the representation is rejected and/or there is inaction on the part of the authorities in deciding such representation, the petition will ordinarily, not to be entertained by this Court.
10. Undisputedly, before filing this petition, the petitioner has not approached the respondents by way of some suitable representation pointing out his grievance raised in this petition and straightway, petition has been filed. Therefore, according to my opinion, the writ petition is not maintainable.
11. At this stage, learned counsel for the petitioner submits that he will approach to respondent No.4 in respect of grievance raised in this writ petition. The petitioner may approach

respondent No.4. As and when such representation is made by the petitioner, respondent No.4 will do well to consider and examine it on its own merit in accordance with law.

12. With the aforesaid observation, the writ petition is dismissed.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-