

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13885 of 2017

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Awadh Kishore, Son of Jitan Ram, R/o Village-Dharmukata, P.O.-Baghi Bazar, P.S.-Kateya, Dist.-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar, through Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18786 of 2014

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Ramesh Sharma son of Sh. Ram Janam Sharma, resident of village- Hajipur Narayanpur, Post- Amarpura, P.S.- Naubatpur, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna
2. The Principal Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, Patna
3. The Bihar Staff Selection Commission, Patna, through it's Chairman
4. The Secretary, Bihar Staff Selection Commission, Patna
5. The District Magistrate, Patna
6. The Additional Collector (Revenue), Patna
7. The District Land Acquisition Officer, Patna
8. The Sub-Divisional Officer, Patna
9. The Circle Officer, Naubatpur, District- Patna

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 13885 of 2017)

For the Petitioner/s	:	Mr. Dinu Kumar, Adv. Ms. Ritika Rani, Adv. Mr. Vijoy Kumar Vimal, Adv. Mr. Ritu Raj, Adv. Mr.Arvind Kumar Sharma, Adv.
For the Respondent/s	:	Mr.P.N. Shahi, AAG6 Mr. Manish Kumar, AC to AAG 6 Mr. Raj Kishore Roy, GP 18

(In Civil Writ Jurisdiction Case No. 18786 of 2014)

For the Petitioner/s	:	Mr.Manoj Kumar, Adv.
For the Respondent/s	:	Mr.Binodji Verma,GP17
For the B.S.S.C	:	Dr. Ratan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 10-01-2019

Heard Mr. Dinu Kumar, learned counsel for the writ petitioner in C.W.J.C. No. 13885 of 2017 and Mr. Manoj Kumar, learned counsel appearing for the writ petitioner in C.W.J.C.No.18786 of 2014 (hereinafter referred to as the 'second writ petition'). Mr. Manish Kumar, AC to AAG 6 appears for the State in C.W.J.C. No. 13885 of 2017 and Mukul Prasad, A.C. to GP 18 appears for the State in C.W.J.C.No. 18786 of 2014. Dr. Ratan Kumar, learned counsel appears for the Bihar Staff Selection Commission in the two writ petitions.

The petitioners in the 2 writ petitions question the validity of the Bihar Amin Cadre Rules, 2013 (hereinafter referred to as the 'Cadre Rules') together with Bihar Amin Cadre (Amendment) Rules, 2016 (hereinafter referred to as the 'Amendment Rules, 2016') and Bihar Amin Cadre (Amendment) Rules, 2017 (hereinafter referred to as the 'Amendment Rules, 2017'), copies of which are impugned at Annexures 1,2 and 3 to the writ petition.

For the sake of convenience we shall be referring to the pleadings as occurring in the first writ petition bearing C.W.J.C.



No. 13885 of 2017 unless clarified by specific reference to the 'second writ petition'.

According to Mr. Dinu Kumar, learned counsel for the petitioner Section 1(3) of the 'Cadre Rules' notified by the Notification No. 604 dated 13.12.2013 prescribes that the rules shall come into effect from the date of its publication and even when the respondents have fairly accepted in the counter affidavit at paragraphs 12 and 14 that the said Rules were sent to the Superintendent, Government Press, Gulzarbagh for its publication in the Official Gazette but the fact remains that the 'Cadre Rules' have yet not been published despite a lapse of more than 5 years. While accepting that the 'Amendment Rules, 2016' and 'Amendment Rules, 2017' have been published in Official Gazette, it is the contention of Mr. Dinu Kumar that until and unless the parent rule is published in the Official Gazette, it cannot be made effective nor the consequent amendments can have a force of law.

The arguments advanced by Mr. Dinu Kumar is seconded by Mr. Manoj Kumar appearing in the 'second writ petition'. Counsel for the State does not and cannot dispute this position. Although learned counsel seek to justify the position by submitting that the 'Cadre Rules' were notified on the website and



is available on the internet which is the sole purpose and object of publication of statute in an Official Gazette so that it has a wide circulation and available for the general public but the fact remains that the 'Cadre Rules' have yet not been published though the Amendments in 2016 and 2017 have been notified in the official gazette. We find a similar stand taken by the respondents in the counter affidavit.

Having heard learned counsel for the parties and considering the limited issue put up for contest it is only to be seen whether the answer given by the respondents in the counter affidavit so filed regarding uploading the Rules on the website would amount to sufficient compliance of the stipulation present at Rule 1(3) of the 'Cadre Rules' or is in violation of the prescribed procedure.

Mr. Dinu Kumar has relied upon the following judgments of the Supreme Court namely, in support of his submissions:

(a) (1987) 1 SCC 658 (B.K. Srinivasan and Ors. versus State of Karnataka and Ors.) and

(b) (2000) 9 SCC 461 (Union of India and Ors. versus Ganesh Das Bhojraj)



We have heard learned counsel for the parties and we have perused the records. The issue so canvassed would not detain us for long because the Rule 1(3) mandates that it would come into effect with effect from the date of the publication of the notification. No doubt the 'Cadre Rules' is silent as to the manner of publication of the notification but the answer can be found in Section 4 (36) of the Bihar and Orissa General Clauses Act, 1917 which reads under:

“(36)“notification” shall mean a notification in the Official Gazette.”

The word Official Gazette was incorporated by way of amendment.

The amendment in the Bihar and Orissa General Clauses Act, 1917 in the definition of the term 'notification' to include the words 'Official Gazette' by itself casts an obligation on the State to ensure that necessary steps, is taken for publication of every notification determining inter party rights in the Official Gazette. Interestingly, the respondents have tried to justify their lapse by relying upon the very same judgment rendered in the case of **B.K. Srinivasan** (supra). The opinion of the Supreme Court in the concluding portion of paragraph 15 draws the contest in favour of the writ petitioners for while making it certain that a notification would become effective from the date it is published in Official Gazette, it is further



clarified that even if the statutory requirement is silent on the mode of publication, the duty for the State becomes greater for in such situation it has to ensure that the notification is published in the Official Gazette. For the sake of convenience we are persuaded to reproduce the relevant extract of paragraph 15 which runs under:

“It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the official gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient.”

The view so expressed by the Supreme Court in the case of **B.K. Srinivasan** (supra) has been endorsed with approval in the subsequent judgment rendered in the case of



Ganesh Das Bhojraj (supra) relied upon by Mr. Dinu Kumar.

The observations at paragraph 17 of the judgment are relevant for the purpose and which runs as follows:

“17. From the aforesaid observations, it is plain and clear that the decision in *B.K. Srinivasan* also reiterates that the notification will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette. We also agree with the reasons recorded in *Mayer Hans George* and hold that notification under Section 25 of the Customs Act would come into operation as soon as it is published in the Official Gazette and no further publication is required. Hence, the decision rendered in *Pankaj Jain Agencies* represents the correct exposition of law on the subject. The decision rendered in *New Tobacco Co.* followed in *Garware Nylons Ltd.* does not lay down the correct law.”

In view of the definition of the term, ‘notification’ so present in the Bihar and Orissa General Clauses Act, 1917 reproduced hereinabove and the legal position settled by the Supreme Court on the obligation cast on the State as to the manner of publication of a notification, we are persuaded to hold that the ‘Cadre Rules’ cannot be made effective or implemented or acted upon by the State until such time that the same is published in the Official Gazette. It is rather surprising that while the State understanding its obligation has taken pains to get the ‘Amendment Rules, 2016’ and ‘Amendment Rules,



2017' published in the Official Gazette, it has taken a laid back attitude to ensure that the parent Rules also gets published in the Official Gazette which mandatory obligation remains unsatisfied even as on the date and even when these writ petitions remain pending since 2017 and 2014 respectively.

We thus, declare & hold that the Bihar Amendment Cadre Rules, 2013 are unimplementable and would have no force of law until its publication in the Official Gazette. We would further restrain the State in its concerned Department to act in furtherance of these Rules until its publication in the official Gazette.

Let a writ of mandamus issue accordingly to the State in its concerned Department.

The writ petitions are allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Bibhash/Ranveer

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