

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25569 of 2019

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Shishir Kumar Jha, Son of Rama Kant Jha, resident of Mohalla- Maithil Tola Korat Bari, P.S. K. Hat, District- Purnia - 854301, at present practicing Advocate at Purnia Civil Court, Purnea (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna, Old Secretariat, Patna.
2. The Principal Secretary, Department of Health and Family welfare, Bihar, Patna, 1st Floor Vikash Bhawan, Bailey Road, Patna- 800015.
3. The State Health Society, Bihar, Parivar Kalyan Bhawan, Sheikhpura, Patna- 800014 through its Executive Director (E.D).
4. The Executive Director, State Health Society, Bihar, Parivar Kalyan Bhawan, Sheikhpura, Patna- 800014.
5. The Deputy Secretary-cum-Human Resources (Incharge) State Health Society, Bihar, Parivar Kalyan Bhawan, Sheikhpura, Patna- 800014.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rabindra Kumar Choubey,Adv. Ms. Minu Kumari, Adv.
For the Respondent/s	:	Mr.Ajay Bihari Sinha (Ga8)
For the State Health	:	Mr. Kishore Kumar Sinha, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 20-12-2019 The petitioner has prayed for the following relief:

“For issuance of an appropriate writ (quo-warranto) order or orders for direction to the respondents to rectify or to correct by cancelling the present advertisement No. 03/2019 in column, as has been published on 01.03.2019 online filled up to 05.04.2019 vacancies for the various posts of 5(five) categories of posts i.e., D.P.M. (District Programme



Manager), D.A.M.(District Acct. Manager), M.M. & E. (District Monitoring and Evolution Officer), D.C.M. (District Community Bobilizer) and D.P.C. (District Planning Co-ordinator) without giving weightage of desirable experience (working) for separate Districts in Bihar. And to publish the new/fresh advertisement by mentioning/inserting desirable working experience and age relaxation as per Bihar Gazette Clause for all the above named posts already published earlier.”

Having heard learned counsel for the petitioner, we are of the considered view that present petition filed under Article 226 of the Constitution of India in the nature of Public Interest Litigation, is totally misconceived. How would the present petitioner, who claims himself to be a public spirited person, has any interest in filling up of certain post in the Department of Health and that too on contractual basis. Is it to pursue the cause of those who are going to be replaced through the recruitment process in question? By means of the present petition, the present petitioner seeks amendment in the terms of appointment/selection so notified way back in 1st March,2019 and yet the petition is filed on 18.12.2019. What should be the criteria for selection and what should be the criteria for eligibility is all within the domain of the policy maker.

Before us, it could not be highlighted as to how the



criteria of eligibility is arbitrary, illegal or unconscionable. Simply, certain unemployed youth may be left out in the process, cannot be a reason sufficient enough to interfere in the eligibility criteria fixed by the employer.

Also, we notice that the petitioner, prior to approaching this Court, has not done the spade work necessarily required to be carried out for this Court to issue a writ of mandamus. The petitioner should fulfill all the requirements as reiterated in **D. N. JEEVARAJ V. State of Karnataka (2016) 2 SCC 653**, wherein Madan B. Lokur, J. has culled out the following process for adjudication of public interest litigation, more so in a writ of mandamus as is sought to be enforced, at para Nos.34 to 38 as under:

“34. The learned counsel for the parties addressed us on the question of the bona fides of Nagalaxmi Bai in filing a public interest litigation. We leave this question open and do not express any opinion on the correctness or otherwise of the decision of the High Court in this regard.

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* [*Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504] to this



effect as follows: (SCC p. 515, para 16)

“16. The writ petitions before us are not inter partes disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court.”

36. A considerable amount has been said about public interest litigation in *R&M Trust* [*R&M Trust v. Koramangala Residents Vigilance Group*, (2005) 3 SCC 91] and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organisation or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they



should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India v. S.B. Vohra* [*Union of India v. S.B. Vohra*, (2004) 2 SCC 150 : 2004 SCC (L&S) 363] that: (SCC p. 160, paras 12-13)

“12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”

38. A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd.*



v. *Union of India* [*Saraswati Industrial Syndicate Ltd. v. Union of India*, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)

“24. ... 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 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. 11, p. 106:

‘198. *Demand for performance must precede application.*—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.”

As such, for all the aforesaid reasons, we dismiss the
present writ petition.

(Sanjay Karol, CJ)

(Prakash Chandra Jaiswal, J)

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