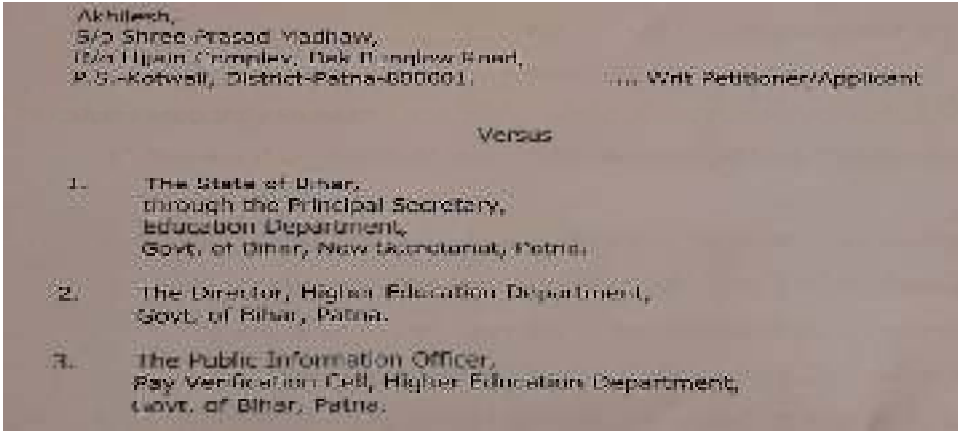


IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10449 of 2020



-Versus-

- 4. Patliputra University, Patna through its Registrar.
 - 5. Vice-Chancellor, Patliputra University, Patna.
 - 6. The Registrar, Patliputra University, Patna
 - 7. The Principal, B.D. College, Mithapur, Patna-800001, Bihar.
 - 8. Dr. Chandravijay Prasad Singh, Associate Professor,
Department of Zoology, B.D. College, Mithapur, Patna.
- Respondents

Appearance :

For the Petitioner/s : Mr. Daya Shankar Prasad, Advocate
Ms. Sugadha Prasad, Advocate

For the Respondent/s : Mr. Lalit Kishore, Advocate General
Mr. Shashi Shekhar Tiwari, A.C. to AAG

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon’ble the Chief Justice/ Hon’ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 31-05-2021

Petitioner has prayed for the following relief(s):

“(i) For issuance of an appropriate order and/or direction restraining the respondent authorities, i.e.,

respondent nos. 4 to 7, from releasing payment of arrears of salary etc. to the respondent no. 8 pursuant to the office order No. R/PPU/494/2020 dated 07.08.2020 issued by the Registrar of Patliputra University, till the directions made by this Hon'ble Court in its judgment and order dated 27.02.2019 in Civil Review No. 535 of 2018 are complied with.

(ii). To seek an appropriate order and/or direction to the respondent authorities, i.e., respondent nos. 4 to 7 to file FIR against respondent no. 8 to recover the salary and arrear illegally drawn by Dr. Chandra Vijay Prasad Singh (respondent no. 8) amounting to Rs. 1.25 crores, pursuant to the audit report 2016 of B.D. College done by A.G. office IPAI audit team and inquiry report para 22 of Financial adviser of Magadh University dated 08.01.2017; Inquiry was conducted by Financial Adviser, Magadh Univ. on the basis of resolution taken in agenda no.16 of Syndicate meeting dated 19.07.2017.

vis-à-vis

In such piquant situation the investigation by apex intelligence agency of the state of Bihar, constituting SIT with regard to ongoing racket flourishing under the heels of concerned authorities (Patliputra University) requires to be conducted by having full proof probe in the whole episode as there has been irregularities of wrongful/illegal payment amounting to Rs. 1.25 crores is also being paid in the case of one Rakesh Kumar Singh, Lecturer, presently posted

in Arbind Mahila College, Patna.

(iii). To grant any other reliefs for which petitioner is found entitled in the facts and circumstances of the case.”

Petitioner who claims to be a person advancing the cause in public interest, has filed the instant petition, which in fact is seeking enforcement of the judgment dated 27.02.2019 in Civil Review No. 535 of 2018, titled as **Akhilesh Vs. The State of Bihar & Ors.**

It is not in dispute that touching the very same issue, petitioner has initiated proceedings for contempt by filing an application inviting attention of this Court relating to the violation of the order by the respondent authorities.

If that were so, present petition being totally misconceived, only merits rejection.

We only notice that prior to approaching this Court petitioner did not bring the factum of non-compliance of the judgment in the case of **Akhilesh** (supra) to the authority concerned which it ought to have so done, more so in the light of the decision rendered by Hon’ble the Supreme Court in ***D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653***, wherein Hon’ble the Apex Court

in paragraphs 34 to 39 observed 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 parties 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.”

Hence, the present petition stands dismissed with liberty to pursue the matter in appropriate proceeding.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	01.06.2021
Transmission Date	