

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4953 of 2022

1. Pramod Kumar Singh Son of Late Asharfi Mandal Resident of Village and P.O. - Jichho, Police Station - Lodipur, District- Bhagalpur.
2. Dilip Kumar Pathak Son of Late Parmanand Pathak Resident of Village and P.O. - Marwa, Police Station - Bihpur, District- Bhagalpur.
3. Rubi Kumari Devi Wife of Jay Prakash Paswan Resident of Village - Kharba, Post - Muhran, Police Station - Goradih, District- Bhagalpur.
4. Sanjay Kumar Mandal @ Sanjay Mandal Son of Harihar Mandal Resident of Village and P.O. Farka, Police Station - Sabour, District- Bhagalpur.
5. Rupan Prasad Singh Son of Late Nakku Prasad Singh Resident of Village - Sardho, Police Station - Bishanpur Jichho, District- Bhagalpur.
6. Anupam Kumari @ Anupam Devi Daughter of Suresh Kumar Resident of Village and P.O. Marwa, Police Station - Bihpur, District- Bhagalpur.
7. Ashok Kumar Pathak Son of Parmanand Pathak Resident of Village and P.O. Marwa, Police Station - Bihpur, District- Bhagalpur.
8. Shambhu Prasad Sharma Son of Late Saryug Prasad Sharma Resident of Village and Post - Lokmanpur, Police Station - Kharik, District- Bhagalpur.
9. Md. Arahath Ali Son of Md. Abbas Ali Resident of Village - Ujani, P.O. Naugachia, Police Station - Naugachia, District- Bhagalpur.
10. Md. Firoj Son of Md. Alauddin Resident of Village and P.O. Jichho, Police Station - Goradih, District- Bhagalpur.
11. Manoj Kumar Das Son of Radhe Das Resident of Village and P.O. Jichho, Police Station - Goradih, District- Bhagalpur.
12. Gopal Pandit Son of Damodar Pandit Resident of Village and P.O. Jichho, Police Station - Goradih, District- Bhagalpur.
13. Charan Kumar Verma Son of Satish Prasad Das Resident of Village and P.O. Rampur Khurd, Police Station - Nathnagar, District- Bhagalpur.
14. Dhananjay Kumar Verma Son of Naresh Prasad Resident of Village Post - Patehpur, Police Station - Sahkund, District- Bhagalpur.
15. Pandit Braj Kishore Son of Prasadi Pandit Resident of Village and P.O. Satjori, Police Station - Jagdispur, District- Bhagalpur.
16. Chandra Mohan Kumar Son of Rajendra Prasad Mandal Resident of Village and P.O. Lokmanpur, Police Station - Kharik, District- Bhagalpur.
17. Bal Krishna Biswas Son of Jay Narayan Mandal Resident of Village and P.O. Lokmanpur, Police Station - Kharik, District- Bhagalpur.
18. Amrendra Prasad Yadav Son of Umesh Prasad Yadav Resident of Village and P.O. Bhawanipur, Police Station - Bhawanipur, District- Bhagalpur.
19. Shiv Narayan Das Son of Vanarsi Ravi Das Resident of Village and P.O. Mohamdabad, Police Station - Mirjanhat Goradih, District- Bhagalpur.
20. Nirmala Devi Wife of Shiv Prakash Modi Resident of Village and P.O. Mohamdabad, Police Station - Mirjanhat Goradih, District- Bhagalpur.



21. Nandlal Yadav Son of Luri Yadav Resident of Village and P.O. and P.S. - Bhawanipur, District- Bhagalpur.
22. Suresh Kumar Singh Son of Jadu Singh Resident of Village Maheshpur, P.O. - Parghudi, P.S. Sabour, District- Bhagalpur.
23. Kiran Kumari Daughter of Damodar Mandal Resident of Village and P.O. and P.S. - Sabour, Ranitalab, District- Bhagalpur.
24. Lalita Kumari Daughter of Akhileshwar Prasad Singh Resident of Village and P.O. - Dharampuratti, P.S. - Bihpur, District- Bhagalpur.
25. Shailendra Prasad Yadav Son of Garbhu Prasad Yadav Resident of Village Srichak, Police Station - Sanhola, P.O. - Mangachak, District- Bhagalpur.
26. MD Israil Ansari Son of MD Abdulla Ansari Resident of Village and P.O. - Amdiha, P.S. - Sanhola, District- Bhagalpur.
27. Md. Khursid Alam Son of MD Badruddin Alam Resident of Village and P.O. Palwa, Police Station - Sanhola, District- Bhagalpur.
28. Rekha Rani Wife of Arvind Kr. Singh Resident of Village Maheshlitti, PO-Charvargaon, Police Station - Jagdishpur, District- Bhagalpur.
29. Sujata Kumari Daughter of Baldeo Prasad Singh Resident of Village and P.O. Bhulni, Police Station - Jagdishpur, District- Bhagalpur.
30. Ravindra Prasad Singh Son of Mohan Prasad Singh Resident of Village Kamalpur, PO - Mohijaddinpur, Police Station - Jagdishpur, District- Bhagalpur.
31. Shankar Bhandari Son of Firangi Bhandari Resident of Village P.O. - Gangapur Gadhel, Police Station - Amarapur, District- Banka.
32. Jai Prakash Das Son of Shankar Das Resident of Village Kamalpur, P.O. - Mohitpur, Police Station - Ratanganj, District- Bhagalpur.
33. Arvind Kumar Singh Son of Mahendra Prasad Singh Resident of Village Maheshietti, P.O. - Charavargaon, Police Station - Sakhund, District- Bhagalpur.
34. Lakshmi Devi Wife of Subash Chandra Singh Resident of Vill - Chandpur, P.O. - Mohidinpur, P.S. - Sakhund, District- Bhagalpur.
35. Anita Devi Wife of Vrishketu Singh Resident of Vill - Chandpur, P.O. - Mohidinpur, P.S. - Sakhund, District- Bhagalpur.
36. Vrishketu Singh Son of Uday Prasad Singh Resident of Vill Chandpur, P.O. - Modipur, P.S. - Sakhund, District- Bhagalpur.
37. Avadhesh Kumar Son of Dashrath Prasad Singh Resident of Village and P.O. - Charavargaon, Police Station - Sakhund, District- Bhagalpur.
38. Manohar Mandal Son of Ganga Mandal Resident of Vill and P.O. - Fatehpur, P.S. - Sajour, District- Bhagalpur.
39. Sanjay Kumar Das Son of Bindeshwari Das Resident of Village - Chaknarayanpur, P.O. Bhuini, Police Station - Sakhund, District- Bhagalpur.
40. Shyam Sundar Das Son of Arjun Das Resident of Vill and PO - Vaisi Jahagirapur, Police Station - Gopalpur, District- Bhagalpur.
41. MD Sahbaj Alam Son of MD Israfil, Resident of Vill and PO - Vaisi Jahagirapur, Police Station - Gopalpur, District- Bhagalpur.



42. Vikas Kumar Son of Rambriksh Yadav Resident of Vill ad PO Bhawanipur, Police Station - gopalpur, District- Bhagalpur.
43. Subash Chandra Bharti Son of Suryug Sharma Resident of Village and PO - Bhawanipur, Police Station - Gopalpur, District- Bhagalpur.
44. Jai Prakash Singh Son of Sitaram Singh Resident of Vill - Babhaniya, PO - Bhawanipur, Police Station - Gopalpur, District- Bhagalpur.
45. Vinay Kumar Son of Lakshman Prasad Yadav Resident of Vill and PO Bhawanipur, Police Station - Gopalpur, District- Bhagalpur.
46. Bimal Kumar Singh Son of Vasudeo Prasad Singh Resident of Vill and PO and Police Station - Pranpur, District- Katihar.
47. Chandra Sekhar Madal Son of Maniklal Mandal Resident of Village Masudanpurvaisi, PO - Bhawanpur, Police Station - Gopalpur, District- Bhagalpur.
48. Upendra Bhagat Son of Borhan Bhagat Resident of Vill - Narayanpur Chandiasthan, PO - Ismailpur, Police Station - Gopalpur, District- Bhagalpur.
49. Masomat Durga Devi Son of Ramesh Jha Resident of Vill and PO - Pothia, Police Station - Sanhola, District- Bhagalpur.
50. Kavindra Chaudhary Son of Late Prayagg Chaudhary Resident of Vill and PO - Amdiha, Police Station - Sanhola, District- Bhagalpur.
51. Hemant Kumar Mishra Son of Shashikant Mishra Resident of Vill - Vishwaspur, PO and Police Station - Mahiyam, District- Bhagalpur.
52. Ramju Baitha Son of Fakir Baitha Resident of Vill and PO - Kodanda, Police Station - Sahkund, District- Bhagalpur.
53. Raushan Kumar Singh Son of Jagdish Prasad Singh Resident of Vill - Sultanpur, PO - Kodanda, Police Station - Sahkund, District- Bhagalpur.
54. Usha Shabnam Wife of Sudhir Prasad Singh Resident of Vill - Dindayalpur, PO - Kodanda, Police Station - Sahkund, District- Bhagalpur.
55. Amit Yadav So of Uchitlal Yadav Resident of Vill - Dindayalpur, PO - Kodanda, Police Station - Sahkund, District- Bhagalpur.
56. Sudhir Kumar Son of Upendra Prasad Singh Resident of Vill - Dindayalpur, PO - Kodanda, Police Station - Sahkund, District- Bhagalpur.
57. Ramchandra Prasad Singh Son of Ramdhari Singh Resident of Vill - Sultanpur, PO - Kodanda, Police Station - Sahkund, District- Bhagalpur.
58. Rajkumar Yadav So of Vishwanath Prasad Yadav Resident of Vill - NayatolaKurpat, PO - Parghari, Police Station - Sabour, District- Bhagalpur.
59. Byas Prasad Singh Son of Dhodhay Singh Resident of Vill - and PO - Hario, Police Station - Bihpur, District- Bhagalpur.
60. Rana Pratap Sharma Son of Saryug Sharma Resident of Vill and PO - Lokmanpur, Police Station - Kharik, District- Bhagalpur.
61. Niranjan Kumar Das Son of Narayan Das Resident of Village - Sardho, P.O. - Vishanpur Jichho, Police Station - Sabour, District- Bhagalpur.
62. Bibi Sanjida Khatoon Wife of Md. Faijuddi Resident of Village - Bhurakhap, Police Station - Madhepura Chakhethu, Police Station - Sanhaura, District-



Bhagalpur.

63. Md. Zafer Alam Son of Shekh Akhtar Ali Resident of Village and P.O. Maniyamor, Police Station - Naugachia, District- Bhagalpur.
64. Mahendra Kumar Son of Kali Sharma Resident of Alalpur Vasa, P.O. Jotgovind, Police Station - Gopalpur, District- Bhagalpur.
65. Santosh Kumar Yadav Son of Bivishan Prasad yadav Resident of Village and P.O. Vaisi Jahagirpur, Police Station - Gopalpur, District- Bhagalpur.
66. Abhay Kumar Yadav Son of Umesh Prasad Yadav Resident of Village and P.O. Bhawanipur, Police Station - Gopalpur, District- Bhagalpur.
67. Md. Kasim Rasul Son of Md. Rasool Baks Resident of Village - Ujani, P.O. Maniyamor, Police Station - Naugachia, District- Bhagalpur.
68. Md. Iftekhhar Alam Son of Md. Hadi Suil Rahman Resident of Village - Ujani, P.O. Maniyamor, Police Station - Naugachia, District- Bhagalpur.
69. Aruna Kumari Wife of Uma Kant Mandal Resident of Village - Sadhopur, P.O. Vaisi Jahagirpur, Police Station - Rangra Chowk, District- Bhagalpur.
70. Md. Abdul Baki Son of Md. Halim Resident of Village - Chandanpur, P.O. Charvargaon, Police Station - Sakhund, District- Bhagalpur.
71. Md. Talim Ahmad Son of Md. Nasir Uddin Resident of Village and P.O. Khiribandh, Police Station - Jagdishpur, District- Bhagalpur.
72. Md. Aslam Son of Md. Israfil Resident of Village and P.O. Rangra, Police Station - Rangrachowk, District- Bhagalpur.
73. Bina Kumari Sinha D/o Banari Prasad Resident of Village - and P.O. Khankitta, Police Station - Sabour, District- Bhagalpur.
74. Gopal Mandal Son of Darshan Mandal Resident of Village ad P.O. Farka, Police Station - Sabour, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar, Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Human Resource Development - cum- Education Department, Government of Bihar, Patna.
3. The Director, Mass Education, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Dr. Manoj Kumar, Advocate
For the Respondent/s : Mr.Ajay Kumar Rastogi, AAG 10

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



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-04-2022

Heard learned counsel for the parties.

2. Petitioners have prayed for the following

relief(s):-

“i. For diluting/quashing or declaring the clause (iii) of the notice dated 21.4.2016 published in Hindi Daily “Hindustan” read with clause 6(ka)(i) of the Govt. Memo no. 2530 dated 04.10.2017 as ultravirous to the constitution of India so also nonest in the eye of law.

ii. The respondents simultaneously may kindly be directed to replace the above said incorporation through just, fair, rational and reasonable stipulation so that the constitutional protection under Article 14,16 & 21 be made available to the petitioners and other Non-formal Education Instructors cum Special Education Instructors who are/were validly appointed, bonafidely worked and genuinely entitle for the job/absorption in question within the four corners of law coupled with the illegibility and experience criteria which they having admittedly.

iii. For directing the respondents to consider the petitioners candidature/cause, in view of the well settled preposition of law as stated hereunder-

a. “Justice must not only be done, but must also be seen to be done”, since reported in {1924} 1KB256 (i.e. Rex V. Sussex Justices case) and other cases.

b. “ A reasonless order cannot be termed as an order, more so could not come under the definition of law decided and as such not at all have any binding effect”, since reported in (2010) 9 SCC 496 (M/s Kranti Asso. Pvtg. Ltd. & Anr Vs Masood Ahmed Khan & Ors., AIR 2004 SCC 2950 (Narcotics Control Bureau Case) etc.

c. “Hot and cold can not be allowed to blow simultaneously” since reported in AIR 2006 SCC Online Cal. 158, (2009) 8 SCC-366, (2009) 9 SCC-304, (2011) 10 SCC-420, (2020) 6 SCC 387 etc.



- d. “whenever a cut of date is fixed to categorized one set of employees for favourable consideration over others the twin test of valid classification must necessarily be satisfied” since reported in (2013) 2 SCC-772 (794), K.T. Retired officials Association Vs. The State of Tamil Nadu & Ors.
 - e. “The judgment must be read in totality “as has been held in Hon’ble Apex Courts decision since reported in AIR 1993SC 43 (Commissioner Income Tax Vs. Sun Engineering) etc. and as such the Hon’ble Apex Court decision/order Supra dated 26.02.2016 ought to have been looked into in its totality and not in isolation while confining over the later part of order only.
 - f. The doctrine towards “judicial decorum and binding nature” of an order has also could not be looked into by the Hon’ble Apex Court while passing the order above said dated 26.02.2016 and 02.12.2021 as the principal decided in Ashwini Kumar and ors. Case supra has been passed by the strength/bench of three Hon’ble Judges of the Hon’ble Apex Court and even though the said decision was neither diluted nor challenge, having still holding its field ought to have been honoured/followed by the Division Bench of the Hon’ble Apex Court under the doctrine of judicial decorum and binding nature of residence or the same ought to have been referred to the larger Bench, in case of difference of opinion etc.
 - g. “Right to livelihood is an integral part of right to life” since reported in (2016) 2 SCC 123 (B.S. Shershiri) vs. The State of Karnakata, (2014) 14 SCC 127 (Dhiraj Singh vs. State of Haryana), 2011(1) SCC 53 (V.N.Shrikhande (Dr.) Vs. Amla Sera Fernandes).
 - h. “State action to be reasonable and in public interest “since reported in 2005 ALD 194 (Dr. V.V.Sai Naresh and another vs. Union of India & Ors.
- iv. The answering respondents also may kindly be



directed to not at all be prejudice with any decision or order which has no sanction of law and not having any binding effect more so going to cause miscarriage of justice on the face of it.

v. The answering respondent alternatively may kindly be directed to engage the petitioners either on regular basis or on contractual basis while extending preferential right/weightage in their favour in view of the latest development published in Hindi Daily “Dainik Jagran” on 19.12.2021.”

3. After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made across the bar, more so, on account of delay and laches, learned counsel for the petitioners, under instructions, seeks permission to withdraw the present petition reserving liberty to approach the Respondent No. 3, namely the Director, Mass Education, Government of Bihar, Patna by filing a representation venting out his grievance, subject matter of the present *lis*, which the petitioners shall be filing within a period of four weeks from today.

4. Learned counsel for the respondents states that if such a representation is filed by the petitioners, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of four months from the date of its filing along with a copy of this order.



5. Statement accepted and taken on record.

6. The Hon'ble Supreme Court in *D. N. Jeevaraj*

Vs. Chief Secretary, Government of Karnataka & Ors, (2016)

2 SCC 653, paragraphs 34 to 38 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.”

7. As such, petition stands disposed of in the following terms:-

(a) Petitioners shall approach the authority concerned within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The authority concerned shall consider and dispose it of expeditiously by a reasoned and speaking order preferably within a period of four months from the date of its filing along with a copy of this order;

(c) The order assigning reasons shall be communicated to the petitioners;

(d) Needless to add, while considering such



representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(f) Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioners take recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Liberty reserved to the petitioners to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;

(i) We have not expressed any opinion on merits. All issues are left open;

(j) The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet



in person i.e. physical mode;

8. The petition stands disposed of in the aforesaid terms.

9. Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	11.04.2022
Transmission Date	

