

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9118 of 2022

Prof. Vivekanand Sah Son of Birendra Prasad Sah, Resident of Lower Jamtikari Road, Near Shiv Mandir Parvatti, Police Station- Tatarpur, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Higher Education, Education Department, Government of Bihar, Patna.
4. The Hon'ble Chancellor of the Universities of Bihar, Patna.
5. The Principal Secretary, Governor Secretariat, Raj Bhawan, Patna.
6. The Tilkamanjhi Bhagalpur University, Bhagalpur through its Registrar.
7. The Vice-Chancellor, Tilkamanjhi, Bhagalpur University, Bhagalpur.
8. The Registrar, Tilkamanjhi, Bhagalpur University, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Nitya Nand Neeraj, Advocate
For the Respondent/s : Smt. Shilpa Singh (GA-12)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 01-07-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

(i) For issuance of an appropriate writ / order / direction to the respondents to check the misappropriation and illegal payment of salary from public ex-chequer to the teaching and non-teaching staff of the Tilkamanjhi Bhagalpur University, Bhagalpur (in short T.M.B.U. Bhagalpur) who are being paid in the name of absorption

pursuant to the justice Agrawal Committee report and order of Apex Court but the same absorption is incomplete violation of Justice Agrawal Commission Report as well as order passed in S.L.P. No. 6098 of 1997 dated 12.10.2004.

- (ii) For issuance of an appropriate writ / order / direction to the respondent University taking further action in compliance of letter no. 1830 dated 15.09.2009 issued by the Human Resources Development Department, Government of Bihar (Now Education Department) by which all the universities including the respondent university was directed to stay the payment of salary of the teachers who were shown in category R2 and NR as per the section 76

amended section 35(3) of the Bihar State Universities Act as such lecturers were observed in complete violation of or order passed in S.L.P. No. 6098 of 1997 by Appex Court and it was further directed to take action against such observed teachers to take actions under the provisions of Public Demand Recovery Act 1914 for recovery of illegal payments.

(iii) For issuance of an appropriate writ / order / direction to take action by the respondent university in pursuance of letter no. 433 dated 03.03.2022 by which the Education Department, Government of Bihar directed the Registrar, Tilkamanjhi Bhagalpur University, Bhagalpur by which it was communicated to submit

a report regarding the teachers observed though they were placed in R2 and NR category of Justice Agrawal Committee Report and such absorption has completely in violation of order passed by apex court in S.L.P. No. 6098 of 1997 though in the letter year of the S.L.P. has been wrongly type as 2004 in place of 1997.

(iv) For issuance of an appropriate writ / order / direction granting any other relief or reliefs for which the petitioner is found entitled.

Learned counsel for the State submits that the issue raised in this PIL can be best resolved at the local level by the appropriate authorities.

After the matter was heard for some time, learned counsel for the petitioner, under instructions, states that petitioner shall be content if a direction is issued to the **respondent no. 8, the Registrar, Tilkamanjhi, Bhagalpur University, Bhagalpur,** to consider and decide the representation which the petitioner shall be filing within a

period of four weeks from today for redressal of the grievance(s).

Learned counsel for the respondents states that if such a representation is filed by the petitioner, 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.

Statement accepted and taken on record.

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)**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, petition stands disposed of on the following terms:-

(a) Petitioner 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 petitioner;

(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 petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioner takes 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 petitioner 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;

The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	