

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13748 of 2021

1. Dr. Om Prakash Prasad Son of Yogesh Chandra Mandal @ Yogesh, Resident of Village and P.O. - Manihari Semapur Baretha, District - Katihar.
2. Dr. Rama Shankar Prasad, Son of Ram Naresh Prasad, Resident of Village and P.O. - Mahadevpur, District - Katihar.
3. Raghav Prasad Singh, Son of Junglee Prasad Singh, Resident of Village - Phulwadiya, P.O. - Madwa, District - Katihar.
4. Jhagru Prasad Sah, Son of Basudev Prasad Sah, Resident of Village - Nima, District - Katihar.
5. Raj Narayan Kunwar, Son of Ram Chandra Kunwar, Resident of Village - Amla Tola, Girls School Road, District - Katihar.
6. Ranjeet Prasad Choudhary, Son of Harish Chandra Choudhary, Resident of Village - Jagdishpur Barari, District - Katihar.
7. Rajendra Prasad Choudhary, Son of Kedar Nath Choudhary, Resident of Village and P.O. - Kumaripur, District - Katihar.
8. Krishnanand Prasad Lal, Son of Late Kameshwar Prasad Lal, Resident of Village and P.O. - Azamnagar, District - Katihar.
9. Rajendra Singh, Son of Kare Singh, Resident of Village and P.O. - Belwa, District - Katihar.
10. Ghanshyam Prasad Singh, Son of Yugal Prasad Singh, Resident of Village and P.O. - Belwa, District - Katihar.
11. Ram Chandra Mahaldar, Son of Sahdev Mahaldar, Resident of Village - Basuhaar Majdiya, P.O. - Muradpur, District - Katihar.
12. Ramdev Choudhary, Son of Raghunath Choudhary, Resident of Village and P.O. - Pasraha Babhangama, District - Katihar.
13. Md. Mistar, Son of Md. Mofil Miyan, Resident of Village - Raghuni Chowk, P.O. - Sirniya, District - Katihar.
14. Md. Jalil, son of Late Shaikhawat Miyan, Resident of Village - Makdampur, P.O. - Sirniya, District - Katihar.
15. Surendra Prasad Singh, Son of Late Kamla Prasad Singh, Resident of Village and P.O. - Bahbhani, District - Katihar.
16. Baleshwar Urao, Son of Late Hathi Urao, Resident of Village - Hariharpur, P.O. - Dighri, District - Katihar.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principaln Secretary, Panchayati Raj Department, Bihar, Patna.
3. The Chief Secretary Bihar.
4. The Secretary, Bihar Legislative Council, Bihar, Patna.



5. The Additional Chief Secretary Urban Development and Housing Department, Government of Bihar, Patna.
6. The Honble Excellency, the Governor of Bihar, Patna.
7. The Honble Chief Minister, Bihar, Patna.
8. The Speaker, Bihar Legislative Assembly, Bihar, Patna.
9. The Chairman, Bihar Legislative Body, Bihar, Patna.
10. Mr. Tejashwi Yadav, The Leader of Opposition, Bihar Legislative Assembly, Bihar, Patna.
11. The Honble Minister, Panchayati Raj Department, Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Ranjeet Kumar, Advocate Mr. Mohit Srivastava, Advocate
For the State	:	Mr. Pawan Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 11-04-2022

We are utterly dismayed over the cavalier way this writ application has been drafted, and despite this Court's observation at the very commencement of hearing the case in the wake of the nature of relief sought for in the present writ application, the matter has been argued by learned counsel for the petitioner.

This writ application has been filed seeking direction to the respondent authorities to frame rules/policy for the employees of the *Gram Panchayats* in view of Article 243H of the Constitution of India and in the light of a 'judgment' delivered by this Court on 11.12.2013 passed in **CWJC No. 3689 of 2012**



(Rajendra Prasad Choudhary Vs. State of Bihar and Ors.). At the very outset, this Court pointed out to learned counsel for the petitioner, Mr. Ranjit Kumar that this Court exercising power of judicial review under Article 226 of the Constitution of India should not issue a writ in the nature of *Mandamus* requiring the State Government to frame statutory rules or amend statutory rules in view of the law clearly laid down by the Supreme Court in this regard.

2. Mr. Ranjit Kumar, learned counsel, disregarding such clear observation made by this Court took us to the said order of this Court dated 11.02.2013 passed in CWJC No. 3689 of 2012 and other analogous matters with reference to Article 234H of Constitution of India. Unfortunately, the said order of this Court dated 11.12.2013 has been described in the writ petition as this Court's Judgment, which it is not.

3. It is noteworthy that the said order of this Court in the case of Rajendra Prasad Choudhary (supra) is apparently an *interim* order. There is no disclosure in the writ petition as to what was the final outcome of the proceedings arising out of the said proceeding. Only upon an enquiry made by this Court, it has emerged that the said batch of writ applications has been disposed of by an order dated 19.06.2013 with the following direction and



observation:-

“I find that the Zila Parishad has taken a decision to gear up the payment of legal dues of the petitioners including post retirement benefits and has made payments as well. Thus, the writ petitions bearing C.W.J.C. No.3689 of 2012 and C.W.J.C. No. 1297 of 2013 are disposed of in terms of the observations noted above.

The petitioner of C.W.J.C. No. 15079 of 2004 retired on 31.10.2002 from Zila Parishad, Samastipur whereas the petitioner of C.W.J.C. No.4487 of 2005 retired on 1.7.2001 from Zila Parishad, Saharsa.

Learned counsel for the Zila Parishad submits that most of the retrial dues of these petitioners have been paid and as soon as the fund is available, the retrial dues of the petitioners would be paid forthwith.

The petitioners of these writ applications have retired long back in the year 2001 and 2002, I direct the respondent Zila Parishad to clear the retrial dues of the petitioners on priority basis within four months from the date of receipt of a copy of this order.

The petitioner of C.W.J.C. No.4883 of 2008 retired from Zila Parishad, Darbhanga. Counsel for the Zila Parishad submits that the petitioner has been paid most of his retrial dues. Counsel for the petitioner submits that he has been paid 60% of his retrial dues. The respondent State Government should release the necessary funds for payment of balance amount of retrial dues to the petitioner forthwith.



*For the reasons stated hereinabove,
all these writ petitions bearing C.W.J.C. No.
15079 of 2004, C.W.J.C. No.4487 of 2005 and
C.W.J.C. No.4883 of 2008 are thus disposed of.”*

4. The petitioners, as is evident from paragraph 1 of the writ petition are seeking direction to make exhaustive provisions regarding service conditions, payment of salary, promotion and post-retiral dues. In paragraphs 4 and 16 of the writ application, it has been vaguely stated that the petitioners are employees of different Municipal Corporations in the State of Bihar. Surprisingly, in paragraph 16 of the writ application, it has been stated that the petitioners are being discriminated by the machinery by not framing particular recruitment rules which includes retiral dues and pension. This statement is preposterous on the face of it for two reasons. Firstly, the recruitment rules and rules governing retiral dues have no connection with each other. Secondly, the petitioners who claim to be employees of the Corporation cannot be said to be the ‘party-aggrieved’ for non-framing of the recruitment rules as they claim to be already in the service of the Corporations. As is evident from the cause title of the writ petition, petitioners No. 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, and 13 are more than 62 years of age. The age of petitioner No. 2 has been mentioned as 62 years. Many of them are more than 68. We



fail to appreciate the circumstance in which all such petitioners, as noted herein, can be said to be in service after having attained the age of superannuation, which is normally 62 years. The statements made in the writ petition that all the petitioners are still the employees of different Municipal Corporations, appears to be false. Learned counsel for the petitioners ought to have been cautious and careful while drafting the writ petition and incorporating such facts which on the face of it appear to be incorrect and false.

5. We deem it proper at this stage to mention that Rule 2 of Chapter III under Part 2 of the High Court at Patna, 1915 Rules mandates that every petition should state concisely and clearly, the facts, matters, and circumstances upon which the applicant relies. There is no specific averment in the writ petitioner as to how and in what manner the petitioners are aggrieved. Material pleadings are completely lacking in the writ petition to make out any case for this Court to entertain the writ petition. Except for the vague statements and sweeping comments in the writ petition, there is no material pleaded nor brought on record by any other means for this Court to entertain the nature of relief sought in the present writ application. There is no averment as to in what circumstance the petitioners are entitled to a particular relief with



reference to the constitutional or statutory provisions. Surprisingly, the petitioners claim in the writ petition to be employees of the Municipal Corporation and they are seeking a direction to frame rule, policy for the employees of *Gram Panchayat*. Lack of responsibility in drafting of the writ petition is, thus, writ large and exemplary. The relief which has been sought in paragraph 1 has no connection with the pleadings with reference to the status of the petitioners. The Supreme Court in the case of ***D.P. Chadha Vs. Triyugi Narayan Mishra and Ors.*** reported in (2001) 2 SCC 221 has noted with approval an apt quote of Mr. Justice Crampton in paragraph 27 expounding the position of an advocate, which is being reproduced hereinbelow:-

“The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not wilfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable services, yet he has a prior and perpetual retainer on behalf of truth and



justice and there is no Crown or other license which in any case or for any party or purpose can discharge him from that primary and paramount retainer.”

6. The least which was expected of learned counsel for the petitioners was to have been more diligent in properly advising the client or drafting the writ petition for presentation before this Court.

There is yet another perturbing aspect which relates to impleadment of parties. Following is the list of respondents impleaded in the writ petition:-

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Bihar Patna.
3. The Chief Secretary, Bihar.
4. The Secretary, Bihar Legislative Council, Bihar, Patna.
5. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
- 6. The Hon'ble Excellency, the Governor of Bihar, Patna.**



7. The Honb'ble Chief Minister, Bihar, Patna.

8. The Speaker, Bihar Legislative Assembly, Bihar, Patna.

9. The Chairman, Bihar Legislative Assembly, Bihar, Patna.

10. Mr. Tejashwi Yadav, The Leader of Opposition, Bihar Legislative Assembly, Bihar, Patna.

11. The Hon'ble Minister, Panchayati Raj Department, Bihar, Patna.

7. In the Court's opinion, no lawyer of ordinary prudence could have impleaded respondents No. 6 to 11 while seeking nature of relief noted above. We are completely at a loss to understand the purpose, (even hidden) behind impleadment of respondents No. 6 to 11.

8. In our opinion, the Governor of Bihar could not have been impleaded as a party respondent by virtue of the bar under Article 361 of the Constitution of India, the relevant portion of which reads as under:-

“361. Protection of President and Governors and Rajpramukhs. – (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be



done by him in the exercise and performance of those powers and duties”

9. The Supreme Court dealing with Article 361 of the Constitution of India in the case of ***Rameshwar Prasad and Others (VI) Vs. Union of India and Another*** reported in (2006) 2 SCC 1 has laid down the law in paragraph 173 as under:-

“173. A plain reading of the aforesaid article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any court for the exercise and performance of their powers and duties. Most of the actions are taken on the aid and advice of the Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions. Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by the Union of India or the State, as the case may be. Even in cases where personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made. Article 361 does not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of



the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to the President or the Governor for even filing of affidavit to assist the Court. Filing of an affidavit on one's own volition is one thing than the issue of direction by the Court to file an affidavit. The personal immunity under Article 361(1) is complete and, therefore, there is no question of the President or the Governor being made answerable to the Court in respect of even charges of mala fides."

10. In a relatively recent decision in the case of ***Anindita and Another Vs. Pranav Kumar Mukherjee and Others*** reported in ***(2018) 15 SCC 628***, the Supreme Court strongly deprecated the conduct of the petitioner of that case for impleading the President of India as a party to the litigation, despite the pronouncement in the case of ***Rameshwar Prasad and Other (VI)*** (supra). The Supreme Court observed that no litigant can be permitted to browbeat or malign the system which is essential for maintaining the integrity of the institution and public confidence in the delivery of justice.

11. The case of ***Anindita and Another*** (supra) and the present case has one crucial distinguishing feature. The said writ petition before the Supreme Court was filed under Article 32 of the Constitution of India by the petitioner-in-person. This case, on



the other hand, has been drafted by a learned advocate of this Court. Before dealing with the constitutional issues in the writ petition with reference to Article 243 H of the Constitution of India, learned counsel ought to have consulted relevant constitutional provision before impleading the Governor of Bihar as party respondent in this case. It is shocking for the Court to notice that the Leader of the Opposition, Bihar Legislative Assembly, Bihar, Mr. Tejashwi Yadav has been impleaded as respondent No. 10. We find it difficult to decipher the circumstance which might have made learned counsel for the petitioners to consider impleadment of the Leader of the Opposition as a party respondent in the present case for the relief which the petitioners are seeking.

12. Similarly, there is no justification at all for impleading the Chief Minister of Bihar, Speaker, Bihar Legislative Assembly and the Chairman, Bihar Legislative Council, and the Minister of Panchayati Raj as party respondents. There cannot be any justification for this except, possibly, cheap publicity.

13. As has been noted above, on the one hand, the petitioners have vaguely claimed to be employees of different Municipal Corporations in the State of Bihar which, appears to be



false, on the other, they are curiously seeking a direction for framing rule, policy for employees of *Gram Panchayat* which is a body different from Corporation. The petitioners have not been able to make out any case of infringement of any of their legal or fundamental rights requiring this Court to interfere in a proceeding under Article 226 of the Constitution of India by entertaining the nature of relief which they have sought.

14. At this juncture, we must also record that at the very beginning of the case, we had pointed out to Mr. Ranjit Kumar, learned counsel for the petitioner that this Court, exercising powers of judicial review shall not issue any writ in the nature of *Mandamus* requiring the respondents to frame rules. Almost brushing aside the said observation, he kept on addressing this Court by referring to the constitutional provisions and interim observations made by a learned Single Judge of this Court in the case of ***Rajendra Prasad Chaudhary*** (supra). In this regard, we deem it appropriate to refer to the Supreme Court's decision in case of ***Asif Hameed and Others Vs. the State of Jammu and Kashmir and Others*** reported in ***1989 Supp (2) SCC 364***, wherein the Supreme Court has ruled that the Constitution does not permit the Court to direct or advise the executive in the matters of policy or to sermonize *qua* any matter which under the



Constitution lies within the sphere of legislature or executive.

[See Para-19]

15. In the case of ***Mallikarjuna Rao and Others Vs State of Andhra Pradesh and Others*** reported in ***(1990) 2 SCC 707***, the Supreme Court relying on its earlier decision in case of ***Asif Hameed*** (supra) reiterated the aforesaid view in paragraph 13, which reads as under:-

“13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India.”

16. In the case of ***Supreme Court Employees’ Welfare Association Vs. Union of India and Another*** reported in ***(1989) 4 SCC 187***, also the Supreme Court has laid down that no writ of *Mandamus* can be issued to the legislature to enact a particular



legislation nor can such direction be issued to the executive which exercises the powers to make rules in the nature of subordinate legislation.

17. The aforesaid view has further been reiterated in subsequent decisions including in case of ***Dr. Ashwani Kumar Vs. Union of India and Another*** reported in ***(2020) 13 SCC 585***. In a recent decision also, in the case of ***Jarnail Singh and Others Vs. Lachhmi Narain Gupta and Others*** reported in ***2022 SCC OnLine SC 96***, the Supreme Court has again reiterated that it is neither legal nor proper for the Courts to issue directions or advisory sermons to the executive in respect of spheres which is exclusively within their domain under the Constitution.

18. For the foregoing reasons, in our considered view, this application is vexatious making out no case for interference and is devoid of any merit.

19. This application is accordingly dismissed with cost.

20. Before we part with the present judgment, we consider it apt to issue a note of caution to the learned advocates to be more careful and cautious while drafting pleadings and presenting their case before the Court during the course of hearing. We restrain ourselves from making any further comments.



The cost is quantified at Rs. 2000/- (Rupees Two Thousand Only) payable by the petitioners in the account of Bihar State Legal Service Authority within two months from today.

(Chakradhari Sharan Singh, J)

I Agree
Madhuresh Prasad, J:

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
CAV DATE	31.03.2022
Uploading Date	29.04.2022
Transmission Date	NA

