

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11793 of 2022

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1. Krishna Kant S/o Nandan Mandal, Resident of Village - Babupur, P.O. and P.S.- Sabour, District - Bhagalpur.
 2. Sushila Devi, W/o Baleshwar Harizan, Resident of Village - Babupur, P.O. and P.S.- Sabour, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Director, Health Department, Govt. of Bihar, Patna.
3. The Secretary, Health Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, Health Department, Govt. of Bihar, Patna.
5. The District Magistrate, Bhagalpur.
6. The Civil Surgeon, Bhagalpur.
7. The In-charge, Primary Health Centre, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Chandrasekhar Sharma
For the Respondent/s : Mr.Pawan Kumar (A.C. To A.G.)

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

Date : 18-08-2022

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):_

- i. For diluting/ quashing or declaring the clause (iii) of the notice dated 21.04.2016 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 Justice 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. Pvt. Ltd., & Anr Vs. Masood Ahmed Khan & Ors., AIR 2004- SSC2950 (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) BSCC-366, (2009) 9SCC-304, (2011)10 SCC-420, (2020) 6SCC-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)28CC-772 (794), K.T. Retired official 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)2SCC 123 (B.S. Shershiri) Vs. The State of Karnataka), (2014)14 SCC127 (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 fact 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. (Annexure-10, Page-)



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. 6, namely the Civil Surgeon, Bhagalpur 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.

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.

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)

“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, as mutually prayed for, 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;

The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	22.08.2022
Transmission Date	

