

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18903 of 2021

Mithilesh Kumar Singh Son of Ramvinod Singh Resident of 404, Nilamber Apartment, Near Panchmukhi Mandir, Ram Suchit Mishra Path, East Boring Canal Road, Buddha Colony, Patna, Bihar-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Member (Judicial) Lokayukta, Bihar, Patna,
3. The Deputy Development Commissioner, Katihar, District-Katihar.
4. The District Magistrate, Katihar, District-Katihar.
5. The Mukhiya, Gram Panchayat Bishanpur, Anchal, Barari, District-Katihar.
6. The Panchayat Secretary, Bishanpur Panchayat, Block-Barari, District-Katihar.
7. Parsuram Singh Son of Name not Known, Resident of Village-Durga Asthan, Pradhan Dakghar, P.S. Katihar, District-Katihar.
8. The District Certificate Officer, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi, Advocate Mr. Nikesh Kumar, Advocate
For the Respondent/s	:	Ms Shilpa Singh (Ga12) Ms. Abhanjalli, AC to GA 12

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

Date : 05-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

- (i) For issuance of an appropriate writ preferably in the nature of certiorari quashing the order dated 4.12.2019 passed by Member (Judicial) Lokayukta, Bihar in Case No. 5/LOK(Aarakshi) 25/2010 in the name of Sri Parshuram Singh Vs. Officer In-Charge, Barari, Katihar, whereby and whereunder the petitioner has been directed and coerced to deposit the amount of Rs. 1,50,000/- in the name of District Education Officer, Katihar and all its subsequent orders passed in the aforesaid Case No. 5/LOK(Aarakshi) 25/2010 in the name of Sri Parshuram Singh Vs. Officer In-Charge, Barari, Katihar, as contained in Annexure-7 which have been communicated from the office of District Magistrate, Katihar and further for also quashing one certificate case bearing No. 02/2020-2021 in the Court of Certificate Officer, Katihar as contained in Annexure-9 for the payment aforesaid amount of Rs. 1,50,000/- as per direction of the learned Member (Judicial) Lokayukta, Bihar, Patna.
- (ii) For issuance of any other relief or reliefs for which the petitioner may be found entitled under law as well as on the facts of the case.

While deprecating petitioner's action in according approval for release of certain payments, as dues payable as salary to one Mukesh Kumar Yadav whose appointment was illegal, Member (Judicial) Lokayukta, Bihar directed recovery of the said amount from the petitioner.

Vide order dated 31.01.2022, the instant petition was directed to be tagged with CWJC No. 18876 of 2018 titled as Prem Chandra v. the State of Bihar and Ors. in which this Court on 25.09.2018 had passed the following order:-

“Heard learned counsel for the petitioner and learned counsel for the State.

In the present writ petition, the petitioner is challenging the order dated 20.08.2018 passed by the Member (Judicial) Lokayukta, Bihar by which the Authority of Lokayukta has directed for payment of Rs. 16,63,396/- otherwise petitioner has to face a criminal case under the Prevention of Corruption Act.

Learned counsel for the petitioner submits that one Mukesh Kumar Yadav appointed was as Sikhsha Mitra for the period of 11 months from 01.07.2003 to 13.05.2004 and posted at Primary School, Dhanua. The period of Sikhsha Mitra was further extended for 11 months, but before its expiry he was made an accused in Barari P.S. Case No. 26 of 2005 for offences under Sections 376 and 314/34 of Indian Penal Code. He remained in Jail from 15.06.2005 to 20.08.2005 and when he was released from Jail he was again granted third extension for 11 months, but before the expiry of that period Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rule 2006 came into force and under Clause 20 (iii) of the said Rule, the post of Sikhsha Mitra was automatically converted to the post of Panchayat Teacher and according he became a Panchayat Teacher. He has applied for payment of salary for the period which he has discharged the service. He has recorded his criminal antecedent as well as his detention in Jail and

discloses the entire facts for consideration before the DDC who has approved the payment for salary, accordingly, he has been paid salary.

Thereafter, on the complaint made by respondent no.7, Member (Judicial) Lokayukta, Bihar has proceeded with the present matter and passed the present order.

Learned counsel for the petitioner submits that Clause 16 of the Lokayukta Act, does not empowers the Member (Judicial) Lokayukta for passing the order of recovery of the amount which was paid to Mukesh Kumar Yadav, inasmuch as, he has done nothing but he has only recommended for making a payment.

The Lokayukta can only take cognizance and pass an order in which the person is found associated with the charges of corruption under the Prevention of Corruption Act.

Learned counsel for the petitioner has submitted that he has only recommended for payment and there is no material to show the petitioner has anyway connived for payment of salary. He has further submitted that he has/had no authority to examine the legality of appointment of Siksha Mitra.

Learned counsel for the State makes a prayer for time to file its counter affidavit.

Let this case be listed after three weeks under the heading "For Orders".

In the meantime, no coercive steps would be taken against the petitioner."

Vide judgment dated 06.12.2021, passed in CWJC No.3599 of 2020, titled as Dharmendra Kumar v. The State of Bihar & others, this Court has observed as under:-

"Historical Background

10. The genesis of an Indian constitutional ombudsman was in the 1960's. The term Lokpal was coined and an Administrative Reforms Commission, "ARC Interim Report" was formed in 1966. The ARC suggested a dual structure, a Lokpal at the Center and a Lokayukta at the State Level. Its area of function was discussed in the ARC Interim Report as:- "The Lokpal will have the power to investigate an administrative act done by or with the approval of a Minister or a Secretary

to Government at the Centre or in the State, if a complaint is made against such an act by a person who is affected by it and who claims to have suffered an injustice on that account.”

11. Regarding the Lokayukta, the ARC Interim Report stated in Para 36 that “So far as the Lokayukta is concerned, we envisage that he would be concerned with problems similar to those which would face the Lokpal in respect of Ministers and Secretaries though, in respect of action taken at subordinate levels of official hierarchy, he would in many cases have to refer complainants to competent higher levels. We, therefore, consider that his powers, functions and procedures may be prescribed mutatis mutandis with those which we have laid down for the Lokpal.”

12. Commenting upon the need for such institutions, the report noted;

“These institutions are, generally a supplement to the Parliamentary control, independent of any political affiliations, outside the normal administrative hierarchy, and free from the formalism, publicity and delays associated with governmental machinery. They work unobtrusively to remove the sense of injustice from the mind of the adversely affected citizen and yet uphold in a very large measure the prestige and authority of the administration, instilling public confidence in its efficiency and faith in its working and introducing a proper perspective of it in the mind of the public. Our analysis of the situation in our own country convinces us that a reform in all these directions is required as a sine qua non of democratic functioning and as an essential pre-requisite of the progress and prosperity on which the fulfilment of our democracy depends.”

The Law

13. The Preamble to the 2013 Act, termed as the Lokpal and Lokayuktas Act passed both Houses of Parliament after numerous attempts contain as under-

“An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public

functionaries and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

AND WHEREAS India has ratified the United Nations Convention Against Corruption;

AND WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption;

NOW, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of Corruption.”

14. The 77th Report of the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice issued by Rajya Sabha noted the legislative intent behind bringing the Lokpal and Lokayuktas Act, 2013 as under:

“Lokpal and Lokayuktas Act, 2013 was enacted to setup an independent and empowered anti corruption institution, namely, Lokpal at union level and for making enabling provision for establishment of Lokayukta for States for prompt inquiry and investigation into allegation of corruption by public functionaries and to fulfil the obligations of our country under the United Nations Convention Against Corruption (UNCAC). The Lokpal and Lokayuktas Act, 2013 came into force w.e.f. 16th January, 2014.”

15. The Bihar Lokayukta Act, 2011 (Bihar Act) preceded the central law by two years. The importance of Lokayukta in our State cannot be overlooked under the Bihar Act. The Preamble of the Act is as follows-

“An Act to provide for establishment of Lokayukta institution, its powers and functions and for expeditious investigation and prosecution

relating to allegations involving corruption against public servants of all grades.”

16. The relevant provisions of the Bihar Act are reproduced below for ready reference-

2. Definitions.-

“2 (b) “allegation” in relation to a public servant means any affirmation that such public servant-

- (i) Has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person.
- (ii) Was actuated in the discharge of the functions as such public servant by personal interest or improper, corrupt motives, or
- (iii) Is guilty of corruption or lack of integrity in his capacity as such public servant;”
- (ii) “**mal administration**” means action taken or purporting to have been taken in the exercise of administrative functions in any case-
 - (a) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory, or
 - (b) where there has been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay.”

“16. Jurisdiction of Lokayukta. - (1) Subject to other provisions of this Act, Lokayukta shall inquire into any matter involved in, or arising from, or connected with any allegation or grievance against any public servant made in the complaint in respect of the following, namely:

- (a) any person who is or has been a Chief Minister of the State,
- (b) any person who is or has been a Minister of the

State,

(c) any person who is or has been a Member of either house of the State Legislature,

(d) every officer referred to in clause (m) of Section 2,

(e) every officer referred to in clause (m) of section 2 who on deputation or on transfer to foreign service is in the service or pay of –

(i) any Local Authority , Local Self Government including the Panchayati Raj Institutions and the Urban Local Bodies;

(ii) any Corporation (not being the local authority) established by or under the State Act and owned or controlled by the State Government;

(iii) any Government Company within the meaning of section 617 of the Companies Act, 1956 (Act I of 1956) in which not less than fifty-one percent of the paid up share capital is held by the State Government of any Company which is a subsidiary of a company capital is held by the State Government;

(iv) any Society registered under the Societies Registration Act, 1860 (Act 21 of 1860) which is subject to the control of the State Government and which is notified by the State Government in this behalf in the Official Gazette;

(f) every Head or his Deputy by whatever designation he may be known and other employees of Local Authority, the Local Self Government including the Panchayati Raj Institutions and the Urban Local Bodies, the Corporation, the Government company or a Society or Association of Persons or Trust or Non-Governmental Organizations (whether registered under any law for the time being in force or not) having received a donation of more than Rs. five lakhs from any other source including foreign sources. or any other institution or organization or authority, subsidized or being given grant by the State Government or receiving payment of more than the prescribed amount from the Government.

(g) any Chairperson or Member or Officer {referred to in clause (e) of sub-section (1)} or equivalent / above in any body / Board / Corporation / Authority / Company / Society / Autonomous Body (by whatever

name called) established or constituted under an Act of State Legislature or wholly and partly financed by the State Government or controlled by it,

Provided that no investigation or prosecution shall be initiated without obtaining permission from a full bench of Lokayukta against; persons named in clause (a), (b) & (C) of sub-section(1) of Section 16 of the Act.

(2) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1) of section 16, if such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988.”

(Emphasis supplied)

“28A. Reports of Lokayukta.-(1) If, after investigation of any action in respect of which a complaint involving a grievance has been or can be or could have been made, the Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokayukta shall, by a report in writing, recommend to the public servant and the competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.

(2) The competent authority shall examine the report forwarded to it under subsection (1) and intimate within three months of the date of receipt of the report, to the Lokayukta, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukta is satisfied with the action taken or proposed to be taken on its recommendations or findings referred to in sub-section (1), it shall close the case under information to the complainant, the public servant and the competent authority concerned; but where it is not so satisfied and if it considers that the case so deserves, it may make a special report upon the case to the Governor and also inform the complainant concerned.

(4) The Lokayukta may, at his discretion, make available from time to time, the substance of cases closed or otherwise disposed of by him which may appear to him to be of general public, academic or professional interest in such manner and to such persons as he may deem appropriate.”

(Emphasis supplied)

“38. Other power and function.—Lokayukta shall have also following functions and powers:-

1. (a) If the Lokayukta prima facie is satisfied on the basis of preliminary inquiry of investigation that a lease, license, permission, contract or agreement was obtained by corrupt means including misfeasance, misrepresentation, fraud and coercion, it shall recommend cancellation or modification of the lease, license, permission, contract or agreement and it may also recommend blacklisting of firm, company, contractor or any other person involved in act of corruption. The above said recommendations shall be complied by the public authority or be rejected by him within a month of receipt of recommendation.

(b) If the Lokayukta in course of any investigation is satisfied that any preventive action is necessary in public interest to prevent the ongoing incident of corruption it may make recommendation to the public authority concerned either to stay the implementation enforcement of any decision or take any such action as is recommended by the Lokayukta. The aforesaid recommendation shall be complied by public authority or be rejected by him within fifteen days of receipt of recommendation.

(c) to monitor the investigation of offences under Prevention of Corruption Act ,1988 involving any act of corruption, for the cases initiated on behalf of the Lokayukta.

(d) to initiate prosecution before a Special Court established under the Prevention of Corruption Act, 1988 and the Bihar Special Courts Act, 2009, for the cases initiated on behalf of the Lokayukta.

(e) to appoint prosecutors and Senior Counsels under Prevention of Corruption Act,1988 or under the Bihar Special Court Act, 2009 or under this Act, for the cases initiated on behalf of Lokayukta.

(f) to get the Investigating Officer trained in modern methods of scientific investigation.

(g) to enquire modern equipments necessary for proper investigation.

(h) to receive complaints against any officer or

staff of Lokayukta.

(i) to ensure the integrity of its functionaries and impose punishments of dismissal, removal and reduction in rank.”

(Emphasis supplied)

17. The very Preamble of the Principal Act indicates the importance of Lokayukta in our State. Its role and responsibility are in guiding the State and the judiciary against corruption in our society. Section 16 of the Bihar Lokayukta Act, 2011 concerning the Jurisdiction of the Lokayukta makes clear in light of the Preamble that inquiry to be made by the Lokayukta, has to be a matter involved in, arising out of or connected with, an allegation or grievance, against any public servant, and that has to be, as dictated by the scheme of the Lokpal/Lokayukta Institution as well as the governing legislation, in connection to Corruption.

18. Expounding on the legislative intent behind Lokayukta Acts, the Hon’ble Apex Court held in **Institution of A.P. Lokayukta/Upa-Lokayukta v. T. Rama Subba Reddy,(1997) 9 SCC 42** as under:-

“17. Before parting with these matters, it may be necessary to note that the legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta who is to be a Judge or a retired Chief Justice of the High Court and in appropriate cases to the Upa-Lokayukta who is a District Judge of Grade 1 as recommended by the Chief Justice of the High Court, so that these statutory authorities can work as real ombudsmen for ensuring that people's faith in the working of these public servants is not shaken. These statutory authorities are meant to cater to the need of the public at large with a view to seeing that public confidence in the working of public bodies remains intact. When such authorities consist of high judicial dignitaries it would be obvious that such authorities should be armed with appropriate powers and sanctions so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented. These authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that the

efforts put in by them are not wasted and their reports are not shelved by the disciplinary authorities concerned. When we turn to Section 12, sub-section (3) of the Act, we find that once the report is forwarded by the Lokayukta or Upa-Lokayukta recommending the imposition of penalty of removal from the office of a public servant, all that is provided is that it should be lawful for the Government without any further inquiry to take action on the basis of the said recommendation for the removal of such public servant from his office and for making him ineligible for being elected to any office etc. Even if it may be lawful for the Government to act on such recommendation, it is nowhere provided that the Government will be bound to comply with the recommendation of the Lokayukta or Upa-Lokayukta. The question may arise in a properly-instituted public interest litigation as to whether the provision of Section 12(3) of the Act implies a power coupled with duty which can be enforced by a writ of mandamus by the High Court or by writ of any other competent court but apart from such litigations and uncertainty underlying the results thereof, it would be more appropriate for the legislature itself to make a clear provision for due compliance with the report of Lokayukta or Upa-Lokayukta so that the public confidence in the working of the system does not get eroded and these institutions can effectively justify their creation under the statute.”

19. While reflecting on the role played by the Lokayukta, Radhakrishnan, J. wrote in **Justice Chandrashekharai (Retired) versus Janekere C. Krishna & Ors. (2013) 3 SCC 117**, as under:-

“19. The Commission suggested that there should be one authority dealing with complaints against the administrative acts of ministers or secretaries to Government at the Centre and in the States and another authority in each State and at the Centre dealing with complaints against administrative acts of other officials and all these authorities should be independent of the executive, the legislative and the judiciary.”

The Supreme Court referred to passages of the above referred ARC Interim report, reproducing its para

25 as under-

“25. The following would be the main features of the institutions of Lokpal and Lokayukta:-

(a) They should be demonstrably independent and impartial.

(b) Their investigations and proceedings should be conducted in private and should be informal in character.

(c) Their appointment should, as far as possible, be non- political.

(d) Their status should compare with the highest judicial functionaries in the country.

(e) They should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism.

(f) Their proceedings should not be subject to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties.

(g) They should not look forward to any benefit or pecuniary advantage from the executive Government.”

20. We reproduce with profit what was said in an earlier judgment by Hon’ble Mr. Justice Chakradhari Sharan Singh, a Single Judge of this Court, in **CWJC 18053 of 2019, titled as Bipin Bihari Singh vs The State Of Bihar, decided on 03.06.2020** –

“26. There is no gainsaying that a decision sans jurisdiction is non est. A direction issued by any statutory body, howsoever high the said body may be, cannot be allowed to be sustained, for, anything done in excess of jurisdiction is void ab initio. The impugned order passed by learned Judicial Member of Lokayukta suffers from inherent jurisdictional error. It is settled legal principle which needs no reiteration that absence of jurisdiction in a statutory body goes to the root of the matter, which, if absent, cannot be conferred, even with the consent of the contesting parties. A decision rendered by any statutory body without jurisdiction is inoperative.

27. If a statutory authority assumes to act in a case over which the law does not give it authority,

the proceeding and adjudication will be altogether void. An authority has jurisdiction of any subject matter if, by the law of its organization, it has authority to take cognizance of, try, and determine cases of that description and not otherwise. (See A Treatise on the Constitutional Limitations by THOMAS M. COOLEY).

28. Before I conclude, I need to observe that the institution of Lokayukta must remind itself the purpose of its constitution and its own limitations, while exercising its powers and discharging its duties and functions under the Act of 2011. It cannot act beyond the provisions of the Act which has constituted it. The Lokayukta is certainly not a super executive empowered to supervise/ control functionings of the executive and issue commandments to various functionaries asking them to discharge their duties in a particular manner. Further, the Lokayukta does not have any power of judicial review over administrative action, akin to the powers of the High Court under Article 226 of the Constitution of India.”

21. The Spirit of the Act emanates from the desire to curb corruption which has had a vice like grip on our society and this institution is a big step in that direction.

22. While the Court appreciates the vision of the Lokayukta, this action of having ordered the total sum removal of Group D employees, in the considered view of this Court, cannot be found within the letter, much less spirit of the law. The language of the Act is unambiguous with respect to the clear and cogent connection to curbing corruption being a necessity when the Lokayukta takes any action. Although the Hon'ble Member (Judicial) notes in his order that employing Group D people is a perennial source of corruption, no report of the investigation undertaken is on record.

23. Termination of people from service falls squarely within the area of service jurisprudence, which cannot be found within the powers of Lokayukta. With the lack of a comprehensive report presenting the situation as noted by the Hon'ble Member (Judicial), this action cannot be said to be within the bounds of law. Section 28A of the Act reproduced above makes it clear that where, upon

investigation, the Lokayukta finds injustice to have been meted out, it shall submit a written report to the relevant authorities who are to consider the report within three months from its date and submit a report concerning the action taken or proposed to be taken on such report. If the Lokayukta is unsatisfied, it may make a special report to the Governor.

24. Having recourse to the legislative intent behind the institution of Lokayukta, and the words employed by the legislature in the governing statute, the observations of Member (Judicial), Lokayukta Bihar, concerning requiring an explanation to be furnished in reference to non-compliance with government policy, or an order restraining engagement of Group 'D' daily wage employees post a specified date, do not find favour of the language. The institution and its functioning is intrinsically connected to the presence of corruption, and even though, as stated in the order passed on 28.11.19, instances may have been found, it is for the Lokayukta to recommend to the relevant authorities that certain action may be taken in accordance with the provisions of Section 38(1)(a), but a direct order to restrain employment cannot be countenanced in law.”

Undisputedly, in view of law laid down by this Court Dharmendra Kumar(supra), the impugned order dated 04.12.2019 passed by the learned Member (Judicial) Lokayukta, Bihar asking the petitioner herein to deposit a sum of Rs.1,50,000/- is beyond the jurisdiction of the learned Member (Judicial) Lokayukta, as such, the order dated 04.12.2019 passed by the learned Member (Judicial), Lokayukta, Bihar, in Case No.5/Lok/(Aarakashi) 25/2010 (Annexure 7) is quashed and set aside, reserving liberty to the disciplinary authority/appointing authority to initiate

disciplinary proceedings for recovery of the amount, if so required and desired, in accordance with law.

The writ petition stands allowed.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/- Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.04.2022
Transmission Date	NA