

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19951 of 2019

=====

Raj Kumar, Son of Umesh Chandra Mehta, Resident of Village-
Nakhashpind, P.S.- Malsalami and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna.
2. Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Secretary, Personnal and Administrative reforms department, Govt. of Bihar, Patna.
4. Director Madhyamik Shiksha Govt. of Bihar, Patna.
5. District Education Officer, Patna.
6. District Education Officer, Aurangabad.
7. District Education Officer, Jehanabad.
8. District Education Officer, Hajipur.
9. District Education Officer, Gaya.
10. District Education Officer, Nawada.
11. District Education Officer, Nalanda.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ebrahim Kabir, Advocate Ms. Shruti Sinha, Advocate
For the Respondent/s	:	Mr. Shekhar Tiwary, AC to AAG 13

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 19-07-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

That this is an application for issuance of an appropriate writ order or direction for quashing Rule 4 (ka) VII (A) of the Bihar Zila Parisad Madhyamik and Ucchatar Madhyamik Sikshak (Niyozan and Seva Sarta) Sansodhan Neyamawali 2008 issued by the Bihar Government's Human and resource development Department memo no. 11 NI 2-13/91 (Ansh-1) 1340 dt.

25.08.08 and also for quashing the rule 4 (ka) (vii) (a) of the Bihar Nagar Nikaya Madhyamik and Ucchatar Madhyamik Sikshak (Niyozan and Sewa Sarta) Amendment Rule 2008 issued by human resources development department government of Bihar no. 11 NI 2-13/91 (Anns-10 1339 dt. 25.08.08 to the extent where in it fixes/lays down graduation degree only from a recognized university to be one of the minimum educational criterias for appointment on the post of Zila Parisad Madhyamik and Ucchatar Madhyamik and Nagar Nikaya Madhyamik and Ucchatar Madhyamik pustakalaya dhyaksha and not any equivalent degree from a recognized university or institution including the degree/Certificate of Sahityalankar from Hindi Vidhya Peetha Deoghar Jharkhand

and for a further direction to the respondents to consider/treat the equivalent degree/certificate of B.A from other recognized university/institutions including Sahitya lankar of Hindi Vidhyapeetha Deoghar to be equivalent and at par with

graduation degree and accept the forms of petitioner for the post of Pustakalaya Dhyaksha i.e librarian with his Sahitya lankar degree from Hindu Vidyapeeth Deoghar and also consider their cases for appointment against the said post submitted against the recently initiated 2nd phase of process for appointment on the post of teachers and librarians in various Zila parishad and Nagar Madhyamik and Uchchar Madhyamik Schools as not doing with not only be highly illegal but also discriminatory and in violation of Article 14 and 16 of the Constitution or nor any other order or orders which this Hon'ble Court may deem fit and proper under the circumstances of the case.

Learned counsel for the petitioner submits that petitioner's case is squarely covered as that of the petitioners of CWJC No.5129 of 2009, **tilted as Sanjay Kumar Versus the State of Bihar and Ors.**, with other analogous cases.

Without going into the correctness of such submissions, we are inclined to accept the other prayer made by

the learned counsel for the petitioner of approaching the respondents to decide the petitioner's case in accordance with law.

Learned counsel for the petitioner submits that the petitioner shall be filing a representation before the authority concerned 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)

“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)

Sanjay/-Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2022
Transmission Date	NA