

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3192 of 2018

1. Onkar Nath Roy and Ors Son of Sri Santoshi Prasad Roy Resident of - Nawadih, P.O. and P.S. Kaukol, Distt. Nawada, H.M. Upgraded Middle School Ektara Block- Govind Pur, District- Nawada.
2. Jai Prakash Chakravarti Son of Latan Prasad R/o- Loh Singhani , P.S. Kauakol, District- Nawada.At Present Posts at Head Master Urdu Girls Middle School Roh, Block, Roh, District- Nawada.
3. Saroj Kumar S/o Bishwadeo Prasad R/o of- Mohalla- Gola Road Kadam Kuan, P.S. Nawada, District- Nawada.At Present Post at H.M. Girls, Middle School Akbarpur Block Akbarpur, District- Nawada.
4. Sanjai Kumar S/o Bindeshwari Prasad R/o Village- V.I.P. Colony, Nawada, P.S. Nawada, District- Nawada.At Present H.M. Utkarmit Middle School Mirchak, Warsaliganj Block- Warsaliganj, District- Nawada.
5. Girani Paswan S/o lae Paro Paswan R/o Village- Sarauni, P.S. Kauakol District- Nawada, At Present Posted at H/M Middle School Majhway, Block- Hisua, and District Nawada.
6. Abu Sayeed W/o Abdul Majeed R/o Mohalla Ansar Nagar, P.S. Nawada, District- Nawada, At Present Upgraded Urdu Middle School, Badri Dargah, District Nawada.
7. Vijay Kumar S/o Ramji Prasad Singh H.M. Upgraded Middle School , Tetaria Block- Meskaur, District- Nawada.
8. Laliteshwar Prasad S/o Baijnath Prasad R/o Village Nawin Nagar, Nawada, P.S. Nawada, District Nawada. H/M. Middle School Lond- Block- Sirdala District- Nawada.
9. Vijay Bahadur Singh S/o Harilal R/o Vill- Bhagwanpur, P.S. Nawada, District- Nawada. H.M. Middle School , Khadsari, Block- Kauakol, Distt. Nawada.
10. Pushkar Kumar Arun S/o Vishnu Kumar R/o Village- Navin Nagar, P.S. Nawada, District- Nawada. H.M. Upgraded Middle School chitra Coli, Block- Rajauli, District Nawada.
11. Awdhesh Prasad Singh S/o Ram Nandan Singh R/o Village- New Area Nawada, P.S. Nawada and District- Nawada. H.M. Upgraded Middle School, Chhoti Pali Block, Narhat, Nawada.
12. Naresh Kumar W/o late Bhagi Rath Ram R/o Rajendra Nagar, Nawada P.S. Nawada, District Banka, H.M. Middle School , Biku Nardi Ganj, Block- Nardi Ganj, District Nawada.
13. Parmila Devi W/o Vijay Singh H.M. Middle School Khakhari, Kashi Chak Nawada Block- Kashi Chak, District- Nawada.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Human Resource Department, Govt. of Bihar, Patna.

3. The Director, Primary Education, Human Resource Department, Govt. of Bihar, Patna.
4. The Director Mid-Day Meal Programme, Human Resource Department, Govt. of Bihar, Patna.
5. The District Magistrate, Nawada.
6. The District Education Officer, Nawada.
7. The District Programme Officer, Mid Day Meal M.D.M Nawada.
8. Sri Shiv Shakti Kumar , The District Proramme Manager, MDM, Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Md. Kamaluddin, Adv.
For the Respondent/s : Mr.A.R. Pandey- Aag15

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

6 12-07-2022

1. No one appears for the petitioners.

2. This Court cannot leave this case to remain pending as an order of similar nature has already been examined by the Division Bench.

3. Learned counsel appearing for the respondents points out that the prayer made in the present writ petition is almost identical to the prayer made before the Division Bench in P.I.L. filed by one Haldhar Singh in C.W.J.C. No. 5944 of 2022 and it is stated that the Division Bench vide its judgment dated 24th June, 2022 passed an order disposing of the petition with certain directions.

4. Learned counsel for the petitioners submits that the present petition may be disposed of in the same terms.

5. It would be, therefore, apposite to quote the order passed by the Division Bench as under:-

“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.”

6. Keeping in view, the prayer made by the petitioners seeking relief in the present writ petition is as under:-

“1. That through this writ application, the Petitioner seeks following reliefs:

i) To issue an appropriate writ, order or direction commanding the respondents to spare the petitioner's from the responsibility of Mid day Meal forth with as the same is not only against the interest of education but it is also against the larger public interest and is under the teeth of the Hon'ble High Court's order/direction passed on 21.11.2016 in C.W.J.C. No. 11210 of 2015, as also against the guide lines issued by the Govt. of India in it's Gudgette No. 35 of 2009, published on 27.08.2009.

ii) To issue an appropriate writ, order or direction commanding the Respondents not to take any penal action against any of the Head Masters/ Teachers for not performing the duties assigned towards mid

*day Meal (here in after referred to as M.D.M.) as they under the relevant provisions/Schemes of the Central Govt. and the State Govt. are only duty bound to perform the Teaching work as per the Education as under **THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009.***

iii) To declare all punitive actions of the Respondents against the petitioners and other teaching staffs with respect to M.D.M. as illegal inoperative and not binding in the facts of the case.

iv) To issue an appropriate writ, order or direction for declaring the entire actions of the Respondent District Programme Officer as illegal, inoperative and without jurisdiction.

v) To issue further appropriate writ, order or direction retaining the Respondents from making any recovery from the petitioners in the name of irregularity in the operation of Mid-day meal.

vi) This Hon'ble Court may adjudicate and hold that in view of the clear cut directions, Gadgette Notification by the Central Govt. and the order passed by the Hon'ble High Court on 21.11.2016 as also the decisions taken on 16.05.2017 as notified in the State Gadgette also on 16.05.2017 it was statutory duty of the Respondents to spare the petitioner's from the responsibility of the MDM.

vii) This Hon'ble Court may further adjudicate and hold that holding the petitioners responsible for any lapses and taking punitive action against them

is an act of malafide and most arbitrary exercise of the power by the respondents.

viii) To award the cost of litigation and suitable compensation for the loss and the damages caused to the petitioner's due to the nefarious actions/activities of the Respondents.

ix) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case."

7. Keeping in view the prayer made as above and the directions issued by the High Court (supra), this Court is satisfied that the present case can be disposed of in the aforesaid terms.

8. Accordingly, that the present case stands allowed in terms of the orders passed by the Division Bench in Writ Petition No. 5944 of 2022 and it is directed as under:-

"(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.”*

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 22

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