



2023:DHC: 7213



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 21st September, 2023**

+ **W.P.(C) 12456/2023**

SMT JAGDEVI JAGDEI

..... Petitioner

Through: **Mr. Ritwik Parikh, Advocate**
(Through VC)

versus

THE GENERAL MANAGER VIGILANCE & ORS.

..... Respondents

Through: **Mr. Jitesh Vikram Srivastava, SPC**
with **Mr. Vinod (GP) and Mr. Prajesh**
V. S., Advocates for R-1 to R-3

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner seeking the following reliefs;

- “a. Direct the Railway authority to disclose the status/result of D&AR enquiry that was initiated against Respondent No. 4 Sh. Ram Kumar as per their own representation before this Hon’ble Court and vide Orders dated 4.10.2021 and 8.1.2019; b. Direct the Respondents to provide legal cost to the Petitioner; c. Provide adequate and exemplary compensation to the aggrieved Petitioner; d. Pass any such other order or further orders as this Hon’ble*



Court may deem fit and proper in the interest of justice.”

2. The petitioner’s husband was working in the respondent no. 2 as a crane driver and was decategorised in the year 1989, and subsequently died in the year 2003. Thereafter, the respondent no. 4 allegedly forged the documents and secured the job in place of the petitioner’s husband on compassionate grounds.
3. Aggrieved by the same, the petitioner filed a complaint before the railway authorities and subsequently preferred a writ petition No. 54/2019, whereby the Coordinate Bench of this Court directed the respondent no. 2 to complete the inquiry pending against the respondent no. 4 within eight weeks *vide* order dated 8th January, 2019.
4. In compliance to the order passed by the Coordinate Bench, the respondent issued charge sheet to the respondent no. 4 and also initiated the D&AR inquiry.
5. During the pendency of the said inquiry, the petitioner sent multiple letters to the respondent no. 2 & 3 seeking information regarding the stage of inquiry which was replied by the respondents, however, the petitioner preferred Contempt Case No. 109/2020 against the respondent railway authorities on grounds of non-compliance with the order dated 8th January, 2019.
6. In the said contempt petition, the Coordinate Bench disposed of the case *vide* order dated 4th October, 2020 and held that the previous order was complied with by the respondents and therefore, conditions necessary for



establishing contempt were not met.

7. Thereafter, the petitioner sent multiple letters to the respondent railways and a legal notice dated 19th June, 2023, however, the petitioner did not receive any response to the said notice.

8. Aggrieved by the untimely delay in conclusion of the said pending inquiry, the petitioner has preferred the present petition.

9. The learned counsel appearing on behalf of the petitioner submitted that the petitioner is living in penury and therefore inaction by the respondents is arbitrary and contrary to the directions passed by the Coordinate Bench of this Court vide order dated 8th January, 2019 and the same directly affects the petitioner's right to livelihood.

10. It is submitted that the non-response to the letters written to the respondents is a clear violation of principle of natural justice as the respondents have failed to disclose the status of D&AR proceedings against the respondent no. 4.

11. It is also submitted that the petitioner is an old lady and is running from pillar to post for justice, but the respondent authorities have failed to pay heed to her requests thereby causing great distress and financial burden.

12. In view of the above arguments, learned counsel for the petitioner prays that the petition be allowed and the reliefs be granted as prayed.

13. *Per Contra*, the learned counsel appearing on behalf of the respondent 1 to 3 vehemently opposed the present petition and submitted that the authorities had taken cognizance of the complaint and had constituted a committee to inquire about the allegations leveled against the respondent no.



4.

14. It is submitted that the respondents had examined the certificates of the respondent no. 4 and found that one of the certificates was forged by the respondent no. 4.

15. It is also submitted that the contempt petition filed by the petitioner was also disposed of by the Coordinate Bench of this Court as the respondents had complied with the earlier order of this Court.

16. It is further submitted that the inquiry is at the concluding stage and therefore, the respondent needs some more time for completion of the enquiry.

17. Therefore, in view of the foregoing submissions, it is prayed that the instant petition, being devoid of any merit, is liable to be dismissed.

18. Heard the learned counsel for the parties and perused the records.

19. It is the case of the petitioner that the respondent no. 4 forged the documents to prove paternity of the petitioner's husband, therefore leading to an employment in the railways to which he is not eligible.

20. As per material on record, the petitioner had filed a complaint to the railways, and therefore, the necessary inquiry was initiated against the respondent no. 4, however, the said inquiry has been delayed.

21. Therefore, the only issue before this Court is to determine whether a writ of mandamus can be issued for grant of the relief prayed by the petitioner. Before getting into the said issue, it is imperative for this Court to look at the scope of the writ of mandamus.

22. The writ of mandamus has been defined in *Halsbury Statutes of*



2023:DHC:7213



England, Vol 11, (3rd Edition) p. 84 in the following manner:

“The order of mandamus is an order of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice, and accordingly, it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right ”

23. On perusal of the aforesaid definition, it is clear that the writ of mandamus is a command issued from the courts to direct the Subordinate Courts, Organizations or the State to perform a duty which they are bound to do by virtue of the nature of the public office they hold.

24. The scope of mandamus has also been explained by the Hon’ble Supreme Court in a catena of judgments. In the case of ***Hero Motocorp Ltd. v. Union of India, (2023) 1 SCC 386***, the Hon’ble Supreme Court discussed scope of mandamus and held that the Courts can issue mandamus where a government or a public authority has failed to exercise the discretion conferred upon it. The Hon’ble Court held as follows:

“74. This Court in Bihar Eastern Gangetic Fishermen Coop. Society [Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh, (1977) 4 SCC 145] had an occasion to consider when a writ of mandamus could be issued. This Court held that : (SCC pp. 152-53, para 15)



“15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (See *Lekhraj Sathramdas Lalvani v. N.M. Shah* [*Lekhraj Sathramdas Lalvani v. N.M. Shah*, (1966) 1 SCR 120 : AIR 1966 SC 334], *Rai Shivendra Bahadur v. Nalanda College* [*Rai Shivendra Bahadur v. Nalanda College*, 1962 Supp (2) SCR 144 : AIR 1962 SC 1210] and *Umakant Saran v. State of Bihar* [*Umakant Saran v. State of Bihar*, (1973) 1 SCC 485]. In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same.”

75. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in *K.S. Jagannathan* [*Comptroller & Auditor General of India v. K.S. Jagannathan*, (1986) 2 SCC 679 : 1986 SCC (L&S) 345] as under : (SCC pp. 692-93, para 20)



“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

76. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion mala fide or on an irrelevant consideration.”

25. On perusal of the said judgments, it is clear that the Courts have wide scope under Article 226 for issuance of mandamus and are empowered to direct the Government to get done away with a decision which is illegal in nature thereby causing injustice to a party.

26. In the instant case, the respondent had submitted on record that the



inquiries were already initiated against the respondent no. 4 and during the course of said inquiry, one certificate submitted for consideration for the appointment in the organization was also found to be a forged document, however, the said inquiry is still pending, therefore leading to petitioner approaching this Court seeking issuance of mandamus for directing the respondent to disclose the findings of enquiry.

27. It is a settled principle that the scope of writ of mandamus, even though very wide, is still limited to the issuing of directions to either get done away with an illegal decision or perform a duty which a Government instrumentality is bound to perform. The petitioners in the instant case have sought direction to be issued to the respondent to disclose the result of the inquiry initiated against the respondent no. 4, however, the rival contention makes it clear that the said inquiry is still pending. Therefore, the petitioner could have only prayed for completion of inquiry in a timely manner.

28. On perusal of the petition, it is also clear that the petitioner has not prayed for the said relief to be granted in the present petition and settled position of law bars the Court from getting into the reliefs not prayed by the party in the pleadings.

29. In the case of *Manohar Lal v. Ugrasen*, (2010) 11 SCC 557, the Hon'ble Court reiterated and summarized the said position and held as under:

“30. In Trojan & Co. v. Nagappa Chettiar [AIR 1953 SC 235] this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under : (AIR p. 240, para 22)



“22. ... It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

31. A similar view has been reiterated by this Court in Krishna Priya Ganguly v. University of Lucknow [(1984) 1 SCC 307 : AIR 1984 SC 186] and Om Prakash v. Ram Kumar [(1991) 1 SCC 441 : AIR 1991 SC 409] observing that a party cannot be granted a relief which is not claimed.

32. Dealing with the same issue, this Court in Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi [(2010) 1 SCC 234 : (2010) 1 SCC (Cri) 757 : AIR 2010 SC 475] held : (SCC p. 246, para 30)

“30. ... Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.”

33. In Fertilizer Corpn. of India Ltd. v. Sarat Chandra Rath [(1996) 10 SCC 331 : 1997 SCC (L&S) 75 : AIR 1996 SC 2744] this Court held that “the High Court ought not to have granted reliefs to the respondents which they had not even prayed for”.

34. In view of the above, law on the issue can be summarised that the court cannot grant a relief which has not been specifically prayed by the parties. The instant case requires to be examined in the light of the aforesaid certain legal propositions.

xxx xxx xxx

38. Admittedly, the interim order passed by the High Court in favour of Shri Manohar Lal in Writ Petition No. 4159 of 1980 was in force and it restrained the authorities to make allotment of the land in dispute in favour of anyone else. Indisputably, the State Government as well as GDA remained fully alive of the factum of subsistence of the said interim order as is evident from the correspondence between them. In view of the law referred to



hereinabove, order passed by the State Government in contravention of the interim order remains unenforceable and inexecutable.

39. More so, in the writ petition filed by Shri Ugrasen relief sought was limited only to quash the allotment made in favour of Shri Manohar Lal. No relief was sought for making the allotment in favour of the writ petitioner Shri Ugrasen. However, the High Court vide the impugned judgment and order has issued direction to make the allotment in his favour. Thus, we are of the view that issuance of such a direction was not permissible in law. Even otherwise as Shri Ugrasen's land had been acquired for roads, he could not make application for taking benefit of the Land Policy, particularly, when the Land Policy was not declared to be invalid or violative of the equality clause enshrined in Article 14 of the Constitution.”

30. On perusal of the aforesaid judgments, it is evident that the Courts should not delve into the aspects which are related to reliefs not prayed by the petitioner and it is fundamental that a relief can be granted in a case when it is prayed by the petitioner. Therefore, any relief, not prayed by the petitioners, cannot be granted by this Court under Article 226 of the Constitution.

31. Since the issue regarding relief a) is settled, this Court will now briefly deal with the other reliefs prayed by the petitioner i.e. directions to the respondents to provide adequate and exemplary compensation and also provide legal costs to the petitioner.

32. Even though the material on record suggests that the conclusion of the inquiry might go against the respondent no. 4, however, the report is yet to be released by the respondent railway authorities, therefore, grant of any



2023:DHC: 7213



compensation before conclusion of the said inquiry is premature as the same can only be directed once the case is established in favor of the petitioner and not anytime earlier.

33. In view of the foregoing discussions and the admitted fact that the inquiry is still pending on the complaint, therefore, it is expected that the respondent may conclude the inquiry expeditiously.

34. In view of the discussion in the foregoing paragraphs, it is clearly established that the prayers sought by the petitioner are premature at this stage and therefore, the prayers which have been sought by the petitioner in the instant petition may not be granted. The petition, being devoid of any merit, is dismissed.

35. Pending applications, if any, also stands dismissed.

36. Order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 21, 2023

gs/av/db

Click here to check corrigendum, if any