

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6646 of 2012**

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1. Sheo Kumar Son of Late Indradeo Mahto Resident Of Village Shadipur, P.O. Sondhi, P.S. Buniyadganj, District - Gaya At Present Posted As Tax Collector Safai Jamadar In Lodging House Committee, Gaya
2. Ram Prasad Yadav Son of Late Ram Bhajan Yadav Resident Of Village-Siyari, P.S. Magadh Medical College, P.O. Wireless Aerodram, Distt. Gaya Posted As Peon In Lodging House Committee, Gaya
- 3.1. Shobha Devi Wife of Late Premnath Ram, Resident Of Ward No. 40 Gaya, P.O. Chandchaura, P.S.-Vishnupad, District-Gaya.
4. Ram Kumar Mali Son of Late Mahavir Mali Resident Of Village Bhadeji, P.S. Muffasil, District Gaya Posted As Peon In Lodging House Committee, Gaya, Distt. Gaya
5. Chathu Yadav Son of Late Mallu Yadav Resident Of Village Gopi Bigha, P.O. Kendui, P.S. Magadh Medical College, District Gaya Posted As Peon In Lodging House Committee, Gaya, District- Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Lodging House Committee, Gaya through Its Chairman, The District Magistrate, Gaya
3. The Commissioner, Magadh Division, Gaya-Cum Convenor, Lodging House Committee, Gaya
4. The District Magistrate, Gaya-Cum-Chairman Lodging House Committee, District- Gaya
5. The Secretary, Lodging House Committee, Gaya District- Gaya
6. The Deputy Collector, Cum-Administrator, Lodging House Committee, Gaya District - Gaya
7. The Asstt. Collector-Cum-Senior Officer, Lodging House Committee, Gaya, District- Gaya

... .. Respondent/s

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**Appearance :**

For the Petitioner/s	:	Mr. Raghwendra Sharan Pandey, Advocate
	:	Mr. Somesh Kumar, Advocate
For the State	:	Mr. Alok Kumar, SC-7

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**ORAL JUDGMENT**

**Date : 15-04-2024**

Heard Mr. Raghwendra Sharan Pandey, learned  
counsel for the petitioners and Mr. Alok Kumar, learned SC-7



appearing on behalf of the State.

2. The present writ petition has been filed for the following reliefs;

*I. For declaration of Resolution Nos. 9, 12 & 20 passed in the meeting dated 16.04.2010 of the proceeding of the lodging house committee published vide memo no. 1921 dated 24.04.2010 under the signature of respondent no.4 as ultravirus, unconstitutional and violative of Articles 14 & 16 of the Constitution of India, as it is inconsistent with the provision of the Rules, which has been framed under the provision of the Act called as Bihar and Orrisa places of Pilgrimage Act, 1920.*

*II. For issuance of appropriate writ(s)/direction(s) directing the respondents to provide and make the payment of salary and other allowances to the petitioners and other staffs (employees) of the Lodging House Committee (L.H.C.) at par with the other State Government employees with was being paid to them prior to issuance of memo dated 24.04.2010. Because since 1983, the service condition including payment of salary etc. of the employees of L.H.C. has been governed by the provisions of Bihar Service Code. Prior to 1983, the service condition of its employees were governed by the provisions of Gaya Municipality Act.*

*III. For issuance of appropriate writ(s)/order(s)/direction(s) for quashing the memo no. 2401/गौ० गया dated 30/05/2012 issued by the respondent No.4 (The District Magistrate, Gaya*



*-cum- Chairman Lodging House Committee, Gaya), whereby and whereunder in clause 14, the respondent no.4 has illegally rejected and denied the petitioners and other employees of the committee from making payment and other allowances at par and equal to the Collectorate employees Gaya, which was being paid to them since their initial date of appointment and entry in the service of the committee.*

*IV. For direction upon the respondents to make payment of salary to the petitioners in the same and equal pay scale and other allowances as well as other benefits of service as has been given to the Collectorate employees, Gaya.*

*V. And/or grant of any other appropriate relief(s) to the petitioners for which they may be found entitled in the eyes of law.*

3. Learned counsel for the petitioners submits that the petitioners are permanent employees of the Lodging House Committee, Gaya (hereinafter referred as 'L.H.C., Gaya') and they were duly appointed in different class III and class IV posts in between 1985 to 1990. Since their appointment and joining of service under the L.H.C., Gaya. They were being paid their monthly salary in the different pay scales along with other allowances meant for the posts of class III and class IV at par with permanent/regular class III and class IV posts employees of the State Government which have been revised from time to time. From the very beginning of its establishment



the L.H.C., Gaya had been governed by the provisions of the Bihar Service Code including the service conditions of the State Government employees. Lodging House Committee, Gaya has no separate Rule or by laws, as such in the year, 1983 it had adopted all the provisions of Bihar Service Code for Governance and Administration of the service conditions of its employees including appointments, promotion, payment of salary etc. The petitioners are getting their monthly salary in the pay scale and other allowances i.e. T.A., D.A. etc at par with other permanent/regular employees of the District Collectariate as well as State Government employees which is clearly manifested from a bare perusal of the monthly acquittance roll of the permanent/regular employees of the L.H.C., Gaya.

4. Learned counsel for the petitioners submits that resolutions have been passed by the L.H.C., Gaya in its meeting dated 06.04.2010 under the chairmanship of respondent no.4 and a decision has been taken that the payment of salary and other facilities which was provided to all the permanent/regular employees of L.H.C., Gaya since its establishment should be enquired into and shall be refixed as per the provisions of B.T.M.C. (The *Bodhgaya* Temple Management Committee) and the State Government as well as this Hon'ble Court has also



held that the L.H.C., Gaya is a State within the meaning of Article 12 of the Constitution of Indian because the said committee has been constituted under Bihar And Orissa Places of Pilgrimage Act, 1920 and it has also fulfilled other necessary criteria as being the State. After the proposal dated 24.04.2010, the payment of salary of the petitioners and others have been refixed in a lower scale than the salary they were getting prior to the issuance of proceeding dated 24.04.2010. Thereafter, the petitioners have filed several representations before the authority concerned, but no action has been taken then the petitioners have compelled to approach before this Hon'ble Court.

5. Learned counsel for the petitioners further submits that the case of the petitioners is that the L.H.C., Gaya, has been established under the Bihar and Orissa Places of Pilgrimage Act, 1920 as such it is a State within the meaning of Article 12 of the Constitution of India. The service condition of its employee is guided by the Bihar Service Code similar to that of other employees of the State Government. Their monthly salary along with other allowances are being paid as par with permanent/regular class III and class IV post employees of the State Government and the L.H.C., Gaya has no separate rules or



by laws. The L.H.C., Gaya in its meeting dated 20.09.1983 has taken decision to provide all facilities to the employees of the L.H.C., Gaya similar to the employees of the Collectariate, Gaya which reflect from the letter no. 104 dated 06.03.2009 issued by the respondent no.7. From a bare perusal of the resolution dated 20.09.1983 of the L.H.C., Gaya whereby all the provisions of the Bihar Service Code has been adopted for governance and administration of the employees of the L.H.C., Gaya which cannot be taken away by the resolution dated 16.04.2010 or 26.04.2012 of L.H.C., Gaya.

6. Learned counsel for the petitioners relies upon the judgment/order dated 03.07.2007 passed in C.W.J.C. No. 8620 of 2004 which is quoted hereinbelow;

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

*Petitioner is an employee of the Lodging Housing Committee, Gaya constituted under the Bihar and Orissa Places of Pilgrimage Act, 1920 and considering the provisions of the said Act it goes without saying that the Lodging House Committee is a State within the meaning of Article 12 of the Constitution of India. He has been visited with few punishments including the one of stoppage of two increments under order bearing Memo No. 811 dated 21<sup>st</sup> February, 2004, Annexure-1. He assails the said order on various grounds including the ground that the same was passed without giving him opportunity to file his reply as also to peruse the Enquiry-Report. He further assails the said order on*



*the ground that the charges were vague and assailing the said order he filed appeal before the Divisional Commissioner, Magadh Division, which is dated 23.3.2004 and is contained in Annexure-13 of this application. From the counter affidavit filed on behalf of Respondent no.4 and 5 duly affirmed by the Officer on Special Duty in the Collectorate, Gaya it does not appear that the appeal of the petitioner dated 23.3.2004 as contained in Annexure-13 has yet been disposed of. In the circumstances, I dispose of this writ application with direction to the Divisional Commissioner, Gaya Division to consider and dispose of the appeal of the petitioner dated 23.3.2004. Annexure-13, as early as possible in any case within a period of three months from the dated of receipt/production of a copy of this order by passing a speaking order.*

And Clause 9, 12 & 20 of the of the proposal of the proceeding dated 16.04.2010 which was published on 24.04.2010 vide memo no. 1921 is totally illegal, mala fide, arbitrarily, discriminately, unconstitutional, unjustified, irrational and the same is based on colourable exercise of the power of the respondent-authority. The State Government has never vested any such power in any of the higher authority of the L.H.C., Gaya to amend the basic rules and structure of the committee and the Clause 9, 12 and 20 of the proceeding dated 16.04.2010 are contrary to the provisions of the 1983 Rules which was framed in terms of the provisions of the 1920 Act.

7. Learned counsel for the State submits that



employees of the Lodging House Committee, Gaya cannot be treated as Government servant as it is an organisation constituted under the Bihar and Orissa Pilgrimage Act, 1920 for providing facilities to pilgrims coming to Vishnupad Temple for offering *Pinddan* to their ancestors. It is expedient to make better provisions for the control and sanitation of the places of pilgrims and for regulation of the houses therein in which pilgrims are accommodated for such functioning the Bihar and Orissa Places of Pilgrimage Act, 1920 has been enacted. Under Section 22 of the Pilgrimage Act, 1920, the State Government may appoint any person or a committee to administer and control the provisions provided under the Act. In the district of Gaya, pilgrims come to Vishnupad temple for offering *pinddan* for which L.H.C., Gaya has been created which is governed by the Managing Committee under the chairmanship of the District Magistrate, Gaya, the Secretary of the Committee is the Deputy Collector, O.S.D. to the District Magistrate, Gaya. For a smooth functioning of the committee employees like clerk, cashier, peon and receptionist are appointed and the petitioners are also the employees of the committee and they have not been appointed by the State Government but were appointed by the Committee. Under Section 20 of the Pilgrimage Act, 1920



there is lodging house fund created wherein the sum collected within the area of the Lodging House Committee which are collected as licensee fee and other avenues that come from providing lodging facility to the pilgrims. The employees of the Lodging House Committee has been paid salary from the revenue earned by this Committee, the State Government does not provide any grant to the L.S.G. Gaya for the purpose of the payment of salary. The economic condition of the committee always fluctuates as per the income and expenditure the committee provided any benefit to the employee. Considering the economic condition of the L.S.G., Gaya on its meeting dated 20.09.1983, the committee has decided to provide the same pay to its employee w.e.f. October, 1983 vide memo no. 2966 dated 12.10.1983. The committee has not taken any decision to adopt the Bihar Service Code for its employees. Subsequently, in view of the financial exigencies, the committee in its meeting dated 16.04.2010 passed a resolution that no appointment should be made on compassionate ground as the provisions of Bihar Service code is not applicable. Again the employees of the L.S.G. Gaya has filed representation for providing the similar pay scale equal to the pay scale given to the employees of the Collectariate, Gaya which has been



considered by the committee in its meeting dated 26.04.2012 and the resolution was taken vide clause 14 of the said meeting that since the State Government does not provide any fund grant to the L.S.G. Gaya as such as per income and expenditure it was not possible to provide similar pay scale to that of the employees of the Collectariate, Gaya and the resolution dated 26.04.2012 of the L.S.G., Gaya has been notified vide Memo No. 2401 dated 30.05.2012.

8. He further submits that the rights of the committee to regulate service condition of its employees as well as to take policy decision regarding enhancement of the age of the retirement as well as service condition has come to question before this Hon'ble Court in C.W.J.C. No. 13938 of 2007 (Rajdeo Paswan V/s State of Bihar and others) wherein vide order dated 26.02.2008 the Hon'ble Court has accepted that it is the committee to decide such issues and the Writ Court is exercise of power under Article 226 of the Constitution of India impose financial burden on the respondents. The said order has further been affirmed by the Division Bench in *L.P.A. No. 287 of 2008 reported in 2009 (1) PLJR 150 (D.B.)* in the case of *Rajdeo Paswan versus State of Bihar*, which is quoted hereinbelow;

*1. On and from 24.3.2005 Bihar Service Codes*



*came to be amended and the superannuation age of the Government employees was enhanced from 58 years to 60 years. The question that falls for determination in this appeal is whether the appellant, being an employee of the Lodging House Committee, Gaya is entitled to the enhanced age of superannuation of Government employees.*

*2. Counsel for the appellant relied upon a Single Bench decision of this Court in the case of Yogendra Kumar Singh vs. The State of Bihar and Others (C.W.J.C. No. 8620 of 2004 decided on 3.7.2007) in support of his contention that the Lodging House Committee is nothing but a State Government and its employees are, therefore, Government employees. Upon perusal of the order of the Single judge of this Court in the case of Yogendra Kumar Singh (supra), we find that for the purpose of Article 12 of the Constitution of India. Lodging House Committee has been held to be a State. We are afraid, merely because instrumentality or public body is treated as a "State" for the purpose of Article 12 of the Constitution of India, it does not become the State Government.*

*3. Counsel for the appellant then took us through the provisions contained in the Bihar & Orissa Places of Pilgrimage Act, 1920; again to demonstrate that Lodging House Committee is a Department of the State Government. Having carefully considered*



*those provisions, what transpires to us is that the establishment of Lodging House Committee is traceable to Section 20(2) of the Act of 1920. However, that does not make it a department of the State Government.*

*4. Nothing has been shown nor placed on record that the Commissioner, or for that matter, the Managing Committee has adopted the amendment in the Bihar Service Code with effect from 24.3.2005 whereby the retirement age of the Government employees has been enhanced from 58 years to 60 years. Rather the material on record shows that the Managing Committee has deferred the subject for consideration in its meeting held on 3.12.2006.*

*5. In our considered view, the claim of the appellant that he is entitled to the retirement age of 60 years, as provided under the Bihar Service Code (Amended) with effect from 24.3.2005, is wholly misconceived.*

*6. The Letters Patent Appeal has no merit. It is dismissed in limine.*

And it was held that the L.S.G., Gaya is not a department of the State Government merely because of the instrumentally a public body stated as a 'State' for the purpose of Article 12 of the Constitution of India, it does not become the State Government. The establishment of Lodging Housing Committee is traceable to Section 20(2) of Bihar and Orissa Places of Pilgrimage Act,



1920, however, that does not make it a department of the State Government.

9. Mr. Alok Kumar, learned counsel for the State submits that no amount has been given as an aid to the L.S.G., Gaya for the purpose of the salary payment to the establishment of the L.S.G., Gaya rather the same has been specifically given for repairing of lodging house and clearing the river bank and for administrative arrangements during the time of the offering of the *pinddan*. In the Said letter, nowhere it is stated that the allotment made to the committee may be realised to pay the salary or other service benefits of the employees. Section 20 & 21 of the Bihar and Orissa Places of Pilgrimage Act, 1920 specifically provides the nature and composition of the committee as well as application of its fund. It is apparent that nowhere it is mentioned that the committee shall treat its employee as par with the State Government Employees. Section 23 of the Bihar and Orissa Places of Pilgrimage Act, 1920 provides power of the State Government to make rules and till date State Government has not made nay rule to treat the employees of the L.S.G. Gaya at par with Collectariate employees or the State Government employees it is clear that the committee has spend his fund within the limitations



prescribed by the said act which has been constituted mainly to provide efficiency facility to the pilgrims. The committee always consider benefits of the employees keeping in view of the financial resources and in view of the judgment reported in *2009 (1) PLJR 150 (D.B.) (Supra)* the L.S.G., Gaya has not come within the purview of the meaning of the State under Article 12 of the Constitution of India.

10. In view of the aforesaid as well as judgment in the case of *Rajdeo Paswan versus State of Bihar (Supra)*, no case is made out for interference of this Court. The application is devoid of merits.

11. In the result, the writ petition stands dismissed.

**(Rajesh Kumar Verma, J)**

ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.06.2024
Transmission Date	NA

