

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10484 of 2021

Jai Prakash Yadav Son of Late Badri Yadav Resident of Village- Kiratpur,
P.S.- Ghoghardiha, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Primary Education, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The Office of the Lokayukta, Bihar through the Secretary, 4 Kautilya Marg, Bailey Road, Patna.
4. The District Magistrate, Madhubani.
5. The District Education Officer, Madhubani.
6. The District Programme Officer, (Establishment), Madhubani.
7. The Block Development Officer, Ghoghardiha, Madhubani.
8. The Block Education Officer, Ghoghardiha, Madhubani.
9. The Panchayat Secretary, Gram Panchayat Raj Kewatna, P.S.- Ghoghardiha, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kripa Nand Jha, Advocate
For the State	:	Mr. Rajeev Ranjan, AC to GP-20

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 29-04-2025

Heard Mr. Kripa Nand Jha, learned counsel
appearing on behalf of the petitioner and Mr. Rajeev Ranjan,
learned AC to GP-20 for the State.

2. The petitioner in paragraph no. 1 of the present writ
petition has sought *inter alia* following relief(s), which is
reproduced hereinafter:

*"(i) For issuance of an appropriate
direction, order or writ in the nature of
mandamus commanding the respondent
no. 3 to produce the entire proceeding
including the order dated 16.10.2020
passed in Complaint Case No. 5/लोक
(शिक्षा) 80/2010 by Learned Lokayukta,
Bihar, Patna and after production of the*



same, Quash the entire proceeding including order dated 16.10.2020 and the complaint petition as also the consequential letter no. 239 dated 22.12.2020 issued by the District Education Officer, Madhubani by holding that the proceeding aforesaid by the Learned Lokayukta is wholly without jurisdiction and in complete contravention of Sub Section (5) of Section 29 of the Bihar Lokayukta Act, 2011.

(ii) For holding and declaring the entire proceeding / enquiry initiated against the petitioner on the basis of a complaint by third party, other than the aggrieved, the Learned Lokayukta, Bihar is not vested with the jurisdiction to enquire the issue under Section 2(f) of the Bihar Lokayukta Act, 2011 and ought to have been closed the complaint.

(iii) For any other relief/reliefs to which the petitioner may be found entitled to, in the facts and circumstances of the case."

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as a Shiksha Mitra vide Memo No. 29 dated 02.06.2005 and his selection was extended for a period of eleven months in the year 2006. Thereafter, the State Government came out with Bihar Panchayat Primary Teacher (Employment and Service Condition) Rules, 2006 (hereinafter referred to as the "Rules, 2006") and by a policy decision, post of Shiksha Mitra was abolished and the petitioner had become Niyojit Teacher as per the terms and conditions contained in Rules, 2006. A complaint was made before the Lokayukta in the year 2013 by one Deo



Karan Rai in respect of appointment of the petitioner and other Shiksha Mitra, which was registered and Lokayukta directed the Collector to lodge an FIR against the then Mukhiya, Panchayat Secretary and the petitioner for committing forgery in selection of Panchayat Shiksha Mitra. The Block Development Officer, Ghoghardiha lodged an FIR bearing Ghoghardiha P.S. Case No. 125 of 2016 under Section 403, 409 and 420 of the Indian Penal Code in which, final form was submitted on 02.08.2017 and no cognizance, as on date, has been taken against the petitioner in respect of the said criminal case. Learned counsel further submitted that the petitioner is still working as per the provision of Rules, 2006, however, he is aggrieved by the action of the District Programme Officer (Establishment), Madhubani, who has stopped the salary of the petitioner during the pendency of the writ petition i.e. from March, 2025. Learned counsel further referred to the provisions of the Bihar Lokayukta Act, 2011 and the jurisdiction of the Lokayukta is confined to financial irregularities and one cannot be penalized on the basis of any direction issued by the Lokayukta without following the due process of law and in this regard, he has relied on ***Bipin Bihari Singh vs. the State of Bihar & Ors.*** reported in (2020) 3 PLJR 10.



4. *Per contra*, learned counsel appearing on behalf of the respondent submitted that the a complaint was made before the Lokayukta by one Deo Karan Rai alleging therein that the petitioner was employed as Panchayat Shiksha Mitra on the basis of forged certificate against which Lokayuta had directed the Collector, Madhubani to enquiry and submit report with respect to the appointment of the petitioner. Thereafter, the District Programme Officer (Establishment), Madhubani vide Letter No. 801 dated 14.07.2017 submitted a detailed report in the office of the Lokayukta stating therein that the candidate having higher marks and weightage have shown above the petitioner had not given consent for their employment as Shiksha Mitra being the next candidate and the petitioner was appointed by the selection committee, thereafter, Lokayukta had again directed to lodge an FIR against the petitioner, then Mukhiya and Panchayat Secretary. Learned counsel further submitted that several enquiry were made by the different authority including the Superintendent of Police, Vigilance Cell of Lokayukt and found that the petitioner was appointed as Panchayat Shiksha Mitra on the basis of forged certificate and, in such circumstances, the present writ petition is pre-mature and is fit to be dismissed.



5. Heard the parties.

6. Having considered the rival submissions made on behalf of the parties, as well as, information contained in the writ petitioner, no action can be taken on the direction of the Lokayukta, who can only recommend to the State Government to take appropriate action in accordance with the finding contained in the enquiry report. The petitioner has been made victim, whose salary is being stopped from the month of March, 2025 without taking any action in accordance with the provision of Rules, 2006.

7. This Court in case of ***Bipin Bihari Singh (supra)*** has held that Hon'ble Lokayukta, Bihar, Patna, has no power to direct for initiation of Departmental/Disciplinary Proceeding against any Government Servant. It is worth to quote paragraphs no. 15, 16, 17, 21, 23, 24 and 27 of the judgment passed in case of ***Bipin Bihari Singh (supra)***, which *inter alia* are reproduced hereinafter:

"15. In the background of the abovenoted facts, I proceed to answer the legal question, as noticed at the very outset, which the present writ application involves in the light of statutory provisions, dealing with jurisdiction of Lokayukta under the Act of 2011.

16. Before I refer to various provisions under the Act of 2011, I must mention that the Lokpal and Lokayuktas Act, 2013(hereinafter referred to as the



'Lokpal Act') (a Central Act), which received the assent of the President on 01.01.2014 i.e. subsequent to enactment of the Act of 2011, envisages, inter alia, establishment of Lokayukta for every State, if not so established, by law made by State Legislature, 'to deal with complaints relating to corruption against certain public functionaries'. Many of the provisions under Bihar Lokayukta Act, 2011 and Lokpal and Lokayuktas Act, 2013 are akin to each other. The preamble of Lokpal Act reads 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."

17. The preamble of Bihar Lokayukta Act, 2011 makes clear the purpose behind enactment of the Act, viz. to provide for establishment of institution of Lokayukta, its powers and functions and 'for expeditious investigation and prosecution relating to allegation involving corruption against public servants of all grades'. Chapter VII of the Act of 2011 lays down the procedure in respect of inquiry and investigation. Section 27



under Chapter VII of the Act of 2011 stipulates the action which may be taken on inquiry in relation to the public servants other than the Chief Minister or Ministers or members of the State Legislature. Since Section 27 of the Act of 2011 is one of the significant provisions to address the legal issues raised in the present writ application, the same is being reproduced hereinbelow :-

“27. Action on inquiry in relation to Public Servants not being Chief Minister or Ministers or Members of the State Legislature.-(1) Where after the conclusion of the inquiry or investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (d), (e), (f), or (g) of sub-section (1) of Section 16, any officer authorized by Lokayukta shall-

(a) file a case in the Special Court and send a copy of the report together with its findings to the competent authority; and

(b) recommend to the competent authority for initiation of disciplinary proceedings under the rules of disciplinary proceedings applicable to such public servant;

(c) provide a copy of the report to the public servant or his representative;

(2) The competent authority shall, having regard to the recommendations of the Lokayukta within a period of thirty days of the receipt of recommendation under clause (b) of sub-section (1), initiate disciplinary proceedings against the delinquent public servant accused of committing offence under the Prevention of Corruption Act, 1988 and forward its comments on the report, including the action taken or proposed to be taken thereon, to the Chairperson ordinarily within six months of initiation of such disciplinary proceedings.”

21. On conjoint reading of Sections 28A and 29 of the Act, I have absolutely



no hesitation in reaching a definite conclusion that Lokayukta has no jurisdiction, acting on a complaint containing grievance of maladministration beyond submitting a report to the competent authority, as defined under Section 2(d) of the Act, prescribing the manner in which injustice or undue hardship has to be remedied or redressed. It is expected of the competent authority to examine the report and inform the Lokayukta, the action taken or proposed to be taken on the basis of the report. In view of clear language used in Section 28A of the Act, Lokayukta does not have any jurisdiction to issue any direction to the competent authority. The provision clearly stipulates that if, on receipt of report from the competent authority, in response to recommendations made by the Lokayukta, the Lokayukta is dissatisfied with the action taken or proposed to be taken, he can make 'a special report to the Governor of the State and inform the complainant in this regard'. Lokayukta does not have any other jurisdiction at all under the Act when the matter is on the basis of a complaint raising a grievance of maladministration.

23. Before I conclude, I must not lose sight of the other powers and functions conferred on the institution of Lokayukta under Section 38 of the Act, which reads as under :-

***"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.”

24. There is no jurisdiction, under the



aforesaid provision too, vested in the institution of Lokayukta to direct for initiation of a disciplinary proceeding, unless requisite conditions envisaged in Section 27 of the Act of 2011 are available.

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)."

8. Law is well settled that disciplinary action is required if any government servant or employee of the Board or Corporation or Municipal employee is to be proceeded, who also have protection of Article 311(2) of the Constitution of India.

9. In that view of the matter, the action taken by the District Programme Officer (Establishment) Madhubani, against the petitioner cannot be sustained.

10. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	05.02.2025
Transmission Date	N/A

