
(2019) 12 PAT CK 0119

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 23980 Of 2019

Vikash Chandra Guddu Baba

APPELLANT

Vs

State Of Bihar Through Its Chief Secretary And Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 12 PAT CK 0119

Hon'ble Judges : Sanjay Karol, CJ;Anil Kumar Upadhyay, J

Bench : Division Bench

Advocate : Vikash Chandra Guddu Baba, S.D.Yadav

Final Decision : Dismissed

Judgement

This is an application has been preferred praying for the following relief/s:

"That this is an application for issuance of writ of mandamus or other appropriate writ(s), order(s) and direction(s) commanding the respondents to constitute a high level committee for enquiry on the issue of appointment and posting of Pharmacist made in the year 2014 posted in different Govt. Hospitals including Medical colleges as about 82 Bachelor or pharmacists have been appointed without having requisite qualification of Diploma in Pharmacy which is in contravention of Advertisement itself in which eligibility has been mentioned and also contrary to the provisions of the Pharmacy Council of India, Education Regulation 1991 apart from it some of them have been posted in the home district which is also contrary to the letter issued by Personnel & Administrative Department, Govt. of Bihar and take other appropriate step permissible under law and/or any other order/orders or relief/reliefs for which the petitioner may found to be entitled in the facts and circumstances of the case."

Having heard Mr. Vikash Chandra Guddu Baba in person, we refrain from even issuing notice for we find the petitioner to have instituted the present petition without doing any spade work or inviting the attention of the authorities with

regard to the alleged illegalities.

Prima facie, petitioner does not appear to have any interest in the present petition or in pursuing the instant cause which pertains to a service matter.

Averments in the petition are absolutely vague and unspecific. No research on the ground level has been carried out by the petitioner. He has also not approached the authorities immediately prior to the filing of the instant petition. One such representation was filed in the year 2017. Petitioner could have sought information under the R.T.I. with regard to the decision/action thereupon. The petitioner wants this Court to have clarified the effect of the advertisement issued on 25th of January, 2000 for the post of pharmacist Matric and Diploma in Pharmacy. Also he seeks in a circuitous manner to challenge the process of selection which stood completed in the year 2014 and that too at a belated stage by filing the instant petition on 28.11.2019. Petitioner is not associated in the field of Pharmacy or Medical Science. Also he seeks implementation of the directions issued by this Court in C.W.J.C. No.8410 of 2008 (Braj Bhushan Kumar Vs. The State of Bihar & Ors.) through the present petition filed under Article 226 of the Constitution.

The Apex Court in (2016) 2 SCC 653 (D.N. JEEVARAJ V. STATE OF KARNATAKA) has culled out the following process for adjudication of public interest litigation, more so in a writ of mandamus as is sought to be enforced, at para Nos.34 to 38 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.*, (1989 Supp (1) SCC 504)

"16. The writ petitions before us are not inter partes 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 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* (2004) 2 SCC 150 that:

"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-recognized 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* in the following words:

"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-recognized 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 is 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."

The application is dismissed.