

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1111 of 2018
In
Civil Writ Jurisdiction Case No.16556 of 2017

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Bijay Kumar Singh Son of Sri Mohan Singh resident of Quarter No. B - 151,
Buddha Colony, P.S. - Buddha Colony, District - Patna.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Labour Resources Department, Govt. of Bihar, Patna.
4. The Commissioner, Department of Labour Resources, Govt. of Bihar, Patna.
5. The Director, Public Relation Department of Information and Public Relation, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Y.V.Giri, Senior Advocate
Mr.Rajesh Prasad Choudhary, Advocate
For the Respondent/s : Mr.Parijat Saurav, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-01-2023

Pursuant to the earlier order Mr.Pankaj Kumar, Joint Secretary, Labour Resource Department, Government of Bihar, Patna is present in the court.

2. Heard the learned counsels for the parties.

3. In the instant Letters Patent Appeal, appellant has assailed the order of the learned Single Judge dated 31.07.2018 passed in CWJC No. 16556 of 2017. Appellant-Bijay Kumar



Singh was holder of the post of Chairman, State Employment Committee, Bihar, Patna with effect from 09.04.2002 for three years and it was further extended for five years as on 28.08.2004. He was further appointed as a Chairman, Monitoring Committee, Manisana Wage Board, Bihar, Patna (in short 'MCMWB'). Dates and Events of the *lis* are as under:-

09.04.2002	Notification no. 148 dated 09.04.2002 issued by the State of Bihar whereby petitioner was appointed as Chairman State Employment Committee for a period of three years.
28.08.2004	Tenure of the State Employment Committee was extended for a period of 5 Years.
30.12.2005	Extra ordinary issue of Bihar Gazette dated 30.12.2005 was published regarding constitution of Monitoring Committee, Manisana Wage Board.
03.07.2015	C.W.J.C. No. 16352/14 filed by the petitioner for payment of pay and allowances for the post of Chairman, State Employment Committee was allowed on 03.07.2017 where by this Hon'ble Court held that the petitioner is entitled for the pay scale and other allowances admissible to the Chief Secretary of the State and directed to ensure the remuneration payable to the petitioner is terms of clause - 7 of the resolution dated 12.02.1985. During pendency of the above CWJC No. 16325/2014, respondents passed Resolution on 13.08.2014 for fixation of consolidated salary of Rs. 4500/- per month.
10.05.2016	L.P.A. No. 187 of 2016 filed by the State of Bihar against the order dated 03.07.2015 passed in C.W.J.C. No. 16352/14 was dismissed on 16.05.2016.
27.07.2016	M.J.C. No. 21 of 2016 filled by the petitioners for non compliance of the order passed in C.W.J.C. No. 16352 of 2014 was disposed of as the order complied with.
01.08.2016	S.L.P.(C) No. 20151 of 2016 filed by the State of Bihar against the order dated 10.05.2016 passed in L.P.A. No. 187 of 2016, was dismissed on 01.08.2016.
31.03.2017	Representation filed by the petitioner for payment of salary to the post of Chairman, Monitoring Committee, Manisana Wage Board, Bihar, Patna.
13.11.2017	C.W.J.C. No. 16556 of 2017 was filed by the petitioner / Appellant for



	directions commanding the respondents to make payment of salary and allowances for the period 09.04.2007 to 31.03.2017 of the post of Chairman, Monitoring Committee, Manisana Wage Board, Bihar, Patna and further for any other relief / reliefs for which the petitioner may be found entitled to.
31.07.2018	C.W.J.C. No.16556 of 2017 was dismissed.
06.06.2018	LPA No. 1111 of 2018 (In CWJC No. 16556 of 2017) is filed.

4. The appellant was appointed on 28.08.2004 to the post of Chairman, MCMWB, however, he has not been assigned any duties as contended by the learned counsel for the respondents.

5. Both the learned counsels for the respective parties could not apprise this Court as to how the post of Chairman, MCMWB is created by means of any statute or law. If any public post is created in the State, it must be supported by Constitutional provision like Article 309 of Constitution or Articles 162/166 of Constitution or any Act, Rule or Regulation. Further, considering that the present post is relating to Chairman, MCMWB, in that event Board must have been constituted under a particular Act. Both the respective parties could not apprise this Court how board was created under a particular Act and further what are powers and functions of the Chairman, MCMWB, how it was created, what is the mode of filling up of the post and what is the remuneration? In other words, overall services condition of the post of Chairman,



MCMWB is not forthcoming from any document. Along with supplementary affidavit to the writ petition Annexure-6 is enclosed. Annexure-6 reads as under:-

“बिहार गवर्नमेंट प्रेस, गया।

(दो0पी0वी0मै0)

चर्चा-टिप्पणी

श्रमायुक्त, बिहार

निदेशानुसार श्रम, नियोजन एवं प्रशिक्षण विभाग, बिहार- सरकार की अधिसूचना संख्या-252, पटना, दिनांक-28.08.2004 के आलोक में श्री विजय कुमार सिंह, अध्यक्ष, अनुश्रवण समिति, बिहार, पटना का योगदान प्राप्त हुआ। श्री सिंह को सरकार के द्वारा प्रखण्ड स्तर से जिला स्तर के पत्रकारों की सुविधाओं के अभाव पर नियंत्रण करने हेतु नियुक्त किया गया है। श्री सिंह को कार्य करने हेतु जो भी सुविधाओं की आवश्यकता हो उपलब्ध करायी जाय। ज्ञातव्य हो कि श्री सिंह, अध्यक्ष, राज्य नियोजन समिति, बिहार, पटना के पद पर कार्यरत हैं, इसलिये श्री सिंह को अध्यक्ष, अनुश्रवण समिति, बिहार, पटना के रूप में वही वेतन भत्ता एवं अन्य सुविधाएँ प्राप्त होगी, जो राज्य नियोजन समिति के अध्यक्ष के रूप में निर्धारित होगी। उपरोक्त निर्णय पर विभागीय आयुक्त एवं सचिव और विभागीय मंत्री का अनुमोदन प्राप्त है।

। चन्द्र नाथ झा ।

उप-सचिव,

श्रम, नियोजन एवं प्रशिक्षण, विभाग,

संलग्न- यथोपरि।

बिहार, पटना। ”

6. The aforesaid document is not in the form known to the law. In other words, it is only a decision and it is not in the form of notification or order supported by any particular source of provision. The Supreme Court in the case of **Union of India & Anr vs. Kartick Chandra Mondal & Anr** reported in **(2010) 2 SCC 422**, held that internal communications while processing a matter cannot be said to be orders issued by the competent



authority unless they are issued in accordance with law. Similar view was expressed by the Apex Court in an earlier decision, reported in **(2003) 5 SCC 134 J.P. Bansal vs. State of Rajasthan & Anr.**

7. There is no method of appointment to the post of Chairman, MCMWB. In other words, how the aforementioned post was born or created or under which provision of law, is not forthcoming. The State Government invoked its powers at whims and fancies. In other words, in the absence of source of power to appoint or fill up Chairman, MCMWB. The Apex court recently in the case of **Mahadeo and Ors. vs. Smt. Sovan Devi & Ors.** reported in **AIR 2022 SC 4071** held that office notings is not a decision and decision must be by means of issuing notification or order. Perusal of Annexure-6 to rejoinder cited (supra) is incomplete to the extent in not issuing notification or order so as to assign the service condition including remuneration to the post of Chairman, MCMWB.

8. At this stage, learned senior counsel Mr. Y.V.Giri vehemently contended that source of power for appointment and assignment of remuneration to the post of Chairman, MCMWB is under Article 166 of Constitution and Annexure-6 to the rejoinder cited (supra) is required to be read with reference to Article 166 of Constitution. He has also submitted that appellant, while holding



the post of Chairman State Employment Committee, was not paid the remuneration. Therefore, he had invoked remedy before this Court claiming that he had been extended remuneration on par with particular post in the State Government.

9. At this stage, it is necessary to notice that the appellant is seeking a writ of mandamus for issuance of direction to the respondents to pay the remuneration in terms of Annexure-6 cited (supra). This court has already noticed that Annexure-6 is not the final outcome like issuance of notification/executive order under Article 166. The Apex Court decision cited (supra) is suffice on the point that appellant has no statutory or vested right in respect of incomplete proceedings of the State Government in assigning remuneration to the post of Chairman, MCMWB. Unless and until, appellant establishes that he has a legal or statutory right under a particular provision of law, he has no vested right to seek a writ of mandamus for payment of certain remuneration or consolidated pay. The High Court can issue a writ of Mandamus only when there exists a legal right in the writ petition and corresponding legal obligation in the State as held in the case of **Union of India & Anr vs. Arulmozhi Iniarasu & Ors** reported in **(2011) 7 SCC 397**.

Insofar as extending remuneration to the post of Chairman State Employment Committee is concerned, we are not



apprised what is the source of power and how it has been created with the State Government. For issuance of writ of mandamus the aforesaid ingredients are mandatory as held by the Apex Court in the case of **Mani Subrat Jain vs. State of Haryana** reported in **(1977) 1 SCC 486, Para 9** which reads as under:-

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. 1, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors. (1) Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. (2) and Ferris Extraordinary Legal Remedies paragraph 198."

10. The aforementioned principle has been reiterated by the Apex Court in the case of **M/s Hero Motocorp Ltd. vs. Union of India & Ors.** reported in **AIR 2022 SC 5572. Para 60 to 63** which is reproduced hereunder:-

60. This Court in the case of The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. (supra) had an occasion to consider when a writ of mandamus could be issued. This Court held that:

"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 Satramdas Lalvani v. Deputy Custodian- cum-Managing Officer](#) [AIR 1966 SC 334 : (1966) 1 SCR 120 : (1966) 1 SCJ 24] , [Rai Shivendra Bahadur Dr v. Governing Body of the Nalanda College](#) [AIR 1962 SC 1210 : 1962 Supp 2 SCR 144 : (1962) 1 LLJ 247] and [Umakant Saran Dr v. State of Bihar](#) [(1973) 1 SCC 485 : AIR 1973 SC 964]). 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.” [emphasis supplied]

61. 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 the case of *K.S. Jagannathan and another* (*supra*) as under:

“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 concerned parties, 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.”

62. 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.

63. This position was again reiterated by this Court recently in the case of *Bharat Forge Ltd.* (*supra*) as follows:

“18. Therefore, it is clear that a Writ of Mandamus or a direction, in the nature of a Writ of Mandamus, is not to be withheld, in the exercise of powers of [Article 226](#) on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise from a Statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public 25 duty in a Statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority. A Writ of Mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this



country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court.” [emphasis supplied]”

11. In the case of **P.U.Joshi & Ors vs. Accountant General & Ors** reported in (2003) 2 SCC 632 in **Para 10** which reads as under:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or



amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

And in the case of **Union of India vs. Pushpa Rani &**

Ors reported in **(2008) 9 SCC 242** in **Para 37** which reads as

under:-

“37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the Judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot



suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

12. The action of the respondent in appointing appellant to the post of Chairman, MCMWB is without source of power. In other words, arbitrarily exercising power and appointing a particular person without resorting to Article 14 and 16 of Constitution is wholly illegal. Even to this day they have not withdrawn, cancelled or modified this order. Such arrangement of appointing appellant to the post of Chairman, MCMWB had been continued from 06.04.2002 for three years and further on 28.08.2004 for five years. The appellant for the first time approached this Court in the year 2017 seeking remuneration. The entire exercise of the official respondent is without any source of power and how the Manisana Wage Board has been created is the State without taking recourse to a particular statute or Act is without consideration. Staff of the Board, method of their appointment and other service conditions of the staff of Manisana Wage Board have not been determined in the manner known to the law.

13. Union of India enacted the law called The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955). Section 2(a) of the said Act reads as under:-



“(a) “Board” means-
(i) in relation to working journalists,
the Wage Board constituted under
Section 9; and
(ii) in relation to non-journalist
newspaper employees, the Wage
Board constituted under Section 13-
C;J”

14. Section 9 and 13-C of Working Journalists
And Other Newspaper Employees (Conditions Of
Service) and Miscellaneous Provisions Act, 1955 reads
as under:-

“9. Procedure for fixing and revising rates of wages:- *For the purpose of fixing or revising rates of wages in respect of working journalists under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of--*

(a) three persons representing employers in relation to newspaper establishments;

(b) three persons representing working journalists;

(c) four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.”

“13-C. Wage Board for fixing or revising rates of wages in respect of non- journalist newspaper employees:- *For the purpose of fixing or revising rates of wages in respect of non- journalist newspaper employees under this Act, the Central Government shall, as and when necessary, constitute a Wage Board which shall consist of--*



(a) three persons representing employers in relation to newspaper establishments;
(b) three persons representing non- journalist newspaper employees, and
(c) four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.”

15. In the light of the aforesaid Act, concerned Ministry constituted Wage Board which was to consist of-

(a) three persons representing employers in relation to newspaper establishments;

(b) three persons representing working journalists under Section 9 and three persons representing non-journalists newspaper employees Wage Board under Section 13-C of the Act;

(c) four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall be appointed by that Government as the Chairman thereof.

16. Since, 1955 the Government has constituted six Wage Board at regular intervals for the working journalists and non-journalists newspaper employees in the following table:-

S.No	Name of The Industry	Date Of Appointment Of Wage Boards	Date on which Final Report was submitted To Govt.	Date of Acceptance Of Recommendation By Govt.	Remarks
1.	2.	3.	4.	5.	6.
(I)	Wage Board for Working Journalists	02-05-1956	NA	11-05-2017	



(II)	(a) Wage Board for Working Journalists	12-11-1963	17-07-1967	27-10-1967	
	(b) Wage Board for Non-Journalists Newspaper Employees	25-02-1964	17-07-1967	18-11-1967	
(III)	(a) Wage Board for Working Journalists	11-06-1975	13-08-1980	26-12-1980	Converted into one man Tribunal on 9 th Feb, 1979 (Palekar Wage Boards)
	(b) Wage Board for Non-Journalists Newspaper Employees	06-02-1976	13-08-1980		
(IV)	Wage Board for Working Journalists and Non-Journalists Newspaper Employees	17-07-1985	30-05-1989	31-08-1989	Bachawat Wage Board
(V)	Wage Boards for Working Journalists and Non-Journalists Newspaper Employees	02-09-1994	25-07-2000	05-12-2000 and 15-12-2000	Manisana Wage Board
(VI)	Wage Boards for Working Journalists and Non-Journalists Newspaper Employees	24-05-2007	31-12-2010	11-11-2011	Majithia Wage Board

17. The recommendations of the Wage Board for working journalists and non-journalists newspaper employee (other than newspaper employees in news agency), called the Manisana Wage Board Award, have been made and the same has been accepted by Central Government. It is noticed that two



wage Boards were constituted under **Section 9 & 13C of the Working Journalists And Other Newspaper Employees (Conditions Of Service) and Miscellaneous Provisions Act, 1955**. The aforementioned Act do not empower State Government to constitute any Board to monitor the wage of journalists or non-journalists.

18. In the present case, we are concerned with Manisana Wage Board. Respective parties have not furnished a single document to establish that Government of India/Union of India namely, Ministry of Labour and Employment have entrusted State of Bihar insofar as implementation of Manisana Wage Board Award is concerned, so as to legitimize that order of Appointment of the appellant-Bijay Kumar Singh Chairman, MCMWB. Even the provisions of Act of 1955 do not provide any entrustment of work to the State. Section 12 of the Act reads as under:-

“12. Powers of Central Government to enforce recommendations of the Wage Board:-

(1) As soon as may be, after the receipt of the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.



(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit,--

(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit: Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or

(b) refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit.

(3) Every order made by the Central Government under this section shall be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order.”

19. Reading of Section 12 makes it clear that State Government has no role insofar as enforcement of recommendations of the Wage Board like Manisana Wage Board are concerned.

20. State Government has limited role in the Act called The Working Journalists (Fixation of Rates of Wages)



Act, 1958. Section 9 is relating to Recovery of money due to working journalist. Section 9 reads as under:-

“9. Recovery of money due to working journalists:-

(1) Where any amount is due under this Act to a working journalist from an employer, 1[the working journalist himself, or any other person authorised by him in writing in this behalf or in the cash of the death of the working journalist, any member of his family may], without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government, or such authority as the State Government may specify in this behalf, is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.*

2[(2) If any question arises as to the amount due under this Act to a working journalist from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.]*

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference, and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).”



21. Therefore, each and every action of the respondents are in violation of most of the constitutional provisions. Apex Court in the case of **D.C.Wadhwa (Doctor) vs. State of Bihar** reported in **(1987) 1 SCC 378** in respect of violation of rule of law held as under:-

“The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice is adopted by the executive which is in flagrant and systematic violation of its constitutional limitations, Petitioner 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice.”

22. Even after 75 years of independence, State Government has not been adhering to the Constitutional provision for filling up of public post like Chairman, MCMWB. Apex court in the case of **Tis Hazari Court vs. Renu & Ors** reported in **(2014) 14 SCC 50** has crystal clearly held that in order to fill up any public post the competent authority was required to follow the relevant Constitution provision like Article 14, 16, 309, 162 or 166 etc. The aforementioned principle is reiterated in the case of **State of Jammu & Kashmir & Ors. vs. Shaheena Masarat &**



Anr. reported in **2021 SCC Online SC 835**. In the present case the aforesaid provisions have not been taken note of before issuance of order of appointment to the appellant to the post of Chairman, MCMWB. Further, State has not taken note of that as on the date of appointment of appellant to the aforesaid post he was already holding the post of Chairman State Employment Committee. State is also not aware as to how Manisana Wage Board is created and constituted. On the other hand, the aforementioned Board was created by Central Government & Award was passed by Shri R.K. Manisana. In such an event whether a person can hold dual post in the State organization or State undertaking institution or not? In other words, *prima facie* in order to accommodate one more post to the appellant, the State Government has exercised arbitrary power of appointment in the absence of any statute or source of power.

23. In view of these facts and circumstances, it is a case for imposition of exemplary cost on the State for having wasted the appellant's time and valuable time of this Court in the Writ and LPA. Cost is quantified at Rs. 10,00,000/- (Rs. Ten Lakhs Only). The Cost shall be remitted in the Prime Minister's Relief Fund within a period of three months. Learned Chief Secretary of the State of Bihar is hereby directed to take note of the present case and circulate the same among all the Secretaries and Heads of the



Department of the State so as to enable them to express or give opinion relating to constitutional provision or statute or executive orders wherever it is warranted.

24. Learned counsel for the State cited in **CWJC No. 16352 of 2014, LPA No. 187 of 2016 and SLP No. 20151 of 2016** insofar as fixation of consolidated salary against the post of Chairman, State Employment Committee, Bihar, Patna, therefore, the aforesaid yardstick is not applicable to the case in hand. In the light of the factual aspects, the matter are entirely different.

25. Accordingly, learned counsel for the appellant has not made out a case so as to interfere with the learned Single Judge order, hence the present Letters Patent Appeal No. 1111 of 2018 stands dismissed. The appellant is at liberty to file a suit for damages for causing inconvenience to him, if any, in accordance with law.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	AFR
CAV DATE	NA
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