

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)

W.P. No..... /2020 (GM-PIL)

BETWEEN:

**KARNATAKA STATE LEVEL ADVOCATES' CLERKS'
ASSOCIATION (R),**

Having its office at
High Court Building,
Bangalore-560 001.
Represented by its President
Sri.D.Shivanna,
S/o. Late Kencha Mayigowda,
Aged about 65 years,

..PETITIONER

AND:

1. STATE OF KARNATAKA,

By its Secretary,
Department of Law,
Vidhana Soudha,
Dr. Ambedkar Veedhi,
Bangalore-560 001.

2. KARNATAKA STATE BAR COUNCIL,

Having its office at Old KGID Buildings,
Dr. Ambedkar Veedhi,
Bangalore-560 001.
Represented by its Secretary.

..RESPONDENTS

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

The Petitioner-Association above named most respectfully submits
as follows:

1. The Petitioner-Association is an Association of State Level Advocates' Clerks' and is registered with the Registrar of Societies, Bangalore Urban District, Bangalore. The Petitioner-Association comprises of number of Clerks who are working in various offices of Advocates, Law Firms, etc., and also comprises of many of them who are carrying on freelancing work as clerks. The said clerks assist the Advocates in filing of cases before the Registry of the various courts, compliance of office

objections after due scrutiny by the Registry, applying for and obtaining Certified copies of orders, judgments, order sheets etc., and other ancillary clerical work.

2. Larger number of clerks do not have a regular source of income and are heavily dependent on the day to day filing of cases in various courts. Due to the present situation prevailing in the entire country due to the break out of the Novel Coronavirus disease "Covid-19", the actual functioning of the courts have been closed since 25th March 2020. This has resulted in great hardship to the members of the Petitioner-Association mentioned above and most of them are in a state of penury. None of the Respondents mentioned in this Petition have taken any measures to financially support the members of the Petitioner-Association nor have they even enquired about their well being. Copy of the byelaws of the Petitioner-Association is produced herewith and marked as **ANNEXURE-A**.

3. The Petitioner herein being aggrieved by the inaction and apathy on the part of the Respondents in dealing with the welfare of its members has filed the present writ petition.

4. Hence by this Petition, the Petitioner is seeking redressal of its grievance in the form of various directions to the Respondents as mentioned in the prayer column as the Petitioner has no other alternative and efficacious remedy, on the following among other grounds mentioned below.

GROUND:

5. This Honourable Court in W.P.No.20740/2005 (GM-RES) by Order dated 16.04.2008 was pleased to direct the 1st Respondent to constitute a fund called the Karnataka Registered Clerks Welfare Fund as contemplated under Section 27 of the Karnataka Advocates Welfare Fund Act, 1983 and notified the Rules as expeditiously as possible not later than six months from the date of the said order. However, no fruitful action was taken pursuant to the said direction and as such, till date, no measures have

been adopted with regard to the welfare of the members of the Petitioner-Association. The copy of the Order dated 16.04.2018 passed in W.P.No.20740/2005 is produced herewith and marked as **ANNEXURE-B**.

6. The present prevailing situation in the country and more particularly in the State of Karnataka due to the outbreak of the above mentioned Covid-19 has led to total deprivation of the livelihood of the members of the Petitioner-Association, because there is no judicial work taking place in any of the courts in the State and thereby the clerks have absolutely no work and are deprived of their livelihood which amounts to violation of their fundamental right as enshrined under Article 19(1)(g) of the Constitution of India.

7. The lack of judicial work has rendered most of the members of the Petitioner-Association to a state of penury and thereby causing great hardship not only to the members but also to their family members comprising of aged parents, wife, children etc. They have been rendered to a stage where they are not even able to feed their family members. This amounts to violation of their fundamental right under Article 21 of the Constitution of India. Most of them are even suffering to feed their family members, for which they are not to be blamed nor responsible.

“In the famous case of *Delhi Transport Corporation v/s D.T.C. Mazdoor Congress and others reported as 1991 Supp(1) SCC 600, the Constitution Bench of the Supreme Court, in paragraph-298 of the said judgment has held that Article 21 guarantees the right to live which includes right to livelihood, the deprivation thereof must be in accordance with the procedure prescribed by law conformable to the mandates of Articles 14 and 21 has to be fair, just and reasonable but not fanciful, oppressive or at vagary*”.

8. The apathy shown by the Respondent No.1 in spite of clear directions issued by this Honourable Court in W.P.No.20740/2005

mentioned above is unpardonable and further the insensibility shown to the suffering of the members of the Petitioner-Association at the present stage of distress also requires interference at the hands of this Honourable Court. There has been violation of Article 47 of the Constitution of India as per which a duty is cast on the State to raise the level of nutrition and standard of living and to improve public health. There has been total neglect on the part of the Respondent No.1 to protect the members of the Petitioner-Association.

9. Article 38 of the Constitution of India mandates the State to secure a social order for the promotion of welfare of the people. Article 38(2) states that “the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or **engaged in different vocations**”. As per Article 39(a) of the Constitution of India, the State is obliged to secure adequate means of livelihood to all its citizens, men and women equally.

10. Similarly, as per Article 46 of the Constitution of India, the State is obliged to promote with special care the educational and economic interest of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. None of the above mentioned mandatory provisions of the Constitution have been kept in mind by the Respondent No.1 and Respondent No.2. It is pertinent to mention here that all the above mentioned Articles of the Constitution of India are included in Part-IV dealing with Directive Principles of State Policy.

11. Several representations have been made by the members of the Petitioner-Association to protect them and to formulate a set method to take care of their welfare and interest. In spite of the same, the Respondent No.1 has not acted till date. Even the Respondent No.2 has not taken any action to protect the welfare of the members of the Petitioner-Association. After disposal of the W.P.No.20740/2005 by order

dated 16.04.2008 as produced at Annexure-B, the Petitioner submitted a representation/request to the 1st Respondent to take action and to implement the said order and to take measures for the welfare of the members of the Petitioner-Association. However, till date, no action has been taken in this regard. Copy of the latest representation dated 13.12.2018 addressed by the President of the Petitioner-Association to the Respondent No.1 is produced herewith and marked as **ANNEXURE-C**.

12. In fact, the Petitioner-Association has been time and again making several requests and representations to protect them and to take care of their welfare. In the past such representation was made to the Honourable Chief Justice of this Honourable Court also. For the purpose of reference and completeness of facts, representation dated 04.12.2006 addressed by the President of Petitioner-Association to the Honourable Chief Justice, High Court of Karnataka, Bangalore, is produced herewith and marked as **ANNEXURE-D** and another Representation dated 17.01.2008 addressed to the Honourable Chief Justice, High Court of Karnataka, Bangalore, by the President of the Petitioner-Association is produced herewith and marked as **ANNEXURE-E**.

13. Several other class of people and sections of the Society have been taken care by the State Government by introducing various welfare schemes more particularly to tackle the present situation and to abate the imminent hardship caused to such people. However, no such reforms nor welfare measures have been adopted nor introduced to protect the interest of the members of the Petitioner-Association. In fact the same is an infraction of Article 14 of the Constitution of India. In the event the present Petition is not entertained, then the members of the Petitioner-Association who are several in numbers would be rendered destitute and their family members would be completely destroyed / ruined.

14. The present Petition is filed by the President of the Petitioner-Association keeping in mind the larger interest of the members of the

Petitioner-Association without any private or personal interest involved and hence the present Petition is maintainable.

15. In a 7 Judges Bench reported judgment of the Supreme Court of India, reported as AIR 1962 SC 1621, in the case of Smt.Ujjam Bai v/s State of Uttar Pradesh and another, it has been held thus:

*“The language used in Articles 32 and 226 of the Constitution is very wide and powers of Supreme Court as well as the High Court in India extend to issue of order, writs, or directions including writs in the nature of Habeas Corpus, Mandamus, Quo-warranto, Prohibition and Certiorari as may be considered necessary for enforcement of ***fundamental right and in cases of the High Court for other purposes as well***”.*

16. The Petitioner herein has not filed any other writ or application on the same cause of action that has arisen in the present writ petition.

GROUND FOR INTERIM PRAYER

17. Larger number of members of the Petitioner-Association have been deprived of their day to day earnings because of the closure of courts and in the entire State of Karnataka thereby leading to the deprivation of their right to eke out their livelihood and thereby has caused immense hardship to the members of the Petitioner-Association and most of them have been reduced to the state of penury. In the event emergent financial assistance is not given to the members of the Petitioner-Association by way of financial aid, the same would lead to great disaster as most of the members of the Petitioner-Association and their family members would be ruined because of lack of financial resources to take care of their basic needs for survival/more particularly because of the prevailing uncertainty. Hence it would be in the interest of justice, this Honourable Court may be pleased to direct the Respondent No.1 to release a consolidated sum of money at the rate of Rs.10,000/- (Rupees Ten Thousand only) per member

of the Petitioner-Association to be disbursed by the Respondent No.2, upon production of valid identity card, during pendency of this petition.

PRAYER:

Wherefore it is most respectfully prayed that this Honourable Court be pleased to:

- (a) Issue a Writ of Mandamus directing Respondent No.1 to create a corpus of Rs.5,00,00,000/- (Rupees Five Crores only) to ensure that the subsistence of the members of the Petitioner-Association is guaranteed in terms of right to livelihood guaranteed by Article 21 of the Constitution of India, during the period of closure.
- (b) Issue a Writ of Mandamus directing the Respondent No.2 to disburse a sum of Rs.20,000/- (Rupees Twenty Thousand only) per month per registered member of the Petitioner-Association from the corpus created by Respondent No.1 on submission of the requisite identity card.
- (c) Issue a Writ of Mandamus directing the 1st Respondent to formulate a scheme for the welfare of the members of the Petitioner-Association.
- (d) To issue a Writ of Mandamus directing the 1st and 2nd Respondents to implement the order dated 16.04.2008 passed in W.P.No.20740/2005 (GM-RES) by this Honourable Court.
- (e) Pass such other orders, directions, writ etc., as this Hon'ble Court may deem fit in the interest of justice and equity.

INTERIM PRAYER

Pending disposal of the above writ petition, this Honourable Court may be pleased to direct the Respondent No.1 to release a sum of Rs.10,000/- (Rupees Ten Thousand only) per person/per member of the Petitioner-Association to be disbursed by the Respondent No.2 upon production of the identity card by the respective registered clerk of the Petitioner-Association, during the period of closure from 25th March 2020 till the commencement of the normal functioning of the courts, in the interest of justice and equity.

Bangalore:
Dated. 05.05.2020

(Murthy Dayanand Naik)
Advocate for Petitioner

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D/WRIT PETITION/WP GM PIL / KARNATAKA STATE LEVEL ADVOCATES' CLERKS' ASSN VS STATE OF KARNATAKA AND KARNATAKA STATE BAR COUNCIL.