

RESERVED

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 201 of 2022

Petitioner :- Rama Kant Dixit

Respondent :- Union Of India Thru. Its Secy. Ministry Of Personnel, Public Grievances And Pensions And Another

Counsel for Petitioner :- Asok Pande, Atul Kumar

Counsel for Respondent :- A.S.G.I., Shiv P. Shukla

Hon'ble Devendra Kumar Upadhyaya, J.

Hon'ble Subhash Vidyarthi, J.

Heard Shri Ashok Pande, learned counsel for the petitioner and Shri Shiv P. Shukla, learned counsel representing the respondents.

By means of these proceedings instituted under Article 226 of the Constitution of India ostensibly in Public Interest Litigation, the following prayers have been made:

I. To issue a writ of Mandamus thereby directing the Respondent/s, [DOPT and CBI] to upgrade the overall working condition, pay structure, support staff, incentive etc. of CBI Prosecution Cadre.

II. To issue any such other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

When we peruse the averments made in the writ petition, what we find is that the petition seeks to advocate the alleged discrimination being meted out to the officers of a particular

cadre in the Central Bureau of Investigation (hereinafter referred to as "the CBI"), such as Assistant Public Prosecutors, Public Prosecutors and Senior Public Prosecutors.

Submission of the learned counsel for the petitioner is that the instant petition in public interest has been filed for making the prosecution by the CBI strong independent and robust. It has also been averred that on account of not so good conditions of service, the members of prosecution cadre of the CBI are leaving their jobs in large numbers every year and that the CBI has failed to retain their talent, as a result of which the prosecution has become poor and toothless.

The writ petition also talks about various alleged anomalies in the pay scales, the cadre structure and other service conditions of the prosecution cadre in the CBI. The petition also speaks about the alleged pay anomalies amongst the members of prosecution cadre, their status as a government servant and various other alleged entitlements.

When we closely scrutinize the submissions made by the learned counsel for the petitioner and the issues raised in the writ petition, what we find is that this purported Public Interest Litigation is a camouflage by which an attempt has been made to raise the issues relating to conditions of service of a particular set

of employees, including cadre structure, pay scales and other alleged entitlements of the members of the Prosecution Cadre in the CBI.

Having considered the averments made in the writ petition and also having heard the submissions made by the learned counsel for the petitioner, we find that the instant Public Interest Litigation is not maintainable for the reason that it essentially raises the issues relating to service of a particular cadre of an organization.

Hon'ble Supreme Court as far back as in the year 1998 in the case of **Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others**, reported in (1998) 7 SCC 273 has held that Public Interest Litigation in a service matter is not maintainable. Hon'ble Supreme Court in the said case has opined that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Court.

In the case of **Dattaraj Nathuji Thaware vs. State of Maharashtra and others**, reported in (2005) 1 SCC 590, Hon'ble Supreme Court referring to the judgment in the case of **Dr. Duryodhan Sahu and others** (supra) has observed that despite the said judgment the inflow of so called PILs involving service matters continues unabated in the courts. The relevant

observation in this regard has been made by Hon'ble Supreme Court in para 16 of the judgment in the case of **Dattaraj Nathuji Thaware (supra)**, which is extracted herein below:

"16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* [(1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out the truth and motive behind the petition. Whenever such frivolous pleas, as

noted, are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

As observed above, when we closely examine the averments made in the instant PIL, what we find is that the petitioner, though a stranger to the cadre of Prosecuting Officer in the CBI, has sought cadre restructuring which essentially is an issue relating to service conditions of the members of the said cadre. Such a petition, in our considered opinion, is not maintainable having regard to the above mentioned judgments of Hon'ble Supreme Court in the case of **Dattaraj Nathuji Thaware (supra)** and **Dr. Duryodhan Sahu and others (supra)**. Even otherwise the cadre restructuring, structure of pay scales and other service conditions are essentially policy matters which lie in the realm of the government. As to what should be the structure of a cadre, sources/mode of the recruitment, prescription of qualifications, selection criteria, evaluation of service records, pay structure and other service benefits are matters which fall exclusively in the realm of the employer, judicial review of which is very very limited. Hon'ble Supreme Court in the case of **Union of India and others vs. Pushpa Rani**

and others, reported in **(2008) 9 SCC 242** has enunciated the above legal principle in relation to scope of judicial review in the matters relating to conditions of service. Hon'ble Supreme Court in the said case of **Pushpa Rani (supra)** has held that it is not for the Court to suggest the manner of restructuring of cadre.

We may also notice that while evolving the concept of Public Interest Litigation or Social Interest Litigation, Hon'ble Supreme Court has though relaxed the principles of locus, however, such relaxation under law is available only if a public spirited person espouses the cause of any disadvantaged or incapacitated section of the society. In this background if we examine the instant Public Interest Litigation, what we find is that the instant petition has not been filed in any larger public interest; rather it seeks to take up the cause of various service related issues of the cadre of Prosecuting Officers in the CBI, who, in no manner, can be said to be a disadvantaged or incapacitated lot.

Before concluding, we are reminded of the observations made by Hon'ble Supreme Court in the case of **Holicow Pictures (Private) Limited vs. Prem Chandra Mishra and others**, reported in **(2007) 14 SCC 281**, where the Apex Court at one hand emphasizes the laudable concept of PIL and on the other

hand also notes with caution that frivolous PILs being filed before the Courts result in wastage of innumerable working days of the Court which time could be utilized for disposal of genuine litigation.

In view of the aforesaid, we are not inclined to entertain this petition, which is hereby **dismissed**.

Order Date :- 04.05.2022

akhilesh/

[Subhash Vidyarthi, J.]

[D. K. Upadhyaya, J.]