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ITEM NO.3

COURT NO.8

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(Civil) No. 1034/2021

VIVEK KRISHNA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.117314/2021-EXEMPTION FROM FILING AFFIDAVIT and IA No.117315/2021-PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 18-04-2022 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Petitioner-in-person

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The application for permission to argue and appear in-person being IA No. 117315/2021 is allowed.

Heard the Petitioner appearing in-person.

This Writ Petition has been filed under Article 32 of the Constitution of India seeking a writ in the nature of Mandamus or any other appropriate writ/order/direction on the Respondent No.1, i.e. the Union of India, to impose restrictions to prevent Civil Servants from contesting elections to the Legislature, Central or State, on a political party ticket, immediately after retirement or resignation from service, by imposing a "Cooling off Period".

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Under Article 32 of the Constitution of India, appropriate proceedings may be filed in this Court, as of right, for enforcement of any of the fundamental rights conferred by Part III of the Constitution of India.

This Court has been conferred with the power under Article 32(2) of the Constitution, to issue directions or orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by Part III of the Constitution.

Unlike Article 32 of the Constitution of India which confers powers upon the Supreme Court only to enforce fundamental rights guaranteed by Part III, Article 226 of the Constitution confers wider powers on the High Courts to issue writs for enforcement of the fundamental rights guaranteed in Part III as also for any other purpose.

A Writ Petition under Article 32 of the Constitution of India can only be filed in this Court for enforcement of a fundamental right, unlike a Writ Petition in the High Court under Article 226 of the Constitution of India which may lie for enforcement of a fundamental right or any other purpose. The right under Article 32 of the Constitution to approach this Court is itself a fundamental right.

In this case, there is no complaint of violation of any

fundamental right of the Petitioner or any group of persons represented by the Petitioner. Nobody has the fundamental right to get a mandatory order of this Court directing the appropriate Legislature to enact law or the Executive to frame rules imposing restrictions on the eligibility of civil servant to contest elections. This Writ Petition cannot, therefore, be entertained by this Court.

Even otherwise, a writ of Mandamus cannot be issued to direct the Respondents to enact law and/or to frame rules even under the wider powers conferred under Article 226 of the Constitution. A Mandamus lies for enforcement of a fundamental right or a statutory right, or the enforcement of a fundamental duty related to enforcement of a fundamental right or a statutory right. In exceptional cases, a writ may even lie for enforcement of an equitable right. The breach or threat to breach a fundamental, statutory or may be enforceable equitable right, is the *sine qua non* for issuance of a writ of Mandamus.

The right to compel performance of a public duty must be that of the Petitioner. Of course, the rule of infringement of the fundamental right of the Petitioner does not mean that the right must be that of the Petitioner alone and not of anybody else. A public interest litigation may be entertained for enforcement of the fundamental right of any group of people who may not be able to approach this Court.

The writ of Mandamus is only granted to compel performance of

a public duty or to enforce private rights when duties of a public nature, affect public rights or when private rights are breached by or in collusion with public officers.

The legal duty that may be enjoined by Mandamus can be one imposed by the Constitution, a statute, any law or by rules or orders having the force of law, which are capable of being judicially enforced.

The writ of Mandamus is liable to be refused when there is no legal or constitutional obligation of the authority concerned, which is capable of being enforced by Mandamus.

Whether under Article 32 or Article 226 of the Constitution of India, the Court can give directions in order to prevent injustice. This Court and/or a High Court cannot direct the Legislature to enact a particular legislation or the Executive to frame rules. This Court, and/or the High Court, does not give any direction to the State to enforce an Act passed by the Legislature. Nor does the Court enforce instructions in a Departmental Manual not having statutory force, any non-statutory scheme or concession which does not give rise to any legal right in favour of the Petitioner, far less, any recommendation made by an authority such as the Election Commission. It is for the Union of India to take a decision on the recommendation of the Election Commission, in accordance with law. It is not for this Court to decide what should be the policy of the Government. Policy matters are never interfered with, unless patently arbitrary, unreasonable or violative of Article 14 of the

Constitution.

It is reiterated at the cost of repetition that Mandamus will not be issued to command Legislature to enact a law, which it is competent to enact. Reference may be made to the judgments of this Court in Narinder Chand Hem Raj and Ors. vs. Lt. Governor, Administrator, Union Territory, H.P. and Ors. reported in AIR 1971 SC 2399 and State of Jammu & Kashmir vs. A.R. Zakki & Others reported in AIR 1992 SC 1546.

As held by the Bombay High Court in Vidarbha (Rent Control) Bhadkaru Sangh Akola and Anr. vs. State of Maharashtra and Anr. reported in AIR 1987 Bombay 10, when the Legislature cannot be commanded to enact legislation, no Mandamus should be issued to the Government to the same effect, however desirable the legislation may be.

The Court cannot even issue a Mandamus to the Government for enforcement of a Cabinet decision. It is only when an administrative order confers rights or creates estoppel against the Government, that Mandamus can be issued to enforce the circular. Similarly a Mandamus may be issued to cancel an administrative order, which violates the rules of fairness.

The Petitioner had filed a similar Writ Petition in the High Court of Jharkhand at Ranchi being W.P.(PIL) No. 4333/2015 which had been dismissed by an order dated 06.04.2016. The order of dismissal appears to have been accepted by the Petitioner. The Petitioner did not question the order in this Court. This Writ

Petition is barred by the principles of *res judicata* and/or principles analogous thereto.

There can be no doubt that law may be enacted, laying down the norms and qualifications for contesting specific elections. It is, however, for the appropriate Legislature to frame the law.

There can be no doubt that civil servants should maintain the highest ethical standards of integrity and honesty; political neutrality; fairness and impartiality in the discharge of duties, courtesy, accountability and transparency.

Integrity, impartiality, neutrality, transparency and honesty are non-negotiable. Ethical standards necessarily have to be enforced and stringent action taken against the concerned officer whenever there is any breach of ethical standards as laid down in the All India Services (Conduct) Rules, 1968.

Apart from the fact that no fundamental right of the Petitioner is in issue for which a Writ Petition might be filed under Article 32 of the Constitution of India in this Court, we do not find any merit in the contentions raised in the petition, even otherwise. It is not for this Court to interfere in matters relating to framing of law, rules or policy. Whether there should be any "Cooling off Period" for civil servants for them to contest elections or not is best left to the concerned Legislature.

The allegations of bureaucrats deviating from strict norms of

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political neutrality with a view to obtaining party tickets to contest elections, is vague, devoid of particulars and unsupported by any materials which could justify intervention of this Court.

No particulars have been given of the number and/or percentage of erstwhile bureaucrats, who have contested elections on the ticket of a political party, not to speak of any act on their part, prior to their retirement, in deviation of the standards required of bureaucrats.

It is not for this Court to decide whether or not there should be any rules/guidelines for a bureaucrat to contest elections. It is for the appropriate authorities to take a decision in this matter.

The Writ Petition is, accordingly, dismissed.

Pending applications, if any, shall stand disposed of.

(MANISH ISSRANI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)