

**WWW.LIVELAW.IN**  
**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11717 of 2021**

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Dr. Ashish Kumar Sinha

... .. Petitioner/s

Versus

The Union of India & Ors.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 5713 of 2020**

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Bihar Local Bodies Employee Federation

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 9047 of 2020**

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Ramesh Kumar

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 12524 of 2021**

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Bihar Local Bodies Employees Federation,

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 12619 of 2021**

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Patna Nagar Nigam Staff Union

... .. Petitioner/s

Versus

The Union of India & Ors.



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... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 12809 of 2021**

Binod Kumar Yadav

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No. 11717 of 2021)

For the Petitioner/s : Ms. Mayuri, Advocate  
Mr. Kamleshwar Pandey, Advocate  
For the Union of India : Mr. Dr. K.N. Singh , A.S.G.  
Mr. Rakesh Kumar Sinha, CGC  
Mr. Sriram Krishna, JC to A.S.G.  
For the State : Mr. Pawan Kumar, AC to A.G.  
Mr. Subhash Prasad Singh, GA- 3  
For the PMC : Mr. Prasoon Sinha, Advocate  
Mr. Rabindra Kumar Priyadarshi, Advocate

(In Civil Writ Jurisdiction Case No. 5713 of 2020)

For the Petitioner/s : Mr. Anuj Kumar, Advocate  
Mr. Madhav Raj, Advocate  
For the State : Mr. Pawan Kumar, AC to A.G.  
Mr. Pankaj Kumar, SC 12

(In Civil Writ Jurisdiction Case No. 9047 of 2020)

For the Petitioner/s : Dr. Anjani Pd. Singh, Advocate  
For the State : Mr. Pawan Kumar, AC to A.G.  
Mr. Abbas Haider, SC 6

(In Civil Writ Jurisdiction Case No. 12524 of 2021)

For the Petitioner/s : Mr. Sunit Kumar, Advocate  
Mr. Siddharth Prasad, Advocate  
Mr. Surya Nilambari, Advocate  
Mr. Om Prakash Kumar, Advocate  
For the State : Mr. Pawan Kumar, AC to A.G.  
Mr. Subash Prasad Singh, GA 3

(In Civil Writ Jurisdiction Case No. 12619 of 2021)

For the Petitioner/s : Mr. Akash Keshav, Advocate  
Mr. Akanksha Malviya, Advocate  
Mr. Shashwat, Advocate  
Mr. Vishal Kumar Singh, Advocate  
Mr. Deepak Kumar Singh, Advocate  
For the Union of India : Mr. Dr. K.N. Singh , A.S.G.  
Mr. Rakesh Kumar Sinha, CGC  
Mr. Sriram Krishna, JC to A.S.G.



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For the State : Mr. Pawan Kumar, AC to A.G.  
For the PMC : Mr. Prasoon Sinha, Advocate  
Mr. Rabindra Kumar Priyadarshi, Advocate  
Mr. Alok Kumar Jha, Advocate

(In Civil Writ Jurisdiction Case No. 12809 of 2021)

For the Petitioner/s : Ms. Mayuri, Advocate  
Mr. Kamleshwar Pandey, Advocate

For the State : Mr. Pawan Kumar, AC to A.G.  
Mr. Subhash Prasad Singh, GA- 3  
For the PMC : Mr. Prasoon Sinha, Advocate  
Mr. Rabindra Kumar Priyadarshi, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE  
and  
HONOURABLE MR. JUSTICE S. KUMAR  
ORAL ORDER**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

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**(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)**

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7 18-02-2022 Today, an adjournment is made on behalf of the learned Advocate General, who is not attending the court work on account of his personal difficulty.

We request the learned Advocate General to also instruct other senior advocates in future for rendering assistance to the Court, should he be in any difficulty, be it for whatever reason.

On 17.09.2021, we had passed the following orders:-

“ As prayed for, let counter affidavit be filed by the respondents within a period of three weeks from today, failing which a cost of Rs. 5000/- (five thousand) each shall be recovered from the salary of Respondent No. 2, namely the Finance Secretary, Ministry of Finance,



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Government of India (In CWJC No. 11717 of 2021) and Respondent No. 2, namely Principal Secretary, Urban Development and Housing Department, Government of Bihar (In CWJC No. 10589 of 2021), to be deposited with the Patna High Court Legal Services Committee.

It is made clear that no further opportunity shall be afforded for the said purpose and the petition shall be heard on the basis of materials available on record.

Rejoinder to the counter affidavit, if any, be filed within a period of two weeks thereafter.

List this case on 22<sup>nd</sup> of October, 2021.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.”

Despite opportunities afforded, the Respondent No. 2 namely Finance Secretary, Ministry of Finance, Government of India and the respondent No. 5, namely Principal Secretary, Urban Development and Housing Department, Government of Bihar had not filed their counter affidavit.

Let the said respondents deposit cost of Rs. 5000/- each to be recovered from their personal salary to be deposited with the Patna High Court Legal Services Committee.

In terms of our order dated 17.09.2021 supra, proof of compliance be filed by Tuesday i.e. 22.02.2022.

At this stage, Dr. K.N.Singh, learned A.S.G., has persuaded us to defer the order by one week, enabling both the Respondents No. 2, namely, namely Finance Secretary, Ministry of Finance, Government of India and Respondent No. 5, namely,



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the Principal Secretary, Urban Development and Housing Department, Government of Bihar, from filing their personal affidavits, dealing with each one of the averments made in the petition.

Well, we only highlight the importance and significance of the matter by extracting the amendments brought-in in the Bihar Municipal Act, 2007 whereby all powers of appointment and transfer of employees of Grade-C & D, have been taken over by the State by virtue of the provisions of the Bihar Municipal (Amendment) Act, 2021.

It is argued that such amendments are in violation of Part-9A of the Constitution of India, brought in by virtue of the Constitution (Seventy-Fourth) Amendment Act, 1992.

The matter, undoubtedly, is of prime importance and needs urgent attention of the authorities. The only reason for bringing in the amendment, as is so disclosed by the State, is receipt of certain complaints in the recruitment process of Group-C & D employees, in relation to which, we find, the State not to have taken any action, as is, otherwise empowered by virtue of the Municipal Act itself. Whether receipt of complaints in the recruitment process can itself be a ground to amend the



legislation is something, which the Respondents need to explain.

The report of the 6<sup>th</sup> Pay Finance Commission is also to be kept in mind; so also Article 243P of the Constitution of India while filing such response. The structure of fiscal federalism and autonomy, including purpose of de-centralisation of power, which, perhaps, prompted the amendment in the Constitution, appears to have been ignored or not accounted for.

Ms. Mayuri, leaned counsel for the petitioner, vehemently presses for grant of stay of the provisions of the Statute.

At this stage, we refrain from doing so, clarifying that if response is not filed, dealing with each one of the averments made in the petition, perhaps, we may be persuaded to do so on the next date of hearing.

List on 28.02.2022.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

Sujit/-

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