

**IN THE HON'BLE SUPREME COURT OF INDIA**

**ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO.      OF 2021**

**IN THE MATTER OF:**

**SANJAY KUMAR, ADVOCATE**

**...PETITIONER**

**VERSUS**

**1. HIGH COURT OF JUDICATURE AT PATNA,  
THROUGH THE REGISTRAR  
JAWAHARLAL NEHRU MARG,  
VEERCHAND PATEL ROAD AREA  
PATNA, BIHAR-800028**

**...RESPONDENT NO.1**

**2. THE SECTRETARY  
COMMITTEE FOR DESIGNATION OF SENIOR ADVOCATES,  
HIGH COURT OF JUDICATURE AT PATNA  
JAWAHARLAL NEHRU MARG,  
VEERCHAND PATEL ROAD AREA  
PATNA, BIHAR-800028**

**...RESPONDENT NO.2**

**A WRIT PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION OF INDIA FOR SEEKING ISSUANCE OF AN  
APPROPRIATE WRIT IN THE NATURE OF MANDAMUS FOR  
DESIGNATION OF SENIOR ADVOCATES AT THE HIGH  
COURT OF JUDICATURE AT PATNA, BIHAR.**

To

Hon'ble the Chief Justice of India and His Lordship's Companion  
Justices of the Supreme Court of India.

The Humble Petition of the Petitioner above named.

**MOST RESPECTFULLY SHOWETH:**

1. That it is stated that the Petitioner is a citizen of India and is an advocate practicing at the High Court of Judicature at Patna, Bihar and is a public spirited person having keen interest in public and social wellness of the nation as well as the State of Bihar and is invoking the jurisdiction of this Hon'ble Court for the redressal of the legitimate, just and bona fide grievances and issues faced by advocates and the public in the State of Bihar due to the delay of almost five (5) years and the lackadaisical approach of the High Court of Judicature at Patna and the Committee for Designation of Senior Advocates in designating and appointing Senior Advocates. A copy of the Aadhar Card of the Petitioner is being annexed herewith and marked as **ANNEXURE P-1 (Page 22).**

2. The Petitioners full name and details is Sanjay Kumar aged

3. That the Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this petition. It is not guided by the gain of any other individual, institution or body.
4. There is no civil, criminal or revenue litigation involving the Petitioner, which has or could have legal nexus, with the issue involved in this petition. It is stated that the same is completely bona fide. The Petitioner has not approached any Government authority for the present case.
5. That the Respondent No. 1 is the High Court of Judicature of Patna, through its Registrar and Respondent No. 2 is the Committee for Designation of Senior Advocates, through the Secretary.
6. That the cause for filing the present writ petition is due to the inordinate delay on the part of the High Court of

Judicature at Patna as well as by the Committee formed for designation of Senior Advocates by the High Court of Judicature at Patna, so much so that no new senior advocate has been appointed in almost past five years.

7. That the Respondent No. 2 on 01.07.2019 issued public notice inviting applications from eligible practicing Advocates at the High Court of Judicature at Patna for designation of Senior Advocates as per the rules and guidelines laid down by the Hon'ble Supreme Court and as per the High Court of Judicature at Patna (Designation of Senior Advocates) Rules, 2019. The final date for submissions of applications was fixed as 21.07.2019. Copy of notice dated 01.07.2019 is being annexed herewith and marked as **ANNEXURE P-2 (Pages 23 to 24)**.
8. That vide notice dated 17.07.2019, the Committee extended the dates for accepting the applications and the revised extended date fixed was 22.07.2019. Copy of the notice dated 17.07.2019 is being annexed herewith and marked as **ANNEXURE P-3 (Pages 25 to 26)**.
9. That vide notice dated 05.08.2019 the Committee notified that 35 advocates of the total number of applicants did not have the documents required and hence gave last

opportunity to furnish the same by 13.08.2019. Copy of the notice dated 05.08.2019 is being annexed herewith and marked as **ANNEXURE P-4 (Page 27)**.

10. That on 16.08.2019 meeting was held by the Committee discussing the publication of the summary of applications on the official web portal of the High Court of Judicature at Patna, inviting suggestion/view/objections of the members of the Bar and other concerned individuals. Further as per the guidelines laid down by the Hon'ble Supreme Court, incorporated in the Senior Designation Rules, 30 days time given for such suggestions/views/objections.

11. That as per the directions of the Committee, the Registrar General of the High Court of Judicature at Patna vide public notice dated 19.08.2019 published the application summaries (117) on the official web portal of the High Court. 30 days time period granted for members of the Bar and others concerned for providing suggestions/ view/ objections, with the 30 days period ending on 18.09.2019. Thereafter no progress has been made and neither has the Committee held any interview nor any meeting before the Full Court has been convened on account of the same. Copy of the notice dated 19.08.2019 is being annexed

herewith and marked as **ANNEXURE P-5 (Pages 28 to 88)**.

12. In fact, no advocate has been designated seniority for almost the past five (5) years at the High Court of Judicature at Patna and it is against this inaction on the part of the Respondents and inordinate delay caused in the designation of senior advocates that the Petitioner seeks intervention of this Hon'ble Court by way of the present writ which raises the following

**Questions of Law:**

- a. Whether by not designating the Senior Advocate are denying the eligible Advocates to be recognized for their merit and knowledge of law?
- b. Whether the inaction of the respondent authorities after inviting application for designation of Advocate as Senior is dereliction of its duties?
- c. Whether the respondent authorities are under obligation to enforce the direction given by the Hon'ble Supreme Court as also mandated under Article 141 of the Constitution of India?

- d. Whether the inaction of the respondent authorities has deprived the lawyers and litigants to make judicious choice while engaging an Advocate?
  - e. Whether the action of the respondents had violated the rights of the as enshrined in Article 21 of the Constitution of India?
  - f. Whether the inaction of the respondent authorities is unjust, arbitrary and illegal and is violative of Article 14 of the Constitution of India?
13. That the inaction of the Respondents and inordinate delay in the designation of Senior Advocates is clearly in contravention of the guidelines laid down by this Hon'ble Court as well as of the provisions of the Rules set up thereby, further amounts to arbitrariness stemming from such inaction which in turn is violative of Article 14 of the Constitution which is the antithesis to arbitrariness. That the said inaction apart from being violative of Article 14 is also in violation of Article 141 of the Constitution of India which states that the law declared by the Supreme Court is to binding upon all courts of the country.

#### 14. **GROUND**S

- A. That human by nature look forward for the recognition of the work they do in their life. This instinct of human being has been recognized from time immemorial by the society and it has developed various formal and in

formal ways to recognize the persons for their distinguished achievements in their field of work.

- B. That Rule of Law had been one of the fundamental pillars of human civilization to maintain discipline and growth in the society. Through period of Roman laws to Common Laws – it has evolved and now in the modern society it is one of the fulcrums of freedom and democracy. It is the voice of the depressed and aggrieved. One of the essential parts of this system is the Advocate, who specializes in the field of law and help the Judges to protect the rights of the individuals/organizations.
- C. That with the passage of time from law of Manu to its new incarnation of Secular and Codified laws – Indian judicial system has evolved with changing time and has assimilated best of traditions and laws throughout the world. But due to historical legacy Indian judiciary follows the tradition and system of Common law inherited from Britain.
- D. That there are several Statutes governing the functioning of both the Bar and the Bench. The profession of Advocate is mainly governed by the Advocates Act, 1961 and Rules framed by the Bar Council of India.
- E. That Section 16 of Advocates Act, 1961 recognizes two categories of Advocates namely – ‘Senior Advocates’ and ‘Other Advocates’.



- F. That the designation of Senior Advocates as per the above mentioned Section stipulated three conditions namely i) ability; ii) standing at the Bar and iii) special knowledge or experience in law. However, during different points in time there were controversies in different Hon'ble High Courts with regard to designation of Senior Advocates.
- G. That it is stated that all these controversies from different Hon'ble High Courts travelled up to Hon'ble Supreme Court. The Hon'ble Supreme Court after considering the contentions raised by all the stakeholders framed and laid the law in the case of *Indira Jaising Vs. Supreme Court [2017 (9) SCC 766]*. A copy of the judgment passed by this Hon'ble Court in *Indira Jaising Vs. Supreme Court [2017 (9) SCC 766]* is being annexed herewith and marked as **ANNEXURE P-6 (Pages 89 to 128)**.
- H. That in paragraph 69 of the *Indira Jaising* judgment this Hon'ble Court notes the existing guidelines for designation of Senior Advocates in the Supreme Court and in various High Courts, and states that the guidelines required consideration "*to ensure conformity*

*of the actions/decisions taken under Section 16 of the Act with the requirement of constitutional necessities, particularly, in the domain of a fair, transparent and reasonable exercise of a statutory dispensation on which touchstone alone the exercise of designation under Section 16 of the Act can be justified.”*

- I. Paragraph 70 of the *Indira Jaising* judgment clearly lays out the purpose of introducing a framework/guidelines for the designation of Senior Advocates, and reads as follows:

“70. We are, therefore, of the view that the framework that we would be introducing by the present order to regulate the system of designation of Senior Advocates must provide representation to the community of advocates though in a limited manner. That apart, we are also of the view that time has come when uniform parameters/guidelines should govern the exercise of designation of Senior Advocates by all courts of the country including the Supreme Court. The sole yardstick by which we propose to introduce a set of guidelines to govern the matter is the need for maximum objectivity in the process so as to ensure that it is only and only the most deserving and the very best who would be bestowed the honour and dignity. The credentials of every advocate who seeks to be designated as a Senior Advocate or whom the Full Court suo motu decides to confer the honour must be subject to an utmost strict process of scrutiny leaving no scope for any doubt or dissatisfaction in the matter.”

- J. This Hon'ble Court in para 73 of its judgment states that  
*"It is in the above backdrop that we proceed to venture into the exercise and lay down the following norms/guidelines which henceforth would govern the exercise of designation of Senior Advocates by the Supreme Court and all High Courts in the country. The norms/guidelines, in existence, shall be suitably modified so as to be in accord with the present."*
- K. That the Hon'ble Supreme Court directed all the Hon'ble High Courts to formulate norms/guideline governing the exercise of designation of Senior Advocate by modifying the existing guidelines/norm by incorporating the guidelines provided by it in the said case.
- L. That in light of the aforementioned direction of the Hon'ble Supreme Court the High Court of Judicature at Patna framed the High Court of Judicature at Patna (Designation of Senior Advocates) Rules, 2019 (herein after referred to as Rules) and notified the same on 29.03.2019. A Copy of the High Court of Judicature at Patna (Designation of Senior Advocates) Rules, 2019 is

being annexed herewith and marked as **ANNEXURE P-7 (Pages 129 to 132)** .

M. That as per Rule 7 (c) of the Rules, the Committee is to hold meeting atleast once a year. Rule 7 is being reproduced below for ready reference:

*“7.(a) The proposal/ recommendation/ application for designation as a Senior Advocate shall be processed by a Permanent Committee of the High Court known as the "Committee for Designation of Senior Advocates" (hereinafter referred to as "the Committee" for short). The Permanent Committee will be headed by the Hon'ble the Chief Justice and consist of two senior-most Hon'ble Judges of this Court and the Learned Advocate General who will be the Members of this Permanent Committee. The above four Hon'ble Members of the Permanent Committee will nominate a Member of the Bar to be the fifth Member of the Permanent Committee. (b) The Secretariat of the Registrar General of the High Court shall be the Secretariat of "the Committee" and the Registrar General of the High Court shall be the ex-officio Secretary of "the Committee". (c) The Committee shall meet at least once in every calendar year.”*

It is submitted that the Respondent No.2, the Committee has blatantly violated the said rule, as no new senior

has been designated in the recent past and it has been almost 5 years since the same.

N. That it is further submitted that intent and purpose the Hon'ble Supreme Court framing direction for designation of the Senior Advocates across the country was that same should be conducted regularly and transparently. It is further submitted that time frame has already been framed for inviting suggestions/views of the Bar, which indicates the fact that exercise should be completed within a stipulated time.

O. That in view of the time bound manner that the said process is supposed to be completed, the delay of more than one year post publishing of the application summaries on the official web portal is affecting deserving lawyers and also the litigants. It is imperative to mention that considering the fact that no new senior had been designated at the High Court of Judicature at Patna since 2015, the process set in motion in 2019 by the Respondent No. 2 and thereafter the abrupt interruption/stoppage of the same has left the advocates and litigants in anticipation.

- P. That it is further submitted that designation of an Advocate as Senior Advocate is recognition of his merit, ability and experience in law. The delay in designation of the eligible Advocate as Senior Advocate leads to stagnation in his/her progress and also demoralizes his/her moral and career growth. It is submitted that even during the pandemic, other High Courts of the country adopted virtual and electronic modes to complete its judicial and administrative functions, while the High Court of Judicature at Patna remained with no action towards its administrative functions of designating Senior Advocates..
- Q. That inaction is an action which can be challenged as arbitrary. The law does not lay down any time frame for different stages of senior designation but lack of action for an indefinite period is not the mandate of law. When the law does not prescribe any time period the same has to be acted within a reasonable period. Any action/inaction which is irrational, capricious, unreasonable, unfair, not informed with reason, unguided by public interest capricious or without any sanction of law or that does not confirm to rule of law can be termed as arbitrary under Article 14. It would be pertinent to mention here that the last designation of the Senior Advocate by the High Court of Judicature of Patna was in the year 2015. Now it has been almost five years that any advocate has been designated as Senior Advocate in the High Court. It would not be out of place to mention that after framing of guidelines by the Hon'ble Supreme Court in *Indira Jaising Case* (Supra)

may High Courts after framing of law for Senior Designation has already designated deserving Advocates as senior Advocates.

- R. That it is further submitted that idea of designating an advocate as Senior Advocate is to recognize his talent and depth knowledge of intricate questions of law and while doing his duty as counsel as an officer of the Court contribute in assisting the Court to charter the right course of action. The delay in designating the Advocate as Senior is also depriving the assistance of those Advocates who after being designated would be duly recognized and their knowledge can be used in larger interest of the justice.
- S. That it is respectfully submitted that designating eligible Advocates as Senior Advocate would also help the litigants and lawyers to make knowledgeable and judicious choice while selecting the Advocate to represent their case.
- T. That it is imperative to mention that appointment of senior advocates on regular basis as also directed by this Hon'ble court in Indira Jaising case (supra) would be beneficial both to the deserving lawyers and to the general public.
- U. That it is further submitted that delay in completing the cycle initiated for designation of Advocate as Senior Advocate is adversely affecting both the advocate and litigants. Thus in the interest of justice the process of designation of Advocate as Senior Advocate may be completed at the earliest.

V. That the public at large along with advocates would suffer if this Hon'ble Court does not intervene into the said matter.

W. That the present petition has been filed in the interest of the public at large and hence is to be treated as public interest litigation.

X. That in the given set of facts the Petitioners have got no other alternate or efficacious remedy than to invoke the Writ jurisdiction of this Hon'ble Court

Y. That the Petitioners have not moved before this Hon'ble Court earlier for the reliefs sought for in this Writ Petition and no similar petition has been filed or is pending before any other court.

### **PRAYER**

In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- i) Issue an order direction or writ in the nature of Mandamus directing the respondent authorities to designate the eligible Advocates of High Court of Judicature at Patna as Senior Advocates in terms of



guidelines laid down by the Hon'ble Supreme Court and the rules framed by the High Court of Judicature at Patna christened as High Court of Judicature at Patna (Designation of Senior Advocates) Rules, 2019 (herein after referred as Rules) and notified on 29.03.2019.

- ii) Issuance of writ in the nature of Mandamus directing the respondent authorities to designate the Advocates as the Senior Advocates from list published on 19.08.2019 submitted by the Advocates pursuant to the Notice dated 01.07.2019 by High Court of Judicature at Patna inviting names of the Advocates to be designated as Senior Advocates.
- iii) Any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.

- iv) Grant such other reliefs as this Hon'ble Court may deem fit and proper in light of the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL,  
AS IN DUTY BOUND EVER PRAY

DRAWN BY:

SURAJ SAMDARSHI

 FILED BY:

PANKAJ BHAGAT

Drawn on: 29.01.2021

Filed on: 04.02.2021