

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2020**
(A WRIT PETITION UNDER ARTICLE 32 OF CONSTITUTION OF
INDIA)

IN THE MATTER OF:

POSITION OF PARTIES

Madhu Purnima Kishwar
D/o- Late Shri K L Kishwar



VERSUS

.....Petitioner

1. Union of India
Through Home Secretary
North Block, Central Secretariat
New Delhi. Contesting
Respondent no. 1
2. Union of India
Through Secretary
Ministry of Law & Justice
Jaisalmer House
New Delhi. Contesting
Respondent no. 2
3. Supreme Court of India
Through Secretary General
Supreme Court of India.
Tilak Marg,
New Delhi. Contesting
Respondent no. 3

**A WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN**

NATURE OF MANDAMUS, APPROPRIATE ORDER OR DIRECTION, FOR APPLICATION OF SECTION 8 OF THE LOPKAL ACT ON JUDGES OF SUPREME COURT AND HIGH COURTS.

To

The Hon'ble Chief Justice of India
And his companion Judges of the
Supreme Court of India at New Delhi

The humble Petition of the
Petitioner above-named.

MOST RESPECTFULLY SHOWETH:

1. That the petitioner is filing the present Writ petition under article 32 of the Constitution of India for issuance of writ in the nature of mandamus, appropriate order or direction, for application of restrictions contained in Section 8 of the Lopkal Act on judges of Supreme Court of India and various high courts.
- 1A. That the instant writ petition in the nature of Public Interest is being filed under Article 32 against the State and its functionaries for protecting the independence of

judiciary which is part of the basic structure of the Constitution of India.

1B. That the Petitioner is an acclaimed social scientist and public intellectual. The Petitioner currently holds the prestigious fellowship as the Maulana Azad National Professor at the Indian Council of Social Science Research. Formerly she was a Professor, at the Delhi-based Centre for the Study of Developing Societies, as well as the Director of the Centre's Indic Studies Project. The Petitioner is also the founder-editor of the internationally acclaimed publication, '*Manushi – A Journal about Women and Society*' which was started in 1978 and run by the non-profit organization, Manushi Trust. She is widely acknowledged as having pioneered human rights/women's rights activism in India and spent a life time endeavouring to expand the horizons of democratic freedoms in India and strengthen the culture of accountability in governance. She has worked closely with government agencies to bring about policy and law

reform and make government more accountable with regard to livelihood rights of self-employed poor. The Alternative Women's Reservation Bill she drafted and advocated was adopted by the Chief of the Election Commission as a far better legislation to enhance the participation of women in parliament and state legislatures. The PAN card no. of the Petitioner is [REDACTED]. After superannuation, her current annual income is [REDACTED] per annum. Her Aadhar Card No is [REDACTED]. A copy of her Aadhar Card and Pan Card is annexed herewith.

- 1C. That there is no civil criminal or revenue litigation involving the petitioner which has any legal nexus with the subject matter of the present Writ petition.
- 1D. That the present Writ petition is being filed to seek directions which are vital to restoring the faith of citizens of India in the independence of judiciary.
2. That the petitioner has not filed any representation to any authority before filing present this writ petition

under Article 32 of the Constitution of India for issuance of appropriate Writ order or directions.

3. That this is the first Writ-Petition filed by the petitioner in this Hon'ble Court on same or similar this issue.
4. That the cause of action for filing this writ petition arose on 16.03.2020 when a recently retired Ex-Chief Justice of India Shri Ranjan Gogoi was nominated as a Rajya Sabha member.
5. That the Petitioner has no personal gain or interest, or private motive in filling the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioner which has or could have a legal nexus with the issues involved in this PIL.
6. That all of the documents annexed with the present writ petition are in public domain.

7. BRIEF FACTS OF THE CASE:

- i. That as a public spirited citizen she shares the widespread disquiet and unease in the country following the nomination of recently retired Chief

Justice of India Shri Ranjan Gogoi as a Rajya Sabha member by the President of India vide Notification No. CGDLE 16032020-218695 dated March 16, 2020, /Phalguna 26, 1941.

True Copy of the Notification No. CGDLE 16032020-218695 dated March 16, 2020 has been annexed herewith as ANNEXURE NO. P-1 at pages _____

- ii. That she feels deeply aggrieved at this appointment since it compromises the independence and credibility of our judiciary at the highest levels. During his tenure as a judge of the Supreme Court, and especially after he became the Chief Justice of India, Justice Gogoi delivered several historic judgments, some of which had the potential to create widespread unrest. But all sections of society accepted those verdicts in order to uphold the majesty of Supreme Court judgments, no matter what their personal convictions in the matter.

However, his nomination as a Rajya Sabha member by the President of India gives it the colour of a political appointment and therefore casts a shadow of doubt on the credibility of the judgments delivered under his headship of the Supreme Court.

Hence, the present Writ Petition.

8. That it is of vital for the survival of democracy and rule of law in India that this issue be addressed with urgency and effective directions be issued in the interest of justice in the large public interest.

GROUND

- I. Because 'independence of judiciary' is an essential part of the basic structure of the Constitution and also considered a pillar of democracy. The strength of judiciary lies in the faith citizens of this country have in it. Any act which creates any adverse impression on the independence of judiciary like the present one, wherein EX- CJI has been nominated to Rajya Sabha, amounts to an assault on the independence of

judiciary.

- II. Because whenever a recently retired justice of the Supreme Court has been nominated to Rajya Sabha or given a political portfolio, it has created great consternation among informed citizens of India. The first recently retired judge nominated to the Rajya Sabha was Justice Baharul Islam, who retired from the Supreme Court in January 1983 and was nominated to the Upper House by the Indira Gandhi government in June 1983. This appointment was also viewed as a slur on judicial independence. Later, ex Chief Justice Ranganath Mishra also secured a Rajya Sabha seat. But he did so by joining the Congress Party and winning his Rajya Sabha seat through election. But even that appointment aroused serious misgivings about judicial integrity among general public.
- III. Because Supreme Court judges are expected to work without fear or favour and remain above political

divides or affiliation.

- IV. Because Justice (Retd.) Ranjan Gogoi's acceptance of RS nomination is all the more befuddling since he himself pronounced that there is a valid "strong viewpoint" that "post retirement appointment is itself a scar on judicial independence of the judiciary".
- V. Because the nomination of Justice Ranjan Gogoi to Rajya Sabha crosses yet another Lakshman Rekha with regard to the independence and integrity of the judiciary. It has given a handle to the external enemies of India as well as Break Up India Forces within the country to defame and cast aspersions on the highest judiciary of India. This is amply evident from the adverse coverage of this appointment in the national and international media.
- VI. Because Justice(retd.) Gogoi was one of the four judges of the Supreme Court who jolted the people of India by holding a press conference demanding "independence of judiciary" from the executive and

political power structures. This was an unprecedented step for judges of the Apex Court since it violated judicial protocol and made the judges appear like disgruntled citizens venting their anger at the government by launching a public attack at the current regime. Given that controversial background, Justice Gogoi's cheerful and instant acceptance of the nomination to Rajya Sabha comes as a huge disappointment. It has already hit headlines in the international media and cast a shadow on the integrity of the judiciary.

- VII. Because the Independence of judiciary is an essential feature of our Constitution and polity. It forms part of the Basic Structure Doctrine as enunciated by the SC in a whole series of judgements. The rulings of the SC for appointments of judges through the collegium system minimizing the role of the executive is premised on the necessity of maintaining independence of judiciary.

VIII. Because Article 50 of the Constitution directs that:
The State shall take steps to separate the judiciary from the executive in the public services of the State.

IX. Chapter-IV of Part-V and Chapter-V of Part-IV the Constitution dealing with Supreme Court and the High Courts have provided many safeguards to maintain the independence of Judiciary. Clause (4) of Article 148 of Constitution reads as:

“The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.”

X. Because Article 319 of Constitution lays down that on ceasing to hold office—

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public

Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(c) *a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission, or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;*

(d) *a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.”*

- XI. Because Unlike in the case of Comptroller and Auditor-General, and Chairmen and Members of the Union and State Public Service Commissions, the framers of the Constitution did not make any explicit provisions restricting the post retirement acceptance

of public offices by the judges of the Supreme Court and high courts as they were expected to conduct themselves in such a manner *even after their retirement* so as not to create an adverse impression about the independence of judiciary.

- XII. Because in order to maintain the independence of the anti-corruption watch dog of the Union of India the Parliament has explicitly barred any type of public employment of the Central Vigilance Commissioner and other Vigilance Commissioners. **Sub-section (6)** of **Section 5** the Central Vigilance Commission Act, 2003 reads as:

“On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

(a) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal.

(b) further employment to any office of profit under

the Government of India or the Government of a State.”

XIII. Because very stringent provisions restricting any kind of public employment including debarring them from contesting elections, have been provided for the Ombudsman of the Union namely, the Chairman and Members of Lokpal, to insulate them from any post-retirement allurements. **Section 8** of the Lokpal and Lokayuktas Act, 2013 reads as follows: *(1)On ceasing to hold office, the Chairperson and every Member shall be ineligible for—*

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice-

President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.”

PRAYER

Given the facts and circumstances mentioned above, the petitioner respectfully prays that this hon'ble Court may please:

- a. Issue a writ in the nature of mandamus, appropriate orders or direction, for application of restrictions contained in Section 8 of the Lokpal and Lokayukta Act, 2013 on ex judges of the Supreme Court and high courts.
- b. Stay the notification and appointment order dated 16.03.2020, by which the Ex- CJI of this hon'ble Supreme Court has been appointed as Rajya Sabha Member;
- c. Pass such other and further order as this Hon'ble Court may deem just in the interest of public.

DRAWN & FILED BY:

MADHU PURNIMA KISHWAR

PETITIONER IN PERSON

Dated 18.03.2020

New Delhi



**IN THE SUPREME COURT OF INDIA
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WRIT PETITION (CIVIL) NO. _____ OF 2020**

IN THE MATTER OF:

Madhu Purnima Kishwar

...Petitioner

5. That no other Writ Petition filed by the Petitioner is pending before this Hon'ble Court or any other court praying for similar relief.

6. That there is no personal gain, private motive or oblique reasons in filing the present public interest litigation.

DEPONENT

VERIFICATION:

I, the above name deponent do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge, belief and no relevant or material information has been concealed therefrom. No part it is false.

Verified at New Delhi on this 18th day of March, 2020

DEPONENT

APPENDIX

32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

//True Typed Copy //