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**IN THE HIGH COURT OF KARNATAKA AT
BANGALORE**

(ORIGINAL JURISDICTION)

WRIT PETITION No. 2021

BETWEEN:

Samaj Parivarthana Samudaya

PETITIONER

AND:

**THE STATE OF KARNATAKA
AND OTHERS**

RESPONDENTS

LIST OF DATES AND SYNOPSIS

1963	Karnataka Parliamentary Secretaries Allowances and Miscellaneous Provisions Act, 1963 came into force.
1999	Karnataka Parliamentary Secretaries Allowances and Miscellaneous Provisions Act, 1963 was amended.
2003	(Ninety first amendment) Act, 2003
04:01:2020	Judgement in Writ Petition No. 2073/2019
January 2021	Present Writ Petition filed

Aggrieved by the arbitrary and unconstitutional appointments of the respondents by the State Government the petitioner files the present petition before this Hon'ble Court.

Bengaluru

Date: 12:01:2021

Advocate for Petitioner

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**IN THE HIGH COURT OF KARNATAKA AT
BANGALORE**

(ORIGINAL JURISDICTION)

WRIT PETITION No. _____ 2021

BETWEEN:

**Samaj Parivarthana Samudaya,
(A Society registered under the provisions of
Karnataka Societies Registration Act, 1960),
represented by its Founder President,
Sri. S. R. Hiremath,
Office at "Ashadeep", Jayanagar Cross,
Saptapur, Dharwad - 580 001.**

PETITIONER

AND

1.State of Karnataka

by its Principal Secretary,
Department of Personnel and Administrative
Reforms
VidhanSoudha, Dr. Ambedkar Road,
Bangalore 560 001

2.Mr. Mahadev Prakash

Residing at No. 49/23,
2nd Cross, Mico Layout, (Near B.C.C. Layout),
Athiguppe,
BENGALURU- 560 040.

cabinet

3. Mr. Mohan A. Limbikai

Residing at No.27,
"Madllu" Apoorva nagar,
Gokul Road, Huball

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DARWAD - 580 030.

4. **Mr. Sunil G.S.**

Residing at No. 6/3, 9 th 'H' Main Road,
Pipe Line Road,
Vijayanagar,
BENGALURU - 560 040.

State rank

5. **Mr. Shankargowda I. Patila**

Residing at No. 1008, Gayathri Nivas,
9th Cross, Bhgya Nagar,
BELGAUM - 590 006.

State rank

6. **Mr. M.V. Renukacharya**

Hon'ble MLA
Residing at Opp. L.I.C Office,
Nyaamathi Road,
Honalli,
DAVANGERE - 577 217.

Cabinet rank

7. **Mr. Bhelhuru Sudharshan**

Residing at No. 409,
"Vivechana" 1st Floor,
1st Main Road,
Saraswathi Puram,
MYSORE - 570 009

State Rank

8. **Mr. M.B. Marmkal**

Residing at No. 5, Chennabasava,
1st Cross, Bhogadi 2nd Phase,
MYSORE - 570 026.

Cabinet rank

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9. **Mr. Lakshminarayana**
Advisor of Hon'ble Chief Minister
VidhanSoudha, Dr. Ambedkar Road,
Bangalore 560 001

State Bank

RESPONDENTS

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA**

The Petitioner above named submits as hereunder:

1. In the present petition, which is filed in public interest, the petitioner challenges the appointment of respondents 2 to 9 as advisors to Government of Karnataka. In the respectful submission of the petitioner, such appointments are unconstitutional being violative of Article 164 1(A) of the Constitution of India. The appointments smack of colorable exercise of power. The petitioner has no personal interest in the subject matter. The factual antecedents leading to the presentation of this petition are stated as hereunder:

STATEMENT OF FACTS

2. It is submitted that the petitioner Samaj Parivathana Samudaya (SPS) is a voluntary organisation working in Karnataka, and other parts of India since 1984. It works in close co-operation with several other voluntary organisations,

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networks and movements, to promote actions with people's power of participation on a broader scale towards social transformation and to bring about larger collective impacts on the governmental policies, deliberated legislations and programmes for human-wellbeing:

3. The petitioner Samaj Parivathana Samudaya is also engaged in activities for the betterment of the society in general and for protection of Natural Resources; *Jal, Jungle, Jameen, Khaneej* and *Beej* in particular. The appellant has been working in the said direction for more than three decades and has been continuing as a guide and a source of inspiration for SPS and other similarly placed organisations. The fight against corruption is a major focus of SPS and it has filed several successful PILS in the Supreme Court of India and this Hon'ble Court.

4. It is submitted that the petitioner's efforts to highlight public causes and public interest concerns by seeking judicial redressal in a number of litigations initiated before the Hon'ble Supreme Court of India in (2013) 8 SCC 154 in the case of *Samaj Parivartana Samudaya vs. State of Karnataka*, (2012) 7 SCC 407 in the case of *Samaj Parivartana Samudaya vs. State of Karnataka* and also before the Hon'ble High Court of Karnataka

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(W.P. 15511-14/2013) in the case of *Samaj Parivartana Samudaya vs. Union of India and others* demonstrate the petitioner's concern for preservation of the natural resources and its fight against corruption at all levels. As a matter of fact, as far back as in 1997, the founder President of the appellant filed an Interlocutory Application 60/1997 (*S.R. Hiremath Vs. Madhya Pradesh and others*) in W.P. 202/1995 relating to protection of Forest and *Adivasi*. The said Writ Petition pertains to dealing with the Timber Mafia in which two reports by the Lokayukta of Madhya Pradesh were relied on and orders were passed for criminal investigation and prosecution of the high and powerful persons by the Forest Bench of the Hon'ble Supreme Court of India. The on-going fight against illegal mining, initiated by the appellant before the Hon'ble Supreme Court of India is too well known and various orders have been passed from time to time by the Hon'ble Supreme Court in this regard.

5. It is submitted that Article 164 1(A) of the Constitution of India reads are hereunder:

Article 164 1(A)-*The total number of Ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State:*

Provided that the number of Ministers, including the Chief Minister, in a state shall not be less than twelve:

Provided further that where the total number of ministers, including the Chief Minister, in the Council of Ministers in that State at the commencement of the Constitution (Ninety First Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then, the total number of Ministers in the State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

6. It can be inferred from this article that the percentage of members of the council of ministers cannot exceed fifteen percent of the total strength of the State Legislative Assembly. Total strength of Karnataka Legislative Assembly is 224. The maximum ministerial berths can only be 34.

7. The ruling party in the State could not accommodate its followers who helped the party to form the Government either on its own or by toppling the existing one. Hence an ingenious methodology was devised to accommodate these loyalists and lobbyists in the Government by providing the status of a cabinet minister. This has been achieved by creating several "advisors" posts with cabinet ministerial rank annexed to them.

8. It is submitted that respondents 2 to 9 have been appointed as various advisors to Government to advise the Chief Minister of Karnataka. These appointments are made under Article 162 of the Constitution of India. Needless to state, these appointments are not traceable to any plenary legislation or constitutional provision. They are byproducts of colorable exercise of executive power only to circumvent Article 164(1)A of the Constitution of India. The appointments smack collateral political aims and have absolutely no connection whatsoever to achieve real governance. The government said orders appointing 2 to 9 as various advisors to Government to advise the Chief Minister of Karnataka is herewith produced and marked as **Annexures-A to H** respectively for the kind perusal of this Hon'ble Court.

9. It is submitted that respondents 2 to 9 are given Cabinet Minister rank. Each one of them are entitled to perks which are given to a cabinet Minister. This is a clearly unconstitutional since the State cannot create hybrid positions to overcome constitutional mandate under Article 164(1)A.

10. The impugned government orders do not even describe the role of respondents 2 to 9 except stating that they are appointed advisors to the Chief Minister. There is neither duty nor

responsibility attached to these posts. Needless to state, these appointments have caused severe damage to public exchequer.

11. The petitioner who believes in upholding constitutional values and institutional integrity, is aggrieved by unconstitutional appointments of respondents 2 to 9 as advisors to the Chief Minister. In the absence of alternative, efficacious remedy left open for the redressal of its grievances, the petitioner has invoked the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. The following grounds are stated in support of the writ petition.

GROUND

12. It is submitted that impugned appointments are not traceable either to a plenary legislation or constitutional provision. They are issued, presumably, under Article 162 of the Constitution of India. The protection available to a plenary legislation seldom applies an executive order. It is a trite law that ***every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority - State of M.P. v. Thakur Bharat Singh AIR 1967 SC 1170.*** Later, in ***BishambharDayal Chandra Mohan v. State of U.P., (1982)***

I SCC, 39 the Hon'ble Supreme Court held that **"27. The quintessence of our Constitution is the rule of law. The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In State of M.P. v. Thakur Bharat Singh² the Court repelled the contention that by virtue of Article 162, the State or its officers may, in the exercise of executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the legislature of the State has power to legislate in regard to the subject on which the executive order is issued."** In the respectful submission of the petitioner, the impugned orders are violative of Rule of Law in that there is a clear attempt to circumvent constitutional provision limiting number of ministers.

13. It is submitted that this Hon'ble Court had an occasion to consider somewhat similar issue in Writ Petition 2073/2019 and connected matter decided on 4 January 2020. This Hon'ble Court struck down Karnataka Parliamentary Secretaries Allowances and Miscellaneous Provisions Act, 1963 as amended by Act No. 7 of 1999. This Hon'ble Court observed that **'for all intents and**

purposes, the office of the Parliamentary Secretaries has trappingsofthepostofHon'bleMinistersofStatewithout independent charge or at least Hon'ble Deputy Ministers. The said Act will work as a devise available to the Hon'ble Chief Minister to appoint the members of the Legislative Assembly and Legislative Council of his choice as parliamentary Secretaries, who cannot be made as Ministers due to constraints of Article 164(1-A). This will completely defeat and nullify the upper ceiling limit imposed by Article 164(1-A) of the Constitution of India on number of Ministers. Hence, even otherwise, the said enactment is ultra vires the constitutional mandate in Article164(1-A).

14. The petitioner most respectfully submits that the ratio laid down in the above matter applies to the present case also.

15. It is submitted that, an executive order under Article 162 of the Constitution of India cannot create a post equivalent to a constitutional office. This is exactly what is done under the impugned orders. The Government has virtually created a parallel hybrid constitutional functionalities just to please its loyalists. These posts are aimless, powerless and meaningless.

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16. The petitioner has not filed any other writ petition before this Hon'ble Court or initiated any other proceedings before any other Court or Tribunal on the same cause of action.

PRAYER

The petitioner prays that this Hon'ble Court be pleased to issue appropriate writ, order or direction;

i) Declaring that the Government Order dated 30th August 2019 bearing No. C.Aa.Su.E. No.86 of 2019 Bangalore issued by the first respondent copy produced and marked as Annexure-A as unconstitutional, illegal and arbitrary;

ii) Declaring that the Government Orders dated 30th August 2019 bearing No. C.Aa.Su.E. No. 88 of 2019 Bangalore issued by the first respondent copy produced and marked as Annexure-B as unconstitutional, illegal and arbitrary;

iii) Declaring that the Government Orders dated 30th August 2019 bearing No. C.Aa.Su.I. No.89 of 2019 Bangalore issued by the first respondent copy produced

and marked as Annexure-C as unconstitutional, illegal and arbitrary;

iv) Declaring that the Government Orders dated 27th September 2019 bearing No. C.Aa.Su.E. No.91 of 2019 Bangalore Issued by the first respondent copy produced and marked as Annexure-D as unconstitutional, illegal and arbitrary;

v) Declaring that the Government Orders dated 06th September 2019 bearing No. C.Aa.Su.E. No.92 of 2019 Bangalore issued by the first respondent copy produced and marked as Annexure-E as unconstitutional, illegal and arbitrary;

vi) Declaring that the Government Orders dated 24th October 2019 bearing No. C.Aa.Su.E. No.111 of 2019 Bangalore issued by the first respondent copy produced and marked as Annexure-F as unconstitutional, illegal and arbitrary;

vii) Declaring that the Government Order dated 30th October 2019 bearing No. C.Aa.Su.E. No.115 of 2019 Bangalore issued by the first respondent copy produced and marked as Annexure-G as unconstitutional, illegal and arbitrary;

viii) Declaring that the Government Order dated 19th October 2019 bearing No. C.Aa.Su.E. No.221 of 2019 Bangalore issued by the first respondent copy produced and marked as Annexure-H as unconstitutional, illegal and arbitrary; AND

ix) to pass such other order or orders as this Hon'ble Court deems fit to grant in the facts and circumstances of the case in the interest of justice and equity.

BANGALORE
DATED 12:01:2021

ADVOCATE FOR PETITIONER

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