

# THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.07.2014

+ **W.P.(C) 701/2014 and CM No. 1398/2014**

**ASHOK KUMAR BANSAL**

... Petitioner

versus

**UNION OF INDIA & ORS**

... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Ms Indu Malhotra, Senior Advocate with Mr Uttam Datt,  
Mr Shubham Aggarwal, Ms Nishtha and Mr Varun

For the Respondents : Mr Maninder Singh, ASG with Mr Sachin Datta, Ms Ritika  
Jhurani and Ms Niti Arora for UOI  
Mr Parag P. Tripathi, Senior Advocate with Mr Atul Shanker  
Mathur, Ms Shruti Verma, Mr Abhisaar Bairagi, Mr Aseem  
Chaturvedi and Ms Kanika Tandon for respondent No. 2  
Ms Zubeda Begum for GNCTD  
Ms Anjana Gosain for respondent No. 3

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

1. The petitioner seeks the issuance of a writ of Certiorari calling upon the respondent No. 1 to produce the record pertaining to its decision dated 31.12.2013, whereby the respondent No. 3 has been granted post superannuation extension of tenure as the Chairman-cum-Managing Director of respondent No. 2 (BHEL). It is, further, prayed that, *inter alia*, a writ of Certiorari be issued quashing the said decision dated

31.12.2013 as being arbitrary and illegal. A mandamus is also sought directing the respondent No. 1 to follow the guidelines issued under the Government of India (Transaction of Business) Rules, 1961 by the DOPT in filling up the vacancy to the post of Chairman-cum-Managing Director of respondent No. 2 (BHEL).

2. At the threshold, Mr Maninder Singh, the learned ASG, appearing on behalf of the respondent No. 1 took the preliminary objection with regard to the maintainability of this writ petition on the ground that the issues urged before this court are essentially those of a service related dispute and that no public interest litigation is maintainable under Article 226 in relation to a service matter. He placed reliance on several decisions of the Supreme Court which have been noted in the case of **Girjesh Shrivastava And Others v. State of Madhya Pradesh And Others: (2010) 10 SCC 707**. He submitted that the only exception pointed out by the Supreme Court where a writ petition could be maintained in a service matter would be that of a writ of Quo Warranto where there has been a clear violation of statutory provisions or rules. He submitted that neither is the present writ styled as a writ of Quo Warranto nor is there any allegation that there has been a violation of any statutory provision. He, further, submitted that since the present matter does not come within the exception carved out by the Supreme Court, a writ of Certiorari styled as public interest litigation in a service matter cannot be entertained by this court and, therefore, the writ petition ought to be dismissed at the threshold.

3. Mr Parag P. Tripathi, the learned senior counsel, appearing on behalf of respondent No. 2 (BHEL) submitted that there is a maxim '*ubi jus ibi remedium*' which translates to "where there is a right there is a remedy". He submitted that the right in the present case is that of the person who is directly affected of any other third party and, therefore, it is only the person aggrieved who can maintain a petition challenging the extension granted to respondent No. 3 by respondent No. 1. He, therefore, supported the contention raised by Mr Maninder Singh that the writ petition ought to be dismissed at the threshold.

4. Ms Indu Malhotra, the learned senior counsel for the petitioner, however, submitted that the present case is not a service matter simplicitor inasmuch as the petitioner is not personally interested in the matter but has taken up the issue as a matter of principle. She submitted that no public sector undertaking has ever granted an extension in the manner granted in the present case and this would become a bad precedent which would be subsequently followed by other public sector undertakings despite the DOPT guidelines to the contrary. Consequently, she submitted that the argument of maintainability raised by the respondents ought to be dispelled.

5. We have considered the arguments. The first thing that has to be decided is whether the present matter is a service matter or not. It is admittedly a petition which challenges the extension of tenure granted to respondent No. 3 post-superannuation. Furthermore, a mandamus is also sought directing the respondent No. 1 to follow the DOPT guidelines to fill up the vacancy to the post of CMD of respondent No. 2 (BHEL). To

our minds, these elements have all the trappings of a service matter and, therefore, we are of the view that this is clearly a service dispute.

6. In **Dr Duryodhan Sahu And Others v. Jitender Kumar Mishra And Others**: (1998) 7 SCC 273, the Supreme Court observed as under:-

“If public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of the service matters would get defeated.”

This was followed by the Supreme Court in **Girjesh Shrivastava** (supra) where the Supreme Court reiterated that public interest litigation could not be entertained in service matters. The Supreme Court, further, placed reliance on several other decisions of the Supreme Court as under:-

“16. In **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees’ Assn**: (2006) 11 SCC 731 (2), this court held that in service matters only the non-appointees can assail the legality of the appointment procedure.

17. This view was very strongly expressed by this Court in **Dattaraj Nathuji Thaware v. State of Maharashtra**: (2005) 1 SCC 590, by pointing out that despite the decision in Duryodhan Sahu, PILs in service matters “continue unabated”. This court opined that the High Courts should “throw out” such petitions in view of the decision in Duryodhan Sahu.

18. Same Principles have been reiterated in **Ashok Kumar Pandey v. State of W.B.**: (2004) 3 SCC 349.

19. In a recent decision of this Court delivered on 30-8-2010, in **Hari Bansh Lal v. Sahodar Prasad Mahto: (2010) 9 SCC 655**, it has been held that except in a case for a writ of “quo warranto”, PIL in a service matter is not maintainable.”

7. From the above, it is evident that except in the case of a writ of Quo Warranto, public interest litigation in a service matter is not maintainable. Since we have already observed that the present matter has the trappings of a service matter, and since this writ petition is not filed by a person immediately and directly aggrieved by the order of extension, the present writ petition, in our view, is not maintainable. Consequently, without going into the arguments on merits sought to be raised by the learned counsel for the petitioner, we are not inclined to entertain this writ petition at the threshold on the ground that a writ petition filed as public interest litigation in a service matter cannot be entertained by us. The writ petition is dismissed. There shall be no order as to costs.

**BADAR DURREZ AHMED, J**

**JULY 17, 2014**  
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**SIDDHARTH MRIDUL, J**