

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6338 of 2011

Mohan Mishra "Mrityunjay", S/o Shri S.K. Mishra,
aged about 36 years, R/o C/o S.K. Mishra,
Ramsagar Para, Dhamtari, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary,
Department of Public Relation, Ministry, D.K.S.
Building, Raipur, C.G.
2. Director, Directorate of Public Relation, Near Mahila
Thana Raipur, Raipur, C.G.
3. Chhattisgarh Samvad, Through Chief Executive
Officer, Near Directorate of Public Relation, Chhota
Para, Raipur, C.G.
4. Sabyasachi Kar, S/o Dr. Sisir Kar, aged about 39
years, Publication Expert, Chhattisgarh Samvad,
Near Directorate of Public Relation, R/o C/o Mr. M.B.
Jagtap, 621, Sundar Nagar, Near Ring Road, Raipur,
C.G.

---- Respondents

For Petitioner: Mr. Manoj Paranjpe, Advocate.

For State/Respondents No.1 & 2: -

Mr. Suvigya Awasthy, Panel Lawyer.

For Respondent No.3: -

Mr. Raja Sharma, Advocate.

For Respondent No. 4: -

Mr. Jitendra Pali, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/12/2015

1. Seeking issuance of a writ of quo warranto directing

respondent No.5 Sabyasachi Kar to show cause under what authority he continues to hold the office of Publication Expert in respondent No.3 Chhattisgarh Samvad, the petitioner herein has filed this writ petition.

2. Respondent No.3 is a registered society registered under the provisions of the Chhattisgarh Societies Registrikaran Adhiniyam, 1973. Respondent No.3 appointed respondent No.4 on the post of Publication Expert on contractual basis on 5-10-2001 subject to an agreement entered into between the parties.
3. The petitioner mainly seeks writ of quo warranto on the ground that as respondent No.4 is not having required educational qualification and experience and, therefore, he is not entitled to hold the public office of Publication Expert in the Office of the Chhattisgarh Samvad – respondent No.3.
4. Mr. Manoj Paranjpe, learned counsel appearing for the petitioner, would submit that respondent No.4 is not having requisite qualification for the post of Publication Expert and, therefore, he is not entitled to

hold the office and as such, it is a fit case where the writ of quo warranto can be issued.

5. Mr. Suvigya Awasthy, Mr. Raja Sharma and Mr. Jitendra Pali, learned counsel appearing for respective respondents, would submit that respondent No.4 was appointed on the post of Publication Expert on contractual basis, respondent No.3 is a registered society registered under the provisions of the Chhattisgarh Societies Registrkaran Adhiniyam, 1973 and the petitioner has not shown/established violation of any statutory rules or regulations to claim writ of quo warranto and as such, the appointment being contractual in nature, petition for writ of quo warranto is not maintainable.
6. I have heard learned counsel for the parties and perused the documents available on record with utmost circumspection.
7. It is well settled that issuance of writ of quo warranto is a discretionary remedy, authority of a person to hold a public office can be questioned inter alia in the event the appointment is violative of statutory provision and unquestionably a writ of quo warranto

can be issued inter alia when the appointment is contrary to statutory rules and lacks eligibility criteria.

8. Way back in the year 1963, the Constitution Bench of the Supreme Court in the matter of **The University of Mysore and another v. C.D. Govinda Rao and another**¹ while dealing with the nature of writ of quo warranto has held in no uncertain terms that before a citizen can claim a writ of quo warranto, he must satisfy the Court that the office in question is a public office and is held by usurper without legal authority by observing as under: -

“7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the enquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they

1 AIR 1965 SC 491 : (1964) 4 SCR 575

tend to protect the public from usurpers of public office, in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.”

9. Similarly, in the matters of High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others² and R.K. Jain v. Union of India³ similar proposition of law has been propounded with regard to writ of quo warranto.

10. In the matter of Centre for PIL and another v. Union of India and another⁴, Their Lordships of the Supreme Court have laid down the requisites and object of issuance of writ of quo warranto.

Paragraph 51 of the report states as under:-

“51. The procedure of quo warranto

² (2003) 4 SCC 712

³ (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464

⁴ (2011) 4 SCC 1

confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of *quo warranto* he must satisfy the court *inter alia* that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of *quo warranto* is issued to prevent a continued exercise of unlawful authority.”

11. Similarly, in the matter of **Rajesh Awasthi v. Nand**

Lal Jaiswal and others⁵, it has been held that writ of *quo warranto* lies when appointment is made contrary to statutory provisions and laid down the test to issue a writ of *quo warranto* to see whether person holding the office is authorised to hold the same as per law. Thus, the petitioner seeking issuance of writ of *quo warranto* has to satisfy that the appointment of 4th respondent Sabyasachi Kar is contrary to statutory rules and he lacks eligibility.

12. Thus, the question is whether the petitioner has established clear violation of any statutory rules in appointment of respondent No.4. Admittedly, respondent No.3 is a registered society constituted

5 (2013) 1 SCC 501

under the Chhattisgarh Societies Registrarian Adhiniyam, 1973 and it has not been established that his appointment is in violation of any statutory rules or that his appointment is contrary to the provisions of any Act. Therefore, the petitioner has failed to establish that appointment of respondent No.4 is contrary to law, he is holding the post contrary to law and his appointment is illegal and unauthorized.

13. Now, the question is whether in case of contractual appointment, petition for writ of quo warranto would be maintainable.

14. In the matter of **Satish Chandra Anand V. Union of India**⁶, Their Lordships of the Supreme Court, while dealing with a case of a contract appointment which was being terminated by notice under one of its clauses, have held that Articles 14 and 16 of the Constitution of India had no application as the petitioner therein was not denied equal opportunity in a matter relating to appointment or employment who had been treated just like any other person to whom an offer of temporary employment under these conditions was made. Their Lordships of the

6 1953 SCR 655 : AIR 1953 SC 250

Supreme Court further held as under:

“The State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who choose to accept those terms and enter into the contract are bound by them, even as the State is bound.”

15. In the matter of **P.K. Sandhu v. Shiv Raj V. Patil**⁷,

Their Lordships of the Supreme Court have held as under:-

“The power to make an appointment includes the power to make an appointment on substantive basis, temporary or officiating basis, ad hoc basis, on daily wages or contractual basis.”

16. In the matter of **B. Srinivasa Reddy v. Karnataka**

Urban Water Supply & Drainage Board

Employees' Assn. and others⁸ Their Lordships of

the Supreme Court have held that writ of *quo-*

warranto would not be applicable in a case of

contractual appointment and held as under: -

“43. Whether a writ of *quo warranto* lies to challenge an appointment made “until further orders” on the ground that it is not a regular appointment? Whether the High Court failed to follow the settled law that a *writ of quo warranto* cannot be issued unless there is a clear violation of

⁷ (1997) 4 SCC 348 : 1997 SCC (L&S) 954

⁸ (2006) 11 SCC 731 (II)

law? The order appointing the appellant clearly stated that the appointment is until further orders. The terms and conditions of appointment made it clear that the appointment is temporary and is until further orders. In such a situation, the High Court, in our view, erred in law in issuing a *writ of quo warranto* the rights under Article 226 which can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus.

60. Thus it is seen that a *writ of quo warranto* does not lie if the alleged violation is not of a statutory provision.”

17.Their Lordships of the Supreme Court in a Constitution Bench judgment in the matter of **Statesman (Private) Ltd. v. H. R. Deb and others**⁹ have held that in an unclear case, writ of quo warranto should not be issued and observed as under:-

“The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law.”

18.Thus, on the basis of above-stated analysis, this Court is satisfied that the petitioner seeking a writ of quo warranto has demonstrably failed to plead and establish that appointment of 4th respondent Sabyasachi Kar as Publication Expert in Chhattisgarh Samvad is in violation of the statutory

9 AIR 1968 SC 1495

rules and further, it is apparent that as respondent No.4 was appointed on contractual basis by order Annexure P-3 dated 4-10-2001 on the post of Publication Expert only for a period of one year, writ of quo warranto cannot be issued as held by Their Lordships of the Supreme Court in **B. Srinivasa Reddy** (supra). The law laid down by Their Lordships of the Supreme Court in **Statesman** (supra) sounding a of caution for this Court to slow in issuing a writ in the nature of quo warranto in unclear case, which aptly and squarely applies to the factual score of the present case, as the petitioner has failed to establish clear infringement of law for the writ claimed in the nature of quo warranto and as such, the petitioner is not entitled for any of the reliefs claimed in the writ petition.

19.As a fallout and consequence of aforesaid discussion, the writ petition being sans substratum, deserves to be and is accordingly, dismissed *in limine* but without imposition of cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6338 of 2011

Mohan Mishra "Mrityunjay"

- Versus -

State of Chhattisgarh and others

HEAD NOTE

Writ of quo-warranto cannot be issued, if the appointment is temporary.

अधिकार पृच्छा रिट जारी नहीं की जा सकती, यदि नियुक्ति अस्थायी हो।