

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21974 of 2014

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1. Prabhat Kumar son of Dashrath Sah, resident of Village - Akopur, Post - Akona,
Police Station - Singhiya, District - Samastipur.

.... Petitioner/s

Versus

1. The Hon`ble Chancellor, Universities of Bihar.
2. Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga.
3. Saket Kushwaha, son of Prof. S. S. Kushwaha, presently posted as Vice-Chancellor, L. N. M. U. Darbhanga.
4. The Chairman, University Grant Commission (UGC), Bahadur Sah Zafar Marg, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sarva Deo Singh
For Respondent No.1	:	Mr. Rajendra Kumar Giri
For Respondent No. 2:		Mr. Yugal Kishore, Sr. Advocate
		Mr. A. B. Sinha
		Mr. Virendra Prasad
For Respondent No.3:		Mr. Binod Kanth, Sr. Advocate
		Mr. Md. Nadeem Seraj
For Union of India	:	Mr. S D Sanjay, Addl. Solicitor General of India
		Mr. Akshay Amritanshu
For U. G. C.	:	Mr. Deepak Kumar

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

C.A.V. JUDGMENT

Date: 7 - 04-2016

Petitioner claims himself to be a student of graduation of L N Mithila University, Darbhanga (hereinafter referred to as the University). He filed the present writ application seeking a writ of *quo warranto* against respondent No.3, who has been appointed as the Vice-Chancellor of the University. Petitioner claims a vital interest in the cause having been espoused by him primarily on the ground that no person can hold a public office if he is not qualified to do so.



2. Appointments of Vice-Chancellors are done under section 10 of the Bihar State Universities Act, 1976, which has been amended on 10.08.2013 in light of a direction issued by the Hon`ble Supreme Court in a dispute relating to appointment of Vice-Chancellors in the State of Bihar. The concept of appointment of a Search Committee was introduced for the first time and the private respondent has been appointed by the Hon`ble Chancellor of Universities of Bihar on the recommendation of the Search Committee.

3. The provision, however, which is of significance in the adjudication of the present writ application, which is section 10 of the amended Act reads as follows:

“10. The Vice-Chancellor.-(1) (i) Persons of the highest level of competence, integrity, morals and institutional commitment are to appointed as Vice-Chancellor. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

(ii)”

4. Learned counsel representing the petitioner submits that a minimum of 10 years experience as a Professor in a University system or 10 years of experience in an equivalent position in a reputed research and/or academic administrative organization is a must as per the statutory provision. Since the present Vice-Chancellor namely, respondent No.3 does not possess 10 years of experience as a Professor in a University, therefore, his selection, per say, is vitiated and he should be ousted from the post.

5. Argument is made at the bar on the basis of the materials produced by the petitioner as well as the affidavits, filed on behalf of the private respondent that the private respondent worked as a Professor in what is known as Abubakar Tafawa Balewa University, Bauchi of Nigeria is suspect. There is no clear evidence that the said University is a University recognized under the Indian system or that the teaching experience by the private respondent in the said University is in conformity with the standards laid down by the University Grants Commission and conforms to the UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER

EDUCATION, 2010.

6. Several affidavits have been filed on behalf of the private respondent and many supporting materials have been brought on record to defend his appointment as a Vice-Chancellor. He has denied the insinuation made against him.

7. During the course of argument learned counsel for the petitioner does concede that since there is no challenge to the appointment of the private respondent as a Professor at BHU, which is dated 2.11.2006, the main area of attack is with regard to the period of work of the private respondent prior to his appointment as a Professor in BHU at the Nigerian University. The Court has, therefore, to be satisfied with regard to the work of the private respondent as a Professor at Nigerian University, which is said to be w.e.f. 18th April, 2001. If this period of work of the private respondent is found to be in order then the disqualification which is being urged or held out against the private respondent of not having 10 years of experience as a Professor fails and the writ would be liable to be dismissed.

8. The Court had also directed the University Grants Commission to file an affidavit with regard to the recognition or equivalence, if any, with regard to the Nigerian University in question. They take a stand that it is the Association of Indian Universities, which provides for equivalence of degrees but not any

equivalence with regard to experience. It has emerged that this University does figure in the list of Universities in the Commonwealth List of University.

9. Learned senior counsel representing the Vice-Chancellor opens his argument with regard to the power which a High Court has and the ambit thereof while issuing a writ of *quo warranto* or *certiorari*. He has relied on a recent decision of the Hon`ble Supreme Court rendered in the case of **Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and others, (2014) 1 SCC 161**. The above decision has dealt with the scope of power of High Court and the duty cast upon it while dealing with the writ of *quo warranto*. Since reliance has been placed on paragraph 18 to 21 and paragraph 40 of the said decision which does have bearing and reflection on the issue. The Court reproduces them as under:

“18. In University of Mysore v. C. D. Govinda Rao (AIR 1965 SC 491) Gajendragadkar, J, (as His Lordship then was) speaking for the Constitution Bench, has stated thus: (AIR p. 494, para 7)

“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 recognized in that behalf, they 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.” (emphasis supplied)

19. In **High Court of Gujarat v. Kishan Mazdoor Panchayat** (2003) 4 SCC 712, S. B. Sinha, J., in his concurring opinion, while advertng to the concept of exercise of jurisdiction by the High Court in relation to a writ of quo warranto, has expressed thus: (SCC pp.730-31, paras 22-23)

“22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari. [See **R. K. Jain v. Union of India**, (1993) 4 SCC 119, para 74].

23. A writ of quo warranto can only be

issued when the appointment is contrary to the statutory rules. [See *Mor Modern Coop. Transport Society Ltd. v. State of Haryana* (2002) 6 SCC 269]” (emphasis supplied)

20. In *Centre for PIL v. Union of India* [(2011) 4 SCC 1] a three-Judge Bench, after referring to the decision in *R. K. Jain* [(1993) 4 SCC119], has ruled thus: (*Centre for PIL Case*, SCC p.29, para 64)

“64. Even in *R K Jain* case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and *the manner in which the appointment came to be made* or whether procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction.” (emphasis in original)

21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued



when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

40. In this backdrop it is to be seen whether the action of the authority requiring the Chairman to remain in charge of the CEO or to function as CEO comes within the scope and ambit of writ of quo warranto. We have already stated the principles relating to exercise of jurisdiction of the Court to issue a writ of quo warranto. When a writ of quo warranto is filed, it is the obligation of the relator to satisfy the Court that the office in question is a public office and is held by the usurper without the legal authority. It is the duty of the Court to see whether the appointment has been made contrary to the statutory rules. The issue of institutional integrity has also to be taken into consideration when a post is filled up and that



is where the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable are required to be seen. On a perusal of the reasons adopted by the High Court it is perceptible that it has paved a different path. It has given emphasis on the role of the Commission, the functionism of CESU, the control of the Chairman on the CEO, the violation of the principles of natural justice, the nature of appointment, the abuse of power by the Commission and the violation of the Regulations in such appointment. In our opinion, most of the reasons that have been given by the High Court are totally unrelatable to the sphere of issue of writ of quo warranto. We are only required to see whether the Commission has the authority to make any temporary arrangement and whether the fifth respondent was eligible for the said purpose. To understand the said facet, we have to refer to certain provisions of the Act which encapsulate the basic map of the functions of the licencees and the utility service.”

10. Besides the question of law urged as above, learned senior counsel has categorically submitted that the University where the private respondent was a teacher and also held the post of a Professor is a State University in Nigeria, which follows the same



pattern of appointment and promotion as the Indian system and to buttress that position, attention of the Court was drawn to page 575 of the brief, which is a part of the handbook of the Regulations Governing the Conditions of Service of Senior Staff of the University, which is Annexure-W to the 3rd additional counter affidavit filed on behalf of respondent No.3. If this be so, then the whole argument or the doubt which was sought to be built upon the authenticity of the University in question where the private respondent worked as a Lecturer, Reader and then as a Professor cannot be a matter of debate any further.

11. Learned senior counsel has also handed over to the Court two annual reports which were published and issued by the University relating to the year 1995/1996 and 1997-2001 to show that the private respondent has been shown to be a Member of the staff in the teaching branch and the post and position which he held in the said University during the period in question, which included the post of Professor prior to the private respondent being appointed as a Professor in BHU.

12. The Court, therefore, is satisfied that no illegality has been committed by the Search Committee in recommending the name of the private respondent as a Vice-Chancellor of the University. He does have the requisite experience and qualification provided under

section 10 of the Bihar Universities Act as amended and his appointment does not suffer from any vice.

13. If this be so, this court will not issue any writ of *quo warranto* against the private respondent nor will it issue a writ of *certiorari* quashing the appointment of the private respondent.

14. Before parting, the Court can only observe that it is one of those cases where the insinuation and allegation against the private respondent with regard to his qualification and experience was more made than made out. The documents available on the record support the rightful appointment of the private respondent as a Vice-Chancellor.

15. Writ application, therefore, has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

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