

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2695 of 2016**

Gautam Choubey, S/o Ajendra Choubey, aged about 36 years, R/o Rudra Chowk, Vikash Vihar Colony, Raipura, District Raipur (C.G.)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through The Chief Secretary, Government of Chhattisgarh, Mahanadi Bhavan, Raipur (C.G.)
2. Commissioner, Municipal Corporation, Raipur, District Raipur (C.G.)
3. Yogesh Kadu, Sub Engineer (Civil), Zone No.3, Nagar Nigam, Raipur, District Raipur (C.G.)
4. Ashutosh Singh, Sub Engineer (Civil) Zone No.8, Nagar Nigam, Raipur, District Raipur (C.G.)

---- **Respondents**

For Petitioner : Mr. T.K. Jha, Advocate.
 For Respondent No.1 /State: Mr. Garry Mukhopadhyaya, GA
 For Respondent No. 2 : Mr. Anumeh Shrivastava, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****10/11/2016**

(1) This writ petition has been filed by the petitioner seeking writ of *quo warranto* for removal of respondents No. 3 & 4 from the post of Assistant Engineer contrary to the Circular of the State Government dated 4.8.2011.

(2) Learned counsel appearing for the petitioner would submit that junior persons have been given the charge of Assistant

Engineer in violation of the instructions of the State Government and, therefore, the writ of *quo warranto* be issued in favour of the petitioner.

(3) On the other hand, learned counsel for respondent No. 2 while relying on the decision of this Court in the matter of **Mohan Mishra “Mrityunjay” Vs. State of Chhattisgarh & others**¹ would submit that as per para 16 & 17 of the aforesaid judgment, there is no violation of the instructions of the Circular of the State Government dated 4.8.2011 while giving the charge to respondents No. 3 & 4 on the post of Assistant Engineer.

(4) I have heard learned counsel appearing for the parties.

(5) In the matter of **Satish Chandra Anand Vs. Union of India**², Their Lordships of the Supreme Court while dealing with a case of contract appointment which was being terminated by notice under one of its clauses, have held that Article 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 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

1 W.P. (S) No.6338 of 2011 decided on 11.12.2005

2 AIR 1953 SC 250

the contract are bound by them, even as the State is bound.”

(6) In the matter of **P.K. Sandhu V. Shiv Raj V. Patil**³, 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.”

(7) In the matter of **B. Srinivasa Reddy V. Karnataka Urban Water Supply & Drainage Board Employees' Association and others**⁴, 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 on 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 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 whether the writ prayed from 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.”

3 (1997) 4 SCC 348

4 (2006) 11 SCC 731 (II)

(8) Their Lordships of the Supreme Court in a Constitution Bench judgment in the matter of Stateman (Private) Ltd. Vs. H.R. Deb and others⁵ 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.”

(9) The petitioner has failed to point out the violation of any statutory provisions in giving current charge to the respondents No. 3 & 4 of the post of Assistant Engineer for the time being/ till the regular incumbent is appointed on the said post. It is purely temporary arrangement, I do not find any good ground to entertain this writ petition for issuance of *quo warranto* in favour of the petitioner.

(10) For the reasons mentioned hereinabove, the petition being devoid of merit is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

5 AIR 1968 SC 1495