

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4839 of 2016 (O & M)
Date of decision: 15.03.2016.

Mehar Singh

....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE GURMIT RAM

Present: Mehar Singh- petitioner in person.

S.S.SARON,J.

The petitioner has filed the present petition in the form of Public Interest Litigation for quashing agenda note (Annexure P-1) issued by the State of Punjab through the Secretary, Department of Home Affairs and Justice (respondent No.1) vide which three posts of Joint Director Prosecution and Litigation are to be filled from General Category by ignoring the members of the Scheduled Castes category.

The petitioner claims that he is the General Secretary of the Punjab, Haryana and U.T. Scheduled Castes and Backward Classes Advocates Society. Admittedly the petitioner is not a claimant for the posts of Joint Director, Prosecution and Litigation, which are to be filled.

The question whether a writ petition is maintainable at the behest of a third person in a service matter who is not a claimant for the post for the appointment of which the selection procedure has been initiated, is not res integra.

The Supreme Court in R.K. Jain v. Union of India, AIR 1993 SC 1769 held that the appointment of a member of the Customs, Excise and Gold Control Appellate Tribunal is not to be gone into a Public Interest Litigation and only in a proceedings initiated by an aggrieved person, it may be open to be considered. The writ petition was also not a writ of quo-warranto. It was held that in service jurisprudence it is a settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person.

In P. Seshadri v. S. Mangati Gopal Reddy & others, (2011) 5 SCC 484 a writ petition raising disputes regarding service matter was filed before the High Court in the guise of a PIL by a person not concerned with the service, at the behest of persons hiding behind the veil. It was held that the writ petition was not maintainable and should not have been entertained and should have been dismissed at the threshold.

The Supreme Court in Partap Singh v. State of Haryana (2002) 7 SCC 484 in a Public Interest Litigation filed by a legislature questioning the validity, legality and propriety of selections made by the Haryana Public Service Commission and appointments made pursuant to the selection by the State Government to the posts of District Food and Supplies Controller held that the petitioner had no locus standi to maintain the petition as he himself was not a candidate for the said posts.

In Madan Lal v. High Court of J&K, (2014) 15 SCC 308 it

was observed that the Supreme Court repeatedly held that in service matter, a Public Interest Litigation is not maintainable. Reliance was placed and paras 14 and 15 from the decision in Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 were quoted which are as follows:-

"14. In Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349 this Court held thus: (SCC pp. 358-59, para 16)

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in DuryodhanSahu v. Jitendra Kumar Mishra, (1998) 7 SCC 273 this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is

to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

The same principles have been reiterated in the subsequent decisions, namely, B. Singh v. Union of India, (2004) 3 SCC 363, Dattaraj Nathuji Thaware v. State of Maharashtra, (2005) 1 SCC 590 and Gurpal Singh v. State of Punjab, (2005) 5 SCC 136.

15. The above principles make it clear that expect for a writ of quo warranto, public interest litigation is not maintainable in service matters."

Learned counsel for the petitioner submits that for the present, he may be allowed to withdraw the writ petition and approach the Government itself in the first instance for filling up the vacant posts of Joint Director keeping in view the service policy of the State Government.

The writ petition is accordingly dismissed as withdrawn.

(S.S. SARON)
JUDGE

15.03.2016
A.Kaundal

(GURMIT RAM)
JUDGE