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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 11.08.2016

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W.P.(C) 1156/2016 & CM No. 5111/2016

PRAVEEN SAKHUJA

..... Petitioner

Through: Mr. G.D. Bhandari with Parveen
Kumar, Advocates.

versus

S K SAXENA AND ORS

..... Respondent

Through: Mr. L.R. Khatana, Adv. with Mr.
Siddharth Khatana, Adv. for R-1 and R-2.
Mr. Dev P. Bhardwaj and Ms. Anubha Bhardwaj,
Advs. for Resp./ UOI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (oral)

1. This is a petition filed under Article 226 of the Constitution of India seeking a direction against the appointment of respondent no.1 as Director, Export Inspection Council of India (in short 'Council'), Ministry of Commerce & Industry, Dept. of Commerce and also seeking quashing of his appointment order dated 27.08.2009. It would be pertinent to mention that the petitioner was removed from employment of the Council on account of misconduct of having physically assaulted a senior officer, i.e., a former Joint Director of related organisation, i.e., the Export Inspection Agency, Delhi functioning under the Council (as seen from the counter affidavit of

respondent nos.1 and 2).

2. The petitioner has impugned the appointment of respondent no.1 after a lapse of almost seven years. The learned counsel for the petitioner states that the petitioner had been working with the Council since 1975 till he was removed from service in September, 2014. The petitioner took 18-20 months to prepare and file this petition. However, it is a matter of record that the petitioner did not raise any grievance against respondent no.1 when he was employed with the Council.

3. The petition is premised on the ground that the appointment of respondent no.1 to the post of Director (Inspection and Quality Control), is against the statute of Export Inspection Council (Director) Recruitment Rules, 1991 (in short the 'RRs'), is based on forged documents and the appointment has been obtained fraudulently. With reference to the RRs it is contended that although respondent No.1 does not in fact possess a Post Graduate degree in Science he has claimed to have a Ph.D. in Food Analytical Chemistry, M. Phil in Food Analytical Chemistry and M.Sc. in Food Chemistry. It is further alleged that respondent no.1 has claimed to have 22 years of experience in various organizations including a claim of having worked as (i) Chairman, Food Additives Sectional Committee FAD 8 (Food & Agriculture Division), Bureau of Indian Standards and (ii) Chairman Food Additives Sectional Committee FAD 59, Bureau of Indian Standards (BIS). However, both these appointments have been denied by the BIS in reply to an RTI query sought by the petitioner. The queries put to the BIS and its response thereto, were as under:

“..... Question 1: Whether the Food Additive Sectional Committee (FAD 8), Food & Agricultural Division, has been established/formed in BIS.

Answer: Yes

Question2: If yes, Please state whether Sh. S. K. Saxena (as claimed by him) was ever appointed as the Chairman of FAD 8 committee, if yes, please state year.

Answer 2: As per our records Sh. S. K Saxena wasn't the Chairman of FAD 8 committee.

Question 3: Whether the Food Additive Sectional Committee (FAD 59), Food & Agricultural Division, was established/formed in BIS .

Answer 3: FAD 59 was Farm Implements and machinery Sectional Committee which was later on converted to FAD 2 (farm implements & sectional committee).

Now it is merged with another committee and function as FAD 11 (agriculture machinery and Equipment sectional committee).

Question 4: If yes please state whether Sh. S. K. Saxena was ever appointed the Chairman of FAD 8 and FAD 59 as claimed by him, if yes, please inform the period.

Answer 4: As per our record Sh. S. K. Saxena was neither the Chairman of FAD 8 nor the chairman of FAD59.

Question 5: Kindly provide me the copy of any information available on records about Sh. S. K. Saxena being the Chairman of above-named two committee (FAD 8 and FAD 59) and -work performed by Sh. S. K. Saxena.

Answer 5: Not applicable as Sh. S. K. Saxena as per our records was never the Chairman of either FAD 8 or FAD 59....”

5. The RRs for the post of Director [Export and Quality Control] in the Council were notified on 29.08.1991. The qualifications required for that post are:

“.. **Essential:**

Post graduate degree in Science/ Economics/ Commerce/ Business Administration/ Degree in Engineering/ Technology or equivalent.

Desirable: Knowledge of modern management techniques:

Experience: Fifteen years experience in handling administrative and technical problems at a senior administrative level of an organisation engaged in development of export trade through quality control; and adequate knowledge of Government rules and procedures.

Notes:

(i) Qualifications regarding experience is relaxable at the discretion of the competent authority in case of candidates belonging to Scheduled Castes and Scheduled Tribes, if at any stage of selection, the competent authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill the vacancies reserved for them.

(ii) Qualifications, experience may be relaxed at the discretion of the appointing authority on the recommendations of Selection Committee within the ambit of the guidelines prescribed, by the Government of India, Deptt. Of Personnel & Training from time to time in this regard.....”

The learned counsel for the petitioner relied upon a judgment of this Court dated 21st March, 2006 passed in LPA No. 348/2004, titled: ***Delhi Development Authority & Ors. vs Ashok Kumar*** to contend that where an applicant gets an order by making misrepresentation or playing fraud upon the competent authority, such an order cannot be sustained.

6. In reply, the appointing authority, the Union of India, has in its counter affidavit annexed correspondence and documents from Aligarh Muslim University (‘AMU’) and from Dr. B.R. Ambedkar University, which certify that the respondent no.1 possesses the requisite educational

qualifications. The letter from AMU dated 15.10.2015 from the office of the Assistant Controller of Examination, has been addressed to the Under Secretary, Govt. of India, Ministry of Industry and Commerce. By this letter, the AMU has certified that respondent no.1 had been conferred degrees in (i) Masters of Philosophy in Chemistry in 1988 and (ii) Doctor of Philosophy in Chemistry in 1991 by the University. Copies of the degrees of Ph.D. and M.Phil too have been annexed to the said letter. By a letter dated 26.04.2016 Dr. B.R. Ambedkar University, Agra has intimated the Union of India that respondent no.1 was conferred (i) a degree of B.Sc. in 1982 and (ii) a degree of M.Sc. in 1985.

7. In view of the above, the essential educational qualification stood duly met by respondent no.1. The claim of respondent no.1, regarding Ph.D. in Food Analytical Chemistry; M. Phil in Food Analytical Chemistry and M.Sc. in Food Chemistry, is of little consequence as far as the RRs are concerned. It may at best be an explanation of the nature of the thesis submitted by the candidate. It does not in any way cast a doubt on the fact that the petitioner had the requisite minimum qualifications for the said post.

8. The second contention is that respondent no.1 did not possess the requisite experience of fifteen years in handling administrative and technical problems at a senior administrative level of an organisation engaged in the development of export trade through quality control and adequate knowledge of Government rules and procedures. It is not in dispute that the appointment of respondent no.1 was made by the Appointment Committee of the Cabinet ('ACC') on 27.08.2009. The ACC had taken into

consideration the experience of the petitioner as under:

“.... Director – Food Research and Analysis Centre (1994-2003)
Director – Centre for Analysis, Research and Training (2003-2007)
Director – National Analytical Lab (NDDDB) (Dec. 2007 till date)..”

9. The petitioner contends that respondent no.1 claimed to have experience as Chairman of the sub-committees at BIS, which has been denied by the BIS itself. However, what is relevant to examine in the present petition is whether that experience was taken into consideration by the ACC. Clearly, the experience at BIS was not considered by the ACC. This argument is accordingly, rejected.

10. The learned counsel for the petitioner further contended that the application of respondent no.1 was not forwarded through proper channel and it was without the mandatory certificate from the employer. This issue too was examined by the ACC. The response in this regard was examined by the Ministry of Commerce. A reply was submitted by the DoPT as under:

“..... Reference notes at p 37 /n

2. This is regarding appointment to the post of Director (Inspection and Quality Control), export Inspection Council of India (EIC). We had referred a proposal to DOPT for obtaining the approval of ACC for appointment of Dr. Sushil Kumar Saxena, who was selected by the Selection Committee to the post of Director (EIC) (p267-268/c)

3. In response to our communication, the DOPT has requested us to furnish the following information/documents:-

(i) Cadre clearance from the present employer of Dr. S. K.

Saxena may be obtained, alongwith ACRs and Vigilance clearance, as required in the advertisement. Antecedent verification report from the local authorities in response to the candidate proposed for appointment may be furnished if vigilance clearance is not made available.

(ii) Why forwarding of application through proper channel was not insisted upon in his case, as per requirement spelt out in the advertisement.

(iii) It may be please clarified whether approval of ACC was obtained for appointing previous incumbent (Viz. Ms. Shashi sareen) of the post? If so a copy of this office's communication in this regard, may be please be furnished.

4. As regards cadre clearance from the present employer of Dr. S. K. Saxena

along-with ACRs and vigilance clearance, it may be pointed out that Dr. S. K. Saxena has applied for the post of Director, EIC as a member of general public. He had clearly stated in his application that he joined National Dairy development Board (NDDB) few months back and, therefore, it is not possible for him to forward his application through proper channel and in case he is found suitable for the position, he shall give up his current assignment.

5. The antecedent verification report from local authorities will be obtained prior to formally appointing Dr. Saxena as Director, EIC after his name is approved by ACC.

6. As regards to why forwarding of application through proper channel was not insisted upon his case, it may be pointed out that post of Director, EIC was required to be filled up on direct recruitment basis and it was not mandatory for the applicants to forward their application through proper channel unless they intend to avail the benefit of age concession or counting of their previous service in the event of their selection and appointment to the post of Director, EIC. It was all the more difficult for Dr. S. K. Saxena to get his application forwarded through proper channel as he joined NDDB on 14.12.2007 and was holding the post of Director-FRAC(FICCI), Director-NAL(NDDB) in the

pay scale of 18,400-22,400 i.e. the pay scale attached to the post of Director, EIC.

7. It may be mentioned that approval of ACC was obtained for appointing previous incumbent (Viz. Ms. Shashi Sareen) . A copy of the DOPT communication no. (5)EO/2000(ACC) dated 1.3.2000 may be furnished to DOPT for ready reference.

8. We may request DOPT to get the approval of AGO at the earliest as EIC is an important institution under the department of Commerce and the post of Director, EIC is lying vacant for quite sometime now...”

11. The above note was, evidently, considered by the ACC before appointment of respondent no.1 to the post of Director. The aforesaid note is self-explanatory and does not require for this court to delve into it because the Government has itself found that *ex-post facto* approval had been given to Respondent No.1. The Government’s position has been that the post of Director was required to be filled on direct recruitment basis hence in- so-far-as a candidate does not seek the benefit of age concession or counting of previous service in the event of his/ her selection to the said post, the application need not have been filed through the proper channel. The details, being on record, are deemed to have been considered by the ACC and nothing further requires to be done in the matter. Accordingly, the contention of the petitioner that the application was not sent through a proper channel is untenable.

12. The learned counsel for the petitioner has then contended that the Export (Quality, Control and Inspection Act, 1963 (in short the ‘Act’), the Government may by notification establish a Council to be known as Export Inspection Council and not an Export Inspection Council of India.

However, the advertisement has been issued by one Export Inspection Council of India and the appointment has been made to it, this is illegal and a fraud upon the statute and upon the Consolidated Fund of India; as the appointment is to a non-existent or illegal body. The Court considers that the said contention is most untenable and needs to be rejected. The Act envisages the establishment of an Export Inspection Council. It is applicable to the whole of India. Only one organization/ council of that nature is envisaged; it denotes an Inspection Council for the entire country and it is in this context that the Government has identified Export Inspection Council of India (emphasis supplied). The Government itself refers to the said Council as the 'Council' having been established under Section 3 of the Act. There is neither any duplication of the Council nor is another Council envisaged beyond what has been mentioned under Section 3 of the Act. The RRs, which seek to form the basis of the present petition, are also made under the same statute, therefore, in so far as the petitioner seeks to rely upon the RRs framed under the Act, he cannot now turn around to say that the organization itself is fake.

14. The learned counsel for respondent no.1 submitted that any petition seeking a writ of *quo warranto* should be examined by the ratio of the Supreme Court in ***Hari Bansh Lal vs Sahodar Prasad mahto & Ors. (2010) 9 SCC 655*** which held :

“.....16) A writ of *quo warranto* lies only when appointment is contrary to a statutory provision. In High Court of Gujarat and Another vs. Gujarat Kishan Mazdoor Panchayat and Others, (three-Judges Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held: (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 a 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 of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India 2, SCC 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. Financial Commr. & Secy. to Govt. of Haryana)"

18) In B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and Others, this Court held: (SCC p. 754, para 49)

"49. The law is well settled. 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 a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules."

.....

19) It is clear from the above decisions that even for issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules. In the later part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and whether he satisfied the relevant statutory provisions...."

15. This Court has examined all the aforesaid contentions and holds that the essential qualifications as per the Recruitment Rules have been duly met

by respondent no.1 and nothing further needs to be examined.

16. In view of the aforesaid, it is evident that the petition is baseless. It has been pursued by a disgruntled employee, who did not raise any of the aforesaid issues while he was in employment. It appears to be nothing but an exercise to settle a personal grudge. It is evidently an abuse of the process of court. Accordingly, the petition is dismissed with costs of Rs. 7000/- to be deposited with the Delhi High Court Mediation & Conciliation Centre within two weeks from the date of receipt of this order.

17. The Registry to put up a compliance report regarding payment of the costs after one month.

AUGUST 11, 2016/kk

NAJMI WAZIRI, J

