

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 15186 of 2015 (O&M)
Date of decision: 05.07.2017.**

Jagmohan Singh Bhatti

..... Petitioner.

Versus

Union of India and others and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Jagmohan Singh Bhatti, Advocate-petitioner in person.

Mr. Satya Pal Jain, Senior Advocate/Additional Solicitor
General of India with Mr. Dheeraj Jain, Senior Counsel,
Government of India for respondents No.1 and 2.

Mr. Lokesh Sinhal, Additional Advocate General, Haryana
for respondents No. 4 and 5.

Respondent No.6 (deleted vide order dated 03.08.2015).

Mr. Manoj Bajaj, Advocate for respondents No.7 and 8.

None for respondent No.9.

Mr. K.P.S. Virk, Advocate for respondents No.10 and 11.

S.S. Saron, J.

The petitioner - Jagmohan Singh Bhatti, a practising Advocate
in this Court, by way of the present petition under Articles 226/227 of the
Constitution of India seeks issuance of a writ of *quo warranto* for
invalidating the appointments of respondents No.7 to 10 as Chief
Parliamentary Secretaries in the State of Haryana and for declaring and
quashing their appointments as such being illegal, unconstitutional,

contrary to and in utter disregard of the Constitution (Ninety-first Amendment) Act, 2003; besides, being a burden on the public exchequer and a setback to the austerity drive. A further prayer has been made for restraining the State of Haryana (respondent No.4) from providing any facilities and perks to respondents No.7 to 10 as Chief Parliamentary Secretaries and for restraining them from functioning and dealing with the government files. It is further prayed that the Finance Department of the State of Haryana be prohibited and restrained from bearing the expenses of these illegal appointments, which are in violation of the Constitution (Ninety-first Amendment) Act, 2003 and to withdraw all the facilities that have been extended to them in the interest of the State, its people and its exchequer. A further direction has been prayed for directing the Union of India; the Secretary, Law Department, Ministry of Home Affairs and Justice; Chief Election Commission and the State of Haryana (respondents No.1 to 4) to forthwith dispense with the services of respondents No.7 to 10 while restraining them from working or availing the facilities attached to the posts of the Chief Parliamentary Secretaries.

The petitioner submits that he has been in the legal profession, practising in this Court and Hon'ble the Supreme Court for the last thirty-two years. He is a resident of Sahibzada Ajit Singh Nagar (Mohali). He states that he is conscious and an awakened citizen. He is interested in the affairs of the country including the State of Haryana. He takes up various causes of general public at large by way of filing and presenting petitions from time to time before this Court.

It is submitted by the petitioner that since the issue relates to the State of Haryana and its general public, therefore, in public interest he is entitled to invoke the extraordinary writ jurisdiction of this Court. The main cause that is being pursued by him is that the State of Haryana through its Chief Secretary and the Chief Minister, Haryana (respondents No.4 and 5) have appointed respondents No.7 to 10 as Chief Parliamentary Secretaries in the State despite the fact that no such posts exists under the Constitution of India or under any statute or Act passed by the Parliament of India or any State Legislature. All the appointments of Chief Parliamentary Secretaries are from amongst the Members of the Legislative Assembly ('MLAs' - for short) and these have been made by the Haryana State and the Chief Minister illegally, besides, are unconstitutional and in utter disregard and violation of the law of the land. Therefore, the said appointments are liable to be set aside and respondents No.7 to 10 forthwith removed from the posts of Chief Parliamentary Secretaries with no assignment of work, and the facilities and benefits be withdrawn.

A reference has been made to media reports and the news items dated July 22 (Annexure P-2) wherein it is mentioned that besides the three Cabinet Ministers, the Chief Minister (respondent No.5) would induct a few Chief Parliamentary Secretaries and Parliamentary Secretaries. Both the ceremonies would take place at different venues. The Cabinet Ministers would be sworn in at Haryana Raj Bhawan and Parliamentary Secretaries at Haryana Niwas an hour later. It is mentioned that there has been a lot of pressure from within the party to induct six Chief Parliamentary

Secretaries. The Bhartiya Janta Party (BJP) had been opposing their appointments in Aam Aadmi Party (APP) ruled Delhi and Congress ruled Himachal Pradesh States calling it a waste of public money and a way to oblige its men. Despite this argument, the BJP already had four Chief Parliamentary Secretaries in the neighbouring Punjab State and was all set to make similar appointments in Haryana.

A further reference is made to the news item (Annexure P-3) published in the 'Hindustan Times' newspaper on 23.07.2015 stating, 'Four Chief Parliament Secretaries also sworn-in Khattar Government.' It is mentioned as an update that Badkhal MLA, Seema Trikha, Radaur MLA Shyam Singh Rana, Hisar MLA Dr. Kamal Gupta and Assandh MLA Bakshish Singh Virk (respondents No.7 to 10) had been sworn-in as Chief Parliamentary Secretaries. In the news item (Annexure P-4), which is an earlier clipping from 'The Tribune' newspaper dated 20.08.2005, a mention has been made to the appointments of Chief Parliamentary Secretaries in the State of Himachal Pradesh being invalidated and that Punjab should take a cue from Himachal Pradesh. Immediate indulgence of this Court has, therefore, been sought. It is stated that the matter is already *sub judice* before this Court in the case of 'Jagmohan Singh Bhatti v. Union of India', CWP No.6715 of 2012¹ filed by the present petitioner. It is further submitted that the Bhartiya Janta Party itself approved the stand taken by the petitioner before this Court in the case of Antar Singh Brar v. Union of India, CWP No.14546 of 2005².

1 The said writ petition has since been decided on 12.08.2016 and appointments of Chief Parliamentary Secretaries and Parliamentary Secretaries in the State of Punjab have been set aside. The judgment Jagmohan Singh Bhatti v. Union of India and others is reported in (2016-4) PLR 110.

2 Dismissed as infructuous on 29.06.2010.

The appointments of the Governors, Council of Ministers, Ministers, Speakers in the States as also their qualifications and disqualifications for being Members of the State Legislatures, it is submitted, are governed by various Articles of the Constitution of India starting from Article 152 as contained in Part VI of the Constitution. The elected MLAs of the ruling party i.e. Smt. Seema Trikha, MLA Badkhal (respondent No.7); Sh. Shyam Singh Rana, MLA Radaur (respondent No.8); Dr. Kamal Gupta, MLA, Hisar (respondent No.9) and Sh.Bakshish Singh Virk, MLA, Assandh (respondent No.10), it is stated, have been administered the oath as Chief Parliamentary Secretaries on the basis of caste and regional equation and not on the point of 'One Nation' concept which itself is a threat to the unity and integrity of India to promote such tendencies. It is submitted that few of them who have been appointed Chief Parliamentary Secretaries have also shown utter disregard and disrespect to the Constitution knowing fully well that the constitutional provisions are crystal clear. However, the State of Haryana and the Chief Minister, Haryana (respondents No.4 and 5), it is stated, issued the appointment orders of these Chief Parliamentary Secretaries being fully aware of the afore-stated position. Therefore, according to the petitioner, there has been a flagrant violation of the Constitution of India and the democratic set up as governed and enshrined under the Constitution.

The Parliament enacted the Constitution (Ninety-first Amendment) Act, 2003 restricting the number of Ministers both in the Centre as well as in the State. The amendments as carried out in respect of

Articles 75 and 164 have been placed on record as Annexure P-1. The Haryana State Legislative Assembly has a House of 90 elected members. As such the total strength of the Ministers in the State of Haryana including the Chief Minister cannot exceed thirteen after six months of the notification. However, with a view to circumvent the constitutional amendment, the Chief Minister, Haryana, it is alleged, apparently out of political compulsions appointed four Chief Parliamentary Secretaries. The said four Chief Parliamentary Secretaries are *de facto* Ministers enjoying the status of Deputy Ministers with all basic facilities and amenities available to a Minister. The allocation of portfolios is to take place very shortly. This, according to the petitioner, is in sheer violation of the Constitution (Ninety-first Amendment) Act, 2003. Due to the said act of the State of Haryana and the Chief Minister, the entire object and purpose of the Constitution (Ninety-first Amendment) Act, 2003 to restrict the total number of members of the Council of Ministers to the maximum of fifteen per cent of the total seats of the Assembly or the House, stands defeated. It is further submitted that the respondents cannot amend, modify or re-write the Constitutional provisions in any manner. The large cavalcade of these Chief Parliamentary Secretaries, is a burden on the Government exchequer to the tune of about Rs.3.00 crores annually or even more. Thus, the expenditure as incurred due to the appointments of these Chief Parliamentary Secretaries is a big drain of the financial resources of the State of Haryana, which is already under heavy debt; besides, it is jeopardizing the interest of the people of the State in every walk of life.

A reference has been made to the thirteenth (13th) entry under Sub Rule (1) of Rule 2 of the Rules of Procedures and Conduct of Business in the Lok Sabha which defines Minister, which it is stated includes a 'Parliamentary Secretary.' Even in the fifteenth (15th) entry under Sub Rule (1) of Rule 2 of the Rules of Procedures and Conduct of Business in the Haryana Vidhan Sabha defines, 'Minister' to include 'Chief Parliamentary Secretary or a Parliamentary Secretary'. Similarly, Section 2 (h) of the Haryana Lokpal Act, 1956 includes, 'Chief Parliamentary Secretary and Parliamentary Secretary' in the definition of 'Minister'. As such it is stated that it is writ large that for all purposes the term 'Minister' includes four Chief Parliamentary Secretaries who have been appointed, which would be in violation of the Constitution (Ninety-first Amendment) Act, 2003.

The respondents No.7 to 10 on their appointment, it is stated, would be paid salaries, allowances etc. with all perks equivalent to the perks of Ministers of the State and Deputy Ministers. They are moving in official cars with National Flags on these Government provided cars. More government facilities are to be extended. In terms of Section 6 (a) of the the Salaries and Allowance of Deputy Ministers, Punjab Act, 1956, the Chief Parliamentary Secretaries and Parliamentary Secretaries are entitled to the same salary and allowances etc. as are available to the Deputy Ministers. Similarly, the Ministers Travelling Allowances Rules, 1953 as amended from time to time were made applicable to the Chief Parliamentary Secretaries and the Parliamentary Secretaries by the previous Government by way of notification issued on 29.10.2002, which is subject

matter of challenge in CWP No.6715 of 2012³ in respect of Punjab. The appointment of previous Chief Parliamentary Secretaries of Punjab and Haryana Governments too were under challenge, however, these were rendered infructuous, which has encouraged the present Government to act in an unconstitutional manner. It is stated that the Chief Parliamentary Secretaries i.e. Respondents No.7 to 10 are yet to be allotted portfolios but they are posing as if they were Cabinet Ministers. They would also have access to the official records and files of various Government Departments, despite the fact that they have not been administered oath as prescribed by law and by a person authorized by the Constitution or under the Constitution to do so. The posts which are not the creation of law in view of the Constitution (Ninety-first Amendment) Act, 2003 are not liable to be given effect.

The State of Punjab, before its reorganization by the Punjab Reorganization Act, 1966, had enacted the Punjab State Legislature (Prevention of Disqualification) Act, 1952 to save disqualification of Members of the Legislative Assembly from the rigors of Article 191 of the Constitution. In the said Act, the posts of Chief Parliamentary Secretaries and Parliamentary Secretaries are mentioned in Section 2 but these would not be of much use because these posts do not exist under any law or the Constitution. So much so the oath ceremony too is illegal.

As an illustration, the instance of Himachal Pradesh has been cited whereby the Chief Parliamentary Secretaries and the Parliamentary Secretary were appointed in the State of Himachal Pradesh also. The

³ (2016-4) PLR 110.

matter was challenged before the High Court and a Division Bench of Hon'ble the High Court in Citizen Rights Protection Forum v. Union of India and others CWP No.506 of 2004 decided on 06.12.2004 held that whatever may be the function of the Chief Parliamentary Secretary, they cannot be identical, similar or akin to a Minister. The Chief Parliamentary Secretary is not a Minister and cannot perform the function of a Minister either from the touchstone of Article 164 of the Constitution or, from the standpoint of Article 166, particularly Clause 2 thereof and responsibilities cannot be assigned to a Chief Parliamentary Secretary which was in the nature of responsibilities to be discharged by a Minister. Thereafter, the same Division Bench of Hon'ble the Himachal High Court in Citizen Rights Protection Forum v. Union of India and others, 2006 (1) Service Cases Today 514⁴ held that there is no such post of Chief Parliamentary Secretaries or Parliamentary Secretaries nor any authority with the Chief Minister to make any such appointments or to administer oath under any provisions or under any Act or the Constitution and neither is there any statutory constitutional provision or any executive instructions or any subordinate legislation under which the State Government may make such appointments. It is, therefore, submitted that the appointments of the Chief Parliamentary Secretaries/Parliamentary Secretaries of the private respondents No.7 to 10 is liable to be invalidated.

Written statement of Sh. Attar Singh Godara, Under-Secretary Political and Services Department has been filed on behalf of the State of Haryana and the Chief Minister, Haryana (respondents No.4 and 5). It is

⁴ CWP No.1087 of 2004 decided on 18.08.2005.

submitted that the writ petition filed by the petitioner is based on factually incorrect, legally misconceived and distorted facts with a view to mislead this Court and the same is liable to be dismissed. The petition, it is stated, does not disclose any violation of the petitioner's statutory rights or the statutory obligation/duty of the respondent State. As such, in the absence of such material facts, the petitioner is not competent to invoke the extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution. It is stated that the Chief Parliamentary Secretaries are neither Minister nor Deputy Minister as alleged by the petitioner. As such, a writ of *quo-warranto* is not maintainable. Respondents No.7 to 10, according to respondents No.4 and 5, have been legally appointed as Chief Parliamentary Secretaries and there has been no violation of any statutory provision or any provision of the Constitution of India. They have not usurped any public office in any manner. In terms of Article 164 of the Constitution, the Chief Minister is to be appointed by the Governor and the other Ministers are to be appointed by the Governor on the advice of the Chief Minister and the Ministers are to hold office during the pleasure of the Governor. Article 164 (1A) envisages that the total number of Ministers including the Chief Minister in the Council of Ministers in a State is not to exceed fifteen per cent of the total number of members of the Legislative Assembly of that State. In the present case, respondents No.7 to 10, it stated have not been appointed as Ministers by the Governor on the advice of the Chief Minister as required under Article 164 of the Constitution. The Council of Ministers in terms of Article 164 (2) of the Constitution is

collectively responsible to the Legislative Assembly of the State and under Article 164 (3), before a Minister enters upon his office, the Governor is to administer him the oath of office and secrecy according to the forms set out for the purpose in the Third Schedule of the Constitution. The salaries and allowances of Ministers under Article 164 (5) are to be such as the Legislature of the State may from time to time by law determine and until the Legislature of the State so determines, shall be specified in the Second Schedule. In the present case, it is submitted that the respondents have neither been appointed as Ministers on the advice of the Chief Minister of the State nor have been administered the oath of office and secrecy by the Governor. They are not getting salaries and allowances of Ministers as envisaged under Article 164 of the Constitution of India. Therefore, the said respondents No.7 to 10, it is submitted, do not in any manner fall within the definition of 'Ministers'. As such, the averments made in the petition in this regard, are highly misconceived and the petition is liable to be dismissed on this ground alone.

It is further submitted that the petitioner has also prayed for quashing the appointments of respondents No.7 to 10 mainly on the ground that the State Government has no power to create posts of Chief Parliamentary Secretaries as there is no provision in the Constitution providing for the Posts of Chief Parliamentary Secretaries.

It is submitted that the posts of Chief Parliamentary Secretaries were created by the Government (one+one+seven), vide Notification No.27/1/2006-Pol (3P) dated 13.01.2006 (Annexure R-I), 27/1/2006-Pol

(3P) dated 06.05.2008 (Annexure R-II) and 27/1/2006-Pol (3P) dated 07.11.2009 (Annexure R-III) after the concurrence of the Finance Department and their salaries and allowances were also fixed by the Government. Though initially only one post of Chief Parliamentary Secretary was sanctioned, these were later increased from time to time to twelve posts of Chief Parliamentary Secretaries. The Governor of Haryana in terms of order dated 13.01.2006 (Annexure R-IV), was pleased to order that the appointments to the said posts would be made from amongst the sitting MLAs of Haryana Vidhan Sabha. Besides, this the Governor has also issued instructions dated 13.01.2006 as per provisions of Rules 51 of the Rules of Business of the Government of Haryana vide which the Chief Minister has been authorized to pass orders from time to time deputing the Chief Parliamentary Secretaries with a Minister. Para 1 Clause (iv) of these instructions reads as under:-

“At no stage the Chief Parliamentary Secretary/
Parliamentary Secretary attached to the Minister would
take a decision independently but would aid and assist
the Minister-in-Charge in arriving at a decision.”

It is submitted that the Governor of Haryana vide notification dated 23.07.2015 (Annexure R-V) was pleased to appoint respondents No.7 to 10 as Chief Parliamentary Secretaries for the State of Haryana. They were administered oath by the Chief Minister on 23.07.2015. Necessary orders were issued on 26.07.2015 for assisting the Chief Minister/Ministers in the following departments were issued:-

Sr. No.	Name of the Chief Parliamentary Secretary	Attached with	Department
1.	Sh. Shyam Singh	Chief Minister Finance Minister	1. Jails. 2. Revenue, Consolidation and Rehabilitation
2.	Sh. Bakshish Singh Virk	Agriculture Minister	Development and Panchayats
3.	Smt. Seema Trikha	Education Minister	Tourism and Hospitality
4.	Dr. Kamal Gupta	Health Minister	Health

The above, it is submitted, clearly indicates that the appointments of the said respondents No.7 to 10 in every respect are legal and they have not usurped any public office as alleged by the petitioner. Earlier also, it is submitted that the appointments of Parliamentary Secretaries made in the State of Haryana in the year 2006 were challenged in the case of Pavitar Singh Bajwa v. Union of India CWP No.1600 of 2006; Parmanand v. State of Harayna and others CWP No.734 of 2006 and Sushil Indora v. Union of India and others CWP No.1518 of 2006 alleging violation of the Constitution (Ninety-first Amendment) Act, 2003. The writ petition in Parmanand's case and Pavitar Singh Bajwa's case have been dismissed vide order dated 23.03.2010. The orders passed in both the writ petitions read as under:-

“Learned counsel for the petitioner states that this petition has become infructuous and therefore same be dismissed as such.

In view of the statement of learned counsel for the petitioner, this petition is dismissed as having become infructuous.”

Apart from the above, the writ petitions Jagmohan Bhatti v. Union of India and others CWP No.17311 of 2009 and Pardeep Chaudhary and others v. Union of India and others CWP No.19097 of 2009 also challenging the appointments of Parliamentary Secretaries and Chief Parliamentary Secretaries were dismissed as infructuous by this Court vide order dated 28.11.2014.

A reference has been made to the provisions of Articles 163 and 164 of the Constitution. A bare perusal of the same, it is submitted, leaves no manner of doubt that the Ministers are to be appointed by the Governor on the advice of the Chief Minister. The Ministers hold office during pleasure of the Governor. The Council of Ministers is to aid and advice the Governor and is collectively responsible to the Legislative Assembly of the State. A Minister has to be administered the oath of Office and oath of Secrecy according to the forms set out for the purpose in the Third Schedule of the Constitution. A Minister can be appointed for a period of six months who though is not a member of the Legislative Assembly. The salary and allowance of the Ministers are to be legislated by the State Legislature. The Haryana Salary and Allowances of Ministers Act, 1970 is applicable insofar as the Council of Minister is concerned. The Chief Parliamentary Secretaries are not covered within the definition of Ministers and, therefore, the entire case of the petitioner, according to respondents No.4 and 5, falls flat for the simple but strong reason that the petitioner has proceeded on this factually incorrect and misconceived presumption equating the Chief Parliamentary Secretaries with the

Ministers. The office of Minister to the Constitutional office, is distinct and different from the post of Chief Parliamentary Secretary created in exercise of the executive powers of the State.

It is further stated that there is a mere allegation that respondents No.7 to 10 are enjoying the status of Ministers and there is violation of Article 164 (1A) of the Constitution (Ninety-first Amendment) Act, 2003. The petitioner, it is submitted, has failed to lay down the factual foundation referring to the relevant facts and figures in this regard. Otherwise also, the writ petition having been filed for politically motivated and extraneous reasons, the same is liable to be dismissed because the petitioner, it is submitted, is misusing the process of law. The creation of posts to run the affairs of the State is the exclusive domain of the State. The petitioner has no *locus standi* to question the same. The Chief Minister and his Council of Ministers, it is submitted, are the exclusive judge as to how the administration is to be run and which post is necessary for the same. The State has the right to create posts and fix salaries and other allowances. The Institution of the Chief Parliamentary Secretaries is stated to be an established one and they are appointed to assist the Ministers in public interest in view of the multifarious duties of the Ministers. At present, there are thirteen Ministers including the Chief Minister who are in-Charge of more than one department. Therefore, the Chief Parliamentary Secretaries who are to assist the Ministers have been appointed for smooth functioning of the departments. The Chief Parliamentary Secretaries/Parliamentary Secretaries were being appointed in the State of

Punjab and are being appointed in the State of Haryana since its formation on 01.11.1966. The names of as many as fifty-three Chief Parliamentary Secretaries have been mentioned who have been appointed for various periods of time under various Chief Ministers.

It is submitted that the present appointment of Chief Parliamentary Secretaries are distinct from the fifty-three earlier appointments as the earlier appointees could move motion in the Haryana Vidhan Sabha as they were included in the definition of Ministers for the purpose of the Rules of Procedure and Conduct of Business in the Haryana Vidhan Sabha. The present Chief Parliamentary Secretaries cannot move motion on behalf of the executive in the State Legislature as they are not included in the definition of Ministers after the amendment carried out in Rule 2 of the Rules of Procedure and the Conduct of Business in the Haryana Legislative Assembly. A mention has been made to the fact that the Governor of Haryana in exercise of powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India and all other powers enabling him in this behalf has made the Rules of Business of Government of Haryana 1977 as amended from time to time. The said amendment completely takes out the creation as well as the appointments qua the posts of Chief Parliamentary Secretaries/Parliamentary Secretaries from the Constitutional provisions, meaning thereby that these are neither the creation of the Constitution nor can be said to be Constitutional appointees like Ministers. It is submitted that in order to succeed in a writ of *quo warranto*, the petitioner is required to state the provisions of law against

which a post is alleged to have been usurped. The respondents No.7 to 10 have not been appointed in terms of Article 164 of the Constitution, as such the petition is liable to be dismissed.

Written statements have also been filed by Smt. Seema Trikha, MLA Badhkal, Chief Parliamentary Secretary (respondent No.7) and Shyam Singh Rana, MLA Radaur, Chief Parliamentary Secretary (respondent No. 8) in which the stand as taken by the State of Haryana and the Chief Minister (respondents No.4 and 5) has more or less been reiterated. A reference has been made to the case of Ajaib Singh v. State of Punjab, (2013-4) PLR 367 (P&H) (DB) to contend that the petitioner has no *locus standi* to file the petition and these are personal litigations. Besides, it is submitted that the petitioner has not been verified his petition according to law and it needs to be specified by the petitioner with reference to the numbered paragraph of the pleadings as to what is verified through his own knowledge, and what information in the verification part is believed to be true. The verification of the petition, it is submitted, is defective.

The petitioner, it is alleged, has acted in a hasty manner and instituted the present petition against all norms of law and practices. According to respondents No.7 and 8, the petition clearly indicates that the petitioner has acted like a compulsive critic to condemn all actions of the Government without any verification and research on the subject. The claim of issuance of a writ in the nature of *quo warranto*, it is submitted, is not maintainable as the respondents No.7 to 10 were appointed as Chief

Parliamentary Secretaries against sanctioned posts. The manner and method of appointment is completely distinct to that of the appointment of a Minister. It is also submitted that the petitioner does not disclose the violation of any of the petitioner's statutory rights or the statutory obligation/duty of the respondent - State. As such, in the absence of such material facts, the petitioner is not competent to invoke the extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution. The present petition is highly misconceived.

It is further submitted that in the present case, the private respondents have neither been appointed as Ministers on the advice of the Chief Minister nor have been administered the oath of office and secrecy by the Governor. They are not getting salaries and allowances of Ministers as envisaged by the provisions of Article 164 of the Constitution. A reference has been made to the instructions dated 13.01.2006 issued by the Governor as per provisions of Rule 51 of the Rules of Business of Haryana by which the Chief Minister has been authorized to pass orders from time to time deputing the Chief Parliamentary Secretaries with the ministers.

Sh. Bhatti, Advocate appearing in person submits that the respondents No.7 to 10 are usurpers of public offices and they have been appointed as Chief Parliamentary Secretaries *de hors* any statutory provision and therefore, their continuation in office as Chief Parliamentary Secretaries is liable to be invalidated. Strong reliance is placed on Division Bench of this Court in the case of Jagmohan Singh Bhatti v. State of Punjab (2016 - 4) PLR 110 wherein the appointments of Chief Parliamentary

Secretaries in the State of Punjab had been invalidated. The said judgment , it is stated, has been implemented in the State of Punjab.

Sh. Satya Pal Jain, Senior Advocate/Addl. Solicitor General, Govt. of India appearing with Sh. Dheeraj Jain, Advocate for respondents No.1 and 2 has submitted that the appointments of the Chief Parliamentary Secretaries is the domain of the State Government and/or its Legislative Assembly and the Govt. of India has no hand in their appointments. Besides, such appointments are not provided for under the Constitution.

Sh. Lokesh Sinhal, Addl. Advocate General for Haryana appearing for the State of Haryana and Chief Minister of Haryana (respondents No.4 and 5) and Mr. Manoj Bajaj, Advocate appearing for the private respondents No.7 and 8 have submitted that the posts of Chief Parliamentary Secretaries are not akin to or equivalent to that of Ministers and therefore, there is no infraction of the provisions of Article 164 (1A) of the Constitution.

Sh. Manoj Bajaj, Advocate has emphasized on the defective verification of the pleadings of the petition which according to him does not entitle the petitioner to invoke the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the parties and with their assistance gone through the records of the case.

On the basis of the pleadings of the parties and the contentions raised the questions that would require consideration are: (1) whether there

has been defective verification of the petition so as to disentitle the petitioner to invoke the writ jurisdiction of this Court and consequently, the petition liable to be dismissed; (2) whether the appointments of respondents No.7 to 10 as Chief Parliamentary Secretaries have been made under any statutory rules having the force of law; (3) whether the posts of Chief Parliamentary Secretaries are akin and similar to that of Ministers so as to include them for counting the size of Ministers in the Legislative Assemblies and thereby infringe the Constitutional mandate of restricting the size of Ministers to fifteen per cent of the total strength of the house as provided for by Article 164 (1A) of the Constitution, and (4) whether the petitioner has the *locus standi* to seek invalidation of the appointments of respondents No.7 to 10 as Chief Parliamentary Secretaries in the Haryana Legislative Assembly whose job, according to the respondents State of Haryana and Chief Minister Haryana, is to assist the Chief Minister and other Ministers in public interest in view of the multifarious duties of the Ministers.

As regards the question of verification of the petition it is to be noticed that the petitioner at the end of his petition has verified the petition by *inter alia* stating that the contents of paras No.1 to 23 and 25 and 27 of the writ petition are true and correct as per the information derived from the news items appearing in the newspapers and information as available on the internet and para No.24 of the writ petition is based on his legal knowledge, which is believed to be correct. No part of it, is stated, to be false.

According to Sh. Bajaj, Advocate appearing for the private respondents No.7 and 8, the writ petition is clearly misconceived and is barred by the ratio of the judgment in Ajaib Singh's case (supra) wherein it has been emphasized that PILs which are not truly PILs in the sense the concept is envisaged. They are either personal angst, someone reading a newspaper and annexing a copy of the newspaper making it a cause, making general allegations without any research about the subject or persons who have really no experience or exposure about the subject matter sought to be raised. Therefore, the petition being based on newspaper reports according to Sh. Bajaj, Advocate merits dismissal.

The verification of pleadings of writ petition in a matter where serious consequences ensue in case the petition is allowed, is an important aspect of the pleadings and where the verification is defective, the petition is normally to be dismissed. It is beyond doubt that the pleadings of a petition and its verification should be clear and unambiguous. This Court has made Rules for regulating proceedings under Article 226 of the Constitution called the; 'Writ Jurisdiction (Punjab and Haryana) Rules, 1976' ('1976 Rules' – for short). These are contained in Volume 5, Chapter 4, Part - F of the 'High Court Rules and Orders.' As regards verification of pleadings, Rule 20 of the 1976 Rules relates to 'Contents of petition' and Sub Rule (3) thereof envisages that every petition shall be supported by a short affidavit duly verified in the manner prescribed under Order 19 Rule 3 of the Code of Civil Procedure ('CPC' – for short). The said Order 19 Rule 3 CPC relates to: 'Matters to which affidavits shall be confined'. It is

provided that: 'Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.' Sub Rule (4) of Rule 20 of the 1976 Rules reads as follows:-

“Pleading shall be verified by the party for and on behalf of his co-parties also, where there are more than one petitioner or respondent, as the case may be, in the manner prescribed in Rule 15 Order 6 CPC.”

Order 6 CPC relates to; 'Pleadings Generally'. Rule 15 thereof relates to 'Verification of Pleadings'. It reads as follows:-

“15. Verification of pleadings- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

Besides, the provisions of the CPC are applicable to writ petitions filed in this Court in view of the provisions of Rule 32 of the 1976 Rules, which reads as under:-

“In all matters for which no provision is made by these rules, the provisions of the Code of Civil Procedure 1908, shall apply mutatis mutandis, in so far as they are not inconsistent with these rules.”

Section 141 CPC relates to 'Miscellaneous Proceedings'. It is provided that the procedure provided in this Code i.e. the CPC in regard to suits shall be followed, as far as it can be applicable, in all proceedings in any Court of civil jurisdiction. The 'Explanation' thereof envisages that in this Section the expression “proceedings” includes proceedings under Order 9, but does not include any proceedings under Article 226 of the Constitution. Therefore, in terms of the 'Explanation' the procedure provided under CPC is inapplicable to proceedings under Article 226 of the Constitution. However, the provisions of CPC have been made applicable by Rule 32 of the 1976 Rules. Therefore, the provisions of CPC are applicable insofar as these are not inconsistent with the 1976 Rules.

In V. Purushotham Rao v. Union of India (2001) 10 SCC 305, it was held by the Supreme Court that the 'Explanation' to Section 141 CPC would not apply where the High Court itself has made the provisions of CPC applicable to a proceeding under Article 226 of the Constitution. As

such in view of Rule 32 aforesaid 1976 Rules, the provisions of CPC apply to proceedings under Article 226 of the Constitution insofar as these are not inconsistent with the said 1976 Rules.

The provisions relating to deposing of affidavits as contained in Order 19 Rule 3 CPC and relating to verification of pleadings as contained in Order 6 Rule 15 CPC would, therefore, apply to proceedings under Article 226 of the Constitution. The verification as given by the petitioner at the foot of the pleadings is based on newspaper reports; however, the petitioner has also deposed an affidavit dated 24.07.2015 in which he has clearly stated; “That para No.1 to 27 of the accompanying writ petition are true and correct to my knowledge. The petitioner has not filed any such or similar petition either before this Hon'ble Court or before the Hon'ble High Court (sic. Supreme Court) seeking such or similar relief except those mentioned in CWP and no personal interest of the deponent is involved.” The said verification is in accordance with the affidavit which is required to be filed and is provided for under Order 19 Rule 3 and the verification under Order 6 Rule 15 CPC. Even otherwise, it is well-known that rules of procedures are handmaids of justice and their object is to secure justice and not thwart it. Besides, the petition involves questions of law primarily and whether the appointments of Chief Parliamentary Secretaries have the force of law. The question of verification assumes greater importance where a factual position has to be verified, which is to be on the basis of knowledge or the source of information from where the knowledge was derived. The same not being the position and the validity

of the person holding a public office being in issue, the defect, if any, in the verification of the pleadings, in the facts and circumstances, would not be of much consequence. Therefore, the objection of Sh. Manoj Bajaj regarding the verification of the petitioner is liable to be ruled out of consideration.

The further question as formulated and that requires consideration is whether the appointments of respondents No.7 to 10 as Chief Parliamentary Secretaries have been made under any statutory rules having the force of law.

The State of Haryana and the Chief Minister, Haryana (respondents No. 4 and 5), in their written statement, have justified the creation of the posts of Chief Parliamentary Secretaries and the appointments made against the said posts so created. An order dated 13.01.2006 (Annexure R-I) for creation of one post of Chief Parliamentary Secretary and seven Parliamentary Secretaries has been passed. The said order reads that the Governor of Haryana is pleased to accord sanction to the creation of one post of Chief Parliamentary Secretary and seven posts of Parliamentary Secretaries with immediate effect. Thereafter, the order goes on to fix the salary and allowances; entitlement to use official car and its maintenance etc.; payment of rent; travelling allowances, facility of free travel as provided under Section 7 of the Haryana Legislative Assembly (Allowances and Pension of Members) Act, 1975; Constituency Allowances; medical facilities and daily allowance at the rate of Rs.600/- per day while on official tour to the incumbents holding the posts. The

State of Haryana and the Chief Minister, Haryana (respondents No. 4 and 5) have taken the stand that the private respondents No. 7 to 10 have not been appointed as Ministers by the Governor on the advice of the Chief Minister and that they are not Ministers. Therefore, the creation of posts and the emoluments etc. payable to Chief Parliamentary Secretaries has been justified on the basis of order dated 13.01.2006 (Annexure R-I).

The other justification is the order dated 03.05.2008 (Annexure R-II) whereby the Governor of Haryana has amended clauses (i) and (viii) of para 2 of the sanction issued on 13.01.2006 (Annexure R-I) regarding salary and allowances payable to the posts of Chief Parliamentary Secretaries and Parliamentary Secretaries. This is followed by an order dated 07.11.2009 (Annexure R-III) whereby the Governor of Haryana has been pleased to order the Chief Parliamentary Secretaries who shall assist the Chief Minister/Ministers in various departments. This also does not indicate the statutory provisions. Thereafter, order dated 13.01.2006 (Annexure R-IV) has been mentioned which reads as under:-

“The Governor of Haryana is pleased to order that appointment to the posts of Chief Parliamentary Secretary and Parliamentary Secretaries will be made from amongst the sitting MLAs of Haryana Vidhan Sabha.

2. The Governor of Haryana is further pleased to empower the Chief Minister to make appointment to the posts of Chief Parliamentary Secretary/Parliamentary

Secretary created vide Order No.27/1/2006-3POL dated 13.01.2006. The sitting MLAs appointment as such will be administered the oath/affirmation by the Chief Minister and will hold the office at the pleasure of the Government.”

The Chief Parliamentary Secretaries have been appointed vide order dated 23.07.2015 (Annexure R-V), which reads as follows:-

“Notification

No. 27/1/2015-3POL, - The Governor of Haryana is pleased to appoint the following as Chief Parliamentary Secretaries for the State of Haryana with effect from 23rd July, 2015:-

1. Sh. Shyam Singh.
2. Bakhishish Singh Virk.
3. Smt. Seema Trikha.
4. Dr. Kamal Gupta S/o Manphool Singh.

They will be entitled to salary and allowances as specified in the Haryana Government sanction issued vide letter No. 27/1/2006-3POL, dated 13.1.2006, dated 6.5.2008, 17.12.2010 and dated 17.10.2013.

Dated Chandigarh the 23 rd July, 2015	D.S. DHESI Chief Secretary to Government, Haryana”
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It is pertinent to note that the said orders dated 13.01.2006 (Annexure R-I), 03.05.2008 (Annexure R-II), 07.11.2009 (Annexure R-III),

13.01.2006 (Annexure R-IV) and 23.07.2015 (Annexure R-V) have not been passed or shown to have been passed in exercise of powers conferred by any statutory provision. By merely not quoting the provisions of a statute by which certain powers have been exercised, would indeed not invalidate the order passed by the Governor but it is at least liable to be shown that such an order could be passed under the provisions of a statute. The respondents have submitted that the Governor of Haryana in exercise of powers conferred by clauses (2) and (3) of Article 166 of the Constitution of India and all other powers enabling him in this behalf has framed the Rules of Business of Government of Haryana, 1977 (hereinafter referred to as - 'the Rules of Business'). A reference has been made to Rule 28 (1) (i) and (xiv) of the Rules of Business, which reads as under:-

“28 (1). The following classes of cases shall be submitted to the Chief Minister before the issue of orders:

(i) to (xiii) xxx xxx xxx

⁵(xiv) Proposal for appointment to the posts of Chief Parliamentary Secretary/Parliamentary Secretaries and determining their qualifications as well as salary/ remuneration and allowances payable to them.

(xv) to (xxxii) xxx xxx xxx”

A perusal of the above Rule 28 (1) (xiv) of the Rules of Business merely shows the classes of cases which are to be submitted to the Chief Minister before the issue of orders. The proposal for appointment to

⁵ Inserted vide No. 10/1/2006-2 Cabinet dated 14.03.2006.

the Post Chief Parliamentary Secretaries/Parliamentary Secretaries and determining their qualification as well as salary/remuneration and allowances payable to them are to be submitted to the Chief Minister before issue of orders. The Rule by itself does not confer any power on the Chief Minister to appoint Chief Parliamentary Secretaries or Parliamentary Secretaries.

Even otherwise, Article 166 of the Constitution in exercise of powers by which the Rules of Business have been framed relate to, 'Conduct of the Business of the Government of a State'. It is provided in terms of sub-article (1) of Article 166 that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. Sub-article (2) provides that the orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Besides, sub-article (3) envisages that the Governor is to make rules for the more convenient transactions of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. The said Article 166 of the Constitution, therefore, provides that whatever executive action is to be taken by way of an order or instrument by the Government of a State is to be expressed to be taken in the name of

the Governor in whom executive power of the State is vested. Such order is to be authenticated in such manner as is specified in the rules framed by the Governor. Rules can be made by the Governor for the more convenient transaction of Government business of the State, and for allocating amongst Ministers of the said business insofar as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. Therefore, the said Article contemplates the framing of rules for transaction of business of the Government of a State and not for making appointments of Chief Parliamentary Secretaries.

Shri Lokesh Sinhal, Additional Advocate General, Haryana appearing for the State of Haryana and the Chief Minister, Haryana, and Shri Manoj Bajaj, Advocate appearing for the private respondents have submitted that the appointments of respondents No. 7 to 10 are liable to be sustained as their appointments would fall within the ambit of Entry 39 of List-II of the Seventh Schedule of the Constitution read with Article 162 of the Constitution. The said Entry 39 of List-II of the Seventh Schedule reads as under:-

“39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.”

The said Entry 39 in List-II, i.e. the 'State List', of the Seventh Schedule of the Constitution relates to powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof. It does not remotely suggest the power to make appointments.

Article 162 of the Constitution relates to extent of executive power of the State. It is provided that subject to the provisions of the Constitution, the executive power of the State shall extend to the matters with respect to which the Legislature of a State has power to make laws. The proviso envisages that in any matter with respect to which the Legislature of a State and Parliament have powers to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any other law made by Parliament upon the Union or authorities thereof. The executive power of the State Executive is in fact co-extensive with that of the State Legislature. Therefore, it follows that the State Executive may make rules regulating any matter which is within the legislative competence of the State Legislature and without prior legislative sanction, except where a law is required to be made because the rules so framed would violate any provision of the Constitution.

The scope of the executive powers of the State in the matter of making appointment to the posts of Chief Parliamentary Secretaries or Parliamentary Secretaries has been delineated upon in the case of *Jagmohan Singh Bhatti v. Union of India* (supra) wherein a challenge was made to the posts of Chief Parliamentary Secretaries and Parliamentary

Secretaries in the State of Punjab. In the said case, it was *inter alia* held that the provisions of Article 162 of the Constitution relate to the extent of executive power of the State and that the executive power of the State shall extend to matters with respect to which the legislature of the State has power to make laws. The power sought to be derived by the officials respondents in the said case was in the context of Article 309 of the Constitution. The Rules that had been framed in the said case, i.e. the Punjab Parliamentary Secretaries and Chief Parliamentary Secretaries (Terms and Conditions of Appointment) Rules, 2006, had been framed by the State in exercise of the powers conferred by Article 162 of the Constitution and it was urged in the said case that the State had the power to make rules for appointments of Chief Parliamentary Secretaries and Parliamentary Secretaries in terms of the proviso to Article 309 of the Constitution. It was held that the said provision related to services under the State of the executive and not that of the legislature. The ratio of the said judgment would apply insofar as the extent of executive powers of the State has been pressed for conferring powers on the Governor to appoint Parliamentary Secretaries and Chief Parliamentary Secretaries.

In Rai Sahib Ram Jawaya Kapur v. State of Punjab, AIR 1955 Supreme Court 549, it was held by Hon'ble the Supreme Court that neither of these Articles, i.e. Article 73 and 162, contain any definition as to what the executive function is and what activities would legitimately come within its scope. These are concerned primarily with the distribution of executive power between the Union on the one hand and the component

States on the other. These do not mean that it is only when Parliament or the State legislature has legislated on certain items appertaining to their respective lists that the Union executive or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 162 clearly indicates that the power of the State executive do extend to matters upon which the State legislature is competent to legislate and are not confined to matters over which the legislation has been passed already. The same principle underlies Article 73 of the Constitution. The limits within which the executive government can function under the Indian Constitution, it was said, can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.

Article 162 of the Constitution as such extends to the extent of executive power of the State and is limited to matter with respect to which

the legislature of the State has power to make laws.

Therefore, the question that remains is whether the State has the powers to frame a law for appointment of Chief Parliamentary Secretaries and Parliamentary Secretaries; besides, whether *de hors* any statutory rules being shown in exercise of which the State government has made appointments to the post of Chief Parliamentary Secretaries can the said appointments be held to be valid. Indeed no such specific provision has been shown by the learned counsel appearing for the State of Haryana and Chief Minister as also learned counsel appearing for the private respondents although attempts have been made to cover the field by one or the other provisions of the Constitutional like Article 187 (2) of the Constitution as well. Article 187 relates to Secretariat of the State Legislature and sub-article (2) provides that the Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State. Therefore, the Article is confined to the Secretarial staff of the House of the State Legislature, and Chief Parliamentary Secretaries or Parliamentary Secretaries cannot possibly be termed to be part of or member of the Secretarial Staff of the Legislature of the State. The orders that have been passed i.e. the orders dated 13.01.2006 (Annexure R-I), 06.05.2008 (Annexure R-II), 07.11.2009 (Annexure R-III), 13.01.2006 (Annexure R-IV) and Notification dated 23.07.2015 (Annexure R-V) creating, sanctioning the perks and emoluments payable, besides, making appointments of respondents No.7 to 10 as Chief Parliamentary Secretaries

are in fact merely an executive fiat. In Rai Sahib Ram Jawaya Kapoor's case (supra), the Supreme Court said that the powers of the State Executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. However, Article 162 nor the decisions of the Supreme Court go so far to hold that the State's power can be exercised in derogation of a law. As such there must be a law and a statutory provision on the basis of which such appointments to the posts of Chief Parliamentary Secretaries can be said to be valid and upheld.

Sh. Manoj Bajaj, Advocate appearing for the private respondents has referred to the cases of Express Hotels (P) Ltd. v. State of Gujarat (1989) 3 SCC 677 and Elel Hotels and Investments Ltd. and others v. Union of India, (1989) 3 SCC 698 to contend that Entries in Legislative List should be most widely and liberally construed so as to include ancillary and subsidiary matters. In Express Hotels (P) Ltd. (supra), it was contended that the taxation entry in Entry 62 of List II providing for taxes on “luxuries” contemplates, and takes within its sweep, a tax on goods and articles in their aspect and character as luxuries and does not include “services” or “activities”. The levy of services for lodging provided at the hotels, is, therefore, beyond the scope of Entry 62 List II. Rejecting the contention the Supreme Court held, that luxury connotes extravagance or indulgence, as distinguished from the needs and necessities of life. The concept of tax on “luxuries” in Entry 62, List II cannot be limited merely to tax things tangible and corporeal in their aspect as “luxuries”. These were

merely illustrative of the concept. The entry encompasses all the manifestations or emanations and comprehends the element of extravagance or indulgence that differentiate “luxury” from “necessity”. There can be elements of extravagance or indulgence in the quality of services and activities.

In Elel Hotels case (supra), the petitioners' contended that in pith and substance the law is one imposing a tax on luxuries provided in hotels; therefore, the law was one under Entry 62 List II of the 7th Schedule and outside the power. Rejecting the contention, it was held that the word “income” is of elastic import. In understanding the scope and amplitude of the expression “income” in Entry 82 List I any meaning which fails to accord with the plenitude of the concept of “income” in all its width and comprehensiveness is to be avoided. The expression in Entry 82 List I cannot be subjected, by implication, to any restriction by the way in which the term might have been deployed in a fiscal statute. A particular statute enacted under the entry, might, as a matter of fiscal policy, seek to tax some species of income alone. The definition would, therefore, be limited to the consideration of fiscal policy of a particular statute. But the expression “income” in the Legislative Entry has always been understood in a wide and comprehensive connotation to embrace within it every kind of receipt or gain either of a capital nature or of a revenue nature. The “taxable receipts” as defined in the statute cannot be held to fall outside such as wider connotation of “income” in the wider constitutional meaning and sense of the terms as understood in Entry 82 List I.

There is no dispute to the proposition that entries in the legislative list are to be widely and liberally construed; however, these cannot be extended to include the appointments of Chief Parliamentary Secretaries, who are appointed from amongst the elected Members of the Legislative Assembly, with the Secretarial staff of the House which even otherwise would be inappropriate and reducing their status of elected members of the House. Therefore, contention of Sh. Bajaj, Advocate is devoid of any merit.

Shri Bajaj has further made a reference to the case Pashupati Nath Sukul v. Nem Chandra Jain and others, (1984) 2 SCC 404. In the said case, two questions arose for consideration of Hon'ble the Supreme Court, i.e. whether the Secretary of a State Legislative Assembly is not qualified to be appointed as the Returning Officer at an election held to fill a seat in the Rajya Sabha, and whether a person elected as a member of a Legislative Assembly but who has not made and subscribed the prescribed oath or affirmation as required by Article 188 of the Constitution can validly propose a person as a candidate at an election held for filling a seat in the Rajya Sabha.

The appellant - Pashupati Nath Sukul and the respondent No. 1 - Nem Chandra Jain, in the said case i.e. Pashupati Nath Sukul v. Nem Chandra Jain and others (supra), were nominated as candidates for the Rajya Sabha election. At the time of scrutiny, respondent No. 1 therein filed objections to the nomination of the appellant raising two grounds, i.e. the appellant was disqualified as he was a government servant and that the proposer of the candidature of the appellant was not qualified to propose

his candidature as he had not yet taken the oath as required by Article 188 of the Constitution. The appellant pleaded that he had retired voluntarily from Government service and he was not disqualified for being chosen as a member of the Rajya Sabha, besides, the proposer of his candidature was an elected member of the Legislative Assembly who was competent to make the proposal even though he had not taken the oath as provided in Article 188 of the Constitution. The objections of respondent No. 1 were overruled and nominations of both the appellant and respondent No. 1 were accepted by the Returning Officer. At the poll, the appellant secured 325 votes and respondent No. 1 got 41 votes. The appellant was declared elected as member of the Rajya Sabha. Aggrieved by the result of the election, respondent No. 1 filed an election petition on various grounds including that the Secretary of the Legislative Assembly was neither an officer of the Government nor of a local authority, he could not be appointed as a Returning Officer under Section 21 of the Representation of the People Act, 1951 and that as the proposer of the nomination paper of the appellant had not made or subscribed the oath or affirmation as required by Article 188 of the Constitution on the date of the nomination, there was improper acceptance of the nomination of the appellant.

The contention of respondent No. 1 which had been accepted by the High Court was that the Secretary of the Legislative Assembly being not an officer of the Government or of a local authority he was not qualified to be appointed as the Returning Officer. The argument was that “Government” in the expression “an officer of the Government” used in

Section 21 of the Representation of the People Act means the Executive only and an officer of the Legislature was not, therefore, an officer of the Government.

The Supreme Court, however, said that all the three organs i.e. the Legislature, the Executive and the Judiciary together constitute the Government at their respective level. A reference was made to the provisions of Article 79, Article 53 (1) and the provisions relating to appointment of Judges of the Supreme Court under Article 124 (2) and issuance of an order removing a Judge under Article 124 (4) of the Constitution, of course, subject to the limitations contained therein. Besides, at the State level also, the position was analogous to the position at the level of Union. A study of the provisions showed that there was no watertight compartment between the three major organs of the State. The Comptroller Auditor General of India though is assigned an independent status is an officer under the Government (See: Gurugobinda Basu v. Sankari Prasad Ghosal, AIR 1964 SC 254). The Judges of the Supreme Court and the High Court are not servants of Government but hold a Constitutional office [vide Union of India v. Sankal Chand Himatlal Sheth, (1977) 4 SCC 193 and Hargovind Pant v. Dr. Raghukul Tilak, (1979) 3 SCC 458] but the Comptroller and Auditor General of India and the Judges of the Supreme Court and of High Court are not eligible to contest election to Parliament and the State Legislature in view of Article 102 (1) (a) and Article 191 (1) (a) of the Constitution, as the case may be, because they are serving in connection with the affairs of the Union and are, therefore,

holding offices of profit under the Central Government. The position of a person who works as an officer of the Legislature of a State was also the same. Even though he belongs under Article 187 of the Constitution to the staff of the State Legislature, he is still an officer of Government in the broad sense in which the expression “Government” is used in Article 102 (1) (a) and Article 191 (1) (a) of the Constitution. It was held that if the expression “Government” used here is construed as meaning the Executive Government only, then it would defeat the very purpose of these provisions of the Constitution. Similarly he has to be treated as an officer of the Government for the purposes of Section 21 of the Representation of the People Act, 1951 and also qualified for being appointed as Returning Officer for an election held under the said Act. It was said that it is not disputed that after the commencement of the Constitution, the Secretaries of the State Legislatures almost as a matter of rule were being appointed as Returning Officers for election to the Rajya Sabha and for election to the Legislative Councils of States, and Parliament has not thought it fit to amend suitably Section 21 of the Representation of the People Act, 1951 expressly including the officers of the State Legislatures amongst the persons qualified to be appointed as Returning Officers even though it had amended that section once by including officers of local authorities.

The ratio of the said judgment as pressed by Shri Bajaj in fact is quite out of context inasmuch as the said case relates to the question whether the Secretary of the Legislative Assembly is a Government servant and, therefore, eligible and qualified to be appointed as a Returning Officer

for the Rajya Sabha election. The Secretary of the Legislative Assembly is not an elected member of the House or the Legislative Assembly and is normally an appointee under Article 187 (2) of the Constitution and is part of the secretarial staff of the House. Therefore, the same has no relation whatsoever to the appointment of Chief Parliamentary Secretaries which is in issue in the present petition and they are admittedly appointed from amongst the MLAs of the House.

The other judgment cited by Shri Bajaj is a Full Bench judgment of this Court in Kanwal Parkash etc. v. The State of Punjab, 1977 (1) ILR (P&H) 40 (Full Bench) wherein it was held that reservation of posts for members of the Scheduled Castes can be made by an executive order and it is not necessary for the State to introduce legislative measures.

There is no dispute to the said proposition. In the case of providing for reservations as contemplated by Article 15 (4) i.e. for making any special provision by the State for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes and Article 16 (4) of the Constitution i.e. providing for reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State, are not adequately represented in the services under the State. Insofar as providing for reservations by instructions is concerned, Hon'ble the Supreme Court in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217⁶ has held that reservations can be provided by the Parliament, State Legislatures, statutory rules as well as by way of executive instructions issued by the Central Government and the

⁶ Para 392; (page 487 of SCC)

State Governments from time to time. It was said that the executive instructions can be issued only when there are no statutory provisions on the subject. Executive instructions can also be issued to supplement the statutory provisions when those provisions were silent on the subject of reservation. These propositions of law were unexceptionable and were reiterated. It was, however, made clear that any executive instructions issued under Article 16 (4), 73 or 162 providing reservations which goes contrary to the statutory provisions or the Rules under Article 309 or any other statutory Rules, shall not be operated to the extent it is contrary to the statutory provisions/rules.

The Full Bench judgment of this Court in Kanwal Parkash etc. v. The State of Punjab (supra), referred to by Shri Bajaj, providing for reservations by instructions, therefore, would not cover the field of providing for creation of posts of Chief Parliamentary Secretaries in the Legislative Assembly of the State unless the State has the power to legislate on the subject and make laws as contemplated by Article 162 of the Constitution. The executive power of a State, in terms of Article 162, is to extend to matters with respect to which the Legislature of the State has the power to make laws. There has to be a legislative power in the State to make laws for appointment to the post Chief Parliamentary Secretaries. The extent of legislative power in the context of Article 162 for creation of posts of Chief Parliamentary Secretaries and appointment thereto has been delved upon at length by a Division Bench of this Court in Jagmohan Singh Bhatti v. Union of India (supra). It was held therein that the Governor of

the State or the legislature has no competence or legislative sanction to frame rules regulating the conditions of appointment and services of Chief Parliamentary Secretaries and Parliamentary Secretaries for their functioning within the House of the State Assembly. Such posts it was held are not part of regular services of the State under the executive forming part of the bodies involved in the governance of the State.

The question whether the State has the power to create Parliamentary Secretaries and power of conferring the status of Minister of Cabinet rank upon the appointee was considered by a Division Bench of the Bombay High Court in Aires Rodrigues v. State of Goa, 2001 (sup.) BCR 16 : (2009) 111 Bom. L.R. 737. It was held that Article 162 permits the executive to exercise powers on the matters on which legislature could legislate. This wide power carries with itself an important restriction. Powers under this Article can be exercised subject to the provisions of the Constitution and law framed by the Union shall take precedence. The Legislature of the State is vested with wide powers in regard to regulation of the recruitment and conditions of service of person appointed to public service and post in connection with the affairs of the State. Under proviso to Article 309, the Governor would be competent to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rule so made shall have effect subject to the provisions of any such Act. Thus, the State exercises its executive powers under this Article till proper legislation is

framed by the competent Legislature. The purpose of appointing 'Parliamentary Secretaries' was examined. It was observed that there was no regular cadre carrying this nomenclature originating from any statute or deriving authority from the Constitution of India. In other words, they were not part of the regular State services nor Executive authorities forming part of the bodies involved in Governance of the State. Normally and as was even conceded in the reply affidavit in the said case was that their functions and duties were to assist the Minister with whom they were working. They were given all privileges and perks of a Minister. Their staff was equivalent to that of a Minister. It could not be said that they did not have access to the Government records and Government files. Their main role, as it appeared from the record before Hon'ble the High Court was to participate in Government functioning, may be with some limitations but they were no way outsiders to the Government functioning, its records and interaction with the public. The distinction between these two was primarily marked with their nomenclature. One was called a regular Minister while other was called 'Parliamentary Secretary'. Which is and what is the main line of distinction between these two public officers is a question left to anybody's imagination and in any case, the record reflected nothing. Viewed from the normal conduct of the Government, these appointments, it was said, were primarily made with the purpose of accommodating an elected member who could not be included in the regular Cabinet for one reason or the other and primarily for the limitation contained in Article 164 (1A) of the Constitution. They were given the status, functions and privileges of a

Minister though without the title of the Minister. The situation created as a result of this exercise of power did appear to be paradoxical as, in fact, 'Parliamentary Secretary' carried all that a Minister did except the name. 'Minister personally' is de jure Minister while the Parliamentary Secretary is Minister de facto who exercises all such authority, power, perks, status and privileges of Minister.

The action in the appointment of Parliamentary Secretaries, it was said, was unsupported by reasoning and had no record to show the need and necessity for taking such a decision would tilt the law in favour of the action being termed as arbitrary. There was no reference to the source of power, no explanation for the undue haste in making appointments and administering oath of office. The motive to appoint Respondent Nos.2 to 4 as Parliamentary Secretaries in the rank and status of Cabinet Ministers was merely an attempt to create political balance by accommodating the elected members. Lack of any reasoning further supported by the fact that it was not even considered appropriate to spell out the duty and function of the persons appointed to such high public office in the State before hand and granting them rank and status of Cabinet Ministers, was sufficiently suggestive of unjustifiable motive on the part of the authorities concerned and it entirely defeated the very purpose even if it is assumed that such a power of appointment and administering oath indeed vested in the Chief Minister.

The Hon'ble Calcutta High Court also in the case, Vishak
Bhattacharya v. State of West Bengal and others, W.P. No. 7326 (W) of

2013, decided on 01.06.2015, had the occasion to consider the scope of Parliamentary Secretaries appointed for the West Bengal Legislative Assembly. It was held that the Parliamentary Secretaries could not be equated with that of service of persons serving the Union or the State. Article 309 authorizes the Legislature to regulate the recruitment and conditions of persons appointed in connection with the affairs of the Union or State as the case may be. These appointments were regulated by rules with reference to recruitment and other conditions of service. It would be inappropriate to equate the services of Parliamentary Secretaries with that of the services of persons serving the Union or a State with reference to public service i.e., in connection with the affairs of the Union or the State. Therefore, there was no justification for the State to rely upon Article 309 so far as the controversy was concerned before the High Court. The powers defined under Article 162, it was said no doubt give/vest executive powers to the State but it also defines or qualifies the executive powers of the State, i.e., to what extent it can be exercised since it is subject to the provisions of the Constitution and proviso to Article 162.

In the circumstances, it is to be noticed that a Division Bench of Hon'ble the Himachal High Court in *Citizen Rights Protection Forum v. Union of India and others* (supra) held that there is no such post of Chief Parliamentary Secretaries or Parliamentary Secretaries nor any authority with the Chief Minister to make any such appointments or to administer oath under any provisions or under any Act or the Constitution and neither is there any statutory constitutional provision or any executive instructions

or any subordinate legislation under which the State Government may make such appointments. A Division Bench of Hon'ble the Bombay High Court in Aires Rodrigues v. State of Goa (supra) also held that Parliamentary Secretary is a Minister de facto who exercises all such authority, power, perks, status and privileges of a Minister. Besides, there was no data to support the creation of these posts or necessity thereof and the action was violative of Article 164 (1A) of the Constitution. A Division Bench of Hon'ble the Calcutta High Court in Vishak Bhattacharya v. State of West Bengal and others (supra) held that the Parliamentary Secretaries could not be equated with that of service of persons serving the Union or the State. Besides, it would be inappropriate to equate the services of Parliamentary Secretaries with that of the services of persons serving the Union or a State with reference to public service i.e., in connection with the affairs of the Union or the State. The powers defined under Article 162 also, it was said no doubt give/vest executive powers to the State but it also defines or qualifies the executive powers of the State, i.e., to what extent it can be exercised since it is subject to the provisions of the Constitution and proviso to Article 162. Besides, a Division Bench of this Court in Jagmohan Singh Bhatti v. State of Punjab (supra) held that the Parliamentary Secretaries though the State had taken the stand were not Ministers but in fact they performed functions almost like Ministers; besides, they had perks and facilities equivalent that of Ministers. It was said that the appointment of Chief Parliamentary Secretaries was contrary to the constitutional intent of limiting the number of Ministers or the size of

the Cabinet. The appointments as made in the said case were held to be in fact a roundabout way of by passing the constitutional mandate of Article 164 (1A) of the Constitution and, therefore, had to be invalidated.

The present in fact is a case where there is not merely an absence of legislative sanction to the executive action of the State but there is an implied limitation on its executive power in regard to the appointments of respondents No.7 to 10 as Chief Parliamentary Secretaries. Besides, the respondents despite their sincere efforts have not been able to show any legislative sanction so as to uphold the validity of such appointments of Chief Parliamentary Secretaries.

The next question that requires consideration is whether the posts of Chief Parliamentary Secretaries are akin and similar to that of Ministers so as to include them for counting the size of Ministers in the Legislative Assemblies and thereby infringes the Constitutional mandate of restricting the size of Ministers to fifteen per cent of the total strength of the house as provided for by Article 164 (1A) of the Constitution.

As has already been noticed above, no statutory or legislative sanction has been shown by the respondents for the creation of the post of the Chief Parliamentary Secretaries leave alone making appointments against them. The posts of Chief Parliamentary Secretaries were created vide order dated 13.01.2006 (Annexure R-I) and sanction to create one post of Chief Parliamentary Secretary and seven posts of Parliamentary Secretaries was accorded vide order dated 05.09.2007 (Annexure R-VII). However, no statutory provision is mentioned for the creation of the said

posts as is normally done. The executive orders that are passed normally show and depict the statutory provisions in exercise of which these are passed. The legislative sanction even if it is not mentioned would not *per se* invalidate an order that has been passed if it is shown that such an order could be passed under a statutory provision. However, none has been shown. The ones on which reliance has been placed are in fact of no significance, besides, also being of no consequence.

In Citizen Rights Protection Forum v. Union of India and others (supra)⁷, Hon'ble the Himachal Pradesh High Court held that whatever may be the function of the Chief Parliamentary Secretary, they cannot be identical, similar or akin to a Minister. The Chief Parliamentary Secretary is not a Minister and cannot perform the function of a Minister either from the touchstone of Article 164 of the Constitution or, from the standpoint of Article 166, particularly Clause 2 thereof and responsibilities cannot be assigned to a Chief Parliamentary Secretary which was in the nature of responsibilities to be discharged by a Minister. However, later the same Division Bench of Hon'ble the Himachal High Court in Citizen Rights Protection Forum v. Union of India and others (supra)⁸ held that there is no such post of Chief Parliamentary Secretaries or Parliamentary Secretaries nor any authority with the Chief Minister to make any such appointments or to administer oath under any provisions or under any Act or the Constitution and neither there is any statutory constitutional provision or any executive instructions or any subordinate legislation under which the State Government may make such appointments.

⁷ CWP No.506 of 2004, decided on 06.12.2004.

⁸ 2006 (1) Service Cases Today 514.

The question whether Chief Parliamentary Secretaries are akin to that of Ministers was also considered by a Division Bench of this Court in Jagmohan Singh Bhatti v. Union of India (supra)⁹. The State of Punjab in the said case, took the stand that the Chief Parliamentary Secretaries are not Ministers. The State of Haryana in the present case has also taken the same stand. However, in Jagmohan Singh Bhatti's case (supra) it was noticed that in fact they perform the functions almost like Ministers; besides, they have perks and facilities equivalent to that of Ministers.

A reference was made to the case, State (Delhi Admn.) v. V.C. Shukla, AIR 1980 SC 1382 (at page 1410) wherein it was observed¹⁰ that O.Hood Phillips in; 'Constitutional And Administrative Law' (4th Edition p. 312 and 314) defined the hierarchy of Government Departments thus:

“Ministers – At the head of each Department – except the “nonpolitical” Departments, which are not important for present purposes – is the minister, whether he is called Minister or Secretary of State or President of the Board. He is a member of the Government and changes with the Ministry of the day, and he may also be a member of the Cabinet.

Parliamentary Secretaries – Under the minister will be one or more Parliamentary Secretaries, or Parliamentary Under-Secretaries of State if the minister himself is a Secretary of State. As their name implies,

⁹ (2016 – 4) PLR 110 (DB) (P&H).

¹⁰ (in para 67 of the AIR report)

Parliamentary Secretaries are members of one or other of the Houses of Parliament; they are Junior Ministers who change with the Government of the day. They assist their chief in the Parliamentary or political side of his work, as well as in the administration of his Department.....

The detailed administration of the work of a Government Department is carried out by “permanent” civil servants. Although, like Ministers, they are servants of the Crown, civil servants are called “permanent” since their appointment is nonpolitical and in practice lasts during good behaviour, as opposed to Ministers, Parliamentary Secretaries, etc., who are responsible to Parliament and change office with the Government.”

The Chief Parliamentary Secretaries/Parliamentary Secretaries are indeed appointed from amongst the elected members of the Legislative Assembly of the State; they are Junior Ministers who change with the Government of the day. They assist their chief in the parliamentary or political side of his work, as well as in the administration of his department.

Article 164 (1A) of the Constitution and its proviso limits the size of the Ministers in the Legislative Assembly of the House. The said Article 164 (1A) reads as under:-

(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date¹¹ as the President may by public notification appoint.

The said Article 164 (1A) was inserted by Constitution (Ninety-first Amendment) Act, 2003. The Article provides for limiting size of the Ministers in the Legislative Assembly of the House. It is envisaged that the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State. In terms of the proviso, it has been provided that the number of Ministers, including

¹¹ 7th January 2004, vide S.O. 21 (E), dated 7th January 2004.

the Chief Minister, in a State shall not be less than twelve. Further where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date¹¹ as the President may by public notification appoint.

The object and purpose of the Constitution (Ninety-first Amendment) Act, 2003 has been to curtail and downsize the number of Ministers in a House. This object is achieved by the above provisions of Article 164 (1A) by providing that the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State not to exceed fifteen per cent of the total number of members of the Legislative Assembly of that State. Besides, the number of Ministers, including the Chief Minister, in a State is not to be less than twelve and further where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State are to be brought in conformity with the provisions of the said clause within six months from such date as the President may by publication of notification appoint.

¹¹ 7th January 2004, vide S.O. 21 (E), dated 7th January 2004.

Chief Parliamentary Secretaries being akin to and similar to Ministers in the House of the Legislative Assembly, their appointment as such amounts to clear infraction and negation of the Constitution (Ninety first Amendment) Act, 2003. Such appointments are, therefore, contrary to the Constitutional intent of limiting the number of Ministers in a House of Legislative Assembly so as to not to exceed more than fifteen per cent. The appointments of respondents No.7 to 10 are in fact a roundabout way of bypassing the Constitutional mandate as contained in Article 164 (1A) of the Constitution and, therefore, have to be invalidated.

The question whether the petitioner has the *locus standi* to seek invalidation of the appointments of respondents No.7 to 10 as Chief Parliamentary Secretaries in the Haryana Legislative Assembly may be considered. According to the State of Haryana and Chief Minister Haryana (respondents No.4 and 5), the job of the Chief Parliamentary Secretaries is to assist the Chief Minister and other Ministers in public interest in view of the multifarious duties of the Ministers. The said respondents No.4 and 5 have objected to the filing of the petition by the petitioner by stating that the petition does not disclose the violation of any of the petitioner's statutory rights or the statutory obligation/duty of the respondents-State. As such in the absence of such material facts, it is submitted that the petitioner is not competent to invoke the extraordinary writ jurisdiction of this Court under Articles 226/227. It is also submitted that besides the prayer for issuance of a writ of mandamus, the petitioner has also prayed for issuance of writ of *quo warranto* mentioning therein that the Chief

Parliamentary Secretaries are the *de facto* Ministers enjoying the status of Deputy Ministers and has also been allocated portfolios which is in violation of the Constitution (Ninety-first Amendment) Act, 2003 which restricts the total number of Ministers to a maximum of fifteen per cent. It is submitted that the averments made by the petitioner in the petition are misconceived. The Chief Parliamentary Secretaries, it is stated, are neither Ministers nor Deputy Ministers as alleged by the petitioner in the present petition and as such, a writ of *quo warranto* is not maintainable.

As has already been noticed and held that the Chief Parliamentary Secretaries are akin to and similar to Ministers. In any case, it is not in dispute that they hold a public post and office. A writ of *quo warranto* can be issued when persons holding public offices lack the eligibility to do so or when their appointments are contrary to or, as in the present case, *de hors* the statutory rules. The jurisdiction to issue a writ of *quo warranto* is conferred on the Constitutional Courts and the High Court is to ensure that public offices are not usurped without legal authority. The concept of *locus standi* to assail such appointments by usurper is softened and relaxed, if not entirely inapplicable. The obligation of the petitioner to file a writ in the nature of a *quo warranto* is to satisfy the Court that the office in question which had been usurped without legal sanctity or authority was a public office.

The orders that have been passed creating the posts of Chief Parliamentary Secretaries and making the appointments against the said posts that were created, certain perks and facilities had also been extended

to the incumbents of the posts and/or offices. It is to be noticed that in terms of order dated 13.01.2006 (Annexure R-I) creating one post of Chief Parliamentary Secretary and seven posts of Parliamentary Secretaries, it has been provided that the incumbent of the said posts would be paid salary at the rate of Rs.12,000/- per month. Sumptuary allowance at the rate of Rs.3000/- per month and office allowance to maintain office in their Constituency/District at the rate of Rs.1000/- per month. They are entitled to use of an official car, the expenses on the maintenance and propulsion of which is borne by the State Government. In lieu thereof, they are entitled to conveyance allowance of Rs.10,000/- per mensem provided that the maintenance and propulsion expense of the State car so used is not to be subject to the limit of Rs.10,000/-. They are also entitled without payment of rent throughout their term of office and for a period of fifteen days immediately thereafter to the use of a house for residence furnished and maintained by the State Govt. or in lieu thereof, are to be paid such allowance as may be prescribed by the State Govt. The House is to include the staff quarters and other building appurtenant thereto and the gardens thereof. Their travelling allowance are to be regulated in accordance with such Rules as may be framed or adopted by the State Government from time to time. Provided that no mileage or travelling allowance is to be chargeable in respect of journey performed in the State car. They would continue to avail the facility of free travel as provided under Section 7 of the Haryana Legislative Assembly (Allowances and Pension of Members) Act, 1975. They are also entitled to avail medical facilities as provided to

MLAs under the Haryana Legislative Assembly (Medical Facilities to Members) Act, 1986 and the Haryana Legislative Assembly (Medical Facilities to Members) Act, 1988. They are also entitled to daily allowance at the rate of Rs.600/- per day while on official tour.

In terms of order dated 03.05.2008 (Annexure R-II), the salary and allowances payable to the incumbents of the post of Chief Parliamentary Secretaries and Parliamentary Secretaries was substituted to the effect that they would be paid salaries at the rate of Rs.20,000/- per month w.e.f. 24.04.2008, sumptuary allowance at the rate of Rs.5000/- w.e.f. 16.4.2008 and office allowance to maintain office in his/her constituency/district at the rate of Rs.2000/- per month w.e.f. 24.04.2008. They would also be entitled to draw daily allowance at the rate of Rs.1000/- per month w.e.f. 24.04.2008.

In terms of order dated 13.01.2006 (Annexure R-IV), the Governor of Haryana was pleased to order that appointments to the posts of Chief Parliamentary Secretaries and Parliamentary Secretaries would be made from amongst the sitting MLAs of the Haryana Vidhan Sabha; besides, the Chief Minister was empowered to make appointments to the posts of Chief Parliamentary Secretaries created vide order dated 13.01.2006 (Annexure R-I). It is further mentioned that the sitting MLAs appointed as such would be administered the oath/affirmation by the Chief Minister and would hold office at the pleasure of the Government. In terms of order dated 01.10.2013 the salary payable to be incumbents of the post of Chief Parliamentary Secretaries is to be deemed to have been substituted

in the manner that they would be paid salary at the rate of Rs.50,000/- per month w.e.f. 01.10.2013, Sumptuary at the rate of Rs.12,000/- per month and office allowance to maintain office in his constituency/district at the rate of Rs.2000/- w.e.f. 07.09.2010. All the three sums were exclusive of income tax and such tax was to be borne by the State Government. Vide order dated 05.09.2007 (Annexure R-VII), the Governor of Haryana accorded sanction to the creation of one post of Chief Parliamentary Secretaries and seven posts of Parliamentary Secretaries on the terms and conditions as are recorded in the order dated 13.01.2006 (Annexure R-I) which as already noticed has been modified from time to time.

These perks, allowances and facilities have been provided to persons holding public offices without sanctity of law or under the authority of any statutory provisions. Therefore, the petitioner who is an Advocate practising in this Court would have the *locus standi* to seek invalidation of such posts. The petitioner has expressed no personal interest in the cause but states that he is espousing the cause of the general public.

In Rajesh Awasthi v. Nand Lal Jaiswal, (2013) 1 SCC 501 it was held that a citizen can claim a writ of *quo warranto* and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorized to hold the same as per law. It was said that a writ of *quo warranto* would lie when the appointment is made contrary to the statutory provisions.

The judgment of a Division Bench of this Court in Ajaib Singh's case (supra) pressed by the respondents in support of their stand to say that the petitioner has no *locus standi* to file the present petition, in fact does not in any manner disentitle the petitioner to file the Public Interest Litigation. In Ajaib Singh's case (supra) it was said that a petitioner invoking the PIL jurisdiction of a High Court is to specifically disclose his credentials and direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. The expression “specifically disclose his credentials”, it was said must naturally imply that he has to set forth what he does for his living, what public interest he has been espousing, the work done by him in that behalf, the particulars of any matter preferred by him as earlier on which the Court has passed orders etc. It was further said that it can not imply merely writing a sentence that a person is residing in the State, is public spirited and is, thus, filing a PIL.

There is no dispute to said proposition. However, in the present case as already noticed the petitioner is an Advocate of the High Court and he has earlier filed PILs, besides, he has no personal interest in the case and neither have the respondents alleged that he has any personal interest. He has stated that he takes up various causes of general public at large by way of filing and presenting petitions before this Court from time to time. Since the affairs relate to the State of Haryana and its general public and in the interest of the public and public exchequer, therefore, he is entitled to invoke the extra-ordinary writ jurisdiction of this Court by filing and presenting the present petition in the larger public interest.

These averments are supported by an affidavit of the petitioner. Besides, it is at the behest of the petitioner that the appointments of Chief Parliamentary Secretaries in the State of Punjab were invalidated and set aside. He has also filed other Public Interest Litigations. Therefore, it cannot be said that he does not have any *locus standi* to file the present PIL.

In the present case, the appointments of Chief Parliamentary Secretaries have been held to be *de hors* any statutory provisions leave alone being contrary to any statutory provisions. Therefore, these are to be invalidated and quashed. In the said circumstances also, it can not be said that the petitioner does not have the *locus standi* to seek invalidation of such appointments.

For the foregoing reasons, the writ petition is allowed and the appointments of respondents No.7 to 10 as Chief Parliamentary Secretaries are set aside. There shall, however, be no order as to costs.

(S.S. SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

05.07.2017
A.Kaundal/amit

Note: 1. Whether reasoned/speaking : **Yes**
2. Whether reportable : **Yes**