

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7983 of 2017

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Sanjay Kumar son of Ram Chandra Prasad Resident of Village-Tendua Khurd,
Post-Muriar, Police Station-Akorhi Gola, District-Rohtas at Sasaram.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department, of Health, Govt. of Bihar, Patna.
3. The Director-in-Chief, Health Services, Govt. of Bihar, Patna
4. The Civil Surgeon-Cum-Chief Medical Officer, Kaimur at Bhabua.
5. Dr. Ashok Kumar Singh Son of Mahendra Shankar Singh, resident of Ward No.-9 Mohania, Police Station and Block-Mohania, District-Kaimur at Bhabua at Present Posted as Deputy Superintendent Sub-Divisional Hospital, Mohania District-Kaimur at Bhabua.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Jitendra Kumar Roy
For the Respondent/s : Mr. Sunil Kr. Mandal, SC-3
Mr. Bipin Kumar, A.C. to SC-3
Mrs. Neelam Kumari

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
Date: 29-06-2018

The present writ petition has been filed for issuance of a writ of quo warranto for removal of the respondent no. 5 from the post of Deputy Superintendent, Sub-Division Hospital, Mohania on the ground that as per the government police decision any posting in the home district is barred but nonetheless the respondent no. 5, whose home district is Kaimur, has been posted at Mohania illegally. The petitioner is a social worker, as stated in paragraph-3 of the writ petition and as such has filed the present writ petition in public interest to set aside the said irregularity. The petitioner is resident of village Tendua under the district of Rohtas at Sasaram.

The learned counsel for the respondents has raised a



preliminary objection regarding maintainability of the present writ petition at the behest of the petitioner herein on the ground that petitions in public interest are not entertainable in service matters and moreover the petitioner has no locus standi to prefer the instant writ petition.

In reply, the learned counsel for the petitioner has submitted, by relying upon the judgments rendered by the Hon'ble Apex Court, which are being discussed herein below that the present writ petition is fully maintainable. The first judgment referred to by the learned counsel for the petitioner is the one reported in **AIR 1965 Supreme Court 491 (The University of Mysore vs. C.D. Govinda Rao & Anr.)**; paragraph no. 6 and 7 whereof are reproduced herein below:-

"6. *The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.*

7. *As Halsbury has observed^{*}:*

** Halsbury's Laws of England, 3rd Ed. Vol., II, P. 145*

"An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined." Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action



in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

It is apparent from the aforesaid judgment that the basis for issuance of a writ of quo warranto is to ascertain as to whether the appointment of the alleged usurper to a public office has been made in accordance with law or not.

The next judgment is the judgment reported in **(2000) 2 SCC 465 (Railway Board v. Chandrima Das)**; paragraph no. 15 whereof is reproduced herein below:-

"15. *The existence of a legal right, no doubt, is the foundation for a petition under Article 226 and a bare interest, maybe of a minimum nature, may give locus standi to a person to file a writ petition, but the concept of "locus standi" has undergone a sea change, as we shall presently notice. In Satyanarayana Sinha (Dr) v. S. Lal & Co. (P) Ltd.²² it was held that the foundation for exercising jurisdiction under Article 32 or Article 226 is ordinarily the personal or individual right of the petitioner himself. In writs like habeas corpus and quo warranto, the rule has been relaxed and modified."*



The said judgment deals with locus standi to file writ petitions for issuance of a writ in the nature of habeas corpus and quo warranto. The said judgment is not an authority on the main issue under consideration in the present writ petition at the moment, hence reliance upon the same by the learned counsel for the petitioner is misplaced. The other judgment relied upon by the learned counsel for the petitioner is the one reported in **(2009)8 SCC 273 (Mahesh Chandra Gupta v. Union of India)**, paragraph 71 whereof is reproduced herein below:-

71. *"The overarching constitutional justification for judicial review, the vindication of the rule of law, remains constant, but mechanisms for giving effect to that justification vary."*

Mark Elliott

"Judicial review must ultimately be justified by constitutional principle."

Jowett

In the present case, we are concerned with the mechanism for giving effect to the constitutional justification for judicial review. As stated above, "eligibility" is a matter of fact whereas "suitability" is a matter of opinion. In cases involving lack of "eligibility" writ of quo warranto would certainly lie. One reason being that "eligibility" is not a matter of subjectivity. However, "suitability" or "fitness" of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion."

Again the said judgment is not an authority on the issue under consideration in the present writ petition, hence the reliance on the said judgment is again misplaced.

The learned counsel for the petitioner has next relied upon a judgment reported in **(2013)1 SCC 501 (Rajesh Awasthi v. Nand Lal**



Jaiswal), paragraph no. 31 whereof is reproduced herein below:-

"31. From the aforesaid pronouncements it is graphically clear 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 authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in *Kashinath G. Jalmi v. Speaker*."

The proposition, put forth by the learned counsel for the petitioner, relying on the aforesaid judgment is not in dispute but at this juncture it would be relevant to reproduce paragraph nos. 29 and 30 of the aforesaid judgment, as well, herein below:-

"29. [In B.R. Kapur v. State of Tamil Nadu and another](#)[1], in the concurring opinion Brijesh Kumar,J., while dealing with the concept of writ of quo warranto, has referred to a passage from *Words and Phrases Permanent Edition, Volume 35, at page 647, which is reproduced below: -*

"The writ of "quo warranto" is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf. Mc. Kittrick v. Murphy, 148 SW 2d 527, 529, 530, 347 Mo. 484.

Information in nature of "quo warranto" does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State Ex. Inf. Walsh v. Thactcher, 102 SW 2d 937, 938, 340 Mo.

30. [In The University of Mysore v. C.D. Govinda Rao and another](#)[2], while dealing with the nature of the writ of quo warranto, Gajendragadkar,J. has



stated thus: -

"Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

From the aforesaid paragraphs of the judgment rendered in the case of Rajesh Awasthi (supra), it is clear that the procedure of quo warranto confers jurisdiction upon an authority on the judiciary to control executive action in the matter of making appointment to public office against the relevant statutory provisions. The petitioner has also referred to a judgment reported in **(2013)5 SCC 1** (*State of Punjab v. Salil Sabhlok*); paragraph no. 88 whereof is reproduced herein



below:-

"88. *The significance of these decisions is that they prohibit a PIL in a service matter, except for the purposes of a writ of quo warranto. However, as I have concluded, the appointment of the Chairperson in a Public Service Commission does not fall in the category of a service matter. Therefore, a PIL for a writ of quo warranto in respect of an appointment to a constitutional position would not be barred on the basis of the judgments rendered by this Court and mentioned above."*

Though the learned counsel for the petitioner has relied upon paragraph no. 88 of the aforesaid judgment rendered in the case of Salil Sabhlok (supra), I find it relevant to reproduce herein below, paragraph nos. 71, 72, 73, 74, 75, 76, 77, 78, 85, 86 and 87 of the aforesaid judgment, as well, herein below:-

"71. *A couple of years ago, in Hari Bansh Lal v. Sahodar Prasad Mahto¹⁶ this Court considered the position at law and, after referring to several  ⁴⁵ earlier decisions, including R.K. Jain v. Union of India¹², Mor Modern Coop. Transport Society v. Govt. of Haryana³⁶, High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat³⁷ and B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.²⁶ held that: (Hari Bansh Lal case¹⁶, SCC p. 662, para 19)*

"19. ... even for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules."

72. *This principle was framed positively in Mahesh Chandra Gupta v. Union of India³⁸ wherein it was said: (SCC p. 305, para 71)*

"71. ... In cases involving lack of 'eligibility' writ of quo warranto would certainly lie."

(ii) Is it a service matter?

73. *Is the appointment of a person to a constitutional post a "service matter"? The expression "service matter" is generic in nature and has been specifically defined (as far as I am aware) only in the Administrative Tribunals Act, 1985. Section 3(q)*



of the Administrative Tribunals Act is relevant in this regard and it reads as follows:

"3. Definitions.—*In this Act, unless the context otherwise requires—*

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- (q) **'service matters'**, *in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects—*
- (i) *remuneration (including allowances), pension and other retirement benefits;*
 - (ii) *tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;*
 - (iii) *leave of any kind;*
 - (iv) *disciplinary matters; or*
 - (v) *any other matter whatsoever;"*

74. *It cannot be said that the Chairperson of the Public Service Commission holds a post in connection with the affairs of the Union or the State. He or she is not a government servant, in the sense of there being a master and servant relationship between the Union or the State and the Chairperson. In view of the constitutional provisions pertaining to the security of tenure and the removal procedure of the Chairperson and Members of the Public Service Commission, it can only be concluded that he or she holds a constitutional post. In this context, in Reference under Article 317(1) of the Constitution of India, In re³⁹, it was held: (SCC p. 269, para 9)*

"9. *The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of a Member of the Commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by Articles 315 to 323 of Chapter II of Part XIV of the Constitution."*

75. *Similarly, in Bihar Public Service Commission v. Shiv Jatan Thakur⁴⁰, the Public Service Commission is referred to as a "constitutional institution" and its Chairperson and Members as "constitutional functionaries".*

76. *In Ram Ashray Yadav, In re², a reference was made to the "constitutional duties and obligations" of the*



Public Service Commissions. It was also observed that the Chairperson of the Public Service Commission is in the position of a constitutional trustee.

77. *In Ram Kumar Kashyap v. Union of India³, the obligations of the Public Service Commission were referred to as "constitutional obligations" and on a review of the case law, it was held that: (SCC p. 383, para 16)*

"16. ... since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions."

78. *Finally, in Mehar Singh Saini, In re⁴, a distinction was made between service under the Government of India or a State Government and a constitutional body like a Public Service Commission. It was observed that: (SCC p. 599, para 4)*

"4. A clear distinction has been drawn by the Framers [of our Constitution] between service under the Centre or the States and services in the institutions which are creations of the Constitution itself. Article 315 of the Constitution commands that there shall be a Union Public Service Commission for the Centre and State Public Service Commissions for the respective States. This is not, in any manner, linked with the All India Services contemplated under Article 312 of the Constitution to which, in fact, the selections are to be made by the Commission. The fact that the Constitution itself has not introduced any element of interdependence between the two, undoubtedly, points to the cause of Commission being free from any influence or limitation."

 ⁴⁷ *A little later in the judgment, the Public Service Commission is described as a "constitutional body".*

85. *What then is the remedy to a person aggrieved by an appointment to a constitutional position like the Chairperson of a Public Service Commission?*

86. *About twenty years ago, in a case relating to the appointment of the President of a statutory tribunal, this Court held in R.K. Jain v. Union of India¹² that an aggrieved person—a "non-appointee"—would alone have the  ⁴⁸ locus standi to challenge the offending action. A third party could seek a remedy only through a public law declaration. This is what was held: (SCC p. 174, para 74)*



"74. ... In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person."

This view was reiterated in B. Srinivasa Reddy²⁶. Therefore, assuming the appointment of the Chairperson of a Public Service Commission is a "service matter", a third party and a complete stranger such as the writ petitioner cannot approach an Administrative Tribunal to challenge the appointment of Mr Dhanda as Chairperson of the Punjab Public Service Commission.

87. *However, as an aggrieved person he or she does have a public law remedy. But in a service matter the only available remedy is to ask for a writ of quo warranto. This is the opinion expressed by this Court in several cases. One of the more recent decisions in this context is Hari Bansh Lal¹⁶ wherein it was held that: (SCC p. 661, para 15)*

"15. ... except for a writ of quo warranto, public interest litigation is not maintainable in service matters."

This view was referred to (and not disagreed with) in Girjesh Shrivastava v. State of M.P.¹⁷ after referring to and relying on Duryodhan Sahu v. Jitendra Kumar Mishra¹³, B. Srinivasa Reddy²⁶, Dattaraj Nathuji Thaware v. State of Maharashtra¹⁴, Ashok Kumar Pandey v. State of W.B.¹⁵ and Hari Bansh Lal¹⁶."

The aforesaid dictum of the Hon'ble Apex Court, as is apparent from the aforesaid paragraphs, reproduced herein above, of the judgment rendered in the case of Salil Sabhlok (supra) is that firstly for issuance of a writ of quo warrant, the High Court has to satisfy that the appointment is contrary to the statutory rule and secondly the cases of government servant is subject to the special provision governed by the law of master and servant.

The last judgment relied upon by the learned counsel for the



petitioner is one reported in (2014) 1 SCC 161 (*Central Electricity Supply Utility of Odisha v. Dhobei Sahoo*), paragraph no. 22 whereof is reproduced herein below:-

"22. While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a relator to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds."

The aforesaid judgment is of no use to the petitioner herein inasmuch as the issue of delay and laches does not arise for consideration in the present case.

It would be pertinent to reproduce paragraph no. 21 of the aforesaid judgment rendered by the Hon'ble Apex Court in the case of **Dhobei Sahoo (supra)** herein below:-

"21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."



The aforesaid paragraph no. 21 clearly shows the dictum of the judgment of the Hon'ble Supreme Court to the effect that the jurisdiction of the High Court, while issuing a writ of quo warranto is a limited one and can be issued only when the appointment of the person holding the public office is contrary to the statutory rules and such person lacks the eligibility criteria.

I have heard the learned counsel for the parties and gone through the materials on record as also the judgments referred to by the learned counsel for the petitioner. However, before proceeding further it would be appropriate to delve on the relevant judgments rendered by the Hon'ble Apex Court relating to the issue under consideration in the present proceedings. First of all, I would like to refer to a judgment reported in **(2001) 7 SCC 231 (B.R. Kapur vs. State of Tamilnadu)**, paragraph no. 80 whereof is reproduced herein below:-

"80. In the same volume of *Words and Phrases*, Permanent Edn., at p. 647 we find as follows:

"The writ of 'quo warranto' is not a substitute for mandamus or injunction *nor for an appeal or writ of error*, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. *State ex inf. McKittrick v. Murphy*⁶⁶.

Information in the nature of 'quo warranto' does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, *but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State ex inf. Walsh v.*



Thatcher⁶⁷."

The next judgment relevant for the present purposes is the one reported in **(2006) 11 SCC 731 (B. Srinivasa Reddi vs. Karnataka Urban Water Supply and Drainage Board Employees' Association & ors.)**, paragraph nos. 43, 44, 51, 52, 53, 54, **55** and 56 whereof are reproduced herein below:-

- 43.** *Whether a writ of quo warranto lies to challenge an appointment made "until further orders" on the ground that it is not a regular appointment? Whether the High Court failed to follow the settled law that a writ of quo warranto cannot be issued unless there is a clear violation of law? The order appointing the appellant clearly stated that the appointment is until further orders. The terms and conditions of appointment made it clear that the appointment is temporary and is until further orders. In such a situation, the High Court, in our view, erred in law in issuing a writ of quo warranto the rights under Article 226 which can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus.*
- 44.** *In the instant case, the power to appoint the Managing Director of the Board is vested in the Board under Section 4(2) of the Act. Neither the Act nor the Rules prescribed any mode of appointment or tenure of appointment. When the mode of appointment, tenure of appointment have been left to the discretion of the Government by the Act and the Rules, and the Act makes it ⁷⁵³clear that the Managing Director shall hold office at the pleasure of the Government, the High Court could not have fettered the discretion of the Government by holding that Section 4(2) of the Act does not expressly give the power to the State Government to make ad hoc or contractual appointment. When the Act and the statutory Rules have not prescribed any definite term and any particular mode, the High Court could not have read into the statute a restriction or prohibition that is not expressly prohibited by the Act and the Rules. It is well settled that when the statute does not lay*



down the method of appointment or term of appointment and when the Act specifies that the appointment is one of sure tenure, the appointing authority who has the power to appoint has absolute discretion in the matter and it cannot be said that discretion to appoint does not include the power to appoint on contract basis. An appointment which is temporary remains temporary and does not become permanent with the passage of time. The finding recorded by the learned Single Judge that the appointment is bad for the reason that the appointment which was made on temporary basis has continued for nearly 2 years is wholly contrary to law particularly when the Act and the Rules do not stipulate maximum period of appointment. The High Court, in our view, gravely erred in issuing a writ of quo warranto when there is no clear violation of law in the appointment of the appellant.

- 51.** *It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v. Union of India¹² was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of quo warranto so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post.*
- 52.** *The judgment impugned in this appeal not only exceeds the limit of quo warranto but has not properly appreciated the fact that the writ petition*



filed by the Employees' Union and the President of the Union, Halakatte was absolutely lacking in bona fides. In the instant case, the motive of the second respondent Halakatte is very clear and the Court might in its discretion decline to grant a quo warranto.

53. *This Court in A.N. Shashtri v. State of Punjab¹³ held that the writ of quo warranto should be refused where it is an outcome of malice or ill will. The High Court failed to appreciate that on 18-1-2003 the appellant filed a criminal complaint against the second respondent Halakatte, that cognizance was taken by the criminal court in CC No. 4152 of 2003 by the Jurisdictional  Magistrate on 24-2-2003, process was issued to the second respondent who was enlarged on bail on 12-6-2003 and the trial is in progress. That apart, the second respondent has made successive complaints to the Lokayukta against the appellant which were all held to be baseless and false. This factual background which was not disputed coupled with the fact that the second respondent Halakatte initiated the writ petition as President of the 1st respondent Union, which had ceased to be a registered trade union as early as on 2-11-1992 suppressing the material fact of its registration having been cancelled, making allegations against the appellant which were no more than the contents of the complaints filed by him before the authorities which had been found to be false after thorough investigation by the Karnataka Lokayukta, would unmistakably establish that the writ petition initiated by Respondents 1 and 2 lacked in bona fides and it was the outcome of the malice and ill will the 2nd respondent nurses against the appellant. Having regard to this aspect of the matter, the High Court ought to have dismissed the writ petition on that ground alone and at any event should have refused to issue a quo warranto, which is purely discretionary. It is no doubt true that the strict rules of locus standi are relaxed to an extent in a quo warranto proceedings. Nonetheless an imposter coming before the Court invoking public law remedy at the hands of a constitutional court suppressing material facts has to be dealt with firmly.*

54. *This Court in B. Singh (Dr.) v. Union of India¹⁴ held that only a person who comes to the Court with bona fides and public interest can have locus.*



Coming down heavily on busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, this Court at para 14 of the Report held as under: (SCC p. 373, para 14)

"14. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect."

55. It is useful to refer to *University of Mysore v. C.D. Govinda Rao*¹⁵, SCR at pp. 580-81:

"As Halsbury has observed*:

'An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.'

Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined,



and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not."

56. It is also beneficial to refer to the decision of this Court in *Ghulam Qadir v. Special Tribunal*¹⁶, SCC p. 54, para 38 which reads thus:

"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in  758 some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or



property, he cannot be non-suited on the ground of his not having the locus standi."

Yet another judgment on the subject matter is the one reported in (2010) 9 SCC 655 (*Hari Bansh Lal v. Sahodar Prasad Mahto*); paragraph nos. 11, 12, 13, 14, 16, 18 and 19 are reproduced herein below:-

"11. About maintainability of the public interest litigation in service matters except for a writ of quo warranto, there are a series of decisions of this Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection was not raised and agitated before the High Court. Even otherwise, in view of the fact that the appellant herein was initially appointed and served in the State Electricity Board as a member in terms of Section 5(4) and from among the members of the Board, considering the qualifications specified in sub-section (4), the State Government, after getting a report from the Vigilance Department, appointed him as Chairman of the Board, it is impermissible to claim that the issue cannot be agitated under service jurisprudence.

12. We have already pointed out that the person who approached the High Court by way of a public interest litigation is not a competitor or eligible to be considered as a member or Chairman of the Board but according to him, he is a Vidyut Shramik leader. Either before the High Court or in this Court, he has not placed any material or highlighted in what way he is suitable and eligible for that post.

13. In *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra*¹ a three-Judge Bench of this Court held: (SCC p. 281, para 18)

"18. ... If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated."

In para 21, this Court reiterated as under: (SCC p. 283)

"21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

14. In *Ashok Kumar Pandey v. State of W.B.*² this Court



held thus: (SCC pp. 358-59, para 16)

"16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court ⁶⁶¹ in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra¹ this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

The same principles have been reiterated in the subsequent decisions, namely, B. Singh (Dr.) v. Union of India³, Dattaraj Nathuji Thaware v. State of Maharashtra⁴ and Gurpal Singh v. State of Punjab⁵.

- 16.** *A writ of quo warranto lies only when appointment is contrary to a statutory provision. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat⁶ (three-Judge Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held: (SCC pp. 730-31, paras 22-23)*

"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to



determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India⁷, SCC para 74.)

 662 23. *A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana⁸.)"*

18. *In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.⁹ this Court held: (SCC p. 754, para 49)*

"49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules."

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

Even by way of repetition, it would be apt to reproduce paragraph no. 21 of the judgment reported in **(2014)1 SCC 161** herein below:-.

"21. From the aforesaid exposition of law it is clear as noontday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for



such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."

From a conjunct reading of the law laid down by the Hon'ble Apex Court in a catena of decisions as discussed herein above in the preceding paragraphs, it is clear that for issuance of a writ of quo warranto, the High Court has to be satisfied that the appointment is contrary to the statutory rules/provisions. Moreover, a writ of quo warranto, as has been held by the Hon'ble Apex Court in the case of B.R. Kapur (supra), is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed and its purpose is solely to prevent a person to act as such from usurping a power which he does not have. Thus information in the nature of quo warranto does not command performance of official functions and cannot be used for the purpose of dictating or prescribing an official duty.

In the instant case, the petitioner has not alleged that the very initial appointment of the respondent no. 5 is bad or illegal or *de hors* the statutory provisions, on the contrary what has been alleged by the petitioner is that the respondent no. 5 has been posted as Deputy Superintendent of Sub-Divisional Hospital, Mohania contrary to the policy decision of the government. At this juncture it might be stated, though not necessary, that no statutory rules or regulations have been



either shown by the learned counsel for the petitioner or referred to in the writ petition for the purposes of claiming that the respondent no. 5 has been posted at Mohania contrary to the statutory rules/regulations. Therefore, the only conclusion which can be drawn in the present case is that no writ of quo warranto can be issued since the petitioner has not alleged that the appointment of the respondent no. 5 is contrary to the statutory provisions. Merely assailing the transfer of the respondent no. 5 to Mohania cannot stretch the scope and ambit of a writ of quo warranto so as to warrant issuance of such a writ, especially in absence of any challenge to the initial appointment of the petitioner on the ground of the same being contrary to the statutory provisions.

For the reasons mentioned hereinabove as also in view of the law laid down by the Hon’ble Apex Court in a catena of decisions as discussed hereinabove in the preceding paragraphs, I find that not only the present writ petition is not maintainable but the same is bereft of any merit, hence the same is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

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