

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8005 of 2009

Anurag, son of Sri Rajendra Prasad, resident of Mohalla- Bahuar Chaura,
P.O.-G.P.O., P.S.-Civil Line, District- Gaya.

..... Petitioner

Versus

1. The State of Bihar, through Secretary, Department of Energy, State of Bihar.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Patna.
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Patna.
4. The Member (Finance), Bihar State Electricity Board, Vidyut Bhawan, Patna.
5. The Director, Personnel, Bihar State Electricity Board, Vidyut Bhawan, Patna.
6. The Deputy Director of Personnel (Adm.), Bihar Electricity Board, Vidyut Bhawan, Patna.
7. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Patna.
8. Sri Jayjit Ray, Deputy Director of Accounts (HQ), Bihar State Electricity Board, Vidyut Bhawan, Patna.
9. Sri Pradip Manjhi, Deputy Director of Accounts, Bhagalpur Electric Supply Area, Bhikhanpur, Bhagalpur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate Mr. Nilanjan Chatterjee, Advocate
For the State	:	Mr. Syed Iqbal Ahmad, S.C.-20 Mr. Mahendra Prasad Verma, A.C. to S.C.-20
For the Power Holding Company:		Mr. Anand Kumar Ojha, Advocate Mr. Ashok Karn, Advocate
For the Respondent Nos.8 & 9	:	Mr. Y.V. Giri, Senior Advocate Mr. Sanjeet Kumar, Advocate Mr. Raj Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
C.A.V.**

Date : 23-07-2018

Heard learned counsel appearing for the respective parties.



2. In the present case, the petitioner is challenging the action of the respondents in not promoting the petitioner to the post of Deputy Director of Accounts from the post of Accounts Officer, rather granted promotion juniors to the petitioner, namely, Sri Jayjit Ray, respondent no.8 and Pradip Manjhi, respondent no.9, to the post of Deputy Director of Accounts, is direct violation of Articles 14 and 16 of the Constitution of India.

3. In this case, four Interlocutory Applications have been filed vide Interlocutory Application No. 2394 of 2010, thereby the petitioner has sought relief, restraining the Bihar State Electricity Board to grant provisional promotion to the eligible persons and thereby claimed that Resolution no. 17 dated 25.02.2010 be injunctioned. Where-after, another Interlocutory application has been filed vide Interlocutory Application No. 9206 of 2014, in which the prayer is in two parts; first part related to addition and substitution of new respondents on account of creation of five companies to be added as party respondents and another part of the relief of challenging the initial appointment of respondent nos. 8 and 9 and the promotion, sought the relief of *quo-warranto*, having said that appointment is not only illegal statutorily, but also



unconstitutionally. Another Interlocutory Application has been filed vide Interlocutory Application No. 5097 of 2016, wherein prayer has been made for production of records relating to appointment of respondent nos.8 and 9 including the certificates in proof of their academic qualification. Last Interlocutory Application has been filed vide Interlocutory Application No. 1984 of 2018, wherein the prayer has been made for early disposal of the case. From the record, it appears that none of the Interlocutory Applications has been allowed, but all the Interlocutory Applications are to be considered at this final disposal of the case.

4. So far the Interlocutory Application No. 2394 of 2010 is not required to be considered as its purpose has already lost. The Interlocutory Application No. 9206 of 2014 is the only relevant Interlocutory Application which is required to be allowed or rejected, will be considered at later stage.

5. Short and necessary facts, for disposal of this case, are as follows:

6. The erstwhile Bihar State Electricity Board (herein after mentioned as “the Board”) had issued the Employment Notice No. 6 of 1999 dated 20.08.1999 in the daily Hindi



newspaper, namely, Hindustan, for the appointment of Accounts Officer in the pay scale of Rs. 2450 – 4250/- (Annexure 1). The petitioner applied for the post against unreserved category and accordingly he appeared in the written test conducted by the Board on 31.10.1999 and the petitioner was accordingly selected. He was given the appointment letter dated 24.12.1999 (Annexure-2) and was directed to join the said post by 10.01.2000. Accordingly, all the persons who were selected joined the post of Accounts Officer. The Board issued Notification dated 20.07.2005, whereby granted promotion to the post of Deputy Director (Accounts) to several persons including two persons, namely, Sri. Jayjit Ray, respondent no.8 and Mr. Pradip Manjhi, respondent no.9. The petitioner has claimed that his juniors were promoted to the higher post but being the member of Schedule Caste, as at the time of appointment, they have shown their status as member of 'Rajbansi' and 'Sunri' caste respectively, members of those casts have been declared to be Schedule Caste in the West Bengal. At the time of appointment, they have produced the certificate issued by the authority of the State of West Bangal. The Bihar State Electricity Board has issued gradation list on 05.03.2003 (Annexure-6), wherein, the name of the respondent nos. 8 and 9



have been shown to be juniors to the present petitioner, as the petitioner has been shown at serial no. 25 whereas, the name of respondent nos. 8 and 9 are standing at serial nos. 41 and 42 respectively. The petitioner has claimed that he had no knowledge about the caste of respondent nos.8 and 9 and he could know only when the information was given by the Bihar State Electricity Board to one Rajeev Kumar, who had filed the application under the Right to Information Act (hereinafter mentioned as "R.T.I.") in order to know the caste of these respondents, the Bihar State Electricity Board has supplied the desired information vide letter no.422 dated 27.05.2008 (Annexure-7) and letter no.45 dated 23.01.2009 (Annexure-8), reflecting the caste of the respondent nos. 8 and 9 respectively.

7. The basic plea which has been taken that the President in exercise of power under Articles 341 and 342 of the Constitution of India used to issue the Presidential Order for every State, declaring list of Scheduled Castes and Scheduled Tribes including for the State of Bihar, list of Scheduled Caste and Scheduled Tribes were issued, made it effective retrospectively from the date of enforcement of Bihar Reservation Act, showing certain class of persons for respective states as member of Scheduled Castes and Scheduled Tribes.



Further has taken plea that the Bihar Reservation of Vacancies in post and Services (for Scheduled Caste and Scheduled Tribes and Backward Classes) Act, 1991 (hereinafter mentioned as “the Reservation Act, 1991”) has been amended from time to time but in 2003 the amendment has been made to the Act, added the proviso, thereby the persons from outside the State have been excluded from the benefit of reservation and has been made effective retrospectively from the date of enforcement of Bihar Reservation Act. On the basis of that strength, the claim has been made by the petitioner that the respondents nos. 8 and 9 could not have been appointed to the post of Account Officer nor they could have been given the benefit of accelerated promotion.

8. The respondent nos. 8 and 9 have filed common counter affidavit, have given the details of their educational qualification that they have done the B. Com from Kolkatta University in the year 1996 and 1994 respectively and respondent no.8 has done his Master of Business Management in the year 1999 from L.N. Mithila Institute of Economic Development and Social Change, Patna, and respondent no.9 has done his Master of Business Administration from B.R. Ambedakar University, Mazaffarpur and further stated that in



the writ petition no objection was raised by the petitioner at the time of their appointment under scheduled caste category and as such, he cannot be allowed to challenge the promotion of respondent nos. 8 and 9 against the scheduled caste vacancy in the next grade. It has further been submitted that they have been promoted against the post of reserved category for the Scheduled caste, unconnected with the claim of the petitioner as the petitioner is from the general category candidate, neither he can challenge their appointment nor the promotion of respondent nos. 8 and 9. It has further been stated that merit list of both the categories were prepared, where their details have been given, which was known to the petitioner and further said that the advertisement was made for appointment of 9 posts of Accounts Officers and out of that two posts were earmarked for the unreserved category, but excess appointment were made, and the petitioner falls in the category of excess appointment, is an illegal appointment and as such, the petitioner cannot challenge the appointment and promotion of respondent nos. 8 and 9.

9. On receipt of the counter affidavit, the petitioner filed Interlocutory Application No.9206 of 2014, which is very much relevant in the present case as in that Interlocutory



Application the petitioner has challenged the initial appointment of the respondent nos. 8 and 9 on the plea that their initial appointment being *de hors* to the Constitutional provision as well as statutory provision and having said that 'Rajbansi' and 'Sunri' caste may be declared under the Presidential Order to be scheduled caste, but for this State, no Presidential Order for both the castes having been included in the list of Scheduled Castes, rather both the castes are backward class castes in the State of Bihar and further said that they cannot carry the tag of scheduled caste, which was conferred in the West Bengal and will not be applicable to the State of Bihar. Further the prayer has been made that the Bihar State Electricity Board on account of enforcement of Electricity Act, 2003 the erstwhile Bihar State Electricity Board has been divided in five units, and as such, it is required that the Bihar State Power Holding Company Limited be substituted in place of Bihar State Electricity Board. This part of relief has not been seriously objected either by the private respondents or by the Holding Company, but serious objection has been raised with regard to next part of relief, seeking the prayer of *quo-warranto* and thereby claiming the initial appointment of respondents nos. 8 and 9 to be void on the ground that this Interlocutory Application has been filed in the



year 2014 and the copy of the same has been served in 2016, whereas the appointment of respondent nos. 8 and 9 has been made in the year 1999 and after a delay of 15 years, the petitioner cannot challenge the appointment of respondent nos. 8 and 9 and as such, it suffers from delay and laches.

10. In the rejoinder, the petitioner has stated that respondent nos. 8 and 9 had obtained the appointment by fraud as they do not have the requisite qualification for the post of Accounts Officer. The Bihar State Electricity Board has also filed the counter affidavit, has not disputed the fact mentioned in the writ petition, but stated that the petitioner is not a 'person aggrieved' having no *locus standi* to challenge the appointment or promotion of respondent nos. 8 and 9 as they were appointed against the quota of scheduled caste and promoted under the quota of scheduled caste, having no any way connected either with the selection of the petitioner or the promotion to the next grade. It has also been pointed out for general category candidate minimum qualifying marks was fixed 40% out of 200, whereas for scheduled caste/scheduled tribes candidate was required to obtain 32% marks out of 200, but the same was reduced by the Selection Committee 25% and as such, the Selection Committee could not have reduced the bench mark



mentioned in the advertisement or fixed by the employer.

11. By way of supplementary counter affidavit the respondent nos. 8 and 9 brought all the certificates showing that they have requisite qualification for the post of Accounts Officer and the claim that has been made by the petitioner that having no requisite qualification has no leg to stand. In course of the hearing, respondent nos. 8 and 9 have filed second supplementary counter affidavit, wherein it has been submitted that the petitioner has already been promoted to the post of Deputy General Manager (F&A) vide Notification no.1913 dated 30.12.2016 (Annexure-R8/8). From perusal of the Notification, it appears that the petitioner has been promoted to the post of Deputy General Manager (F&A) provisionally. The respondent no.8 was also promoted provisionally vide Notification no.1920 dated 30.12.2016 (Annexure-R8/9) and vide Notification no.506 dated 17.05.2017 (Annexure-R8/10) he has been promoted substantively. Similarly, respondent no.9 has been provisionally promoted vide Notification 508 dated 17.05.2018 (AnnexureR8/11) in place of Rajiv Ranjan Singh, Senior Manager (F & A) as it has been informed that Sri Rajiv Ranjan Singh, Senior Manager (F&A) is facing departmental proceeding and later on, respondent no.9, who was holding the



post of Deputy General Manager (F&A), South Bihar Power Distribution Company has been made General Manager (Finance) South Bihar Power Distribution Company Limited in his own scale.

12. Learned counsel for the petitioner raised the point with regard to the appointment and promotion of respondent nos. 8 and 9 as having been claimed that the caste from which the both respondents are belonging, may be scheduled caste in the State of West Bengal but those castes are backward caste in the State of Bihar and Article-341 and 342 talks about the Presidential Order to be issued, notifying certain castes with respect to each States to be member of the Scheduled Caste, any persons who may be a scheduled caste in a particular State but on migration he will not carry the same tag of same class in another State, inasmuch as, in view of the amendment effected in 2003, wherein the proviso has been added that the person from other States having been declared scheduled caste and scheduled tribes will not be entitled to benefit of reservation in the State of Bihar, that has been made effective from 1996. It also appears that 2003 amendment Act has been made effective from 11th June, 1996. Further the petitioner has submitted that the Interlocutory Application required to be allowed on the



ground that necessary facts showing illegal entry of the respondent nos. 8 and 9 in the pleading of the writ petition. But, in the Interlocutory Application, the petitioner has only sought the amendment in the relief portion, if the foundational facts are already available in the pleadings of the writ petition, there cannot be any bar for making proper amendment to the relief portion of the writ petition. Further submitted that the plea of *quo-warranto* can be taken at any stage as there is no bar of limitation and the mischief of delay and laches will not be a fatal for seeking the relief of *quo-warranto* against the respondents as continuation of respondent nos. 8 and 9 is illegal on day-to-day basis. So the claim has been made that it is a recurring continuous cause of action, even today continuation of respondent nos.8 and 9 is statutorily and constitutionally illegal and invalid on account of fact that they cannot be treated to be member of the scheduled caste.

13. In contra, learned counsel for the respondent nos. 8 and 9 and learned counsel for the Board both the respondents are sailing in the same boat, having taken a common plea that the appointment of respondent nos.8 and 9 cannot be challenged by the petitioner as they were selected and appointed under the quota of scheduled caste, only member of scheduled caste can



challenge their entry in the service. Further submitted that the petitioner is not a person aggrieved on account of fact that their appointment or promotion are not in any way connected or effected or dependent on the appointment of petitioner, and as such, the petitioner cannot challenge the selection or promotion of the respondent nos. 8 and 9. Further submitted that Interlocutory Application cannot be allowed as the petitioner never challenged the entry in service of respondent nos. 8 and 9 in the writ petition, but now he wants to change the entire scenario by bringing the Interlocutory Application as it amounts to changing the nature of writ (suit) itself as in the writ petition the petitioner has only claimed that he should be promoted and illegally the respondent nos. 8 and 9 having been promoted and further submitted that the petitioner has been knowing very well right from the day of their entry in service that respondent nos. 8 and 9 have been appointed against the Scheduled Caste quota, which is reflected from the Notification dated 05.06.200 (Annexure- R/4), wherein the name of their respective castes, the place of residence, entire information has been made, if he is/was knowing the status of respondent nos. 8 and 9, if he was so sanguine that respondent nos. 8 and 9 should not have been appointed, in such circumstance, he should have challenged the



same at the initial point of time, not after 15 years of their appointment to the post of Accounts Officer and later on, granted promotion under the Scheduled Caste category. Further submitted that in the writ petition, no such relief challenging the appointment or promotion of respondent nos. 8 and 9 has been made by the petitioner and if no relief has been sought, this Court cannot grant the same by way of moulding the relief. Further claim has been made by the respondent nos. 8 and 9 that the petitioner has entered into the service illegally as his appointment has been made excess to the advertisement and as such, when the entry of the petitioner itself is illegal he cannot challenge the appointment or promotion of respondent nos. 8 and 9 but the respondent nos. 8 and 9 nowhere has taken this plea in their pleadings. It has further been stated that the Court is not a place of academic discussion, if the relief cannot be granted, the writ petition is to be dismissed as in the present writ petition no challenge has been made with regard to appointment of respondent nos. 8 and 9, inasmuch as, he has no *locus standi* to challenge the appointment of the respondent nos. 8 and 9 on the ground that the petitioner is a member of unreserved category, whereas the respondent nos. 8 and 9 having been appointed under scheduled caste category, so there is no clash of



interest in between the two and as such, relief sought for is not maintainable.

14. In view of the aforesaid discussion, this Court will have to decide the following issues:-

(I) Maintainability of the writ petition.

(a) Whether the present writ petition is maintainable as has been claimed by respondent nos. 8 and 9 and also the Board now Holding Company that the petitioner is not a 'person aggrieved', his status will be either the stranger of the interloper ?

(b) Whether the petitioner can challenge the appointment of respondent nos. 8 and 9 in this writ petition in view of the fact that the petitioner is from the general category whereas, the respondent nos. 8 and 9 are from the reserved category ?

(c) Whether the Interlocutory Application No.9206 of 2014 with respect to claim made by the petitioner to add the relief of granting *quo-warranto* against respondent nos. 8 and 9 and delay will not defeat the relief even after 15 years as the continuation of respondent nos. 8 and 9 creates recurring continuous cause of action ?



(d) Whether the Interlocutory Application would be allowed, as the relief of challenging the appointment of respondent nos. 8 and 9 has been sought after 15 years and the relief sought for in the present writ petitioner is quite different and distinct as that has been mentioned in the Interlocutory application which amounts to changing the nature of writ petition itself ?

(ii) On merit.

(a) Whether the entry of the respondent nos. 8 and 9 as Account Officer is bad in law as well as unconstitutional right from the beginning and as such, they cannot claim reservation at the initial stage as well as the benefit of accelerated promotion ?

(b) Whether this Court would be justified to mould the relief in favour of the petitioner which has not been claimed in the main writ petition ?

15. As the Bihar State Power Holding Company as well as the respondent nos. 8 and 9 have challenged the maintainability of the writ petition on two grounds; that the petitioner is not a 'person aggrieved' on account of fact that respondent nos. 8 and 9 were appointed under the reserved



category seat and they have been promoted to next higher grade under the reserved category seat and in no circumstance, there is clash of interest in between the petitioner as well as respondent nos. 8 and 9, the petitioner has been appointed against the unreserved category of seat and would be promoted in that category, which has nothing to do or having any clash with the reserved category candidate and as such, the petitioner has no semblance right or legal right to challenge the appointment or promotion of respondent nos. 8 and 9.

16. In support of the submission, learned counsel for the Power Holding Company as well as respondent nos. 8 and 9 have placed reliance on the judgments rendered in the case of *The State of Orissa vs. Madan Gopal Rungta* reported in *A.I.R. 1952 Supreme Court, page- 12*, in the case of *the Calcutta Gas Company (Proprietary) Ltd. vs. the State of West Bengal and Others*, reported in *A.I.R. 1962 Supreme Court 1044*, in the case of *Ashok Kumar Jain v. Neetu Kathori and Ors.*, reported in *(2004) 12 S.C.C., page-73*, in the case of *Jasbhai Motibhai Desai vs Roshan Kumar & Ors.* reported in *AIR 1976, page-578* and in the case of *the Multipurpose Co-operative Society, Salmari and another vs. the State of Bihar and Ors*, reported in *A.I.R. 1984 Patna, page-128*.



17. Let us examine the case one by one what is the meaning and outline dimension of the 'person aggrieved'.

18. In the case of *the State of Orissa vs. Madan Gopal Rungta* (supra) the respondents had alleged that he had agreed to take mining lease from the Ruler of Keonjhar and had entered into the possession of the area. Some of them have alleged that they had spent money on the development of the mines and installed machinery to work in the mines, but there was no registered lease deed in their favour. The Ruler of Keonjhar entered into a merger agreement with the Dominion of India and whereafter the Government of Orissa by issuing Notification declaring leases to be void and not binding on it. The annulment was made expressly on the ground that these commitments were not reasonable and bona fide. Lessee approached the Orissa Government to give them leases and the State Government has granted temporary permits to work in the mines in November, 1949. But, in 1951, cancelled the temporary permits and directed for removal of their assets. The lessee approached the Orissa High Court, praying for writs or directions in the nature of *mandamus* against the State of Orissa, directing them to withdraw the notices for forbearing to give effect to the same, in which the question of maintainability of the writ petition came



for consideration, wherein the Court has held that the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article and it has to be seen that the right has been infringed. The language of the Article shows that the issuing of writs or directions by the Court is not founded on its decision that the right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226, the legal right has to be examined in the context of nature of proceeding and nature of right claimed. Therefore the existence of legal right is the foundation for the exercise of jurisdiction of the Court under this Article.

19. It will be relevant to quote paragraph nos.5 and 6 of the said judgment, which read as under:-

“5. Article 226 of the Constitution of India runs as follows:-

“226. (1) "Notwithstanding anything in Art. 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of



them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Art.32”

The language of the Article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Art. 226 have to be read in the context of what precedes the same. Therefore the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article. The judgment of the Orissa High Court under appeal, however, shows that the Judges have decided nothing at all in respect of the rights of the parties. Indeed they have expressly stated that their observations should not in any way be considered as deciding any of the rights or contentions of the parties raised in the petitions. The whole judgment shows that because of the requirement of S.80 of the Civil P.C. the present respondents could not file a suit against the Government for at least sixty days, the respondent's position should not in the interval be disturbed and accordingly the Court gave the directions in its order of the 2.8.1951. If there was any doubt about the nature of the relief desired to be granted by the order of 2nd August the same Judges have made it perfectly clear by their order of the 6th of August, wherein they have stated that except for these directions



they were not prepared to make any other order on the petitions. The result therefore is that while the Judges declined to investigate and pronounce on the rights of the parties and expressly kept the determination thereof in abeyance in the suit proposed to be filed by the present respondents, they gave directions for interim relief till such suit was filed. It must be noted that with the passing of the order of the 2.8.1951, containing directions in the nature of interim relief the petitions were completely disposed of and have not been kept pending for disposal. Those directions embody therefore the final order passed by the Court on these petitions. A preliminary objection was raised about the maintainability of the appeals on the ground that no final orders were passed on the petitions. That objection must fail in view of the fact that with these orders the petitions were disposed of finally and nothing further remained to be done in respect of the petitions. The fact that the operation of the order is limited to three months or a week after the filing of the intended suit does not prevent the order from being final.

6. On behalf of the appellant, it was urged that the Court had no jurisdiction to pass such orders under Art. 226 under the circumstances of the case. This is not a case where the Court before finally disposing of a petition under Art. 226 gave directions in the nature of interim relief for the purpose of maintaining the status quo. The question which we have to determine is whether directions in the nature of interim relief only could be granted under Art. 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a



like nature could be issued. In our opinion, Art. 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of S. 80, Civil P.C., and in our opinion that is not within the scope of Art. 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Art. 226 of the Constitution. In our opinion, the language of Art. 226 does not permit such an action. On that short ground the judgment of the Orissa High Court under appeal cannot be upheld.”

20. So, the proposition has been laid that the person must have a legal right.



21. In the case of *the Calcutta Gas Company vs. the State of West Bengal and Others* (supra) the issue of “*locus standi*” came for consideration, as the question was raised that the Calcutta Gas Company was only managing the industry and it has no proprietary right therein and, therefore, it could not maintain the application. The Hon’ble Supreme Court has held that Article 226 confers a very wide power on the High Court to issue directions and writs in the nature mentioned therein for enforcement of any of the rights conferred by Part III or for any other purpose. So, it is clear that persons other than those claiming fundamental right can also approach the Court, seeking a relief thereunder. The Article does not classify the classes of persons entitled to apply thereunder, but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, except in cases like habeas corpus or *quo-warranto*.

22. It will be relevant to quote paragraph no.5 of the said judgment, which reads as under:-



“5. The first question that falls to be considered is whether the appellant has locus standi to file the petition under Art. 226 of the Constitution. The argument of learned counsel for the respondents is that the appellant was only managing the industry and it had no proprietary right therein and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In State of Orissa v. Madan Gopal 1952 SCR 28 : (AIR 1952 SC 12) this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Art. 226 of the Constitution. In Charanjit Lal Chowdhuri v. Union of India, 1950 SCR 869:(AIR 1951 SC 41), it has been held by this Court that the legal right that can be enforced under Art. 32 must ordinarily be the right of the petitioner himself who complains of infraction of such



right and approaches the court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Art. 226 of the Constitution. The right that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. The question, therefore, is whether in the present case the petitioner has a legal right and whether it has been infringed by the contesting respondents. The petitioner entered into an agreement dated July 24, 1948, with respondent No. 5 in regard the Oriental Gas Company. Under the agreement, the appellant was appointed as Manager and the general management of the affairs of the Company was entrusted to it for a period of 20 years. The appellant would receive thereunder by way of remuneration for its services, (a) an office allowance of Rs. 3,000/- per mensem, (b) a commission of 10 per cent, on the net yearly profit of the Company, subject to a minimum of Rs. 60,000/- per year in the case of absence of or inadequacy of profits and (c) a commission of Rs. 1/- per ton of all coal purchased and negotiated by the Manager. In its capacity as Manager, the appellant-Company was put in charge of the entire business and its assets in India and it was given all the incidental



powers necessary for the said management. Under the agreement, therefore, the appellant had the right to manage the Oriental Gas Company for a period of 20 years and to receive the aforesaid amounts toward its remuneration for its services. Section 4 of the impugned Act reads:

"With effect from the appointed day and for a period of five years thereafter:-

(a) the undertaking of the Company shall stand transferred to the State Government for the purpose of management and control;

(b) the Company and its agents, including managing agents, if any, and servant shall cease to exercise management or control in relation to the undertaking of the company;

(c) all contracts, excluding any contract or contracts in respect of agency or managing agency, subsisting immediately before the appointed day and affecting the undertaking of the Company shall cease to have effect or to be enforceable against the Company, its agents or any person who was a surety thereto or had guaranteed the performance thereof and shall be of as full force and effect against or in favour of the State of West Bengal and shall be enforceable as fully and effectively as if instead of the Company the State of West



Bengal had been named therein or had been a party thereto:"

Under the said section, with effect from the appointed day and for a period of five years thereafter, the management of the Company shall stand transferred to the State Government, and the Company, its agents and servants shall cease to exercise management or control of the same. Under cl. (c) of the section, the contracts of agency or managing agency are not touched, but all the other contracts cease to have effect against the Company and are enforceable by or against the State. It is not necessary in this case to decide whether under the said agreement the appellant was constituted as agent or managing agent or a servant of the Oriental Gas Company. Whatever may be its character, by reason of S. 4 of the impugned Act, it was deprived of certain legal rights it possessed under the agreement. Under the agreement, the appellant had the right to manage the Oriental Gas Company for a period of 20 years and to receive remuneration for the same. But under S. 4 of the impugned Act, it was deprived of that right for a period of five years. There was certainly a legal right accruing to the appellant under the agreement and that was abridged, if not destroyed, by the impugned Act. It is, therefore, impossible to say that the legal right of the appellant was not infringed



by the provisions of the impugned Act. In the circumstances, as the appellant's personal right to manage the Company and to receive remuneration therefore had been infringed by the provisions of the statute, it had locus standi to file the petition under Art. 226 of the Constitution.” (emphasis supplied)

23. The decision of *Ashok Kumar Jain v. Neetu Kathoria* (supra), which has been placed reliance is not applicable to this case as in that case the petition was dismissed on the ground of alternative remedy, is not the issue involved in the present case and as such, this decision has no application in the present case.

24. In the case of *Jasbhai Motibhai Desai vs Roshan Kumar & Ors.* (supra) the question of ‘person aggrieved’ has been gone into deeply and elaborately and the judgment has classified three categories; (i) person aggrieved (ii) stranger (iii) busybody of meddlesome interloper. Straightway, the Court has held that the busybody or meddlesome interloper has no right or *locus standi* to approach the Court. In that case, the owner of the site of Survey No. 98 in the town of Mehmabad, applied for licence for running a cinema theatre to the District Magistrate that there was no objection to the location of the Cinema theatre. The District Magistrate notified



in the prescribed form, the substance of the application by publication in newspapers, inviting objections for grant of a No-objection Certificate. In response thereto, several persons lodged objections, but J.M. Desai did not lodge any objection. The objection received by the District Magistrate was of different natures, such as, Muslim graveyard, a Durgah, a compost depot, a school and public latrines, but later on, the District Magistrate, invited the opinions of the Chairman of Nagar Panchayat, Executive Engineer Roads and Buildings, and the District Superintendent of Police, all of them have raised 'no objection' for grant of the Certificate for running the cinema theatre. The District Magistrate visited the proposed site and has recorded that the proposed site was not fit for the location of a cinema theatre. He recommended that the 'No-objection Certificate' should be refused. The State Government did not agree with the opinion of the District Magistrate and directed the District Magistrate to grant the Certificate. Whereupon, the District Magistrate granted the 'No-objection Certificate' to the owner of the site. Mr. J.M. Desai, was also running a cinema theatre, approached the Hon'ble Supreme Court that the District Magistrate while granting no objection was exercising a quasi judicial power, but instead of applying



his discretion independently, had acted at the dictate of the Government. The claim was made that on establishment of the cinema theatre, his business will be effected and will cause financial loss on account of establishment of the rival cinema theatre. Accordingly, the point was raised that the 'aggrieved person' should be understood in a wide term and not confined to a person who is aggrieved by an invasion of a legal right vested in him. Anyone says, who is personally interested and genuinely aggrieved by an act of usurpation of jurisdiction or lack of jurisdiction on the part of an administrative tribunal or body, would fall within the category of an 'aggrieved person', even if such usurpation or lack of jurisdiction had not resulted of a legal right or legal interest vested in him; nor would such a person be denied *locus standi* for the purpose of *certiorari* merely because he had not lodged any objection or joined the proceedings before the tribunal or the District Magistrate and in this term, the writ petition was maintainable. But, the Court has rejected the contention of the petitioner having held that when the notice was issued, the petitioner had not raised any objection and after everything was over, he cannot be said to be a 'person aggrieved'. The Court has held that ordinarily this cannot be put to caste an iron rule. It is flexible enough to take



on those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule.

25. It will be relevant to quote paragraph nos. 34 to 38 of the said judgment, which read as under:-

“34. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject- matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

35. In the United States of America, also, the law on the point is substantially the same. "No matter how seriously infringement of the Constitution may be called into question, "said Justice Frankfurter in Coleman v. Miller,



(1939) 307 us 433 'this is not the tribunal for its challenge except by those who have some specialized interest of their own to vindicate apart from a political concern which belongs to all'. To have a "standing to sue", which means locus standi to ask for relief in a court independently of a statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a legal wrong. Courts can intervene only where legal rights are invaded. "Legal wrong" requires a judicially enforceable right and the touch stone to justiciability is injury to a legally protected right. A nominal or a highly speculative adverse affect on the interest or right of a person has been held to be insufficient to give him the "standing to sue" for judicial review of administrative action. Again the "adverse affect" requisite for "standing to sue" must be an "illegal effect". Thus, in the undermentioned cases, it was held that injury resulting from lawful competition, not being a legal wrong, cannot furnish a "standing to sue" for judicial relief.

36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for 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. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a



desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outerzone may not be "persons aggrieved".

38. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been



pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something" ? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community ? Or is it a statute dealing with private rights of particular individuals ?”

26. In the case of *the Multipurpose Co-operative Society, Salmari vs. The State of Bihar* (supra) identical question of maintainability of the writ application was raised on the ground of *locus standi* of being not a ‘person aggrieved’. In that case, the petitioner being Primary Krishi Sakh Sahyog Samiti, claiming preferential right to get settlement of Hats, Bazars and Melas, but when the notice was issued, it did not file any objection and the Mela was settled with the highest bidder. The Court has held that, a cause of a public concern can be brought to this Court by any person. A person who has got some interest of his own which is not common with the public, has got *locus standi* to approach this Court for the redressal of



the wrong and removal of the injury. In order to have the *locus standi* to invoke this Court's jurisdiction for a writ of *certiorari*, the maximum that can be asked for is that the petitioner should be a person aggrieved. It has further been held that even if the society in its general body or executive committee meeting has not authorized the Chairman to represent it, Chairman individual in his individual capacity has some concern and some interest in the society, cannot be denied. His standing as an individual, in view of the authorities of the Supreme Court, is sufficient to invoke *certiorari* jurisdiction of this Court.

27. It will be relevant to quote paragraph no.13 of the said judgment, which reads as under:-

“13. Although it has not been argued with any emphasis but since it has been stated in the counter affidavit of the 5th respondent that the Chairman of the petitioner-society in C.W.J.C. No. 1617 of 1983 has not been authorised to represent the society and as such the writ application is not maintainable. I propose to deal with this aspect also. The petitioner has produced a resolution showing authorisation in favour of Mujibur Rahman to move this Court in C.W. J. C. No. 1287 of 1983. But authorisation or no authorisation locus standi to challenge a void action by a writ petition, is a question that has been



answered more than once by the Courts. A cause of a public concern can be brought to this Court by any person. A person who has got some interest of his own which is not common with the public, has got locus standi to petition this court for the redressal of the wrong and removal of the injury. In order to have the locus standi to invoke this Court's jurisdiction for a writ of certiorari. the maximum that can be asked for is that the petitioner should be a person aggrieved. The society undoubtedly is a person aggrieved. As pointed out in the case of Jasbhai Motibhai v. Roshan Kumar(AIR 1976 SC 578), the expression "aggrieved person" denotes an elastic and to an extent, an elusive concept. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. In the case of Gadde Venkateshwara Rao v. Government of Andhra Pradesh (AIR 1966 SC 828), right of a "member of a committee to question the validity of an action affecting the rights of the committee was recognised as sufficient to give him a locus standi. Apparently, in the instant case, the society is before us. Even if it is accepted that the society in its general body or executive



committee has not authorised the Chairman to represent it, Chairman's individual concern and some interest of his in the society cannot be denied. His standing as an individual, in view of the authorities of the Supreme Court is sufficient to invoke certiorari jurisdiction of this Court."

28. In this background, it has to be decided by this Court whether the writ petition is maintainable by the writ petitioner or not, as having claimed by the respondents that the petitioner is not a 'person aggrieved' and as such, the petition is not maintainable as he does not fall in that category.

29. For arriving to a right conclusion, the factual aspect has to be forensically examined about the claim made by the petitioner having a *locus standi* to pursue this petition. The respondent nos. 8 and 9 were appointed under the scheduled caste category as both of them are residents of West Bengal, their caste in the West Bengal has been classified as Scheduled Caste but in the State of Bihar those castes have been categorized as Backward Class castes, inasmuch as, the Presidential Order which has been issued for the State of West Bengal will be in confinement to the territorial jurisdiction of the State of West Bengal. In the State of West Bengal the respondent nos. 8 and 9 are Scheduled Castes but they can not



claim the same status and privilege in the State of Bihar. This issue will be dealt with in the later stage elaborately.

30. Of course, at the initial stage the petitioner can not have any grievance for the appointment of respondent nos. 8 and 9 under reserved category but as and when the issue of accelerated promotion comes for consideration then the clash would start on account of fact that if they would not be recognized as Scheduled Caste candidates, certainly they will not be entitled to accelerated promotion and in that event the petitioner being senior to them and would get the privilege of promotion over them, there may not be a clash of interest at the initial stage of entry but the moment the issue of promotion comes for consideration and the junior gets accelerated promotion over just senior, certainly it can not be denied that he has no interest or grievance because of out of term promotion. If the respondent nos. 8 and 9 would be treated as general category candidate, in such circumstance, they will not get any accelerated promotion over the head of this petitioner and petitioner will remain senior all through in his service career. But in the present case, certainly the respondent nos. 8 and 9 have been granted the accelerated promotion, and as such, this Court is of the view that the petitioner can not be unsuited on



account of fact that his legal right is not being in any manner affected by accelerated promotion of respondent nos. 8 and 9.

31. In the present case, one of the points has been raised on the issue of *locus standi* that respondent nos. 8 and 9 were appointed and promoted under the quota of scheduled caste, whereas the petitioner being a member of general category candidate cannot have any clash of interest and cannot claim appointment against the post reserved for scheduled caste and scheduled tribes, he may have a clash of interest in his own category but cannot have any claim or any interest over the quota of scheduled castes and scheduled tribes. In such circumstance, the writ petition itself should be dismissed outrightly.

32. In support of this submission, the respondent nos. 8 and 9 has placed reliance on the judgment rendered in the case of *Kumari Chithra Ghosh & another vs Union of India and Others*, reported in *AIR 1970 (SC) 35*. In that case, Chitra Ghosh wanted her admission in the medical college. She was resident and domicile of Delhi, passed the premedical examination of the Delhi University and obtained 62.5% marks. First applied for admission at the Lady Harding Medical



College, New Delhi, but she was not admitted. Further, she applied for admission to the Maulana Azad Medical College. The certain seats were reserved for different categories i.e. 15% seats are reserved for schedule caste candidates and 5% for scheduled tribes candidates, 25% of the seats (excluding the seats reserved for Government of India nominees) are reserved for girl students. The petitioner has challenged the admission of those candidates who having secured lesser marks were admitted in the college. One of the issue was raised that petitioner can not have a clash of interest over the seat reserved for scheduled caste and other categories. In such circumstance, the petitioner has no *locus standi* to challenge the admission of those candidates admitted in the college against reserved category seats and the Court has accepted the plea of *locus standi*.

33. It will be relevant to quote paragraph no. 12 of the said judgment, which is as follows :-

“12. The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made



by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded. The Central Government is under no obligation to release those seats to the general pool. It may in the larger interest of giving maximum benefit to candidates belonging to the non-reserved seats release them but it cannot be compelled to do so -at the instance of students who have applied for admission from out of the categories for whom seats have not been reserved. In our opinion the High Court was in error in going into the question and holding that out of the nine seats filled by nomination two had been filled contrary to the admission rules and these would be converted into the general pool. Since no appeal has been filed against that part of the order we refrain from making any further observations in the matter.”

34. In the case of ***B. Srinivasa Reddy vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others***, reported in (2006) 11 SCC 731, various issues were involved for consideration and one of the



issues was *locus standi* to approach the High Court. The Court has held that the High Court would exercise the *certiorari* jurisdiction only at the instance of a person who is qualified to the post and who is a candidate for the post and the appointment cannot be challenged by one who is himself not qualified to be appointed, placing reliance on the decision rendered in the case of Kumari Chitra Ghose (*supra*).

35. It will be relevant to quote paragraph no.78 of the said judgment, which reads as under:-

“78. The High Court, in the instant case, was not exercising certiorari jurisdiction. Certiorari jurisdiction can be exercised only at the instance of a person who is qualified to the post and who is a candidate for the post. This Court in Umakant Saran (Dr.) v. State of Bihar, held that the appointment cannot be challenged by one who is himself not qualified to be appointed. In Kumari Chitra Ghose v. Union of India, a Constitution Bench of this Court held as under: (SCC p.234, Para 12)

"12. The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the



Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded."

36. Another decision has been placed reliance rendered in the case of ***Durgesh Kumar Prasad vs. The National Institute of Technology and Ors.*** (C.W.J.C. No.11742 of 2011), there also same question has been raised and this Court has reiterated the same principle placing reliance on the judgment rendered in the case of Kumari Chitra Ghosh (supra).

37. In the present case, the initial appointment could not have been challenged by the petitioner as respondents were appointed against the post reserved for scheduled caste, but the moment the accelerated promotion was granted to respondent nos. 8 and 9 who were juniors at the entry point became senior, creates cause of action, the petitioner cannot be said that he is not "the person aggrieved".

In this case also, the issue of *quo-warranto* has



been raised, will be taken into consideration at the later stage.

Amendment, delay and quo-warranto

38. The petitioner in the writ petition has sought the relief that this Court should issue the writ, order or direction, commanding the respondents to promote the petitioner to the post of Deputy Director of Accounts from the date, i.e. 20.07.2005, of his juniors namely, Mr. Jayjit Ray and Mr. Pradip Manjhi, respondent nos. 8 and 9 respectively were promoted.

39. In paragraph no.22 of the counter affidavit, it has been averred that the petitioner has not challenged the appointment/promotion of respondent nos. 8 and 9 in his writ petition and has only tried to formulate a point that they are junior to the petitioner, and on such ground he has assailed the consideration of the case of the respondent nos. 8 and 9 for promotion to the post of Deputy Director of Accounts against the reserved quota stating that the same is not permissible in law. Further stated that without challenging the appointment/promotion of respondent nos. 8 and 9 and confining his prayer for consideration against higher post of Deputy Director of Accounts under reserved quota is also not tenable as because the posts are of reserved category and do not



belong to the general category quota and only on this account this writ petition is fit to be dismissed by this Court.

40. This paragraph of the counter affidavit led to filing of the Interlocutory Application No.9206 of 2014, in which two prayers have been made, mentioning therein that on account of enforcement of Electricity Act, 2005, led to creation of Holding Company and its sister concern such as North Bihar Power Distribution Company Limited, South Bihar Power Distribution Company Limited, Bihar State Power Transmission Company Limited and Bihar Power Generation Company Limited and made a prayer that the Chairman, Bihar State Electricity Board be replaced and substituted by Power Holding Company. Another part of the relief of challenging the initial appointment of respondent nos. 8 and 9 as having claimed that their entry itself suffers from violation of Constitution of India as well as on account of fact that after the amendment of Section 4 of the Reservation Act, 1991 and by amendment of 2003 in Reservation Act, 1991 thereby adding the proviso stipulating that the reservation will not be extended to the person outside the Bihar. The original legislation and the amendment made therein will be dealt with at the later stage. But for the purpose of the claim made by the petitioner, the



relief of *quo-warranto* is to be taken into consideration at this stage.

41. The respondents have challenged the amendment, seeking relief of *quo-warranto*, thereby claiming that the appointment as well as promotion of respondent nos. 8 and 9 is *per se* illegal from the initial stage itself. The point has been raised by the respondents that at such belated stage the amendment of the writ petition should not be allowed and other plea has been taken that the relief which has been sought to be added will change the nature of relief sought for in the writ petition, and as such, on two counts the relief of *quo-warranto* is not permissible to be added in the original writ petition by way of amendment to the writ petition.

42. So, the issue of amendment and delay are inter related to each other are being dealt with hereinbelow. So, the Court at first will take up the issue of amendment of the writ petition.

43. Article 226 specifically does not prescribe the amendment of writ petition. The power of amendment, as such, has not been prescribed in the provision of Article 226 of the Constitution of India, but the general law of amendment



provided under the Code of Civil Procedure will be applicable, so the principle, contour and guideline as envisaged under Order VI Rule-17 will be invoked for dealing with the scope and power of amendment of the writ petition. First, it should be made clear that even if the amendment is allowed, it does not mean that the relief has been granted, it is nothing but addition of pleadings to the main writ petition, giving an information to the other side of the plea that has been taken by the petitioner, *ipso facto* does not mean of allowing the point that has been urged in the amendment petition. So, let us examine the scope of Order-VI Rule-17. It will be appropriate to deal with the judgments on the issue of scope and power of grant amendment of the writ petition.

44. The question of grant of amendment came for consideration in the case of ***A. K. Gupta and Sons Ltd. vs Damodar Valley Corporation*** reported in ***A.I.R. 1967 Supreme Court, page-96***. In that case, A.K. Gupta had done the work on contract basis, there was increase of labour rate of more than 10%. The respondents contended that he was entitled to part and disputed the rest portion. Further challenged the quality of work done by A.K. Gupta. A.K. Gupta, filed a suit, claiming declaration that on proper interpretation of the Clause, he was



entitled to enhancement of 20% amount over the tender rate. It was a suit for declaration only, the respondents in the written statement has challenged the interpretation of the Clause and did not dispute the material fact, only dispute was about the interpretation. The written statement concluded by saying that the respondents were ever ready and willing and are still ready and willing to pay the legitimate dues to the plaintiff. One of the issue was raised about the maintainability of the suit. The Trial Court decreed the suit. Damodar Valley Corporation challenged the same in the High Court, which was dismissed by the High Court. Ultimately, the matter of amendment came before the Hon'ble Supreme Court and the Hon'ble Supreme Court has held that it is not in dispute that on the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new case or cause of action is barred. Further held that it is also well recognized principle of law that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment was



allowed even after the expiry of the statutory period of limitation.

45. It will be relevant to quote paragraph nos. 7, 8, 13 and 14 of the said judgment, which are as follows:-

“7. It is not in dispute that at the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new case or cause of action is barred : Welch v. Neale (1887) 19 QBD 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation : see Charan Das v. Amir Khan, 47 Ind. App. 255: (AIR 1921 PC 50) and L. J. Leach & Company Ltd. v. Jardine Skinner and Co., 1957 SCR 438 : (AIR 1957 SC 357).

8. The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (Cropper v. Smith) (1884) 26 Ch D 700 (710 - 711) and secondly,



that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (Kisandas Rupchand v. Rachappa Vithoba, (1909) ILR 33 Bom. 644 at p.651, approved in Pirgonda Hongonda Patil v. Kalgonda Shidgonda, 1956 SCR 595 (603) : (AIR 1957 363 at p.366).

13. It may be that as a result of the amendment, if the respondent chooses to raise a controversy about the work done, that is, about the quantity, quality and other things concerning it, which it had never raised so long, the matter will have to be gone into. That again would not justify a refusal of leave to amend. It would not mean any waste of time or money or any duplication of work. That investigation would now be made for the first time and nothing done so far would become futile. Such an enquiry was indeed directed in L. J. Leach & Co.'s case, 1957 SCR 438: (AIR 1957 SC 357).

14. The amendment sought is necessary for a decision of the real dispute between the parties which is, what are their rights under the contract ? That dispute was clearly involved in the plaint as originally framed. All the necessary basic facts had been stated.



Only through a misconception a relief which could be asked on those facts had not been asked. It would not have been necessary to ask for it unless the respondent had at a late stage taken the point that the suit should fail without more in the absence of that relief. We find the present case indistinguishable from Charan Das's case, 47 Ind. App. 255: (AIR 1921 PC 50)."

46. In the case of ***Ganesh Trading Co vs. Moji Ram*** reported in ***(1978) 2 S.C.C. 91***, same issue of power of Court under Order-VI Rule-17 came for consideration. The Court has held that Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really the issue between the parties. Further held that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting *mala fide* or that by his blunder, he had caused injury to his opponent which may not be recompensed by an order of costs. However,



negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

47. It will be relevant to quote paragraph nos. 4 and 11 of the said judgment, which are as follows:-

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

11. The High Court had also referred to Jai Jai Ram Manohar Lal, v. National Building Material Supply, Gurgaon, but had failed to follow the principle which was clearly laid down in that case by this Court. There, the plaintiff had instituted a suit in the name of Jai Jai Ram Manohar Lal which was the



name in which the business of a firm was carried on. Later on, the plaintiff had applied to amend the plaint, so that the description may be altered into "Manohar Lal Proprietor Jai Jai Ram Manohar Lal". The plaintiff also sought to clarify paragraph 1 of the plaint so that it may be evident that "Jai Jai Ram Manohar Lal" was only the firm's name. The defendant pleaded that Manohar Lal was not the sole Proprietor. One of the objections of the defendant in that case was that the suit by Manohar Lal as sole owner would be time barred on July 18, 1952, when the amendment was sought. In that case, the High Court had taken the hypertechnical view that Jai Jai Ram Manohar Lal being a "non-existing person", the Trial Court could not allow an amendment which converted a non-existing person into a "person" in the eye of law so that the suit may not be barred by time. This Court while reversing this hypertechnical view observed (at p. 1269) :

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which



may not be recompensed by an order of costs. However, negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

48. In the case of ***B.K.N. Pillai vs. P. Pillai and another***, reported in ***A.I.R. 2000 Supreme Court, page 614*** the amendment was allowed placing reliance on the previous judgments of the Hon'ble Supreme Court. It will be relevant to quote paragraph no.5 of the said judgment, which is as follows:-

“5. In the appeals the appellant-defendant wanted to amend the written statement by taking a plea that in case he is not held a lessee, he was entitled to the benefit of Section 60(b) of the Indian Easements Act, 1882. Learned counsel for the appellant is not interested in incorporation of the other pleas raised in the application seeking amendment. The plea sought to be raised is neither inconsistent nor repugnant to the pleas already raised in defence. The alternative plea sought to be incorporated in the written statement is in fact the extension of the plea of the respondent- plaintiff and rebuttal to the issue regarding liability of the appellant of being dispossessed on proof of



the fact that he was a licensee liable to be evicted in accordance with the provisions of law. The mere fact that the appellant had filed the application after a prolonged delay could not be made a ground for rejecting his prayer particularly when the respondent-plaintiff could be compensated by costs. We do not agree with the finding of the High Court that the proposed amendment virtually amounted to withdrawal of any admission made by the appellant and that such withdrawal was likely to cause irretrievable prejudice to the respondent.”

49. In *Sampath Kumar vs Ayyakannu and Anr*, reported in (2002) 7 S.C.C. page-559, the Court has held that Order VI Rule 17 of the C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation



back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit.

50. It will be relevant to quote paragraph nos. 9 and 10 of the said judgment, which read as under:-

“9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of



the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation-back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma v. Mamtha Shenoy).”

51. In *Pankaja and Another v. Yellappa (D) By L.Rs. & Ors.* reported in *A.I.R. 2004 (S.C.) 4102*, same has come for consideration. In that case, the appellant has filed a suit seeking relief to grant a judgment and decree of permanent injunction restraining the defendant their men, and agents from interfering with marked portion of the suit schedule property. The written



statement was filed, plea was taken that the suit for injunction and possession without seeking a declaration of title was not maintainable. An application for amendment of the plaint was filed, thereby sought declaration that the plaintiff is the owner of the suit schedule property. The issue of amendment came before the Hon'ble Supreme Court and the Hon'ble Court has held that the jurisdiction to allow the amendment is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the court to allow applications in spite of the delay and latches in moving such amendment application. Further held that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed, the discretion can be exercised in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances of the case.

52. It will be relevant to quote paragraph nos. 12, 13



and 14 of the said judgment, which are as follows:-

“12. So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinion that the same is wide enough to permit amendments even in case where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the court to allow applications in spite of the delay and latches in moving such amendment application.

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments?

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation



of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

53. Again same issue came for consideration in the case of ***Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka and Ors.*** reported in ***2013(2) PLJR 356 (S.C.)***, there the Court has refused to grant the relief of amendment of plaint on two grounds; first is delay and second the amendment was afterthought and set aside the order of the High Court, thereby amendment was allowed.

54. It will be relevant to quote paragraph no.7 of the said judgment, which reads as under:-

"7. Prima facie the aforesaid statement made in the amendment petition is not correct. Indisputably, the plaintiff-respondent no.1 was the office-bearer of the Society at the relevant time and by Resolution taken by the Society respondent No.1 was authorized to complete the transaction. Hence, it is incorrect to allege that the plaintiff-respondent No.1 was not aware about the



transaction of 1989. Moreover, before the institution of the suit in the year 2010, the plaintiffs allegedly came to know about the Conveyance Deed dated 8th February, 1989, sometime in the year 2009, but relief was not sought for in the plaint which was filed much later i.e. 14th October, 2010. The High Court has not considered these undisputed facts and passed the impugned order on the general principles of amendment as contained in Order VI Rule 17 of the Code of Civil Procedure. Hence we do not find any ground for allowing the amendment sought for by the plaintiffs which was not only a belated one but was clearly an after-thought for the obvious purpose to avert the inevitable consequence. The High Court has committed serious error of law in setting aside the order passed by the trial court whereby the amendment sought for was dismissed. The impugned order of the High Court cannot be sustained in law.”

55. In view of the aforesaid discussion, it is very much clear that the procedural law is a handmaid, cannot be a mistress of justice as has been discussed hereinabove the amendments to be allowed liberally to avoid the multiplication of the suit as well as unnecessary deprivation on account of defect in the pleadings in appropriate cases the discretion should be exercised to allow the amendment, thereby adding the facts in the



pleadings of the plaint, written statement and the writ petition and mere addition of the pleadings does not *ipso facto* mean that the relief which has been added will be treated to be allowed but it is an information to other side of the plea taken by the plaintiff or the defendant, if so like, may file reply to the new facts introduced in the plaint or written statement.

56. In such view of the matter, the interlocutory application no. 9206 of 2014 is allowed and the portion of the pleadings and relief sought by way of amendment petition will be treated to be the part of the main Writ Petition.

57. But, the question would arise whether the relief of *quo-warranto* challenging the appointment of respondent nos. 8 and 9 should be allowed, thereby causing irreparable injury and loss to respondent nos. 8 and 9 after lapse of about more than two decades as in the amendment petition the plea has been taken by the petitioner that Articles 341 & 342 prescribes the declaration made by the President of India State-wise the list of member of scheduled caste and scheduled tribe. It will be relevant to quote Articles 341 & 342 of the Constitution of India.

“341. **Scheduled Castes:-** (1) The President
[may with respect to any State [or Union



Territory], and where it is a State, after consultation with the Governor thereof], by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State [or Union territory, as the case may be].

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342 . Scheduled Tribes :- *(1) The President [may with respect to any State (or Union territory), and where it is a State, after consultation with the Governor thereof], by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union Territory, as the case may be].*

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or



group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

58. The aforesaid Articles show that the President of India will issue the Order through notification, giving the list of castes declaring them scheduled caste scheduled tribe, State wise. It is no longer *res integra* that the caste which has been declared to be scheduled caste and scheduled tribe in “A” State, on migration to another state will not carry the tag of scheduled caste and scheduled tribe in the migrated State. But, in the present case the employment notice was issued in the year 1999, the respondent nos. 8 and 9 along with others applied for the post, they have attached the certificate issued by the State of West Bengal, showing them as member of scheduled caste and on that basis they were treated to be scheduled caste and were appointed under that category. They did not suppress anything and it was known to all including the petitioners that they have been appointed under the reserved category in view of the notification no. 670 dated 05.06.2000, wherein the names of respondent nos. 8 & 9 have been mentioned at item no. 9 & 10, wherein it has specifically been mentioned the member of scheduled caste and state has been shown as West Bengal,



South 24 Parganas, Bardhwan with the proper certificates issued by competent authority. The respondent nos. 8 & 9 are not at fault, they have entered into the service with specific assertion that they are scheduled caste of West Bengal and as such there is no *Suppressio veri* and *suggestio falsi*, rather they have come with clean hand and made a declaration, claiming to be scheduled caste of the State of West Bengal.

59. So in such situation, whether the relief of the *quo-warranto* declaring the initial appointment of respondent nos. 8 & 9 to be illegal will be a proper exercise of discretion and jurisdiction after lapse of more than two decades or they should be left untouched. It will be relevant to consider the issue of delay and laches and later the issue of *quo-warranto*.

60. As has been claimed by the petitioner that the entry of respondent nos. 8 & 9 is illegal and constitutionally bad from the initial stage itself and as such they should be declared usurper of the public office and they should be removed from holding the post as having not been properly appointed, but their appointment is *de hors* to the constitutional scheme as well the statutory provision.

61. The issue of delay in approaching this court should



be considered, as to how far it is fatal in seeking relief of *quo-warranto* against respondent nos. 8 and 9. It will be relevant to consider the judgment rendered in the case of ***Ramchandra Shankar Deodhar & Ors vs The State of Maharashtra & Ors.*** reported in ***A.I.R. 1974 (S.C.) 259***, there the claim was made in connection with violation of the fundamental right with respect to promotion. The Court has held that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. But, at the later stage, the Court held that each case must depend on its own facts. There is no lower limit nor upper limit. It all depends on nature of breach related to violation of fundamental right and the remedy claimed and the nature of delay arose. It has further been held that the Court proceeds in refusing to grant relief to the petitioner on ground of delay and laches and deals with the rights which have accrued to others by reasons of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The Court has further held that party claiming fundamental rights must move the Court before other rights



come into existence. The action of Courts cannot harm innocent parties if their rights accrued by reason of delay on the part of the person moving the Court.

62. It will be useful to quote relevant portion of paragraph no.9 of the said judgment, which read as under:-

“9. The first preliminary objection raised on behalf of the respondents was that the petitioners were guilty of gross laches and delay in filing the petition. The divisional cadres of Mamlatdars/Tehsildars were created as far back as 1st November, 1956 by the Government Resolution of that date, and the procedure for making promotion to the posts of Deputy Collector on the basis of divisional select lists, which was a necessary consequence of the creation of the divisional cadre of Mamlatdars/Tehsildars, had been in operation for a long number of years, at any rate from 7th April, 1961, and the Rules of 30th July, 1959 were also given effect to since the date of their enactment and yet the petitioner did not file the petition until 14th July, 1969. There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Art. 32 of the Constitution. We do not think this contention



should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilockchand Motichand v. H. B. Munishi (1969) 2 SCR 824 = (AIR 1970 SC 898) "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit..... It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose." Here the petitioners were informed by the Commissioner, Aurangabad Division, by his letter dated 18th October, 1960 and also by then Secretary of the Revenue Department in January 1961 that the rules of recruitment to the posts of Deputy Collector in the reorganised State of Bombay had not yet been unified, and that the petitioners continued to be governed by the rules of Ex-Hyderabad State and the Rules of 30th July, 1959 had no application to them. The petitioners were, therefore, justified in proceeding on the assumption that there were no unified rules of recruitment to the



posts of Deputy Collector and the promotions that were being made by the State Government were only provisional to be regularised when unified rules of recruitment were made. It was only when the petition in Kapoor's case was decided by the Bombay High Court that the petitioners came to know that it was the case of the State Government in that petition and that case was accepted by the Bombay High Court that the Rules of 30th July, 1959 were the unified rules of recruitment to the posts of Deputy Collector applicable throughout the reorganised State of Bombay. The petitioners thereafter did not lose any time in filing the present petition. Moreover, what is challenged in the petition is the validity of the procedure for making promotions to the posts of Deputy Collector whether it is violative of the equal opportunity clause and since this procedure is not a thing of the past, but is still being followed by the State Government, it is but desirable that its constitutionality should be adjudged when the question has come before the court at the instance of parties properly aggrieved by it. It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reasons of the delay in filing the petition should not be allowed to be



disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by Hidayatullah, C.J. in (1969) 2 SCR 824 = (AIR 1970 SC 898):-

"The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

Sikri, J., (as he then was), also restated the same principle in equally felicitous language when he said in R. N. Bose v. Union of India, (1970) 2 SCR 697 = (AIR 1970 SC 470): "It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years...."

63. In ***R.S. Makashi & Ors vs I.M. Menon & Ors***, reported in ***A.I.R. 1982 (S.C.) 101***, wherein the question of delay and laches in filing the application again came for consideration. The Court has held that when the writ petition is highly belated, is liable to be dismissed on the ground of delay and laches.



64. The decision rendered in the case of *N. Balakrishnan vs. M. Krishnamurth*, reported in *(1998) (7) SCC 123*, though it is dealing with the condonation of delay in the context of limitation, but the Court has held that condonation of delay is a matter of discretion of the Court and discretion can only be exercised if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole based on untenable grounds or arbitrary or perverse.

65. It will be relevant to quote paragraph no.9 of the said judgment, which reads as under:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no



matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

66. In view of the aforesaid discussion, the entry of respondent nos. 8 and 9 is of the year 1999 and after a long lapse of time i.e. more than two decades the challenge has been made of their selection and appointed under the scheduled caste category.

67. On the issue of *quo-warranto* as has been claimed by the petitioner that the delay and laches will not come in the way of declaring the appointment of respondent nos.8 and 9 to



be illegal, requires interference and for that he has placed reliance on two decisions i.e. in the case of ***Renu and others v. District and Sessions Judge, Tis Hazari and another***, reported in ***A.I.R. 2014 S.C. 2175*** and ***Central Electricity Supply Utility of Orissa vs. Dhobei Sahoo And Others*** reported in ***A.I.R. 2014 S.C. 246***, but before the aforesaid judgments it will be proper to consider the decision rendered in the case of ***B. Srinivasa Reddy vs Karnataka Urban Water Supply & Ors.*** reported in ***2006(11) S.C. 731***, wherein the Court while dealing with the issue of *quo-warranto* has held 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 is in the nature of *habeas corpus* or *quo-warranto*. The Court in paragraph no.49 has held that 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. Even otherwise, no writ of *quo-warranto* could have been issued on the ground that even though the appointment is contrary to any statutory rule it is contrary to the



administrative instruction which the High Court holds as disclosed the policy of the Government. It is also settled provision of law that it is for the aggrieved person that is the non- appointee to assail the legality or correctness of the action and that third party does not have *locus standi* to canvass the legality or correctness of the action. The limits of *quo-warranto* is 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, but the writ of *quo-warranto* should be refused where it is an outcome of malice or ill-will. The Court may refuse to issue a *quo-warranto* which is purely discretionary.

68. It will be relevant to quote paragraph nos. 51 to 55 of the said judgment, which are as follows:-

“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 India, 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 bonafides. In the instant case, the motive of the second respondent Halakatte is very clear and the Court might in its discretion declined to grant



a Quo Warranto.

53. This Court in A.N. Sashtri v. State of Punjab 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 18.01.2003 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 24.02.2003, process was issued to the second respondent who was enlarged on bail on 12.06.2003 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 02.11.1992 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 the 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 imposture 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 India 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)

"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 meddling 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*, 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." (emphasis supplied)



69. Again the issue of *quo-warranto* came for consideration in *Central Electricity Supply Utility of Orissa vs. Dhobei Sahoo And Others (supra)*. In this case the appointment of C.E.O. was challenged as was claimed that he was bereft of qualification for holding that post, and as such, he was a usurper to the public office. The issue was dealt with by the Hon'ble Supreme Court and it has been held that from the exposition of law it is clear that the jurisdiction of the High Court while issuing a writ of *quo-warranto* is a limited one and can only be exercised 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 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.

70. It will be relevant to quote paragraph no. 15 to 18 of the said judgment, which are as follows:-

“15. Before we advert to the aforesaid submissions and the legal substantiality of the order passed by the High Court, we may refer to certain authorities that throw light on the duty of the Court while dealing with a writ of quo warranto. In The University of Mysore v. C.D. Govinda Rao and another[1], Gajendrakadkar, J. (as his Lordship then was) speaking for the Constitution Bench, 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 recognized 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 entitle 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." [Emphasis supplied]

16. In High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others S.B. Sinha, J., in his concurring opinion, while adverting to the concept of exercise of jurisdiction by the High Court in relation to a writ of quo warranto, has



expressed thus: -

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

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. To Govt. of Haryana.)

[Underlining is ours]

17. In Centre for PIL and another v. Union of India and Another, a three-Judge Bench, after referring to the decision in R.K. Jain (supra), has ruled thus: -

“64. Even in R.K. Jain case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether



the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decision when impugned under the judicial review jurisdiction.”

18. From the aforesaid exposition of law it is clear as noon day 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. 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 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.”

71. Again the same issue came for consideration in the case of *Renu and others v. District and Sessions Judge, Tis Hazari (supra)*, there the appointment was under challenge. The Court has held that if a person is holding the 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 appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right.

72. It will be relevant to quote paragraph no. 15 of the



said judgment, which is as follows:-

“15. Where any such appointments are made, they can be challenged in the court of law. 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 appointment 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 an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo



warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide: The University of Mysore & Anr. v. C.D. Govinda Rao & Anr., AIR 1965 SC 491; Shri Kumar Padma Prasad v. Union of India & Ors., AIR 1992 SC 1213 : (1992 AIR SCW 1093); B.R. Kapur v. State of Tamil Nadu & Anr., AIR 2001 SC 3435 : (2001 AIR SCW 3720); The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana & Anr., AIR 2002 SC 2513 : (2002 AIR SCW 2826); Arun Singh v. State of Bihar & Ors., AIR 2006 SC 1413 : (2006 AIR SCW 1306); Hari Bansh Lal v. Sahodar Prasad Mahto & Ors., AIR 2010 SC 3515 : (2010 AIR SCW 5567); and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo & Ors., (2014) 1 SCC 161 : (AIR 2004 SC 246 : 2013 AIR SCW 6339).”

73. In the present case, there is two conflicting rights; one is the right of respondent nos. 8 & 9, they were having qualification for being appointed as Accounts Officer but they should not be treated to be member of scheduled caste as in the State of Bihar those castes were treated to be a backward caste, inasmuch as, the caste which is declared by the President of India to be a scheduled caste only for the State of West Bengal,



that will not confer any right on migration to the migrant State of Bihar. They would not be treated to be a member of scheduled caste as Article 341 is very much clear that grant of status as scheduled caste is State-wise, list issued by the President of India by issuance of notification made entitled to the status of scheduled caste is not available to the person on migration as has been held by the Supreme Court. But in the present case, the appointment has been made in the year 1999, the petitioner never challenged or could not have challenged the appointment of respondent nos. 8 and 9 by way of *certiorari* as the petitioner was in the general category candidate and the respondent nos. 8 and 9 under reserved category candidate, but the petitioner has asked this Court to exercise the jurisdiction of *quo-warranto* and declare the appointment of respondent nos. 8 and 9 to be illegal entry in the service. The Court is of the view it will be highly inequitable, after lapse of so much of time, in exercising the power of *quo-warranto* declare the appointment of respondent nos. 8 and 9 to be null and void because they have already lost all the avenues for getting an opportunity of new appointment and the challenge has been made at the event when they have been promoted to the post of Deputy Director of Accounts. The petitioner has been knowing right from the



beginning that their entry in the service is under scheduled caste category though the petitioner could not have challenged the appointment by way of *certiorari* but he could have challenged the appointment by way of *quo-warranto* just after entry as Account officer. So, this Court is not exercising the discretion of *quo-warranto* for the purposes to declare their entry in the service from initial stage to be illegal and void. But it will not bring the matter to end as the issue of accelerated promotion is very much involved in the present case which this Court has to decide the merit of the case about the entitlement of respondent nos. 8 & 9 to get the benefit of accelerated promotion.

74. The Reservation Act has come in the year 1991. It will be appropriate to quote Section 4 of the Reservation Act in extenso:-

“4. Reservation for direct recruitment:- -

All appointments to services and posts in an establishment which are to be filled by direct recruitment shall be regulated in the following manner, namely:-

(1) The available vacancies shall be filled up -

- (a) from open merit category .. 50%*
- (b) from reserved category .. 50%*

(2) The vacancies from different categories



of reserved candidates from amongst the 50% reserved categories shall, subject to other provisions of the Act, be as follows:-

- (a) Scheduled Castes .. 16%*
- (b) Scheduled Tribes .. 01%*
- (c) Extremely Backward Class.. 18%*
- (d) Backward Class .. 12%*
- (e) Woman of Backward Classes . 03%*

Total ...50%

Provided that the State Government may by notification in the Official Gazette, fix different percentage for different districts in accordance with the percentage of population of Scheduled Castes/Scheduled Tribes and other Backward Classes in such districts:

Provided further that case of promotion, reservation shall be made only for Scheduled Caste/Scheduled Tribes in the same proportion as provided in this section.

(3) A reserved category candidate who is selected on the basis of his merit shall be counted against 50% vacancies of open merit category and not against the reserved category vacancies.

(4) Notwithstanding anything contained to the contrary in this Act or in any other law or rules for the time being in force, or in any judgment or decree of the Court, the provision of sub-section (3) shall apply to all such cases in which all formalities of



section have been completed before the 1st November, 1990, but the appointment letters have not been issued.

(5) The vacancies reserved for the Scheduled Caste /Scheduled Tribes and other Backward Classes shall not be filled up by the candidates not belonging to Scheduled Caste/Scheduled Tribes and Other Backward Classes except as otherwise provided in this Act.

(6) (a) In case of non-availability of suitable candidates from the Scheduled Castes and Scheduled Tribes for appointment and promotion in vacancies reserved for them, the vacancies shall continue to be reserved for three recruitment years and if suitable candidates are not available even in the third year, the vacancies shall be exchanged between the Scheduled Caste /Scheduled Tribes and the vacancies so filled by exchange shall be treated as reserved for the candidates for that particular community who are actually appointed.

(b) In case of non-availability of suitable candidates from the Extremely Backward Classes and Backward Classes the vacancies so reserved shall continue to be reserved for them for three recruitment years and if suitable candidates are not available even in the third year also, the



vacancies shall be filled by exchange between the candidates from the extremely Backward and Backward Classes and the vacancies so filled by exchange shall be treated as reserved for the candidates of that particular community who are actually appointed.

(c) In case of non-availability of suitable candidates for the vacancies reserved for the women of backward classes; the vacancies shall be filled in order of preference as follows:-

(i) by the candidates from the Scheduled Caste;

(ii) by the candidates from the Scheduled Tribes;

(iii) by the candidates from extremely Backward Classes;

(iv) by the candidates from Backward Classes.

The vacancies so filled in the transaction shall be treated as reserved for the candidates of that particular community who are actually appointed.

d) If in any recruitment year, the number of candidates of Scheduled Castes/Scheduled Tribes, extremely Backward and Backward Classes and are less than the number of vacancies reserved from even after exchange formula the remaining backlog vacancies may be filled by general



candidates after deserving them but the vacancies so deserved shall be carried forward for three recruitment years.

e) If the required number of candidates of Scheduled Castes, Scheduled Tribes and Extremely Backward and Backward Classes and Women of Backward Classes are not available for filling up the reserved vacancies, fresh advertisement may be made only for the candidates belonging to the members of the Scheduled Castes, Scheduled Tribes and Extremely Backward and Backward Classes and Women of Backward Classes, as the case may be, to fill the backlog vacancies only.

(f) Notwithstanding anything contained to the contrary in the Act or in any other law or rule for the time being in force, or in any judgment or decree of the Court, the provisions of Section 4 shall apply to all such cases in which all formalities of selection have been completed before 28th April, 1993 but the appointment letters have not been issued."

75. In the year 2003, amendment has been made in Section 4 of the Bihar Reservation Act 3 of 1992, which is as follows:-

“3. Amendment of Section 4 of Bihar Act 3 of 1992.- The following third proviso shall be added to sub-section (2) of Section 4 of the



said Act.

“Provided further that the candidates residing out of the State of Bihar shall not claim for benefits of reservation under this Act.” (emphasis supplied)

76. Time to time the amendment has taken place and for the purpose of this case the important amendment is the amendment of 2003, wherein it has been specifically stipulated in proviso that the candidate residing outside the state of Bihar shall not claim the benefit of the reservation.

77. The issue of availability of reservation is no longer *res integra* as has been decided in the case of **Baleshwar Prasad Rajak vs. State of Bihar & Ors.**, reported in **2009 (1) PLJR 873**, where the appointment of judicial officer was challenged, claiming that he is not a native of the State of Bihar so he was not entitled for selection as Judicial Officer in the category of scheduled caste and the recommendation made by the B.P.S.C. was completely illegal and not sustainable in law. This Court has held that recommendation of the respondents were illegal and they cannot be appointed as judicial officer and the Court has declared that respondent nos. 4 and 5 were not eligible to be considered for appointment against the vacancy reserved for the members of the scheduled caste and their



appointment has been held to be illegal and the Bihar Public Service Commission was directed to recommend the case of the persons just below respondent nos. 4 and 5 in the merit list/waiting list for being appointed as judicial officer.

78. It will be relevant to quote paragraph nos. 10, 11, 24 and 25 of the said judgment, which are as follows:-

*“10. Mr. Umesh Prasad Singh, Senior Advocate, appearing on behalf of petitioner contends that undisputedly respondents 4 & 5, according to their own showing, came to the State of Bihar on appointment of their father in the judicial service and, hence it cannot be said that they are members of the Scheduled Caste of the State of Bihar or for that matter they are native of Bihar and, therefore, in terms of the advertisement, they are not eligible to be considered for appointment on the post reserved for the members of the Scheduled Caste. In support of the submission, reliance has been placed on a decision of the Constitution Bench of the Supreme Court in the case of **Marri Chandra Shekhar Rao v. Dean, Geth G.S. Medical College and Ors.** [(1990(3) SCC 130)]. In this case a member of the Scheduled Tribe of Andhra Pradesh on transfer of his father went to Maharashtra and claimed benefit of reservation in admission to Medical College in Maharashtra. The Constitution Bench of the Supreme Court in*



the said case laid down the law as follows:-

“21. We have reached the aforesaid conclusion on the interpretation of the relevant provisions. In this connection, it may not be inappropriate to refer to the views of Dr. B.R. Ambedkar as to the prospects of the problem that might arise, who stated in the Constituent Assembly Debates in reply to the question which was raised by Mr. Jai Pal Singh which are to the following effect:-

“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area ? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in his Constitution. But, so far as the present Constitution stands, a member of a Scheduled Tribe going outside the Scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than



those which are covered by them...”

22. In that view of the matter, we are of the opinion that the petitioner is not entitled to be admitted to the medical college on the basis of Scheduled Tribe certificate in Maharashtra. In the view we have taken, the question of petitioner's right to be admitted as being domicile does not fall for consideration.

11. Yet another decision on which reliance is placed is the decision of the Supreme Court in the case of Action Committee on issue of caste certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India and Ors. : (1994)5SCC244, in which it has been held as follows:-

“16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in



another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State “for the purposes of this Constitution”.”

24. In view of what we have observed, respondent Nos. 4 & 5 were not eligible to be considered for appointment against the vacancy reserved for the members of Scheduled Caste. Hence, we have no option than to hold their appointment illegal.

25. The Bihar Public Service Commission shall now recommend the case of persons just below respondent Nos. 4 & 5 in the merit list/waiting list of the candidates belonging to the category of Scheduled Caste without unnecessary delay. The State Government on receipt of the recommendation shall make appointment. Persons so appointed shall carry their seniority but shall not be entitled to any emoluments. We make it clear that if the petitioner or the intervenors are not the candidates below respondent Nos. 4 & 5 in the merit list, the Bihar Public Service Commission shall be at liberty to recommend the names of those persons whose placement is just below respondent Nos. 4 & 5.”

79. This judgment has been affirmed by the Hon’ble Supreme Court in the case of **Sanjeev Kumar and Another v. State of Bihar and Others**, reported in **2016(13) S.C.C. 105**, but has granted liberty to the petitioner to appear in the next examination as general candidate, on his selection, it will be



treated to be uninterrupted service with all consequential benefits of seniority.

80. It will be relevant to quote paragraph nos. 3, 5, 13, 14, and 15 of the said judgment, which reads as under:-

“3. The question in Melwin's case (supra) as in the case before us was whether a person belonging to any Scheduled Caste/Scheduled Tribe in the State of his/her origin can claim the benefit of reservation upon his/her migration to another State. In Marri Chandra Shekhar Rao and Action Committee's cases, this Court has answered the said question in the negative. In Melwin's case also while referring to the Constitution Bench pronouncements of this Court, this Court has reiterated that the benefit of reservation for Scheduled Caste and Schedule Tribe candidates, does not ensure to candidates upon their migration to another State even in cases where the caste of those migrating from one State to the other is recognised as a Scheduled Caste/Tribe in both the States.

5. In the case at hand the High Court has held and in our opinion rightly so that the appellants who are originally from the State of Uttar Pradesh were not entitled to the benefit of reservation as Scheduled Caste candidates in the State of Bihar even when the caste to which they belong was found and recognised



as a Schedule Caste in both the states. To that extent, therefore, the judgment of the High Court is legally unexceptionable and does not in our opinion call for any interference.

13. It is true that the initial appointment of the appellants has been found to be legally bad on account of the reasons set out earlier, yet the prolonged litigation on the subject has indeed deprived the appellants of the opportunity to seek employment elsewhere and even to appear in the successive examinations that have been offered by the Public Service Commission to eligible candidates for recruitment in the Bihar State Judicial Service not only in the reserved category but for the general category candidate like the appellants. The appellants appear to have laboured under the impression that since they have already been appointed they would be entitled to defend their appointments and continue in service. That expectation has not come true in the light of the Constitution Bench decisions. Be that as it may, we see no impediment in the appellants being given a last opportunity to appear in the next examination for recruitment of officers in the State Judicial Service to be notified by the Bihar Public Service Commission hereafter in relaxation of the age bar, if any prescribed. We make it clear that the appellants shall appear in the said examination and shall be treated as



general category candidates only. In case they qualify and get selected for appointment as fresh candidates, their appointments already made in the year 2006 would continue uninterrupted with all consequential benefits of seniority etc. In case, however, the appellants fail to qualify for appointment in the next examination, as indicated above, they shall cease to hold the posts currently held by them.

14. On the same analogy, we do not see any reason to deny to respondents no. 4 and 5, writ petitioner and intervenor, a similar opportunity whose position is no different. They too appear to have neglected the subsequent examinations hoping that the impugned judgment would entitle them to enter the judicial service. Now that we find it too late for the said respondents to be appointed on the basis of examination held in the year 2006, the only option for them too is to try their luck in the next examination along with the appellants in relaxation of the age bar in the general/reserved category for Scheduled Caste candidates as the case may be.

15. In the result, we dismiss this appeal insofar as the impugned judgment declares that the appellants are not entitled to the benefit of reservation. The remainder of the impugned order is however modified to the effect that the appellants herein and



respondents no. 4 and 5 (original writ petitioner and intervener) shall have an opportunity to appear in the next examination for selection of Civil Judge, Junior Division (Munsif Magistrates) in the Bihar Judicial Service, to be notified by the Bihar Public Service Commission. We make it clear that this opportunity shall be the last and final opportunity to both sides to appear in the examination and compete for a fresh appointment. In case the appellants fail to qualify for appointment in the open merit category on the basis of their inter se merit with other candidates in that category, their appointments shall stand terminated with effect from the date the Public Service Commission declares the final result of the examination. In case however they qualify their appointment made in the year 2006 shall continue with all consequential benefits. The appellants shall not however be entitled to any benefit of reservation at any stage of their service in future. We further make it clear that this order has been passed in the peculiar facts and circumstances of the case and is limited to the appellants and respondents no. 4 and 5 alone. No other candidate placed anywhere in the merit list of 2006 shall be entitled to claim any such benefit either from this Court or from the Public Service Commission or by the State of Bihar for that



matter.”

81. Again this issue has considered in the judgment of ***Khichri Ram and Ors. vs. The State of Bihar and Ors***, reported in ***2009(2) PLJR 265***, there the question of promotion of Judicial Officer came for consideration and the Court has held that the person outside the State cannot be given the benefit of promotion in view of the amendment made to the Reservation Act.

82. In view of the aforesaid discussion, it is very much clear that the respondents no.8 and 9 could not have entered into the service by way of scheduled castes and at no stretch of imagination they can claim to be member of the scheduled caste in the State of Bihar, but one point has been raised by the respondents that the petitioner has sought a relief of promotion, which cannot be granted as the same was never demanded by writ petitioner nor the demand has been rejected. As there was no demand and no rejection, so the *mandamus* cannot be issued to the petitioner for granting promotion to the next grade and for that the petitioner, has placed reliance on ***Halsbury's Law of England (para 128, volumn-1)***.

“128. Nature of mandamus. The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing



from the High court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Whereas the older authorities were concerned with restoration, admission and election to offices and delivery up and production and inspection of documents, in modern times the purpose of mandamus is to compel the performance of a public duty, whether of an inferior court or tribunal to exercise its jurisdiction, or that of an administrative body to fulfil the obligations cast upon it. Its purpose is to remedy defects of justice; and accordingly it will issue to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right. It is a discretionary remedy and may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effective.

An applicant for judicial review may seek all or any of the prerogative orders either in the alternative or cumulatively with each other, as well as with any other remedies available on an application for judicial review. It is common practice to apply for certiorari and mandamus together.

Disobedience to mandamus is a contempt of court, punishable by fine or



imprisonment.”

83. Has also placed reliance on ***Bharat Amratlal Kothari and Another vs. Dosukhan Samadhan Sindhi and Ors.*** reported in ***2010(1) SCC 234***, in that case it has been held that the relief which has not been sought cannot be allowed but in paragraph no.33 the Hon'ble Supreme Court has held that the High Court has power to mould reliefs to meet the ends of justice, that does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the court.

84. It will be relevant to quote paragraph nos. 30 to 34 of the said judgment, which reads as under:-

30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.



31. *In Krishna Priya vs. University of Lucknow, overlooking the rule relating to grant of admission to Postgraduate course in medical college, the High Court in the exercise of powers under Article 226 of the Constitution directed the Medical Council to grant provisional admission to the petitioner. This Court set aside the order passed by the High Court observing that:(SCC p.319, para 26)*

"26....in his own petition in the High Court, the respondent has merely prayed for a writ directing the State or the College to consider his case for admission yet the High Court went a step further and straightway issued a writ of mandamus directing the College to admit him to M.S. course and thus granted relief to the respondent which he himself never prayed for and could not have been prayed for"

32. *Again, in Om Prakash v. Ram Kumar, this Court observed: (SCC p.445, para 4)*

"4. ...A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute".

33. *Though a High Court has power to mould reliefs to meet the requirements of each case,*



that does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the court.

34. It is relevant to notice that the High Court was not exercising powers under Article 226 of the Constitution suo motu but was examining the validity of order passed by the Additional Chief Judicial Magistrate refusing to grant custody of goats and sheep to the respondent Nos. 1 to 6, in the Special Criminal Application, which was filed by them under Article 226 of the Constitution through a were represented by a senior counsel practicing in the Gujarat High Court and having regard to the facts of the case, the learned lawyer was justified only in claiming those reliefs to which reference is made earlier.”

85. As in the present case, the amendment has been allowed in the writ petition, thereby the pleading made in the Interlocutory Application No.9206 of 2014 to be the part of the writ petition. In the Interlocutory Application relief has been sought for quashing the appointment and promotion of respondent nos. 8 and 9 on the ground of illegal entry, but this Court is of the view that as the relief has been sought, after long lapse of time by way of *quo-warranto* it will not be proper exercise of discretion to oust the respondent nos. 8 and 9 from



their entry as Accounts Officer itself but the Hon'ble Supreme Court in the case of ***State Of Bihar & Ors. vs Kameshwar Prasad Singh & Anr.*** reported in ***A.I.R. 2000, Supreme Court 2306***, has granted the benefit by moulding the relief.

86. It will be relevant to quote paragraph no.34 of the said judgment:-

“34. It is further contained that as the respondent was, in the meantime, appointed/promoted in the IPS Cadre and as per requirements of the State Government he has already submitted his resignation from the State Service, the acceptance of the appeal and setting aside the directions of the High Court would result in great hardship to him and amount to unsettling his settled service rights particularly when his promotion/appointment to the IPS cadre has not been challenged and is not in dispute. Such a plea by itself cannot be accepted as a ground to dismiss the appeal filed against an order which we have held to be illegal being contrary to law and the Service Rules applicable in the case. Once the judgment is set aside, the consequences have to follow and a person taking advantage or benefit of the wrong orders is to suffer for his own faults which cannot be attributed to anybody-else. However, in appropriate cases this Court can mould the relief to safeguard the interests of a



person wherever required. For doing complete justice between the parties, appropriate directions can be given to protect the interests of a person who is found to have been conferred the benefits on the basis of judicial pronouncements made in his favour. As the appellant-State has been found to be careless and negligent in defending its cases, we feel and are inclined to protect the interests of Brij Bihari Prasad Singh, respondent. We are convinced that the interests of justice would be served by holding that despite setting aside the judgments of the High Court his interests be protected by not disturbing his promotions made from time to time. However, judgments passed in his favour cannot be permitted to be made a basis for conferment of similar rights upon other persons who are shown to have filed writ petitions or representations which, if accepted, are likely to adversely affect the interests of more than 150 Inspectors and 400 Officers in the rank of Dy. SP. Similarly, if any benefit has been conferred upon any other person who has superannuated, no useful purpose would be served by directing his demotion retrospectively and recovery of the excess emoluments paid to him.” (emphasis supplied)

87. In **Banglore Development Authority vs. Vijaya Leasing Limited and Ors.** reported in **2013(14) S.C.C. 737**



same principle has been reiterated. It will be relevant to quote paragraph no.12, 13 and 14 of the said judgment, which reads as under:-

“12. In the abovesaid background, the question for consideration is, therefore, whether such a conclusion of the learned Single Judge and the ultimate order passed by him can be held to be justified in exercise of his power and jurisdiction under Article 226 of the Constitution.

13. To appreciate the legal position we only wish to refer to two of the decisions of this Court reported in Dwaraka Nath v. I.TO and Gujarat Steel Tubes Ltd v. Gujarat Steel Tubes Mazdoor Sabha. In Dwaraka Nath case the Supreme Court stated as under: (AIR pp.84-85, para 4)

“4. ...This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression ‘nature’, for the said



expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself." (Emphasis added)

14. Similarly in Gujarat Steel Tubes Case (supra), the relevant principles can be culled out from paragraphs 73 and 81; (SCC pp.624-25 and 627)

"73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of



alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.

81. ...Broadly stated, the principle of law is that the jurisdiction of the High Court under Article 226 of the Constitution is limited to holding the judicial or quasi-judicial tribunals or administrative bodies exercising the quasi-judicial



powers within the leading strings of legality and to see that they do not exceed their statutory jurisdiction and correctly administer the law laid down by the statute under which they act. So long as the hierarchy of officers and appellate authorities created by the statute function within their ambit the manner in which they do so can be no ground for interference.” (emphasis added)

88. Applying the principle of equity, considering competing right of the petitioner as well as the respondents nos. 8 and 9, the equity demands to save the appointment of respondent nos. 8 and 9 but at the same time they will not be treated to be member of scheduled caste rather they will be treated to be general category candidates and they will not be entitled to relief of accelerated promotion but will be treated to be junior to the petitioner, as and when their turn will come for promotion, they will be granted the same, not out of turn.

89. Accordingly, this writ petition is partially allowed to the aforesaid extent saving the appointment of respondent nos. 8 and 9 but treating them as member of general category.



In consequence, the promotions granted to respondent nos. 8 and 9 will be treated to have been quashed / cancelled and both will be treated to be below to the petitioner.

(Shivaji Pandey, J)

pawan/-

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