

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1047 OF 2018

Mr. Hemant Sawant ... Petitioner

Versus

State of Goa & Ors. ... Respondents

Mr. V. Rodrigues and Mr. V. Naik, Advocates for the petitioner.

Mr. D. Lawande, Advocate General with Mr. Deep Shirodkar, Addl. Government Advocate for respondent nos.1, 2 and 4.

***Coram : R. M. Borde &
Prithviraj K. Chavan, JJ.***

Date : 28th November 2018.

P.C. :

The petitioner claims to be the member of public invoking jurisdiction of this Court and praying for a writ of quo-warranto and mandamus questioning the authority of respondent no.5 to hold in the public post of Dean of respondent no.4-Institution. A writ of mandamus is also requested to be issued directing respondent no.2 to issue appropriate directions recalling approvals for appointment of respondent no.5 as a Dean and to recover the salaries

paid by respondent no.2 from the public funds of the State of Goa.

2. The petitioner contends that respondent no.5 was initially appointed as a Senior Resident on 21st March 1984. The petitioner was thereafter promoted to the post of Lecturer. While making appointment of respondent no.5 as a Lecturer, he did not fulfill the requirements of having three years experience as a Senior Resident and respondent no.5 fall short of two months for being considered for appointment to the post of Lecturer at the relevant time. However, he was appointed to the said post and continued as such. The petitioner has also further invited our attention to the remarks concerning the appointment of respondent no.5 as a Professor of Ophthalmology which records as such 'Dr. Pradeep Naik cannot be counted as he was promoted as Professor without having required experience as Associate Professor to promote as Professor'. The aforesaid observations are part of the Assessment Form, Part A-II prepared by the Medical Council of India. The petitioner thus contends that since respondent no.5 did not possess required experience of three years in the cadre of Senior Resident, he could not have been appointed to the post of Lecturer and in view of the observations made by the Medical Council of India referred to above, he could not have been promoted to the post of Professor since he did not possess required experience as Associate

Professor. The petitioner thus contends that since the appointment of respondent no.5 as a Professor has not been considered as valid he could not have been promoted to the post of Dean of the Goa Medical College. It is contended that the cadre of Professor is a feeder category for the post of Dean and since respondent no.5 did not fulfill the eligibility criteria for appointment as a Lecturer and consequentially he could not have been considered for the appointment to the post of Professor as well as Dean.

3. The petitioner has invited our attention to the judgment of the Supreme Court in the matter of *Central Electricity Supply Utility of Odisha Vs Dhobei Sahoo and others*¹ to contend that the petitioner is entitled to question the appointment of respondent no.5 on the ground that he does not fulfill the essential eligibility criteria for holding the post of Dean and the writ of quo- warranto can be issued. It is also further contended that the doctrine of delay and laches should not be construed as a bar because the ineligible person holds the public office as a usurper and such continuance needs to be prevented by the Court. In this context, it would be appropriate to refer to the observations made by the Apex Court in the aforesaid judgment in paragraphs 21 and 22 which read thus:

¹ (2014) 1 SCC 161

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

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

4. The learned counsel for the petitioner thus contends that respondent no.5 is not entitled to continue in office since the

concerned respondent lacks basic eligibility criteria to occupy the post, and a quo-warranto shall be issued for questioning the authority of respondent no.5 to hold the post of Dean.

5. We have heard the learned Advocate General appearing for the State of Goa. The learned Advocate General has questioned the maintainability of the petition. Firstly, he contended that the petitioner does not have any personal interest in the matter, he is not from the medical profession, neither he is in employment of the concerned department. It is further contended that the petitioner has approached this Court by way of presenting this petition in which he has no personal interest. As far as the presentation of the PILWP is concerned, same may not be entertained in respect of the service matter but there can be exception in respect of issuance of quo-warranto. The instant matter presented to us is not a Public Interest Litigation and as such the petition need not be entertained. Apart from the question of maintainability of the Public Interest Litigation, it is contended that considering the factual aspect, the petition is liable to be thrown out at this stage itself. It is contended that respondent no.5 was appointed in pursuance to the advertisement No.4/1992 published on 9th October 1992 as a Professor in Ophthalmology. A copy of the application form presented at the relevant time by respondent no.5 to Goa Public

Service Commission is placed on record. The Goa Public Service Commission recommended the name of respondent no.5 for appointment to the post of Professor of Ophthalmology on 16th February 1993 and a copy of the letter of recommendation is placed on record by the learned Advocate General. Further, an order of appointment came to be issued by the Government of Goa under the signature of Under Secretary (Health) on 22nd August 1995 appointing respondent no.5 as a Professor of Ophthalmology in the Goa Medical College. Initially, respondent no.5 was placed on probation for a period of two years from 11th June 1993 to 10th June 1995. It is further stated that after the completion of the probation period he has been confirmed on the post of Professor. Our attention is invited to the recruitment rules called 'The Goa, Daman and Diu Medical Education Service Rules, 1979' framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. So far as the appointment to the post of Professor is concerned, in terms of the Rules the respondent no.5 has been appointed directly to the post. It has been pointed out by the learned Advocate General that respondent no.5 has been appointed as a direct recruit to the post of Professor and the order of appointment in that regard has been issued on 22nd August 1995. So far as the appointment to the post of Dean is concerned, the method of appointment is by promotion falling which

by way of transfer on deputation or direct recruitment, which may be decided in consultation with the Commission. For the purpose of appointment by way of promotion, the candidate shall have five years experience as a Professor. It has been pointed out by the learned Advocate General that respondent no.5 has fulfilled the requirements for appointment to the post of Dean. Since respondent no.5 has been appointed to the post of Professor by way of direct recruitment, he has been selected by the Goa Public Service Commission after verifying that he fulfills the eligibility requirements and as such after observing necessary formalities the recommendation has been made for his appointment way back in the year 1993. It does appear that respondent no.5 was holding the post of Professor since the date of appointment i.e. 22nd August 1995 till his appointment as a Dean of the Goa Medical College. The objections raised by the petitioner that since respondent no.5 does not fulfill the eligibility requirements for appointment to the post of Lecturer, he shall deem to be ineligible for appointment to the post of Professor and consequential promotion to the post of Dean does not deserve to be considered for the reasons that respondent no.5 has been appointed by way of direct recruitment to the post of Professor in observance of the relevant procedure and after scrutinizing the eligibility of the concerned respondent no.5 by the Goa Public Service Commission. The respondent no.5 has not gained

promotion to the post of Professor from the promotional channel and as such the arguments as regards the ineligibility canvassed by the petitioner does not deserve any consideration.

6. The petitioner has made a grievance that the information furnished by the learned Advocate General and the documents placed before the Court namely the order of appointment, copy of the letter of recommendation, copy of the application form shall not be taken into consideration since no affidavit in support has been presented. Since we are dealing with the petition at the admission stage and the copies of the relevant records have been placed before us by the learned Advocate General who is responsible Constitutional functionary, we do not deem it necessary to consider the objections raised by the petitioner in this regard. It is not the matter of dispute that respondent no.5 is appointed to the post of Professor in the year 1995 and was holding the aforesaid post till his appointment as Dean. The respondent no.5 is appointed to the post of Dean on officiating basis on 30th July 2014 and on regular basis on 3rd July 2015. The belated challenge raised by the petitioner questioning the eligibility of respondent no.5 does not deserve any consideration. It has not been canvassed before us that the respondent no.5 does not fulfill the eligibility criteria laid down under the Rules for appointment to the

post of Dean. So far as the respondent no.5 is concerned, he does fulfill the educational qualifications requirements laid down under the regulations. We are of the opinion that the petition is frivolous and amounts to abuse of process of Court. In this regard, the observations of the Supreme Court in the matter of *Holicow Pictures (P) Ltd., Vs Prem Chandra Mishra*², recorded in the paragraph 10 of the judgment are relevant and needs to be quoted.

“ 10.....12. It is depressing to note that on account of such trumpety proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy, whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions gallows under untold agony and persons sentenced to death facing and kept in incarceration for long years, persons suffering from undue delay in service matters government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. are all standing in a long serpentine queue for years with the fond hope of

2 (2007) 14 SCC 281

getting into the Courts and having their grievances redressed, the 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, break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultant they lose faith in the administration of our judicial system.”

7. For the reasons recorded above, we do not deem it necessary to entertain the petition. The petition is devoid of substance. As such, the writ petition stands rejected.

Prithviraj K. Chavan , J.

R. M. Borde , J.

*at**