

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

CWP No. 16978 of 2017

Date of decision : 17.01.2018

Ramandeep Singh

....Petitioner

V/s

Union of India & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Gurminder Singh, Sr. Advocate with
Mr. J.S. Gill, Advocate for the petitioner.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Dheeraj Jain, Sr. Panel Counsel for respondents no. 1 & 2.

Mr. Harsimran Singh Sethi, Addl. A.G. Punjab.

RAJAN GUPTA J.

Petitioner has sought a writ in the nature of quo-warranto seeking removal of respondent no. 5 from the post of Chief Principal Secretary to Chief Minister (hereinafter referred as 'CPSCM') on the ground that his appointment is not sustainable in the eyes of law. Petitioner is stated to be a practicing advocate and resident of State of Punjab, District Mohali. He has stated that he has vital interest in the functioning of administrative machinery of the State as it affects his daily life and even otherwise every citizen is entitled to good governance. As a public spirited person he has the right to question the appointment of respondent no. 5. Petitioner has placed on record internal communications, noting files and other documents, all of

same having been produced and made part of record, this court proceeds to examine the pleas raised by the petitioner in this petition.

Mr. Gurminder Singh, learned senior counsel for the petitioner vehemently urged before the court that vide order dated 17.03.2017, respondent no. 5 was appointed as Chief Principal Secretary to the Chief Minister in the pay-scale of Cabinet Secretary with the stipulation that terms and conditions of the office would be notified later after approval by Council of Ministers. However, there is nothing on record to show that Council of Ministers later accorded approval. This appointment had purportedly been made in exercise of Rules under 18 & 19 of the Rules of Business of Government of Punjab, 1992 made by the Governor in exercise of powers under Article 166(3) of Constitution of India. According to him, said Rules are mandatory in character. Pursuant to aforesaid Rules, a standing order was issued by the Chief Minister stipulating that powers vested in Principal Secretary to Chief Minister would be exercised by 'CPSCM' during the absence of Chief Minister. The said officer would be at liberty to dispose off cases of immediate nature subject to ex-post facto approval. He vehemently submitted that such functions being sovereign in nature cannot be delegated to anybody as it would be repugnant to the Constitutional scheme. According to him, Standing Order would amount to delegation of powers vested in the Council of Ministers headed by Chief Minister to 'CPSCM'. Referring to Article 166(3) of the Constitution, he submitted that the Rules made thereunder are mandatory in nature. The Standing Order is against the Constitutional scheme as it is against the Rules of Business as framed by Governor of Punjab in view of powers vested in him under

‘cadre officers’ posted in the CMO who have not been given the liberty to take decisions of their own in the absence of the Chief Minister. However, this power has been vested in a non-cadre officer. He submits that sovereign functions cannot be exercised by an ‘outsider’. This apart, terms and conditions of his appointment were notified on 19.04.2017, however, they did not have approval of the Council of Ministers. Besides, respondent no. 5 being a retired officer, was not amenable to any disciplinary rules or any other control, having ceased to be a public servant. The order of appointment was not issued in the name of the Governor as mandated by the Constitution and Rules 8 & 9 of the Rules of Business, 1992. Mere authentication thereof by an authority, other than Governor, would not make it a legal order. Though the officer had been empowered to exercise sovereign functions, he had not been administered any oath of secrecy as was necessary in case of Ministers and cadre officers of the State. According to him, the appointment as ‘CPSCM’ in the rank and pay-scale of Cabinet Secretary shows that it was a post of great authority in the State Government hierarchy and, thus, a ‘public office’ amenable to question by an ordinary citizen by way of writ of quo-warranto. Referring to order, Annexure P-7, he submitted that the Finance Department had opined that one post of IAS be kept in abeyance in the existing cadre. According to him, this was done with a view to make way for induction of respondent no. 5 as ‘CPSCM’ and to justify payment of emoluments and perks to him.

Mr. Ranjit Kumar, learned senior Advocate appearing for the State as well as respondent no. 5 countered the pleas taken by the petitioner.

At the outset, he posed a challenge to maintainability of a writ of quo

warranto on the ground that respondent no. 5 was not holding a public

office. He was merely a 'staff officer' in the CMO which, by no stretch of imagination could be said to be an independent post. His services being contractual in nature and co-terminus with term of the Chief Minister, were not amenable to challenge by way of a writ of quo warranto. According to him, appointment order dated 17.03.2017 having been ratified by Council of Ministers on 18.03.2017 was valid in nature. The fact that respondent no. 5 had been granted pay and allowances admissible to an officer of the rank of Cabinet Secretary to Government of India, did not mean that he was holding the post of Cabinet Secretary and, thus, a 'public office'. Respondent no. 5, who had retired as an Additional Chief Secretary while drawing a salary of ₹2.25 lacs, had been given a contractual appointment, total emoluments being ₹2.50 lacs minus pension. Relying upon judgment in *R. Chiterlekha 1964 (AIR) SC 1823*, he submitted that provisions of Article 166 were not mandatory but directory in nature. Thus, order which is not issued in the name of Governor cannot be held to be violative of Rules 8 & 9 of 1992, Rules. Besides, the said order stands authenticated by the Chief Secretary who was authorized to do so by the Governor under 1992 Rules. An order not expressed in the name of Governor cannot be held to be unsustainable. In the written statement submitted subsequently, respondents also raised the plea of *coram non-judice* stating that Government was not accountable to courts while appointing a person unless said post is a 'public office'. Petitioner was infact pursuing a public interest litigation which is beyond the scope of consideration of this court and, thus, it is *coram non-judice*. Though during the course of arguments it was vehemently denied that powers of the Chief Minister had been delegated to respondent no. 5, in the

be done and same cannot be subject matter of judicial review. The arrangement has been worked out to tackle immediate and emergent situations in consultation with the Chief Minister on mobile, if possible; if not, then in terms of the Standing Order. According to him, the Standing Order is totally valid and is being misinterpreted by the petitioner.

UOI has filed a short reply. During the course of arguments, its stand remained that entire issue pertained to the State. Department of Personnel & Training had been impleaded for no reason. There was no challenge to any order/ policy/action of DoPT. Thus, UOI and DoPT be struck off from the array of parties.

This court, thus, proceeds to decide the issues raised before it. The writ of quo warranto is regarded as an appropriate and adequate remedy to determine the right or title to a public office and to oust one who has usurped or intruded on such office. The writ affords a judicial inquiry into such matter. Specific provision has been made in Articles 32 & 226 of the Constitution for issuance of writs, orders or directions in the nature of quo warranto to oust a person from public office in case it is found that same has been unlawfully occupied. Scope of inquiry in this writ has been gradually enlarged and a right has been granted to any citizen to question “by what warrant or authority” a person holds a particular public office. In such challenge, it has to be examined whether quo-warranto has been sought in respect of a person who is holding a ‘public office’. A public office may be an office created by the Constitution, Statue or by virtue of duties it entails in which general public is interested. It appears that the character of such office ought to involve discharge of duties towards the community, usually connected with governance. If the office is of public nature and involves

delegation of some of the sovereign functions of the Government, executive, legislative or judicial, rigors of the quo-warranto writ would be attracted. On a challenge being made if the court finds that office is being held in contravention of law, it would warrant its interference. The extent to which writ of quo warranto can be issued has been laid down in the decision of Hon'ble Supreme Court in **Registrar General, High court of Madras v. R. Gandhi (SC) 2014 (11) SCC 547**, which is a case pertaining to challenge to the recommendations made by High Court Collegium for appointment as Judges of Madras High court in which a three Judge Bench of Hon'ble Supreme Court held as under:-

*“20..... Even after the President of India accepts the recommendations and warrants of appointment are issued, the Court is competent to quash the warrant as has been done in this case of **Shri Kumar Padma Prasad v. Union of India & ors., AIR 1992 SC 1213** wherein the recommendee was found not possessing eligibility for the elevation to the High Court as per Article 217(2). This case goes to show that even when the President, has appointed a person to a constitutional office, the qualification of that person to hold that office can be examined in quo warranto proceedings and the appointment can be quashed. (See also: **B.R. Kapur v. State of Tamil Nadu & anr., AIR 2001 SC 3435**”*

So as to have an idea about the nature of action in the proceedings for writ of quo-warranto, it would be beneficial to quote from *Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 145:-*

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

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions 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 entitled to the post allowed to occupy it. It is thus clear that

before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not. ”

This court, thus feels it appropriate to examine whether the office of “CPSCM” being held by respondent no. 5 is a ‘public office’. Elections for electing representatives to the State General Assembly were held in the month of February, 2017. On March 16, 2017 the Chief Minister took reins of the State Government alongwith Council of Ministers. Thereafter, normal process for putting in place administrative machinery was undertaken. Respondent no. 2 is a cadre controlling authority for the IAS and other Secretarial Services in the Central Secretariat. Respondent no. 3 deals with the matters relating to Council of Ministers in Punjab Government as well as constitution of Committees, Sub-Committees of Council of Ministers and coordinate work amongst them. Respondent no. 4 i.e. the Chief Secretary is primarily concerned with Personnel, General Administration, Vigilance, Investment and Promotion and is *de jure* head of the civil services under the Punjab Government. Petitioner is aggrieved by intrusion of a non-cadre officer in the administrative machinery of the State. Said respondent namely Suresh Kumar has been impleaded as respondent no. 5 in this petition, a 1983 batch IAS Officer of Punjab Cadre who superannuated as Additional Chief Secretary (Development) in April, 2016. He has now been appointed as Chief Principal Secretary to Chief Minister.

post. In response to the petition preferred by the petitioner, a detailed reply by way of an affidavit has been filed by Karan Avtar Singh, Chief Secretary to Government of Punjab. It has been stated therein that provisions of the Constitution of India and executive power of the State is co-extensive with its legislative power. Thus, State is fully competent to create a post depending upon its requirement. Instant post has been created to meet the requirement of the work of the Chief Minister's Secretariat. Respondent no. 5 had been appointed to the post to oversee the functioning thereof. It has been emphasized that conceptually the Chief Minister's Secretariat was different from the administrative department of the State Government. It was prerogative of the Chief Minister to appoint anybody in whom he has confidence to supervise the functioning of the CM Secretariat. In reply the Chief Secretary has referred to certain appointments of similar nature made by Government of India as well as State of Gujarat. However, reference to such notifications need not be dealt by this court. Bare perusal thereof shows that same have been made in exercise of powers vested in the Government under certain statutory Rules. Besides, it appears that same were never subject matter of challenge before any court. In the absence of challenge, it is not possible to comment on validity thereof.

As regards appointment impugned in the instant case, it has been mentioned in the noting, Annexure R-3 dated 16.03.2017 initiated by Secretary Personnel that the State Government had a very ambitious manifesto. To fulfill commitments made therein, regular monitoring would be required, for this purpose CMO's involvement and guidance in finalizing the plans and schemes would be crucial and essential. To achieve this, the capacity of Chief Minister's Office would be required to be enhanced by

appointing a senior, experienced and retired IAS officer. Thus, enriched experience of Shri Suresh Kumar across the departments and international organizations would immensely help the State Government in general and CMO in particular. The letter outlines that the pay and allowances would be same as that of Cabinet Secretary to Government of India minus pension plus D.A. i.e. level 18 in the pay-matrix given in schedule to the Indian Administrative Service (Pay) Rules, 2016; as also government accommodation, LTC and medical facilities as per the entitlement of Cabinet Secretary. It provides that the incumbent (respondent no. 5) would exercise all powers vested in the post of Principal Secretary to the Chief Minister. It was further directed that Cabinet Memorandum seeking approval for terms and conditions of service with regard to 'CPSCM' be placed before the CMM in the first meeting itself. A perusal of record shows that on the same day i.e. 16.03.2017 a proposal was prepared and put up before the Finance Department.

The Chief Secretary states in the affidavit that Finance Department stipulated that one post of IAS be kept vacant so that salary of respondent no. 5 after appointment in Chief Minister's office on contract basis could be drawn against the said post. As regards meeting of CMM, noting file only shows that same was held, however, minutes are not on record. According to State, para 2.0 of the proposal was approved but this would not mean that appointee had been appointed to that post against which salary was being drawn. This interpretation, according to affidavit, has to be drawn from the terms and conditions of appointment which is contractual and not from the source of salary. According to affidavit, merely because

respondent no. 5 had been appointed against a cadre post. Para 4 of the affidavit is reproduced below for ready reference:-

“4. That the assertion which is being made by the petitioner to canvass before this Hon'ble Court that the Respondent no. 5 has been appointed against a cadre post, is by placing reliance on any observation of the Finance Department mentioned in Annexure P-7. In that regard, it is submitted that before a post is created the concurrence of the Finance Department is necessary in respect of the salary and other perks to be paid to the person who is to be appointed. It is in this respect that the Finance Department had said that one post of the IAS be kept vacant and the salary of Respondent no. 5 after the appointment in the Chief Minister's secretariat on a contract basis, can be drawn against the said post. There are a large number of cases, where the salary of the appointees is drawn against another posts which are lying vacant. That does not mean that the appointee becomes appointed to the post from where the salary is being drawn. The appointment is to be seen as per the terms and conditions of the appointment and not in respect from where the salary of a person is coming. Therefore, the reliance being placed by the petitioner on Annexure P-7 to contend that as one post of IAS cadre is being kept vacant, therefore, the appointment of respondent no. 5 is on a cadre post, is not at all correct and is liable to be rejected.”

A perusal of record shows that an office noting dated 16.03.2017 was prepared by Secretary Personnel and marked to Chief Secretary who in turn presented it before the Chief Minister. The office of the Chief Minister observed that “Finance Department may kindly give their concurrence.” Relevant para of the office noting which is necessary for decision of this case is reproduced herein under:-

“The Chief Minister vide his orders dated 16.03.2017 has appointed Sh. Suresh Kumar, IAS (Retd.) with immediate effect as Chief Principal Secretary to Chief Minister, Punjab in the pay scale of Cabinet Secretary to Govt. of India. The C.M. has desired that the formal orders be issued accordingly. Further, he has also directed that a copy of the Cabinet Memorandum seeking approval for the terms and conditions of service with regard to Sh. Suresh Kumar, IAS (Retd.) be also placed before the Council-of-Ministers in its first meeting.

2. *In this regard it is apprised that the new State Government has taken over on 16.3.2017 after the conclusion of Assembly Elections, recently conducted in the State. The Chief Minister vide his order dated has appointed Sh. Suresh Kumar, IAS (Retd.) as Chief principal Secretary to Chief Minister in the pay scale of Cabinet Secretary to Government of India. The Chief Minister also directed that a Cabinet Memorandum seeking approval for the terms and conditions of service with regard to Sh. Suresh Kumar, IAS (Retd.) as Chief Principal Secretary to Chief Minister, Punjab be placed before the CMM in its first meeting itself.*

1.1 *It may be seen that the new State Government has a very ambitious manifesto. To fullfill the commitments made in the manifesto, a comprehensive planning and regular monitoring would be required. Foir the purpose, the Chief Minister Office's involvement and guidance in finalizing the plans and schemes would be very crucial and essential. To achieve this, the capacity of Chief Minister's office would require to be enhanced by appointing a senior, experienced and retired IAS officer.*

1.2 *Sh. Suresh Kumar, IAS (Retd.) is of 1983 batch of Indian Administrative Service of Punjab cadre. He retired from the service as Additional Chief Secretary after attaining superannuation on 30.4.2016. Sh. Suresh Kumar has vast experience of working in various departments of the State Government, Government of India, United Nations apart from having the experience of working as Principal Secretary to Chief Minister. His enriched experience across the departments and International organizations will immensely help the State Govt. in general and Chief Minister Office in particular.*

3. xxxxx xxxxx xxxxx”

Perusal of file shows that all terms relating to job profile and tenure, pay and allowances, government accommodation, leave/LTC, medical facilities etc. were specified in original noting. It was also proposed to appoint respondent no. 5 in the pay and rank of Cabinet Secretary and at level 18 of pay matrix issued by Government of India.

On 16.03.2017 itself, an order was issued appointing respondent no. 5 as 'CPSCM'. Relevant part thereof reads as under:-

“Shri. Suresh Kumar, IAS (Retd.) is hereby appointed with immediate effect as Chief Principal Secretary to the Chief Minister, Punjab in the pay scale of the Cabinet Secretary to Government of India. Formal orders be issued accordingly. A Cabinet Memorandum seeking approval for the terms and

conditions of service with regard to Sh. Suresh Kumar, IAS (Retd.) be also placed before the CMM in its very first meeting.”

Pursuant to aforesaid order, petitioner assumed charge on 17.03.2017. The report reads as under:-

“I, Suresh Kumar, IAS (Retd.) have today in the afternoon, assume the charge of the post of Chief Principal Secretary to the Chief Minister, Punjab in compliance with Punjab Government, Department of General Administration (Secretariat Establishment-V Branch) order dated 17th March 2017, issued vide No. 1/35/2017-IE5/2464 dated 17th March, 2017”

In para 6 of the affidavit filed by Karan Avtar Singh, Chief Secretary to Government of Punjab, it is vehemently denied that any power of the Chief Minister had been delegated to any one, much less to respondent no. 5. The affidavit adds that under the Rules of Business of Government of Punjab, 1992, delegation is to all the Ministers-in-Charge of the department and Chief Minister is also the Minister-in-Charge of various departments apart from being the Chief Minister of the State. He, thus, issued the Standing Order, Annexure R-4 providing for distribution of work in the CMO. It has been denied that same can be considered as delegation of work. In the written arguments submitted on behalf of the State, however, an effort has been made to explain that delegation of powers vested in Chief Minister, if any, cannot be subject matter of judicial review.

This court shall deal with this issue in the later part of this judgment. It has

been further stated that Principal Secretary to Chief Minister is a cadre post

and is manned by an IAS officer. There is, however, no explanation forthcoming in the order, Annexure P-4 why respondent no. 5 has been empowered to exercise all powers vested in the Principal Secretary which is a 'cadre post'. From the affidavit of Chief Secretary, it appears that State either lacks clarity on the issue or is not able to substantiate its stand that respondent no. 5 is not working against a post meant for a cadre officer. The affidavit further makes reference to the Standing Order issued on 16.03.2017. This court finds it necessary to reproduce the same herein below for ready reference:-

“Annexure R-4

(Chief Minister's Office, Punjab)

STANDING ORDERS

In pursuance of the provisions of Rule 18 and 19 of the Rules of Business of the Government of Punjab, 1992, and in supersession of previous Standing Order, if any, it is hereby ordered that in respect of Chief Minister's office, the cases/files mentioned below shall be submitted to the Chief Minister, Punjab for his orders by the officers mentioned there against. The powers vested in the Principal Secretary to CM shall be exercised by CPSCM, subject to mentions/details given in attached statement, giving details of tasks/departments/branches assigned to PSCM/SPSCM/DPSCM and other officers.

2.0 During my absence from the headquarters, cases of immediate nature, which are required to be disposed of at my level and decisions on which cannot wait for my return or

which cannot be sent to me during my tour for timely orders, shall, after discussing with me on my mobile phone, if possible, be disposed of by the Chief Principal Secretary. However, such cases shall be put up to me on my return to headquarters for ex-post facto approval.

3.0 Further for all such cases where a decision has been taken by me, such a decision should be recorded on the file or conveyed to the Concerned Departments by CPSCM/PSCM/SPSCM only.

Dated, Chandigarh, the

Sd/-

Chief Minister,

Punjab”

As regards the work distribution amongst the Officers of CMO, a statement is attached to the Standing Order. It has been stipulated that files pertaining to particular departments would be put up through ‘CPSCM’. Same reads as under:-

“Shri Suresh Kumar,

Chief Principal Secretary to Chief Minister

The files of the below mentioned departments shall be put up through Chief Principal Secretary to Chief Minister, Punjab:-

- (1) Home Affairs, Jails and Judicial
- (2) Vigilance;
- (3) Personnel;
- (4) Industries and Commerce;

- (5) INVESTMENT Promotion;
- (6) Finance and Planning’
- (7) Information and Public Relations;
- (8) Administrative Reforms and Information Technology;
- (9) Governance Reforms; and
- (10) Parliamentary Affairs;

Matters concerning Council of Ministers including Cabinet memorandums;

Matters concerning appointment/ placements/transfers of Heads of Department;

All papers/matters/files received from CS for consideration of CM;

All papers/letters/files received from or going to Government of India or any other State, HE Governor of Punjab and Vidhan Sabha;

Matters requiring changes in legislations or subordinate legislation;

Matters aimed at reforms and changes in policies and programmes, matters aimed at administrative, financial and governance reforms, matters concerning negotiations and approvals of externally aided projects and matters involving inter-departmental issues or difference of opinion;

Residual matter, if any, not specified in this order.”

A perusal of the record and the affidavit filed by Chief

created post of 'CPSCM' to take decisions with regard to important departments such as Home, Vigilance, Personnel, Finance etc. The standing order issued on 16.03.2017 shows that 'CPSCM' has been authorized to dispose of cases of immediate nature during the absence of the Chief Minister after discussing with him on mobile phone, if possible. However, such cases would be put up before the Chief Minister on his return to headquarter for ex-post facto approval. It is, thus, clear that in the eventuality respondent no. 5 is not able to contact the Chief Minister in his absence from the headquarter, he would be authorized to take decision with regard to files pertaining to the departments enumerated in the statement attached to the standing orders. Such files may relate to departments of Home, Vigilance, Personnel, Finance etc. In view of this power conferred on respondent no. 5, it is evident that he can take decisions as regards sovereign functions of the State. The stand taken during arguments that respondent no. 5 would work only as 'staff officer' is not borne out from the record. The standing order leaves no room for doubt that 'CPSCM' would take all decisions in the absence of the Chief Minister from the headquarter, after discussion on mobile phone, if possible. It is evident that in the eventuality respondent no. 5 is not able to get through to the Chief Minister he would be at liberty to take appropriate decision. Though, provision of ex-post facto approval has been incorporated in the Standing Order, it is obvious that such approval cannot be automatic. There can be situations where Chief Minister may not approve the decision taken by the CPSCM. However, by that time it may be difficult to redeem the situation created by such a decision. The fact remains that the Standing Order gives immense powers to the 'CPSCM' to take decisions with regard to sovereign powers

vested in the State. In such circumstances it is not possible for this court to accept the plea of the State that respondent no. 5 does not hold a 'public office' and is merely a 'staff officer'. During the course of arguments, it was emphasized on behalf of the State that 'staff officer' is merely authorized to put up the files before the Chief Minister and to assist in the functioning of the CMO. Besides, provision for ex-post approval was an important safeguard incorporated in the Standing Order. As already observed above, there cannot be a presumption that all decisions taken by 'CPSCM' during absence of the Chief Minister would get ipso facto approval. The safeguard referred to by the State may prove futile in certain circumstances. The plea that officer would not pass any order on his own, appears to be bereft of any substance as the Standing Order leaves enough room for the 'CPSCM' to take decisions in the situations mentioned therein.

The noting file was generated wherein it was clearly stated that respondent no. 5 would be appointed in the rank and pay-scale of Cabinet Secretary, showing intention of the State to empower the officer to take important decisions pertaining to affairs of the State. Had it been a case of plain and simple appointment as a 'staff officer' appropriate pay-scale could have been specified in the appointment order without reference to the post of Cabinet Secretary. A perusal of the noting file, however, shows that there is repeated reference therein to the rank and pay-scale of Cabinet Secretary to Government of India which undoubtedly is a post much higher in the hierarchy of members of Indian Administrative Services. If the veil is lifted and record pertaining to appointment of respondent no. 5 examined, it transpires that true intent of the appointment as reinforced by the Standing

functioning of the State, its sovereign powers as well. During the course of hearing, a plea was raised by Mr. Ranjit Kumar that appointment of 'staff officers' is usual in case of important functionaries including higher judiciary while acting on the administrative side. According to him, this is purely for the purpose of distribution of work and efficient handling of files. This court feels that the plea does not carry any weight as substantive powers of the office are never delegated to staff officers. If any such delegation is made it would virtually amount to abdication of powers by the authority obligated under law to exercise powers exclusively vested in it. In the instant case, respondent no. 5 has been given wide discretion to take decisions in matters relating to affairs of the State. To hold that office held by him is not a 'public office', would not only be absurd but against the record. It was vehemently submitted before this court that appointment of respondent no. 5 was purely contractual in nature, thus, not amenable to question in a writ of quo-warranto. As already discussed above, at the time of creation of the post of 'CPSCM', terms and conditions thereof were laid down even before the approval of Council of Ministers. In the noting dated 16.03.2017 it was clearly stated that respondent no. 5 would be appointed in the rank and pay-scale of Cabinet Secretary. As directive was issued in the noting file itself by the CMO to the effect that "Finance Department may kindly give their concurrence", not much discretion was left with the Finance Department to take independent decision in the matter. There is nothing to show that Finance Department enjoys such autonomy as to ignore a directive of the nature aforesaid. In case the appointment was purely contractual in nature to discharge ministerial functions, it was suffice to lay

reference to the rank and pay-scale of Cabinet Secretary and a fixed tenure given to the office in question, makes it clear that the same is office of immense public importance. The fact that IAS Branch of State was asked to keep one post of a member of Indian Administrative Services in abeyance shows that one cadre post was kept vacant for accommodating respondent no. 5. Stand of the State as contained in the affidavit (para 4) of Chief Secretary is on similar lines. It has not been denied therein that one post in the IAS cadre had been kept in abeyance to draw salary for the newly created post. However, it has been explained away by saying that keeping a post in abeyance would not show that respondent no. 5 had been appointed against a cadre post. This court, on perusal of noting files, finds that a directive was issued to the Finance Department to concur with the proposal, simultaneously as the file for appointment of respondent no. 5 was moved. It is, thus, clear that one post in the cadre strength of IAS in the State was kept vacant to facilitate appointment of respondent no. 5. The speed and alacrity with which the file moved thereafter shows that appointment of respondent no. 5 was to play an important role in the decision making and functioning of the State. It appears that after this court was seized of the matter, the General Administration Branch in its noting dated 17.08.2017 sought comments from the IAS Branch in order to prepare its affidavit to be submitted before this court. It sought clarification as to whether the matter was considered by the IAS Branch for keeping one post in abeyance in the IAS cadre. There is nothing on record to show that issue regarding keeping one post in abeyance was considered by the IAS Branch at any stage. Said branch, thus, requested that relevant files/documents be furnished to it.

Administration branch in this regard are reproduced below:-

“Returned in original with a request that it is be clarified as to which paras of the writ petition relate to IAS Branch so that its appropriate reply could be given. It be also clarified as to on which point, the comments of IAS Branch are required because the appointment and terms and conditions of retired officer has been made by you

18.08.2017

“Returned in original with a request to intimate as to whether after advice of Finance department and before taking the matter in the meeting of Council of Ministers, they had taken up the matter for keeping one post of IAS cadre in abeyance? If yes, the relevant file be attached

18.08.2017

Reg. ‘A’ at pre-page, it be clarified that there is no mention in these noting regarding taking up the matter with IAS branch regarding keeping one post of IAS cadre in abeyance. In this connection, it is once again requested that relevant file/documents be sent so that necessary comments could be given.”

18.08.2017

(translation from relevant record in vernacular)

The entire sequence of event shows that the file was dealt with post haste. It appears that the file moved to and fro between IAS Branch and General Administration five/six times on the same day i.e. 18.08.2017. This clearly reveals that decision was taken in undue haste. Normal procedure which would require application of mind and due consideration was not followed. The concerned departments including the IAS Branch, which was to lose one post in its regular cadre, was kept in the dark about the nature of appointment being made. This decision being simultaneous with the decision to appoint respondent no. 5 as 'CPSCM', shows that

appointment of respondent no. 5 was made by keeping one post of IAS cadre

in abeyance. At the very inception of the file it was observed that the State Government had a very ambitious manifesto and to fulfill the commitments made therein, comprehensive planning and regular monitoring would be required for which CMO's involvement and guidance in finalizing the plans and schemes would be very crucial and essential. For this purpose a senior experienced and retired IAS officer would be required. Enriched experience of respondent no. 5 across the departments and international organizations would immensely help the State Government in general and CMO in particular (Paras 1.1 & 1.2 of the noting dated 16.03.2017).

In view of notings and orders issued pursuant thereto, it is evident that one post of IAS cadre was kept in abeyance for appointment of respondent no. 5 and in view of important government functions assigned to it which would effect the general public, there is no escape from the conclusion that respondent no. 5 holds a 'public office'. Observations made in judgment *King vs. Speyer (1916) I K.B., 595* in context of 'public office' are relevant:-

"It is no doubt true that in early times quo warranto was confined to case of encroachment upon the King's prerogative and the writ was only issued at the suit of the Crown. But as time went on the procedure developed, and it was found that the writ itself was not a convenient method of dealing with all the cases which might arise under quo warranto, and informations in the nature of quo warranto came into use. The first instance of an information of this sort is to be found in Rex v. Hertford Corporation (5), where the relator was a private person. That case also shows that quo warranto was not restricted to franchises and officers granted by the King: see also Rex v.

information lies in respect of any office which concerns the public, although if the office be a very small one, such as the office of petit constable, the Court may refuse to grant the information.”

(emphasis applied)

It has already been held above that office held by respondent no. 5 is of vital public importance and relates to governance of the State. Thus, there can be no doubt that same is ‘public office’.

This court finds it inexplicable why emphasis has been laid in the noting file on “senior, experienced and retired IAS officer”. The use of word ‘and retired’ in the noting makes it almost mandatory to appoint a retired IAS officer on the newly created post of “CPSCM”. No reason is forthcoming for this policy decision at the time of inception of file. It is, thus not clear why same functions could not have been performed by an in-service officer. Though State has liberty to choose a person in whom he can repose faith to discharge duties on an important post, however, such a choice has to be within the frame work of the Constitution as people have vital interest in the functioning of the Government for it affects their day to day life. Due to creation of a new post, State was left with no option but to keep an existing post in the IAS cadre in abeyance to facilitate appointment of respondent no. 5. Stand taken by the State in its response to the writ petition appears to supplement rather than support the reasons contained in the orders. This is not permissible in view of judgment of Hon'ble Supreme Court in *Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi* 1978 (1) SCC, 405. It has been laid-down therein that when a State

functionary makes an order on certain grounds its validity has to be

adjudged by the reasons mentioned in the order and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. An order bad in the beginning cannot be validated by additional grounds later brought out. For this reason, this court cannot permit the State to go beyond the record file and orders passed therein.

Though the term of office of respondent no. 5 has a fixed tenure, a stand has been taken by the State that same is purely contractual and thus, has no public element attached to it. In this context observation of the Apex court in judgment reported as *Kumari Shrilekha Vidyarthi & ors. vs. State of U.P. & ors (1991) 1 SCC 212* are relevant:-

“17. We are. therefore. unable to accept the argument of the learned Additional Advocate General that the appointment of District Government Counsel by the State Government is only a professional engagement like that between a private client and his lawyer, or that it is purely contractual with no public element attaching to it. which may be terminated at an), time at the sweet will of the Government excluding judicial review.

18. We have already indicated the presence of public element attached to the `office' or `post' of District Government Counsel of every category covered by the impugned circular. This is sufficient to attract Article 14 of the Constitution and bring the question of validity of the impugned circular within the scope of judicial review. The scope of judicial review permissible in the present case, does not require any elaborate consideration since even the minimum permitted scope of judicial review on the ground of arbitrariness or

unreasonableness or irrationality, once Article 14 is attracted, is sufficient to invalidate the impugned circular as indicated later. We need not, therefore, deal at length with the scope of judicial review permissible in such cases since several nuances of that ticklish question do not arise for consideration in the present case.

19. *Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter.”*

Aforesaid judgment makes it amply clear that requirements of Article 14 are attracted in sphere of contractual appointments as well. Such appointments would not exclude judicial review or be permitted to be made in an arbitrary manner. All executive actions of the State are subject to judicial review and the plea that the same cannot be questioned being contractual is unacceptable. In democratic set up like ours, supremacy of rule of law has to be acknowledged. Higher the dignitary, more objectivity is expected to be observed. While examining the validity of appointment of a person to a high official position in the State hierarchy, this court is competent to consider whether a writ ‘in the nature’ of quo-warranto needs to be issued. The words ‘in the nature’ enlarge the scope of inquiry in such a writ. The superior courts are competent to issue not only writ of quo-warranto but also a writ ‘in the nature’ of quo-warranto (See judgment

Even if it is assumed that the post in question is contractual in nature or at pleasure of the authority, this court would be entitled to examine legality thereof during subsistence of the contract or the pleasure. For this, in considered view of this court, writ of quo warranto is the most appropriate remedy. Even if appointment is contractual, there can be no doubt that it be open to challenge in a writ of quo-warranto if it is a 'public office'.

For the same reason the plea of *coram non-judice* raised in the written arguments submitted by the State deserves to be outrightly rejected. Remedy of writ of quo-warranto is clearly available to the petitioner as this court has already come to the conclusion that respondent no. 5 holds a 'public office'. Validity of such appointment can be examined only in a writ of quo-warranto as it is a proper remedy to test the right or title to an office and to remove or oust an incumbent. This writ is prosecuted against a person who unlawfully usurps, intrudes or holds a public office (*Corpus Juris Secundum* 74 C.J.S. Quo Warranto, 14). This court, thus, rejects the plea of the State as regards *coram non-judice*. In case said plea has been raised as the State feels that office of respondent no. 5 is not within the purview of writ of quo warranto, same is not sustainable as this court has come to firm conclusion that respondent no. 5 holds a "public office".

Right of the petitioner to challenge the same being a citizen, also cannot be questioned, as it is settled that rule of locus standi does not apply to writ of habeas corpus and quo-warranto (see Vinoy Kumar vs. State of U.P. & ors (2001) 4 SCC, 734).

This court now proceeds to decide the validity of appointment of respondent no. 5 in light of the Constitutional Scheme and Rules of

Constitution titled as “The States” incorporates various provisions as regards governance of the State and the authorities entrusted with the task. Article 154 of the Constitution provides that the executive power of the State would be vested in the Governor and exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 163 provides that there would be a Council of Ministers with the Chief Minister as the head, to aid and advise the Governor in exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion. Article 164 lays down that the Chief Minister would be appointed by the Governor and other ministers on advice of the Chief Minister and they would hold office during his pleasure.

For conduct of business of the government of a State Article 166 has been enacted. Same is reproduced hereunder:-

“166. Conduct of business of the Government of a State –(1) All executive action of the government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order of instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to

which the governor is by or under this Constitution required to act in his discretion.”

The Constitutional scheme is, thus, devised in such a manner as to ensure smooth functioning of the State machinery. For all intents and purposes Chief Minister acts as head of the executive wing of the Government. Section 167 lays down duties of the Chief Minister as regards furnishing of information to the Governor. It provides that it would be the duty of each State to communicate to the Governor all decisions of the Council of Ministers relating to administration of the affairs of the State and proposal for legislation. If the Governor so requires, to submit for consideration to Council of Ministers any matter on which a decision has been taken by the Minister but which has not been considered by the Council. In State of Punjab, Rules of Business of Government of Punjab 1992 (hereinafter to be referred as ‘1992 Rules’) have been made by the Governor in exercise of powers conferred on him under Article 166(3) of the Constitution. Appointment of respondent no. 5 is stated to have been made under general executive powers of the State Government followed by a Standing Order dated 18.04.2017 issued in exercise of powers under Rules 18 & 19 of the 1992 Rules. Said rules read as under:-

“18. Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister-in-charge, who may, with the prior approval of the Chief Minister, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the Department and copies of such standing orders shall be sent to the Chief Minister and the Governor.

Provided that if the Minister-in-charge is unable to dispose of the business of his department for some time due to any reason, the Chief Minister may direct the Chief Secretary to modify the existing standing orders of the department or formulate fresh standing orders as the Chief Minister may consider appropriate.

19. Each Minister shall by means of standing orders, arrange with the Secretary, what cases or classes of cases are to be brought to his personal notice and copies of such standing orders shall be sent to the Chief Minister and the Governor.”

It is evident that the order dated 17.03.2017 was issued by the Chief Minister appointing respondent no. 5 in pay-scale of Cabinet Secretary to the Government of India with terms and conditions thereof to be notified later, on approval of council of ministers. It appears the matter was thereafter referred to CMM. There is a mention in the noting file to the effect “meeting held”. Thereafter, Chief Secretary gave a note as under:-

“After considering the memorandum dated 17.03.2017 of general administration department, the proposals mentioned in para 2 have been approved.”

Immediately, thereafter a press note was issued informing the general public that Shri Suresh Kumar had been appointed as CPSCM. It needs to be noticed here that had the post not been of vital public importance, there would have been no need to issue a press note.

It deserves mention that the Council of Ministers approved only para 2.0 of the proposal. As per stand of the State, Finance Department had

already put a rider while concurring with the proposal that one post of IAS in its existing strength be kept in abeyance. Same reads as under:-

“The Finance Department concurs in the proposal of the AD with the conditions that one post of IAS out of its existing strength may be kept in abeyance.”

According to affidavit of the Chief Secretary (para 4), concurrence of Finance Department is necessary before a post is created to draw salary and other perks to be paid to such a person. In this respect the Finance department had directed that one post of IAS be kept vacant so as to draw salary of respondent no. 5 after his appointment in Chief Minister secretariat on contract basis. According to State, this does not mean that appointee had been appointed against the post from where salary is being drawn. Stand of the Chief Secretary needs to be considered in light of 1992 Rules. Rule 7 thereof lays down that no department would issue any order, other than any general directions, without previous consultation with the Finance Department which either directly or by repercussion, would affect the finance of the State. Rules 7(2) provides that no proposal which requires previous consultation of the department but in which the department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council. Relevant paras of said Rule are reproduced hereunder:-

“7(I) No Department shall, without previous consultation with the Department of Finance, issue any order (other than orders pursuant to any general delegation made by the Department of Finance) which –

a.either directly or by their repercussion will affect the finance of the State or which, in particular:

i.involves any grant of land or assignment of revenue or concession, grant, lease or licence of mineral or forest rights or right to water, power of any easement or privilege in respect of such concession: or

ii.in any way involves any relinquishment of revenue or

b. relates to the number of grading or cadre of posts or the emoluments or other conditions or service or posts.

(2) No proposal which requires the previous consultation with the Department of Finance under this rule, but in which the Department of Finance has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council.”

On perusal of record it becomes clear that prior consultation with the Finance Department was not done while deciding to create a post of “CPSCM” and laying down terms and conditions thereof. On the other hand in the noting file generated at the inception in the CMO, it was directed that Finance Department would concur with the proposal. It appears that no effort was made to act in accordance with 1992 Rules. In case the order was issued in exercise of the general executive powers of the State Government, pay-scale of Cabinet Secretary which would entail payment of salary, allowances, perks etc., prior consultation with the Finance Department was required. The 1992 Rules further show that distribution of work can only be between Minister in-Charge and the Administrative Secretary and not to any

other person. Any delegation of the functions envisaged by the Rules, to a person outside the framework thereof, would be against the Constitutional scheme. There are certain functions which are entrusted to the elected representatives of people who constitute the Council of Ministers. Said functions which are sovereign in nature cannot be delegated to a person who does not have the mandate of the people. It may not be possible to delegate these functions even to a cadre officer such as the Principal Secretary who may not take substantive decisions outside his purview. No extra constitutional authority can be created to oversee the functioning of the affairs of the State even for a short *interregnum* during absence of Chief Minister. A perusal of the Standing Order, however, shows that it envisages creation of such an authority. A bare reading of Rule 18 shows that files would ordinarily be disposed of by or under the authority of Minister in-Charge of the concerned department. Only in a situation when he is unable to dispose of business of his department for some time due to any reason, the Chief Minister may direct the Chief Secretary to modify the existing Standing Order of the department or formulate fresh Standing Order as the Chief Minister may consider appropriate. Rule 19 also vests power in each Minister to frame Standing Orders to make internal arrangement with the Administrative Secretary as regards cases or class of cases to be brought to his personal notice, copies of which are required to be sent to the Chief Minister and the Governor. It is possible that certain portfolios may be retained by the Chief Minister making him the Minister-in-Charge for the said department. In such circumstances, procedure envisage by Rules 18 & 19 would be required to be followed. Internal arrangement can be made

envisage post of Principal Secretary in the CM Secretariat for this purpose which is a 'cadre post'. Newly created post of 'CPSCM' is neither comprehended by the Rules nor is a 'cadre post'. It is therefore inexplicable how a person appointed as 'CPSCM' would exercise the powers vested in the 'Principal Secretary' to the Chief Minister. There can be no doubt that the post of Principal Secretary is a cadre post as specified in the Schedule for Punjab State notified by Central Government under Indian Administrative Services (Fixation of Cadre Strength) Regulations, 1955. Needless to say that had post of 'CPSCM' had not been created, Principal Secretary would ipso facto exercise the powers vested in him.

The term 'cadre officer' is defined in the Indian Administrative Services Cadre Rules, 1954. Definition 2(a) specifies that 'cadre officer' means a member of the Indian Administrative Services. Respondent no. 5 having superannuated cannot be said to be a 'cadre officer'. However, the appointment order and the Standing order dated 17.03.2017 give an impression that *de facto* cadre post is sought to be created by the State which is unsustainable. As a cadre post of Indian Administrative Services has been kept in abeyance to appoint respondent no. 5, it may amount to reduction of one post in total strength of all India IAS Cadre. As Union of India has not made its stand clear in this regard, this issue remains warped.

The factum of giving rank and status of Cabinet Secretary to respondent No. 5 conveys that he would be higher in rank to the Chief Secretary which may create anomaly in the hierarchy of the Administrative Secretaries in the State. Besides, it is unusual for the State to authorize a contractual employee to exercise powers, sovereign in nature, even for a

limited period i.e. during absence of the Chief Minister. There can be no justification for this extraordinary empowerment apparently in violation of procedure and rules of business framed under Article 166(3) of the Constitution.

In view of the stand of the State that appointment of respondent no. 5 is contractual in nature, he would not be governed by any disciplinary or other Rules. Having been entrusted with important sovereign functions and having ceased to be a public servant, it is inexplicable how such a appointee can be held accountable for the decisions taken by him. To discharge functions of this nature, post of Principal Secretary to CM is in existence which is normally held by a cadre officer. Such officer is bound by the oath of secrecy and amenable to disciplinary rules. Respondent no. 5 himself held the post of Principal Secretary during the previous tenure of the same dispensation. However, in view of complete lack of control on the newly created post of CPSCM, appointment thereto cannot be sustained being against the Constitutional scheme. Record shows that over-riding powers have been vested in the post of CPSCM. Even consultation with the Ministers and the Administrative Secretaries is not necessary in view of powers bestowed on him by virtue of the Standing Order. It is not difficult to envision a situation where the State is plunged into crisis by a decision taken by such appointee because he cannot be expected to have, despite his long career as a bureaucrat, same vision for the development of the State as the Chief Minister who enjoys the mandate of the general populace and is answerable to them for his decisions. Accountability is *sine qua non* of appointment in public services which is altogether missing in the instant

case. Any lapse on part of respondent no. 5, intentional or unintentional, cannot be questioned by any disciplinary authority. He is also not bound by the oath of secrecy, having superannuated from regular service. It is also not clear why, in the absence of Chief Minister, next senior most Minister or the Minister in-Charge would not assume command and authorized to take important decisions. There can be no justification for vesting this extraordinary power in 'CPSCM' apparently in violation of the procedure and rules of business envisaged by Article 166(3) of the Constitution. An effort was made during the course of arguments to argue that the provisions of Article 166 are merely directory in nature and not mandatory in view of judgment of the Apex court in ***R. Chitralekha & Anr vs State Of Mysore & Ors. 1964 AIR 1823***. However, this contention has no substance in view of judgment in *MRF Limited vs. Manohar Parrikar & ors. (2010) 11 SCC 374* wherein it has been held that in *Chitralekha's* case provisions of Article 166(3) were not under consideration. Relevant paras thereof are reproduced hereunder:-

“77. The decision of the Constitution Bench in Chitralekha has been misinterpreted. In that case this Court was considering a controversy in regard to an order which was not expressed in the name of the Governor in terms of Article 166(1) and (2). In that context, this Court observed that it is a settled law that the provisions of Article 166 of the Constitution are only directory and not mandatory in character. The context clearly shows that the observation that the provisions of Article 166 of the Constitution are only directory and not mandatory, referred only

to clauses (1) and (2) of Article 166 and did not refer to clause (3) which was not under consideration at all. Chitralekha, therefore, cannot be relied upon to support the contention that Business Rules made under clause (3) of Article 166 are directory.

78. We have earlier referred to all the decisions on which reliance was placed by learned senior counsel Shri F.S. Nariman. In our view, those decisions would not assist the appellant, since they were all rendered in the context of interpretation of Article 166(1) and (2) of the Constitution.

79. $xxxx$ $xxxx$ $xxxx$

xxxx xxxx xxx

107. Thus from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as have been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of Business Rules framed by the Government of Goa under the provisions of Article 166(3) of the Constitution and the Notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as the decision of the State Government and the Notifications issued as a result of the decision of the individual Minister which are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void.”

It is, thus evident that provisions relating to Article 166(3) are mandatory in nature and Rules framed thereunder need to be followed in letter and spirit. As Chapter VI of the Constitution lays down entire procedure for governance of the State and Article 166(3) is a vital part thereof, it is difficult to imagine a situation where action of the State in violation of the Rules framed thereunder, would be upheld by this court. In gamut of arguments a reference was also made to doctrine of pleasure and whether same is applicable to the instant case. It is well settled that doctrine of pleasure cannot be interpreted to mean that State can act arbitrarily ignoring the public good and democratic principles as enshrined in the Constitution. In *B.P. Singhal vs. Union of India (2010) 6 SCC 331*, the Apex Court held as under:-

22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by Rule of Law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for public good.

24. It is of some relevance to note that the 'Doctrine of Pleasure' in its absolute unrestricted application does not exist in India. The said doctrine is severely curtailed in the case of government employment, as will be evident from clause (2) of Article 310 and clauses (1) and (2) of Article 311. Even in regard to cases falling within the proviso to clause (2) of Article 311, the application of the doctrine is not unrestricted, but moderately restricted in the sense that the circumstances mentioned therein should exist for its operation. The Canadian Supreme Court in Wells v. Newfoundland [1999 (177) DL (4th) 73(SCC)] has concluded that "at pleasure" doctrine is no longer justifiable in the context of modern employment relationship."

This court can further draw support from dictum in judgment reported as *King vs. Speyer (supra)* in which it has been held as under:-

"The maxim "The King can do no wrong," which is sometimes misunderstood, and which only means that His Majesty individually and personally and in his natural capacity is independent of, and not amenable to, any other earthly power or jurisdiction, has no application to the present case. The King is the fountain head of justice, and the power of declaring his laws is entrusted to his judges. It is a fundamental general rule that the King cannot sanction any act forbidden by law. It is in that point of view that His Majesty is under and not above the laws, that he is bound by them equally with his subjects: see Chitty's Prerogatives of the Crown, p.5, and Bracton, bk. 1, ch. 8; and it has been held that a grant from the Crown contravening the statute law is void: see Shiffner v. Gordan.(1)"

Apart from the observations herein above, aforesaid judgments make it clear that even if office is held during the pleasure of the sovereign, it would not place it beyond the scope of challenge in a writ of quo-warranto. The court would be at liberty to examine the validity of an appointment even during the subsistence of the pleasure or contract, as the case may be. Pleasure Doctrine, may, in any case, be not attracted to appointment of this nature as same has not been made in the name of the Governor. It is incomprehensible why the file having been formally moved, was not sent to the Governor. Had this been done, it would have ensured compliance of Rules 8 and 9 of 1992 Rules. In that case order would have been in the name of Governor. However, stand of the State is that order was authenticated by the Chief Secretary. In considered view of this court, mere authentication would not make the order valid, 1992 Rules being mandatory in character. If the State had proceeded as per the Rules, necessity of explaining its stand by way of affidavits would have been obviated, a practice which is otherwise against the spirit of ***Mohinder Singh's*** case (supra).

Plea taken in the written arguments on behalf of respondents that no post of IAS cadre had been kept in abeyance is contradictory to stand taken by Chief Secretary in his affidavit (para 4). The judgment in *E.P. Royappa vs. State of Tamil Naidu*, AIR 1974 SC 555, referred therein, is not applicable as in said case issue was regarding power of State Government to create a temporary additional post in the IAS cadre. Other judgment relied upon in the written arguments need not be adverted to in view of factual distinction of this case.

No response has been filed by Respondent No. 5 despite the fact that the writ of quo-warranto is primarily directed against the usurper of office (*King vs. Speyer - supra page 628*). Instead State has tried to justify his appointment. In *B.R. Kapur vs. State of Tamil Naidu (2001) 7, SCC 231*, the Apex court had held that quo warranto lies against a person who is called upon to establish his legal entitlement to hold the office in question. In case he fails to prove a valid authority to hold such office, writ of quo warranto would be directed against him. Having considered the entire conspectus of the matter, this court finds that respondent no. 5 is holding a 'public office' without authority of law and in clear violation of the Constitutional scheme, particularly Article 166(3) and rules framed thereunder. Thus, the appointment of respondent no. 5 is held to be void. Same is hereby set-aside. Petition is accordingly allowed. Record be returned to the State counsel after retaining a copy thereof.

January 17, 2018

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes

Whether reportable:

Yes