

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2498 of 2019

Binay Kumar sharma, aged about 64 years, (Male) Son of Mudrika Prasad Sharma, Resident of Village- Birupur, Ward No. 12, P.S. Birupur Sahayak, Distt. Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Human Resource Development Department, Patna
2. The Director, Secondary Education, Govt. of Bihar, Bihar, Patna.
3. The Deputy Director Secondary Education, Bihar Secondary Education Office, Budhmarg, Patna
4. The Regional Deputy Director of Education, Munger Division, Munger
5. The Collector, Munger
6. The Chief Executive Officer Cum Deputy Development Commissioner, Lakhisarai.
7. The District Education Officer, Lakhisarai.
8. The District Programme Officer, R.M.S.A. Lakhisarai.
9. Sanjeev Kumar, aged about 48 years (Male) Son of late Karu Singh, Resident of Village- Hirdan Bigha, P.O. and P.S. Barhiya, District- Lakhisarai at working upgraded Secondary School, Lodiya, Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajeev Ranjan Sinha
For the Respondent/s : Mr.Subash Chandra Mishra (Sc16)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 13-02-2019

The present writ petition has been filed for quashing the order dated 05.01.2019, by which the private respondent no.9, namely, Sanjeev Kumar, has been directed to join the Government High School, Birupur. It has been further prayed to direct the respondent authorities to restore the order of transfer dated 21.11.2017, whereby and whereunder the private respondent no.9 has been transferred from Government High School, Birupur (Lakhisarai) to the updated Secondary School, Lodia (Lakhisarai).



2. I have heard the learned counsel for the petitioner and the petitioner is stated to be the resident of village Birupur and it is stated that the present writ petition is being filed in the interest of students, who are studying in the school in question so that quality of education can be maintained.

3. It is a trite law that petition in public interest is not entertainable in service matter and moreover, as far as the present case is concerned, the petitioner has got no locus standi to prefer the said writ petition. In this regard, it would be relevant to refer to the judgment rendered by the Hon'ble Apex Court, reported in 2010 (9) SCC 655 [**Hari Bansh Lal vs. Sahodar Prasad Mahto**], paragraphs- 11 to 14, 16, 18 and 19 are reproduced herein below:-

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

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



not placed any material or highlighted in what way he is suitable and eligible for that post.

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

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

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

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

14. In *Ashok Kumar Pandey v. State of W.B.*² this Court held thus: (SCC pp. 358-59, para 16)

“16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court  in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra*¹ this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do



well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

The same principles have been reiterated in the subsequent decisions, namely, *B. Singh (Dr.) v. Union of India*³, *Dattaraj Nathuji Thaware v. State of Maharashtra*⁴ and *Gurpal Singh v. State of Punjab*⁵.

16. A writ of quo warranto lies only when appointment is contrary to a statutory provision. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*⁶ (three-Judge Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held: (SCC pp. 730-31, paras 22-23)

"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See *R.K. Jain v. Union of India*⁷, SCC para 74.)

66223. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See *Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana*⁸.)"

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

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

19. It is clear from the above decisions that even for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is



contrary to the statutory rules. In the latter part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and whether he satisfied the relevant statutory provisions.”

4. It may be apt to quote paragraph-7 of a judgment rendered by the Hon’ble Apex Court in the case of **Gurpal Singh vs. State of Punjab & Ors.**, reported in 2005(5) SCC 136 herein below:-

“7. As noted supra, the time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra*⁵ this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right



direction that petitions filed with oblique motive do not have the approval of the courts."

5. I further find it relevant to reproduce herein below paragraphs 71 to 78 and 85 to 87 of the judgment rendered by the Hon'ble Apex Court in the case of **State of Punjab vs. Sabhlok** (2013)5 SCC 1, herein below:

"71. A couple of years ago, in *Hari Bansh Lal v. Sahodar Prasad Mahto*¹⁶ this Court considered the position at law and, after referring to several ⁴⁵ earlier decisions, including *R.K. Jain v. Union of India*¹², *Mor Modern Coop. Transport Society v. Govt. of Haryana*³⁶, *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*³⁷ and *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.*²⁶ held that: (*Hari Bansh Lal case*¹⁶, SCC p. 662, para 19)

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

72. This principle was framed positively in *Mahesh Chandra Gupta v. Union of India*³⁸ wherein it was said: (SCC p. 305, para 71)

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

(ii) Is it a service matter?

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

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

* * *

(q) '**service matters**', in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of



India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects—

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;"

74. It cannot be said that the Chairperson of the Public Service Commission holds a post in connection with the affairs of the Union or the State. He or she is not a government servant, in the sense of there being a master and servant relationship between the Union or the State and the Chairperson. In view of the constitutional provisions pertaining to the security of tenure and the removal procedure of the Chairperson and Members of the Public Service Commission, it can only be concluded that he ⁴⁶ or she holds a constitutional post. In this context, in *Reference under Article 317(1) of the Constitution of India, In re*³⁹, it was held: (SCC p. 269, para 9)

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

75. Similarly, in *Bihar Public Service Commission v. Shiv Jatan Thakur*⁴⁰, the Public Service Commission is referred to as a "constitutional institution" and its Chairperson and Members as "constitutional functionaries".

76. In *Ram Ashray Yadav, In re*², a reference was made to the "constitutional duties and obligations" of the Public Service Commissions. It was also observed that the Chairperson of the Public Service Commission is in the position of a constitutional trustee.

77. In *Ram Kumar Kashyap v. Union of India*³, the obligations of the Public Service Commission were referred to as "constitutional obligations" and



on a review of the case law, it was held that: (SCC p. 383, para 16)

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

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

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

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

(iv) The remedy

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

86. About twenty years ago, in a case relating to the appointment of the President of a statutory tribunal, this Court held in *R.K. Jain v. Union of India*¹² that an aggrieved person—a “non-appointee”—would alone have the  ⁴⁸ locus standi to challenge the offending action. A third party could seek a remedy only through a public law declaration. This is what was held: (SCC p. 174, para 74)

“74. ... In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third



party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person.”

This view was reiterated in *B. Srinivasa Reddy*²⁶. Therefore, assuming the appointment of the Chairperson of a Public Service Commission is a “service matter”, a third party and a complete stranger such as the writ petitioner cannot approach an Administrative Tribunal to challenge the appointment of Mr Dhanda as Chairperson of the Punjab Public Service Commission.

87. However, as an aggrieved person he or she does have a public law remedy. But in a service matter the only available remedy is to ask for a writ of quo warranto. This is the opinion expressed by this Court in several cases. One of the more recent decisions in this context is *Hari Bansh Lal*¹⁶ wherein it was held that: (SCC p. 661, para 15)

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

This view was referred to (and not disagreed with) in *Girjesh Shrivastava v. State of M.P.*¹⁷ after referring to and relying on *Duryodhan Sahu v. Jitendra Kumar Mishra*¹³, *B. Srinivasa Reddy*²⁶, *Dattaraj Nathuji Thaware v. State of Maharashtra*¹⁴, *Ashok Kumar Pandey v. State of W.B.*¹⁵ and *Hari Bansh Lal*¹⁶.”

6. Thus, I find that in a catena of decisions, the Hon’ble Apex Court has held that no litigation in the form of public interest litigation is maintainable in service matters. I further find that the petitioner has no locus standi because the person who would be effected adversely, are the only persons who have locus standi to approach this Court and the petitioner is not one amongst them.



7. For the reasons, mentioned herein above, there is no merit in the present writ petition, hence the same is dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

Tiwary/-

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