

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.2961 of 2019

Commandant AKS Panwar, TM(Retd) ..Appellant/ Petitioner

-Vs-

1.Union of India
Rep.through its Secretary
Ministry of Defence
Room No.101, South Block
New Delhi-110 001

2.The Secretary
Department of Personnel and Training
Room No.112, North Block
New Delhi-110 001

3.Shri.R.Singh ..Respondents/ Respondents

Writ Appeal filed under section 15 of Letters patent Act against the order dated 11.06.2019 passed in W.P.No.16050 of 2019.

Prayer in W.P.No.16050 of 2019:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Quo Warranto to show cause under what authority the 3rd respondent is holding the office of Director General of Coast Guard and remove him from office of Direct General of Coast Guard and direct him not to exercise or use the rights liberties privileges honours service and attendant benefits in respect of the post of Director General Coast Guard and review and revise the promotions in accordance with relevant DOP & T guidelines and settled law on the subjects.

For appellant : Mr.D.Prabhu Mukunth Arunkumar

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR,J.)

Instant Writ Appeal is filed against the order made in W.P.No.16050 of 2019 dated 11.06.2019, by which the writ court

declined to issue Writ of Quo Warranto while considering the locus of the writ petitioner.

2. Though, Mr.D.Prabhu Mukunth Arunkumar, learned counsel for the appellant made submissions on the grounds of challenge to the order made in W.P.No.16050 of 2019, considering the fact, as reported by the learned counsel for the appellant that the appellant has retired from service as Director General of Police, we are of the view that there is no need to delve into the grounds of challenge.

3. In Dr.S.Mahadevan vs. Dr.S.Balasundaram and others, reported in (1986) 1 Mad LJ 31, at paragraph 21, this Court, held thus:-

"For the issuance of a writ of quo warranto, the court asks the question - Where is your warrant of appointment? It enjoins an enquiry into the legality of the claim which the party asserts to an office and if the appointment and holding on to the office are illegal and violative of any binding rule of law, then the court shall oust him from his enjoying thereof. This Court, within the scope of the enquiry for the issuance of a writ of quo warranto, is not concerned with any other factor except the well laid down factors: which require advertence to and adjudication. The existence of the following factors have come to be recognised as conditions precedent for the issuance of a writ of quo warranto: (1) the office must be public; (2) the office must be substantive in character, that is, an office independent of in title; (3) the office must have been created by statute or by the Constitution itself; (4) the holder of the office must have asserted his claim to the office; and (5) the impugned appointment must be in clear infringement of a provision having the force of law or in contravention of any binding rule of law. This Court shall not frown upon an appointment to the office on the ground of irregularity, arbitrariness or caprice or mala fides and these features, even if they are present, could not clothe this court with the power for the issuance of a writ of quo warranto. The scope of the enquiry is riveted to only the aforesaid factors. Prerogative writs, like the one for quo warranto, could be and should be issued only within the limits, which circumscribe their issuance. It is not possible to widen their limits. A writ of quo warranto is of a technical nature. It is a question to an alleged usurper of an office to show the legal authority for his appointment and holding on to it. If he shows his legal authority, he cannot be ousted from

the office. The invalidity of the appointment may arise either for want of qualifications prescribed by law or want of authority on the part of the person who made the appointment, or wants of satisfaction of the statutory provisions or conditions or procedure governing the appointment and which are mandatory. This Court, under Art. 226 of the Constitution, can issue a writ of quo warranto only if the salient conditions delineated above stand satisfied and not otherwise."

(ii) In P.L.Lakhanpal vs. A.N.Ray and Others, reported in AIR 1975 Delhi 66, the Hon'ble Delhi High Court, held thus:-

These four writ petitions were heard together. Substantially, they raise the same questions. Primarily the writ petitioners have prayed for a writ of quo warranto to challenge the appointment on April 25, 1973 with effect from April 26, 1973 of Justice A.N. Ray, one of the respondents herein, Judge of the Supreme Court of India, as the Chief Justice of India on the retirement of Justice S.M. Sikri, the then Chief Justice of India.

Before I deal with the points raised, I will state what I understand to be the scope and ambit of a writ of quo warranto. A writ of quo warranto poses a question to the holder of a public office. In plain English language, the question is "where is your warrant of appointment by which you are holding this office?" In its inception in England such a writ was a writ of right issued on behalf of the Crown requiring a person to show by what authority he exercised his office, franchise, or liberty. Webster's Third New International Dictionary, Volume II, describes it as "a legal proceeding that is brought by the state, sovereign, or public officer, has a purpose similar to that of the ancient writ of quo warranto, is usually criminal in form and sometimes authorizes the imposition of a fine but is essentially civil in nature and seeks to correct often at the relation or on the complaint of a private person a usurpation, misuser, or nonuser of a public office or corporate or public franchise, and may result in judgements of ouster against individuals and of ouster and seizure against corporations."

Halsbury's Laws of England, Third Edition, Volume 11, Para 281(1) contains a summary of the decisions of the English Courts with regard to the discretion of the Court in issuing a writ of quo warranto. It is said:-

"An information in the nature of a quo warranto was not issued, and an injunction in lieu thereof will

not be granted, as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case the Court might in its discretion decline to grant a quo warranto information where it would be vexatious to do so, or where an information would be futile in its results, or where there was an alternative remedy which was equally appropriate and effective."

The leading case on the subject of quo warranto from which many of the statements are derived is R. v. Speyer, (1916) 1 K.B. 595. Lord Reading, Chief Justice has observed:-

"If the irregularity in the appointment of an office held at pleasure could be cured by immediate reappointment, the Court in the exercise of its discretion would doubtless refuse the information."

Lush, J. expressed the view that the Court would not make an order ousting the holders of public offices from their office if the existing defect, if there is one, could be cured, and they could be reappointed. Rex v. Stacey, 99 English Reports 938 (2) holds that writ of quo warrant, is not a motion of course and it is in the discretion of the Court to issue it considering the circumstances of the case. Frederic Guilder Julius v. The Right Rev. The Lord Bishop of Oxford: The Rev. Thomas Thellusson Carter, 5 Appeal Cases 214 (3) also states that the issue of writ of quo warranto is in the discretion of a Court. The Canadian view as stated in The King exrel Boudret v. Johnston, (1923) 2 Dominion Law Reports 278 (4) is that the Court has to take into consideration public interest, the consequences to follow the issue of a writ of quo warranto and all the circumstances of the case. These general propositions have been accepted in America as appears from the statements contained in sections 5, 9, 10 and 18 in American Jurisprudence, Second Edition, Volume 65.

The above views and statements indicate and reflect the principles which have guided courts outside our country in issuing writs of quo warranto. There is abundant authority that these principles have been accepted and applied in this country.

University of Mysore v. C.D. Govinda Rao, (1964) 4 Supreme Court Reports 575 (5) affirms some of these principles. One is that a writ of quo warranto is a writ of technical nature. The following statement in Halsbury's Laws of England, Third Edition, Volume 11, page 145 is quoted with approval:-

"An information in the nature of a quo warranto

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

It is then stated:-

"Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the Executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not."

In *University of Mysore v. C.D. Govinda Rao*, (supra). It was further observed that it may be open in a quo warranto proceeding to challenge the appointment of persons employed on multifarious duties and in addition performing some judicial functions on the ground that they do not hold essentially a judicial office because they primarily perform other functions. This case is not relevant to the argument of the wider scope of writs issuable under Articles 226 of the Constitution. It was a case to which the principle "could be re-appointed" would not apply. In *Mrs. Priti Prabha Goel v. Dr. C.P. Singh*, (1969) 2 Labour and Industrial Cases 913 (7) the appointment of the respondent as Professor in the University of Jodhpur was challenged on the ground that such an appointment could be made by the Syndicate only on the recommendation of the selection committee and in the absence of such recommendation, the Syndicate is incompetent and has no power to appoint any one as a teacher in the University. It was held by the

Rajasthan High Court that there is a public policy behind the salutary provision of selection committee prescribed in the Statutes and as the University is a State under Article 12 of the Constitution, every citizen has a right to be considered for these posts if he is duly qualified as otherwise there will be violation of Article 16 of the Constitution. No argument of futility of the writ was advanced in this case because it was irrelevant. In *M.S. Mahadeokar v. The Chief Commissioner, Union Territory, Chandigarh*, (1973) 1 Services Law Reporter 1042, (8) the appointment of two of the respondents was challenged by a writ of quo warranto. One of the respondents did not fulfil the qualifications under the service rules and was not eligible for the posts while the other was junior to the petitioner. A contention was raised by the respondents that a writ of quo warranto cannot be issued if the defect can be remedied by the authority who committed the mistake by amending the rules with retrospective effect. The principle of "could be re-appointed" is entirely different. It does not contemplate a change in the existing law. It proceeds on the basis that there is no legal impediment to a re-appointment according to the law as it stands. A possibility of change in the law with retrospective effect, as suggested in this case, would not come within the principle of futility of the writ. By reason of lacking in qualifications or being junior, there was an existing legal impediment to re-appointment. The next case relied upon is *Prabhudutt Sharma v. State of Rajasthan*, 1971 Labour & Industrial Cases 556, (9). This case, rather than support the petitioners, goes against their contention. It is clearly stated that the conditions for the issue of a writ of quo warranto are similar to those for laying an information in the nature of a quo warranto in England. Then it specifies the four requisites for a writ of quo warranto namely, (1) the office must be held under the State or have been created by a statute, (2) it should be an office of a substantive character, (3) its duties must be of a public nature and (4) it should have been usurped by some person. Then it proceeds to state what is more important that even when these requirements are fulfilled, it is in the discretion of the Court to refuse or grant the writ after taking into consideration the circumstances of the case and the consequences which would follow if it is allowed and that it should be in the public interest to grant the writ. These are some of the limitations which obtained in England as to a writ of

quo warranto. In fact, this case refers to and relies on *R v. Speyer* (supra) and the statements made in paragraph 281, Volume 11 in the Third Edition of Halsbury's Laws of England which have been already quoted. In this case it was alleged that the appointments of two of the respondents were in violation of the statute as they were ineligible for appointment as they did not possess the necessary qualifications. The Rajasthan High Court found as a fact that the two holders of the office lacked the essential qualifications and were not eligible for appointment. If the holder of a public office is ineligible for appointment to that office and remains ineligible up to the date of the hearing of the writ petition, he is undoubtedly a usurper and the application of the principle of futility of writ by re-appointment or of in the circumstances of the case or of the discretion of the Court would not arise. It is, therefore, not possible to see how this case advances the contention of the petitioners that the scope of a writ of quo warranto in India is wider than that in England. In fact, in *Hari Shankar Prasad Gupta v. Sukhdeo Prasad*, A.I.R. 1954 Allahabad 227, (10) *R v. Speyer* (supra) was referred and the principle of futility of issue of a writ of quo warranto was applied. The writ of quo warranto was refused as the holder of the office though not qualified on the date of his appointment thereto acquired the necessary qualification during the pendency of the petition. With respect, I agree with this view rather than with the view expressed in *Govinda Panicker v. K. Balakrishna Marar*, A.I.R. 1955 Travancore-Cochin 42, (11). If the view of the Travancore-Cochin High Court is to be accepted, it will mean that the principle "could be re-appointed" does not apply. In my view it does. In *Narayan Keshav Dandekar v. R.C. Rathi*, A.I.R. 1963 Madhya Pradesh 17, (12). Apart from holding that the appointment was in violation of the provisions of a statute, it was held that the appointment had been made contrary to Article 16 of the Constitution as before making the appointment, the post was not regularly advertised nor were any applications invited from persons qualified to hold the post. No argument of futility was addressed in this case possibly because the appointment was held to be in violation of Article 16 of the Constitution thereby depriving other person from applying for the post. This case can, therefore, be no authority for the proposition now being considered. In *Puranlal Lakhanpal v. Dr. P.C. Ghosh*, A.I.R. 1970 Calcutta 118, (13) the question was

whether a writ of quo warranto should issue to a person who had resigned from his office. I do not at all see the relevancy of this case to the contention being discussed now. None of these cases, therefore, supports the argument that scope of Articles 32 and 226 is wider in so far as the writ of quo warranto is concerned.

On the other hand, in Janardan Reddy v. The State of Hyderabad, 1951 Supreme Court Reports 344 (14) it has been observed that the power given to it under Part III of the Constitution is not wider than it is in England and courts in this with well established principles. In T.C. Basappa v. T. Nagappa, (1955) 1 Supreme Court Reports 250 (15) the same principle has been repeated but it has been clarified that the procedural technicalities of the English law do not apply. These cases help me to re-affirm the view that the scope of the power of the High Court to issue a writ of quo warranto under Article 226 of the Constitution is not wider than it is in England and courts in this country have followed the principles including the limitations which have been well established in England. In fact, in University of Mysore v. C.D. Govinda Rao (supra), the Supreme Court has observed that a writ of quo warranto is a writ of technical nature and has approved the statements made in Halsbury's Laws of England in that behalf.

4. Hon'ble Supreme Court, in the case of University of Mysore v. C.D. Govinda Rao (supra), has also observed that Quo Warranto can be issued only when a person is holding the office. The Supreme Court has also observed that if the holder of the office has retired from service, writ petition becomes infructuous.

5. Following the said decision, the Writ appeal is dismissed as infructuous. No costs. Consequently, connected Miscellaneous Petition is closed.

nvsri

Sd/-
Assistant Registrar (CS III)

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Sub Assistant Registrar

To

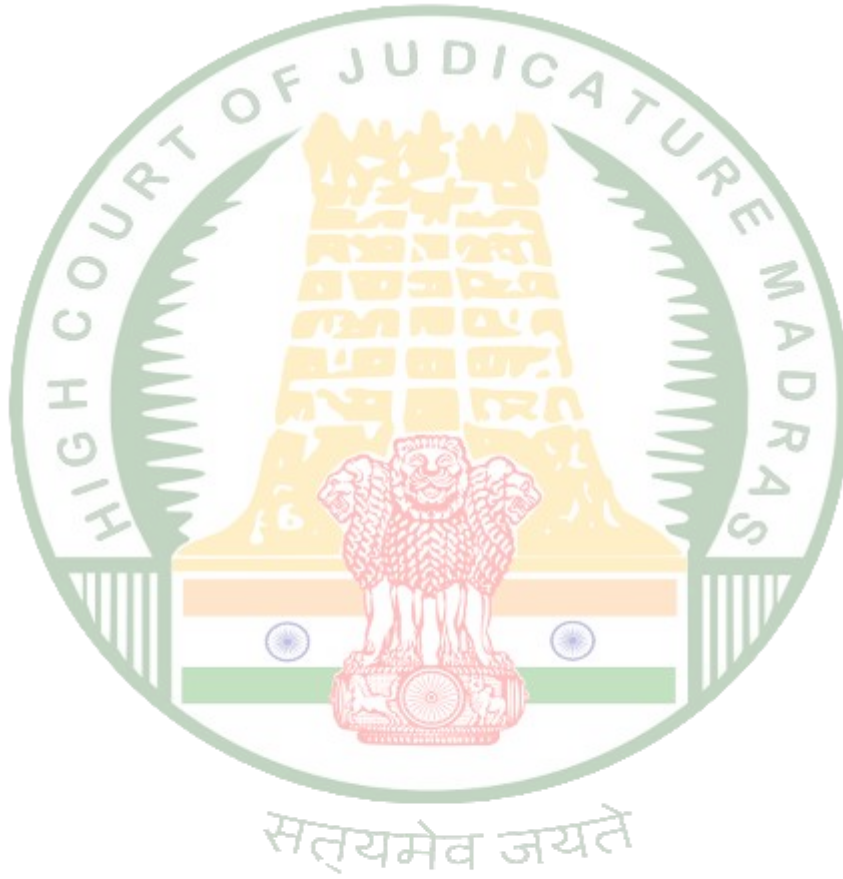
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+1cc to Mr.D.Prabhu Mukunth Arunkumar, Advocate, SR.No.77691

W.A.2961 of 2019

Kak(21/10/2019)



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