IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P.(C) No. 1210 of 2018

1. Shri Sukham Premjit Singh, aged about 42 years, S/o S. Jugindro Singh, a resident of Thongju Pheija Leitong, P.O. M.U., P.S. Singjamei, Imphal East District, Manipur-795003.

2. Sri Chingangbam Sanjoy Singh, aged about 35 years, S/o Ch. Guno Singh, Mayang Imphal Konchak Mamang Leikai, P.O. & P.S. Mayang Imphal, Imphal West District, Manipur – 795142.

..... *Petitioners*

-Versus-

1. The State of Manipur through the Commissioner/Secretary (SCERT), Govt. of Manipur, New Secretariat Building, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

2. The Director, SCERT, Govt. of Manipur, D.M. College Campus, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

3. The Commissioner/Secretary (DP), Govt. of Manipur, New Secretariat Building, P.O & P.S. Imphal, Imphal West District, Manipur-795001.

4. The Manipur Public Service Commission through its Secretary, North AOC, P.O. & P.S. Imphal, District, Imphal West, Manipur-795001.

5. Sri Jim Golden Thingujam, aged about 54 years, S/o Late Thingujam Yaima Singh, resident of Sagolband Meino Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.

..... *Respondents*

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the petitioners	::	Mr. Kh. Tarunkumar, Advocate.
For the Respondents	::	Mrs. Momota Devi Oinam, Addl. AG Mr. A. Mohendro, Advocate.
.		
Date Hearing	::	06.02.2020
Date of Judgment & Order	::	**28.02.2020**

JUDGMENT AND ORDER
(CAV)

This writ petition has been filed by the petitioners seeking a Writ of Quo Warranto to declare the promotion of the fifth respondent to the post of Joint Director, SCERT dated 28.03.2014 as unconstitutional and to direct the official respondents to oust/remove the fifth respondent from the post of Joint Director, SCERT as he is holding the said post without any authority of law.

2. The case of the petitioners is that the fifth respondent was earlier serving as Lecturer of the Government Higher Secondary School and posted at Ramlal Paul Higher Secondary School. On 10.5.1999, the services of the fifth respondent was utilised as Joint Director, SCERT, Government of Manipur and later on, he was transferred with post at the Directorate of SCERT to utilise his service as Joint Director. On 27.4.2002, the fifth

respondent was absorbed along with his post in his grade pay in the SCERT Department with effect from 11.6.1999.

3. The official respondents have initiated steps to publish the Recruitment Rules for the post of Producer in the SCERT Department and accordingly published on 27.11.2002 wherein the post of Lecturers, Project Officer of SCERT with five years regular service in their respective grades and A.I. with seven years regular service in the grade were made eligible for promotion to the said post of Producer. Thereafter, another proposal was made to amend the said Recruitment Rules of Producer by inserting the post of Lecturer of Higher Secondary School possessing five years regular service in the grade with experience in Audio/Visual Education as one of the feeder post for promotion to the said post. However, without accepting the proposals, the Department of Personnel and Administrative Reforms notified the above said Recruitment Rules of Producer in the Gazette without any changes to the said Recruitment Rules, which was notified on 27.11.2002.

4. Further case of the petitioners is that the said post of Producer has been re-designated as Joint Director. Though the post of Lecturer, Higher Secondary School transferred with post and absorbed in SCERT is not one of the feeder post for promotion to the post of Joint Director in the SCERT Department, the fifth

respondent was promoted to the post of Joint Director, SCERT on 28.3.2014 in complete violation of the Recruitment Rules. Hence, the petitioners have filed the writ petition seeking the relief aforesaid.

5. Respondent No.1 filed affidavit-in-opposition stating that the proposal for revision of the Recruitment Rules for the post of Producer by including the posts of Lecturer, SCERT and Lecturer, Higher Secondary School was made by the Administrative Department of SCERT taking into consideration that the posts of Lecturer, SCERT and Lecturer, Higher Secondary School are of the same nomenclature and the nomenclature of the post of Lecturer, Higher Secondary School, after its absorption in SCERT Department, may deem to have been changed as Lecturer, SCERT. It is stated that the Lecturer, SCERT and Lecturer, Higher Secondary School are of the same nomenclature under the same Department and therefore they cannot be treated as different entities. As such, the question whether the post of Lecturer of Higher Secondary School absorbed in the SCERT is included in the feeder post for promotion to the said post of Producer or not does not arise in the present context.

6. The fifth respondent filed affidavit-in-opposition, inter alia, stating that with the perspective for uplifting the SCERT, many

incumbents working in similar line departments like the Education Department were being utilised, transferred and absorbed in the SCERT as there was lack of man power. The fifth respondent with his post of Lecturer, High Secondary School was transferred to SCERT and in the SCERT there were also the post of Lecturer and was utilised as Joint Director in the year 1999 and thereafter was absorbed in the SCERT. As such, the fifth respondent was posted as Lecturer, SCERT and the same has been reflected in all the Government records after being transferred. The ground taken by the petitioners that the post of Lecturer, Higher Secondary School is not a feeder to the post of Joint Director is invalidated for the fact that the fifth respondent after being in SCERT was the Lecturer SCERT. It is stated that the designation of the Lecturer SCERT attached to the post of the fifth respondent after being absorbed to SCERT has not been challenged.

7. It is stated that after being utilised as Joint Director in the SCERT, the Government with an intention to provide a regular, full time Joint Director, initiated the process for promotion for the same post and on the recommendation of the Departmental Promotion Committee meeting held on 04.2.2014 and in association with the fourth respondent and with the concurrence of the Commissioner, the Governor appointed the fifth respondent on

promotion to the post of Joint Director vide order dated 28.3.2014 and thus prayed for dismissal of the writ petition.

8. The learned counsel for the petitioners submitted that the fifth respondent was not appointed on promotion to the post of Joint Director, SCERT, which was earlier called Producer by following the relevant provision of law as the post which was held by him i.e., Lecturer of Higher Secondary School transferred and absorbed in SCERT was not one of the feeder post for promotion to the said post of Producer which was later on renamed as Joint Director. He would submit that the fifth respondent usurped the post of Joint Director, SCERT without any authority of law and therefore, his promotion to the post of Joint Director, SCERT is required to be declared as unconstitutional and illegal.

9. The learned counsel for the petitioners Mr. Kh. Tarunkumar next submitted that Writ of Quo Warranto can be issued when there is violation of statutory provisions/rules and a citizen can claim a Writ of Quo Warranto. He would submit that delay and laches do not constitute any impediment to deal with the list on merits. In support, the learned counsel for the petitioners relied upon the following decisions:

(i) *High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others, reported in (2003) 4 SCC 712.*

(ii) *Rajesh Awasthi v. Nand Lal Jaiswal and others, reported in (2013) 1 SCC 501.*

10. The learned counsel for the official respondents submitted that the fifth respondent was appointed by promotion to the post of Joint Director on the recommendation of the fourth respondent by strictly following the provisions prescribed in the Recruitment Rules and also by treating him as Lecturer, SCERT, not as Lecturer, Higher Secondary School. He would submit that the fifth respondent ceased to hold the post of Lecturer, Higher Secondary School when he was absorbed with the post in the Directorate of SCERT and he had been deemed to have been holding the post of Lecturer, SCERT. Therefore, the fifth respondent had accrued the right to be considered for appointment by promotion to the post of Joint Director as per the Recruitment Rules and accordingly, he was appointed. The learned counsel then contended that the present petition is hit by delay and laches and therefore, the same cannot be entertained. In support, he has relied upon the following decisions of the Hon'ble Supreme Court in the case of (1) Om Prakash v. Union of India and others, reported in

(2010) 4 SCC 17 and (2) State of Maharashtra v. Digambar, reported in (1995) 4 SCC 683.

11. The learned counsel for the fifth respondent Mr. A. Mohendro argued that while the process for promotion to the post of Joint Director was initiated, there were objections filed and the Under Secretary, SCERT, after analysing the objections, requested the fourth respondent to hold Departmental Promotion Committee meeting in connection with promotion to the post of Joint Director, thereby rejecting all the claims as they were not legally viable vide order dated 18.1.2014 and till date, nobody challenged the said order.

12. The learned counsel further submitted that for promotion to the post of Joint Director, the feeder posts are Lecturers/Project Officer of SCERT with five years regular service in the grade with Master Degree in Audio/Video Education under Central/State Undertaking. The fifth respondent was the only feeder incumbent available and other posts of Projection Officer and AI which are in the feeder, had no incumbents. Therefore, the fifth respondent was recommended for the post of Joint Director.

13. The learned counsel then submitted that earlier W.P.(C) No.161 of 2013 came to be filed praying not to take any steps for filling up the vacant post of Joint Director and after the fifth

respondent promoted to the post of Joint Director, another W.P.(C) No.562 of 2014 was filed. Later both the writ petitions were withdrawn on 30.8.2017. He would submit that what cannot be achieved through writ of mandamus are now being filed as Quo Warranto and if the present petition is allowed, it would cause a grave miscarriage of justice. It is also the contention of the fifth respondent that a Writ of Quo Warranto can only be issued when the appointment is contrary to the statutory rules. To fortify his submissions, the learned counsel for the fifth respondent relied upon the following decisions of the Hon'ble Supreme Court:

(i) *Rajesh Awasthi v. Nand Lal Jaiswal and others, reported in (2013) 1 SCC 501.*

(ii) *Bharati Reddy v. State of Karnataka and others, reported in (2018) 6 SCC 162.*

(iii) *Ramesh Prasad Singh v. State of Bihar and others, reported in AIR 1978 SC 327.*

(iv) *S.Satyapal Reddy and others v. Government of A.P. and others, reported in (1994) 4 SCC 391.*

(v) *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others, reported in (2014) 1 SCC 161.*

14. This Court considered the submissions made by the learned counsel for the parties and also perused the materials available on record.

15. The first petitioner being an Advocate by profession/social activist and the second petitioner being a social and RTI activist have filed the instant writ petition questioning the promotion given to the fifth respondent to the post of Joint Director, SCERT on the ground that he was promoted to the public post which is a highly responsible post in the public office of SCERT Department without any authority of law.

16. By the order dated 28.03.2014, the fifth respondent was appointed on promotion to the post of Joint Director, SCERT in the scale of Rs.15600-39100/- plus Grade pay of Rs.6600/- with usual allowances as admissible under rules with immediate effect. In the order dated 28.03.2014, it has been stated that the appointment of the fifth respondent to the post of Joint Director, SCERT is subject to the outcome of W.P.(C) No.161 of 2013. By an order dated 30.8.2017, the said writ petition stands closed on withdrawal. Thus, it is clear that the appointment on promotion to the post of Joint Director was given to the fifth respondent subject to the outcome of W.P.(C) No.161 of 2013. Since W.P.(C) No.161 of 2013 has been withdrawn subsequently, it cannot be a ground to

plead that the petitioners have no right to question the appointment of the fifth respondent. W.P(C) No.161 of 2013 has not been filed by these petitioners.

17. It appears that there were four posts of Lecturer in SCERT Department at the time of bifurcation of SCERT from the Education Department. Further, the function, duties and responsibilities, promotion and the scale of pay of the post of Lecturer, SCERT are different from that of the Lecturer, Higher Secondary School.

18. The fifth respondent was transferred with post to the Director of SCERT in his Grade pay vide order dated 11.6.1999. On 27.2.2002, the Deputy Secretary (Education) modified the order dated 11.6.1999 and transferred the fifth respondent with post to the Director of SCERT for utilization of his service as Joint Director. On 27.4.2002, the fifth respondent was absorbed along with the post in the Directorate of SCERT with effect from the date he was transferred with the post to the SCERT Directorate vide order dated 27.02.2002.

19. It also appears that the fifth respondent and three others holding different post submitted a representation on 22.2.2002 to the Director, SCERT seeking for inclusion of their substantive posts as feeder post for promotion to the post of

Producer. In fact, the respondent State has published the Recruitment Rules for the post of Producer on 27.11.2002 wherein the post of Lecturers, Project Officer of SCERT with 5 years regular service in their respective Grades and A.I (AVE) with seven years regular service in the Grade were made eligible for promotion to the said post of Producer. Thereafter, another proposal was made to amend the Recruitment Rules of Producer by inserting the post of Lecturer of Higher Secondary School transferred and absorbed in SCERT possessing five years regular service in the Grade with experience in Audio/Visual Education as one of the feeder post for promotion to the said post. Later on, the said post of Producer has been re-designated as Joint Director. Thus, it is clear that the post of Lecturer, Higher Secondary School transferred with post and absorbed in SCERT is not one of the feeder post for promotion to the post of Joint Director in SCERT Department.

20. At this juncture, it is to be pointed out that the Directorate, SCERT submitted a new proposal to the fourth respondent including the following post as feeder posts of the Producer (Audio):

(a) AI (AVE)

(b) Lecturer, SCERT

(c) Project Officer, SCERT

(d) Lecturer, transferred from Higher Secondary & absorbed in SCERT.

21. From the materials produced on either side, it is seen that the proposed feeder post for promotion to the post of Producer were (1) Lecturers/Project Officers; (2) Lecturer of Higher Secondary School (transferred and absorbed in SCERT) and (3) A.I. (AVE). Further, the approved feeder post for promotion of the Producer under the published Recruitment Rules is (1) Lecturer/Project Officer of SCERT and (2) A.I. (AVE). Thus, the post of Lecturer, Higher Secondary School (transferred and absorbed in SCERT) has never been a feeder post of the Producer (which is renamed as Joint Director) even it was proposed for inclusion as a feeder post before and after publication of Recruitment Rules. There is no order of the Government for renaming the post of the fifth respondent as either Lecturer/Project Officer/AI (AVE) in the Department of SCERT. There is no whisper about anything in the order of promotion given to the fifth respondent and nothing has been shown by the official respondents that with due deliberation, the fifth respondent was appointed on promotion to the post of Joint Director, SCERT. Therefore, this Court finds that there is some force in the submissions made by the learned counsel for the petitioners.

22. In *Gujarat Kishan Mazdoor Panchayat*, supra, the Hon'ble Supreme Court held:

> *"**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 on the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , SCC para 74.)*
>
> ***23.** A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana [(2002) 6 SCC 269] .)"*

23. In Rajesh Awasthi, supra, the Apex Court held:

> *"**29.** In B.R. Kapur v. State of T.N. [(2001) 7 SCC 231 : AIR 2001 SC 3435] , in the concurring opinion Brijesh Kumar, J., while dealing with the concept of writ of quo warranto, has referred to a passage from Words and Phrases, Permanent Edn., Vol. 35, at p. 647, which is reproduced below: (SCC p. 316, para 80)*

"80. … 'The writ of "quo warranto" is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf McKittrick v. Murphy [347 Mo 484 : 148 SW 2d 527 (1941)] , SW 2d pp. 529-30.

*Information in the nature of "quo warranto" [**Ed.**:*

The words "quo warranto" have been emphasis herein.] does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed.State ex Inf Walsh v. Thatcher [340 Mo 865 : 102 SW 2d 937 (1937)] , SW 2d p. 938.'"

(emphasis in original)

30. *In University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491 : (1964) 4 SCR 575] , while dealing with the nature of the writ of quo warranto, Gajendragadkar, J. has stated thus: (AIR p. 494, para 7)*

"7. … 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 recognised 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."

31. *From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in Kashinath G. Jalmi v. Speaker [(1993) 2 SCC 703 : AIR 1993 SC 1873] .*

32. *In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [(2003) 4 SCC 712 : 2003 SCC (L&S) 565] it has been laid down by this Court that a writ of quo warranto can be issued when there is violation of statutory provisions/rules. The said principle has been reiterated in Retd. Armed Forces Medical Assn. v. Union of India [(2006) 11 SCC 731 (1) : (2007) 1 SCC (L&S) 548 (1)].*

23. In *B.R. Kapur v. State of T.N., reported in (2001) 7 SCC 231,* the Hon'ble Supreme Court observed that a Writ of Quo Warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only

a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority he is entitled to hold the office. The challenge can be made on various grounds, including the grounds that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification, which debars him to hold such office.

24. Writ of Quo Warranto cannot be issued, unless there is clear violation of law. Writ of Quo Warranto can only be issued when the appointment is contrary to the statutory rules. Admittedly, judicial review for the purpose of issuance of Writ of Quo Warranto in a case of this nature would lie (1) in the event the holder of a public office was not eligible for appointment; (2) Processual machinery relating to consultation was not fully complied.

25. The Writ of Quo Warranto proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title he would be directed to be removed from the said office by a judicial order. The proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to

protect the public from being deprived of public office to which it has a right.

26. In *University of Mysore v. C.D.Govinda Rao, reported in AIR 1965 SC 491,* the Hon'ble Supreme Court held as under:-

> *"6. .... As Halsbury has observed:*
>
> *"An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to 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 recognised 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."

27. 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.

28. The learned counsel for the fifth respondent contended that what cannot be achieved in the earlier round of writ petitions filed by other persons in the form of writ of mandamus are now being filed as Quo Warranto through the petitioners and the petitioners have no locus to file the instant writ petition.

29. It is no doubt true that the strict rules of *locus standi* is relaxed to an extent in a *Quo Warranto* proceedings. Only a person who comes to the Court with bonafides and public interest can have locus. In the instant case, nothing has been produced either by the official respondents or by the fifth respondent to show that the writ petition has been filed with the collusion of the persons who were earlier raised objections and failed qua the appointment of the fifth respondent to the post of Joint Director, SCERT.

30. In *Ghulam Qadir v. Special Tribunal and Ors., reported in (2002) 1 SCC 33,* the Hon'ble Supreme Court held:

> *"There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the*

case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea-change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

31. Since no mala fide is attributed against the petitioners, the petitioners have locus to file the instant writ petition questioning the appointment of the fifth respondent as Joint Director, SCERT.

32. Placing reliance upon Om Prakash (supra); Digambar (supra); Central Electricity Supply Utility of Odisha (supra), the learned counsel appearing for the official respondents as well as the private respondent i.e., the fifth respondent submit that the instant writ petition is liable to be dismissed on the ground of delay and laches.

33. In Om Prakash (supra), the Apex Court held:

> *"**92.** Impugned orders passed by the High Court from time to time would reveal that some have been dismissed primarily on the ground of delay and laches. We have gone through the said orders critically and find that if the appellants were under some bona fide mistake and had not challenged the issuance of notifications or declarations under Section 6 of the Act within a reasonable time then on the ground that there was an eclipse period during which they were not supposed to take any legal action, would be of no help to them. For that they have to thank their own stars. Some of the petitions have been filed either in the year 2000 or subsequent*

thereto. Thus, the High Court was justified in not entertaining such petitions on the ground of delay and laches. Even though, they have tried to attempt to explain the delay but such a long delay cannot be condoned more so, when proceeding of acquisition was initiated in the year 1980."

34. In Digambar (supra), the Apex Court held:

*"**12.** Again, as seen from the judgment, a portion of which is excerpted by us earlier, the High Court has not chosen to consider the ground of laches or undue delay on the part of the writ petitioners as that which disentitled them to seek relief under Article 226 of the Constitution, because of its view that the ground of laches or undue delay cannot disentitle a citizen to obtain relief from the High Court under Article 226 of the Constitution when he claims compensation from the State for his land alleged to have been taken away by the State or its agencies.*

***13.** The said view taken by the High Court that the ground of laches or undue delay on the part of a citizen does not disentitle him to obtain relief under Article 226 of the Constitution, when his claim for relief is based on deprivation of his property by the State or its agencies has since made it*

> *(High Court) to grant relief to the respondent in this appeal and other similarly situated, sustainability of such view requires our examination in this appeal."*

35. In Central Electricity Supply Utility of Odisha (supra), the Apex Court held:

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

36. In instant case, it is clear from the materials produced on either side that as citizens the petitioners are entitled to question the office of the fifth respondent and they stand in the position of a

relater. Moreover, they need not have any special interest or personal interest. In the earlier paragraphs, when this Court examined whether the fifth respondent was authorised to hold the office of the Joint Director, SCERT as per law, this Court finds that the appointment of the fifth respondent on promotion to the post of Joint Director is contrary to the statutory rules. In view of the aforesaid finding arrived at by this Court, the delay and laches do not constitute any impediment to deal with the lis on merits and therefore, the decisions relied upon by the learned counsel for the official respondents as well as the fifth respondent have no application to the case on hand. It may further be pointed out that a Government post of such high esteem cannot be filled up or held by a person, who has not been chosen in a manner prescribed in the statute. When a statute prescribes a procedure to be followed for filling up a post, it should be done in that manner and not otherwise and such filling up without following the procedure would render such appointment/promotion redundant. Further, such order of appointment was subject to the result of the writ petition and moreover, the order is cryptic and bereft of reasoning.

37. In the light of the discussions held supra, the fifth respondent was promoted to the post of Joint Director, SCERT though the post which was held by him viz., Lecturer of Higher Secondary School was not a feeder post for promotion to the post

of Joint Director. The non-inclusion of the post of Lecturer of Higher Secondary School as a feeder post for promotion to the post of Joint Director, SCERT which was earlier known as Producer, SCERT has been clearly reflected in the letters of the Director, SCERT and the Under Secretary (DP). Therefore, the case of the fifth respondent that he was the only feeder incumbent available is not acceptable.

38. As stated supra, the legal position has been restated that the jurisdiction of the High Court to issue a Writ of Quo Warranto is a limited one which can only be issued if the appointment is contrary to the statutory rules and the Court has to satisfy itself that the appointment is contrary to the statutory rules. In the instant case, this Court after analysing the factual matrix found that the appointment of the fifth respondent as Joint Director is contrary to the statutory rules, for which it became necessary to issue a Writ of Quo Warranto.

39. In the result,

a) The Writ Petition (C) No.1210 of 2018 is allowed.

b) This Court issued quo-warranto by declaring the promotion of the 5th respondent to the post of Joint Director SCERT dated 28.3.2014 is unconstitutional.

c) The Respondents No. 1 to 4 are hereby directing to remove the 5th respondent from the post of Joint Director SCERT immediately.

d) No cost.

JUDGE

FR/NFR

Sushil

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.02.28 13:04:46 +05'30'