

April 11, 2022
Sl. No.11
Court No.1
PA(RB)

WPA (P) 92 of 2021

Baidyanath Saha
vs.
Union of India and others

Mr. Tanoy Chakraborty,
Mr. Chhandak Dutta, Advocates
... for the petitioner

Mr. Pramod Kr. Drolia,
Mr. Santosh Kr. Pandey, Advocates
... for the Union of India

Mr. Soumya Majumdar, Sr. Adv.
Mr. Subhradip Roy,
Mr. Sananda Ganguly, Advocates
... for the respondent nos. 2, 3, 4

Mr. Anil Kumar Gupta, Advocate
... for the respondent no. 5

By this Public Interest Litigation, the petitioner has challenged the advertisement no. 1/2021 dated 27th January, 2021, wherein the respondent University had advertised 106 posts of professor, associate professor and assistant professor on the allegation that there were certain anomalies for reservation against each category of vacant posts. The allegation is that no reservation roster was published prior to issuance of the advertisement.

Having examined the petition, we find that the petitioner has not disclosed his credentials except by stating that he has no direct pecuniary interest in the matter and that he is a socially committed law abiding citizen. It is the settled position of law that in service matters, PIL is not maintainable. The persons, if any, affected by the

advertisement can always file the appropriate petition or approach the appropriate forum questioning the same. In the matter of **Girjesh Shrivastava and Others vs. State of Madhya Pradesh and Others** reported in **(2010) 10 SCC 707** where in a Public Interest Litigation, allegation of non-issuance of proper advertisement for reservation for ex-servicemen was made, the Hon'ble Supreme Court taking note of the legal position in respect of maintainability of the PIL in a service dispute had held that:

“**14.** However, the main argument by the appellants against entertaining WP (C) No. 1520 of 2001 and WP (C) No. 63 of 2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention. It is common ground that dispute in this case is over selection and appointment which is a service matter.

15. In *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* a three-Judge Bench of this Court held that a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. 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 [Administrative] Tribunal, the very object of speedy disposal of service matters would get defeated.”

Same reasoning applies here as a public interest litigation has been filed when the entire dispute relates to selection and appointment.

16. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.* this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (see SCC p. 755, para 51 of the Report).

17. This view was very strongly expressed by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra* by pointing out that despite the decision in *Duryodhan Sahu*, PILs in service matters “continue unabated”. This Court opined that the High Courts should “throw out” such petitions in view of the decision in *Duryodhan Sahu* (SCC p. 596, para 16).

18. Same principles have been reiterated in *Ashok Kumar Pandey v. State of W.B.* (SCC at p. 358, para 16).

19. In a recent decision of this Court delivered on 30-8-2010, in *Hari Bansh Lal v. Sahodar Prasad Mahto*, it has been held that except in a case for a writ of “quo warranto”, PIL in a service matter is not maintainable (see SCC para 15).”

It has further been held that:

“29. Coming to the issue of selection and appointment of ex-servicemen as a reserved category, from what has been placed before us, we understand that while in Mehagaon 5 ex-servicemen had been appointed out of a total of 9 applicants, in Raun none had been so appointed. As stated above, if at all there was an issue with respect to the reservation policy of the ex-

servicemen it ought to have been brought up as a service dispute and not in a PIL. The High Court, with due respect, should have displayed a little more restraint and balance before quashing a selection process in which the persons selected had already put in 3 years of service.”

Learned Counsel for the petitioner has placed reliance upon the judgment of the Hon’ble Supreme Court in the matter of **Dr Meera Massey (Mrs) Dr Abha Malhotra Dr. S.C. Bhadwal and Others Vs. Dr S.R. Mehrotra and Others** reported in **(1998) 3 SCC 88** but not only in the case of Girjesh Shrivastava (supra) and a number of earlier judgments noted therein but also subsequently in the matter of **Madan Lal v. High Court of Jammu and Kashmir and Others** reported in **(2014) 15 SCC 308**, it has been held that:

“9. That apart time and again this Court repeatedly held that in service matters, public interest litigation is not maintainable. We can profitably refer to a recent decision reported in Hari Bansh Lal v. Sahodar Prasad Mahto. Paras 14 and 15 are relevant which are as under: (SCC pp. 660-61)

“14. In Ashok Kumar Pandey v. State of W.B. 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 v. Jitendra Kumar Mishra* [*Duryodhan Sahu v. Jitendra Kumar Mishra*, (1998) 7 SCC 273 : 1998 SCC (L&S) 1802] 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 v. Union of India*, *Dattaraj Nathuji Thaware v. State of Maharashtra* and *Gurpal Singh v. State of Punjab*.

15. The above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters.'"

Hence, we are of the opinion that the petitioner is not entitled to benefit of the judgment in the matter of **Dr. Meera Massey (supra)** and that the present Public Interest Petition raising a dispute relating to service matter cannot be held to be maintainable which is accordingly dismissed, however, making it clear that this order will not come in the way of the parties affected from alleged irregularity from approaching the competent Court.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]