

December 20, 2022
Item No. 11
Court No.1
PA(RB)

WPA (P) 585 of 2022

Palash Bapari

vs.

The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee,
Mr. Pratip Mukherjee,
Mr. O. F. Gazi, Advocates

... for the petitioner

Mr. S.N. Mookherjee, Id. AG
Mr. Samrat Sen, Id. AAAG
Mr. Nilotpal Chatterjee,
Mr. Debraj Sahu,
Ms. A. Pandey, Advocates

... for the State

Mr. Amitava Chaudhuri,
Mr. M. Chaudhuri,
Mr. N. Roy, Advocates

... for the respondent nos. 2 & 3

In this public interest petition, the petitioner, who is a practicing advocate of this Court, is aggrieved with the appointment of respondent no. 3 as Acting Vice-Chancellor of the West Bengal University of Animal and Fishery Sciences.

The plea of the petitioner is that the Executive Council in its 105th Meeting held on 26th of August, 2021 had prepared a panel for approval of the name of the Vice-Chancellor by the Chancellor of the University. It has further been pleaded that the consent of the Hon'ble Governnor (Chancellor) was received in favour of the empanelled candidate, Professor Arunasis Goswami, but for some unknown reason, the official respondents had suppressed it. Thereafter, the present Vice-Chancellor

had again called the Meeting of the Executive Council on 17th of November, 2021 (106th Meeting) and a fresh panel was prepared and sent to the Hon'ble Governor for his assent which has not been accorded by the Hon'ble Governor. The plea of the petitioner is that the candidate selected through the panel prepared in the 105th Meeting has been deprived of his legitimate right and that Professor Chanchal Guha is unlawfully officiating on the post of Vice-Chancellor. In view of the case so set up, the petitioner has prayed for a direction to give effect to the decision of the Executive Council in its 105th Meeting and also prayed for a further direction to give effect to the consent of the Hon'ble Governor in favour of Professor Arunasis Goswami and direct the respondent no. 3 to vacate the Office of the Acting Vice-Chancellor.

Learned Advocate General has raised a preliminary objection that PIL in service matter cannot be maintained unless a writ of *quo warranto* is prayed. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Hari Bansh Lal vs. Sahodar Prasad Mahto and Others** reported in **(2010) 9 SCC 655**.

Learned counsel for the petitioner placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab vs. Salil Sabhlok and Others** reported in **(2013) 5 SCC 1** has contended that the public interest petition is maintainable.

We have heard the learned counsel for the parties and have perused the record. A perusal of the writ petition reveals that in substance, the petitioner has challenged the appointment and continuation of the respondent no. 3 as Acting Vice-Chancellor of respondent no. 2 University. The subject matter of the writ petition in substance is a service matter but there is no prayer for writ of *quo warranto*. It is the settled position in law that in service matters, public interest petition cannot be maintained unless writ of *quo warranto* has been prayed. Hon'ble Supreme Court in the matter of **Hari Bansh Lal (supra)** considering the earlier judgment on the point has held that:

“PIL in service matters

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* 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.* 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* 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*, *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.”

Thus, in view of the above settled legal position, for want of prayer for issuance of writ of *quo warranto*, the present public interest petition in a service matter cannot be maintained.

Learned counsel for the petitioner has placed reliance upon the judgment of the Hon’ble Supreme Court in the matter of **Salil Sabhlok and Others (supra)** but that was a case where appointment of Chairman of the Public Service Commission, who was holding a constitutional position and not a

statutory post, was under challenge. Therefore, Hon'ble Supreme Court had held that the appointment of Chairman in Public Service Commission does not fall in the category of a service matter. In the present case, respondent no. 3 is not holding any constitutional post. The appointment of Vice-Chancellor in the respondent no. 2 University is done in terms of the provisions of the West Bengal University of Animal and Fishery Sciences Act, 1995, therefore, the post of the Vice-Chancellor in the respondent no. 2 University is a statutory post, hence, benefit of the judgment of the Hon'ble Supreme Court in the case of **Salil Sabhlok and Others (supra)** cannot be extended to the petitioner.

Having regard to the above analysis, we are of the opinion that the present public interest petition in a service matter cannot be maintained in the absence of any prayer for issuance of writ of *quo warranto*. Hence, the petition is dismissed as not maintainable.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]