

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01st NOVEMBER, 2022

IN THE MATTER OF:

+ **LPA 143/2021 & CM APPLs. 13872/2021, 13873/2021**

DR. ASHUTOSH MISHRA

..... Appellant

Through: Mr. N. S. Dalal, Mr. J. B. Mudgil, Mr.
Devesh Pratap Singh and Mr. Alok
Kumar, Advocates.

versus

INDIAN INSTITUTE OF MASS COMMUNICATION & ORS.

..... Respondents

Through: Mr. Vikramjit Banerjee, ASG with
Mr. Prashant Kumar, Ms. Shruti
Aggarwal, Mr. Kartik Dey and Ms.
Janhvi Prakash, Advocates
Mr. Vijay Joshi, Sr. Panel Counsel for
UOI.
Mr. Anubhav Kumar, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant appeal has been filed impugning the Judgment dated 06.11.2020 wherein this Court dismissed W.P.(C) 4164/2020 preferred by the Appellant herein whereby the Appellant had challenged the selection/appointment of Respondent No.3 to the post of Director General of Respondent No.1, i.e. Indian Institute of Mass Communication (*hereinafter referred to as "IIMC"*).

2. The facts leading to the instant petitions are stated as under:

- a) It is stated that the Appellant here in is a Professor and Dean of the School of Mass Communication at Chitkara University, Punjab, and IIMC is an autonomous institute that has been established in the year 1965 under the aegis of the Ministry of Information and Broadcasting, i.e. Respondent No.2, for the purposes of teaching, training, research and consultancy in the field of Mass Communication.
- b) An advertisement dated 13.06.2019 was issued by IIMC inviting applications for the post of Director General of IIMC, with the last date of for submission of applications being 19.07.2019. The essential and desirable requirements as sought for under the advertisement are being reproduced as under:

Educational & Other Qualifications Required:

ESSENTIAL:

- i. A good Masters' Degree
- ii. Experience: Minimum 25 years' experience in the field of journalism/films/media with administrative experience of holding senior positions in Academic/ Professional Institution/University Department/Organization of National repute.

OR

Officers not below the rank of Additional Secretary in the Government of India or equivalent thereto with experience of managing or making personal contribution in one of the following areas:

- Writing Stories/ Lyrics/ Screen play
- Editing of Film / TV Programmes
- Production of Film / TV Programmes

DESIRABLE:

- i. Post-graduation or Doctoral degree in the field of films/Journalism/Mass Communication.
- ii. Weightage will be given for the awards at National and International levels for contributions in the areas mentioned above.
- iii. Participation in International Conferences.

- c) It is stated that on 23.05.2022, the Appellant herein had issued a communication via email to the Vice-President of India and the Chancellor of Makhanlal Chaturvedi National University of Journalism and Communication, Bhopal, Madhya Pradesh (*hereinafter referred to as the "MCRPV"*), regarding allegations

of fraud against Respondent No.3, Mr. Sanjay Dwivedi, who was the Vice-Chancellor of the said University. The email states that not only are there criminal cases pending against Respondent No.3, but W.P.(C) 12660/2015 has been filed against the appointment of Respondent No.3 as Reader at the said University before the Madhya Pradesh High Court.

- d) It is stated that Respondent No.3 was appointed as DG of IIMC, and the Appellant herein has communicated reservations against the same to various authorities on account of Respondent No.3 allegedly not satisfying the minimum eligibility criteria for the post of DG of IIMC. Thereafter, the Appellant herein preferred W.P.(C) 4164/2020 challenging the appointment of Respondent No.3 to the post of DG of Respondent No.1 herein as well as to direct Respondent Nos. 1 & 2 to probe into the alleged illegal appointment of Respondent No.3.
- e) *Vide* Judgement dated 06.11.2020, the learned Single Judge of this Court dismissed W.P.(C) 4164/2020 holding that there was no merit in the petition moved by the Appellant herein. Aggrieved by the same, the Appellant has moved the instant appeal assailing the said Judgement.

3. Mr. N.S. Dalal, learned Counsel appearing for the Appellant, submits that the appointment of Respondent No.3 is illegal as the Respondent No.3 does not fulfil the basic qualifications as stipulated in the advertisement issued by IIMC. He states that Respondent No.3 neither has the proper educational qualifications nor does he have the requisite work experience to have been selected for the position of DG. Mr. Dalal submits that there are criminal cases that survive against Respondent No.3 and that one W.P.(C)

12660/2015 has been filed before the High Court of Madhya Pradesh challenging the appointment of Respondent No.3 as Reader at MCRPV and the same is still pending.

4. Mr. Dalal argues that the principal ground on which the appointment of Respondent No.3 has been challenged is that Respondent No.3 does not possess the requisite work experience. He states that in addition to a good Master's degree, one requires a minimum 25 years' of experience in the field of journalism/films/media with administrative experience of holding senior positions in Academic/Professional Institution/University Department/Organization of National repute. The learned Counsel submits that in the instant case, Respondent No.3 does not have a Ph.D and despite the absence of this qualification, he was appointed a Reader/Associate Professor, and thereafter became a Professor and consequently a Vice-Chancellor. He states that the work experience as has been demonstrated by Respondent No.3 reveals that he was working as a Sub-Editor, however, the same can be refuted by the fact that during the same period of time, i.e. 1994-1996, he was a student of Bachelor of Journalism and Mass Communication (BJMC) as well as Master of Journalism and Mass Communication (MJMC). Thus, submits the learned Counsel, Respondent No.3 could not have been working and studying at the same time, and on the cut-off date, the Respondent No.3 had only 23 years of experience. He further states that in 2005 as well, Respondent No.3 had managed to secured an appointment to the post of Reader at Kusha Bhau Thakre Journalism University, Chhattisgarh, and a petition challenging the same had been filed by the Appellant herein. However, as Respondent No.3 demitted that office within six months, the petition was rendered infructuous.

5. Mr. Dalal argues that there are various other irregularities in the promotion of Respondent No.3 at MCRPV, for instance, he does not satisfy the minimum Academic Performance Index (API) score that is necessary for becoming a Professor, and that these irregularities require a proper investigation. The learned Counsel submits that the impugned Judgement fails to take into consideration the technicalities of the matter and has dismissed the writ petition preferred by the Appellant herein solely on the basis that the Courts should ordinarily not interfere with the findings of a Search-cum-Selection Committee. He states that the impugned Judgement should be

6. *Per contra*, Mr. Vikramjit Banerjee, learned ASG, at the outset, submits that the instant appeal deserves to be dismissed as it is not maintainable. He states that the appeal has been styled as a '*writ of quo warranto*' without explicitly mentioning the same, and that it also seeks for an inquiry into the allegedly illegal appointment of Respondent No.3 as DG of Respondent No.1 which cannot be done within the scope of *aquo warranto* writ. A list of Judgements has been supplied to this Court by the learned ASG to buttress the argument regarding the maintainability of the instant petition.

7. The learned ASG further submits that the appointment of Respondent No.3 is in consonance with the advertisement dated 13.06.2019 which was issued by IIMC as well as the Recruitment Rules. He states that a Screening Committee scrutinised the application of Respondent No.3 *vis-à-vis* the requirements for age, education, and other essential as well as desirable qualifications that were mentioned in the advertisement. Additionally, Respondent No.3 was personally interviewed by the Search-cum-Selection Committee, and it was only after the interview as well as an examination of

the documents submitted by Respondent No.3, his appointment was approved. The learned ASG further brings to the notice of this Court the fact that appointment of Respondent No.3 for post of DG of IIMC was thereafter approved by the Appointments Committee of the Cabinet. He states that the appointment was in accordance with Rule 35 of the Recruitment Rules which is being reproduced as under:

“35. The appointment of Director will be by the Executive Council on recommendations of the Search & Selection Committee constituted by the Ministry and approved by DOPT on such terms and conditions as may be approved by the Central Government, vide minutes of the 112nd Meeting of Executive Council held on November 20, 2008. The Director of the Institute shall be appointed by the Executive Council with the prior approval of the Central Government on such terms and conditions as may be approved by the Central government. ”

8. Mr. Banerjee submits that the grievance of the Appellant that Respondent No.3 does not possess the requisite work experience of 25 years is misplaced as there is no qualification *per se* for becoming a journalist. He states that Respondent No.3 commenced his career as a journalist post completion of his Bachelor of Arts from Lucknow University, Uttar Pradesh, in the year 1993. He submits that the biodata of Respondent No.3 demonstrates that if the experience was counted from 10.07.1994 to the date of the submission of the application, i.e. 19.07.2019, it would be more than 25 years. This work experience coupled with a Master's degree, satisfied the essential requirements as enumerated in the advertisement, submits the learned ASG.

9. The learned ASG relies upon R.K. Jain v. Union of India, (1993) 4 SCC 119, to submit that the Appellant has no *locus standi* to file the instant appeal. He states that it is settled law that in service jurisprudence, it is only for the aggrieved person to assail the legality of the action of appointing a person and that a third party has no *locus standi* to canvass or correctness of the action. Mr. Banerjee further argues that the Appellant herein has filed various petitions against Respondent No.3, right from the days of his appointment as a Reader at Kusha Bhau Thakre Journalism University, Raipur. He states that a similar petition had been filed before the Punjab and Haryana High Court challenging the appointment of Respondent No.3 to the post of Vice-Chancellor of State University at Performing and Visual Arts wherein *vide* Order dated 22.03.2018, the Punjab and Haryana High Court had noted that the Appellant herein had been unable to establish his *locus standi*.

10. Mr. Banerjee submits that a writ of *quo warranto* is not maintainable as the instant appointment has not been made contrary to statutory rules/provisions. He refers to B. Srinivasa Reddy v. Karnataka Urban Water Supply Board Employees' Association and Ors., (2006) 11 SCC 731 to substantiate this argument. He further states that it is settled law that once a Search-cum-Selection Committee has appointed a person and the said person possesses the prescribed qualification and is eligible for appointment, the Court cannot sit in judgement over the wisdom of the Committee. The learned ASG concludes his submissions on the note that the impugned Judgement is sound in law and facts, and should not be set aside.

11. Heard Mr. N.S. Dalal, learned Counsel appearing for the Appellant, Mr. Vikramjit Banerjee, learned ASG, and perused the material on record.

12. Before delving into the matter, it is pertinent to note that the petition before the learned Single Judge, though fails in mentioning that it seeks a writ of *quo warranto*, has been styled as a writ of *quo warranto* as it challenges the appointment of Respondent No.3 in contravention with the qualifications prescribed for the post. A perusal of the impugned Judgement dated 06.11.2020 wherein this Court dismissed W.P.(C) 4164/2020 preferred by the Appellant herein reveals that there are short questions of law that arose for consideration before the learned Single Judge *vis-à-vis* the factual aspects of the matter. The questions of law are as follows:

- i. *The scope of jurisdiction in a writ of quo warranto.*
- ii. *Whether the Court can sit in judgement over the evaluation of an appointment by the Government.*

13. Let us first delineate what is the purpose of a writ of *quo warranto* and when does the same lie. It is well settled that a writ of *quo warranto* applies in a case when a person usurps an office and the allegation against this usurpation is that the said person has neither no title to it, nor does the person possess the legal authority to hold it. This writ confers on the judiciary the jurisdiction as well as the authority to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. It is issued to prevent a continued exercise of unlawful authority [Refer to Centre for PIL and Anr. v. Union of India and Anr., (2011) 4 SCC 1].

14. It was as early as the 1960s that the Supreme Court, in University of Mysore and Anr. v. C.D. Govinda Rao and Anr., (1964) 4 SCR 575, had

deliberated upon when a writ of *quo warranto* could be issued in a case similar to instant matter wherein the appointment of the Appellant therein to the post of a Research Reader in English at the Central College, Bangalore, was under challenge. The relevant paragraph of the said Judgement is as under:

“6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

As Halsbury has observed [Halsbury's laws of England, 3rd Edn. Vol., II, p. 145] :

“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.”

15. Similarly, in Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and Ors., (2014) 1 SCC 161, the Supreme Court had succinctly held that the jurisdiction of the High Court while issuing a writ of *quo warranto* was a limited one and could only be issued when the person holding the public office falls short of the eligibility criteria or when the appointment is contrary to the statutory rules. The portion of the said Judgement reiterating the same has been reproduced below:

“21. From the aforesaid exposition of law it is clear as noontday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action

should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.”

16. Relying upon Judgements such as Mor Modern Coop. Transport Society Ltd. v. Government of Haryana, (2002) 6 SCC 269, and B. Srinivasa Reddy v. Karnataka Urban Water Supply Board Employees’ Association and Ors. (supra), the Supreme Court in Rajesh Awasthi v. Nand Lal Jaiswal and Ors., (2013) 1 SCC 501, observed that a writ of *quo warrant* will lie only if the appointment that is made is with regard to a person who is not authorised to hold the position granted to him as per the law. The paragraph reiterating the same is as under:

“19. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [(2003) 4 SCC 712 : 2003 SCC (L&S) 565] S.B. Sinha, J., in his concurring opinion, while advertng to the concept of exercise of jurisdiction by the High Court in relation to a writ of quo warranto, has expressed thus: (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 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 [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. State of Haryana [(2002) 6 SCC 269] .) ””

17. What can be culled from the aforementioned judicial pronouncements is that the principle ground on which a writ of *quo warranto* can be issued is if the appointment that is under challenge is made in contravention to statutory rules or provisions, i.e. the person who is appointed to a said post or public office does not possess the requisite qualifications that have been prescribed as per the rules. In the instant case, it is the contention of the Appellant herein that the Recruitment Rules have been violated by way of Respondent No.3 not possessing the 25 years of work experience in the relevant fields as mandated under the same. The essential and desirable requirements stipulated in the advertisement have been reproduced above, with the last date of submission of application being 19.07.2019.

18. Respondent No.3 pursued his Bachelor of Arts from Lucknow University, Uttar Pradesh, and completed the same in the year 1993. Thereafter, he worked as a Sub-Editor from 10.07.1994 to 07.08.1995 at Dak Desk, Dainik Bhaskar, Bhopal. Thereafter, he completed his BJMC in 1995 and MJMC in 1996. His biodata then reveals that he worked with various newspapers in different capacities before being appointed as a Reader at MCRPV. He was then given the charge of a Vice- Chancellor at MCRPV. A bare reading of the work experience indicates that the Respondent No.3 commenced his professional activities from 10.07.1994,

and consequently, as on 19.07.2019, Respondent No.3 had completed 25 years of work as was required in the advertisement. It, therefore, cannot be said that Respondent No.3 did not have possess the requisite essential requirements for being appointed to the post of DG of IIMC.

19. The Supreme Court in Indian Airlines Ltd. and Ors. v. S. Gopalakrishnan, (2001) 2 SCC 362, had observed that when in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification. However, in the instant case, it becomes imperative to note that, unlike medicine or law, pursuing a career in journalism does not require possessing a specific qualification as such. The impugned Judgement dated 06.11.2020 notes that the advertisement does not specify whether or not the work experience of a person applying for the post of a DG could only be calculated after the attainment of a Master's degree. The learned Single Judge has correctly observed that the requirement of holding a Master's degree is disjunctive to the 25 years of experience that is stated in the advertisement, and the work experience of Respondent No.3 can be calculated before he completed his Master's degree. Accordingly, a holistic reading of the biodata of Respondent No.3 along with the advertisement dated 13.06.2019 issued by the IIMC reveals to this Court that the appointment of Respondent No.3 was not in violation of the Rules prescribed for the said appointment.

20. The learned Counsel for the Appellant has raised various issues with regard to the ineligibility of Respondent No.3 in assuming the post of either a Reader or a Vice-Chancellor at the previous University. He has stated that an inquiry must be instituted into the irregularities with regard to Respondent No.3 not possessing the essential qualifications, such as Ph.D, and yet being appointed as a Reader or a Vice-Chancellor. This Court is of

the opinion that these arguments advanced by the learned Counsel for the Appellant are baseless and initiating an inquiry does not come with the scope of a writ of *quo warranto*. This Court cannot go into the alleged ineligibility of Respondent No.3 in being appointed at MCRPV.

21. Secondly, having arrived at the observation that the appointment of Respondent No.3 to the post of DG did not contravene the essential qualifications postulated in the advertisement dated 13.06.2019, it becomes imperative to discern whether or not this Court can sit in judgement over an evaluation of an appointment by the Government. The learned ASG has placed reliance on Dr.DuryodhanSahu and Ors. v. Jitendra Kumar Mishra and Ors., (1998) 7 SCC 273, to argue that it is not for Courts to substitute their views for that of the Selection Committee. A bare perusal of the said Judgement brings to the fore the understanding that once concerned authorities are satisfied with the eligibility qualifications of the person concerned, it is not for the Court to embark upon an investigation of its own to ascertain the qualifications of the said person. The relevant portion of the said Judgment is as follows:

“23. Even the Tribunal has found that the petitioner had acquired sufficient practical experience by assisting the Head of the Department of Surgical Gastroenterology in the said College for a long period of six years and had several publications to his credit. The Tribunal overlooked that the said experience acquired by the petitioner was recognised to be sufficient to satisfy the requisite qualification of two years' special training by the Director of Medical Education and Training when a reference was made to him by the Orissa Public Service Commission. It was only after getting the matter clarified, the Service Commission called the petitioner for viva voce. Once the authorities concerned are satisfied with the

eligibility qualifications of the person concerned, it is not for the Court or the Tribunal to embark upon an investigation of its own to ascertain the qualifications of the said person.”

22. The Supreme Court in M.V. Thimmaiah and Ors. v. Union Public Service Commission and Ors., (2008) 2 SCC 119, while considering the setting aside of the recommendations of the Selection Committee to fill up 8 vacancies belonging to non-State Civil Service Officers of the Karnataka Government to the Indian Administrative Service of the Karnataka cadre, observed that normally, the recommendations of the Selection Committee cannot be challenged except on the ground of *mala fides* or serious violation of the statutory rules. The paragraph of the said Judgement delineating has been reproduced below:

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...”

23. In B. Srinivasa Reddy v. Karnataka Urban Water Supply Board Employees’ Association and Ors. (supra), the Supreme Court held that if the person chosen possesses the prescribed qualification and is otherwise eligible for appointment, the Courts must not sit in appeal over the aspect of recommending the said person. Additionally, the burden of establishing

mala fides is very heavy on the person who alleges it. The Supreme Court observed as follows:

“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.

51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v. Union of India [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of quo warranto so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari

proceedings brought before the Court by an aggrieved party who was a candidate for the post.”

24. Flowing from the judgements above as well as the educational qualifications/experience of Respondent No.3, this Court is of the opinion that the Appellant has failed to satisfactorily discharge the burden imposed on them that would warrant the interference of this Court by way of issuance of a writ of *quo warranto*. The observations of the learned Single Judge in the impugned Judgement dated 06.11.2020 are in consonance with the judicial precedents established in similar matters, and the appointment of Respondent No.3 is in accordance with the Recruitment Rules and the advertisement dated 13.06.2019 issued by IIMC.

25. This Court, therefore, finds no merit in the instant appeal and does not wish to interference with the impugned Judgement dated 06.11.2020 wherein this Court dismissed W.P.(C) 4164/2020 preferred by the Appellant herein. The said impugned Judgment is legally firm and does not warrant this Court's indulgence.

26. Accordingly, the instant appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 01, 2022

Rahul