

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

FMA 1316 of 2022

with

IA No. CAN 1 of 2023

Dr. Gautam Pal

-vs

The State of West Bengal & Ors.

For the Appellants : Mr. Ranajit Chatterjee
Mr. Raghunath Chakraborty
Mr. Aniruddha Mitra

For the private Respondent : Mr. Amitava Chaudhuri
Mr. N. Roy

For the State : Mr. Tapas Kumar Dey

Heard On : 21.06.2023

Judgement Delivered On : 30.06.2023

Supratim Bhattacharya, J.:-

1. The appellant herein has challenged the impugned order passed by the Hon'ble Single Bench dated 24.6.2022 in WPA 14238 of 2021.
2. The appellant herein was the writ petitioner while the respondents were the respondents in the writ petition.
3. The appellant writ petitioner is a technical staff of the RCC Institute of Information Technology.
4. Through the writ petition the writ petitioner had prayed for writ in the nature of *quo warranto* for removal of Shri Pranabesh Das the then Additional Director of Technical Education, West Bengal and Ms. Bldisha Mukherjee Joint Director of Technical Education, West Bengal.
5. Through the impugned order the Hon'ble Single Bench has rejected the prayer of the writ petitioner on the grounds that the actual motive behind filing the writ petition was to thwart the disciplinary proceeding initiated against the writ petitioner and the said writ petition filed is abuse of process of law.
6. The fact of the instant lis is that the appellant writ petitioner against whom a disciplinary proceeding is going on wherein he has been charged *inter alia* with insubordination and he was suspended on 30.6.2011 and the disciplinary proceeding resulted in dismissal of the writ petitioner. The appellant writ petitioner challenging the order of dismissal filed a writ petition being WP 13874 (W) of 2016. The Hon'ble Single Bench had

set aside the order of dismissal *vide* its order dated 13.11.2019, on the ground of non-observance of the principles of natural justice, and had given the liberty to the college-in-question to proceed afresh from the state of appointment.

The appellant/writ petitioner had preferred the writ in the nature of *quo warranto* praying for removal of the then Additional Director of Technical Education, West Bengal and the Joint Director of Technical Education, West Bengal. As the then Additional Director of Technical Education, West Bengal has superannuated on 30.4.2022 so the Hon'ble Single Bench felt that a writ in the nature of *quo warranto* cannot be issued against a post which the concerned person is holding no more as such the prayer against the respondent No.4, in the writ petition, that is the then Additional Director of Technical Education, West Bengal, was not at all taken into consideration. The prayer for issuance of a writ in the nature of *quo warranto* against the respondent No.5, in the writ petition that is the Joint Director of Technical Education, West Bengal, was initiated on the ground that the said respondent No.5 in the writ petition did not have the requisite qualification to be promoted as the Deputy Director as she did not possess the required working experience.

7. The Ld. Counsel appearing on behalf of the appellant/writ petitioner has submitted that the prayer for a writ of *quo warranto* for quashing the appointment and promotion of the then Additional Director of Technical Education, West Bengal and the Joint Director of Technical Education,

West Bengal were contrary to the provisions of the notifications dated 14.5.1998 issued by the State Government. He has further submitted that the respondent No. 4 had the required teaching experience but his promotion to the post of Joint Director was without the concurrence of the Public Service Commission (in short PSC) and finance department. He has further submitted that the respondent No. 4 did not have the experience of 5 years of regular service in the feeder post.

The Ld. Counsel had further submitted that the promotion of the respondent NO. 5 as Deputy Director was against a reserve post and she then did not possess the requisite experience of 5 years in the post of Assistant Director and the same could not have been legalized even taking into account the order dated 04.7.2007, wherein the past service of the respondent No.5 as lecturer in a women's polytechnic college and her service as Assistant Director were taken into consideration. Banking upon the aforesaid facts and circumstances the Ld. Counsel has prayed for allowing the instant appeal.

- 8.** The Ld. Counsel appearing on behalf of the private respondents has denied the contentions of the writ petitioner. He has further submitted that out of grudge and ill-motive the appeal and the writ petition have been filed. He has further submitted that the respondent No.4 and 5 being members of the Board looking into the matters of disciplinary proceedings against the appellant writ petitioner so they have been

falsely implicated in the lis. He has further submitted that the Hon'ble Governor had approved the promotion of the Respondent No.5. Considering the aforesaid facts and circumstances he has prayed for dismissal of the instant appeal.

9. Considering the facts and circumstances and submissions of the Ld. Counsels it is evident that the moot point for consideration in the instant appeal is as to whether the allegations brought against the private respondents by the appellant writ petitioner is tenable or not.
10. On going through the facts and circumstances, it reveals that the respondent no.4 has superannuated on 30.4.2022 and this Court is of the same view that writ in the nature of *quo warranto* cannot be issued against a post which the respondent no.4 is not holding.
11. In respect of the respondent no.5 it is fact that the appointment of the said respondent in the said post has been approved by the Governor. The fact of appointment of the respondent No.5 has taken place more than 15 years ago and in addition Government had vide its order dated 04.7.2007 had decided to count the previous services of the respondent No.5.
12. The appellant/ writ petitioner had not challenged the appointment of the respondent no.5 when she was promoted as Deputy Director in the year 2009.

The appellant /writ petitioner has preferred the writ petition just in the year 2021 challenging the appointments given long ago. Challenging of either an appointment or promotion at such belated stage cannot be encouraged.

13. In addition the appellant /writ petitioner is nothing more than a busybody.

In this aspect as regards to busybody this Court refers to the *Paragraph 21* of the Judgement passed by the Hon'ble Apex Court in the case between *S. Chandramohan Nair vs. George Joseph* and others reported in (2010) 12 SCC 687. The Paragraph 21 lays down as follows:

"21. As mentioned above, Respondent 1 had nothing to do with the appointment of the members of the State Commission and who did not place any material on record to show as to how the appointment of the appellant would adversely affect the members of the Samiti. His position was nothing more than that of a meddlesome interloper/busybody and the Division Bench of the High Court gravely erred in entertaining the writ petition filed by him and converting the same into a writ of quo warranto."

14. The appellant writ petitioner has preferred to come before the Hon'ble Court against the appointment of the respondents no.4 and 5 when these respondents have been included in the Board which is

looking into the disciplinary proceeding of the appellant writ petitioner. The respondent no.5 has been inducted into the Board of management of the RCC Institute of Information and Technology in the year 2019 and she has been inducted as a member of the said committee in her capacity as a Joint Director of Technical Education. The respondent no.4 was appointed as Chairman of the said Board of members on 26.2.2020 being the Additional Director. Thereafter the petitioner approached the Court by filing the writ petition in the year 2021 praying for a issuance of a writ in the nature of *quo warranto* questioning their eligibility.

In the mind of this Court it arises that the appellant writ petitioner has approached the Court having ulterior motive that is to thwart the disciplinary proceeding initiated against him.

In this context this Court refers to the Judgement passed by the Hon'ble Apex Court in the case between *A.N Shastri vs. State of Punjab and ors.* reported in *1988 Supp SCC 127* wherein the Hon'ble Apex Court has questioned the *bona fide* of the writ petitioner. This Court also refers to a judgement of an Hon'ble Division Bench of the Allahabad High Court in the case between *Kundan Singh ... Appellant; Versus State of U.P., Throu. Prin. Secy. Medical Edu. Lko. and Others* reported in *(2020) SCC OnLine All 6* wherein the Hon'ble Judges have questioned the *bona fide* of the writ petitioner which is stated in Para 9 which is laid down as follows :

“...A writ of quo-warranto may not be substitute of writ of certiorari. It is trite law that the writ of quo-warranto may be refused where it is an outcome of malice or ill-will...”

As such this Court finds no reason to interfere with the impugned Order and Judgement.

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stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)