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W.P.No.13608 of 2018 &
W.M.P.No.16034 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**W.P.No.13608 of 2018 &
W.M.P.No.16034 of 2018**

Dr.M.Ravindrababu

... Petitioner

Vs.

1. The Secretary
Higher Education Department,
Government of Tamilnadu
Secretariat, Chennai – 600 009

2. The Registrar,
Madras University,
Chepauk, Chennai – 600 005

3. The Principal,
Sir Theagaraja college,
Old No.345, New No.1047,
T.H.Road, Old Washermenpet,
Chennai – 600 021

4. M.Munirathinam
N.R.Kandriga (Vill), Dasukuppam (Post)
Sathyavedu (Mandal)
Chittoor (Dist) – 517 588
Andhrapradesh

... Respondents

Writ Petition filed under Article 226 Constitution of India for issuance of a Writ of Quo Warranto by calling upon the 4th respondent to show cause under what authority of law he is holding the post of Assistant Professor in the 3rd respondent's college and consequently, appoint the petitioner herein



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in the place of the 4th respondent as 2nd highest mark holder.

For Petitioner : Mr. G.Karthikeyan, Senior Counsel for
Mrs.A.Jagadeeswari
For Respondents : Mr.T.M.Rajangam for R1
Government Advocate
Mr.A.S.Vijayaragavan for R2
Mr.B.Ravi for R3
Mr.T.S.Baskaran for R4

ORDER

The present Writ Petition is filed for issuance of a Writ of Quo Warranto by calling upon the 4th respondent to show cause under what authority of law he is holding the post of Assistant Professor in the 3rd respondent's college and consequently, appoint the petitioner herein in the place of the 4th respondent as 2nd highest mark holder.

2. The brief facts of the case are as follows:-

The petitioner had applied for the post of Assistant Professor in Telugu in Sir Theagaraya College, Old Washermenpet, Chennai. Though the petitioner had obtained necessary marks and qualified to be appointed, he was not appointed, instead one Munirathinam, 4th respondent was appointed. Further, the petitioner had obtained the second maximum marks among the candidates and the first highest mark was obtained by the 4th respondent. Even the qualification of the 4th respondent, as Ph.D scholar



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was obtained on 19.01.2010 would go to show that he was doing his research during the period 2004 to 2009. The information received through RTI proves that during the period which the 4th respondent is supposed to have done his M.Phil and the Ph.D, he was working as a full time Lecturer in Government Junior College. Since both the colleges works from 9.30 a.m. to 5.30 p.m., there was absolutely no possibility to have either done M.Phil or research for Ph.D., Moreover, as per the admission procedures of University of Madras, the full time Ph.D.Scholar should not be in any full or part time employment and the M.Phil and Ph.D., obtained by the 4th respondent are illegal and without these two qualifications, he would not have appointed, therefore, the petitioner has come up with the present petition seeking Writ of Quo-Warranto against the 4th respondent.

3. The learned counsel for the petitioner would submit that the 4th respondent has obtained M.Phil and Ph.D certificates against the mandatory procedures and against law. The 4th respondent has suppressed the fact that he was working as a contract lecturer during the period he claims to have done his M.Phil and Ph.D., thereby pleaded to allow the present petition.

4. Per contra, a detailed counter affidavit is filed by the 1st respondent



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refuting the allegations made by the petitioner and submits that the selection committee constituted by the University as per UGC regulation 2000, the qualification approval is given by the University. The concerned Regional Joint Directorate of Collegiate Education approves the appointment of the selected candidates. As per Tamilnadu Private College (Regulations) Act, 1976, the Secretary of the College is the appointing authority in respect of the Aided Private Colleges and the selection committee comprised of the subject experts approved by the Vice chancellor of the University and the Principal of the college concerned. The proposal for appointment will be approved by the concerned Regional Joint Director of Collegiate Education, if it fulfills all the criteria. Further, the petitioner challenges the selection procedure adopted by the selection committee and hence the 1st respondent does not have any role in the selection of the petitioner, thereby pleaded to dismiss the present Petition, as devoid of merits.

5. On the other hand, a detailed counter affidavit has also been filed by the 3rd respondent, wherein it clearly states that the present petition is not maintainable both in law and on facts. The educational qualifications of the 4th respondent is M.A., in Telugu, M.Phil, Ph.D., NET, M.A., Journalism, PGDCA and the certificates have also been produced along with the application form and the same have been thoroughly scrutinized by the



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selection committee and has been found to be in conformity to the prescribed norms. Further, the 4th respondent has also produced relevant certificates issued by the respective colleges and the experience certificates submitted by the 4th respondent have been duly counter-signed by the Joint Director of Collegiate Education and found to be in order, thereby the 4th respondent has been working in the Institution for the past 3 years, thereby pleaded to dismiss the petition. Moreover, the learned counsel for the 3rd respondent has also submitted the following judgments to substantiate his case:-

(i) Judgment of Hon'ble Supreme Court in Civil Writ No.671/1975 [S.K.Dubey Vs. Union of India etc.,]

(ii) Judgment of Hon'ble Supreme Court reported in (2018) 6 Supreme Court Cases 162 [Bharati Reddy Vs. State of Karnataka and Others]

(iii) Judgment of this Court in W.P.No.23652 of 2010 [Dr.S.Karthioli Vs. Government of India rep. By the Secretary, Ministry of Earth Sciences, Mahasagar Bhavan, Block no.12, C.G.O., Complex, Lodhi Road, New Delhi – 110 003 and Others]

(iv) Judgment of Mysore High Court reported in AIR 1964 Mysore 159 [Dr.P.S.Venkataswamy Setty Vs. University of Mysore



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and others]

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6. Resisting the present petition filed by the petitioner, the learned counsel for 4th respondent has also filed a detailed counter affidavit and additional counter affidavit, wherein it is stated that the marks in the interview were granted by the selection committee and therefore, the petitioner cannot raise the allegations regarding the manner in which the marks were granted. Further, all the degrees and certificates were submitted to the college for scrutiny and having found to be in order and valid, the 4th respondent was appointed as Assistant Professor. The 4th respondent has attended requisite number of classes, as stipulated in the Rules and only upon successful completion of the course, the 4th respondent was awarded various degrees and Ph.D., thereby pleaded to dismiss the petition on the ground of delay and latches.

7. Heard the learned counsels for the respective parties and perused the documents placed on record.

8. It is the contention putforth on behalf of the petitioner that the 4th respondent has cheated the Madras University and obtained certificate



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fraudulently, for which, the learned counsel for the 2nd respondent / University contended that if the petitioner feels so, the petitioner could have initiated a complaint to quash the appointment order, so that appropriate enquiry would be conducted, without any such process being adopted, the present petition for issuance of quo-warranto is not maintainable. In reply, the learned counsel for the petitioner again reiterated that quo-warranto will lie because the 4th respondent is appointed on a fraudulent certificate.

9. It is pertinent to point that the 4th respondent obtained Degree during the year 2010 and the petitioner's qualification was approved by the University of Madras in letter No.A-II/MPV/AP-Approval/Sir Theagaraya/2015/465 dated 16.12.2015 and the appointment of the 4th respondent was approved by the Regional Joint Director of Collegiate Education, Chennai Region vide Proceedings K.Dis.No.1121/D1/2015 dated 03.03.2016 and only in the year 2018, the petitioner challenges the same by way of present Writ Petition, the petitioner ought to have intimated it earlier and the 3rd respondent is an aided college. That apart, the forgery and other accusations with regard to the qualification of the 4th respondent, should be proved by the petitioner, without any such documents being filed to prove, this Court is not inclined to pass any orders of quo-warranto. If information has been availed through RTI, the petitioner can challenge the



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same and prefer a complaint to the University and on that complaint, University will hold an enquiry as to whether 4th respondent has cheated, committed forgery or not, it is for the University to decide. When a claim has been made that the 4th respondent has committed forgery, no complaint has been lodged so far, however, a representation has been sent by the petitioner but the same was not acted upon, while so, the petitioner ought to have preferred appropriate legal proceedings, without doing so, the petitioner has preferred this petition for issuance of quo-warranto, which cannot be sustained.

10. Moreover, the learned counsel for the 3rd respondent / College in support of his contention has **relied on Paragraph No.11 of the Judgment of Mysore High Court reported in AIR 1964 Mysore 159 [Dr.P.S.Venkataswamy Setty Vs. University of Mysore], wherein it is held as follows:-**

“11. The peculiar characteristics of the writ of quo warranto and the history of its development in England are found discussed in the leading case of The King v. Speyer, (1916) 1 KB 593. Lord Reading, C. J. , points out that originally a writ of quo warranto was available only for use by the king against encroachment of royal prerogative or of rights, franchise or liberties of the Crown but that later it gave place to the practice of filing informations by the Attorney General on the strength of which the Court enquired into the authority whereby the respondent held any public position. Later still, the King's coroner commenced the practice of exhibiting the information of quo warranto at the instance of even private persons. To prevent the abuse of this practice statutes were subsequently passed during the reign of the King William and Queen Mary, after which the practice of coroner filing



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information was stopped. Another statute was passed during the reign of Queen Anne' making the issue of a writ of quo warranto subject to the discretion of the Court to grant or refuse the same upon the informations exhibited by private persons. In a sense, the proceedings were criminal in nature because the party who laid information before the court was merely in the position of an informer or a relator. The long history of the proceedings in quo warranto led to considerable conflict of decisions. The matter was fully examined by the house of Lords in the case of *Darley v. R.*, (1846) 12 Clause and F. 530 at p. 537 : 8 ER 1513, in which Tindal, C. J. expressed his conclusion in the following oft-quoted words : "after the consideration of all the cases and dicta on this subject, the result appears to be, that this proceeding by information in nature of quo warranto will lie for usurping any office, whether created by charter alone, or by the Crown, with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of others. " after that decision, the position was firmly established in England that a writ of quo warranto will lie only in respect of what may be briefly described as public offices, that is to say, offices the holders of which exercise some governmental function or power or are conferred with the power or charged with the duty of acting in execution or application of the law. It is necessarily so because in its origin the writ of quo warranto was action taken by the Crown itself in England against persons who usurped or purported to usurp any of the privileges, prerogatives, rights or liberties of the Crown, and in England the Crown was the fountain source of law. The same position is found summarised in paragraphs 274 to 277 of Halsbury's Laws of England, Third edition, Volume II. The same view has been accepted and acted upon in India by a Bench of the Madhya Bharat High Court, see *Anand Bihari Ram Sahay*. AIR 1952 Madh-Bha 31 at p. 37. Their Lordships were dealing with the office of the Speaker of the Legislative Assembly and expressed themselves as follows:

"the learned Advocate-General opposes the petition on the ground that the office of the speaker is not an office under the Crown i. e. , the Executive, hence no information in the nature of quo warranto would lie. An information in the nature of quo warranto will lie in respect of any particular office when that office satisfies the following conditions: (1) the office must have been created by charter from the Crown or by Statute. (2) The duties of the office must be of a public nature. (3) The office must be one the tenure of which is permanent in the sense of not being terminable at pleasure. (4) The person proceeded against has been in actual possession and user of the particular office in question (Vide Halsbury's Laws of England, Vol. X 1909 Edn. pages 129 and 130 and 131). The office of the speaker has been created by statute. Article 178 of the constitution and Section 6 of the Interim Legislative Assembly Act of Madhya Bharat provide for it. That the duties of the office of a speaker are of a public nature is not



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disputed by the advocate-General. The third and the fourth requisite conditions are also" fulfilled in the present case. In these circumstances the objection of the Advocate-General cannot be sustained. "

In India we have a republican Constitution. Hence in India the nature of office in respect of which quo warranto will lie must be taken to be an office created by the Constitution itself or by any statute and invested with the power or charged with the duty of acting in execution or in enforcement of the law. We might add that the office may be either an elective office or one in respect of which a nomination or appointment is made by a specified authority and that in the case of elective office, we generally have the procedure. of election petitions which makes it unnecessary for any one to proceed by way of a writ of quo warranto. Provided the office is of the character or nature described above, it is well established in England that the petitioner who is only a relator need not have any personal interest in the matter. All that is necessary is that he should act bona. fide in public interest and should not be a, mere man of straw acting at the instance of others or on ulterior motives. The writ, as already stated, is purely discretionary with the Court and will not issue unless the Court is satisfied that it is necessary to issue the writ in public interest.

11. It cannot be forgotten that a Writ of Quo Warranto which means 'by what authority?' is a prerogative, Writ issued to a person to show under what authority they have exercised a particular power. 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. Information in the nature of "quo warranto" 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



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of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed.

12. In Central Electricity Supply Utility of Odisha v. Dhobei

Sahoo the Hon'ble Apex Court held that:

"21. [...] 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"

13. The Division Bench of Gujarat High Court in **Kaushal Arvindkumar Bhatt v. The Gujarat Technological University Through The Registrar, 2023 Livelaw (Guj) 68**, while dealing with a similar set of facts, has held that writ of quo warranto is not an appeal over an academic decision. The Division bench said the writ of quo warranto is a technical writ. The quo warranto is issued when the holder of the office which is of public nature lacks qualification necessary for such post.

"The qualification accepted by the University has the dimension of equivalence and it was the decision in the expert academic field. The University, obtained the expert advice of Dr. Kulkarni before arriving at a decision that the Ph.D. Commerce could be accepted as one satisfying the eligibility criteria. The decision was ratified by the



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Board of Governors of the University. Thus, the decision on the point became an academic expert decision. Such decision of the University has to be accepted by the Court. It is trite that the Court does not sit in appeal over the academic decisions."

Observing that writ of quo warranto is not an appeal over an academic decision, the court held as follows:

"In view of the reasons supplied as above, which operate so as not to sustain the impugned judgment and order of the learned Single Judge, any other aspect including whether, the post in question was a public office or not, and whether learned Single Judge was justified in principle in directing the consideration of the case of the petitioner to be appointed on the post in question, simultaneously while issuing the writ of quo warranto, are not needed to be gone into."

14. It cannot be forgotten that it was firmly established in England that a Writ of Quo Warranto will lie only in respect of what may be briefly described as public offices, that is to say, offices the holders of which exercise some governmental function or power or are conferred with the power or charged with the duty of acting in execution or application of the law. In our country, we have a republican constitution. Therefore, the nature of office in respect of which quo warranto will lie must be taken to be an office created by the Constitution itself or by any statute and invested with the power or charged with the duty of acting in execution or in enforcement of the law. Further, the office may be either an elective office or one in respect of which a nomination or appointment is made by a specified authority and that in the case of elective office, generally the



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procedure exists for election petitions, which makes it unnecessary for anyone to proceed by way of Writ of Quo Warranto. In the present case, as long as the certificate is in force, it is for the petitioner to prove otherwise and the case of the petitioner does not warrant issuance of quo warranto. As far as qualifications are concerned, all the qualifications prescribed has been received along with the application and the College had scrutinised all the documents based on the certificates submitted and these qualifications have already been approved by the University. The Government had also approved the same. At this juncture, it is brought to the notice of this Court that nearly for the past 7 years, 4th respondent has been working as he is a qualified person and he has published many papers regarding his research work.

15. In view of the above, the present Writ Petition deserves to be dismissed and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

12.12.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
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