

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA-143-2023 (O&M)
Decided on : 28.02.2023**

Annu Kumar & another

.....Appellant(s)

Versus

Maharshi Dayanand University & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Rajiv Kumar Doon, Advocate, for the appellants.

Mr.Shreenath A.Khemka, Advocate, for respondent No.1.

G.S. Sandhawalia, J. :-

CM-420-LPA-2023

Application has been filed for condonation of delay of 48 days in filing the appeal against the judgment of the learned Single Judge dated 18.11.2022. It has been mentioned in the application that certain objections were raised when the appeal was filed on 16.12.2022 vide diary No.8010268 and thereafter, the file was got misplaced in the Branch.

Accordingly, keeping in view the above, we are of the considered opinion that sufficient cause has been made out to condone the delay of 48 days in filing the appeal. The application is accordingly allowed and the said delay in filing the appeal is hereby condoned.

CM stands disposed of.

LPA-143-2023 (O&M)

1. Consideration in the present Letters Patent Appeal, which arises out of the order dated 18.11.2022 of the Learned Single Judge passed in CWP-34925-2019 titled *Annu Kumar & another Vs. Maharshi Dayanand University & others*.

2. Challenge in the writ petition by way of Quo Warranto was for declaration that respondent No.6 who had been appointed as Assistant Professor in the subject of Physical Education was a usurper with respondent No.3-College as he did not have the essential qualifications as per the University Grants Commission. It was the categorical case that the appointment was on the basis of fake, forged, fabricated degree of Doctorate in the subject of Physical Education. The said degree is stated to be issued by respondent No.4-Bundelkhand University, Jhansi (U.P.). The learned Single Judge came to the conclusion that the case was based on information received by one Rajesh Kumar from the respondent No.4-Institute under the Right to Information Act, 2005 (RTI Act) which in turn had informed the said person that there was no such person in the name of Krishan Kumar who had undergone Doctorate in Physical Education during the period/session 2011-14 and that no Ph.D was conducted by the said person in the University.

3. The stand of respondent No.1-University was that it had got the degree of respondent No.6 verified from respondent No.4-University at Jhansi at its own level and was in receipt of the memo dated 15.03.2018 which was found to be verified and correct. It was also averred that the requirement for the post of Assistant Professor was either a degree of Doctorate or a NET qualification. The said respondent No.6 had also cleared UGC NET examination held on 29.12.2013 under Roll

No.72470254 and therefore, the Selection Committee had awarded 10 marks and he had fulfilled the eligibility criteria and he had qualified for the post of Assistant Professor.

4. Similar stand was taken by the State that as per the enquiry, the authenticity of the degree had been confirmed and found to be genuine. Accordingly, keeping in view the said fact and the fact that the UGC qualifications provided the NET eligibility was not the subject matter of dispute, it was held that there was no occasion to impugn the selection/appointment of respondent No.6. On the contrary, it was also noticed that even the University at Jhansi had informed the MDU, Rohtak that it had never provided any information under RTI to said Rajesh Kumar and the fact that no replication had been filed and it was held that there was no reason to disregard the written statement filed by way of an affidavit.

5. Counsel for the appellants with vehemence has submitted that once there was a fraud and there was information received which was obtained by none-else but by the brother of appellant No.1, the learned Single Judge is not justified in dismissing the writ petition. It is pointed out that once Sanjay Kumar who was at merit No.3 had also taken similar information on 24.07.2018 that the research degree was forged and fabricated which was the communication by the University at Jhansi and therefore, the learned Single Judge had wrongly accepted the stand of the State who had vouched for the said certificate.

6. Resultantly, we passed the order on 09.02.2023 that since Rajesh Kumar who had applied for the information was not an appellant, whether he was willing to stand by the veracity of Annexure P-3 and since serious consequences can flow if the said document was to be verified.

Today, an affidavit has been filed along with the originals also as directed.

The same are taken on record. Counsel has accordingly submitted that the matter would require consideration.

7. We, however, are of the view that the appellant No.1 was also a candidate for the post of Assistant Professor but perusal of Annexure P-1 would go on to show that out of the 20 candidates who had applied, 13 had appeared for the said test and he is at Sr.No.19 and it is not disputed that he has only got 42.46 marks and the selected candidate had got 49.18 marks. Next in line is one Dr.Naveen Kumar who has got 45.19 and thereafter is the other candidate Sanjay Kumar who has got 42.51 marks. Thus, only 3 candidates have been recommended for appointment in the order of merit and apparently, respondent No.6 has been appointed whose degree has been questioned. Appellant No.2, Jasveer is one of the candidates who had applied but is not within the first three candidates also and therefore, we feel that the only person who can have real objection is candidate at Sr.No.2. Thus, it would only be an academic exercise to go into the issue that which of the letters of the University at Jhansi is to be accepted since apparently, it would be clear from the record that the respondent-University had specifically asked the University at Jhansi on 04.09.2018 (Annexure R-1/4) whether the Ph.D degree certificate was genuine and the supervisor of the candidate was as per the UGC Regulations/Norms 2009/2015.

8. The verification of the reply submitted by the office under RTI was also done since the approval of the selection proceedings of private-respondent No.6, Krishan Kumar was to take place. Thus, specific information was sought whether Ph.D degree awarded to respondent No.6 was in accordance with the UGC (minimum standards and procedure for award of M/Phil/Ph.D Degree) Regulations, 2009. The University at

Jhansi vide letter received on 25.09.2018, while replying to the earlier letter replied that the Ph.D degree had been awarded to the said respondent and had been got verified by the office and was correct. The said respondent was stated to be registered for Ph.D Programme in the year 2011 and Ph.D Degree was awarded to him in the year 2014 after following due procedure and as per the UGC (minimum standards and procedure for award of M/Phil/Ph.D Degree) Regulations, 2009. The supervisor Dr.R.K.Dhaka fulfilled all the eligibility conditions and it was clarified that no RTI application had been filed by the brother of appellant No.1, Rajesh Kumar and neither the University had issued any letter to Rajesh Kumar in this regard.

9. Thus, apparently, information was sought between two educational institutions at their own level and the verification was got done. There is a presumption of truth attached to such correspondences and it is not for the Writ Court to go into the issues of disputed facts which are now sought to be raised by the appellants. It is not that the University did not verify the said facts on the complaints made by various persons. As noticed, Rajesh Kumar the brother is working separately elsewhere and had not even applied for the said post but was an applicant under the RTI before the University at Jhansi to further the cause of litigation of the brother/appellant No.2.

10. In such circumstances, we are of the considered opinion that on account of the lack of locus standi of the appellants to question the appointment by way of writ of quo warranto would not be justifiable in the facts and circumstances. They have a personal interest involved and having failed to make a cut on the merit and not being in the first three, are not entitled to challenge the appointment. There would be a bar for them

and therefore, resort to quo warranto in the facts and circumstances, would not be justified. It has been held that Quo Warranto is not applicable where the concerned person is seeking his redressal for his personal rights as noticed here, after having failed to make a cut on merits. The appellants have chosen to file a Writ of Quo Warranto rather than a Writ of Certiorari as apparently, on merits, they do not have a case and it is only taking a shelter of the power of Quo Warranto which can oust a person holding a public office. The jurisdiction is sought to be invoked, which in the facts and circumstances, in our opinion, would not be maintainable.

11. In **A.N.Sashtri Vs. State of Punjab & others, (1988) Supp SCC 127**, it was held that where there is a malice or ill-will, the Writ of Quo Warranto should be refused as it was purely a discretionary jurisdiction and the bona fides of the litigant had to be examined. In **R.K.Jain Vs. Union of India, (1993) 4 SCC 119**, the Apex Court held that in service jurisprudence, it was for the aggrieved person i.e. the non-appointee to assail the legality or correctness of the action while examining the jurisdiction under the Writ of Quo Warranto. Similarly, in **Dr.B.Singh Vs. Union of India & others, (2004) 3 SCC 363**, it was held that a meddlesome interlopers, wayfarers have no public interest except for personal gain or private profits and the Court has to satisfy about the credentials of the applicant. The law was examined in detail in **B.Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association & others, 2006 (11) SCC 731**, wherein the writ petition filed by the association challenging the appointment made of the Managing Director who was the earlier Chief Engineer of the Board. The writ petition had been allowed and the order had been upheld and resultantly, the Apex Court examined the said issue and came to the

conclusion that the writ petition was not maintainable by the Union. Keeping in view the principles laid down in the case law which has been mentioned above. In such circumstances, we are also of the considered opinion that the Writ of Quo Warranto at the hands of the brother of the candidate itself would also not be maintainable and the learned Single Judge was well justified in dismissing the writ petition. Accordingly, we do not find any infirmity in the order of the learned Single Judge which would warrant interference.

Resultantly, the present appeal is dismissed. The original documents which have now been appended as Annexures A-2 & A-3, the affidavit of Rajesh Kumar be returned to the counsel for the appellants after keeping a photocopy of the same on record.

(G.S. SANDHAWALIA)
JUDGE

28.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No