

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 2094 of 2012 (O&M)

Reserved on: 19.04.2023

Date of Decision:03.05.2023

WING COMMANDER P.J.P. WARAICH (RETD.) Appellant

Vs.

DR. PARIKSHIT BANSAL AND OTHERS Respondents

CORAM: **HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO.**
HON'BLE MRS.JUSTICE SUKHVINDER KAUR.

Present: - Mr.Rajiv Atma Ram, Senior Advocate assisted by
Mr. Brijesh Khosla, Advocate,
for the appellant.

Mr. Nikhil Anand, Advocate
for respondent No.2.

Mr. Arun Gosain, Senior Govt. Counsel with
Ms. Swati Arora, Advocate
for respondent No.3/UOI.

Mr. Sandeep S. Majithia, Advocate, for respondent No.4.

M.S. RAMACHANDRA RAO, J.

1. This Letter's Patent Appeal is preferred against the judgment dt.30.11.2012 passed by the learned Single Judge in CWP-6458-2012 setting aside the selection and appointment of the appellant as a Registrar of National Institute of Pharmaceuticals Education and Research, Mohali (for short "NIPER")-respondent No.4 at the instance of respondents No.1 and 2.

The Backgrounds Facts

2. NIPER had advertised, vide advertisement No.02/2011 (R-3), for selection to the post of Registrar on 29.01.2011. The appointment was to be on contract basis for 5 years as per clause 12 of the said advertisement.

3. In response thereto, several persons applied including the appellant.

4. After consideration of eligibility of the applicants, interview was held and finally appellant was selected.

CWP-6458-2012

5. This was questioned in the Writ Petition i.e.CWP-6458-2012 by respondents No.1 and 2, who were not candidates for the said posts. They had sought a Writ in the nature of *Quo Warranto* and *Certiorari* for quashing of appointment of the appellant on the pretext that he did not fulfill the experience criteria laid down in the advertisement. They also sought a Writ of *Mandamus* directing respondent No.4 to conduct interview for the post of Registrar of NIPER afresh in a time bound manner.

The judgment of the learned single Judge

6. In the impugned judgment, the learned Single Judge has not addressed the issue of maintainability of the Writ Petition at the instance of respondents No.1 and 2 . He considered the matter on merits and held that the contentions of respondents No.1 and 2 that the appellant lacked experience, was correct. He observed that the selection was being made to a post of responsibility and casualness in the process could not be expected. He disposed off the Writ Petition by setting aside the selection and appointment of the appellant to the post of Registrar of NIPER.

Contention of the appellant and respondents

7. It is the contention of the appellant that the Writ Petition at the instance of respondents No.1 and 2 was not maintainable since they had not offered themselves as candidates for the position of Registrar, NIPER; that it

is in the nature of “*Public Interest Litigation*”; and in service matters, Public Interest Litigation is not permitted.

It is also contended that in his official capacity, he was required to put up agenda before the Board of Governors, NIPER, which included the proceedings or action against respondents No.1 and 2, that disciplinary action had been initiated against respondents No.1 and 2/Writ Petitioners from time to time, and the Writ Petition had been filed only to settle scores with the appellant.

It was thus contended that respondents No.1 and 2 cannot seek a Writ of *Certiorari* nor can they seek even a Writ of *Quo-Warranto*.

8. Counsel for respondents No. 3 and 4 supported the plea of the appellant.

9. Counsel for respondents No.2 and respondent No.1 in person refuted the said contentions and supported the order passed by the learned Single Judge.

Events after disposal of the Writ Petition during pendency of the LPA

10. We may point out that after the Writ Petition was allowed by the learned Single Judge on 30.11.2012, the appellant had filed the instant LPA and the NIPER had filed another LPA-2106-2012 before this Court.

11. On 17.12.2012, a Division Bench of this Court stayed the operation of the order of the learned Single Judge by passing stay orders in both the LPAs.

12. In 2013, the NIPER Research Employees Welfare Association filed CWP-495-2013 seeking a direction to abolish contract system of appointment of employees. It was disposed off on 11.1.2013 by his Court

directing the respondents therein to decide the representation given by the said association in 4 months to them.

13. Thereupon the statutes of the University were amended and notified on 3.7.201 by a Gazette publication. Clause 6.1 of the statutes of NIPER stated “the NIPER adopts a policy of making appointments on regular basis”.

14. Subsequently, the LPAs were admitted on 28.06.2014 and directions for stay were ordered to be continued.

15. SLP(C)-3300-03 of 2015 filed in the Supreme Court challenging the stay orders passed in LPAs was dismissed on 23.08.2015.

16. On 07.08.2016, respondent No.2 filed CM-3146-2016 in LPA-2094-2012 seeking modification/clarification of the order dt.17.12.2012 as the appellant continued on the post, and alleging that such continuance was illegal.

17. In the meantime an FIR had been registered by CBI on 14.01.2016 on certain allegations of funds misappropriation in NIPER at Police Station Chandigarh bearing No.RCC-HG/2016-A/0005.

18. **The services of the appellant as Registrar were regularized on 12.04.2017** w.e.f. 04.07.2011 subject to outcome of a CBI investigation and Court cases regarding his appointment to the post of Registrar.

19. On 13.06.2018, the Ex-Director, NIPER served a suspension order on the appellant. The appellant submitted an appeal against it to the Chairman of the Board of Governors, NIPER which was the Appellate Authority as per the Central Civil Services (CCA) Rules, 1965, and the provisions of Statute, 2003 creating the Institute. The Chairman, Board of

Governors and the Appellate Authority revoked the suspension of the appellant.

20. On 15.06.2018, the appellant reported for joining, but he was not allowed to join as the office of the Registrar was sealed by the Ex-Director, NIPER on 13.06.2018 itself.

21. On 16.06.2018, the appellant re-submitted his joining report and again reported for duty, but again he was not allowed to join by the Ex-Director, NIPER, who called the Police.

22. The Ex-Director then filed CWP-15608-2018 before this Court challenging the order of the Appellate Authority revoking suspension of the appellant, which was later dismissed on 12.09.2018.

23. On 20.07.2018, CM-3146-2016 was taken up for hearing by the Division Bench of this Court, and it passed the following order:-

“This application is filed by the respondent for seeking modification of order dated 17.12.2012 by which order of the learned Single Judge was stayed. It is not in dispute that the applicant was appointed on contract basis for 5 years to the post of Registrar of NIPER w.e.f. 04.07.2011. Admittedly, the said period has already elapsed and with the efflux of time the order of stay of the operation of the order of the learned Single Judge, has come to an end. However, learned counsel for the nonapplicant/appellant has submitted that during the pendency of the LPA, the service of the petitioner on the said post has been regularized on 12.04.2017. The learned counsel appearing on behalf of the applicant/respondent has informed the Court that even the order of the regularization is under challenge in

writ petition No.262 of 2017 which is now pending for 03.08.2018. Be that as it may so far as the stay in the present case is concerned, it has already become redundant, therefore, the application is allowed and it is clarified that the order dated 17.12.2012 is no more in operation.

CM is disposed of.”

24. Thus the stay order granted in LPA-2094-2014 was vacated. But the stay order granted in LPA-2106-2012 filed by NIPER continued to subsist and was not vacated.

25. The appellant sought a correction of the said order by filing an application bearing No.CM-3144-2018, but the same was dismissed on 30.07.2018 on the ground that the order did not require any correction.

26. On 31.07.2018, the then Director, NIPER issued order relieving the appellant.

27. Against the order relieving him passed on 31.07.2018, the appellant again filed an appeal to the Board of Governors which was the Appointing Authority, pointing out that the stay in LPA-2106-2012 filed by NIPER was subsisting on 31.07.2018 because that was by way of a separate order passed in the said LPA, and so relieving of the appellant when that order was in subsistence was not proper and legal, and to set aside order dt.31.07.2018.

28. Thereafter, CM-3890-2018 was filed in LPA-2106-2012 by NIPER on 17.09.2018 seeking withdrawal of the said LPA with a view to nullify the interim order therein which had been in subsistence from 17.12.2012.

29. The said application itself was filed two months after the relieving order was issued, and on 22.05.2019, LPA-2016-2012 was withdrawn by NIPER on the ground that the stay order had been vacated in the instant LPA and the appellant's regularization was subject to outcome of this LPA.

30. The relevant extract of the order dt.22.05.2019 passed in CM-3890-2018 in LPA-2106-2012 is as under:-

“We have found that cause shown in the application filed at the instance of the appellant is that with the efflux of time, much less because of the subsequent events, arising in this appeal, the same has been rendered infructuous and therefore, it would be a futile exercise on the part of the appellant, as conceived by it to continue with the present appeal and therefore, the application has rightly been filed for the purpose of withdrawal of the same.

No other argument has been raised.

In view of the aforesaid discussion, present application is hereby allowed.

Consequently, main appeal is hereby dismissed as withdrawn.”

31. The appeal of the appellant was deliberated in the 73rd Meeting of the Board of Governors of NIPER held on 20.09.2018, 74th Meeting held on 20.12.2018, 76th Meeting 11.07.2019 and 77th Meeting held on 22.08.2019.

32. On 22.08.2019, Board of Governors held as under:

“BoG noted that the stay granted on 17.12.2012 on the appeal of Sh. Waraich (LPA-2094-2012) against the decision of High Court dt.30.11.2012 in CWP-6458-2011 setting aside the appointment, was vacated in July 2018 as the same was considered redundant. However, the stay on the appeal filed by NIPER was vacated on 22.05.2019 after it made fresh plea to

withdraw its appeal. Accordingly, the BoG concluded that the relieving of Sh. Waraich on 31.07.2018 was not correct as second stay on appeal of NIPER was still continuing and this has been allowed to be withdrawn only on 22.05.2019. Any decision about his relieving or otherwise can be thus taken only after 22.05.2019 following CCS (CCA) rules applicable to regular employee". Since the second appeal by NIPER has been dismissed as withdrawn, the Institute may take necessary action regarding the accommodation as per the rules as opined in 73rd BoG meeting.

BoG had also noted that "Offg. registrar vide his email dated 20.08.2019 had asked BoG that this item about appeal of Sh. Waraich to be withdrawn and no comments have been submitted so far". Considering these facts and above legal implications of stays/ appeals being dismissed as withdrawn in above cases, BoG is not in a position to issue any other directions on the matter."

33. Thereafter the appellant submitted several appeals/requests to the Director, NIPER, Joint Secretary, Department of Personnel and the Secretary, Department of Personnel for implementation of the direction of the 73rd Meeting of the Board of Governors, NIPER dt.22.08.2019, but to no effect.

34. Thereafter, the Department of Personnel issued fresh direction to the then Director, NIPER (Additional Charge NIPER) on 12.01.2021 to the following effect:-

"The DoP issued afresh directions to Director (Additional charge) NIPER SAS Nagar, that the relieving order dated 31.07.2018 relieving Sh PJP Waraich, the then Registrar from service issued by ex-Director of the Institute is to be set aside/withdrawn being legally not valid due to pending stay on the said date in LA 2106/2012 filed by the Institute. A fresh order relieving him from the services with effect from 22.05.2019, the date on which Punjab & Haryana High Court permitted the

application of the Institute for withdrawal of LA 2106/2012 has to be issued.

Considering the Resolution of the BoG, advice of the ld ASGI and taking into consideration the principle of Natural Justice, the fresh order passed be implemented after a fortnight so as to give the applicant an opportunity to avail legal remedies, if any.”

35. Consequent thereto, NIPER issued relieving order dt.03.02.2021 w.e.f. 22.05.2019 retrospectively.

Consideration by the Court

36. Firstly, we shall consider the question:

“Whether the Writ Petition filed by respondents No.1 and 2, who had not applied for appointment to the post of Registrar, NIPER, and who were not rival candidates to the appellant, could have been entertained, and the appellant’s appointment as Registrar be set aside.? ”

37. In our considered opinion for seeking a Writ of *Certiorari* in a High Court under Article 226 of the Constitution of India, the petitioner should be a “person aggrieved”, particularly in Service cases.

38. In ***Dr. Duryodhan Sahu and Others V. Jitendra Kumar Mishra and Others¹***, the Supreme Court held that a public interest litigant is not a ‘person aggrieved’, and a Public Interest Litigation in service matters is not maintainable though in certain circumstances, a Writ of *Quo-Warranto* can be sought by a person who is not necessarily a person aggrieved.

¹1998(7) SCC 273

39. This principle was reiterated in ***Gurpal Singh V. State of Punjab and Others***². The Supreme Court further held therein that when a particular person is the object and target of a petition styled as PIL, the Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other malafide object. It reiterated that in service matters, Public Interest Litigation cannot be filed.

40. Similarly, in ***B. Srinivasa Reddy V. Karnataka Urban Water Supply & Drainage Board Employees' Association and Others***³, the Supreme Court held that in Service matters, only the non-appointees can assail the legality of the appointment procedure. This was again reiterated in ***Girijesh Shrivastava and Others V.State of M.P. and Others***⁴.

41. Since there is no dispute that respondents No.1 and 2 had not applied for being appointed to the post of Registrar of NIPER, and were not rival candidates to the appellant, their grievance vis-à-vis the appointment of the appellant is in the nature of a Public Interest Litigation only as they cannot be classified as “persons aggrieved” by his appointment. Therefore, the Writ Petition seeking relief of Writ of *Certiorari* challenging his appointment at their instances is not maintainable.

42. We may further point out that in the written statement filed by the NIPER and its officials before the learned Single Judge, there is a specific pleading that the Writ Petition at the instance of respondents No.1 and 2 is malafide and vexatious. It was stated that respondents No.1 and 2 were

²2005(5)SCC 136

³ 2006(11) SCC 731

⁴ 2010 (10) SCC 707

against the appellant as he persistently followed certain steps to expose their misconduct, and they chose to file the Writ Petition as a counter blast seeking revenge.

43. It was stated that the appellant, being Secretary of the Board of Governors, was responsible for presenting confidential agenda before the Board of Governors in its meeting held on 02.08.2011 against both the respondents No.1 and 2.

(a) As regards respondent no.1, it is stated that the Board of Governors, in its 54th Meeting held on 02.08.2011, decided to constitute a Committee to evaluate his work, performance and conduct to assess and recommend as to whether respondent no.1 is fit to be retained in the service of NIPER or not; to assign to the said Committee or to a separate Fact Finding Committee to ascertain as to whether respondent No.1 had been doing private business in the name of his wife in gross violation of CCS (Conduct) Rules, 1964; and the Committee should also ascertain as to whether he was misusing official infrastructure, e-mails, and wasting his as well as precious time of higher authorities repeatedly, in spite of warning having been given to him by the Ministry; the Committee would recommend action against him for false propaganda and vitiating the academic and scientific atmosphere of NIPER.

This was done after thorough deliberation by the Board of Governors, and after opining that there was a strong *prima facie* case to examine the charges leveled against respondent No.1.

(b) As regards respondent No.2, it is stated that the appellant had presented confidential agenda before the Board of Governors, and the Board of Governors in the same meeting, came to the conclusion that there was a *prima facie* case against respondent No.2 which resulted in issuance of a charge-sheet against him under Rule 14 of the CCS (CCA) Rules, 1965 by the Officiating Director, NIPER; in the Minutes of the 54th Board Meeting, it was recorded that the draft charge-sheet placed before the Board against respondent No.2 was deliberated at length; that there were serious complaints of indiscipline and misconduct against respondent No.2 since 2004; and that there was data to substantiate the articles of charge.

44. The above facts as well as the fact that the services of both the respondents No.1 and 2 had been terminated by NIPER on 21.03.2013 and 28.03.2013 respectively are not in dispute.

45. Though replication was filed by them, these allegations were not denied by respondents No.1 and 2 before the learned Single Judge.

46. Therefore, this indicates that the motive of respondent no.s 1 and 2 for filing the Writ Petition against the appellant was seeking “revenge” for bringing to the notice to the Board of Governors various acts of misconduct committed by them as Assistant Professors working in NIPER.

47. On this count also, the Writ Petition could not have been entertained since it not bonafide and is in fact an abuse of process of Court.

48. Counsel for respondent No.2 however contended that though in Service matters, PIL is not maintainable, there is no objection for seeking a Writ of *Quo-Warranto*, and since respondents No.1 and 2 had sought a Writ

of *Quo-Warranto* and *Certiorari*, no objection can be taken to the entertainment of the Writ by the learned Single Judge at the instance of respondents No.1 and 2 as it is to be presumed that he entertained the Writ as if respondents No.1 and 2 were seeking a Writ of *Quo-Warranto* against the appellant.

49. As we have pointed out earlier, nowhere in the impugned order dt.30.11.2012, has the learned Single Judge dealt with the issue of maintainability of the Writ Petition though the said aspect was specifically raised by the appellant as well as the NIPER, and it is not stated anywhere in his judgment that he is seeking to entertain the Writ Petition treating as if there is a prayer for issuance of a Writ of *Quo-Warranto* against the appellant.

50. The Supreme Court in ***Dr. Ram Singh Saini V. Dr.H.N. Bhargava***⁵ held that if a Writ of *Certiorari* was issued by the High Court, and the judgment is appealed against to the Supreme Court, the successful party cannot seek to sustain the order contending that he had sought for both Writ of *Certiorari* and a Writ of *Quo-Warranto*. It held that whether a Writ of *Quo-Warranto* could issue in the circumstance of the case and whether the office in question was a public office was not raised or argued before the High Court, and so it is not open for it to be argued in the Supreme Court.

51. This principle equally applies in an intra-Court Appeal.

52. Thus in our view it is not open to the respondents No 1 and 2 to try to sustain the judgment of the learned single Judge by contending that that his judgment was granted because a Writ of *Quo-Warranto* was also sought, since the learned single judge's order contains no such justification.

⁵ 1975(4) SCC 676

53. Moreover, there is a technical nature attached to the Writ of *Quo-Warranto* as stated by the Supreme Court in the case of *The University of Mysore V. C.D. Govinda Rao and Another*⁶. Quoting Halsbury's Law of England, the Supreme Court held that a *Quo-Warranto* proceeding affords a judicial remedy in which any person holding an **independent substantive public office** is called upon to show by what right he holds the said office; 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 the public offices against relevant statutory provisions; and it thus tends to protect the public from usurpers of public office.

The Supreme Court in that case held that Boards of appointments are nominated by the Universities, and when recommendations are made by them and appointments are made following the said recommendations which are challenged, normally the Courts should be slow to interfere with the opinions expressed by the experts. It held that where there is no allegation of *malafide* against the experts who constituted the Board, it would normally be wise and safe for the Courts to leave decisions of academic matters to experts who are more familiar with the problems they face than the Courts generally can be.

It observed that considerations which would apply and procedure which should be followed for the Writ of *Certiorari* are entirely different.

⁶1965 AIR (SCC) 491

In the instant case also, we are of the view that comparison of merits of candidates for appointment is not within the purview of the Court when there was a proper selection process and the leaned Single Judge erred in interfering with the same and setting aside the appointment of the appellant.

54. There is yet other aspect of the matter which is that when the advertisement was issued for filling up the post of Registrar, NIPER, it was clearly indicated in Cl.12 thereof that it would be a “contractual appointment” for a period of 5 years which could be renewed depending upon the performance and mutual consent.

55. The question arises:-

“Whether the appointment made of appellant on 04.07.2011 on contract basis for a period of 5 years as Registrar of NIPER would amount to an appointment to a “public office” since it lacks permanence.”

56. Similar issue fell for consideration before the Supreme Court in the case of ***B. Srinivasa Reddy V. Karnataka Urban Water Supply & Drainage Board Employees’ Association and Others*** (3 Supra) and in that case, appointment to post of Managing Director of the Board were made *until further orders*.

The Supreme Court held that it was not a regular appointment as it was temporary in nature “until further orders”, and a Writ of *Quo-Warranto* could not be issued in such circumstances.

It held that for an office to be treated as a “Public Office” the person appointed to the said office should be entrusted with a sovereign functions and duties must be performed independently without control or

superior power other than law and the position have some permanency and continuity. It quoted Black's Law Dictionary on the said aspect.

57. Thus, carrying out of the sovereign functions, permanency and continuity in appointment are quintessential features of a public office. The appellant's initial appointment was only for 5 years as per the advertisement. It was thus not permanent.

58. The post of Registrar of NIPER is a post created under the National Institute of Pharmaceuticals Education and Research Act, 1998.

59. Section 18 of the Act states as under:-

"Section 18:-

(1) The Registrar of the Institute shall be appointed on such terms and conditions as may be laid down by the Statutes and shall be the custodian of records, the common seal, the funds of the Institute and such other property of the Institute as the Board shall commit to his charge.

(2) The Registrar shall act as the Secretary of the Board, the Senate and such committees as may be prescribed by the Statutes.

(3) The Registrar shall be responsible to the Director for the proper discharge of his functions.

(4) The Registrar shall exercise such other powers and perform such other duties as may be assigned to him by this Act or the Statutes or the Director."

60. A reading of the said provision indicates that the holder of a post of Registrar of NIPER is a custodian of records, common seal, funds of the Institute and property of the Institute which are committed to his charge, that he also act as a Secretary of the Board of Governors, the Senate and

Committees which are prescribed by the Statutes, and he is responsible to the Director of the Institute for the proper discharge of his functions.

61. A Registrar acts under the directions of the Director, NIPER, who is designated under Section 16(2) of the Act as the Principal Academic and Executive Officer of NIPER, and who is responsible for proper administration and academic performance of Institute and for imparting of instructions and maintenance of discipline therein.

62. Thus, post of Registrar is not a post having duties which must be performed independently without control or superior powers other than law.

63. So a Writ of Quo-Warranto could not have been sought by the respondents No. 1 and 2 for the aforesaid reasons against the appellant.

64. Even post of Manager (Personal and Administration) in the West Bengal Industrial Development Corporation Ltd. was held to be not a public office by the Calcutta High Court in *West Bengal Industrial Development Corporation Ltd.V. West Bengal Industrial Development Corporation Employees Union and Another*⁷.

65. In our opinion, the position of a Registrar of NIPER stands on a similar footing.

66. Having regard to the aforesaid reasons, we are of the opinion that the post of Registrar of NIPER is not a “public office” in respect of which a Writ of *Quo-Warranto* would lie and therefore, the learned Single Judge could not have treated the Writ Petition as one where a Writ of *Quo-Warranto* could be issued, and erred in setting aside the appointment of the appellant to the said post.

⁷ 1985 (1) SLR 257

67. Therefore, for all the aforesaid reasons, the order of the learned Single Judge cannot be sustained. It is accordingly set aside, and the appellant is declared to have been validly appointed to the post of Registrar of NIPER on 04.07.2011 for 5 years.

To what relief:

68. Since there are subsequent events after disposal of the Writ Petition, we would also like to state that once the contractual appointment of the appellant is held to be valid, his subsequent regular appointment vide regularization order dt.12.04.2017 w.e.f. 04.07.2011 would also have to be treated as valid.

69. Admittedly the order of the learned Single Judge had been stayed by 2 separate orders in the instant LPA as well as in LPA-2106-2012 filed by NIPER on 17.12.2012.

70. On the basis that the contractual term of the appellant of 5 years had ended, it was not open to the Division Bench of this Court to vacate the said stay on 20.07.2018 in this LPA without deciding the main LPA itself, particularly when he had been regularized on 12.4.2017.

71. On the basis of this erroneous order dt.20.7.2018, the appellant had been relieved on 31.07.2018.

72. It was only much later that CM-3890-2018 was filed on 17.09.2018 in LPA-2106-2012, and was permitted to be withdrawn on 22.05.2019.

73. This withdrawal by NIPER of LPA-2106-2012 was at the instance of the Ex-Director, NIPER, who had relieved the appellant illegally on 31.07.2018, and this appears to be have been done with a malafide intention

so that the appellant would not have the benefit of the stay order subsisting in that LPA. Be that as it may, the said withdrawal of LPA-2106-2012 has no bearing on the instant LPA since there is no decision on merits in it.

74. It is a matter of record that the Board of Governors in its 77th Meeting held on 22.08.2019 had accepted that the relieving of the appellant on 31.07.2018 was not correct, and any decision about his relieving or otherwise can only be taken after 22.05.2019 following the CCS (CCA) Rules applicable to the regular employees since he had been regularly appointed on 12.04.2017. Thereafter, a fresh relieving order was issued on 03.02.2021 w.e.f. 22.05.2019 retrospectively.

75. In our view the relieving orders dt.31.07.2018 and dt.03.02.2021 cannot be sustained since they are based indirectly on the order dt.20.07.2018 passed in the instant LPA vacating the stay granted on 17.12.2012 of the order of the learned Single Judge, and on the order dt.22.05.2019 permitting withdrawal of LPA-2106-2012, both of which cannot be legally sustained. Moreso, when in our opinion the CWP-6458-2012 itself could not have been entertained setting aside the appointment of the appellant as Registrar on contract basis made on 10.06.2011.

76. We have been informed that the post of Registrar is still vacant in NIPER.

77. Since we now hold that the appointment of the appellant initially on 04.07.2011 was valid and legal, and we also hold that the order passed on 12.04.2017 regularizing the service of the appellant as Registrar w.e.f. 04.07.2011 is valid, and that his subsequent relieving orders on 31.07.2018, and 03.02.2021 are both invalid, we direct the respondent 3 and 4 to reinstate

the appellant into service within 4 weeks with all consequential benefits and treat him as having been regularly appointed. The respondents No.1 and 2 shall also pay costs of Rs.20,000/- each to the appellant within 4 weeks. LPA is allowed accordingly.

CM-1277-2023

78. This application is filed by Dr. Anil Kumar Angrish, Associate Professor and Dr. Manjinder Singh Gill, Assistant Professor, NIPER seeking to get impleaded in this Writ Petition as Intervenor on the basis that they had filed CWP-9663-2017 in this Court seeking quashing of the regularization order dt.12.04.2017 of the appellant as Registrar of NIPER.

79. After the arguments in this LPA were heard and reserved on 19.04.2023, this application was moved without seeking leave of this Court to file the same.

80. Counsel for the applicants contended that the applicants have a right to file this application since the judgement has not been pronounced in the LPA and reliance is placed on the decision of the Supreme Court in ***KushalbaiRatanbhai Rohit and Others Vs. State of Gujarat***⁸.

81. In the said decision, the Supreme Court held that it is open to a Judge to recall his order though dictated in open Court if he has not signed it. The said decision does not say that a Judge is bound to recall his order if he had not signed it. It also does not say that any third party can intervene at the stage when arguments are heard and judgment is reserved without obtaining the leave of the Court to file any such application from the Court and demand the Court to re-open the matter.

⁸ 2014(9) SCC 124

82. We see no reason to entertain this application after we have reserved orders in the LPA. Accordingly, this application is dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

May 3, 2023.
Ess Kay

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|-------------------------------|------------|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |