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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 132 OF 2024

Raju Dhondiram Akrupe

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Ms. Pushpa Ganediwala a/w Anshu Agrawal and
Ankit Rathod for petitioner.

Mrs. Neha S. Bhide, Government Pleader a/w Mr. O.
A. Chandurkar, Addl. Govt. Pleader a/w Mrs. G. R.
Raghuwanshi, AGP for respondent nos.1 and 2-
State.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
AMIT BORKAR, J.**

DATE: 18th NOVEMBER, 2024

P.C.:

1. Heard Ms. Ganediwala, learned counsel representing the petitioner and the learned Additional Government Pleader representing the respondent nos.1 and 2-State.

2. By instituting these proceedings under Article 226 of the Constitution of India, the petitioner, who is in Government service of the State of Maharashtra and is presently working as Food Safety Officer, Group "B", in the establishment of respondent no.2, namely, the Commissioner, Food and Drugs Administration, State of Maharashtra, has prayed for issuing writ of *quo warranto* challenging the appointment of the

respondent no.3 made on the post of Food Inspector vide order dated 21st August, 1998. The declaration has, thus, been sought that the appointment of the respondent no.3 made on 21st August, 1998 against the post of Food Inspector is *void ab initio*.

3. The petitioner has also challenged the order of grant of permanency in service to respondent no.3, dated 18th March, 2021 and has prayed that the said order be declared as illegal and *void ab initio* and accordingly be quashed.

4. Yet another prayer made in the petition is that the order of promotion of respondent no.3 on the post of Assistant Commissioner (Food)-cum-Designated Officer (Group-A) made vide order dated 4th April, 2022 be also quashed and the State may be directed not to count the earlier services rendered by the respondent no.3 on the post of Food Inspector and on the subsequent post of Assistant Commissioner for the purposes of pension and other monetary benefits.

5. The primary submission of the learned counsel for the petitioner praying for the issuance of writ of *quo warranto* is that the appointment of the respondent no.3 made vide order dated 21st August, 1998 to the post of Food Inspector (which

post has later been designated as the post of Food Safety Officer) was illegal as the relevant recruitment Rules were not followed and accordingly respondent no.3 is an usurper of the post. It is further submitted that grant of permanent status by means of order dated 18th March, 2021 is also not sustainable for the reason that the circular regulating grant of permanent status dated 11th September, 2014 envisages that only the such temporary employees shall be granted permanent status who are appointed by following the procedure prescribed for appointment in terms of the recruitment rules and since in the instant case the initial appointment of the respondent no.3 on temporary basis made vide order dated 21st August, 1998 is in contravention of the recruitment rules and as such grant of permanent status to respondent no.3 is also illegal.

6. It has also been argued further on behalf of the petitioner that subsequent promotion of the respondent no.3 to the post of Assistant Commissioner is also illegal for want of lawful appointment of the respondent no.3 in the feeder cadre.

7. On a query as to why the instant PIL petition has been filed in the year 2024 challenging an order of appointment

passed in the year 1998, i.e., after lapse of period of 26 years, it has been argued by the learned counsel for the petitioner that firstly so far as the writ of *quo warranto* is concerned, the technical ground of delay will not come in the way of this Court to entertain the petition and secondly, that, in fact, the cause of action to the petitioner to seek a writ of *quo warranto* against respondent no.3 accrued on 18th March, 2021 when the respondent no.3 was accorded the permanent status. Relying upon the judgment of the Hon'ble Supreme Court in the case of ***N. Kannadasan vs. Ajoy Khose & Ors., reported in (2009) 7 SCC 1***, it has been argued that Hon'ble Supreme Court in the said judgment has clearly held that while examining if a person holds a public office under valid authority or not, the Court is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. She has also relied upon the judgment in the case of ***Hari Bansh Lal vs. Sahodar Prasad Mahto & Ors., reported in (2010) 9 SCC 655*** to impress upon the Court that ordinarily in service matters though PIL petition would not lie before High Court, however, the said legal principle carries an exception which permits that

prayer for a writ of *quo warranto* would lie in service related issues in a situation where the incumbent concerned is occupying the public office by usurpation having not been appointed under law/rules.

8. She has also brought to our notice the order dated 5th February, 2024 passed by this Court at Nagpur Bench in Writ Petition No. 831 of 2024 which was filed by the wife of the petitioner whereby the writ petition was dismissed with the cost of Rs.10,000/- imposed on her. In the said writ petition the prayer made was similar to the prayers made in the instant PIL petition, that is to say, a writ of *quo warranto* was sought against the respondent no.4 challenging his very initial induction in the department vide order dated 1st October, 1996 on temporary basis.

9. It has also been informed that the order dated 5th February, 2024 of the High Court has been upheld by the Hon'ble Supreme Court as challenge made to the said order passed by this Court at Nagpur Bench vide SLP No. 4542 of 2024 failed since the Hon'ble Supreme Court dismissed the said SLP. It has been argued that this Court at Nagpur Bench while entertaining the writ petition filed by the wife of the petitioner dismissed the same on the ground that the

petitioner in the said writ petition could not be said to be aggrieved person and that the petition to the Court appeared to be proxy petition filed on behalf of the husband of the said petitioner (present writ petitioner), as such the Court did not entertain the writ petition and dismissed the same with the finding that the wife was seeking to espouse the cause of the husband. In the light of the said observations made by this Court at Nagpur Bench while passing the order dated 5th February, 2024, it has been argued by the learned counsel for the petitioner that on dismissal of the said writ petition, now the instant PIL petition has been filed by the present petitioner who is the husband of the said writ petitioner.

10. Another fact which may be noticed at this juncture itself is that though the petitioner is also working in the department where the respondent no.3 is working and is occupying the post of Food Safety Officer, however, it has specifically been stated by the learned counsel for the petitioner, on being asked, that so far as the avenues or chances of promotion of the petitioner to the post of Assistant Commissioner are concerned, the same are not marred on account of promotion of the respondent no.3.

11. We need to consider the issues raised in this PIL petition in the light of the afore-mentioned facts along with the fact that respondent no.3's initial appointment on the temporary post made vide impugned order dated 21st August, 1998 was made under a policy of the State Government which permitted appointment of Project Affected Persons (PAPs) against government posts/service. Project Affected Person would here meaning someone whose land has been acquired for some public purpose or his dependent or someone who was affected on account of earthquake.

12. There is no dispute in the instant case that respondent no.3 was given initial appointment by means of order dated 21st August, 1998 as Project Affected Person. It has been argued on behalf of the petitioner that in view of the law laid down by the Full Bench of this Court in the case of ***Rajendra Pandurang Pagare & Anr. vs. State of Maharashtra & Ors., reported in 2009 (4) Mh.L.J. 961***, the respondent no.3's initial appointment was not only illegal but against the statutory prescription and as such a writ of *quo warranto* or an order in the nature of writ of *quo warranto* can be issued against the respondent No.3.

13. Having regard to the overall facts and circumstances and the material available before us, we are not inclined to entertain this PIL petition; we rather decline to exercise our discretion under Article 226 of the Constitution of India for entertaining the instant PIL petition for the reasons which are detailed herein-below.

14. It is true that so far as writ of *quo warranto* is concerned, *locus* of the petitioner is not to be gone into. It is equally true, as laid down by the Hon'ble Supreme Court in the case of **N. Kannadasan (Supra)** that the Court while examining the issue relating to issuance of writ of *quo warranto* is not concerned with the technical grounds of delay or motive behind the challenge, however, so far as the facts of the instant case are concerned, delay is very substantial. The initial appointment of the respondent no.3, which is under challenge, is dated 21st August, 1998. It is not only that the order dated 18th March, 2021 whereby permanent status was granted to the respondent no.3 in State service is also under challenge in the instant PIL petition, but also that the very foundation of making the prayer for seeking writ of *quo warranto* is based on the assertion that the initial appointment of respondent no.3 made vide order dated 21st August, 1998

is not in terms of the requirement of recruitment rules or other statutory prescriptions governing public employment. Thus, the principal challenge in the instant PIL petition is to the decision of the Government whereby the respondent no.3 was given appointment, though on temporary basis, way back in the year 1998 recognizing him to be a Earthquake Affected Person. In such a situation, insistence on behalf of the petitioner, that too once the earlier attempt made by his wife not only failed but she was imposed with the costs which was affirmed by the Hon'ble Supreme Court, to entertain the PIL petition after a lapse of a period of 26 years, in our opinion, is not tenable. While we observe so, we are conscious of the decision, as relied upon by the learned counsel for the petitioner in the case of ***N. Kannadasan (Supra)***, however, what we need to decide in the instant case, in the facts and circumstances which have been brought on record, is as to whether we should exercise our discretion for entertaining this PIL petition or not and accordingly we find that gap of a period of 26 years in challenging the initial appointment order of respondent no.3 in the instant PIL petition is fatal in itself which we have considered for deciding not to exercise our discretion in the instant matter.

15. Further, we also note that earlier challenge similar to the challenge made in the instant PIL petition was attempted by the wife of the petitioner which failed as this Court at Nagpur Bench not only dismissed her writ petition but imposed costs as well and the order of this Court passed in the writ petition filed by the wife of the petitioner, dated 5th February, 2024, was not interfered with by the Hon'ble Supreme Court which dismissed the SLP by means of the order dated 26th February, 2024. This again is a factor which weighs in our mind as to why we should not entertain this PIL petition and refuse to exercise our discretion.

16. Having observed as above, we may also note certain other factors which are relevant to arrive at the conclusion that the instant PIL petition ought not to be entertained.

17. The learned counsel for the petitioner has placed heavy reliance on the Full Bench judgment of this Court in the case of ***Rajendra Pandurang Pagare & Anr.(Supra)***, however, we may note that the said judgment was rendered on the basis of consideration of various provisions, including the provisions contained in Section 10 and Section 16 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (Act No.11 of 2001). The said enactment, thus, was not in

force on the date the respondent no.3 was initially appointed on temporary basis by means of the order dated 21st August, 1998. Accordingly, what we need to notice in this regard is as to what were the provisions which governed the appointment of Project Affected Persons on the date the respondent no.3 was appointed, i.e., 21st August, 1998. In this regard learned counsel for the petitioner herself has brought to our notice a Government Circular dated 22nd September, 1993 which provides for certain procedure to be followed in so far as appointment of Project Affected Person is concerned. According to the said Circular, the Collector of the District concerned was required to prepare a list of those Project Affected Persons who were seeking employment with the Government and thereafter all such persons and vacancies were to be notified through the employment exchange and it is only thereafter that the appointment could be made.

18. The submission vis-à-vis the Circular dated 22nd September, 1993 on behalf of the petitioner is that before making appointment of the respondent no.3 vide order dated 21st August, 1998 no reference of the vacancies or the PAPs was made to or through the employment exchange and accordingly the appointment of the respondent no.3 being in

contravention of the Circular dated 22nd September, 1993 was illegal and against the legal prescription and, therefore, a writ of *quo warranto* may be issued.

19. We are afraid such submission made by the learned counsel on behalf of the petitioner is not tenable. It is needless to observe that a writ of *quo warranto* can be issued only in case it is found that the incumbent against whom such a writ is sought is an usurper of a public office, that is to say the appointment/placement of the incumbent concerned was made against the statutory prescription. The Circular dated 22nd September, 1993 is, in fact, only an executive direction or order/circular; it is not statutory in nature having not been issued by the State Government under any statute or legislation.

20. So far as the statutory prescription for appointment to the post of Food Inspector is concerned, recruitment rules framed under Article 309 of the Constitution of India, known as "Maharashtra Food Inspector in the Food and Drug Administration of Government (Recruitment) Rules, 1987" (for short "the Recruitment Rules, 1987") have been brought to our notice which only prescribe the eligibility for appointment on the post concerned and does not lay down the procedure.

So far as eligibility of the respondent no.3 is concerned, the learned counsel for the petitioner does not dispute that he does possess the requisite qualification as prescribed in Rule 3 of the Recruitment Rules, 1987. Accordingly, we do not find that the said Recruitment Rules framed under Article 309 of the Constitution of India have been violated *vis-à-vis* eligibility in so far as the initial appointment of respondent no.3 on the post of Food Inspector made vide order dated 21st August, 1998 is concerned.

21. Further, keeping in view the earlier attempt made by the wife of the petitioner to challenge the appointment of respondent no.4, which failed with imposition of costs upon his wife, what we find is that there is something in the matter which does not meet the eyes. Any prayer for issuance of a writ of *quo warranto* may be entertained essentially in public interest and in a situation where the very purpose of instituting such proceedings appear to be unclear or blurred or appears to be beyond public interest, in our opinion, such PIL petition ought not be entertained. Certain observations made by the Supreme Court in this regard in the judgment in the case of ***B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees Assn. & Ors.,***

reported in (2006) 11 SCC 731 (II) may be relevant to be noted. Hon'ble Supreme Court in para 84 of the said judgment has observed that the said petition was motivated for certain reasons. The Apex Court further observed that a petition praying for writ of *quo warranto* being in the nature of public interest litigation is not maintainable at the instance of a person who is not unbiased. In the said matter the Hon'ble Supreme Court proceeded to note certain facts and observed that the second respondent was the President of the first respondent Union and that he had chosen the forum of Court to settle personal scores against his erstwhile superior officer after his retirement. The Court further observed that the proceedings in the Court are not meant to settle personal scores by an employee of the department. Para 84 of the said judgment in the case of **B. Srinivasa Reddy (Supra)** is extracted herein-below: -

"84. In our opinion, the finding of legal mala fides is unsustainable being based on a misunderstanding of the law and facts. When a competent and experienced officer of an outstanding merit is appointed to a higher post on contract basis after his superannuation from service in the larger public interest, it does not suffer from legal malice at all. The decision of the then Chief Minister, Shri S. M. Krishna, recorded in the file is also extracted by the High Court at p. 69 of SLP paper-book, Vol.II. In the context of the note put up by the Secretary of the Department, it is again extracted at pp.67 and 68 which clearly bring out the fact that the appointment

was made in the interest of the Board and the State at a time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element of urgency involved in making the appointment because of impending negotiations with World Bank scheduled for 9-2-2004. The writ petition, in our opinion, was motivated as Respondent 1 had lodged a false complaint to the Lokayukta against the appellant which was found to be baseless by the Lokayukta (Annexure P-9). A petition praying for a writ of quo warranto being in the nature of public interest litigation, it is not maintainable at the instance of a person who is not unbiased. The second respondent is the President of the first respondent Union. He has chosen this forum to settle personal scores against his erstwhile superior officer after his retirement. The proceeding, in our view, is not meant to settle personal scores by an employee of the department. The High Court, in our view, ought to have dismissed the writ petition filed by Respondent 1 at the threshold.”

22. In view of the facts noticed and reasons given above, we are of the opinion that the instant PIL petition does not warrant any interference by this Court in its discretionary jurisdiction under Article 226 of the Constitution of India.

23. The PIL petition is, thus, dismissed with costs of Rs.20,000/- (Rupees Twenty Thousand only) to be paid by the petitioner to the High Court Non Gazetted Ministerial Staff Association, Mumbai, within two weeks.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)