

Court No. 8
19.08.2025

Item No. 25
PA (Chamber)

WPA (P) No. 268 of 2024
IA NO: CAN 1 OF 2025

MD. KALIM ASHRAF & ORS.
Vs.
THE STATE OF WEST BENGAL & ORS.

Mr. Saikat Chatterjee,
Mr. Md. Abdur Rakib,
Mr. Isteyak Ahmed,
Mr. Mojahid Mehedi,
Mr. Sk. Nasim,
Mr. Biswajit Sarkar,
... for the Petitioners.

Mr. Biswabrata Basu Mullick,
Mr. Sayan Ganguly,
..... for the State.
Mr. Nilotpal Chatterjee,
..... for the Indian Nursing Council.

1. In this Public Interest Litigation, the petitioner has
prayed for following principal relief:

“(b) A Writ in the nature of mandamus commanding the Respondent Authorities particularly Respondent No. 1 to 3 and/or their agents and/or associates and/or subordinates to set aside and/or cancel the Gazatte Notification dated 27th April, 2018 to The West Bengal Nursing Personnel (Recruitment) Rules, 2015;

(c) A Writ in the nature of mandamus commanding the Respondent Authorities particularly Respondent No. 1 to 3 and/or their agents and/or associates and/or subordinates not to give effect the Gazatte Notification dated 27th April, 2018 to The West Bengal Nursing Personnel (Recruitment) Rules, 2015, till the disposal of the instant Public Interest Litigation.”

(Emphasis Supplied)

2. The petitioner was heard on the question of maintainability of PIL. He submits that although in the case of ***Duryodhan Sahu (Dr.) vs. Jitendra Kumar Mishra reported in (1998) 7 SCC 273*** the Supreme Court opined that PIL is not maintainable in service matter but it is noteworthy that said matter was travelling from an original application filed before the Central Administrative Tribunal. In this backdrop,

the said observation was given by the Supreme Court in **Duryodhan Sahu (Dr.) (supra)**. Learned counsel for the State opposed the prayer and stated that PIL is not maintainable.

3. The point involved is no more *res integra*. This Court in WPA (P) 299 of 2025 decided on 14.08.2025 considered the entire legal journey on this aspect and recorded as under:

*“The Apex Court in **Duryodhan Sahu (Dr.) vs. Jitendra Kumar Mishra (1998) 7 SCC 273** opined that the PIL in service matters is not maintainable. The said judgment of the Supreme Court was consistently followed in **Ashok Kumar Pandey v. State of W.B. (2004) 3 SCC 349; B. Singh (Dr.) v. Union of India (2004) 3 SCC 363; Gurpal Singh v. State of Punjab (2005) 5 SCC 136; Kushum Lata v. Union of India (2006) 6 SCC 180; Neetu v. State of Punjab (2007) 10 SCC 614; Hari Bansh Lal v. Sahodar Prasad Mahto (2010) 9 SCC 655; Grijesh Shrivastava v. State of M.P. (2010) 10 SCC 707; Ayaubkhan Noorkhan Pathan v. State of Maharashtra (2013) 4 SCC 465, State of Punjab v. Salil Sabhlok (2013) 5 SCC 1; Vishal Ashok Thorat v. Rajesh Shriramjbapu Fate (2020) 18 SCC 673 and State of Jharkhand v. Shiv Shankar Sharma (2022) 19 SCC 626.***

*A Division Bench of Calcutta High Court considered some of aforesaid judgments in the case of **Baidyanath Saha vs. Union of India & Ors. WPA (P) 92 of 2021** decided on 11.04.2022 and opined as under:*

“2. Having examined the petition, we find that the petitioner has not disclosed his credentials except by stating that he has no direct pecuniary interest in the matter and that he is a socially committed law abiding citizen. It is the settled position of law that in service matters, PIL is not maintainable. The persons, if any, affected by the advertisement can always file the appropriate petition or approach the appropriate forum questioning the same. In the matter of Girjesh Shrivastava and Others vs. State of Madhya Pradesh and Others reported in MANU/SC/0888/2010 : (2010) 10 SCC 707 where in a Public Interest Litigation, allegation of non-issuance of proper advertisement for reservation for ex-servicemen was made, the Hon’ble Supreme Court taking note of the legal position in respect of maintainability of the PIL in a service dispute had held that:

“14. However, the main argument by the appellants against entertaining WP (C) No. 1520 of 2001 and WP (C) No. 63 of 2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is

considerable merit in that contention. It is common ground that dispute in this case is over selection and appointment which is a service matter.

15. In *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* a three-Judge Bench of this Court held that a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. Explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held:

“18. If public interest litigations at the instance of strangers are allowed to be entertained by the [Administrative] Tribunal, the very object of speedy disposal of service matters would get defeated.”

Same reasoning applies here as a public interest litigation has been filed when the entire dispute relates to selection and appointment.

16. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.* this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (see SCC p. 755, para 51 of the Report).

17. This view was very strongly expressed by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra* by pointing out that despite the decision in *Duryodhan Sahu*, PILs in service matters “continue unabated”. This Court opined that the High Courts should “throw out” such petitions in view of the decision in *Duryodhan Sahu* (SCC p. 596, para 16).

18. Same principles have been reiterated in *Ashok Kumar Pandey v. State of W.B.* (SCC at p. 358, para 16).

19. In a recent decision of this Court delivered on 30-8-2010, in *Hari Bansh Lal v. Sahodar Prasad Mahto*, it has been held that except in a case for a writ of “quo warranto”, PIL in a service matter is not maintainable (see SCC para 15). ”

It has further been held that:

“29. Coming to the issue of selection and appointment of ex-servicemen as a reserved category, from what has been placed before us, we understand that while in Mehagaon 5 ex-servicemen had been appointed out of a total of 9 applicants, in Raun none had been so appointed. As stated above, if at all there was an issue with respect to the reservation policy of the ex-servicemen it ought to have been brought up as a service dispute and not in a PIL. The High Court, with due respect, should have displayed a little more restraint and balance before quashing a selection process in which the persons selected had already put in 3 years of service.”

3. Learned Counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of *Dr. Meera Massay (Mrs) Dr. Abha Malhotra Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others* reported in MANU/SC/0084/1998 : (1998) 3 SCC 88 but not only in the case of *Girjesh Shrivastava* (supra) and a

number of earlier judgments noted therein but also subsequently in the matter of *Madan Lal v. High Court of Jammu and Kashmir and Others* reported in MANU/SC/0267/2014 : (2014) 15 SCC 308, it has been held that:

“9. That apart time and again this Court repeatedly held that in service matters, public interest litigation is not maintainable. We can profitably refer to a recent decision reported in *Hari Bansh Lal v. Sahodar Prasad Mahto*. Paras 14 and 15 are relevant which are as under: (SCC pp. 660-61)

“14. In *Ashok Kumar Pandey v. State of W.B.* this Court held thus: (SCC pp. 358-59, para 16)

‘16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigations have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu v. Jitendra Kumar Mishra* [Durhodhan Sahu v. Jitendra Kumar Mishra, MANU/SC/0541/1998 : (1998) 7 SCC 273 : 1998 SCC (L&S) 1802] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.’

The same principles have been reiterated in the subsequent decisions, namely, *B. Singh v. Union of India*, *Dattaraj Nathuji Thaware v. State of Maharashtra* and *Gurpal Singh v. State of Punjab*.

15. the above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters.””

4. Hence, we are of the opinion that the petitioner is not entitled to benefit of the judgment in the matter of *Dr. Meera Massey* (supra) and **that the present Public Interest Petition raising a dispute relating to service matter cannot be held to be maintainable which is accordingly dismissed**, however, making it clear that this

order will not come in the way of the parties affected from alleged irregularity from approaching the competent Court.”
(Emphasis Supplied)

*In view of these binding judgments, this PIL is not maintainable. The same is accordingly **dismissed**. However, this order will not come in the way of the affected parties to avail any other remedy available to them under the law.*

(Emphasis Supplied)

4. In view of aforesaid judgments of the Supreme Court and this Court, in our opinion, PIL is not maintainable in service matters. If affected persons are aggrieved by the impugned notification/rules, they may assail it in appropriate regular proceedings. PIL is **dismissed** as not maintainable with aforesaid observation.

(SUJOY PAUL, J.)

(SMITA DAS DE, J.)