



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4075 OF 2024

Mohammad Fahim s/o Mohammad Bashid,
Aged about 58 years, Occ. Business,
R/o. Amar Villa, Near Mount Convent,
Shivaji Nagar, Chandrapur

.....**PETITIONER**

...VERSUS...

1. The State of Maharashtra,
through the Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai – 32

2. The Principal Secretary,
Industries, Energy, Labour and Mining
Department, Government of
Maharashtra, Mantralaya, Mumbai – 32

3. The Directorate of Geology and
Mining, State of Maharashtra
having office at Nagpur,
through its Director

4. Shri Tanugula R. Kishan Rao,
Age : Major, Occ. Service,
C/o. Directorate of Geology and
Mining, Nagpur

.....**RESPONDENTS**

Mr. Firdos Mirza, Senior Advocate a/b Ms. Isha Thakre & Mr. Shad
Mirza, Advocate for the petitioner.
Mr. Ravi Kadam, Senior Advocate a/b Mr. H.D. Marathe, AGP for
respondent/State.

CORAM:- ANIL S. KILOR, &
RAJNISH R. VYAS, JJ.

CLOSED ON : 10.09.2025

PRONOUNCED ON : 18.09.2025

JUDGMENT (Rajnish R. Vyas)

This petition prays for issuance of writ of quo warranto as according to the petitioner, the respondent 4 was having no authority to occupy the post of Director General of Geology and Mining. Other cosequent prayers are also made.

2. Heard Mr. Firdos Mirza, learned Senior Counsel along with Ms. Isha Thakre and Mr. Shad Mirza. On behalf of respondent/State, we have heard Mr. Ravi Kadam along with learned AGP Mr. H.D. Marathe. With consent of the parties petition is decided at the admission stage.

3. According to the petitioner, the post of Director General of Geology and Mining was never in existence and it was for the first time by GR dated 21.09.2023, the said post was created. In pursuance with the GR, respondent 4 was appointed by Notification dated 12.12.2023. The said appointment is only for a period of three years and therefore, it cannot be said that it is the permanent post.

4. He further contended that presently the post of Directorate of Geology and Mining of Government of Maharashtra is already filled and held by the officer concerned in accordance with Rule 3(C) of the Rules of 1987 which can be filled in either by promotion or nomination.

5. He has further brought our attention to Notification dated 21.12.2021 and contended that staffing pattern, if perused, it would reveal that there is no rule to govern the post of Director General of Geology and Mining. It was informed by the Department of Labour, Industrial Energy, to him that the service rules pertaining to duties and responsibilities of Director General are not available in the said office. It is contended that respondent authorities cannot first create the post and thereafter amend the rules.

6. It is further contended that the appointment can also be said to be illegal in view of noting made by the General Administrative Department (GAD).

7. Mr. Mirza, learned Senior Counsel has contended that the respondent No. 4 has not submitted experience certificate and not submitted the evidence in proof of adequate knowledge of Marathi as

per conditions of advertisement and thus respondent No. 4 cannot be allowed to hold and continue the post .

8. He further relied upon Rule 9(40) of Maharashtra Civil Services (General Conditions of Services) Rules 1981 (“for short, the Rules of 1981”) and pointed out that under the said rules, permanent post means a post carrying definite rate of pay ‘sanctioned without limit of time’. It was also contended by Mr. Mirza that according to the Rules of 1981, more particularly, rule 9(22) heads of departments is defined as a term which includes the officers mentioned in Appendix II and any others whom Government may from time to time declare to be Heads of Departments. He also brought our attention to Appendix (II) of the Rules of 1981 and stated that it would be Director, Geology and Mining, Nagpur who would be Head of Department and therefore, now by creating the post of Director General, entire rules are tried to be changed, that too by proposed amendment. In order to support the case of petitioner, Mr. Mirza, learned Senior Counsel relied upon judgment reported in case of *Mor Modern Cooperative Transport Society Ltd Vs. Financial Commissioner and Secretary to Govt. of Harayana and another*, reported in *2002(6)SCC 269*.

9. Per contra, Mr. Kadam, learned Senior Counsel assisted by learned AGP Mr. H.D. Marathe has argued that the writ petition is liable to be dismissed as the appointment made is based upon the proper procedure adopted. He also contended that since there was exigency to create the post and taking recourse to Article 309 of the Constitution, the appointment was made.

We have given careful thought to the arguments advanced by both the parties. We have also perused the record of case and the judgments cited at the bar by the respective parties. The manner in which post was created and filled would be clear from following observations.

10. It is seen from record that the State Government had created regular post of Director General which is of the rank of Secretary through Cabinet approval. On 21.6.2023, respondent No. 1 issued direction to create a regular post of Director General in Geology and Mining department. The need for creation of post, was significant changes in the mining sector with series of reforms undertaken by Central Government through various acts, so also, various policies and guidelines to improve the mining sector and to keep pace with new changes thus decision was taken on 27.7.2023 by the Government.

11. Accordingly, proposal was made to appoint an officer with extensive knowledge and expertise in mining. It was also decided by the State that administrative responsibilities of the said position would fall under Additional Chief Secretary, Ministry of Industries, Energy, Labour and Mining.

12. It was also proposed to secure approval for the expenses related to this post and to amend the recruitment rules, accordingly. Upon due scrutiny by various departments and approval, a note was presented to the Cabinet for final approval and thereafter, in Cabinet meeting held on 27.07.2023, a sanction was accorded.

13. Thus, the Chief Secretary of Government of Maharashtra had approved the creation of regular post of Director General. Not only this, it was emphasized that the Finance and General Administrative Department should provide their remarks for the proposal before it was presented to the Cabinet. On 30.08.2023, another note sheet was prepared stating that Cabinet had approved the creation of post which was presented before High Level Committee to obtain approval for filling the post of the Director General.

14. On 30.08.2023, under the Chairmanship of Chief Secretary, approval for the post was granted and in order to give the effect proposed amendment to the Recruitment Rules were outlined in clause (i) to (iv) (page 66 of affidavit in reply).

15. It reveals from record that to facilitate the selection process for the post of Director General, a selection committee was constituted by GR of Government of Maharashtra dated 3.10.2023 which was consisting of following members:i) Chief Secretary, Government of Maharashtra as a President;ii) Additional Chief Secretary, GAD as a Member;iii) Additional Chief Secretary (Finance) – Member;iv) Additional Chief Secretary (Mining Department), Member Secretary; v) Expert technical from the mining sector – Member.

16. A Screening Committee was also constituted by aforesaid GR to scrutinize the applications and shortlist the candidates and outside expert from the mining sector was also made member to scrutinize the application in the best manner. A Screening Committee of responsible government officers was formed which consisted of (i) Director, Directorate of Geology and Mining as President, (ii) Joint/Deputy Director, Directorate of Geology and Mining – Member and (iii) Technical

qualified person in mining area as member. Further an advertisement dated 25.09.2023 was published by the Joint Secretary (Mining) Government of Maharashtra in pursuance of which twelve applications were received by the Joint Secretary, Ministry of Energy, Labour and Mining.

17. If page 93 is seen, it would be clear that applicant along with others was considered in order to give due weightage to the experience and suitability for appointment on the post and accordingly a detailed chart was prepared showing eligibility/non eligibility of all the candidates. We have perused the said chart more particularly entry at serial 9 at page 95 where the name of respondent No. 4 appears, who was found eligible by the Committee.

18. It is also necessary to consider the import of Article 309 of the Constitution of India, which speaks about recruitment and conditions of Service of person serving the Union or the State. Under the same it shall be competent for the State to make rules regulating the recruitment, and the condition of services of persons appointed, to such services and **posts until provision in that behalf is made by under the Act of appropriate Legislature under this Article.** Reliance can be placed to the law laid

down by the Hon'ble Apex Court in case of ***Sant Ram Sharma Vs. State of Rajasthan and Ors*** reported in ***AIR 1967 SC 1910*** and also ***B.N. Nagrajan Vs. State of Mysore*** reported in ***AIR 1964 SC 1942***.

19. In ***Sant Ram Sharma's*** case, reference has been made to ***B.N. Nagrajan*** in paragraph 8, which reads thus:

"8. In B. N. Nagaraja'n v. State of Mysore, it was pointed out by this Court that it is not obligatory under the proviso to [Art. 309](#) of the Constitution to make rules of recruitment, etc., before a service can be constituted or a post created or filled, and, secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws.A similar view was taken by this Court in [T. Cajee v. U. Jormanik Siem](#) where Wanchoo, J., as he then was, who delivered judgment on behalf of the majority, observed as follows at pp. 762-764 of the Report:

"The High Court has taken the view that the appointment and succession of a Siem was not an administrative function of the District Council could only act by making a law with the assent of the Governor so far as the appointment and removal of a Siem was concerned. In this connection, the High Court relied on para. 3(1)(g) of the Schedule, which lays down that the District Council shall have the power to make laws with respect to the appointment and succession of Chiefs and Headmen.

The High Court seems to be of the view that until such a law is made there could be no power to make laws with respect to the appointment of a Chief and Headman. The High Court seems to be of the view that until such a law is made there could be no power of appointment of a Chief or Siem like the rekspndent and in consequence there would be no power of removal either. With respect, it seems to us that the High Court

has read far more into para 3(1)(g) than is justified by its language. Paragraph 3(1) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under para. 3(1)(g) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect..... Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under para. 19(1)(b) or till the District Council passed laws under para. 3(1)(g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under para. 19(1)(b) or laws are passed under para. 3(1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule. The view therefore taken by the High Court that there could be no appointment or removal by the District Council without a law having been first passed in that behalf under para. 3(1)(g) cannot be sustained.

20. In ***B.N. Nagrajan Vs. State of Mysore***, it was pointed out by this Court that it is not obligatory under the proviso to Article 309 of the Constitution to make rules of recruitment, etc., before a post created or filled, and, secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws.....

In view of the law laid down by the Hon'ble Apex Court in the aforesaid two judgments, Government has exercised the executive power, created the post and have proposed amendment for making rules.

21. Thus, the Rules of 1981 will have to be considered and looked into in the light of proviso to Article 309 of the Constitution of India and law laid down in the aforesaid judgments. Reference can also be made to judgment in case of ***C. Rangaswamaiah and Ors Vs. Karnataka Lokayukta and Ors*** report in ***(1998)6 SCC 66*** wherein the Hon'ble Apex Court has answered the questions which were formulated in paragraph 11, which reads thus:

“11. The following points arise for consideration:

(1) Was it permissible for the State Government to create the post of Director General of Police, Lokayukta by way of an administrative order of 21.12.1992 though the said post was not included in the relevant rules of recruitment of the staff of the LokAyukta? If permissible, can it be said that the said officer was independent and outside the administrative and

disciplinary control of the Lok Ayukta?

(2)

(3)

(4)

Answering the aforesaid point in paragraph 19, the Hon'ble Apex Court has observed, as under:

*“19. We may first deal with the crucial question as to whether the Director General of Police in the Office of the Lokayukta who is to supervise the work of the police officers on deputation in the Lokayukta is independent of the Lokayukta and is out side the administrative and disciplinary control of the Lok Ayukta. We agree with the Division Bench when it took the view, - differing from the learned Single Judge, - that though the newly created post of Director General of Police in the Office of the Lok Ayukta was created on 21.12.1992 by an administrative order and the relevant recruitment rules of the staff of the Lok Ayukta were not amended to bring the said post into the cadre under the Lok Ayukta, still the said post created in the Lok Ayukta, police Wing was intended to be and must be treated as part of the staff of Lok Ayukta in the police wing. **It is well-settled that administrative orders even creating posts can be issued so long as they are not inconsistent with rules, that is to say, as long as there is no prohibition in the statutory rules for creation of such posts.”***

From the aforesaid observations of the Hon'ble Apex Court, it is crystal clear that if there is no prohibition in the rules for making the appointment/creation of post, then appointing a person on a particular post cannot be called as illegal.

22. In order to elaborate scope of Article 309 of Constitution of India, the observations of the Hon'ble Apex Court in case of ***Smt. Swaran Lata Vs. Union of India and Ors*** reported in ***(1979)3 SCC 165***, more particularly, paragraphs 42 and 43 are useful, which are reproduced as under:

“42. The Administrator in exercise of the powers conferred by the aforesaid order of the President, framed no rules to regulate recruitment and conditions of service of the post of Principal, Government Central Crafts Institute for Women, Chandigarh, nor were any rules framed prescribing the qualifications necessary for appointment to such posts.

43. It is not obligatory under the proviso to Article 309 to make rules of recruitment etc. before a service can be constituted, or a post created or filled. The State Government has executive power in relation to all matters in respect to which the Legislature of the State has power to make laws. It follows from this that the State Government will have executive powers in respect of List II, Entry 41 of the Seventh Schedule: “

Thus, it is crystal clear that the ratio laid down by the Hon'ble Apex Court in the aforesaid matter is clearly applicable to the case in hand and in the instant case Government has exercised its power considering the exigency and created the post. Though mala fide has been alleged, there is absolutely no material either in form of pleadings or by way of oral argument brought to the notice of this Court, to substantiate contention raised. In absence of such material, we cannot infer mala fide just because the rules of recruitment are not framed.

Further contention of Mr. Mirza, learned Senior Counsel that General Administration Department in the note sheet has observed that appointment of respondent No. 4 is not made in consonance with Government Resolution, is without merit since the notings made in the note sheet, without there being substantial corroborative material, has no value in the eyes of law.

23. Reliance placed by Mr. Mirza, learned Senior Counsel in Case of **Mor Modern Cooperative** will not be applicable to case in hand since there is absolutely no rule pointed out which would not permit creation of post or appointment of respondent 4 on the aforesaid post.

24. The appointment made by the respondents is of permanent nature and just because the Notification appointing the petitioner (page 25) restricts the period of three years, it cannot be said that the appointment was not of permanent nature. The Notification dated 12.12.2023 appointing the respondent 4 will have to be read holistically. If clause 5 of the said Notification is perused, it would reveal that it has been categorically stated that after expiry of period, with approval of competent authority and considering necessity for further period appointments can be renewed. In the aforesaid background, we are of

the opinion that the petitioner has not made out a case for issuance of quo warranto.

In the aforesaid background, no case is made out by the petitioner, therefore, the petition is liable to be dismissed and it dismissed accordingly. No costs.

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)