IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

WRIT PETITION No. 5927 of 2024

DR. KSHAMASHEEL MISHRA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri L. C. Patne - Advocate for the petitioner through V.C.

Shri Harshvardhan Sharma - Advocate for the respondents No. 3, 4 and 5.

Shri Kushagra Singh - Deputy Government Advocate for the respondents State.

Shri Ramji Yadav – Respondent No.6 is present in person.

Reserved on :- 19.02.2026
Post on :- 26.03.2026

ORDER

The present petition is being filed under Article 226 of the Constitution of India, seeking a writ in the nature of Quo Warranto. The petitioner has approached this Court challenging the appointment of Respondent No. 6 to the post of Lecturer in Computer Science and Applications.The specific action under challenge is the impugned appointment order dated 14.02.1996, issued by Respondent No. 3 (University), whereby Respondent No. 6 was appointed against a post earmarked for the OBC (non-creamy layer) category.

FACTS OF THE CASE

2. The respondent No.3 (University) issued an advertisement dated 12.01.1995, inviting applications for various teaching posts. This included two vacant posts of Lecturer in Computer Science and Applications, with one post reserved for the OBC (non-creamy layer) category of the State of Madhya Pradesh.

3. The advertisement prescribed the essential educational qualification as a good academic record with at least 55% marks or an equivalent grade at the Master's degree level in the relevant subject. Candidates were also required to have cleared the eligibility test for Lecturers conducted by UGC, CSIR, or a similar accredited

test.Exemptions from the eligibility test were strictly provided only for candidates awarded an M.Phil. Degree up to 31.12.1993 or a Ph.D. Degree up to 31.12.1993. Respondent No. 6 submitted his application form on 19.03.1995 and was issued the impugned appointment order on 14.02.1996.

4. Following complaints regarding this appointment, the University issued a letter dated 08.06.1998, directing Respondent No. 6 to clear the NET/SLET examination within a period of two years. Subsequent enquiry committees concluded that the appointment violated educational requirements and reservation rules.

5. On 18.09.2012, the Executive Council of the University held an emergency meeting and prima facie opined that Respondent No. 6 was illegally appointed. The Council subsequently resolved to forward the entire matter to the Chancellor for appropriate orders.

SUBMISSIONS OF THE PETITIONER

6. The petitioner contends that Respondent No. 6 is ineligible to hold the public post of Lecturer. It is submitted that on the last date of submission of the application form (20.03.1995),

Respondent No. 6 merely held a B.Tech degree and was prosecuting his Post Graduation, thereby lacking a Master's degree with 55% marks.

7. The petitioner further contends that Respondent No. 6 did not possess a NET/SLET certificate, nor did he hold a Ph.D. or M.Phil. degree. The petitioner asserts that despite being granted a two-year extension by the University in 1998, Respondent No. 6 failed to obtain the NET/SLET qualification.

8. To support the maintainability of the writ of Quo Warranto, the petitioner places reliance on the Hon'ble Supreme Court's decision in **State of West Bengal v. Anindya Sunder Das & Others 2022 SCC OnLine SC 1382,** asserting that the post of Lecturer in the University is a sanctioned public post and the incumbent lacks the essential qualifications laid down by the UGC Regulations.

9. Additionally, the petitioner asserts that Respondent No. 6, being a domicile of Uttar Pradesh, submitted a caste certificate that did not specify non-creamy layer status. Relying on **Anjan Kumar v. Union of India & Others (2006) 3 SCC 257,** the petitioner

contends that obtaining an appointment against a reserved post despite ineligibility amounts to a fraud upon the Constitution.

SUBMISSIONS OF THE RESPONDENT(S)

10. Respondents No. 3, 4, and 5 (the University) primarily contend that the petition suffers from an inordinate delay. The University denies any collusion, asserting that it has conducted thorough enquiries, issued show-cause notices, and already forwarded the matter to the Chancellor, where it is pending final decision.

11. Respondent No. 6 vehemently opposes the petition on maintainability. He contends that a teacher of the University is merely an 'employee' under Section 4(xx) of the M.P. Vishwavidyalaya Adhiniyam, 1973, and not an 'Authority' or 'Officer' under Sections 11 and 19. Therefore, he argues, the post does not involve sovereign functions and is not a "Public Office".

12. To buttress this submission, Respondent No. 6 relies on the Allahabad High Court decision in **Dr Neetu Singh v. State Of U.P. Thru Secretary Medical Health & Ors. (Misc. Bench No. 24229 of 2019),** quoting verbatim:

> "17. From the aforesaid discussions it is evident that the post of Professor of KGMU cannot be held to be a 'Public Office' merely because the University is imparting education and is a Statutory Body enacted under the Act of 2002. Office of Professor does not seem to involve an obligation of any of the sovereign functions of the government either Executive or Legislative or Judicial for public benefit."

13. Respondent No. 6 further relies on **University of Mysore v. Govinda Rao, AIR 1965 SC 491,** quoting:

> "It is thus clear that before a citizen can claim a writ of quo-warranto, he must satisfy the court, inter-alia, that the office in question is a public office and is held by usurper without legal authority..."

14. Furthermore, Respondent No. 6 pleads that the petition is barred by the principles of res sub-judice, as he has independently challenged the Executive Council's resolution dated 18.09.2012 in a pending writ petition (W.P. No. 11550/2012).

15. On merits, Respondent No. 6 asserts that the UGC had not commenced NET examinations for Computer Science at the relevant time, and the AICTE criteria of a first-class B.E./B.Tech degree was applicable. He also contends that he had submitted a

declaration of being a non-creamy layer candidate at the time of scrutiny.

ANALYSIS AND CONCLUSION

16. Having heard the rival contentions and perused the pleadings, the foremost issue that arises for the consideration of this Court is whether the present writ petition seeking a writ of quo warranto is maintainable. The petitioner seeks to oust Respondent No. 6 from the post of Lecturer (now Associate Professor) in the Respondent No. 3 University. The petitioner alleges usurpation on grounds of inadequate educational qualifications and an invalid OBC caste certificate. Conversely, the respondents have raised a preliminary objection that the said post does not constitute a "public office," thereby rendering the petition defective at the very threshold.

17. Since the petitioners have prayed for a writ of quo warranto, the essentials for issuance of this writ needs to be adverted to at the outset. The writ of quo warranto is a special kind of prerogative writs. The Constitutional Courts may issue the writ of quo warranto to unseat and oust the holder of public office or public post, when such holder is found to have occupied and usurped such post even though the holder does not fulfill the statutory eligibility criteria for the post and that he is

unqualified to hold the post.

18. This court is of view that three ingredients are necessary to be satisfied before a writ of quo warranto could be claimed.

i. The post or office held by the person against whom the writ is sought for, is of the nature of public office.

ii. The appointment of the post must be found to contrary to statutory provisions defining the eligibility of the post.

iii. The order is an usurper without legal authority and is unqualified to man the post, which is a public office.

19. In the Indian context, the nature of office has to be one created either by or under the Constitution, or by or under the Statute.The Hon'ble Supreme Court in **The University of Mysore vs. C.D. Govindarao [AIR 1965 SC 491]** highlighted the nature of the writ, stating:-

> *"Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; 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 front that office."*

20. In **Rajesh Awasti vs. Nandanlal Jaiswal [(2013) 1 SCC 501]**, the Hon'ble Apex Court underlined the ingredients, observing,

> ***19.*** *A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana [(2002) 6 SCC 269] held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] , this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bansh Lal [(2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules.*

21. In **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731 (2) : 2006 SCC OnLine SC 887 at page 752** , Hon'ble Apex Court Held:-

> ***"43.*** *Whether a writ of quo warranto lies to challenge an appointment made "until further orders" on the ground that it is not a regular appointment? Whether the High Court failed to follow the settled law that a writ of quo warranto cannot be issued unless there is a clear violation of law? The order appointing the appellant clearly stated that the appointment is until further orders. The terms and conditions of appointment made it clear that the appointment is temporary and is until further orders. In such a situation, the High Court, in our view, erred in law in issuing a writ of quo warranto the rights*

under Article 226 which can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus.

49. *The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.*

51. *It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v. Union of India [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond*

the limits of quo warranto so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post.

55. *It is useful to refer to University of Mysore v. C.D. Govinda Rao [(1964) 4 SCR 575 : AIR 1965 SC 491] , SCR at pp. 580-81:*

"As Halsbury has observed [Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 145.] :

'An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.'

Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the executive or by

reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not."

56. *It is also beneficial to refer to the decision of this Court in Ghulam Qadir v. Special Tribunal [(2002) 1 SCC 33] , SCC p. 54, para 38 which reads thus:*

"38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right

whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

57. *It is settled law that a writ of quo warranto does not lie if the alleged violation is not of a statutory nature. Three judgments relied on by Mr P.P. Rao can be usefully referred to in the present context.*

58. *In A. Ramachandran v. A. Alagiriswami [AIR 1961 Mad 450 : ILR 1961 Mad 553] the Court observed in paras 74 and 104 as under: (AIR pp. 465 & 472)*

"Where an authority has power to make rules relating to a subject-matter and also the power to decide disputes arising in the field occupied by that subject-matter, the two powers and functions must be kept distinct and separate. This dispute must be decided with reference to the rules in force at the time the adjudication had to be made and, the rule-making power cannot be invoked in relation to that adjudication.

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It was also contended that it was incumbent on the State Government to follow the principle of appointment as laid down in 1932 G.O. so as to avoid arbitrariness of nepotism. Reliance was placed upon the decision in K. Nagarathnammal v. S. Ibrahim Saheb [(1955) 2 Mad LJ 49 : AIR 1955 Mad 305 (FB)] for the position that even non-statutory regulations and rules contained in the Board's Standing Orders are binding on the State Government, and that it cannot depart from such rules arbitrarily and capriciously to suit the exigencies of a particular situation. In that case the Government purported to exercise a revisional power over the orders

of the Board of Revenue which it did not have as per Board's Standing Orders. The exercise of that power by the Government was sought to be justified on the ground that the executive instructions contained in the Board's Standing Orders could at any time be modified or amended and that if the Government had power to bring about such modifications it followed that the Government had power of revision though in terms such power was not conferred upon it."

22. Recently, in **Gambhirdan K. Gadhvi vs. State of Gujarat [(2022) 5 SCC 179],** the Apex Court explained the meaning and purpose of the writ, observing :-

"***17. In Armed Forces Medical Assn. v. Union of India [Armed Forces Medical Assn. v. Union of India, (2006) 11 SCC 731 (1) : (2007) 1 SCC (L&S) 548 (1)]*** *, it has been observed by this Court that strict rules of locus standi are relaxed to some extent in a quo warranto proceedings. It is further observed in the said decision that broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by a judicial order. It is further observed that in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect citizens from being deprived of public office to which they have a right. These proceedings also tend to protect the public from usurpers of public office. It is further*

observed that it will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry, as to, whether, the appointment of the alleged usurper has been made in accordance with law or not.

18. *Thus, as per the law laid down in a catena of decisions, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one, which can only be issued when a person is holding the public office does not fulfil the eligibility criteria prescribed to be appointed to such an office or when the appointment is contrary to the statutory rules. Keeping in mind the law laid down by this Court in the aforesaid decisions on the jurisdiction of the Court while issuing a writ of quo warranto, the factual and legal controversy in the present petition is required to be considered."*

23. Applying these settled principles to the facts at hand, the concept of a public office presupposes a post which has clear public trappings. It must be an office where the incumbent is associated with duties of a public nature. The functional realm of the holder of the office should travel into the public domain. In the present case, Respondent No. 6 was appointed as a Lecturer in Computer Science and Application, and currently holds the post of Associate Professor in the Respondent No. 3 University.

24. An Associate Professor or Professor, as Respondent No. 6 is, may be a part of the academic faculty, but for all functional and legal purposes, he is merely an employee of the University. As noted in the

pleadings relying upon the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, teachers are not defined as 'Officers' or 'Authorities' under Sections 11 and 19 of the Act. The lecturers or associate professors bear a jural relationship with the University, and that relationship is strictly one of employee and employer.

25. Furthermore, as held in **University of Mysore (supra)** regarding Professors or Readers in a University, there is no provision enumerating teachers as statutory functionaries in the same way as the Chancellor, Vice-Chancellor, or Registrar. An Associate Professor or Professor has no sovereign or public function to discharge. They do not interact publicly in their duties, nor do they discharge duties in the public domain affecting the legal rights of the citizenry at large. Professors, readers, or teachers cannot be grouped to treat them in the category of holders of a public office.

26. By no stretch of imagination, given the very nature of their post and the work and duties attached, can teaching faculty become holders of a public office. For all the above considerations, the post of Associate Professor held by Respondent No. 6 is not a public office. The sine qua non for the issuance of a writ of quo warranto is thus not satisfied in the present case. In this view, as no relief can be granted on this preliminary score alone, the need does not arise to go into any other

aspect of merit regarding the petitioner's specific claims of educational or domicile disqualification.

27. The Court therefore has not gone into any other question of merit. The present writ petition fails on the very threshold of maintainability, as the post under challenge does not constitute a public office.

Accordingly, the writ petition is **dismissed**.

Pending applications, if any, shall be **disposed of** accordingly.

No order as to costs.

(Jai Kumar Pillai)
Judge

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