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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 16.10.2020***
Pronounced on: 06.11.2020

\+ **W.P.(C) 4164/2020 & CM 14996/2020**

DR. ASHUTOSH MISHRA ..... Petitioner
Through: Mr. J.B. Mudgil, Advocate with Mr. Devesh Pratap Singh, Advocate.

versus

INDIAN INSTITUTE OF MASS COMMUNICATION THROUGH: ITS CHAIRMAN & ORS. .... Respondents
Through: Mr. Vikramjit Banerjee, ASG with Mr. Prashant Kumar, Mr. Rajan Kumar Singh, Mr. Vijay Joshi & Ms. Anindita Barman, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. This is a writ petition filed by the Petitioner for quashing and setting aside the appointment of Respondent No. 3 as Director General of Indian Institute of Mass Communication, Delhi as well as to direct Respondent Nos. 1 & 2 to set up an inquiry to probe into the alleged illegal appointment of Respondent No. 3.

2. Petitioner is a Professor and Dean of School of Mass Communication at Chitkara University, Punjab. Respondent No.1 is the

Indian Institute of Mass Communication (IIMC), an Autonomous Institute under the Ministry of Information & Broadcasting set up in the year 1965 with a repute in the field of Mass Communication teaching, training, research and consultancy.

3. The factual narrative as set out by the Petitioner is that Respondent No.1 had issued an advertisement dated 13.06.2019 inviting applications for the Post of Director General (DG) IIMC. Essential educational and other qualifications required for the post were as under:-

> *i) A good Masters' Degree*
>
> *ii) Minimum 25 years' experience in the field of journalism/films/media with administrative experience of holding senior positions in Academic/ Professional Institution/University Department/Organization of National repute.*
>
> *Or*
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> *Officers not below the rank of Additional Secretary in the Government of India or equivalent thereto with experience of managing or making personal contribution in one of the following areas:*
>
> - *Writing Stories/Lyrics/Screen play*
> - *Editing of Film/TV Programmes*
> - *Production of Film/TV Programmes*

4. Petitioner claims that the appointment of Respondent No. 3 as DG is illegal and he has no right to hold the public office and assails the same on several grounds. Learned counsel for the Petitioner submits that Respondent No.3 was not even eligible to be appointed to the post of a Reader and Petitioner has filed a petition being W.P.(C) 12660/2015 in

the High Court of Jabalpur challenging his appointment as Reader in MCRPV, Bhopal, which is pending. The contention is that although Respondent No. 3 did not possess a Ph.D Degree, he was appointed as a Reader and thereafter an Associate Professor followed by promotion as Professor. Few months ago he was appointed as Vice-Chancellor of the University, where he served as a Professor. Respondent No. 3 enrolled himself for Ph.D at Central University, Bilaspur but did not complete the degree course. For the Post of a Reader or a Professor, Ph.D is a minimum qualification and yet the Respondent No. 3 has not been removed from any of the said Posts and is being rewarded with appointments to higher posts.

5. It is further argued that for being appointed as a Reader in MCRPV, Bhopal, Respondent No. 3 had shown his experience as Sub-Editor in newspapers, working as a regular employee, whereas he was a regular student of BJMC and MJMC between 1994-1996, the relevant period and thus could not have been an employee and a student at the same time. In 2005 also Respondent No. 3 had managed to secure an appointment to the Post of Reader at Kusha Bhau Thakre Journalism University, Chhattisgarh, but when the Petitioner filed a petition challenging the appointment in Chhattisgarh High Court, Respondent No. 3 left the job in less than six months.

6. Counsel for the Petitioner next contends that as per UGC Guidelines, Academic Performance Index (API) score of 400 is at least required for being appointed as a Professor but Respondent No. 3 does not have any significant research work to his credit and instead of

applying the actual API parameters as per UGC norms, his write-ups, features etc. were counted and he was considered and promoted as Professor that too, despite a case pending against him at the Jabalpur High Court challenging his appointment as Reader.

7. Learned counsel submits that Respondent No. 3 has been further awarded recently by appointing him to the post of DG of IIMC whereas again he does not fulfill the required minimum eligibility criteria as per the Advertisement dated 13.06.2019. It is submitted that under the Advertisement, the minimum experience required was 25 years on the last date of the submission of the applications. Respondent No. 3 acquired the Masters Degree in Journalism and Mass Communication in 1995-96 and the mark sheet was issued in December, 1996. Thus on the cut-off date, Respondent No.3 had only 23 years experience, post the Masters Degree. Learned counsel submits that various representations have been sent by the Petitioner to various concerned authorities, to examine and inquire into the illegal appointment of Respondent No. 3 and take immediate action, but to no avail.

8. Mr. Vikramjit Banerjee Learned Additional Solicitor General on the other hand opposes the admission of the present writ petition. It is argued that the present petition is not maintainable in the present form. From a bare perusal of the writ petition it is evident that pleadings do not make out a case for grant of Writ of *quo warranto*. Assuming it to be so, Prayer (b) is for a direction to set up an inquiry into the appointment of Respondent No. 3, as DG, and cannot be entertained in the present petition.

9. Mr. Banerjee further contends that writ in the nature of *quo warranto* lies only when the appointment challenged has been made contrary to the Statutory Provisions/Rules. Petitioner must satisfy the Court that the office in question is held by an appointee whose appointment is without possessing the requisite qualifications and there is a violation of any statutory provision. Supreme Court in ***B. Srinivasa Reddy v. Karnataka Urban Water Suply Board Employee's Association & Ors. [(2006) 11 SCC 731]*** has held that Court cannot sit in judgement over the wisdom of the Government in the choice of person to be appointed so long as the person chosen possesses the prescribed qualifications. Reliance is also placed on paras 21 & 47 of the judgement of Supreme Court in ***Central Electricity Supply Utility of Odisha v. Dhobei Sahoo & Ors. [(2014) 1 SCC 161],*** which are as follows :

> *"21. From the aforesaid exposition of law it is clear as noon day that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.*
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> *xxxx xxxx xxxx*
>
> *47. The whole thing has to be scrutinized from the point of view of power. Suitability or eligibility of a candidate for appointment to a post is within the domain of the*

appointing authority. The only thing that can be scrutinized by the Court is whether the appointment is contrary to the statutory provisions/rules."

10. Reliance is also placed on the judgement of this Court in ***Jose Meleth v. Union of India & Ors. W.P (C) No. 1443/2012 & CM APPL 3149/2012***. Relevant paras of the judgement are as under:-

"14. Two questions arise for consideration on this case. First, whether the petitioner has the locus standi to agitate this matter, and secondly, if so, do the facts warrant the issuance of a writ of quo warranto.

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34. Having regard to the above background and the documentary proof available before the Court, the limitations upon the Court's authority to review such actions is important and requires to be recollected. In its Article 226 jurisdiction, the Court must not become the "primary decision maker" (Union of India and Another v. G. Ganayutham (Dead) by LRs, AIR 1997 SC 3387), but rather, remain deferential in its assessment. In Rajesh Awasthi v. Nand Lal Jaiswal and Ors. 2013 (1) SCC 501 it was reiterated that the Court is concerned only with eligibility and legality of appointments to public offices, not suitability of individual candidates, in proceedings under Article 226 of the Constitution of India. Other decisions (R.K. Jain v. Union of India & Ors. 1993 (4) SCC 119; Dr. Duryodhan Sahu & Ors. Etc. Etc. v. Jitendra Kumar Mishra & Ors. 1998 (7) SCC 273, Dattaraj Nathuji Thaware v. State of Maharashtra & Ors., 2005 (1) SCC 590, and Ashok Kumar Pandey v. The State of West Bengal and Ors., 2004 (3) SCC 349) have declared that there can be no public interest litigation in service matters. Thus, barring clear cases where a writ of quo warranto can be issued, Courts cannot take upon themselves the task of a "merits review" of appointments to public or such like offices (Centre for

Public Interest Litigation and Anr. v. Union of India (UOI) & Anr., 2011 (4) SCC 1.

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37. The primary decision making authority in this case was the Selection Committee, which considered the certificates and other documentary evidence presented by Dr. Sivakumar, and reached the conclusion that he met the basic minimum requirements. While undoubtedly proceedings under Article 226 relax the rules of evidence and pleadings, and the Court may consider the evidence liberally, and despite the limits on judicial review observed above, the question of lack of eligibility undoubtedly lies within the realm of judicial review, the rigours attached to reaching a correct finding of fact cannot be washed away by not considering the details of the documentary evidence produced before the Court. Indeed, the limitations inherent is considering disputed questions of fact, under an Article 226 petition, stems not only from the limited nature of judicial review as regards findings of fact, but equally, and as importantly, from the fact that the:

> *"12.....issuance of a writ of quo warranto is discretionary and such a writ should be issued only upon a clear finding that the appointment to a public office was contrary to the statute." (Arun Singh @ Arun Kumar Singh v. State of Bihar and Ors., (2006) 9 SCC 375).*

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39. Considering the allegations levelled by the petitioner, it is also possible that while some of the documents may be proven true, others may not, and the cumulative research and teaching experience may meet the ten year threshold (since the 6 years and 7 months or research experience is not denied, but only the details as to the teaching positions held at the Kerala Law Academy and the National

University of Juridical Sciences (and not the Hidayatullah National Law University) are contradicted. Whether in such a case the cumulative total amounts to ten years, and whether this is sufficient to meet the threshold under Clause 1.3.1 is indeed a matter for the Selection Committee to decide and consider.

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41. Equally, the Court is cognizant of the fact that Clause 1.3.1 locates an alternative qualification, i.e. "[a]n outstanding scholar with established reputation who has made significant contribution to knowledge." This standard clearly incorporates a subjective determination by the Selection Committee based on objective factors/material placed before it. While learned counsel for the petitioner has urged that Sivakumar did not place any material so as to demonstrate his satisfaction of this criterion, and did not specifically apply under this head, this line of argument is unpersuasive. Not only did Sivakumar, in his "Academic Profile" attached to his application, enter comprehensive details which speak as to his contribution to the law, such as details of twelve research publications, four book reviews, eleven papers presented internationally, along with three papers submitted and presented (though not personally present), various papers presented nationally, a list of other publications, including four book contributions, programmes organized by him and academic assignments taken, but also, there is no requirement, either under the 2000 UGC Regulations or in the advertisement issued by the ILI, to specifically apply under that head. Rather, a fair reading of the text of Clause 1.3.1 leads to the inevitable conclusion that the Selection Committee may, in its wisdom, and on a consideration of the relevant factors, decide that a candidate falls under either of those heads. Sivakumar's publications and engagement with academia, from a reading of his academic profile, spans from 1992 to 2005 (i.e. the time of the application), while covering a variety of legal issues. The precise and detailed evaluation of these

activities, i.e. Dr. Sivakumar's academic inputs and research, and whether it qualifies him as an "outstanding research scholar with established reputation who has made significant contribution to knowledge", however, is a matter properly reserved for the Selection Committee's decision-making authority, which the Court cannot enter. Indeed, this breadth of authority granted to the Selection Committee is particularly apt given that it sits as an expert body to consider the suitability of the academic qualifications of the candidates, which this Court should not and, as a matter of law, cannot review on merits. Once it is admitted, and the petitioner does not dispute this fact, that the Selection Committee applied its mind to the relevant factors to determine the candidate which, in its opinion, was best suited for the post of Research Professor (i.e. purely as illustrative examples, his academic qualifications, previous research experience, quality of research publications, reviews etc.), and did not base its decision on irrelevant material, this Court's limited judicial review is satisfied. In fact, a Division Bench of the Supreme Court echoed this precise sentiment in Rameshwar Dass Mehla v. Om Prakash Saini and Ors., JT 2002 (2) SC 403, in considering a writ of quo warranto directed against the incumbent university librarian by Kurukshetra University:

> *"5.....It is also pointed out that the equivalence of the two qualifications is a question which pertain purely to an academic matter and courts would hesitate to express a definite opinion, particularly, when it appears to the experts that a candidate fulfils the qualification .....*
>
> *xxxx xxxx xxxx*
>
> *7..... We do not think the view taken by the selection committee can be the subject matter of the judicial review as was held by this Court in Govind Rao's case. In academic matters,*

> *particularly pertaining to qualifications, the view taken by the experts would be final. If this approach had been adopted by the High Court, the High Court could not have interfered with the action taken by the university in this case at all……..” (emphasis supplied)*
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> *42. At the very least, the various details disclosed in the academic profile, which are detailed above, render Sivakumar eligible for the post of Research Professor under the second alternate criterion, and that being the case, his further selection lies at the discretion of the Selection Committee.”*

11. Without prejudice to the said argument, Mr. Banerjee argues that the appointment of Respondent No. 3 is in consonance with the Recruitment Rules and the Advertisement issued by IIMC. IIMC invited applications for the Post of DG on 13.07.2019 with the last date for submission of applications being 19.07.2019. Thorough examination of all the applications received by Respondent No. 2 was carried out and only after it was found that Respondent No. 3 fulfilled the eligibility criteria, his candidature was considered and recommended by a duly constituted Search-cum-Selection Committee. The Search-cum-Selection Committee personally interviewed all the applicants along with their supporting documents and only thereafter shortlisted Respondent No. 3. The recommendation was finally approved by Appointments Committee of the Cabinet. The appointment is not contrary to any statutory provision, does not suffer from any illegality and is also in consonance with provisions of Rule 35 of the Recruitment Rules of the Respondent Institute. Rule 35 as brought to the notice of the Court is as follows:-

> "*The appointment of Director will be by the Executive Council on recommendations of the Search & Selection Committee constituted by the Ministry and approved by DOPT on such terms and conditions as may be approved by the Central Government, vide minutes of the 112th Meeting of Executive Council held on November 20, 2008. The Director of the Institute shall be appointed by the Executive Council with the prior approval of the Central Government on such terms and conditions as may be approved by the Central Government*."

12. Mr. Banerjee submits that the allegation of the Petitioner that Respondent No. 3 does not possess minimum experience of 25 years as postulated in the Advertisement is baseless. Respondent No. 3 completed his Bachelor of Arts from Lucknow University, UP in 1993 and started his Career in Journalism on the platform of Print Media as Sub-Editor at Dak Desk, Dainik Bhaskar, Bhopal, where he worked from 10.07.1994 till 07.08.1995. He completed his Bachelor in Journalism and Mass Communication (BJMC) in 1995 and Masters in Journalism and Mass Communication (MJMC) in 1996. Thereafter he worked with various newspapers in different capacities, which is clearly evident from his Bio-data. Respondent No. 3 was appointed as a Reader in Makhanlal Chaturvedi Journalism University and thereafter given the charge of Vice-Chancellorship in the same University. Thus counting the experience of Respondent No. 3 with effect from 10.07.1994 he meets the requirement of having 25 years experience as on 19.07.2019 coupled with possessing a good Master's Degree, in accordance with the requirements of the Advertisement.

13. Elaborating the argument Mr. Banerjee submits that the requisite Essential qualifications as per the Advertisement are possessing a good Master's Degree and a minimum 25 years experience in the field of Journalism/Films/Media with administrative experience of holding senior positions in Academic/Professional Institution/University/Organization of National repute. The requirement of holding a Masters Degree is disjunctive to the 25 years experience required. There is no stipulation in the Advertisement that the experience must be post the acquisition of the Masters Degree and the Petitioner cannot read into the Advertisement something that does not exist. Perusal of the requisite Desirable qualifications substantiates that Post Graduation would be given preference, but the same cannot be read to mean that a candidate must have the minimum years of work experience required for the post of DG after the PG degree.

14. Mr. Banerjee relies on the judgement of the Supreme Court in the case of ***Dr. Duryodhan Sahu & Ors. vs. Jitendra Kumar Mishra &Ors. [(1998)7 SCC 273]*** to argue that it is not for the Courts to substitute their views for that of the Selection Committees with regard to the eligibility criteria or suitability of a candidate. Relevant part relied upon is as follows :-

> *"22. Turning to the second question, even the facts set out by us earlier would show that the petitioner satisfied the requisite qualifications prescribed for the post of lecturer. The only contention urged is that the petitioner did not have two years special training in Surgical Gastroenterology from an institution recognised by MCI for giving special training. There is no merit in the contention. The list of recognised Medical Colleges in India published by the MCI*

contains the name of S.C.R. Medical College, Cuttack in Sl. No. 80. Thus the said college is a recognised institution. The interpretation that the institution should be recognised for giving special training is erroneous. There is no such requirement in the rules.

23. Even the Tribunal has found that the petitioner had acquired sufficient practical experience by assisting the Head of the Department of Surgical Gastroenterology in the said college for a long period of six years and had several publications to his credit. The Tribunal overlooked that the said experience acquired by the petitioner was recognised to be sufficient to satisfy the requisite qualification of two years special training by the Director of Medical Education and Training when a reference was made to him by the Orissa Public Service Commission. It was only after getting the matter clarified, the Service Commission called the petitioner for viva voce. Once the concerned authorities are satisfied with the eligibility qualifications of the person concerned it is not for the Court or the Tribunal to embark upon an investigation of its own to ascertain the qualifications of the said person."

15. For the proposition that experience was not a post degree experience, reliance is placed on the judgement of the Division Bench of Madras High Court in ***Dr. S. Kathiroli vs. Govt. of India [(2011) SCC OnLine Mad 1494]*** particularly paras 19 & 20 which are as follows:-

"19. The appointing authority having issued an advertisement inviting applications prescribing 20 years experience without specifically stating that the experience is to be counted only after acquiring the Ph.D qualification, the petitioners are not justified in raising a contention to that effect. The qualification and experience should be satisfied by a candidate selected in terms of the advertisement alone as held by the Supreme Court in the

decisions reported in 1993 Supp (2) SCC 419 (M.B.Joshi v. Satish Kumar Pandey); (1997) 4 SCC 753 (D.Stephen ph v. Union of India); (1999) 1 SCC 453 (Dr.Kumar Bar Das v. Utkal University) and (2002) 2 SCC 712 (G.N.Nayak v. Goa University and Others).

20. The decisions cited by the learned counsel for the petitioners viz., 1991 Supp (1) SCC 367 (Sheshrao Jangluji Bagde v. Bhaiyya); and (2001) 2 SCC 362 (Indian Airlines Ltd. v. S.Gopalakrishnan) were rendered holding that experience can be counted only after acquiring the qualification are in the context of the Rule, which specifically stated that experience must be after completion of the degree concerned. In this case, as stated supra, the terms of the advertisement nowhere states that experience can be counted only after obtaining Ph.D."

16. Last but not the least Mr. Banerjee also questions the *locus standi* of the Petitioner in filing the present petition and submits that the petition is motivated and filed with *mala fide* intent and ought to be dismissed. Petitioner has not been able to establish his locus to challenge the impugned appointment inasmuch as neither he has any relationship with the Institute as a student or as a faculty nor was he a candidate aspiring for the Post of DG. The Petition is in the nature of Public Interest Litigation (PIL) in the garb of writ of *quo warranto*. It is a settled law that PIL cannot be filed in service law. It is vehemently contended that the Petitioner has been trailing and harassing Respondent No. 3 for reasons best known to him by filing frivolous and vilifying petitions before various Forums. Petitioner has already challenged the appointment of Respondent No. 3 to the post of Reader before the Jabalpur High court which is pending and thus challenge to appointment as a Reader is barred

by the *res judicata*. The appointment was also challenged when respondent No. 3 was appointed as Reader in a University at Raipur, which later became infructuous. Petitioner has filed a petition before Punjab and Haryana High Court for quashing of the appointment of Respondent No. 3 to the Post of Vice-Chancellor in a State University at Rohtak. Mr. Banerjee has specifically drawn the attention of the Court to the observations made by the court in the order dated 22.03.2018, which are as follows:-

> *"As per assertion, the petitioner is presently working as a Professor in Chitkara University, Punjab. Nowhere, the petitioner has been able to establish his locus standi in challenging the impugned appointment inasmuch as neither the petitioner, in any way, has been able to show his relation with the University as a student or as a faculty, nor it is his case that he was also a candidate for the said post.*
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> *Having heard learned counsel for the petitioner and on perusal of the case file, it emerges that by way of the instant petition, the petitioner has tried to wreak personal vengeance against respondent No.3. This petition is ill conceived and nothing but an abuse of process of law. In "**Kishore Samrite Vs. State of Uttar Pradesh and others",(2013) 2 SCC 398**, it was held as under:-*
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> > *"From the above specific averments made in the writ petitions, it is clear that both these petitioners have approached the Court with falsehood, unclean hands and have misled the courts by showing urgency and exigencies in relation to an incident of 3rd December, 2006, which, in fact, according to the three petitioners and the police was false, have thus abused the process of the Court and misused the judicial process. They maliciously and with ulterior*

motives encroached upon the valuable time of the Court and wasted public money. It is a settled canon that no litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wished. The privilege of easy access to justice has been abused by these petitioners by filing frivolous and misconceived petitions. On the basis of incorrect and incomplete allegations, they had created urgency for expeditious hearing of the petitions, which never existed. Even this Court had to spend days to reach at the truth. Prima facie it is clear that both these petitioners have misstated facts, withheld true facts and even given false and incorrect affidavits. They well knew that Courts are going to rely upon their pleadings and affidavits while passing appropriate orders. The Director General of Police, U.P., was required to file an affidavit and CBI directed to conduct investigation. Truth being the basis of justice delivery system, it was important for this court to reach at the truth, which were were able to reach at with the able assistance of all the counsel and have no hesitation in holding that the case of both the petitioners suffered from falsehood, was misconceived and was a patent misuse of judicial process. Abuse of the process of the Court and not approaching the Court with complete facts and clean hands, has compelled this Court to impose heavy and penal costs on the persons acting as next friends in the writ petitions before the High Court. This Court cannot permit the judicial process to become an instrument of oppression or abuse or to subvert justice by unscrupulous litigants like the petitioners in the present case."

In view of the above, the instant petition sans merit, and is accordingly dismissed with costs of Rs.50,000/- to be

> *deposited with Punjab State Legal Services Authority, Punjab within a period of three months from the receipt of the certified copy of this order.*
>
> *The Registry is directed to send the certified copy of the order to the petitioner free of cost under registered A.D.*
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> *Dismissed."*

17. I have heard the learned Additional Solicitor General and learned counsel for the petitioner.

18. The question that arises before the Court is if the facts of the present case warrant issuance of a writ of *quo warranto.*

19. The law that a writ of *quo warranto* lies for a violation of statutory provisions is well settled. In the case of ***Hari Bansh Lal v. Sahodar Prasad Mahto and Ors., (2010) 9 SCC 655*** Supreme Court held as under:-

> *"20. From the discussion and analysis, the following principles emerge:*
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> *(a) Except for a writ of quo warranto, PIL is not maintainable in service matters.*
> *(b) For issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.*
> *(c) Suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules."*

20. To the same effect are the observations of the Supreme Court in ***B. Srinivasa Reddy v. Karnataka Urban Water Supply Board Employee's***

Association & Ors. (2006) 11 SCC 731 (2) and ***Rajesh Awasthi v. Nand Lal Jaiswal and Ors. 2013 (1) SCC 501.*** Useful it would be to refer to a passage from the judgment in ***Rajesh Awasthi (supra)*** in which it was held that a writ of *quo warranto* can only be filed once the foundation is laid on violation of statutory provisions/rules. Relevant para is as follows:-

> *"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. As held by the Supreme Court in ***B.R. Kapur v. State of T.N., (2001) 7 SCC 231*** *quo warranto* is a writ which lies against a person, who according to the relator is not entitled to hold an office of public nature and is only an usurper of the office. The said person against whom the writ is directed, is required to show, by what authority he is entitled to hold the office. The challenge can be laid on several grounds, including that the holder of the office does not have required qualifications or

suffers from a disqualification which debars him from holding the office. At this stage, I may quote from *Halsbury* as follows:-

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

22. In ***University of Mysore vs. C. D. Govinda Rao and Another, AIR 1965 SC 491***, the Supreme Court held as follows:-

> *"6…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 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 public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. 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, and that necessarily leads to the enquiry as to whether the appointment*

of the said alleged usurper has been made in accordance with law or not."

23. The purpose of the writ of *quo warranto* is to protect the public from usurpers of public office, when they are not entitled to hold the office and therefore before a writ of *quo warranto* is filed the petitioner must satisfy the Court that the office in question is a public office and held by a person without legal authority which would then lead to an inquiry as to whether the appointment is in accordance with law or not. It is settled that while exercising jurisdiction under Article 226 of the Constitution, the High Court must at the outset determine whether a case is made out for issuance of a writ of *quo warranto* based on the limited parameter that the appointment challenged is contrary to statutory provisions.

24. This Court in ***Mr. S.N. Sahu v. Chairman, Rajya Sabha & Ors.*** being W.P.(C) No. 11146/2016, decided on 05.12.2016 held as follows:-

"5. It is a settled law that a writ of quo warranto can be sought only if there is found to be violation of a statutory provision. This is so held by the Supreme Court in its various judgments and two such judgments are in the cases of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and Others, (2006) 11 SCC 731(2) and Rajesh Awasthi Vs. Nand Lal Jaiswal & Others (2013) 1 SCC 501. The relevant paragraphs of the judgment of the Supreme Court in the case of B. Srinivasa Reddy (supra) are paras 49, 57 and 60 which hold that a writ of quo warranto can only be filed if there is found to be violation of a statutory provision.

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> *7. It is therefore clear that the present writ petition seeking reliefs in the nature of quo warranto is not maintainable because there is no pleading in the writ petition as to which statutory provision is violated in the appointments of Shri Ramacharyulu and Shri Mukul Pande. Prayer (a) therefore is misconceived and the writ petition is liable to be and is accordingly dismissed so far as prayer (a) is concerned".*

25. From the conspectus of the judgments referred above, it is clear that in order to succeed the petitioner has to make out a case that the appointment of respondent No.3 is in violation of the statutory provisions/Rules. A perusal of the writ petition shows that there is no averment in the petition that any statutory provision has been violated. The petitioner has primarily challenged the appointment on the ground that respondent No.3 does not meet the minimum eligibility criteria for appointment to the post of DG as per the Advertisement dated 13.06.2019, issued by IIMC. This is predicated on the ground that respondent No.3 acquired the Masters Degree in 1995-96 and the last date for submission of the application under the Advertisement being 19.07.2019, Respondent No.3 does not have the requisite 25 years experience. The other allegations relates to his allegedly not possessing a Ph.D. degree prior to his appointment as a Reader/Associate Professor followed by promotion as Professor. It is thus clear that in the absence of any averment as to the violation of any statutory provision, writ in the nature of *quo warranto* is not maintainable.

26. Although the principal contention of the learned Additional Solicitor General was that the present petition is not maintainable, there

being no allegations of violation of statutory rules, yet it was pointed out that even on merits the appointment of respondent No.3 is in consonance with the Recruitment Rules and the Advertisement issued by IIMC. For the sake of completeness the Court is dealing with the said issue. From the arguments made it is evident that respondent No.3 completed his Bachelors of Arts in the year 1993 and started his career in Journalism in Print Media as a Sub-Editor at *Dainik Bhaskar* where he worked from 10.07.1994 till 07.08.1995. He completed his Bachelors in Journalism & Mass Communication in 1995 and Masters in the same subject in 1996. Between 10.08.1995 to February 1997 respondent No.3 worked in a Hindi *dainik* and thereafter in various other newspapers in various capacities. It is also reflected from the bio-data of respondent No.3 filed by the petitioner along with a compilation of judgments that respondent No.3 worked as a Reader in a University in Bhopal and was thereafter given a charge of Vice Chancellorship in the same University. Thus, if the experience is counted from 10.07.1994 till the last date of the application i.e. 19.07.2019, as rightly contended by the ASG, Respondent No.3 possesses the minimum experience of 25 years.

27. I also find force in the contention of the learned ASG that the 'Essential' qualification as per the Advertisement required the candidate to possess a good Masters degree and a minimum of 25 years experience in the field mentioned in the Advertisement. Reading of the Advertisement substantiates the stand of the respondents that the two requirements are disjunctive of each other and cannot be read conjunctively. It is not the requirement in the Advertisement that the 25

years experience must be post acquisition of the Masters Degree, as erroneously contended by the petitioner. The advertisement can only be read in the manner it is authored and it is not open to the Court or to the petitioner to read into the advertisement requirements of eligibility which do not exist. It is equally well settled that the author of the Advertisement is the best person to interpret its intent, requirements and implications.

28. A similar issue came up before a Division Bench of the Madras High Court in ***T. Lokachari v. Govt. of India, 2013 SCC Online Mad 129***. The appellant therein had challenged the appointment of the 3rd respondent by filing a writ of *quo warranto* alleging that the appointment was contrary to statutory rules. The Rules in the said case relating to qualification and experience for the post of Director in the National Institute of Ocean Technology were as follows:-

> *"Essential:- Doctorate in Science/ Engineering/ Technology, with over 20 years experience in teaching, research & technology development, with a minimum 5 years term as Head/Leader of an important technical/scientific programme or institution…."*

29. The contention of the appellant before the Single Judge in the writ petition was that the respondent did not possess the requisite experience as he had acquired the Doctorate degree only in 1997 and therefore the period of experience shall be counted after the said date. The Single Judge held that the Appointing Authority while issuing the Advertisement had prescribed 20 years' experience without specifically stating that the experience is to be counted only after acquiring the Ph.D. qualifications and therefore the petitioners were not justified in raising a contention to

that effect. The qualification and experience should be satisfied by a candidate in terms of the Advertisement alone. While examining the judgement of the Single Judge, the Division Bench noted the contention of the appellant that the respondent had acquired the Doctorate Degree in 1997 and the period of experience shall be counted from the date of acquiring the Degree and rejected the said contention. The Court also observed as follows:-

> *"29. The Search-cum-Selection Committee is a high powered one comprising of eminent academicians and Scientists. The Committee after examining the qualification and experience of 3 Respondent, recommended his name to be appointed as Director of NIOT. When the Expert Committee consisting of eminent persons have evaluated the qualification and experience of 3rd Respondent and found that he is a suitable person to be appointed as Director, Court cannot sit in judgment over the collective decision taken by the Expert Committee in the choice of appointment of 3 Respondent as Director, NIOT.*
>
> *30. Observing that 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, in (2006) 11 SCC 731 (2)(2) [B. SRINIVASA REDDY v. KARNATAKA URBAN WATER SUPPLY & DRAINAGEBOARD EMPLOYEES' ASSOCIATION], the Hon'ble Supreme Court held as under:-*
>
> > *"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 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. ….."*

30. In the present case as mentioned above the Advertisement does not specifically mention that the 25 years' experience should be after acquiring the Masters Degree and therefore the contention of the petitioner in this regard cannot be accepted and the argument must fail.

31. The Court also accepts the contention of the learned ASG that Courts cannot while exercising powers of judicial review sit over the decisions of Expert Selection Committees. The fetters and limitations on the Courts to review actions of Selection and Appointment Committees and the limited window available in this field cannot be ignored. Principles laying down the strict parameters in interfering have been affirmed and re-affirmed in various judicial pronouncements. In this context, learned ASG has rightly relied on the observations of the Division Bench of this Court in ***Jose Meleth (supra)***, relevant paras of which have been extracted above.

32. In ***Jose Meleth (supra)*** the specific question posed by the Court was whether the person appointed to the post in question, whose appointment was challenged satisfied the basic minimum requirement

under the relevant clause. The Division Bench while examining the issue in the background of its power of judicial review observed as follows:-

> *"36. The question, thus, is whether Dr. Sivakumar satisfied the basic minimum requirements specified under Clause 1.3.1. If the documentary proof provided by the petitioner is to be believed, Dr. Sivakumar did not have the cumulative ten years' teaching or research experience required under the 2000 Regulations, whilst if Dr. Sivakumar's documentary proof is considered, that requirement is clearly satisfied. Specifically, as in this case, when questions of fact come before the Court, and contradicting versions of fact are presented, the Court must tread with caution. This was considered by the Supreme Court in M/s. Shri Sitaram Sugar Co. Ltd. and Another v. Union of India and Others, 1990 (3) SCC 223:*
>
> > *"47. Where a question of law is at issue, the Court may determine the tightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the Court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the Court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the Court would have come to as a trier of fact."*

33. A similar issue came up before another Division Bench of this Court in ***Jai Singh Chauhan vs. Union of India & Ors.*** being ***W.P(C) No.7267/2016 & CM APPL. 29931/2016***, decided on 16.05.2019

wherein the petitioner challenged the appointment made by the official respondents to the post of Secretary-cum-DG (ICAR). The contention of the petitioner assailing the appointment of respondent No.4 was that he did not have the requisite experience of 25 years in the field of agricultural research amongst other grounds. The respondents had contended that a High Level Committee constituted by the Government had gone into the issue of selecting the candidate and the decision of the Search-cum-Selection Committee was approved by the Appointments Committee of the Cabinet. After examining the law on the subject and looking into the appointment procedure of respondent No.4 the Division Bench observed that once a High Powered Search-cum-Selection Committee has approved the appointment of a person, in the absence of any allegation of mala fides the Court cannot sit in appeal over the decision of the Committee and substitute its decision. I may at this stage refer to a few passages from the judgement as under:-

> *"21. From the aforesaid, it is clear that the legal position affirmed by the Supreme Court is that in such matters, Courts have a very limited role to play, particularly when no mala fides have been alleged against the experts constituting the Search-cum-Selection Committee. The Hon'ble Supreme Court holds that it would normally be prudent and safe for the Courts to leave the decision to academician and experts. As a matter of principle, it is held that Courts should not make an endeavour to sit in appeal over the decision of experts. The Courts must realize and appreciate their constraints and limitations in academic and such like other matters. In this case, the respondents do admit that to some extent respondent No.4 may not in the strict sense be fulfilling the experience requirements but looking into his overall performance in the field, a high level committee*

consisting of experts in the field has approved his appointment, therefore this Court should not make any indulgence in the matter. In our considered view, the aforesaid submissions of the senior counsel appearing for the respondents deserve to be accepted.

22. In the absence of any mala fides alleged against the Committee members, they are deemed to have conducted the proceedings in the manner which is proper and legal and in accordance with the requirement of law and even if there was some shortcomings in the experience requirements, the same was taken note of and approved because of the eminence, expertise and other considerations which weighed in favour of respondent No.4. These are matters decided by experts and this Court is not required to sit in appeal over such a decision.

23. As far as respondent No.4 not submitting the application in pursuance to the advertisement before the cut off date is concerned, the Search-cum- Selection Committee, as canvassed by the learned Senior Counsel, is not an ordinary Selection Committee. They are experts in the field, have knowledge not only of the subject matter but also of who are the persons of proven eminence working in the field and who substantively fulfil the requirements of the job to which selection is to be made; and if they nominate a person who may not have applied, looking to his eminence, expertise and knowledge of the subject, in the absence of any mala fides in this regard alleged or proved, the wisdom of the experts is not to be taken lightly or interfered with by this Court by reason of some irrelevant technicality, that too at the instance of a person whose locus to file this petition is doubtful and who prima facie seems to be put-up by somebody else for assailing the selection process."

34. It would be very relevant at this stage to refer to the observations of the Supreme Court in the case of ***Basavaiah (Dr.) vs. Dr. H.L. Ramesh & Ors., (2010) 8 SCC 372***, as follows:-

> *"20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinised the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinised the merits and demerits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.*
>
> *21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.*
>
> *22. A similar controversy arose about 45 years ago regarding appointment of Anniah Gowda to the post of Research Reader in English in Central College, Bangalore in University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] in which the Constitution Bench unanimously held that normally the courts should be slow to interfere with the opinions expressed by the experts particularly in a case when there is no allegation of mala fides against the experts*

> *who had constituted the Selection Board. The Court further observed that it would normally be wise and safe for the courts to leave the decisions of academic matters to the experts who are more familiar with the problems they face than the courts generally can be.*
>
> *23. We have been called upon to adjudicate a similar matter of the same University almost after half a century. In a judicial system governed by precedents, the judgments delivered by the Constitution Bench and other Benches must be respected and relied on with meticulous care and sincerity. The ratio of the Constitution Bench has not been properly appreciated by the learned Judges in the impugned judgment."*

35. In the present case the candidature of respondent No.3 was first scrutinized by high powered Search-cum-Selection Committee which gave its recommendation on 24.02.2020 followed by an approval of the Appointments Committee of the Cabinet. There is no gainsaying that the Committee which carried out the selection would have scrutinized the eligibility as well as the merit of respondent No.3 before making the recommendation. The Committee constituted of the experts in the field with knowledge in the subject and was best equipped to decide whether respondent No.3 fulfilled the requirements of the Advertisement. In the absence of any allegations of *mala fides* it is not for this Court to interfere with the wisdom of the experts. I would only echo the observations of the Division Bench in ***Jai Singh Chauhan (supra)*** that Courts have a limited role to play while examining the recommendations of the Expert Selection Committees and it is prudent and safe to leave the decision to the Academician and experts in the field.

36. Insofar as the contention of the petitioner that respondent No.3 was appointed as a Reader without fulfilling the requisite qualifications, suffice would it be to note that the petitioner has already filed a writ petition bearing WP No.12660/2015 before the Jabalpur High Court challenging the appointment as Reader in a University at Bhopal, which is stated to be pending. In view of this it is not open to the petitioner to assail the said appointment in the present petition.

37. For all the aforesaid reasons, I find no merit in the present petition and the same is accordingly dismissed. Pending application also stands dismissed.

JYOTI SINGH, J

NOVEMBER 6th , 2020

yo/yg/sr