
(2014) 07 AHC CK 0119
In the Allahabad High Court
Case No : Service Bench No.-581 of 2014

Akhilesh Tripathi	Vs	APPELLANT
The State Of U.P.		RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Constitution of India, 1950 — Article 164, 226, 356, 356(1), 361

Citation : (2014) 6 ADJ 686 : (2014) 6 ALJ 33 : (2014) 4 ESC 1889

Hon'ble Judges : Sanjay Misra, J;Brijesh Kumar Srivastava, J

Bench : Division Bench

Advocate : C.B. Pandey, Advocate for the Appellant; Prabhat Kumar and Srideep Chatterjee, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—The petitioner claims to be involved in the profession of news reporting and has filed this writ petition under Article 226 of the Constitution of India seeking the following reliefs:-

- i) issue a writ, order or direction including a writ in the nature of Quo Warranto thereby ousting the opposite party No. 7 Sri Shailendra Kumar Tripathi from the office of District Rural Development Agency, Raebareli which he has usurped the public office District Rural Development Agency, Raebareli holding the post of Assistant Engineer therein for which he is quite disqualified and under no authority of law he is entitled to hold the post of Assistant Engineer in the aforesaid public office of District Rural Development Agency, Raebareli.
- ii) issue a writ, order or direction including a writ in the nature of Certiorari thereby quashing the alleged order dated 21.04.2005 passed by opposite party No. 2 as contained in Annexure No. 8 to the writ petition.
- iii) issue a writ, order or direction including a writ of mandamus thereby restraining the opposite party No. 7 from working and discharging his duties on the post of Assistant Engineer, District Rural Development Agency, Raebareli.

iv) issue any other order or direction deemed just and proper in the circumstances of the case.

v) allow the writ petition with costs.

2. Sri C.B. Pandey, learned counsel for the petitioner has submitted that once the Respondent No. 7, Shailendra Kumar Tripathi was dismissed from service after due inquiry on 01.09.1992 and when his resignation was accepted on 03.08.1992 then the Respondent No. 1 (Principal Secretary) could not have set aside both the said orders to re-instate the Respondent No. 7 in service vide his order dated 21.04.2005 which is impugned in this writ petition.

3. The facts of the case as pleaded by the petitioner in the writ petition can be summarised as follows:-

1. The Respondent No. 7 was engaged as a daily wager since 11.06.1985 to work as an Assistant Engineer in the District Rural Development Agency, Bahraich.

2. The DRDA is a supervisory autonomous body doing Rural Development and the Chairman is the District Magistrate who is the appointing authority of its employees.

3. The appointing authority vide its order dated 27.01.1986 appointed the Respondent No. 7 as Assistant Engineer on ad-hoc basis in the pay scale of Rs. 850-1720 till a regular appointment is made by the State Government or he can be terminated earlier.

4. The Respondent No. 7 was suspended on 29.10.1991 and in the inquiry he was found guilty of the charges hence he was dismissed by the order dated 01.09.1992.

5. The dismissal order dated 01.09.1992 also directed recovery of Rs. 16,02,391/- from the Respondent No. 7.

6. After the order of suspension (29.10.1991) and prior to the order of dismissal (01.09.1992) the Respondent No. 7 submitted a resignation letter dated 01.08.1992 which was accepted by the District Magistrate on 03.08.1992 with a rider that the Disciplinary proceedings already pending against him shall continue and in case any loss to the Government is proved against him he shall be liable for it.

7. The order dated 03.08.1992 was challenged by the Respondent No. 7 in Writ Petition No. 5822(SB) of 1992 (Shailendra Kumar Tripathi Vs. State of U.P. & others).

8. The Respondent No. 7 also challenged the order of dismissal dated 01.09.1992 in Writ Petition No. 6911(SB) of 1992 (Shailendra Kumar Tripathi Vs. State of U.P. & others).

9. Both the writ petitions were clubbed and an interim order dated 12.05.1993 was passed wherein the order dated 03.08.1992 (acceptance of resignation) and

order dated 01.09.1992 (Dismissal) were stayed with a direction that he will be treated in service and be entitled to salary and emoluments.

10. The DRDA filed SLP (Civil) No. 21444 of 1993 wherein by the order dated 07.04.1994 the Supreme Court set aside the interim order dated 12.05.1993 and the High Court was required to decide the writ petition within four months.

11. After nearly 10 years thereafter the Respondent No. 7 filed an application for withdrawal of the writ petition which was allowed on 10.12.2004 and the writ petition was dismissed as withdrawn.

12. Upon withdrawal of the writ petition the Respondent No. 2 has passed the impugned order dated 21.04.2005 whereby the order dated 03.08.1992 (acceptance of resignation) and order dated 01.09.1992 (Dismissal) have been set aside on the ground that they were passed illegally.

13. The Respondent No. 7 was consequently re-instated and directed to join in the office of the Commissioner, Department of Rural Development, U.P. Lucknow and be paid salary.

4. In this writ petition an interim order dated 30.05.2014 has been passed whereby the operation of the impugned order dated 21.04.2005 has been stayed for the reason that the State Government had passed the impugned order in bad faith.

5. Sri S.K. Kalia, learned Senior Counsel appearing for the Respondent No. 1 has raised a preliminary objection regarding maintainability of this writ petition. He states that the petitioner is not a news reporter but is a busy body out to harass the Respondent No. 7 with ulterior motives. According to him, a writ of quo-warranto would lie against an illegal order of appointment and not against an order of reinstatement since it would not amount to a fresh appointment. He states that there is no challenge to the initial appointment order nor there is any challenge to the eligibility of the Respondent No. 7 in light of Respondent No. 7's service conditions or executive instructions.

6. According to him, the Respondent No. 7 was given regular appointment in 1987 w.e.f. 27.01.1986 and is a regular employee of DRDA. He states that a person not aggrieved by an appointment order has no locus hence cannot maintain a writ petition. A writ of quo-warranto can be issued when an appointment is contrary to statutory rules and since no such grounds have been raised in this writ petition such a writ cannot be issued.

7. In support of his arguments learned counsel has placed reliance on the following decisions:-

a) Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others,

b) B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others,

c) Union of India (UOI) and Others Vs. Ranbir Singh Rathaur and Others etc. etc.,
d) (2000) 10 SCC 253-Manubhai J. Patel and another Vs. Bank of Baroda and others.

e) (1991) 6 SCC 632-T.K. Lathika Vs. Seth Karsandas Jamnadas.

8. The preliminary objection has been contested by learned counsel for the petitioner where he states that the Respondent No. 7 has usurped the public office and the Respondent No. 1 is supporting him by collusion and against law since the order dated 07.04.1994 passed by the Supreme Court in SLP (civil) No. 21444 of 1993 has been ignored. The petitioner claims to be a registered press reporter of newspaper United Bharat. In support of his submissions Sri C.B. Pandey has relied upon the decisions in The University of Mysore and Another Vs. C.D. Govinda Rao and Another, and B.R. Kapur Vs. State of Tamil Nadu and Another,

9. Upon hearing learned counsels for the parties we propose to decide the preliminary objection raised by the respondent.

10. In Central Electricity Supply Utility of Odisha (Supra) the Supreme Court in paragraph 21 has held as quoted here under:-

21. From the aforesaid exposition of law it is clear as noontday 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.

11. In Retired Armed Forces Medical Association (Supra) the Supreme Court held as quoted here under:-

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 can be enforced only by an aggrieved person except in the case where the writ prayed for is for Habeas Corpus.

57. It is settled law that 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.

70. In the instant case, there is no violation of statutory provision and, therefore, in our view, a writ of Quo Warranto does not lie. If there be any doubt, it has to be resolved in favour of upholding the appointment.

78. The High Court, in the instant case, was not exercising certiorari jurisdiction. Certiorari jurisdiction can be exercised only at the instance of a person who is qualified to the post and who is a candidate for the post. This Court in *Dr. Umakant Saran Vs. State of Bihar and Others*, held that the appointment cannot be challenged by one who is himself not qualified to be appointed. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, a Constitution Bench of this Court held as under:

The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded.

12. In *University of Mysore (Supra)* the Supreme Court quoted from the Halsbury's Laws of England as under:-

7. As Halsbury has observed:

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.

13. The Supreme Court in *B.R. Kapur (Supra)* held in paragraphs 70 and 79 as quoted hereunder:-

70. One of the arguments advanced on behalf of the respondents was the immunity of the Governor under Article 361 of the constitution. The genesis of the said arguments is that the Governor of a State not being answerable to any Court in exercise of performance of the powers and duty of his office or for any act done or purported to be done by him in the exercise and performance of those powers and duties and respondent No. 2 having been appointed as Chief Minister in exercise of powers of the Governor under Article 164, the said appointment as well as the exercise of discretion by the Governor is immune from being challenged and is not open to judicial review. The arguments of the counsel for the respondents is also based on the ground that any consideration by the Court to the legality of such an appointment is not permissible as it is a political thicket. The decision of this Court in *R.K. Jain Vs. Union of India and Others*, has been relied upon. At the outset, it may be stated that the immunity provided to the Governor under Article 361 is certainly not extended to an appointee by the Governor. In the present proceedings, what has been prayed for is to issue a writ of quo warranto on the averments that respondent No. 2 was constitutionally disqualified to usurp the public office of the Chief Minister, who has been usurping the said post unauthorisedly on being appointed by the Governor. In fact the Governor has not been arrayed as a party respondent to the proceedings. In the very case of *R.K. Jain*, it has been held by this Court in paragraph 73 that judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. It has been further stated in paragraph 70 of the said judgment that in a democracy governed by rule of law surely the only acceptable repository of absolute discretion should be the courts. Judicial review is the basic and essential feature of the Indian constitutional scheme entrusted to the judiciary. It is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority, should be within the constitutional limitation and if any practice is adopted by the executive, which is in violation of its constitutional limitations, then the same could be examined by the Courts. In *S.R. Bommai and others Vs. Union of India and others etc. etc.*, this Court held that a proclamation issued by the President on the advice of the council of ministers headed by the Prime Minister is amenable to judicial review. Even Justice Ahmadi, as he then was, though was of the opinion that the decision making of the President under Article 356 would not be justiciable but was firmly of the view that a proclamation issued by the President is amenable to judicial review. Justice Verma and Justice Yogeshwar Dayal held that there is no dispute that the proclamation issued under Article 356 is subject to judicial review. So also was the view of Justice Sawant and Justice Kuldip Singh and Justice Pandian, where Their Lordships have stated that the exercise of power by the

President under Article 356(1) to issue Proclamation is subject to the Judicial review at least to the extent of examining whether the conditions precedent to the issuance of the Proclamation have been satisfied or not. According to Justice Ramaswamy, the action of the President under Article 356 is a constitutional function and the same is subject to judicial review and according to the learned Judge, the question relating to the extent, scope and power of the President under Article 356 though wrapped up with political thicket, per se it does not get immunity from judicial review. According to Justice Jeevan Reddy and Agarwal, JJ, the power under Article 356(1) is a conditional power and in exercise of the power of judicial review, the court is entitled to examine whether the condition has been satisfied or not. But in the case in hand, when an application for issuance of a writ of quo warranto is being examined, it is not the Governor who is being made amenable to answer the Court. But it is the appointee respondent No. 2, who is duty bound to satisfy that there has been no illegal usurpation of public office. Quo warranto protects public from illegal usurpation of public office by an individual and the necessary ingredients to be satisfied by the Court before issuing a writ is that the office in question must be public created by the constitution and a person not legally qualified to hold the office, in clear infringement of the provisions of the constitution and the law viz. Representation of the People Act has been usurping the same. If this Court ultimately comes to the conclusion that the respondent No. 2 is disqualified under the constitution to hold public office of the Chief Minister, as has already been held, then the immunity of Governor under Article 361 cannot stand as a bar from issuing a writ of quo warranto. In the present case, it is the State Government who has taken the positive stand that there has been no violation of the constitutional provisions or the violation of law in the appointment of respondent No. 2, as Chief Minister, the correctness of that stand is the subject matter of scrutiny.

79. In so far it relates to Article 361 of the Constitution, that the Governor shall not be answerable to any Court for performance of duties of his office as Governor, it may, at the very outset, be indicated that we are considering the prayer for issue of writ of Quo Warranto against the respondent No. 2, who according to the petitioner suffers from disqualification to hold the public office of the Chief Minister of a State. A writ of Quo Warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only an usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification, which debars the person to hold such office. So as to have an idea about the nature of action in a proceedings for writ of quo warranto and its original form, as it used to be, it would be beneficial to quote from Words and Phrases Permanent Edition, Volume 35A page 648. It reads as follows:-

The original common-law writ of quo warranto was a civil writ at the suit of the

crown, and not a criminal prosecution. It was in the nature of a writ of right by the King against one who usurped or claimed franchises or liabilities, to inquire by what right he claimed them. This writ, however, fell into disuse in England centuries ago, and its place was supplied by an information in the nature of a quo warranto, which in its origin was a criminal method of prosecution, as well to punish the usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the crown. Long before our Revolution, however, it lost its character as a criminal proceeding in everything except form, and was applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor, the fine being nominal only; and such, without any special legislation to that effect, has always been its character in many of the states of the Union, and it is therefore a civil remedy only. *Ames v. State of Kansas*, *People v. Dashaway Assn.*

14. A perusal of the decisions referred to above give a clear understanding as to when a writ of quo-warranto can be issued. The jurisdiction of the High Court in this regard can be exercised when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules.

15. The law laid down also settles that the concept of locus standi is strictly applicable to service jurisprudence when legality or correctness of an action is questioned. One not having a locus should not be allowed entry otherwise it is likely to exceed the limits of quo warranto which is not permissible.

16. In the present case the petitioner has not pleaded that the Respondent No. 7 lacks the eligibility to hold the office of an Assistant Engineer whereas the Respondent No. 7 has averred that he is possessed of the requisite qualifications to be appointed as an Assistant Engineer.

17. On the other hand the Respondent No. 7's appointment was not made under any Statutory Rules of service. It is the own case of the petitioner in paragraph 4 of the writ petition that DRDA is a supervisory and autonomous body and its employees are directly recruited and governed by its governing body on orders issued from time to time. The appointment letter of the Respondent No. 7 also clearly mentions that his service in the DRDA are not State Government Services. The relevant portion is quoted hereunder:-

18. As such when the Respondent No. 7 has the eligibility to be appointed as an Assistant Engineer and his services are not governed by any Statutory Service Rules it cannot be held that his appointment was contrary to Statutory Rules. Therefore the law laid down by the Supreme Court in *Central Electricity Supply Utility of Odisha (Supra)* is squarely applicable to the facts of the present case.

19. In *Retired Armed Forces Medical Association (Supra)* it has been held that the law is settled that a writ of quo-warranto does not lie if the alleged violation is not of a statutory nature. In the present case when the impugned order has been passed there is no violation of any statutory provisions since the initial appointment and reinstatement of the Respondent No. 7 is not governed by any

statutory provisions.

20. The Supreme Court in the decision of University of Mysore (Supra) had referred to Halsbury's Law of England where it has been laid down that a citizen can claim a writ of quo-warranto but he must satisfy the Court that the office in question is a public office and has been held without legal authority.

21. In the present case neither the challenge to the Respondent No. 7 is on the issue that he is disqualified due to not having the qualifications for the post nor can it be held that he is holding a public office as alleged by the petitioner.

22. It is the common case of the parties that DRDA is an autonomous body with the District magistrate as its Chairman. He is the appointing authority of the employees of DRDA. The employees so appointed are governed by the terms of their appointment letters or executive instructions. Neither the terms of the appointment letter nor the executive instructions have statutory force. Hence the Respondent No. 7 having been appointed by the competent authority i.e. the District Magistrate he would be governed by the terms and conditions of his appointment and to argue that the appointment is not in accordance with law would be incorrect. The termination order and the acceptance of resignation have not been adjudicated on merits since the writ petitions there against were dismissed as withdrawn without any decision on the challenge involved therein. The impugned order has been passed for the reason that the termination and resignation accepted simultaneously were rendered illegal in the eyes of law.

23. The Supreme Court in B.R. Kapur (Supra) has held that the appointee is duty bound to satisfy that there has been no illegal usurpation of public office when a writ of quo-warranto is being examined. The necessary ingredients are that the office in question must be public, created by the Constitution (Statute) and the person holding it is either not qualified to hold it or it is in clear infringement of the provisions of law.

24. In light of the averments made in the respective affidavits of the parties the fact that the Respondent No. 7 was initially appointed not under any statute is quite clear. The fact that the Respondent No. 7 possesses the eligibility qualification for the post of an Assistant Engineer is not in dispute. The fact that the appointment is not on a public post is apparent from the appointment letter itself which clearly stipulates that the appointment is not a State service nor is it governed by any Statutory Rules.

25. Therefore the Respondent No. 7 was not holding a public post nor he was ineligible for the post of an Assistant Engineer, nor there is any infringement of any provision of a Statute. As such the ingredients necessary for this Court to issue a writ of quo-warranto do not exist in the facts of this case.

26. This writ petition for the relief of quo-warranto is therefore not maintainable.

27. The second and third relief claimed is of a certiorari to quash the order dated 21.04.2005 whereby the Respondent No. 7 has been reinstated by setting aside

the order of dismissal and the order accepting the resignation and a mandamus to restraint the Respondent No. 7 from working and discharging duties on the post held by him in DRDA, Bahraich.

28. These two reliefs of certiorari and mandamus have been claimed by the petitioner relating to the services of the Respondent No. 7. It is not the case of the petitioner that he is an applicant to the post held by the Respondent No. 7. It is not his case that he is qualified and eligible for the post of Assistant Engineer (Civil) in DRDA. It is also not his case that if the Respondent No. 7 is removed the petitioner may have a chance at being appointed. It is not his case that he is aggrieved for not being considered or appointed to the post by DRDA.

29. The jurisdiction to issue a writ of certiorari can be exercised only at the instance of a person who is qualified for the post and who is a candidate for the post. The appointment cannot be challenged by one who himself is not qualified to be appointed. Therefore the present petitioner who claims to be citizen and news reporter cannot maintain this writ petition for issue of a writ in the nature of certiorari and mandamus against the Respondent No. 7.

30. For the reasons recorded herein above we find that this writ petition is not maintainable. The preliminary objection regarding its maintainability is upheld.

31. It is held that the relief sought by the petitioner for issue of a writ in the nature of quo-warranto and mandamus against the Respondent No. 7 and a writ in the nature of certiorari against the impugned order dated 21.04.2005 passed by the Respondent No. 2 is not maintainable at the instance of the petitioner.

32. The preliminary objection is allowed and the writ petition is dismissed as not maintainable.

33. No order is passed as to costs.