

(2015) 03 AHC CK 0140

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2272 of 2010

Jagdish Pandey

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 ADJ 159 : (2015) 6 ALJ 20 : (2015) 3 AWC 2287 : (2015) LabIC 3988 : (2015) 2 UPLBEC 1310

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Advocate : S.S. Sachan and P.M.N. Singh, for the Appellant; C.K. Shahi and V.K. Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Yashwant Varma, J.—By this writ the petitioner seeks the issuance of a writ of Quo warranto questioning the appointment of the respondent No. 4 and assailing his continuance as the Principal of the Institution, Swami Yoganand Purva Madhyamik Vidyalaya Saifpur, Chandauli. The petitioner contends that he is a founder-member of the Society running the Institution aforementioned and remained Manager of the Managing Committee of the Institution from 15th August, 1972 to March, 1989. He alleges that the respondent No. 4 came to be appointed on 7th December, 2004 as Principal of the Institution although he does not possess the H.T.C., J.T.C., C.T. or B.T.C. Certificates as required under the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the "Rules 1978").

2. Shorn of unnecessary details, the case of the petitioner is that the respondent does not have the certificates aforementioned and that his mere holding of a B.Ed. Degree would not qualify him to be appointed as Headmaster in the recognized Institution. It is the admitted cases of parties that the respondent No. 4 was appointed in 2004 and has continued to function as such till date. This writ

petition itself came to be filed in January, 2010 when the same was entertained and the respondent was put to notice.

3. Before proceeding further it would be relevant to bear in mind the relevant statutory provisions on which would depend the validity of the appointment and continuance of the respondent No. 4. Rules 4 and 5 of the Rules, 1978 being relevant for our purposes, are extracted hereinbelow:

"4. Minimum Qualification.--(1) The minimum qualifications for the post of Assistant Teacher of a recognised school shall be Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or equivalent examination (with Hindi and a teacher's training course recognised by the State Government or the Board such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate, or Certificate of Training).

(2) The minimum qualifications for the appointment to the post of Headmaster of a recognised school shall be as follows:

(a) A degree from a recognised University or an equivalent examination recognised as such;

(b) A teacher's training course recognised by the State Government or the Board, such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate, or Certificate of Training; and

(c) Three years teaching experience in a recognised school.

5. Eligibility for appointment.--No person shall be appointed as Headmaster or Assistant Teacher in substantive capacity in any recognised school, unless--

(a) he possesses the minimum qualifications prescribed for such post;

(b) he is recommended for such appointment by the Selection Committee."

4. Rule 4 of the aforementioned 1978 Rules came to be amended on 12th June, 2008 in terms of which a B.Ed. degree holder became eligible for being appointed as a Headmaster of a recognised school. The amendment reads as under:

"1. Short title and commencement.--(1) These rules may be called the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) (Fifth Amendment) Rules, 2008.

(2) They shall come into force with effect from the date of their publication in the Gazette.

2. Amendment of Rule 4.--In the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rules, 1978 (1978-LTT-V-192[157]) hereinafter referred to as the said rules, for the existing Rule 4 the following rule shall be substituted, namely:--

"4. Minimum, qualification.--(1) The minimum qualification for the pot of

Assistant Teacher of a recognized school shall be a Graduation Degree from a University recognized by U.G.C., and a teachers training course recognized by the State Government or U.G.C. or the Board as follows:--

1. Basic Teaching Certificate.
2. A regular B.Ed. Degree from a duly recognized Institution.
3. Certificate of Teaching
4. Junior Teaching Certificate
5. Hindustani Teaching Certificates

(2) The minimum qualifications for the appointment to the post of head master of a recognized school shall be as follows--

(a) A degree from a recognized University or an equivalent examination recognized as such.

(b) A teacher's training course recognized by the State Government or U.G.C. or Board as follows:--

1. Basic Teaching Certificate.
2. A regular B.Ed. Degree from a duly recognized Institution.
3. Certificate of Teaching.
4. Junior Teaching Certificate.
5. Hindustani Teaching Certificate.

(c) Five years teaching experience in a recognized school."

5. Upon notices being issued, the respondent No. 4 has filed a response. However, a perusal of the reply filed, establishes that the basic issue of the respondent No. 4 not holding the certificates required under the aforesaid Rules and having continued only on the basis of a B.Ed. Degree is not disputed. The respondent No. 4, however, contracts that the petitioner as Manager had similarly made appointment of Smt. Krishnawati Singh and Sri Nagendra Pratap Singh on the post of Assistant Teacher although the aforementioned two persons also did not hold the certificates required under Rule 4. It is averred that the aforementioned teachers also held degrees of B.A. and B.Ed. and did not possess the certificates finding mention in Rule 4. Despite the above, the petitioner himself made the above appointments and, therefore, today he cannot contend that the appointment of the respondent No. 4 was invalid. It is further submitted that the challenge itself came to be laid after a gap of six years and therefore, also the above fact may be taken into consideration by this Court as speaking of the mala fide intention of the petitioner.

6. The said respondent has filed a Supplementary Counter-affidavit in these

proceedings to submit that the issue of various persons having been appointed as Assistant Teachers and functioning as Headmasters in Junior High Schools on the strength of a B.Ed. Degree alone has been taken note of by this Court. It is sought to be contended that on account of a prevailing mis-conception that the B.Ed. Degree was a qualification higher than the certificates mentioned in Rule 4, various persons came to be appointed as Assistant Teachers/Headmasters of Junior High Schools in the State of U.P. The attention of the Court was invited to an order made on Writ Petition No. 2020 of 2011 passed on 25th September, 2014 to submit that this Court is already seized of the controversy. On the strength of the orders passed on the aforementioned writ petition, it has been contended that almost 90 per cent of the teachers in Junior High Schools are being permitted to function and draw salary even though they hold a B.Ed. Degree.

7. The learned counsel appearing for the respondent No. 4 has submitted that the issuance of a writ of Quo warranto would lead to a chaotic situation where a large number of Junior High Schools would either be rendered headless or the staff depleted consequent to it being held that they had been wrongly appointed. It is submitted that the issuance of a writ by this Court in this case would open a flood gate of litigation with a large number of challenges being instituted against various serving Assistant Teachers and Headmasters of Junior High Schools and that therefore the issuance of the writ would clearly be deleterious to public interest.

8. Learned Standing Counsel appearing for the respondents opposing the issuance of the writ has submitted that a writ of quo warranto is a discretionary remedy and is not liable to be exercised in every case where alleged illegality has occurred or where public interest would not be served. He submits that the issue is of wide ramifications and would result in crippling Junior High Schools, which were continuing to function with the aid of teachers holding a B.Ed. Degree. He has submitted that the issuance of the writ not being in public interest, the prayer made in this writ petition was liable to be rejected.

9. It is lastly submitted that the issuance of the writ sought by the petitioner would be an exercise in futility inasmuch as post the amendment to the Rules, 1978 on 12th June, 2008 admittedly B.Ed. was introduced as a valid qualification to be held by a person vying to be appointed as Principal. On the strength of the above submission, it was stated that even if the writ were issued, the respondent No. 4 would be eligible to seek re-appointment on the post of Principal being otherwise qualified and eligible for being considered for appointment as a Headmaster of the Institution today.

10. Learned counsel for the petitioner has relied upon the following judgments of the Apex Court on the scope of a writ of Quo warranto (A) The University of Mysore and Another Vs. C.D. Govinda Rao and Another, AIR 1965 SC 491 : (1964) 4 SCR 575 ; (B) Rajesh Awasthi Vs. Nand Lal Jaiswal and Others, AIR 2013 SC 78 : (2013) ELR 137 : (2012) 135 FLR 926 : (2013) 1 RCR(Civil) 275 :

(2012) 10 SCALE 527 : (2013) 1 SCC 501 , and; Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others, (2013) 11 AD 377 : AIR 2014 SC 246 : (2013) 14 JT 522 : (2013) 13 SCALE 477 : (2014) 1 SCC 161 : (2014) 1 SCC(L&S) 1 . The learned counsel for the petitioner has submitted that the principles underlying the issuance of a writ of Quo warranto were authoritatively stated by the Constitution Bench of the Apex Court in University of Mysore (supra). He has placed reliance upon the following observations made by the Hon"ble Supreme Court of India in the said case:

"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, enquire 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 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 case, 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."

11. On similar lines, he has also relied upon the following from the judgment of the Apex Court in Rajesh Awasthi (supra):

"16. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another, (2002) 2 ACC 501 : AIR 2002 SC 2513 : (2002) 5 JT 125 : (2002) 5 SCALE 145 : (2002) 6 SCC 269 : (2002) 1 SCR 87 Supp : (2002) AIRSCW 2826 : (2002) 5 Supreme 55 held that a writ of quo warranto can be issued when appointment is

contrary to the statutory provisions. In *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*, AIR 2006 SC 3106 : (2006) 8 JT 293 : (2006) 8 SCALE 710 : (2006) 11 SCC 731 : (2006) 6 SCR 462 Supp : (2006) AIRSCW 4515 : (2006) 7 Supreme 4 , 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 Vs. Sahodar Prasad Mahto and Others*, AIR 2010 SC 3515 : (2010) 9 JT 192 : (2010) 9 SCC 655 : (2010) 10 SCR 561 : (2010) AIRSCW 5567 wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules."

12. Having heard the learned counsel for the parties, this Court deems it appropriate first to consider the background in which the dispute in question has travelled to this Court. In *Mohd. Sartaj and Another Vs. State of U.P. and Others*, AIR 2006 SC 3492 : (2006) 108 FLR 847 : (2006) 1 JT 331 : (2006) 1 SCALE 265 : (2006) 2 SCC 315 : (2006) SCC(L&S) 295 : (2006) 1 SCR 377 : (2006) 2 SLJ 208 : (2006) AIRSCW 399 : (2006) 1 Supreme 262 , the Apex Court held that the B.Ed. degree is not a recognised training qualification for an Assistant Teacher. In the said judgment, the Apex Court had held that the B.Ed. Degree was not a qualification recognised under Rule 4. The position in law as declared by the Apex Court finds echo in *Sanjay Kumar Tyagi Vs. State of U.P. and Others*, (2005) 1 AWC 824 : (2005) 1 ESC 713 and *Madhubala Upadhyaya*, Special Appeal No. 395 of 2007 decided on 19th January, 2009.

13. It can also not be disputed that this Court has already held that the amendments made to the Rules in 2008 and the inclusion of B.Ed. as a qualification for appointment was neither retrospective nor validatory of the various appointments made in Junior High Schools in the State of U.P. This aspect of the matter has been dealt with in great detail by a Division Bench of this Court in *Akhilesh Kumar Pandey v. State of U.P. and others*, 2009 (9) ADJ 9 (DB).

14. In light of the pronouncements of this Court as also of the Apex Court, it is clear that the appointment of the respondent No. 4 did not fulfill the statutory criteria/conditions. Admittedly on the date when the Respondent No. 4 came to be appointed he did not possess any of the certificates envisaged under Rule 4 of the Rules, 1978. Insofar as the degree in question is concerned, it came to be included as one of the recognised qualifications only in 2008 in terms of the amendments effected in Rule 4. The invalidity of the appointment is therefore stark and evident.

15. The only issue therefore left to be considered by this Court is whether circumstances exist which may compel it to refuse to issue the writ prayed for.

16. In proceedings relating to a writ of quo warranto, the petitioner is in the

position of a relator to the Court. Once a petition with appropriate allegations is filed before the Court, it is its duty to verify and consider the validity of the appointment of the concerned person in light of the relevant statutory rules. This remedy has been put in place to protect the citizens from usurpers of public offices and once it is found by the Court that the holder of office does not obtain the qualifications required and placed by statute, the writ must issue.

17. However to the above undisputed broad proposition, a caveat is liable to be attached.

18. A writ of quo warranto like all other prerogative writs is a discretionary remedy. It is primarily a weapon in the arsenal of this Court designed to control the executive from making appointments to public offices against law and to protect the public from being deprived of public offices to which it is entitled. However, it must be borne in mind that the writ may be refused where the Court finds that the petition is an outcome of malice or ill will. This because the pristine powers of this Court cannot be permitted to be invoked at the behest of a person who has personal scores to settle or where the Court finds that the foray itself is malicious and motivated. The second exceptional situation would be where the Court finds that the issuance of the writ would itself lead to inequitable results or to put it differently rather than subserving public interest, result in operating to the detriment thereof.

19. The challenge laid is therefore considered under the following broad heads.

MALICE AND MOTIVATED LITIGATION

20. Bearing in mind the primary and basic purpose for issuance of a writ of quo warranto can it be said that the purpose of this petition is to cleanse and remove from public office a usurper and restrain the executive from affecting illegal appointments?

21. This Court finds itself compelled to answer the above posed query in the negative. Admittedly the Petitioner was actively engaged in the affairs of the Society running the institution in question. Any, he was in fact a Manager of the said institution when he admittedly brought into service persons whose appointments suffered from the same fatal flaws as that of the Petitioner. When petitioned for issuance of a writ of quo warranto, this Court would be well within its rights to decline the same upon an enquiry into the conduct and motives of the Petitioner or where it finds that it would be vexatious to do so.

22. The Court places reliance upon the judgment of the Apex Court in B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, AIR 2006 SC 3106 : (2006) 8 JT 293 : (2006) 8 SCALE 710 : (2006) 11 SCC 731 : (2006) 6 SCR 462 Supp : (2006) AIRSCW 4515 : (2006) 7 Supreme 4 : "53. This Court in A.N. Shastri v. State of Punjab, held that the writ of quo warranto should be refused where it is an outcome of malice or ill will. The High Court failed to appreciate that on

18.1.2003 the appellant filed a criminal complaint against the second respondent Halakatte, the cognizance was taken by the criminal Court in CC No. 4152 of 2003 by the Jurisdictional Magistrate on 24.2.2003, process was issued to the second respondent who was enlarged on bail on 12-6.2003 and the trial is in progress. That apart, the second respondent has made successive complaints to the Lokayukta against the appellant which were all held to be baseless and false. This factual background which was not disputed coupled with the fact that the second respondent Halakatte initiated the writ petition as President of the 1st respondent Union, which had ceased to be a registered trade union as early as on 2-11.1992 suppressing the material fact of its registration having been cancelled, making allegations against the appellant which were no more than the contents of the complaints filed by him before the authorities which had been found to be false after thorough investigation by the Karnataka Lokayukta, would unmistakably establish that the writ petition imitated by Respondents 1 and 2 lacked in bona fides and it was the outcome of the malice and ill will of the 2nd respondent against the appellant. Having regard to this aspect of the matter, the High Court ought to have dismissed the writ petition on that ground alone and at any event should have refused to issue a quo warranto, which is purely discretionary. It is no doubt true that the strict rules of locus standi are relaxed to an extent in a quo warranto proceedings. Nonetheless an imposter coming before the Court invoking public law remedy at the hands of a constitutional Court suppressing material facts has to be dealt with firmly.

84. In our opinion, the finding of legal mala fides is unsustainable being based on a misunderstanding of the law and facts. When a competent and experienced officer of an outstanding merit is appointed to a higher post on contract basis after his superannuation from service in the larger public interest, it does not suffer from legal malice at all. The decision of the then Chief Minister, Sri S.M. Krishna, recorded in the file is also extracted by the High Court at p. 69 of SLP paper-book, Vol. II. In the context of the note put up by the Secretary of the Department, it is again extracted at pp. 67 and 68 which clearly bring out the fact that the appointment was made in the interest of the Board and the State at a time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element of urgency involved in making the appointment because of impending negotiations with World Bank scheduled for 9.2.2004. The writ petition, in our opinion, was motivated as Respondent 1 had lodged a false complaint to the Lokayukta against the appellant which was found to be baseless by the Lokayukta (Annexure P-9). A petition praying for a writ of quo warranto being in the nature of public interest litigation, it is not maintainable at the instance of a person who is not unbiased. The second respondent is the President of the first respondent Union. He has chosen this forum to settle personal scores against his erstwhile superior officer after his retirement. The proceeding, in our view, is not meant to settle personal scores by an employee of the department. The High Court, in our view, ought to have dismissed the writ petition filed by Respondent 1 at the

threshold."

THE LARGER PUBLIC INTEREST

23. The second aspect of the matter and which has weighed upon this Court to tread this path is this. The dispute in question itself appears to have arisen on account of the confusion prevalent at the time that a B. Ed degree was superior to the certificates finding mention in Rule 4 of the Rules, 1978 and that a holder thereof was qualified for appointment thereunder.

24. In *Raj Kumar Shukla (supra)* the Court on 15.9.2014 recorded as follows:

".....

From the approval letter dated 25.6.1999, it is evident that two other persons having same qualification were appointed who are working and are being paid salary under the Payment of Salary Act, 1978. Not only this, about 90% of the strength of teachers working in Junior High School, Statewide are the teachers who are said to be appointed with the qualification of B.Ed.

.....

The Court has also noticed that in the year 2008, necessary amendment in 1978 Rules has been made and B.Ed. degree since then is provided to be the eligibility criteria for appointment of Assistant Teacher. The dispute which survives relates only to the period prior to the year 2008 and the State Government, cannot be allowed to enforce dual standards by treating the similarly situated persons differently.

About 90% teachers in junior high schools are working with B.Ed. degree and are paid salary whereas the petitioner is deprived of his claim. This position deserves to be explained before this Court.

Let the Principal Secretary (Basic) U.P. Lucknow appear before this Court on 24.9.2014."

On the said date, when the matter was called the Court recorded as under:

".....

25. Shri Ramesh Upadhyay, learned Chief Standing Counsel on the basis of instructions does not dispute the position that a large number of Asst. Teachers with B.Ed. qualification are working in the department without whom it is not feasible to run the institutions and it is also admitted that regular salary is paid to them.

As far as the case of the petitioner is concerned, certain other contentious issues are also involved, which can only be resolved after hearing the parties. Learned Chief Standing Counsel prays for some reasonable time so that the State Government may come forward with a concrete stand to resolve the problem as regards the continuance of all such teachers with B.Ed. qualification, who

otherwise are not eligible as per the criteria envisaged under the Service Rules applicable prior to the amendment in the year 2008. Learned Chief Standing Counsel prays that the authorities would require atleast six weeks" time to address the issue and come forward with a concrete stand. Time prayed for is granted. Further hearing of the matter is accordingly deferred for a period of six weeks. List this matter again on 10th November 2014.

....."

26. The above facts establish that this systemic problem afflicting the Basic Education department of the State of U.P. is already engaging the attention of this Court. The issuance of a writ on this score would not only open flood gates, it would eclipse the continuance of various Assistant Teachers and Headmasters in Junior High Schools and jeopardize the functioning of these basic schools. More fundamentally and as is evident from the above narration of facts, this is not a case where the Petitioner alone has been permitted to continue on the post of Headmaster by virtue of his holding a B.Ed. degree.

27. The stand taken by the respondents establishes that the appointments were made in a state of prevailing uncertainty and confusion as to the true import of the rule and the subsequent amendments and it was only consequent to the declaration of the law by this Court that the issue came to be settled albeit against the holders of a B.Ed. Degree.

28. One may usefully refer to the following observations of the Apex Court in (M/ s. Shiv Shankar Dal Mills and others v. State of Haryana and others) And Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, AIR 1980 SC 1037 : (1980) 2 SCC 437 : (1980) 1 SCR 1170 : (1980) 12 UJ 55 :

"6. Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects:

Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon consideration as of public interest....."

LACHES AND ACQUIESCENCE

29. This Court further finds that the respondent No. 4 was appointed as far back as in 2004 and the petition admittedly came to be filed in this Court only in 2010. By the time, this writ petition has been taken up for final hearing, the respondent No. 4 has already functioned for more than 14 years and the challenge to his appointment itself came to be laid after more than six years.

Here it would be apposite to refer to and rely upon what the Hon"ble Supreme

Court came to hold in M.S. Mudhol and Another Vs. S.D. Halegkar and Others, (1993) 4 JT 143 : (1993) 2 LLJ 1159 : (1993) 3 SCALE 61 : (1993) 3 SCC 591 : (1993) 1 SCR 115 Supp :

"5. As regards the teaching experience, the 1st respondent's contention is that he had worked as a teacher for 9 years in a High School and Higher Secondary School which had up to 11 Standards. According to him, he also worked as a Lecturer in History. His further contention is that the post of the School Inspector in Karnataka where he was working as such and that of the teacher were interchangeable. Hence the selection committee had taken into consideration his experience in both the capacities. These facts are not controverted before us and in any case today, he has the requisite experience of teaching as he has been teaching the 11th and 12th classes continuously for 12 years now, since 1981, it can, therefore, be said that atleast as on date when his removal from the post of Principal is sought, he cannot be said to be disqualified on account of the lack of required teaching experience.

6. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the Court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ."

(Emphasis supplied)

30. A similar view was taken by a Single Judge of our Court when deciding the case of Nirmal Kumar Singh v. State of U.P. and others, Writ(A) No. 20614/2007 decided on 1.5.2007:

"The appointments of respondent Nos. 5 and 6 are continuing since 1994. Validity of order dated 10.1.1994 has not at all been questioned. Petitioner has conceded this fact that he has not questioned the validity of the aforementioned impugned order for the last more than 12 years. Hon"ble Apex Court, in the case of M.S. Mudhol (Dr.) v. S.D. Halegkar, 1999 (3) SCC 59, has taken the view that Post of Principal in Private School, though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by writ of quo warranto, even assuming that such a writ is maintainable, and that too when incumbent has functioned for nine years.

Consequently, this is not a fit case for issuance of writ of quo warranto."

31. More fundamentally and it is not disputed by parties, it is apparent that if the respondent No. 4 had been appointed post the amendment to the Rules in 2008, there would have been no cause for complaint. Even if the writ were issued against the respondent No. 4 today, it would not render him ineligible for being re-appointed. In fact, today he would be fully qualified to hold the post of Headmaster. Accordingly and in view of the above, this Court in the peculiar facts and circumstances of the case refuses to grant the writ as prayed for and the writ petition consequently stands dismissed.