
(2006) 04 GAU CK 0067
In the Gauhati High Court
Case No : Writ Petition (C) No. 456 of 2005

M.C. Nandeesha	Vs	APPELLANT
ML Bowmik and Others		RESPONDENT

Date of Decision : 07-04-2006

Acts Referred:

Central Agricultural University Act, 1992 — Section 12, 27, 27(1), 31, 9
Constitution of India, 1950 — Article 226

Citation : (2006) GLT 590 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : D.K. Biswas and S. Lodh, for the Appellant; S. Deb and S. Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

A.B. Pal, J.—The Petitioner is a professor in Aquaculture since 2001 in the College of Fisheries at Lambucherra under the Central Agricultural University, the third Respondent herein. The first Respondent Dr. M. L. Bhowmik is the Dean of the said College of Fisheries. According to the Petitioner, the appointment of Dr. Bhowmik as Dean was in violation of Statute 4 of the First Statutes which are part of the Central Agricultural University Act, 1992 (for short, "the Act") appearing in the schedule thereto inasmuch as he was not eligible for such appointment as he did not fulfill the requirement of the said provision. Statute 4 of First Statutes the said University provides:

4.(1) Every Dean of a college shall be appointed by the Vice-Chancellor from among the professors in the college for a period of five years and he shall be eligible for reappointment:

Provided that a Dean on attaining the age of sixty years shall cease to hold office as such:

Provided further that if at any time there is no Professor in a college, the Vice-

Chancellor, or a Dean authorized by the Vice-Chancellor in this behalf, shall exercise the powers of the Dean of the college.

2. The eligibility criteria gleaned from the above provision is that for appointment as a Dean, a person must be a professor in the same college and has not attained the age of sixty years. Admittedly, Dr. Bhowmik was not a professor of the said college and he attained the age of sixty years at the time of his appointment as Dean which fact prompted the Petitioner to put under challenge the appointment of Dr. Bhowmik as Dean. The said appointment of Dr. Bhowmik being in violation of the provision contained in Statute 4, the Petitioner has prayed for a writ of quo warranto in terms of his prayer that Dr. Bhowmik should be declared to have held the office of the Dean of the college of Fisheries without having required eligibility as required under Statute 4(1) and directing the second Respondent, the Vice-Chancellor of the University to withdraw/revoke the appointment or extension of appointment of the first Respondent to the office of the Dean. According to the Petitioner, the office of the Dean is a public office which is held by Dr. Bhowmik without legal authority and, therefore, even a stranger can ask for appropriate remedy by a writ of quo warranto.

3. All the three Respondents filed a common affidavit-in-opposition contending, inter alia, that a writ of quo warranto does not lie in the given facts of the case as the office of the Dean of the college of Fisheries is not a public office. It has, however, been admitted that in view of the provisions contained in Statute 4 the Dean has to be a professor of the University, but contended at the same time that Dr. Bhowmik was appointed without violating the said provision as the University conformed to the norms contained in ICAR regulations which permits an incumbent holding a position equivalent to the rank of a professor to continue in the office of the Dean upto the age of 65 years. It has, however, been admitted that before appointment to the post of Dean in the said college, Dr. Bhowmik, had served at Central Institute of Freshwater Aquaculture, Kalyani as Principal Scientist wherefrom he retired attaining the age of sixty years and at the time of his retirement from that office, he was drawing the pay of Rs. 20,450/- in the pay scale of Rs. 16,400- 22,400/-. According to the Respondent, the post of Principal Scientist held by Dr. Bhowmik being equivalent to the post of professor in an Agricultural University, there was no illegality in his appointment to the office of the Dean of the said college.

4. From the rival pleadings briefly noted above, two questions which have fallen for consideration of this Court are:

(I) Whether appointment of the first Respondent as Dean of the college of Fisheries and extension of his term of office is without any legal authority;

(II) whether the office of the Dean is a public office and the first Respondent a usurper to that office for the purpose of determining whether a writ of quo warranto, as prayed for, is a legally sustainable remedy.

5. I have heard Mr. D.K. Biswas, learned Counsel along with Mr. S. Lodh, learned

Counsel for the Petitioner and Mr. S. Deb, learned Sr. Counsel assisted by Mr. S. Chowdhury, learned Counsel for the Respondents.

6. Adverting to the first question, the admitted position that has emerged from the rival pleadings and submission of the parties is that Statute 4 of the First Statutes contained in the Act specifically provides that a person must be a professor of the college for a period of 5 years and has not attained the age of 60 years for becoming eligible for appointment as a Dean of the college. Admittedly, the first Respondent was not a professor of the said college and he attained the age of 60 years before the date of his appointment as Dean of the college. Though apparently the said appointment is not in terms with the provision contained in Statute 4, several issues have been kicked up round this central controversy by way of referring to several related provisions touching not only on eligibility but the question of maintainability of a writ of quo warranto as well. It is the submission of Mr. Biswas that Section 12 of the said Act provides that the manner of appointment of a Dean and the powers and functions he may exercise and perform may be prescribed by Statutes only. The said Statute provides as follows:

12. Every Dean and every Director shall be appointed in such manner and shall exercise such powers and perform such duties as may be prescribed by Statutes.

Mr. Biswas submits that by no other instrument such as ordinance of the University, the manner of appointment of Dean including the powers and functions to be exercised or performed by him can be provided. Accordingly, Statute 4 of the First Statutes has made provision with regard to the appointment of the Dean according to which no person who is not a professor of the college or who has attained the age of 60 years is eligible for appointment as Dean of the said college. This provision contained in the Statute cannot be in any way modified or varied by any ordinance or other instruments. The appointment of the first Respondent as Dean of the said college is, according to Mr. Biswas, also violative of Section 31 of the Act which provides that every employee of the University shall be appointed under a written contract which shall be lodged with the University and a copy of which shall be furnished to the employee concerned. In the case of Dr. Bhowmik, the first Respondent herein, no such written contract exists, Mr. Biswas argues.

7. Though in the affidavit-in-reply the Respondents have sought to clarify that the first Respondent before his appointment as Dean in the said college held a post of a Principal Scientist in the Central Institute of Freshwater Aquaculture, Kalyani, which is equivalent to the post of a professor of the Agricultural University and, therefore, he fulfills the eligibility criteria regarding qualification, this contention is seriously opposed by Mr. Biswas on the ground that Statute 4, as has been noticed above, does not contemplate any post equivalent to professor of the said college for the purpose of appointment as Dean. The clear, specific and definite provision is that the person must be a professor of college of Fisheries only not its equivalent, for a period of 5 years in order to become

eligible for appointment as a Dean of the said college. The second and third Respondents being the authority of the University have, therefore, no power conferred by any law to dilute the said provision by reading into it something more, that a person holding equivalent post is also eligible for appointment as Dean. In order to buttress this submission Mr. Biswas has placed reliance on the decision of this Court in *Dr. M. Laitphlang and Others Vs. State of Meghalaya and Others*, wherein a Division Bench of this Court has made the following important observation in para 25 of the said judgment:

25. While considering the above aspects of the matter, it needs to be pointed out, at the very outset, that the concept of appointment, absorption and/or promotion in service in relaxation of relevant recruitment rules has undergone a prominent development. The present view is that there can be no relaxation of the basic and fundamental rules of recruitment. Moreover, strict conformity with the recruitment rules is insisted both for direct recruits as well as promotees. (Ref: *Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others*, Thus, the service jurisprudence, now, clearly draws a distinction between the conditions of recruitment and conditions of service. In other words, in the realm of service jurisprudence, a distinction is, now, drawn between the conditions of recruitment and the conditions of service. While the conditions of service may be relaxed, conditions of recruitment cannot be so relaxed. In other words, the provisions for relaxation, in general, contained in recruitment rules cannot be resorted to for relaxing the conditions of recruitment, the only exception being, when the recruitment rules in question, contain provisions for relaxation of the conditions of recruitments. The minimum period of qualifying service for promotion, which recruitment rules impose, is really a condition of recruitment and such a condition, not being a condition of service, cannot, generally, be relaxed unless the Rules in themselves provide for otherwise (*J.C. Yadav and others Vs. State of Haryana and others*,). A Division Bench of this Court have set the matter at rest in the case of *Ananda Ram Borah v. State of Assam* reported in 2003 (2) GLT 78, by observing and laying down as follows:

The question, which calls for determination by this Court is, whether the power to relax the Rule would go to the extent of relaxing conditions of recruitment also or it can be only to the extent of relaxing the conditions of service? Can a direct recruit for recruitment to the post of LDA avoid competitive examination? Can the Government exercise power of relaxation of Rule of recruitment requiring a direct recruit to appear in the competitive examination and such relaxation of the recruitment Rules is permissible. In *Aslam Babalal Desai Vs. State of Maharashtra*, the Apex Court has emphasized the need of strict compliance of the recruitment Rules for both direct recruits and promotees. It is held that there cannot be any relaxation of the basic or fundamental rules of recruitment. That was a case where the rule permitting relaxation of conditions of service came for consideration and it was held by a three Judges Bench that the rule did not permit relaxation of the recruitment rules. In *Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others*, the Apex

Court observed, "The condition precedent, therefore, is that there should be an appointment to the service in accordance with Rules and by operation of the Rules undue hardship has been caused.. It is already held that the condition of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to rules. The former cannot be relaxed." Thus, according to the Apex Court there is distinction between the conditions of recruitment and conditions of service. Appointment has to be made in accordance with the recruitment rules and, thereafter, there may be a relaxation in the service condition. Similarly, in *State of Orissa and others Vs. Smt. Sukanti Mohapatra and others*, it was held that though the power of relaxation stated in the rule was in regard to "any of the provisions of the rules," this did not permit relaxation of the rule of direct recruitment without consulting the Commission and the entire ad hoc service of a direct recruit could not be treated as regular service. In *Dr M.A. Haque and Others Vs. Union of India (UOI) and Others*, and in *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, it has been emphatically laid down that the rule relating to recruitment could not be relaxed. The judgment in the matter of *Suraj Prakash Gupta (supra)* has also reiterated the principle laid down by the Apex Court that there cannot be any relaxation of the conditions of recruitment. The conditions of recruitment and conditions of service are distinct. The Government has the power to relax conditions of service, whereas the conditions of recruitment cannot be relaxed even though the rule intends to do so.

The above decision being backed by several decisions of the Supreme Court set at rest the proposition that the condition of recruitment cannot be subjected to relaxation without amendment of the relevant provisions of law which regulates the manner of recruitment. This legal position has been reiterated by this Court in *Gurupada Chakraborty v. Tripura University* reported in (2005) 1 GLR 457. The position which is given further clarification and confirmation has been stated in para 24 which is quoted below:

24. Thus, it is clear that the advertisement, in question, has been published by the State/ official Respondents not exactly in tune with the UGC notification and they had, indeed the freedom to do so under the law inasmuch as the guidelines of the UGC are not mandatory until the State Government and/or the University concerned chooses to adopt the same. There is nothing in the materials on record to show that the UGC recognizes the Associateship in Documentation and Information Research Centre, Bangalore, under the Indian Statistical Institution as equivalent Master's Degree in Library Science but even if it were so, the fact remains that the State/official Respondents could not have gone beyond the said advertisement. The advertisement having made it clear that only Master's Degree in Library Science was the requisite academic qualification for appointment to the post of Deputy Librarian, no equivalent degree or Associateship could have been utilized, to our mind, for treating a person qualified to participate in the selection process, which followed the publication of the said advertisement.

8. Confronted with the above position of law galvanized by the line of decisions noticed above, Mr. Deb, learned sr. counsel for the Respondents has, however, adverted to this question of eligibility from an altogether different angle. He has referred to the provision of Section 27 of the Act which provides for making provisions by ordinance of the University on matters specified therein. In exercise of the said powers conferred u/s 27 of the Act, the Vice Chancellor of the University with the prior approval of the Central Government prescribes academic and other qualifications for the purpose of appointment to various teaching and academic positions of the University including the position of a Dean. The ordinance in question provides in S1. No. 4 the essential qualifications for the post of a Dean which are (i) Doctorate degree in any branch of concerned discipline, (ii) Minimum 13 years experience of teaching in the subject out of which at least 3 years should be in the rank of Professor or equivalent. Giving strong emphasis on the word "equivalent" Mr. Deb submits that the first Respondent, though was never a professor of the college of Fisheries, certainly fulfilled the above essential qualifications prescribed by the ordinance by obtaining a doctorate degree in the concerned discipline and by serving more than 13 years as teacher including more than 3 years in the rank equivalent to a professor. The relevant provision with regard to the essential qualification for appointment to the post of Dean appearing in the ordinance is quoted below:

4. Deans (Agriculture/Veterinary/ Horticulture and Forestry/Fisheries/ Agricultural Engineering and Post Harvest Technology/ Post Graduate Studies/ Home Science: Essential:

- (i) Doctorate degree in any branch of concerned discipline;
- (ii) Minimum 13 years experience of teaching in the subject out of which at least 3 years should be in the rank of Professor or equivalent;
- (iii) outstanding contribution as evidenced by published papers in reputed journals/ books or other contributions and recognition.

Desirable:

- (i) Administrative experience on a responsible position in an agricultural University/ College.

9. Even if the contention of Mr. Deb that the first Respondent possessed all the essential qualifications prescribed in S1. No. 4 in the ordinance for the post of Dean is accepted, the question that still looms large whether such essential academic and other qualifications prescribed in the above noted ordinance have the effect of doing away with the provisions contained in Statute 4 of the First Statute of the Act. It is to be noticed that the power of making ordinance available u/s 27 of the Act clearly provides that such ordinance must be subject to the provisions of the Act and the Statutes. Again, Clause (j) of Sub-section (1) of Section 27 of the Act provides that the ordinance made under that section may provide for appointment and emoluments of the employees other than those

for whom provision has been made in the Statutes. As has been seen, the First Statute contained in the schedule of the Act has made provisions for appointment of Dean and, therefore, no ordinance can make any provision which is repugnant to the provisions contained in the Statutes. Statute 4 of the First Statutes clearly provides that a person must be a professor for 5 years in the said college of Fisheries and has not attained the age of 60 years for becoming eligible for appointment of Dean. These two essential eligibility requirements being conditions of recruitment cannot be in any way relaxed or modified by any provision made in the ordinance. If, however, the academic qualifications prescribed in the ordinance is read together with the provision contained in Statute 4, it can at best be argued that a person who is a professor for 5 years in the college of fisheries and has not attained the age of 60 years must also have a doctorate degree in the concerned discipline with minimum 13 years experience of teaching in the subject. But again, the other part of the provision in the said ordinance requiring "3 years teaching experience in the rank of professor or equivalent" being repugnant to the provision contained in Statute 4 which requires minimum 5 years experience as professor in the same college cannot be said to be legally sustainable. Thus, the First Statutes being part of the Principal Act and the ordinance being only delegated/ subordinate legislation, the latter cannot prevail over the former and proceeding from this settled legal position it has to be held that any provision in the ordinance which is repugnant to any provision in the Act (which includes First Statutes) shall be invalid to the extent of repugnancy. For the above reason, I am of the firm view that no provision in the said ordinance can replace or has replaced any provision in the Statute and, therefore, the essential corollary deducible therefrom is that a person who has not served for 5 years as professor in the same college of Fisheries is not eligible for appointment to the post of Dean.

10. The question of age being the other vital issue on eligibility has been focussed from different angles. It is seen from Statute 4 of the First Statutes that for appointment as Dean a person must be below 60 years of age. Admittedly, at the time of appointment, the first Respondent had already attained the age of 60 years rendering him ineligible for the post. But a feeble argument has been advanced by Mr. Deb that rules and bye laws of the Indian Council of Agricultural Research Society (ICAR) have a provision in bye law 33 that an outstanding scientist may be reemployed even if at the age of 60 years. The said bye law reads as follows:

33 (a). The age of retirement of scientific and technical personnel in the service of the Council shall be 60 years. No extension of service shall be given but where absolutely essential in the interest of research, the Council may re-employ outstanding Scientists on suitable terms with the prior approval of the President.

11. It is nobody's case that the first Respondent was re-employed in the interest of research with the approval of the President and it has not been made clear how the said bye law of the ICAR shall apply to the Central Agricultural University

and how that provision can have the effect of modifying Statute 4 of the First Statutes which clearly provides that a person attaining the age of 60 is not eligible for appointment as Dean in the college of Fisheries. Thus, the submission of Mr. Deb on this Count does not sound to me convincing. The upshot of the above discussion is that the first Respondent being not a professor of the said college of Fisheries and having attained the age of sixty was not eligible for Dean of that college.

12. Coming to the next question relating to nature of the office of Dean, applicability of a writ of quo warranto in relation to such office and locus standi of the Petitioner in approaching the Court by such a writ proceeding, the learned Counsels for the parties have advanced vociferous arguments on several aspect placing reliance on a number of decisions of the Apex Court and other High Courts. It may be said at the very outset that it is no longer *res integra* that even a stranger whose motives are not improper can apply for a writ of quo warranto if the other conditions for such approach exist. The conditions are that before a citizen can claim a writ of quo warranto he must satisfy the Court, *inter alia*, that (a) the office in question is a public office and (b) the same is held by a usurper without legal authority which necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not (From Halsbury). In *Dr. P.S. Venkataswamy Setty v. University of Mysore* reported in AIR 1964 karn 159, the view taken in para 13 is gainfully quoted below:

13. We can therefore take it as well established proposition that if the writ asked for is strictly a writ of quo warranto in respect of a public office, the Petitioner need have no personal interest. If, however, the position or the office held by the Respondents cannot be described as a public office in the sense explained above, the case will not be one for quo warranto in the strict sense but will be one only for some other type of appropriate writ order or direction under Article 226 of the Constitution, before getting which the Petitioner will have to establish that he has some personal interest in the matter which the law recognizes as sufficient.

13. The Petitioner being the professor of the college of Fisheries cannot be said to be a stranger and certainly has a right to be interested in the office of the Dean of the said college if held by a person having no authority of law. The question of locus standi, therefore, need not detain me any further as it is clear from the above decision that the Petitioner has a locus standi to approach the Court for a judicial review of the appointment of the first Respondent as the Dean of the said college which, according to him, is a public office.

14. That a writ of quo warranto shall issue only against the person who holds the public office created under a statute or the Constitution without any authority of law is also well settled. An office to become a public office must, therefore, be created by a statute or the Constitution. In *Jagram v. Gwalior Town and Country Development Authority, Gwalior* reported in AIR 1987 MP 11, this position has been made clear in the following lines appearing in para 5 of the said judgment:

Law is well settled that writ of quo warranto shall not issue against a person who does not hold a public office, created under a statute or the Constitution. Section 47 does not create the post of "Financial Advisor". It merely authorizes the Authority to "appoint such other officers and servants as may be necessary and proper for efficient discharge of its duties" though the Proviso circumscribes this power envisaging that "no post shall be created save with prior sanction of the State Government" and that "the power of appointment shall be subject to restriction as State Government may, from time to time, impose.

In the above noted case, the post of Financial Advisor was not created by any statute and mainly for that reason, the writ Petitioner could not succeed. However, what has been made clear in the above noted decision is that an "office" must be created either by the Constitution or by a Statute to qualify for becoming a "Public office".

15. The word "office" means a position to which certain duties are attached. In a different context, on a question whether a Member of the Parliament holds an office, the Supreme Court in P.V. Narsimha Rao Vs. State (CBI/SPE), made following observations in paras 61 and 67 which would provide help to understand the correct meaning of the term "office".

61. We will first examine the question whether a Member of Parliament holds an office. The word "office" is normally understood to mean "a position to which certain duties are attached, especially a place of trust, authority or service under constituted authority" (See: Oxford Shorter English Dictionary, 3rd Edn., p. 1362). In *McMillan v. Guest* Lord Wright has said:

The word "office" is of indefinite content. Its various meanings cover four columns of the New English Dictionary, but I take as the most relevant for purposes of this case the following: "A position or place to which certain duties are attached, especially one of a more or less public character.

In the same case Lord Atkin gave the following meaning:

...an office or employment which was subsisting, permanent, substantive position, which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders.

In *Statesman (P) Ltd. v. H.R. Deb and Mahadeo v. Shantibhai* this Court has adopted the meaning given by Lord Wright when it said:

An office means no more than a position to which certain duties are attached.

67. It would thus appear that although in the Constitution the word "office" has not been used in the provisions relating to Members of Parliament and Members of the State Legislatures but in other parliamentary enactments relating to Members of Parliament the word "office" has been used. Having regard to the provisions of the Constitution and the Representation of the People Act, 1951 as well as the Salaries, Allowances and Pension of Members of Parliament Act, 1954

and the meaning that has been given to the expression "office" in the decisions of this Court, we are of the view that membership of Parliament is an "office" inasmuch as it is a position carrying certain responsibilities which are of a public character and it has an existence independent of the holder of the office. It must, therefore, be held that the Member of Parliament holds an "office".

16. Mr. Biswas strenuously argued that "Dean" is not a post but an "office" only distinct from other salaried posts of the University. A professor with five years experience in the college is eligible for appointment as Dean only for five years during which he draws the salary of the professor. After five years, if the term is not extended, he has either to retire or to revert back to the substantive position. Above nature of the employment shows its essential character of an office which is undoubtedly a "Public office" having regard to the nature to its powers and functions. His above arguments seem to have emanated from his anxiety that unless it can be shown "Dean" is a Public office, his prayer for a writ of quo warranto is bound to flop. Proceeding from that position he continues to reel out examples of Advocate General, High Court Judge and District Judge to show which are "office" and which are not.

17. As has been seen above, an office must be a public office in order to invoke a writ of quo warranto and such office must be created by the Constitution or by a statute with the duty of acting in execution or in enforcement of the law. The observation made by the Mysore High Court in Dr. P.S. Venkataswamy (Supra) appearing in para 11, the relevant part of which is gainfully quoted below:

In India we have a republican Constitution. Hence in India the nature of office in respect of which quo warranto will lie must be taken to be an office created by the Constitution itself or by any statute and invested with the power or charged with the duty of acting in execution or in enforcement of the law. We might add that the office may be either an elective office or one in respect of which a nomination or appointment is made by a specified authority and that in the case of elective office, we generally have the procedure of election petitions which makes it unnecessary for any one to proceed by way of a writ of quo warranto.

18. The office of the Dean as discussed above has been created by Section 9 of the aforesaid Act which provides as follows:

9. The following shall be the officers of the University, namely:

- (1) the Chancellor;
- (2) the Vice Chancellor;
- (3) Deans;
- (4) Directors;
- (5) The Registrar;
- (6) The Comptroller; and

(7) Such other officers as may be prescribed by the Statutes.

Statute 4(3) of the First Statutes regarding powers and functions of the Dean provides as follows:

4(3). The Dean shall be the Head of the college and shall be responsible for the conduct and maintenance of the standards of teaching and research in the college and shall have such other functions as may be prescribed by the Ordinances.

A "Dean" is, thus, an office created by Act and also an "office" or "employment" which exists even without its holder, if seen in the light of the decision in P.V. Narashimha Rao (Supra) as noted above. "Dean" is a "Public Office" because the same has been created by the Act to exercise powers and perform functions assigned to that office for carrying out purposes of the Act. If powers and functions assigned to "Dean" by Statute 4(3) do not make it "Public office" perhaps nothing more can make it so.

19. What should be the appropriate writ in the present factual position is the next point for consideration which has received much focus from the rival submissions. Regarding the nature of a writ of quo warranto, the Supreme Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, made following important observations, quoting from Halsbury:

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.

20. Once it is found that an office is a public office and an incumbent of that office is not eligible to hold the same, such a position provides appropriate cause of action for a citizen to seek a writ of quo warranto. Such a view derives support from a decision of the Apex Court in *Mir Ghulam Hussan and Others Vs. The Union of India (UOI) and Others*, In para 9, the observation reads as follows:

In our opinion if there is any complaint about the appointment or promotion of an officer who is not eligible under the rules to be promoted or appointed, the proper remedy is to make an application for the issue of a writ of quo warranto and since the Petitioners have not done so, this particular complaint cannot be entertained in this petition.

The word "office" galvanizes the view earlier taken that though "Dean" is an officer, the same can also be a "Public office" for the purpose of resorting to writ of quo warranto.

21. If placed on the anvils of the above noted position, the strenuous submission of Mr. Deb that the office of Dean is not an office at all, much less a public office, but a rank or position only does not appear to have any force. As noticed above, the Central Act itself has created the office of the Dean to be in charge of the administration of the college of Fisheries and it has been vested with the powers to act for execution of the statutory functions. Thus, to reiterate, the office of the Dean is held to be a "Public office" for all purposes and intent. I have already held that the first Respondent being not a professor of the said college and having attained more than 60 years of age at the time of his appointment was not eligible for the post of Dean of that college and, therefore, I have no hesitation to hold that he is a usurper to the said office of "Dean. Proceeding from the above legal position, it is further held that a writ of quo warranto is an appropriate remedy against the first Respondent holding the office of Dean without authority of law.

22. In the result and for the foregoing reasons, this writ petition has merit and accordingly, the same is allowed. The office of the Dean is hereby declared vacant. The appointment of Dr. M. L. Bhowmik, the first Respondent herein, is hereby set aside. This will not, however, in any way affect the validity of any action already taken by the said Respondent as Dean of the said college of Fisheries, nor will it involve him in any liability to refund any remuneration received by him in his capacity as Dean. The second and the third Respondents may proceed to appoint a new Dean in accordance with the provisions of the Act and the Statutes. In the facts and circumstances of the case, there shall be no order as to cost.