
(2016) 01 AHC CK 0190
In the Allahabad High Court
Case No : Service Bench No. 47 of 2016

Nutan Thakur

APPELLANT

Vs

S. Javeed Ahmad and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Constitution of India, 1950 — Article 142, Article 226
Electricity Act, 2003 — Section 85

Citation : (2016) 1 ADJ 714 : (2016) 2 AILLJ 451 : (2016) 1 AllWC 429 : (2016) 34 LCD 467

Hon'ble Judges : Narayan Shukla and Ashok Pal Singh, JJ.

Bench : Division Bench

Advocate : Asok Pande, for the Appellant; C.S.C., A.S.G. and Kaushik Chatterji, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Ashok Pande, learned counsel for the petitioner as well as Mr. Vijay Bahadur Singh, learned Advocate General for the State, Smt. Bulbul Godiyal, learned Additional Advocate General, Mr. Mohd. Mansoor Ahmad, learned Chief Standing Counsel, Mr. Vivek Kumar Shukla, learned Additional Chief Standing Counsel, Mr. Ajay Kumar Shukla, learned Additional Chief Standing Counsel for the respondent No. 2, Mr. S.P. Rai, learned counsel for the respondent No. 3 and Mr. Kaushik Chatterji, learned counsel for the respondent No. 4.

2. The petitioner has sought the following reliefs:-

"a. kindly issue a Writ in the nature of Quo Warranto thereby asking respondent No. Sri S. Javeed Ahmad, Director General of Police, Uttar Pradesh, as under what authority of law he is occupying the post of DGP of U.P., in spite of being disqualified for being considered and appointed on this post as per the law declared by the Hon'ble Supreme Court under Article 142 in the matter of Writ Petition (civil) 310 of 1996 Prakash Singh & Ors. Vs. Union of India And Ors. , 2006 (8) SCC 1 and to quash the appointment after summoning the same.

b. kindly issue any order to the benefit of the petitioner for equal and non-discriminatory application of law as this Hon"ble Court deems fit in the interest of justice."

On the following grounds:

"(1) Because as stated in great details in the petition, Sri S. Javeed Ahmad is an usurper and illegal occupant to the post of DGP, UP.

(2) Because hence the Writ of Quo Warranto lies here against Sri S. Javeed Ahmad.

(3) Because as stated above, the petitioner is not a total stranger to the cause and has more than one direct and indirect relation with who occupies the post of DGP, UP and in what manner.

(4) Because hence the petitioner can file a writ of Quo warranto against the illegal occupant to the post of DGP, UP."

3. The facts as expounded by the petitioner are that the respondent No. 1, who has been appointed as Director General of Police, had been placed at serial No. 14 of the seniority list of Indian Police Service Officers in the State of Uttar Pradesh. He was promoted to the rank of Director General on 30.06.2015. There are thirteen Indian Police Service Officers over and above to the respondent No. 1 for consideration of appointment to the post of Director General of Police. The respondent No. 1 does not satisfy the minimum criteria prescribed for appointment on the post of Director General of Police. The Supreme Court in the case of Prakash Singh & Ors. Vs. Union of India & Ors. , 2006 (8) SCC 1 has issued directions to the Central Government, State Governments and Union Territories for compliance of the directions till framing of the appropriate legislation; State Security Commission. The Supreme Court directed the State Governments to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State Police and for laying down the broad policy guidelines so that the State Police always acts according to the laws of the land and the Constitution of the country. The Supreme Court further observed that the recommendation of this Commission shall be binding on the State Government.

4. Secondly, the Supreme Court further issued direction that the Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department, who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation. The Director General of Police may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services

(Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties. The Supreme Court issued further certain directions to regulate the services of Inspector General of Police and other officers but since the matter on hand relates to Director General of Police, we take notice of the aforesaid directions of the Supreme Court, which are sufficient to deal with the case.

5. The petitioner has stated that only three senior-most officers could be legally considered for appointment to the post of Director General of Police as per law promulgated by the Supreme Court under Article 142 of the Constitution of India in Prakash Singh's case (supra). The respondent No. 1 was not eligible for appointment since he was placed at serial No. 14 of the seniority list of Indian Police Service Officers. The petitioner has placed several decisions of Karnataka High Court, Andhra Pradesh High Court and Bombay High Court, which have come forward to issue a writ of quo warranto in such a case and set aside the appointment of the person concerned. It has been submitted that the office of the Director General of Police is a public office and the respondent No. 1 is said to be usurper of it being not qualified to be appointed on the post in question.

6. In support of his aforesaid submissions, Mr. Ashok Pande, learned counsel for the petitioner has cited a decision of the Supreme Court i.e. B.R. Kapur v. State of T.N. & another , (2001) 7 SCC 231 in which the Constitution Bench of the Supreme Court held that the writ of quo warranto is a writ, which lies against a person, who according to the relator is not entitled to hold an office of public nature and is only an usurper of the office. 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 ground 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.

7. In response, learned Advocate General of the State of U.P. has submitted that the Supreme Court has taken up the issue raised by the petitioner in Contempt Petition (Civil) No. 177 of 2015 filed in Writ Petition (Civil) No. 310 of 1996 in which the Chief Secretary to the Government of Uttar Pradesh has been arrayed as respondent No. 25. The State Government is responding to the Supreme Court about the action taken pursuant to the directions issued by the Supreme Court in Prakash Singh's case (supra). He further pointed out that one writ petition being Writ Petition No. 10958 (M/B) of 2015 has been filed before this Court in which the petitioner has complained the breach of the directions issued by the Supreme Court by appointing the Director General of Police for a period much less than the minimum stipulated period of two years. This Court called for the Principal Secretary (Home) to file his personal affidavit, explaining the steps which have been taken by the State Government for complying with the judgment of the Supreme Court, whether there has been any violation of the

norms prescribed by the Supreme Court as aforesaid and what steps the State Government intends to take hereinafter to ensure compliance.

8. It has further been submitted by the learned Advocate General that since the State is responding to the Supreme Court as well as this Court in the aforesaid matters, if the petitioner is so much interested and is serious about the reformation of the police services, the petitioner may join in the aforesaid proceedings. He has also cited various decisions of the Supreme Court in which the Supreme Court had discussed the scope of writ of quo warranto.

9. In *University of Mysore v. C.D. Govinda Rao and another*, AIR 1965 SC 491 (V 52 C 80), the Constitution Bench of the Supreme Court dealt with the scope of issuance of a writ of quo warranto under Article 226 of the Constitution of India. In this case before the High Court, the petitioner had prayed for a writ of quo warranto on the ground that the person, Anniah Gowda, appointed as a Research Reader in English in the Central College, Bangalore had suffered short of the prescribed qualification. The Supreme Court considered the conditions, which had to be satisfied before a writ could be issued in such a proceeding. Paragraph-6 of the judgment is extracted below:

"6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings."

10. The High Court held that the appointment of a person was invalid and so it had quashed the Resolution of the Board of Appointment of the University of Mysore recommending his appointment.

11. The matter reached the Hon"ble Supreme Court. The Supreme Court held that the judgment of the High Court does not show that any statutory provisions or rules were placed before the Court and that in making the appointment of appellant No. 2 these statutory provisions had been contravened. The Supreme Court further held that the Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. Ultimately the Supreme Court set aside the order passed by the High Court.

12. In *High Court of Gujarat & another v. Gujarat Kishan Mazdoor Panchayat & others*, (2003) 4 SCC 712, the Division Bench of three Hon"ble Judges of the Supreme Court further considered the scope of writ of quo warranto. In this case, a prayer to issue a writ of quo warranto was also asked for to direct Shri N.A. Acharya to state the basis of his right to be appointed as President of the

Industrial Court of Ahmedabad and to set aside and quash the appointment order. The Supreme Court held that the High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of writ of certiorari. It further held that a writ of quo warranto can only be issued when the appointment is contrary to statutory rules. Paragraphs-22 and 23 of the judgment are extracted below:

"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of writ of certiorari. (See R.K. Jain Vs. Union of India and Others; , (1993) 4 SCC 119 para 74).

23. A writ of quo warranto can only be issued when the appointment is contrary to statutory rules. (See Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner & Secretary to Govt. of Haryana and Another; , (2002) 6 SCC 269)."

13. In the case of B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees" Association & others , (2006) 11 SCC 731 (II) also the Supreme Court discussed the principles of law governing the Writ of Quo Warranto. Paragraphs-49 and 51 of the judgment are extracted below:

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

51. It is settled law by a catena of decisions that court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain vs. Union of India , (1993) 4 SCC 119 was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, it may be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that only public law declaration

would be made at the behest of public spirited person coming before the Court as a petitioner. Having regard to the fact that the neither of respondent Nos. 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of Quo Warranto so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post."

14. In *Hari Bansh Lal v. Sahodar Prasad Mahto & others* , (2010) 9 SCC 655, the Supreme Court referred its earlier decision delivered in High Court of Gujarat (supra) in which the Supreme Court held that the High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of writ of certiorari. The Supreme Court further held that the suitability or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules.

15. The Supreme Court further discussed the scope of a writ of quo warranto in the case of *Rajesh Awasthi v. Nand Lal Jaiswal and others* , (2013) 1 SCC 501. In this case, the question for consideration of the Supreme Court was whether the High Court was justified in issuance of a writ of quo warranto holding that the appellant has no authority in continuing as the Chairperson of the U.P. State Electricity Regulatory Commission on the ground that the Selection Committee had not complied with sub-section (5) of Section 85 of the Electricity Act, 2003. Paragraphs-19 and 20 of the judgment are extracted below:

"19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana* , (2002) 6 SCC 269 held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy* (supra), 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* (supra) 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.

20. We are of the view that the principle laid down by this Court in the above-mentioned judgment squarely applies to the facts of this case. The appointment of the appellant, in our considered view, is in clear violation of sub-section (5) of Section 85 of the Act. Consequently, he has no authority to hold the post of Chairperson of the U.P. State Electricity Regulatory Commission."

16. In this case, the Supreme Court further held that we fully agree with the learned senior counsel for the appellant that suitability of a candidate for appointment does not fall within the realm of writ of quo warranto and there cannot be any quarrel with that legal proposition. However, the Supreme Court observed that non-compliance of sub-section (5) of Section 85 of the Act is not a procedural violation, as it affects the very substratum of the appointment, being a mandatory requirement to be complied with, by the Selection Committee before recommending a person for the post of Chairperson.

17. On the scrutiny of the facts of the present case, in view of the principles laid down by the Supreme Court for issuance of a writ of quo warranto discussed above, we find that the petitioner has not denied that the respondent No. 1 was enlisted in the seniority list of Indian Police Service Officers. The petitioner has not disputed the qualification of the respondent No. 1, rather she herself has stated that the respondent No. 1 carries good track record and has good service experience, but it is also a reality that the seniority in service should also be considered over which the Supreme Court has given special emphasis of watchdog in which three senior-most Indian Police Service Officers are to be taken under the zone of consideration. Since apart from the criteria of seniority, as the other conditions have also been laid down by the Supreme Court, we are of the view that it was within the domain of the Selection Committee which has recommended his name for appointment on the post of Director General of Police.

18. After going through the principles laid down by the Supreme Court above, we are of the view that unsuitability may not be the criteria for issuing a writ of quo warranto as it can be seen in a writ of certiorari filed by the person aggrieved. The petitioner has not claimed that she is aggrieved person, therefore, we are of the view that the plea, which has been taken for issuance of writ of quo warranto i.e. of procedural irregularity in appointment, if considered, would be beyond the scope of writ of quo warranto. That apart, the plea of non compliance of the judgment of the Supreme Court is still under consideration by the Supreme Court in Contempt Petition (Civil) No. 177 of 2015 filed in Writ Petition (Civil) No. 310 of 1996 as well as by this Court in Writ Petition No. 10958 (M/B) of 2015. Therefore, we are of the opinion that on the basis of the facts as well as grounds pleaded in the writ petition, a writ of quo warranto is not maintainable. Insofar as the relief to quash the appointment of respondent No. 1 is concerned, that can be sought only by person aggrieved and it has not been pleaded that the petitioner is an aggrieved person.

19. In the result, the writ petition is dismissed as not maintainable.