

(2021) 06 SHI CK 0177

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 22 Of 2021

Satish Chandra Mishra

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 30-06-2021

Acts Referred:

Citation : (2021) 06 SHI CK 0177

Hon'ble Judges : L. Narayana Swamy, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Dilip Sharma, Manish Sharma, Balram Sharma, K.D. Shreedhar, Shreya Chauhan, Ashok Sharma, Ritta Goswami, Basant Thakur, Devyani Sharma

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

1. Aggrieved by the dismissal of Writ Petition challenging the appointment of Mr. Nand Lal Sharma, as Director (Personnel) in Satluj Jal Vidyut

Nigam Limited (for short 'SJVN') in the year 2011 and the extension order of 2016, the petitioner has come up before this Court by filing an

Intra Court Appeal under Clause 10 of the Letters Patent constituting the High Court of Judicature at Lahore, the 21st March 1919, as extended to the

High Court of Himachal Pradesh.

2. SJVN is a public sector listed company with its headquarters in Shimla and is engaged in hydro power generation, mainly from the river Satluj.

The petitioner was appointed as Deputy Manager in SJVN in 1996 and subsequently got promotions, and in the year 2017, he was working as

Additional General Manager.

3. The petitioner alleges that Shri Nand Lal Sharma, the 6th respondent,

belonged to the cadre of Himachal Pradesh Administrative Services under the pay scale of Rs.37,400-67,000/- plus Rs.8700/- Grade Pay. The SJVN appointed him an Executive Director (Human Resources) on a deputation basis w.e.f. 28. 7.2008.

4. In 2011, the Public Enterprise Selection Board (3rd respondent) invited applications after advertising the same in newspapers for Director (Personnel) in SJVN.

5. The eligibility requirements for applying to the said post were mentioned in the advertisement, Annexure P-1, which prescribed four categories. The categories were (a) Central Public Sector Executives; (b) State Public Sector Executive; (c) Private Sector Executives and (d) Government Officers.

In the category of Government officers, the officers of the level of Joint Secretary to the Government of India or an equivalent scale of pay and other similarly placed persons were eligible.

6. The 3rd respondent short-listed 18 candidates, and 6th respondent was one of them. The petitioner nowhere mentions that he was eligible or he applied for the same.

7. The 6th respondent Shri Nand Lal Sharma figured at Sr.No.13, and he was mentioned as a State Government candidate. However, in the column of the pay scale, he was given the head of the pay scale applicable to Public Sector Undertakings, which prescribed a turnover of at least Rs.100 crore.

8. The petitioner's grievance is that the 6th respondent was not eligible because he was not holding the rank as mentioned in sub-clause (d) of the

advertisement about Government Officers. Still, to accommodate him, he was given the benefit of State Public Sector Executive under sub-clause (b),

which prescribed annual turnover over Rs.100 crore by giving him the benefit of his previous post of Executive Director. The petitioner submits that

the 6th respondent was appointed as Executive Director (Human Resources) on a deputation basis. As such, deputation would not entitle him to claim

the benefit of eligibility applicable to State Public Sector Executives. Since he was a government official, his eligibility was as prescribed in sub-clause

(d).

9. The eligibility criteria mentioned for Government Officers in sub clause (d) is extracted as follows:

â??d) Government Officers:

Provided that notwithstanding the qualification and experience prescribed, officers of the level of Joint Secretary, Government of India or on

equivalent scale of pay or Major General in the Army or equivalent rank in Navy/Air Force, on the date of vacancy with adequate experience in the

relevant field will be eligible for consideration on immediate absorption basis.â??

10. The grudge of the petitioner is that in the cases of all other 18 candidates, their eligibility regarding pay scale and turnover was considered against

their parent department, and the 6th respondent was an exception to accommodate him, which is arbitrary and a violation of public policy.

11. The 3rd respondent, Public Enterprise Selection Board, did not file its separate reply. However, the Union of India filed a detailed reply. The

Central Government, in paragraph 3, contends that the Government recognized the need to develop a cadre of professional managers within the public

sector. Hence unless markedly better candidates were available from outside, the policy prefers the employees of public sector undertakings for the

appointment to the Board level post on a preference basis. The replying respondent further submits that the appointment was finalized in consultation

with the Ministry of Power. In all, 35 applications were received, out of which 17 were found ineligible. Out of the remaining 18 applicants, Shri Nand

Lal Sharma was appointed on merits after considering various aspects. In paragraph 6 of the reply, it was contended that Shri Nand Lal Sharma was

on deputation in SJVN w.e.f. 28.7.2008 and was availing the prevalent pay scale of SJVN. The Board had recommended his name, keeping in view

his performance about managerial capability, leadership, broad vision, track record, and other inputs provided by the Additional Secretary, Ministry of

Power, Principal Resident Commissioner, Government of Himachal Pradesh, and CMD of SJVNL.

12. The SJVN and Mr. Nand Lal Sharma also filed their separate replies contending that there is no arbitrariness in this appointment. They also raised

various other grounds, including lack of delay and latches.

13. Learned Single Judge vide a detailed judgment dismissed the Civil Writ Petition because the petition seeking a writ of quo warranto was

misconceived and legally not maintainable.

14. Challenging the said judgment, the appellant-petitioner has come up before

this Court by filing an Intra Court Appeal.

15. We have heard learned counsel for the parties and have gone through the record.

16. Ld. Counsel for SJVNL argued that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any

special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. He further

contended that the grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited

his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid

death and eventually proclaim "Deogratias" "thanks to God".

17. It would be just and proper to extract the relevant portion of the judgment passed by Ld. Single Judge, which reads as follows:

15. Issuance of a writ of quo warranto is a discretionary remedy. Authority of a person to hold a high public office can be questioned inter alia in

the event an appointment is violative of any statutory provision. While examining this question, the Court is not concerned with technical rules of delay

or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality.

16. For the issuance of a writ of quo warranto, it is necessary that the office in respect of which the writ is sought must be a public office and the test

of public office is whether the duties of the office are public in nature and the office in question has been created by statute or the Constitution.

Judicial review for the purpose of issuance of quo warranto will lie if:

(i) the holder of a public office was not eligible for appointment;

(ii) the processual machinery relating to consultation was not fully complied with;

(iii) the appointment was contrary to the statutory rules or statutory provisions.

17. Thus, what can be taken to be well settled is that a Writ of Quo Warranto will be issued in respect of an office, only if the following conditions are

satisfied:

firstly that office must be public;

secondly it must have been created by a statute or by the Constitution itself;

thirdly the office must be of substantive character, an office independent in title;

fourthly the respondent must have asserted his claim to the office; and
lastly that the respondent is not legally qualified.

18. In short, quo warranto will not issue unless there is infringement of provisions having the force of law (as distinguished from mere administrative instructions or rules not having the force of law) or some provisions of the Constitution itself. The question to be determined before issuing quo warranto is whether the impugned appointment has been contravened by binding rule of law and not whether it has involved a manifest error. In case where the appointment is made in contravention of the Government orders, the same cannot be questioned as Government orders are only administrative instructions which are issued under the Government's executive power and having no force of law.

19. As already observed above, there are no statutory rules or provisions under which the post of Director (Personnel) is required to be filled up, rather, the same has to be filled up on the basis of the administrative instructions and, therefore, in such circumstances, a writ of quo warranto cannot be issued. Additionally, it would be noticed that the post in question is not a office of public nature and, therefore, also a writ of quo warrant is not maintainable.

18. There is nothing to take a view different from the view taken by the learned Single Judge, and on this ground, we affirm the judgment passed by the learned Single Judge. Our conclusion is similar to that of the learned Single Judge.

19. For the appellant's satisfaction, we would also like to discuss the merits of the case because SJVNL is, although a public sector undertaking but is listed in the stock exchanges, and small equity held by small investors.

20. The 6th respondent, Shri Nand Lal Sharma, was working on deputation in SJVNL w.e.f. 2008. The reply of the Union of India reveals that he was drawing a pay scale as applicable to SJVNL employees. Merely because in the list, the words State Government are mentioned against his name would not mean that he was not working for a public sector undertaking. It is not in dispute that the 6th respondent Mr. Nand Lal Sharma was working as Executive Director of SJVNL, which would fall in the category of Rs.100 crore plus turnover. Thus, there cannot be any other interpretation that Mr. Nand Lal Sharma was eligible to apply under the category

of State Public Sector Executive in clause (b) of the advertisement,

Annexure P-1, which provided that State Public Sector Executives working in the companies with annual turnover more than Rs.100 crores were

eligible to apply. Needless to say, that the turnover of SJVNL is much above Rs.100 crores, and that is not even in dispute.

21. Given above, we hold that Mr. Nand Lal Sharma was eligible to apply as per Annexure P-1, and merely because in the list, he was mentioned as a

State Government employee would not make him ineligible.

22. The learned Single Judge vide his detailed and very well-reasoned judgment also held that the appointment in question to the post of Director

(Personnel) was not made in violation of some statutory provisions or of rules having the force of law, but made in pursuance to the administrative

instructions which have been issued by the Government's executive powers and having no force of law. The Court further held that the petition

seeking a writ of quo warranto was totally misconceived and not legally maintainable. After analyzing the entire submissions, and scrutinizing the entire

record, we have also arrived at the same conclusion to which Ld. Single Bench had arrived.

23. Given above, there is no merit in the appeal, which is accordingly dismissed. Pending applications, if any are closed.