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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3629 of 2015

Kamlesh Shukla, S/o Shri Sitaram Shukla, aged about 40 years, R/o Loknath Vihar, Lingiyadih, Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Health & Family Welfare, Mantralaya, Mahanadi Bhawan, New Raipur (C.G.)
2. Director, Medical Education, Old Nurses Hostel, D.K.S. Bhawan, Raipur (C.G.)
3. Dean, Chhattisgarh Institute of Medical Sciences, Bilaspur (C.G.)
4. Gurughasidas Vishwavidyalaya, through its Registrar, Koni, Bilaspur (C.G.)
5. Dr. Ramesh Chandra Arya, Associate Professor, Pathology, Chhattisgarh Institute of Medical Sciences, Bilaspur (C.G.)
6. Medical Council of India, through its Secretary, MCI, Pocket-14, Sector-8, Dwarka Phase-1, New Delhi – 110077.

---- Respondents

For Petitioner:	Mr. Ratan Pusty, Advocate.
For State/respondents	No.1 to 3: - Mr. Y.S. Thakur, Deputy Advocate General.
For respondent No.4:	Mr. Ashish Shrivastava and Mr. Soumya Rai, Advocates.
For respondent No.5:	Mr. Sumesh Bajaj, Advocate, on advance copy.
For respondent No.6:	Mr. R.S. Marhas, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/01/2016

1. Claiming issuance of writ of quo warranto directing 5th

respondent Dr. Ramesh Chandra Arya to show cause under what authority he continues to hold the office of Associate Professor (Pathology) in Chhattisgarh Institute of Medical Sciences, petitioner herein Kamlesh Shukla has filed this writ petition.

2. Brief facts shorn of unnecessary details requisite to resolve the controversy are as follows: -

3. The Chhattisgarh Institute of Medical Sciences (CIMS), which was earlier under the control of Guru Ghasidas (State) University, advertised the post of Associate Professor (Pathology) on 20-9-2006. Respondent No.5 applied for the said post. Recruitment to the said post was governed by the Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 (for short 'the MCI Regulations') issued by the Medical Council of India (MCI) in which eligibility qualification prescribed for the post of Associate Professor / Reader is five years' experience in recognized medical college as Assistant Professor. Respondent No.5 submitted his candidature for the said post and ultimately, by order dated 2-12-2006, the then University finding him suitable for the said post, appointed him on the said post.

4. This writ petition for issuing a writ in the nature of quo warranto has been filed on 5-10-2015 by the petitioner herein stating inter alia that respondent No.5 on the date of his

appointment did not have the requisite eligibility qualification for the post of Associate Professor / Reader, as he was not having 5 years' experience on the post of Assistant Professor / Lecturer and, therefore, he is usurper of the office, as his appointment is contrary to the MCI Regulations having the force of law and it is a fit case where an appropriate writ should be issued against respondent No.5 being usurper of the public office to oust him from the said office.

5. The State Government has filed its counter affidavit before this Court on 22-12-2015 clearly stating that respondent No.5 was having working experience of 5 years as Assistant Professor / Reader from 1-10-2001 to 15-11-2002 in Medical College, Ujjain and from 18-11-2002 to 2-12-2006 in CIMS, Bilaspur (present institution) where he is presently working and thus, on the date of appointment, he was having experience of 5 years 1 month 29 days on the post of Assistant Professor / Lecturer and, therefore, he fulfills the eligibility criteria for appointment on the post Associate Professor / Reader, as such, his appointment on the said post vide Annexure P-1 is in accordance with law and he possesses the eligibility qualification required for being appointed as Associate Professor / Reader. Therefore, it is not a fit case where writ of quo warranto deserves to be issued in favour of the petitioner and against respondent No.5.

6. A short rejoinder has been field by the petitioner herein taking

a new plea that Medical College, Ujjain, from where respondent No.5 had worked for quite some time, was not duly recognized at that very point of time by the Medical Council of India.

7. Mr. Ratan Pusty, learned counsel appearing for the petitioner, would submit that though respondent No.5 was having requisite eligibility and experience of 5 years on the post of Assistant Professor / Lecturer in medical college, but Medical College, Ujjain from where the petitioner has gained experience from 1-10-2001 to 15-11-2002 was not duly recognized by the MCI and therefore, his experience at Medical College, Ujjain cannot be reckoned for the purpose of calculating 5 years experience on the post of Assistant Professor / Lecturer, as such, he was ineligible for the post of Associate Professor / Reader and it is a fit case where the writ of quo warranto should be issued.

8. Mr. Y.S. Thakur, learned Deputy Advocate General appearing for the State/respondents No.1 to 3, would submit that Medical College, Ujjain from where the 5th respondent has claimed experience from 1-10-2001 to 15-11-2002 was duly recognized by the MCI. Documents available on the official website of the MCI have been taken as it is and filed which clearly demonstrate that Medical College, Ujjain was duly recognized by the MCI.

9. Mr. R.S. Marhas, learned counsel appearing for the MCI / respondent No.6, on instructions, would submit that Medical College, Ujjain was duly recognized at the relevant point of time i.e. for the period from 1-10-2001 to 15-11-2002, by the MCI and, therefore, it cannot be held that experience of respondent No.5 for the said period was not from the recognized Medical College and he was not eligible for the post of Associate Professor / Reader.

10. Mr. Ashish Shrivastava and Mr. Sumesh Bajaj, learned counsel appearing for respondents No.4 and 5, respectively, would adopt the line of arguments advanced on behalf of the State / respondents No.1 to 3 and the MCI / respondent No.6.

11. I have heard learned counsel for the parties on the question of admission, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.

12. It is well settled that issuance of writ of quo warranto is a discretionary remedy, authority of a person to hold a public office can be questioned inter alia in the event the appointment is violative of statutory provision and unquestionably a writ of quo warranto can be issued inter alia when the appointment is contrary to statutory rules and holder of the office lacks eligibility as per rules.

13. Way back in the year 1963, the Constitution Bench of the

Supreme Court in the matter of **The University of Mysore and another v. C.D. Govinda Rao and another**[1] while dealing with the nature of writ of quo warranto has held in no uncertain terms that before a citizen can claim a writ of quo warranto, he must satisfy the Court that the office in question is a public office and is held by usurper without legal authority by observing as under: -

> "7. ... 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 enquiry 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 cases, 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

1 AIR 1965 SC 491 : (1964) 4 SCR 575

been made in accordance with law or not."

14. Similarly, in the matters of **High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others**[2] and **R.K. Jain v. Union of India**[3] similar proposition of law has been propounded with regard to writ of quo warranto.

15. In the matter of **Centre for PIL and another v. Union of India and another**[4], Their Lordships of the Supreme Court have laid down the requisites and object of issuance of writ of quo warranto. Paragraph 51 of the report states as under:-

> "51. 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. 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 it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority."

16. Similarly, in the matter of **Rajesh Awasthi v. Nand Lal Jaiswal and others**[5], it has been held that writ of *quo warranto* lies when appointment is made contrary to statutory provisions and laid down the test to issue a writ of *quo warranto* to see whether person holding the office is authorised to hold the same as per law. Thus, the petitioner seeking issuance of writ of quo warranto has to satisfy that the

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2 (2003) 4 SCC 712
3 (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464
4 (2011) 4 SCC 1
5 (2013) 1 SCC 501

appointment of 5th respondent Dr. Ramesh Chandra Arya is contrary to statutory rules and he lacks eligibility.

17. In the matter of **Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others**[6], Their Lordships of the Supreme Court have held in no uncertain terms that writ of quo warranto can be issued only when person holding public office lacks eligibility or when appointment is contrary to statutory rules and held as under in paragraph 21: -

> "21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."

18. In a decision in the matter of **Mahesh Chandra Gupta v. Union of India and others**[7], Their Lordships of the Supreme Court have pointed out the distinction between "eligibility" and "suitability" and held that "eligibility" is based on objective factor and it is therefore liable to judicial review, but "suitability" pertains to realm of opinion and is therefore, not amenable to any judicial review, and held as under in paragraphs 39, 43

6 (2014) 1 SCC 161
7 (2009) 8 SCC 273

and 44: -

> “39. At this stage, we may state that, there is a basic difference between "eligibility" and "suitability". The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of "suitability". Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under Article 217(2)(b). This dichotomy between suitability and eligibility finds place in Article 217(1) in juxtaposition to Article 217(2). The word "consultation" finds place in Article 217(1) whereas the word "qualify" finds place in Article 217(2).
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> 43. One more aspect needs to be highlighted. "Eligibility" is an objective factor. Who could be elevated is specifically answered by Article 217(2). When "eligibility" is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of "suitability", stands excluded from the purview of judicial review.
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> 44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in the case of Supreme Court Advocates-on-Record Assn. v. Union of India[8] and Special Reference No. 1 of 1998, Re[9].”

19. Their Lordships further concluded that in case involving lack of eligibility, writ of quo warranto would certainly lie and observed in paragraphs 71 and 74 as under: -

> “71. "The overarching constitutional justification for judicial review, the

8 (1993) 4 SCC 441
9 (1998) 7 SCC 739

> vindication of the rule of law, remains constant, but mechanisms for giving effect to that justification vary".
>
> Mark Elliott
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> "Judicial review must ultimately be justified by constitutional principle."
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> Jowett
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> In the present case, we are concerned with the mechanism for giving effect to the constitutional justification for judicial review. As stated above, "eligibility" is a matter of fact whereas "suitability" is a matter of opinion. In cases involving lack of "eligibility" writ of quo warranto would certainly lie. One reason being that "eligibility" is not a matter of subjectivity. However, "suitability" or "fitness" of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion.
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> 74. It is important to note that each constitutional functionary involved in the participatory consultative process is given the task of discharging a participatory constitutional function; there is no question of hierarchy between these constitutional functionaries. Ultimately, the object of reading such participatory consultative process into the constitutional scheme is to limit judicial review restricting it to specified areas by introducing a judicial process in making of appointment(s) to the higher judiciary. These are the norms, apart from modalities, laid down in Supreme Court Advocates-on-Record Assn. (supra) and also in the judgment in Special Reference No. 1 of 1998, Re. (supra). Consequently, judicial review lies only in two cases, namely, "lack of eligibility" and "lack of effective consultation". It will not lie on the content of consultation."

20. In the matter of **N. Kannadasan v. Ajoy Khose and others**[10] the Supreme Court has clearly held that it is not for the court to embark upon an investigation of its own to ascertain the qualifications of the person concerned and observed in paragraphs 134 and 139 as under: -

10 (2009) 7 SCC 1

"134. Indisputably, a writ of quo warranto can be issued inter alia when the appointment is contrary to the statutory rules as has been held by this Court in High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat[11] and R.K. Jain v. Union of India[12]. (See also Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana[13].) In Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra[14], this Court has stated that it is not for the court to embark upon an investigation of its own to ascertain the qualifications of the person concerned. (See also Arun Singh v. State of Bihar[15].) We may furthermore notice that while examining if a person holds a public office under valid authority or not, the court is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. [See Kashinath G. Jalmi (Dr.) v. Speaker[16].]

139. In R.K. Jain (supra), consultation by the executive which the Chief Justice having found to be not necessary, it was held that no case for issuance of writ of quo warranto has been made out, stating: (SCC p. 173, para 73)

> "73. Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. Exercise of judicial review is to protect the citizen from the abuse of the power, etc. by an appropriate Government or department, etc. In our considered view granting the compliance with the above power of appointment was conferred on the executive and confided to be exercised wisely. When a candidate was found qualified and eligible and was accordingly appointed by the executive to hold an office as a Member or Vice-President or President of a Tribunal, we cannot sit over

11 (2003) 4 SCC 712 : 2003 SCC (L&S) 565
12 (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464
13 (2002) 6 SCC 269
14 (1998) 7 SCC 273 : 1998 SCC (L&S) 1802
15 (2006) 9 SCC 375
16 (1993) 2 SCC 703

> the choice of the selection, but it be left to the executive to select the personnel as per law or procedure in this behalf."
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> In that case, it was held that no case for issuance of a writ of certiorari had been made out as a third party had no locus standi to canvass the legality or correctness of the action seeking for issuance of a writ of certiorari. Only public law declaration would be made at the behest of the appellant who was a public-spirited person."

21. Judgment rendered by the Supreme Court in **Mahesh Chandra Gupta** (supra) has been followed with approval by Their Lordships of the Supreme Court in the matter of **M. Manohar Reddy and another v. Union of India and others**[17].

22. In the matter of **Valsala Kumari Devi M. v. Director, Higher Secondary Education and others**[18], the Supreme Court has defined the word "suitability" as under: -

> "The expression "suitability" means that a person to be appointed shall be legally eligible and "eligible" should be taken to mean "fit to be chosen"."

23. Very recently, in the matter of **Registrar General, High Court of Madras v. R. Gandhi and others**[19], the Supreme Court has reiterated the principle of law laid down in **Mahesh Chandra Gupta** (supra) and held that judicial review is permissible only on assessment of eligibility and not on suitability of an appointee.

24. Now, the question to be considered is whether respondent

17 (2013) 3 SCC 99
18 (2007) 8 SCC 533
19 (2014) 11 SCC 547

No.5 was eligible to be appointed on the post of Associate Professor / Reader on the date of his appointment i.e. 2-12-2006. It is not in dispute that respondent No.5 applied for the post of Associate Professor with experience as Assistant Professor from 1-10-2001 to 15-11-2002 in Medical College, Ujjain and from 18-11-2002 to 2-12-2006 at CIMS, Bilaspur. Claim of the petitioner is that Medical College, Ujjain, where respondent No.5 worked from 1-10-2001 to 15-11-2002, was not recognized medical college. There is no specific averment in the writ petition that Medical College, Ujjain where respondent No.5 worked as Assistant Professor from 1-10-2001 to 15-11-2002, was not recognized medical college by the MCI, only by way of rejoinder, for the first time, the petitioner has claimed that the medical college where respondent No.5 had worked from 1-10-2001 to 15-11-2002 was not recognized medical college in terms of the MCI Regulations and, therefore that period cannot be reckoned for the purpose of 5 years experience.

25. As back as in the year 1958, the Constitution Bench of the Supreme Court in the matter of **Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha and others**[20] has held that plea not raised in the writ petition cannot be allowed to be raised in the rejoinder by the petitioner, by observing as under: -

> "The case of bias of the Chief Minister (respondent 2) has not been made anywhere in

20 AIR 1959 SC 395

> the petition and we do not think it would be right to permit the petitioner to raise this question, for it depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondents had no opportunity to reply."

26. In the matter of **B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. and others**[21] it was observed by the Supreme Court as under: -

> "Before we embark upon the respective contentions made before us on the said issue, we may notice that although the point was urged during hearing before the High Court, the first respondent in its writ application did not raise any plea in that behalf. The High Court was not correct in allowing the first respondent to raise the said contention. (See Chimajirao Kanhojirao Shirke v. Oriental Fire & General Insurance Co. Ltd.[22], SCC at p. 625.)"

27. The principle of law laid down by Their Lordships of the Supreme Court aptly applies to the facts of the present case, as the petitioner did not raise plea in the writ petition that Medical College, Ujjain, where respondent No.5 worked as Assistant Professor from 1-10-2001 to 15-11-2002, was not duly recognized by the MCI, and for the first time, the petitioner raised plea in the rejoinder for which the respondents have no opportunity to file reply as such, the petitioner cannot be allowed to raise such plea in view of the binding pronouncement of the Supreme Court in **Pandit M.S.M. Sharma** (supra).

28. However, the State has filed documents along with affidavit

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21 (2006) 11 SCC 548
22 (2000) 6 SCC 622

clearly stating that Medical College, Ujjain from where respondent No.5 had experience for some period was duly recognized. Be that as it may, the fact remains that respondent No.5 was found suitable, qualified and eligible by the selection committee holding his experience at Ujjain as well as in the present institution (CIMS) to be 5 years on the date of his appointment on the post of Associate Professor / Reader. Principally, the petitioner's argument is that experience of 5 years which respondent No.5 has, is not from recognized medical college. In the considered opinion of this Court, writ of quo warranto lies where the person is questioning the eligibility criteria. Here, the petitioner is now questioning the suitability of respondent No.5 on the said post. In other words, submission of the petitioner that the finding of the selection committee holding respondent No.5 suitable for the post of Associate Professor is bad as such, the dispute falls within the question of suitability of respondent No.5 that has been recorded by the selection committee that respondent No.5 is legally eligible for the post of Associate Professor. In a petition for issuing a writ of quo warranto, suitability cannot be examined. However, the petitioner has not placed any material on record to establish that Medical College, Ujjain, from where respondent No.5 has earned experience in part, was not duly recognized medical college. Thus, the petitioner has miserably failed to demonstrate that appointment of 5th

respondent Dr. Ramesh Chandra Arya is not in accordance with the applicable statutory rules or statutory provisions and thereby, the petitioner has failed to demonstrate that appointment of 5th respondent is in clear violation of the statutory provisions having the force of law. Consequently, writ of quo warranto could not lie.

29. Their Lordships of the Supreme Court in a Constitution Bench judgment in the matter of **Statesman (Private) Ltd., v. H. R. Deb and others**[23] have held that in an unclear case, writ of quo warranto should not be issued and observed as under:-

> "The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law."

30. The aforesaid judgments have been followed by the Supreme Court in the matter of **A. N. Shashtri v. State of Punjab and others**[24].

31. Thus, on the basis of above-stated analysis, this Court is satisfied that the petitioner seeking a writ of quo warranto has demonstrably failed to plead and establish that appointment of 5th respondent Dr. Ramesh Chandra Arya as Associate Professor in CIMS, Bilaspur is in violation of the statutory rules / MCI Regulations. The law laid down by Their Lordships of the Supreme Court in **Statesman** (supra) sounding a note of caution for this Court to slow in issuing a writ in the nature of quo warranto in unclear case, aptly and squarely applies to the

23 AIR 1968 SC 1495
24 1988 Supp SCC 127

factual score of the present case, as the petitioner has failed to make out a clear case that Medical College, Ujjain, from where 5th respondent obtained experience in part, was not the recognized medical college in terms of the MCI Regulations and thereby the petitioner has failed to establish clear infringement of law for the writ claimed in the nature of quo warranto and as such, the petitioner is not entitled for any of the reliefs claimed in the writ petition.

32. As a fallout and consequence of aforesaid discussion, the writ petition being sans substratum, deserves to be and is accordingly, dismissed *in limine* but without imposition of cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3629 of 2015

Kamlesh Shukla

Versus

State of Chhattisgarh and others

HEAD NOTE

In a proceeding for writ of quo-warranto, suitability of holder of the public office cannot be examined.

अधिकार–पृच्छा रिट की कार्यवाही के दौरान लोक पद धारक की उपयुक्तता की जॉच नहीं की जा सकती है।