

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4111 of 2015

Santosh Sahu, S/o Shri M.L. Sahu, aged about 33 years,
Opposite Sahu Complex, Beside Jain Flour Mill, Siddharth
Chowk, Tikrapara, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of
Labour, Government of Chhattisgarh, Mahanadi Bhawan,
Mantralaya, New Raipur, District Raipur (C.G.)

2. The Secretary, General Administration Department,
Government of Chhattisgarh, Mahanadi Bhawan, Mantralaya,
New Raipur, District Raipur (C.G.)

3. Shri Jiten Kumar, Labour Commissioner, Composite
Directorate Building, Indravati Bhawan, Naya Raipur, District
Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Jitendra Pali, Advocate.

For State of Chhattisgarh/respondents No.1 and 2: -
Mr. Dheeraj Kumar Wankhede, Govt. Adv.

For respondent No.3: Mr. Y.S. Thakur, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

18/03/2016

1. Claiming a writ in the nature of quo warranto, Shri Santosh Sahu, the petitioner herein, has filed this writ petition under Article 226 of the Constitution of India stating inter alia that the appointment of respondent No.3 Shri Jiten Kumar as Labour Commissioner is contrary to the statutory provisions, and for

his consequent removal from the post of Labour Commissioner, Government of Chhattisgarh, Raipur.

2. The above-stated challenge has been made by the petitioner in the following factual back drop: —

3. Petitioner Shri Santosh Sahu claiming to be a social worker and interested to ensure transparency in the administration of larger public interest and to see that only the statutorily eligible persons are appointed on the statutory posts in order to provide good governance to the people of the State, has filed this writ petition stating inter alia that the post of Labour Commissioner is a statutory post under Section 3(1) of the Chhattisgarh Industrial Relations Act, 1960 and recruitment to the post of Labour Commissioner is governed by the rules framed by the Governor namely the Chhattisgarh Labour (Gazetted) Service Recruitment Rules, 1985 (for short 'the Rules, 1985'). It was further pleaded that the appointment of Labour Commissioner has to be made in accordance with Rule 6(1)(c) of the Rules, 1985 which is appointment by transfer as provided in Schedule II enacted under Rule 6, as the post of Labour Commissioner has to be filled by transfer of persons from other services i.e. by IAS Officer. Even under Rule 14 of the Rules, 1985 i.e. Conditions of eligibility for promotion / transfer, promotion on the post of Labour Commissioner has to be made by IAS Officer. It was also



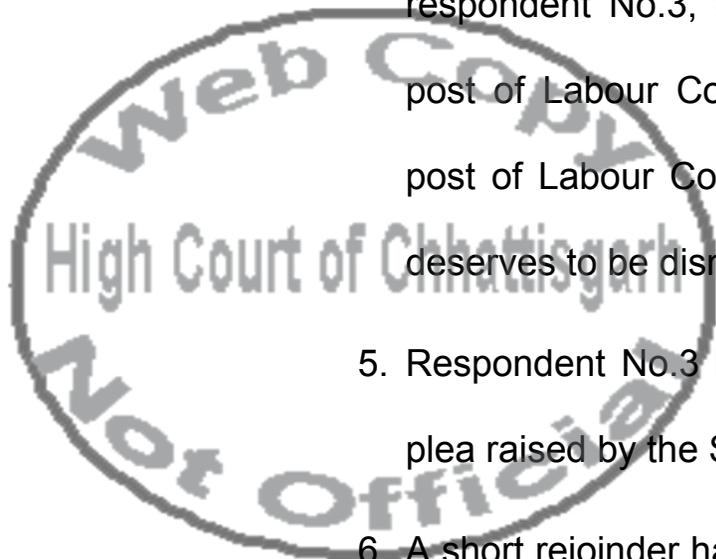
pleaded that respondent No.3 is a member of Indian Forest Service, he is not a member of Indian Administrative Service. It has also been pleaded that the appointment of respondent No.3 on the post of Labour Commissioner also runs contrary to Rules 8 and 9 of the Indian Administrative Service (Cadre) Rules, 1954 (for short 'the Cadre Rules'). Since the post of Labour Commissioner is a cadre post duly notified by the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 2010 and the post of Labour Commissioner being the cadre post, it has to be filled only by the cadre officer i.e. the member of Indian Administrative Service and therefore the appointment of respondent No.3 on the post of Labour Commissioner, being contrary to the statutory rules, deserves to be declared as contrary to law and an appropriate writ in the nature of quo warranto to be issued removing him from the post of Labour Commissioner.

4. Return has been filed by the State/respondents No.1 and 2 opposing the writ petition stating inter alia that recruitment on the post of Labour Commissioner is governed by Section 3 of the Chhattisgarh Industrial Relations Act, 1960 (for short 'the Act, 1960') and respondent No.3 who is an officer of Indian Forest Service has been appointed on the said post. It was further pleaded that Schedules I and II provided under the Rules, 1985 nowhere provide eligibility criteria for the post of

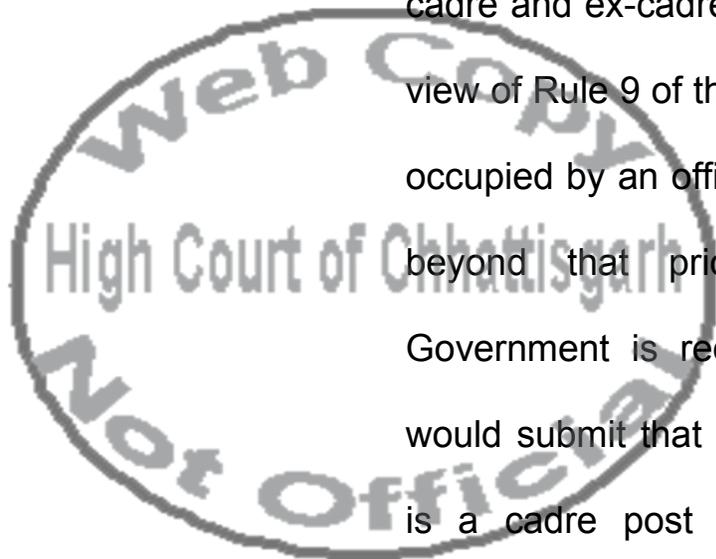


Labour Commissioner, and inclusion of IAS Officer is only a suitability prescribed for the post of Labour Commissioner, same is not the eligibility criteria as the Act, 1960 does not provide for eligibility criteria for appointment of a person to be the Labour Commissioner. The Legislature has left it to the wisdom of the State Government to appoint a person as Labour Commissioner on the basis of his suitability as such, there is no violation of statutory rules in the appointment of respondent No.3, an officer of Indian Forest Service, to the post of Labour Commissioner nor he lacks eligibility for the post of Labour Commissioner and therefore, the writ petition deserves to be dismissed.

5. Respondent No.3 has filed a separate return in line with the plea raised by the State/respondents No.1 and 2.
6. A short rejoinder has been filed by the petitioner reiterating his stand holding that by the Rules, 1985 and by the Cadre Rules, only the member of IAS can be appointed to man the post of Labour Commissioner.
7. Mr. Jitendra Pali, learned counsel appearing for the petitioner, would vehemently submit that the post of Labour Commissioner is a statutory post constituted under Section 3(1) of the Act, 1960 and recruitment to the post of Labour Commissioner is governed by the Rules, 1985. By virtue of Rule 5 of the Rules, 1985 read with Second Schedule to Rule



6, the post of Labour Commissioner can be filled by virtue of Rule 6(c) by transfer of person from other service i.e. an IAS Officer. Elaborating his submission, he would further submit that even otherwise, the Cadre Rules framed in exercise of the powers conferred under Section 3(1) of the All India Services Act, 1951 clearly provide that the post of Labour Commissioner is a cadre post and cadre post can be filled by cadre officer only. By virtue of Rule 8 of the Cadre Rules, cadre and ex-cadre posts are to be filled by cadre officers. In view of Rule 9 of the Cadre Rules, cadre post can be held and occupied by an officer of non-cadre only for three months and beyond that prior approval/permission of the Central Government is required. In sum and substance, Mr. Pali would submit that the statutory post of Labour Commissioner is a cadre post under the Cadre Rules as well as the appointment of Labour Commissioner is governed by the Rules, 1985 i.e. appointment by transfer under Rule 6(c) of the Rules, 1985. Therefore, the post of Labour Commissioner being a statutory and cadre post under the Rules, has to be filled up only by a member of IAS and as such, respondent No.3 not being a member of IAS lacks eligibility and his appointment is contrary to the Rules, 1985 as well as Rules 8 and 9 of the Cadre Rules. Thus, there is an express bar contained in the Cadre Rules for appointment of a person



other than the member of IAS to be Labour Commissioner. Therefore, the appointment of respondent No.3, who is not a member of IAS, on the post of Labour Commissioner deserves to be declared illegal and he be directed to be removed by issuance of an appropriate writ preferably in the nature of quo warranto.

8. Mr. Dheeraj Kumar Wankhede, learned Government Advocate appearing for the State/respondents No.1 and 2, submits that respondent No.3 is a member of All India Service and belongs to Indian Forest Service, and out of his experience and finding him suitable for the post of Labour Commissioner, the State Government has notified and appointed him as Labour Commissioner for the State of Chhattisgarh. No such eligibility qualification has been prescribed in the Act, 1960 for appointment of Labour Commissioner as such, there is no violation of either of the Rules, 1960 or of the Cadre Rules in the appointment of respondent No.3 on the post of Labour Commissioner and as such, the writ petition deserves to be dismissed with cost.

9. Mr. Y.S. Thakur, learned counsel appearing for respondent No.3, would submit in line with the argument raised by learned State counsel for respondents No.1 and 2, and would submit that prescription of the Rules, 1985 as well as the Cadre Rules is all about the suitability of IAS Officer for the post of Labour



Commissioner which cannot be held to be eligibility qualification for the post of Labour Commissioner, as the Act, 1960 does not provide for eligibility qualification for the said post.

10. I have heard learned counsel for the parties, bestowed my thoughtful consideration to the submissions raised herein by the parties respectively and also gone through the record with utmost circumspection.

11. In order to consider the plea raised at the Bar, it would be appropriate to consider the principles governing issuance of writ of quo warranto.

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.

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

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

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 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 others²

² (2003) 4 SCC 712

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.

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

3 (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464

4 (2011) 4 SCC 1

5 (2013) 1 SCC 501

6 (2014) 1 SCC 161

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 noontday 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 others⁷, 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 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

⁷ (2009) 8 SCC 273

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\(2\)](#).

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.

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 India⁸ and Special Reference No. 1 of 1998, Re⁹."

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 vindication of the rule of law, remains constant, but mechanisms for giving effect to that justification vary".

Mark Elliott

"Judicial review must ultimately be justified by constitutional principle."

Jowett

⁸ (1993) 4 SCC 441

⁹ (1998) 7 SCC 739

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.

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."

19. 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: -

"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.](#)

¹⁰ (2009) 7 SCC 1

¹¹ (2003) 4 SCC 712 : 2003 SCC (L&S) 565

Union of India¹². (See also Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana¹³.) In Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra¹⁴, 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 Bihar¹⁵.) 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. Speaker¹⁶.]

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 the choice of the selection, but it be left to the executive to select the personnel as per law or procedure in this behalf."

In that case, it was held that no case for issuance of a writ of certiorari had been made

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

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.”

20. 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.

21. 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”.”

22. 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.

23. In the matter of **Renu and others v. District and Sessions Judge, Tis Hazari Courts, Delhi and another**²⁰, Their

17 (2013) 3 SCC 99

18 (2007) 8 SCC 533

19 (2014) 11 SCC 547

20 (2014) 14 SCC 50

Lordships of the Supreme Court have reiterated that for issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it, and observed as under: -

“15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds 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, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide [University of Mysore v. C.D. Govinda Rao](#)¹, [Kumar Padma Prasad v. Union of India](#)²¹, [B.R. Kapur v. State of T.N.](#)²², [Mor Modern Coop. Transport Society Ltd. v. State of](#)

21 (1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239 : AIR 1992 SC 1213
22 (2001) 7 SCC 231 : AIR 2001 SC 3435

Haryana²³, Arun Singh v. State of Bihar²⁴, Hari Bansh Lal v. Sahodar Prasad Mahto²⁵, and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo²⁶.)

24. Now, after having briefly noticed the principles governing issuance of writ of quo warranto, it would be appropriate to notice Section 3 of the Act, 1960 which provides for Commissioner of Labour for the State. Sub-section (1) of Section 3 of the Act, 1960 provides that the State Government shall, by notification, appoint a person to be the Commissioner of Labour for the State and may appoint Deputy Commissioner of Labour, Assistant Commissioner of Labour. Section 3 of the Act, 1960 provides as follows: -

3. Commissioner of Labour.—(1) The State Government shall, by notification, appoint a person to be the Commissioner of Labour for the State and may appoint the following categories of officers to assist the Commissioner of Labour-

- (a) Deputy Commissioner of Labour;
- (b) Assistant Commissioner of Labour.

(2) The Deputy Commissioner of Labour and the Assistant Commissioner of Labour shall, subject to the control of the Commissioner of Labour and to the conditions and restrictions, if any, prescribed by the State Government in this behalf, exercise such powers and perform such duties of the Commissioner under this Act as may be delegated to them by the Commissioner of Labour from time to time.”

25. In exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Governor of erstwhile State of

23 (2002) 6 SCC 269

24 (2006) 9 SCC 375

25 (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771

26 (2014) 1 SCC 161 : (2014) 1 SCC (L&S) 1

Madhya Pradesh has framed the rules called the Madhya Pradesh (Chhattisgarh) Labour (Gazetted) Service Rules, 1985. Rule 5 provides for Classification scale of pay etc., which reads as follows: -

“5. Classification scale of pay etc.—The classification of the service, the number of posts included in the service and the scales of pay attached thereto shall be in accordance with the provisions contained in Schedule I appended hereto:

Provided that the Government may, from time to time, add to or reduce the number of posts included in the Service, either on a permanent or temporary basis.”

26. Rule 6(1)(c) of the Rules, 1985 provides Method of Recruitment. Clause (c) of sub-rule (1) of Rule 6 reads as follows: -

“6. Method of Recruitment.—(1) Recruitment in the Service, after the commencement of these rules, shall be by the following methods, namely:-

(a) *** *** ***

(b) *** *** ***

(c) by transfer of persons who hold such posts in such services as may be specified in this behalf.”

27. Schedule I appended to Rule 5 of the Rules, 1985 for classification of the post in respect of Labour Commissioner reads as follows: -

SCHEDULE I

(See rule 5)

Name of posts included in the service	No. of the posts	Classification	Pay scale

1	2	3	4
(A) Duty Post -(a) Labour			
1. Labour Commissioner	1	Officer of IAS Cadre	

28. Schedule II appended to Rule 6 of the Rules, 1985 for method of recruitment in respect of Labour Commissioner reads as follows: -

SCHEDULE II

(See rule 6)

Name of the Department	Name of the Service	Number of total posts	Percentage of posts to be filled		By temporary transfer of the persons from other services [(Rule 6(c))]
			By direct recruitment [rule 6(a)]	By promotion of the members of the service [rule 6(b)]	
1	2	3	4	5	6
Labour Department	Madhya Pradesh Labour Service (Gazetted) Labour Commissioner	1			IAS Officer

29. Schedule IV appended to Rule 14 of the Rules, 1985 for Conditions of eligibility for promotion/transfer in respect of Labour Commissioner reads as follows: -

SCHEDULE IV

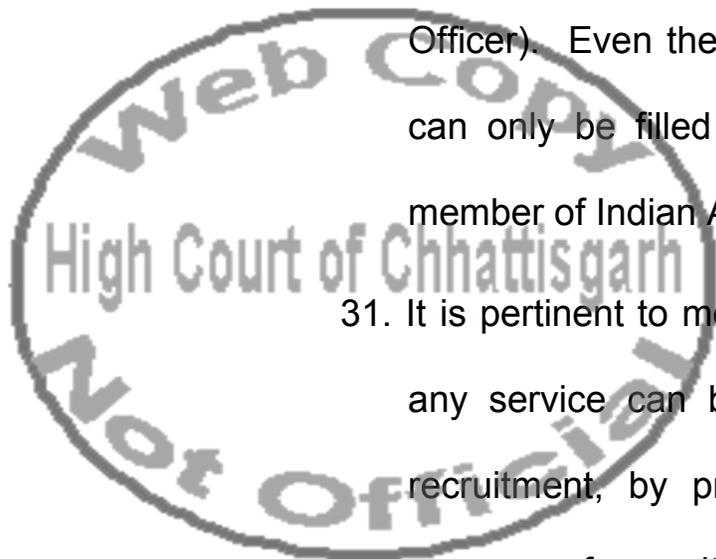
(See rule 14)

Name of the Department	Name of the post from which promotion is to be made	Maximum experience for eligibility	Name of the post to which promotion is to be made	Name of the members of the Departmental Promotion Committee

(1)	(2)	(3)	(4)	(5)
(a) Labour				
Labour Department	As per Indian Administrative Service Rules		Labour Commissioner	IAS Service

30. A careful and meaningful perusal of the aforesaid Rules along with its Schedules would show that the by virtue of the provisions contained in Rule 6(c) of the Rules, 1985, the post of Labour Commissioner has to be filled by transfer from State service i.e. a member of Indian Administrative Service (IAS Officer). Even the promotional post of Labour Commissioner can only be filled by virtue of Rule 14, Schedule IV, by a member of Indian Administrative Service.

31. It is pertinent to mention here that appointment/recruitment to any service can be made from different sources by direct recruitment, by promotion or by absorption/transfer. The sources of recruitment can either be internal or external, internal source would relate to the cases where appointments are made by promotion or by transfer and by absorption, whereas external source would take within its sweep the recruitment of eligible persons who are not already in service in the institution to which recruitment is to be made. In the present case, it appears clearly that appointment or recruitment to the post of Labour Commissioner has to be made by appointment by transfer i.e. internal source of recruitment and that is from amongst the members of Indian



Administrative Service (under the Rule only IAS has been held) to be eligible for the post of Labour Commissioner. An officer cannot be appointed on the post of Labour Commissioner either on appointment by transfer or by promotion unless he is a member of IAS, as the person to be a member of IAS is the requisite eligibility qualification for the post of Labour Commissioner under the above-stated Rules governing appointment on the post of Labour Commissioner.

32. Thus, the mandate of the Rules, 1985 is quite vivid that for appointment on the post of Labour Commissioner a person must a member of Indian Administrative Service. It is pertinent to notice that the post of Labour Commissioner also finds its place in the cadre post specified by the Central Government in its IAS (Fixation of Cadre Strength) Regulations, 2010 which is also relevant and may be noticed herein.

33. In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951, the Central Government, after consultation with the Government of the State concerned has framed the Indian Administrative Service (Cadre) Rules, 1954. Sub-section (a) of Section 2 of the Rules, 1954 provides that 'cadre officer' means a member of the Indian Administrative Service. Sub-section (b) of Section 2 provides that 'cadre post' means any of the post specified



under Item I of each cadre in the schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955.

34. The Ministry of Personnel, Public Grievances and Pensions by its notification dated 20th May, 2010 amended the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 known as the Indian Administrative Service (Fixation of Cadre Strength) Seventh Amendment Regulations, 2010. In the Schedule appended to the Regulations, 1955, the heading "Chhattisgarh" has been added in which the post of Labour Commissioner has been identified as cadre post which reads as follows: -

CHHATTISGARH

Senior Duty Posts under the State Government	97	Minimum Tenure for posting (in years)
(1)	(2)	(3)
Labour Commissioner	1	2

35. Thus, the post of Labour Commissioner by virtue of Cadre Rules as well as the Regulations, 1955 is cadre post.
36. At this stage, it is pertinent to notice sub-rule (1) of Rule 8 and also clauses (a) and (b) of sub-rule (1) of Rule 9 of the Cadre Rules which state as under: -

"8. Cadre and ex-cadre posts to be filled by cadre officers.—(1) Save as otherwise provided in the rules, every cadre post shall be filled by a cadre officer.

9. Temporary appointment of non-cadre

officers to cadre posts.—(1) A cadre post in a State shall not be filled by a person who is not a cadre officer except in the following case, namely:—

(a) if there is not suitable cadre officer available for filling the vacancy:

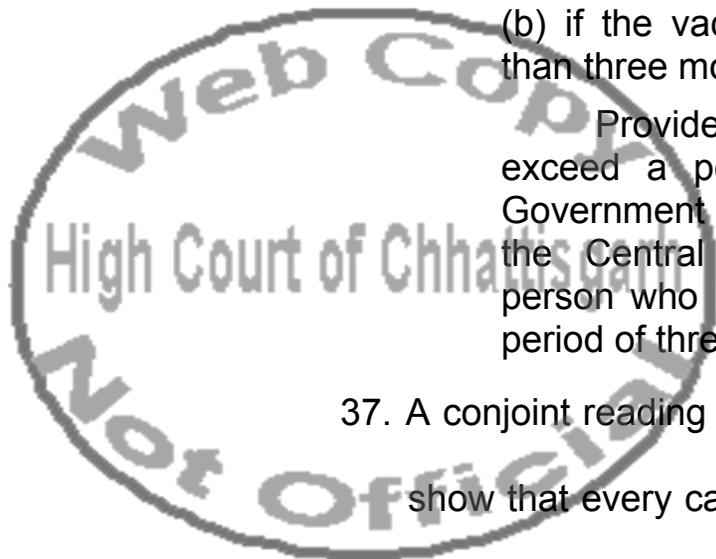
Provided that when a suitable cadre officer becomes available, the person who is not a cadre officer, shall be placed by the cadre officer:

Provided further that if it is proposed to continue the person who is not “a cadre” officer beyond a period of three months, the State Government shall obtain the prior approval of the Central Government for such continuance;

(b) if the vacancy is not likely to last or more than three months:

Provided that if the vacancy is likely to exceed a period of three months the State Government shall obtain the prior approval of the Central Government for continuing the person who is not a Cadre Officer, beyond the period of three months.”

37. A conjoint reading of Rules 8 and 9 of the Cadre Rules would show that every cadre post as specified by Regulations, 1955 shall be filled by a cadre officer (member of IAS) and cadre post in the State shall not be filled by person who is not a cadre officer except if there is no suitable cadre officer available for such post and as soon as the suitable cadre officer becomes available, the person who is not a cadre officer shall be replaced by the cadre officer and such a non-cadre officer shall not continue beyond a period of three months and if it is proposed to continue beyond the period of three months, the State Government shall obtain prior approval of the Central Government for such continuance.



38. Thus, the rules and regulations made in exercise of power conferred under Section 3 (1) of the All India Services Act, 1951, regulating recruitment and the conditions of service for persons appointed to an All India Service are statutory in character by operation of sub-section (2) of Section 3 of the Act. (See Indian Administrative Service (S.C.S.) Association, U.P. and others v. Union of India and others²⁷.)

39. Thus, from the above-stated analysis, it is quite vivid that the post of Labour Commissioner is a statutory post under the Act, 1960 as well as it is a cadre post specified under the Regulations, 1955 to be manned by a cadre officer that is a member of IAS under the Cadre Rules, 1954. Apart from being the cadre post under the Rules, 1954, that has to be appointed on appointment by transfer by a member of IAS i.e. an IAS Officer. Rule 8 of the Cadre Rules clearly provides that cadre post that includes the post of Labour Commissioner has to be manned by a member of IAS and any ex-cadre officer cannot hold the said post beyond the period of three months except to the prior approval of the Central Government, as such, there is a clear cut and express bar provided in the Cadre Rules as well as the Rules, 1985 which clearly provides that the post of Labour Commissioner has to be filled on transfer by appointment by a member of IAS and

27 1993 AIR SCW 1135

in view of the express bar, the person other than an IAS Officer cannot be appointed on the post of Labour Commissioner.

40. Their Lordships of the Supreme Court in the matter of **T.N. Administrative Service Officers Association and another v. Union of India and others**²⁸, referring to the Cadre Rules and Regulations have held that members of Indian Administrative Service are required to man only such posts identified by the Central Government like that of Collectors, Commissioners, members of the Board of Revenue, Secretaries and Deputy Secretaries in the administrative departments and heads of important Departments by holding as under: -

“... These persons are not to be posted to any and every post in the Government. They are to man only such posts which have been identified to be so important as to require the services of these persons. With this view in mind, the Central Government was entrusted with the responsibility of identifying such posts and to encadre them in the IAS cadre. A perusal of the Cadre Rules and Regulations shows that the Central Government has identified posts like that of Collectors, Commissioners, members of the Board of Revenue, Secretaries and Deputy Secretaries in the administrative departments and heads of important Departments.”

41. The appointment of a post has to be made in accordance with the rules for good governance. The responsibility for good administration is that of the Government. Appointment of an

28 (2000) 5 SCC 728

efficient, honest and experienced administrative officer as per the recruitment rules, is a must for due discharge of that responsibility. (See **K.B. Shukla and others v. Union of India and others** (paragraph 26)²⁹.) Keeping in mind the above-stated objective and responsibility, the Central Government has created All India Service. The object of creating All India Service is to select exceptionally bright and intelligent men / women through All India Examinations and train them to handle the affairs of the States manning important posts in the administration of the State. (See **T.N. Administrative Service Officers Association** (supra).)

42. The aforesaid determination leads me to advert to the appointment of respondent No.3 on the post of Labour Commissioner. Thus, the petitioner seeking issuance of writ of quo warranto has to satisfy that the appointment of respondent No.3 Shri Jiten Kumar is contrary to statutory rules and he lacks eligibility.

43. It is not in dispute that respondent No.3 is a member of Indian Forest Service. On 21-2-2012, the Joint Secretary, General Administration Department, Chhattisgarh, made a proposal to the State Government which states as under: -

विषय :- भारतीय प्रशासनिक सेवा अधिकारियों की पदस्थापना ।

—0—

मुख्य सचिव से चर्चा हुई ।

मुख्य सचिव के निर्देशानुसार विभाग के आदेश क्रमांक ई-01-02/2012/एक/2, दिनांक 13.02.2012 में निम्नानुसार संशोधन प्रस्तावित है :-

1/ श्री विकास शील, (भा0प्र0से0) (1994) सचिव, खाद्य नागरिक आपूर्ति एवं उपभोक्ता संरक्षण विभाग को अपने वर्तमान कर्तव्यों के साथ-साथ आयुक्त, खाद्य नागरिक आपूर्ति एवं उपभोक्ता संरक्षण का अतिरिक्त प्रभार दिया जाना प्रस्तावित है ।

2./ डॉ जितेन्द्र कुमार (भा0व0से0) आयुक्त, खाद्य नागरिक आपूर्ति एवं उपभोक्ता संरक्षण विभाग को श्रम आयुक्त, पदस्थ किया जाना प्रस्तावित है ।

श्री जितेन्द्र कुमार द्वारा पदभार ग्रहण करने पर श्री विवेक ढोंड, प्रमुख सचिव, पंचायत एवं ग्रामीण विकास विभाग तथा प्रमुख सचिव, श्रम विभाग एवं आयुक्त, श्रम केवल आयुक्त, श्रम के अतिरिक्त प्रभार से मुक्त होंगे ।

उल्लेखनीय है कि श्रम आयुक्त का पद संवर्गीय पद है एवं श्री जितेन्द्र कुमार भारतीय वन सेवा के अधिकारी है ।
आदेशार्थ ।

(ऋतु सेन)

संयुक्त सचिव, सा0प्र0वि0

44. The aforesaid proposal made by the Joint Secretary of the Department to the State Government clearly indicates that the post of Labour Commissioner is a cadre post and respondent No.3 is a member of IFS. That proposal was accepted by the State Government and ultimately, the order Annexure P-1 which is quoted below came to be passed appointing respondent No.3, member of IFS, to be the Labour Commissioner for the State of Chhattisgarh. The order appointing respondent No.3 as Labour Commissioner states as under: -

Page 27 of 30

छत्तीसगढ़ शासन
सामान्य प्रशासन विभाग
मंत्रालय
// आदेश //

रायपुर दिनांक : 03/03/2012

क्रमांक ई-01-02/2012/ए/2:: श्री विकास शील, भा0प्र0से0 (1994) सचिव, खाद्य, नागरिक आपूर्ति एवं उपभोक्ता संरक्षण विभा को आने वर्तमान कर्तव्यो के साथ-साथ अस्थायी रूप से अगामी आदेश तक, आयुक्त-सह-संचालक, खाद्य, नागरिक आपूर्ति एवं उपभोक्ता संरक्षण का अतिरिक्त प्रभार सौपा जाता है ।

2/ डॉ. जितेन कुमार (भा0व0से0) आयुक्त-सह-संचालक, खाद्य, नागरिक आपूर्ति एवं उपभोक्ता संरक्षण को अस्थायी रूप से आगामी आदेश तक आयुक्त, श्रम के पद पर पदस्य किया जाता है ।

डॉ. जितेन कुमार द्वारा कार्यभार ग्रहण करने पर श्री विवेक ढांड, प्रमुख सचिव, पंचायत एव ग्रामीण विकास, श्रम विभाग एवं आयुक्त, श्रम केवल आयुक्त, श्रम के अतिरिक्त प्रभार से मुक्त होंगे ।

छत्तीसगढ़ के राज्यपाल के नाम से
तथा आदेशानुसार,
सुनिल कुमार
मुख्य सचिव
छत्तीसगढ़ शासन,

45. Concededly and doubtlessly, respondent No.3 is not a member of IAS and is not cadre officer within the meaning of Section 2(a) of the Cadre Rules, 1954 and the post of Labour Commissioner is a cadre post within the meaning of Section 2(b) of the Cadre Rules, 1954 and, therefore, by virtue of Rule 8(1) of the Cadre Rules, he cannot hold the cadre post of Labour Commissioner not being a cadre officer. By virtue of

Rule 6(c) of the Rules, 1985, Labour Commissioner has to be appointed by appointment by transfer by a member of IAS. The Rules, 1985 as well as the Cadre Rules and the Regulations, 1955, both are statutory in character. Respondent No.3 being a member of Indian Forest Service is not a cadre officer and he is not a member of IAS, as such, he does not hold the eligibility to be appointed on the post of Labour Commissioner, as he is not a member of IAS and no prior permission of the Central Government has been brought on record to hold that respondent No.3 has been allowed to man the post of Labour Commissioner beyond the period of three months by virtue of proviso to Rule 9 of the Cadre Rules, 1954. Thus, his appointment on the post of Labour Commissioner is contrary to Rule 6(c) of the Rules, 1985 governing the appointment of Labour Commissioner as well as contrary to Rule 8(1) of the Cadre Rules read with the Regulations, 1955.

46. Thus, respondent No.3 not being a member of IAS lacks eligibility qualification for the post of Labour Commissioner and his appointment is contrary to the Rules, 1985 as well as the Cadre Rules, 1954. In the matter of **State of Haryana v. The Haryana Co-operative Transport Ltd. and others**³⁰, their Lordships of the Supreme Court have indicated the nature of writ to be issued if the writ court finds that person appointed to

30. A.I.R. 1977 SC 237

a office is not eligible to hold that office and held as under:-

“If the High Court finds that a person appointed to any of these offices is not eligible or qualified to hold that post, the appointment has to be declared invalid by issuing a writ to quo warranto or any other appropriate writ or direction. To strike down usurpation of office is the function and duty of High Courts in the exercise of their constitutional powers under Arts. 226 and 227.”

47. As a fallout and consequence of the aforesaid discussion, the appointment of respondent No.3 Shri Jiten Kumar on the post of Labour Commissioner, Chhattisgarh, Raipur is declared non-est in law and consequently the impugned appointment (Annexure P/1) of Shri Jiten Kumar as Labour Commissioner, Chhattisgarh is hereby quashed and the post of Labour Commissioner, Chhattisgarh is declared vacant forthwith, however, Respondent No.1 is at liberty to appoint a member of Indian Administrative Service on the said post, in accordance with law. The writ petition is allowed to the extent indicated hereinabove but without imposition of cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4111 of 2015

Santosh Sahu

Versus

State of Chhattisgarh and others

HEAD NOTE

Cadre post of Labour Commissioner to be filled by cadre officer (member of IAS), cannot be filled by member of IFS.

कैडर अधिकारी (भा.प्र.से. के सदस्य) द्वारा भरे जाने वाले श्रम आयुक्त के कैडर पद को भा.व.से. के सदस्य से नहीं भरा जा सकता।

