



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 7TH DAY OF APRIL 2026 / 17TH CHAITHRA, 1948

WP(C) NO. 41806 OF 2024

PETITIONER/S:

G. SASIDHARAN
AGED 68 YEARS, S/O GANGADHARAN, RESIDING AT
PANCHAMI, POONKULAM, VELLAYANO, KALLIYOOR,
THIRUVANANTHAPURAM, PIN - 695522

BY ADVS.
SHRI.R.SANJITH
SMT.C.S.SINDHU KRISHNAH

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY IT'S SECRETARY, DEPARTMENT OF
TOURISM, SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 2 THE SECRETARY
DEPARTMENT OF TOURISM, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 3 THE JOINT SECRETARY
DEPARTMENT OF FINANCE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 4 KERALA TOURISM DEVELOPMENT CORPORATION LTD
CORPORATE OFFICE, MASCOT SQUARE,
THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGING
DIRECTOR, PIN - 695033



- 5 THE MANAGING DIRECTOR
KERALA TOURISM DEVELOPMENT CORPORATION LTD,
CORPORATE OFFICE, MASCOT SQUARE,
THIRUVANANTHAPURAM, PIN - 695033
- 6 K.T .SANTHOSH KUMAR
AGE AND FATHER'S NAME NOT KNOWN TO THE
PETITIONER, MANAGER GRADE I, KERALA TOURISM
DEVELOPMENT CORPORATION, HOTELS & RESORTS LTD.,
RESIDING AT V.P.V/1565, MUKKOLA JUNCTION.,
NETTAYAM P.O., THIRUVANANTHAPURAM, PIN - 695013
- 7 JAIBEE KOLLARMALIL
AGE AND FATHER'S NAME NOT KNOWN TO THE
PETITIONER, MANAGER GRADE I, KERALA TOURISM
DEVELOPMENT CORPORATION, HOTELS & RESORTS LTD
RESIDING AT KOLLARMALIL HOUSE, VENGOOR P.O.,
ERNAKULAM, PIN - 683546

BY ADVS.
ELVIN PETER P.J. (SR.)
M.GOPIKRISHNAN NAMBIAR
ARAVINDA KUMAR BABU T.K.
K.R.GANESH
GOURI BALAGOPAL
SREELEKSHMI A.S.
ANAMIKA M.J.
M.FATHAHUDEEN
SANDRA SUNNY
ARUN KUMAR M.A
FARAH JYOTHI PRADEEP
K.JOHN MATHAI
JOSON MANAVALAN
KURRYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN
JAI MOHAN
P. A. AHAMED

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 07.04.2026, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



C.R.

J U D G M E N T**Soumen Sen, C. J.**

This writ petition has been filed invoking a writ of quo warranto against the 6th and 7th respondents who are appointed as Executive Trainees on 25.07.1991 on contract basis under the 4th respondent.

2. At the admission stage of the writ petition, the learned Single Judge, after recording that the petitioner does not have interest for himself against the post which has been held by respondent Nos. 6 and 7 in the Kerala Tourism Development Corporation (KTDC) and in the writ petition it is alleged that the respondent Nos. 6 and 7 who are holding the post of the Manager in KTDC at the time of their initial appointment did not have the requisite qualifications, directed the Registry to place the matter before the Hon'ble Division Bench dealing with the subject matter with a further direction upon the petitioner to disclose his credentials by filing an affidavit for maintaining the writ petition as prescribed in the High Court Rules.



3. Following the aforesaid direction, the matter was heard by the Bench headed by Mr. Justice Nitin Jamdar, the former Chief Justice of this Court. In course of the argument, the Hon'ble Division Bench, in its order dated 11.11.2025, made the following observation:-

“2. The settled position of law is that public interest litigation in service law is not to be entertained, except a writ of quo warranto. The petition has been filed without placing on record as to how the post held by Respondent Nos.6 and 7 are public posts, nor is there any specific reference to any statutory rules prescribing qualifications which are not fulfilled. Thus, the basic pleadings for seeking a quo warranto are missing. This would entail dismissal of the petition.

3. At the request of the learned counsel for the Petitioner, one more opportunity is granted to file additional affidavit on these two issues. The petition is restricted to these two grounds.”

4. Initially, no affidavit was filed. Ultimately, an affidavit was filed on 27.01.2026.

5. The petitioner is represented by the learned



counsel Mr. R. Sanjith. The petitioner retired from the services of the 4th respondent as Supervisor on 30.11.2014.

6. The brief facts involved in this case are that on 09.05.1991, the 4th respondent had issued a recruitment notification inviting applications for the post of an Executive Trainee. As per the said notification, the essential qualifications prescribed were a pre-degree along with a Diploma in Hotel Management and Catering Technology from a recognised institution and the candidate was required to be below 21 years of age as on 01.01.1991. In response to the notification, 15 applications were received, out of which, 9 candidates were shortlisted and interviewed, leading to the selection of 5 candidates, including respondents 6 and 7. After the selection, the respondents – candidates would be required to undergo a training programme for two years and after the successful completion of the same, they will be appointed as Assistant Managers on contract basis.

7. Accordingly, the 6th respondent was appointed as Executive Trainee on 25.07.1991 for a period of two years on monthly stipend of ₹1,500/-. The 6th respondent obtained



Diploma in Hotel Management/PGD/Certificate awarded by the National Council for Hotel Management in the year 1992. Respondent No. 4 on 10.08.1993 appointed the 6th respondent as Assistant Manager on contract basis for a further period of two years from 05.08.1993. On 02.08.1995, the 6th respondent made a request for absorption into the regular service of the 4th respondent Corporation. On 29.09.1998, the Government issued an order sanctioning and creating 33 posts of Manager Grade IV under the 4th respondent Corporation. Thereafter, on 10.10.1998, the 6th respondent was appointed as Manager Grade IV with effect from 29.09.1998.

8. The 7th respondent was appointed as Executive Trainee on contract basis with effect from 05.08.1991. His final semester BHM results were declared on October 1991 during the training period and, on successful completion of two years of training, the 7th respondent was appointed as Assistant Manager on contract basis for two years with effect from 05.08.1993. He was subsequently regularized and appointed as Manager Grade IV from 20.09.1998 after the Board resolved his eligibility on 29.06.1996. He was promoted



to Manager Grade III on 04.12.2006 and further promoted to Manager Grade I with effect from 01.03.2008 by order dated 03.12.2010.

9. This writ petition was filed 10 years after the writ petitioner retired from service. The petitioner, at this stage, has raised the issue with respect to the eligibility of respondent Nos. 6 and 7 to have the requisite qualification at the time of their initial selection. It is alleged that the basic qualification for the post of Executive Trainee as per the said notification was pre-degree and Diploma in Hotel Management and Catering Training (DHMCT) from any recognized University and the applicant should not exceed 21 years of age as on 01.01.1991. However, the enquiry report prepared by the Joint Secretary, Department of Finance dated 26.03.2024 would show that the aforesaid appointments are illegal and despite the issuance of the notice to respondent Nos. 1 to 5, they have failed to take any action in removing them from service.

10. The petitioner has relied upon paragraphs 4 and 10 of the affidavit filed by respondent Nos. 1 and 2 to show



that the said respondents have taken action pursuant to the report dated 26.03.2004. A report was called for from the 4th respondent Corporation. The opinion of the Law Department was also sought for in view of the pendency of this writ petition but the said respondents have awaited for the outcome of this petition. The said affidavit further states that the Government has absolutely no personal interest and is always willing to act in terms of the directions of this Court.

11. The petitioner has also relied upon paragraphs 4 and 8 of the counter affidavit filed by the 3rd respondent to show that the inspection report would reveal that the applications for the post of Executive Trainee in KTDC, received in response to the notification dated 09.05.1991, were not properly scrutinized by the Personnel Section in KTDC which helped the respondent Nos. 6 and 7 to attend the interview and obtain posting without having the requisite qualification. Even after getting information regarding this irregularity, the KTDC management were not seen initiated any action against it. Hence, the inspection report recommended the Administrative Department to take appropriate decision on the removal of respondent Nos. 6 and



7 from service. Further action on this recommendation had to be taken by the Tourism Department.

12. It was further stated that the Administrative Department was required to ensure compliance of the recommendations contained in the inspection report. The said affidavit refers to G.O.(P) No. 173/2023/Fin. dated 20.12.2021 and has stated that as per the said notification, Administrative Department/Agency/Institutions are required to take appropriate disciplinary action in case of grave irregularities such as misappropriation and fraud and appropriate action in other cases. Based on the aforesaid averments, the writ petitioner has submitted that the appointments were made against certain provisions and on the basis of misrepresentation of facts, which had led to the subsequent absorption of respondent Nos. 6 and 7 into the regular service of the 4th respondent.

13. It is submitted that since the entry to the service is based on misrepresentation and fraud they are required to be removed from service and all pecuniary benefits enjoyed by them should be directed to be returned and/or recovered



from them. The petitioner has relied upon the decision in *Rajesh Awasthi v. Nand Lal Jaiswal & Others*¹ to submit that the petitioner is required to establish that the office in question is a public office and is held by a usurper without legal authority. He stands in the position of relater and he did not have any special interest or personal interest.

14. In similar way, the decision in *State of AP & Another v. Suryachandra Rao*², paragraph 10, was referred to and relied upon to reinforce and reiterate that fraudulent misrepresentation is called deceit and any benefit obtained on the basis of such falsehood and based on deception will disentitle the person to hold on to such benefit and the Court shall put that clock back and quash all such appointments illegally obtained.

15. In view of the fact that respondent Nos. 6 and 7 were holding the office unauthorisedly and obtained appointments on misrepresentation and fraud, it is contended that the petitioner is entitled to maintain the writ petition.

1 2012 KHC 4631

2 2005 KHC 1262



16. Insofar as the delay in filing the writ petition, the petitioner has relied upon the decision of the Hon'ble Supreme Court in *Dr. Kashinath G. Jalmi & Another v. Speaker & Others*³, wherein, at paragraph 35, it has been held that if the manifest illegality is visible and the usurpation of office is clearly established, a writ of quo warranto cannot be dismissed solely on the ground of laches when it results in continuance in a public office of a person involved without lawful authority.

17. In order to show that respondent Nos. 6 and 7 are holding public posts, the petitioner filed affidavit on 2 December 2025 affirmed on 29.11.2025 along with documents and a further affidavit on 27.01.2026. In the affidavit dated 29.11.2025, the petitioner has disclosed the Articles of Association (in short, 'AOA') to show that the KTDC is regulated by the 1st respondent. The petitioner has placed reliance upon Article 97 of the AOA to argue that the said Article would show that even the internal personnel decisions of KTDC are regulated by the first respondent, thereby satisfying the "deep and pervasive control test" in terms of the

3 1993 KHC 921



judgment of the Hon'ble Supreme Court in *Ajay Hasia v. Khalid Mujib Sehravadi*⁴.

18. It was further stated that the appointments of respondent Nos. 6 and 7 were conducted according to the Recruitment Rules of 1988, framed under the authentication of the Minister of Tourism, Secretary Tourism, as per the Board resolution (Order No. BM-168/9 dated 06.04.1991).

19. On the basis of the aforesaid documents, it is submitted that the 4th respondent is an instrument of the State and the post of Manager is a public post and accordingly, a writ of quo warranto is maintainable.

20. Moreover, the petitioner has referred to the circular dated 29.09.1998, a Government order with regard to creation of posts on Manager Grade IV, to show that the post of Manager Grade IV is not created by the orders of the 1st respondent. So also, with the approval of the 1st respondent, regulations have been made for recruitment by the KTDCL in the year 2014 by order No. KTDC/PA1/7336/2014 dated 26.11.2014. The petitioner has referred to the subsequent

4 (1981) 1 SCC 722



affidavit dated 27.01.2026 to show that in answer to the RTI dated 19.11.2025, the State Public Information Officer has disclosed documents which would show that the 4th respondent is engaged in executing sovereign function through its officials and the said information has a bearing for appreciating the nature of the office being held by respondent Nos. 6 and 7.

21. The 6th respondent has taken a preliminary objection with regard to the maintainability of the writ petition. It was contended that the writ petitioner has to *prima facie* satisfy that the post held by respondent Nos. 6 and 7 is a public post and further that the very appointment to the said post is against the recruitment rules and the respondent Nos. 6 and 7 were appointed against the recruitment notification. There is no averment in the writ petition that the appointments in question were against a public post and in violation of law. The said respondent has relied upon the decision of the Hon'ble Supreme Court in *Hari Bansh Lal v. Sahodar Prasad Mahto and Others*⁵ to argue that public interest litigation is not maintainable in

5 (2010) 9 SCC 655



service matters except by way of quo warranto for which appointment must be shown in contrary to certain provisions.

22. Respondent No. 7 in the affidavit has also urged the same point and has stated that in 2010, KTDC itself issued a memo to the 7th respondent under Clause 76 of the Service Rules seeking his explanation why the service should not be terminated and after receiving a detailed explanation, KTDC was satisfied that the 7th respondent has transparently disclosed in this application that he had appeared in the exam and results were awaited and that the 7th respondent had not made any fraudulent representation. Any procedural lapse, if at all, was on the part of the employer. Thereafter, the 7th respondent was further promoted to be Manager Grade I. Having concluded this proceedings with a finding of no fault, it would be wholly impermissible to now revive the same allegation.

23. Moreover, in 2013, the Government received a report from the KTDC about the appointments of respondent Nos. 6 and 7. The report of the Managing Director dated 04.05.2013 recorded that the explanation of the 7th



respondent was satisfactory and that there is no attempt to defraud the Corporation. The Government thereafter did not take any further action.

24. In 2015-2016, a Vigilance and Anti Corruption Bureau enquiry was conducted. The Vigilance enquiry report forwarded on 09.12.2016 would show that the said Bureau has arrived at a definite finding that the 7th respondent was in no way responsible for getting his appointment irregularly and no fraud or malpractice was practiced. The Bureau has made a recommendation that the KTDC should strictly follow the rules in future recruitments. The Government accepted the report and no action was thereafter recommended against the 7th respondent.

25. In 2022, in response to a complaint before the Chief Minister's Public Grievance Redressal Cell, the Managing Director, in his report dated 28.09.2022, confirmed that the selection committee, which included a Government nominee, was fully aware at the time of interview that the results of the 7th respondent were awaited and had consciously extended the time to produce the certificates. The



complaint was found to have no basis.

26. The Lok Ayuta has also looked into the matter and found no fault on the part of the 7th respondent. Three independent enquiries, KTDC's own disciplinary proceedings, the Vigilance Department's report in 2016 and the Managing Director's reports on 2013 and 2022 have consistently exonerated the said 7th respondent.

27. Insofar as Exhibit-P1 report dated 26.03.2024 of the Finance Inspection Department is concerned, it is submitted that the said report was prepared without issuing notice to the 7th respondent and without seeking an explanation from the 7th respondent. The said report was prepared without allowing the 7th respondent to produce evidence.

28. It is submitted that an enquiry report recommending adverse action against a person, prepared wholly behind his back, without adhering to the principles of *audi alteram partem*, is fundamentally illegal, arbitrary and void.

29. It is submitted that the 7th respondent was



appointed in 1991 over 33 years ago. He has served KTDC with an unblemished record rising from Executive Trainee to Manager Grade I over three decades. Terminating a person from service after 33 years on matters that were long ago settled would be unjust and disproportionate.

30. The learned counsel for the 7th respondent has relied upon the decision of the Hon'ble Supreme Court in *B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*⁶ to argue that a writ of quo warranto does not lie if the alleged violation is not of a statutory nature and unless it is established that the office of the post held by the respondents are public office.

31. It is submitted that in *B. Srinivasa Reddy* (supra), the essential elements of a public office have been summarized as under:-

- a) Position must be created by constitution, Legislature or authority conferred by legislature.
- b) Portion of sovereign power of Government must be

6 2006 KHC 1253



delegated to such position.

c) Duties and powers must be defined directly or impliedly.

d) Duties must be performed independently without control or superior power other than law.

32. Similar is the observations made in *Dr. Neetu Singh v. State of U.P.*⁷ and the subsequent decision of the Hon'ble Supreme Court in *Agriculture Produce Market Committee v. Ashok Hariauni*⁸. It is submitted that in *Agriculture Produce Market Committee* (supra), it has been categorically held that the mere fact that one is an employee of a statutory body would not ipso facto mean that the function exercised by such employee is sovereign in nature.

33. Since the office of the Executive Trainee in KTDC is neither a public office nor does it involve the exercise or delegation of any sovereign power, the fundamental threshold condition required for the maintainability of the writ of quo warranto is not satisfied in the present case. The office of the

⁷ 2019 SCC OnLine All 5871

⁸ (2000) 8 SCC 61



Executive Trainee in KTDC being a post under a commercial corporation dealing with tourism related activities does not involve any delegation of sovereign functions nor it is held by the tenure and authority prescribed by any statute conferring sovereign power.

34. Respondent Nos. 4 and 5 in their affidavit have stated that respondent Nos. 6 and 7 have been appointed in the 4th respondent Corporation as Executive Trainees after following due procedural formalities like inviting applications through advertisement during 1991, conducting interview, etc. At the time of submission of interview report, the 6th respondent had informed that he is awaiting results and by a communication, respondent No. 7 has also informed that he is awaiting results.

35. It is submitted that the report of the Finance Inspection Department dated 26.03.2024 was not served to the respondent and the respondent had only received a letter dated 27.07.2024 from the Government directing to furnish a specific report on the actions recommended by enquiry wing of the Finance Department in the matter of respondent Nos. 6



and 7. Accordingly, the 5th respondent had submitted a report to the Secretary, Tourism, on 17.08.2023⁴ stating that appropriate actions would be taken as per the directions of the Government.

36. In the meanwhile, respondent Nos. 6 and 7 have submitted appeals with regard to the issues connected with their employment in the Corporation. They had appealed that they had served the Corporation for more than 33 years and recently some rumours have been spread among employees on some letters received from the Government in relation to their selection and employment in the Corporation as Executive Trainees in the year 1991. The appeal submitted by respondent Nos. 6 and 7 were placed before the Board of Directors in the 332nd Board meeting held on 04.09.2024. After detailed discussion, vide resolution No. 332/21(5) dated 04.09.2024, the Board resolved “to constitute a sub committee with members Adv. Suresh Babu and Mr. Valsaraj, the Board of Directors, to study and submit a report on the issues involved in the appeals placed before the Board”. It is submitted that the matter is under process.



37. It has been reiterated that the said respondents were appointed on successful completion of training for two years as Assistant Managers on contract basis. Then by way of representation dated 02.11.1993, the 6th and 7th respondents made a request for considering them on probation. This request was rejected by the Corporation on 05.01.1994 on the ground that they were already appointed as Assistant Managers on contract terms for two years. The probation will become applicable to them only if they are absorbed in the regular service of the Corporation as Assistant Managers on successful completion of the contract for two years. The KTDC at the relevant time was considering expansion and with a view to implement such plan, the Board of Directors on 06.09.1994 resolved to create six more posts to Manager Grade IV. On 12.10.1994 the Board of Directors resolved to create 15 more posts of Executive Trainees to be absorbed as Managers Grade IV after training, and six posts of Assistant Manager (Food Production) in Manager Grade IV. Thus, the Board of Directors had resolved to create a total of 33 posts of Manager Grade IV. (six posts on 04.08.1990, six posts on 06.05.1994, and 21 posts on 12.10.1994)



38. Although Article 97(v) of the AOA of the Corporation empowers the Board of Directors to “appointment managers, secretaries, officers....” appointments to posts carrying scale of pay exceeding ₹1,600/- could only be made “after obtaining prior concurrence of the Governor”. The Corporation, therefore, submitted a representation on 08.04.1996 to the 1st respondent enclosing the relevant board resolutions with a request to “accord approval to the decisions of the Board in creating the above mentioned posts”

39. The 1st respondent, on consideration of the aforesaid representation, by order dated 29.09.1998 accorded “sanction for the creation of 33 posts Manager Grade IV in Kerala Tourism Development Corporation Limited”. Following the order according sanction, the services of 6th and 7th Respondents were absorbed as Manager Grade IV (which corresponds to the designation of Assistant Manager referred to in the 1991 Board Resolution/ Advertisement) by way of Corporation’s order dated 10.10.1998 and they were offered the post of Manager Grade IV. Thus, both 6th and 7th Respondents continued to be engaged on contract basis till



their appointment and absorption as Assistant Manager by way of order dated 10.10.1998.

40. The matter of appointments of respondent Nos. 6 and 7 was also brought before Hon'ble Kerala Lok Ayukta in Complaint No. 1476/2015D, and the complaint was rejected as it was time barred since the complainant failed to file the complaint within the statutory period of five years.

41. Before we enter into the merits of the matter, it is necessary for us to decide the entertainability of the writ of quo warranto. Although attempts have been made to show that the KTDC is an instrumentality of the State and the Government has deep and pervasive control over the functioning of the KTDC, the fact remains that the KTDC was originally incorporated as the Kerala Tourism and Handicrafts Corporation Limited on 29.12.1965 and thereafter, in terms of Section 21 of the Companies Act, 1956 and with the approval of the Central Government, the name of the said company was changed to Kerala Tourism Development Corporation Limited on 15.07.1970. The said company was listed under the Companies Act, 1956, as a



company limited by shares. The main object of the said Corporation was to operate and promote establishments, undertaking and enterprises of any description which, in the opinion of the company, are likely to facilitate or ancillary for the development of tourism and handicrafts. The ancillary or incidental objects, *inter alia*, include to own, operate, acquire by purchase or in exchange, lease or rent, land, buildings, hotels, motels, restaurants, resorts, etc., for the purpose of developing tourism and to promote and uphold schemes for the development of tourism and handicrafts.

42. The respondent Nos. 6 and 7 initially were appointed as Executive Trainees. The 6th respondent was promoted to the post of Manager Grade IV and the 7th respondent was promoted to the post of Manager Grade I.

43. In order to make out a case for issuance of writ of quo warranto it is imperative for the petitioner to establish that the usurpers are holding public office in a statutory Corporation and is discharging sovereign functions. Merely by the fact that the Corporation or institution which the alleged usurper serves could be considered to be an instrumentality



of the State and writ petition may be entertained against such Corporation, every employee of the said establishment cannot be considered to be holder of a public post or public office for the purpose of deciding the writ of quo warranto. A three Judge Bench of the Hon'ble Supreme Court in *High Court of Gujarat and Another v. Gujarat Kishan Mazdoor Panchayat and Others*⁹ held in paragraphs 22 and 23 that 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 a writ of certiorari. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. This decision was considered in *Hari Bansh Lal* (supra).

44. The power of this Court to issue a writ of quo warranto flows from Article 226 of the Constitution of India, which expressly empowers the High Courts to issue writs, including quo warranto, not only for the enforcement of fundamental rights but also for any other purpose. The

9 (2003) 4 SCC 712



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. At times, persons not entitled to hold a public office may happen to occupy it and may also continue to hold it 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 a writ of quo warranto is properly invoked, the usurper can be ousted, thereby facilitating the person entitled to the post to occupy the same.

45. In *Corpus Juris Secundum* the term “quo warranto” is defined as under:

"quo warranto proceeding in the nature thereof is a proper and appropriate remedy to test the right or the title to an office and to remove or oust the incumbent. It is prosecuted by the State against a person who unlawfully usurps, intrudes or holds a



public office. The relator must establish that the office is being unlawfully held and exercised by the respondent and that the relator is entitled to that office".

46. Similarly, in **WHARTON'S LAW LEXICON**, quo warranto has been defined as under:

"quo warranto is writ issuable out of the Queen's Bench, in the nature of writ of right, for the Crows against him who claims or usurps any office, franchise or liberty, to enquiry by what authority he supports his claim in order to determine the right. It also lies in case of non-use or long neglect of a franchise or misuse or abuse of it, being a writ commanding the defendant to show by what warrant he exercises such a franchise having never had any grant of it or having fortified it by neglect or abuse".

47. The primary contention of the petitioner is that the offices held by respondents Nos. 6 and 7 are public in nature and are amenable to writ jurisdiction. Whereas, the learned counsel for the respondents claims that the post of Assistant Manager of various grades, which they are holding currently is not a public or civil post as it is not governed by



any Rule or Statute and therefore, they are not amenable to writ jurisdiction.

48. To understand this aspect in detail, it is necessary to refer to various precedents of the Hon'ble Supreme Court. Firstly, let us discuss the observation of the Hon'ble Supreme Court in the case of ***University of Mysore v. C.D. Govinda Rao***¹⁰, wherein it was held as under:

"Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office."

"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..."

(emphasis supplied)

10 AIR 1965 SC 491



49. In the case of ***Gambhirdan K. Gadhvi v. State of Gujarat***¹¹, the Hon'ble Supreme Court explained the meaning and purpose of the writ, observing as under:-

“17. In the Armed Forces Medical Assn. v. Union of India [Armed Forces Medical Assn. v. Union of India, (2006) 11 SCC 731 (1) : (2007) 1 SCC (L&S) 548 (1)], it has been observed by this Court that strict rules of locus standi are relaxed to some extent in a quo warranto proceedings. It is further observed in the said decision that broadly stated, 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 a judicial order. It is further observed that in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect citizens from being deprived of public office to which they have a right. These proceedings also tend to protect the public from usurpers of public office. It is further observed

11 (2022) 5 SCC 179



that 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.”

*** (emphasis supplied)

50. Also, in the case of ***Central Electricity Supply Utility of Odisha v. Dhobei Sahoo***¹², the Hon’ble Supreme Court observed as under:

"21.....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

12 (2014) 1 SCC 161: AIR 2014 SC 246



constitutional courts to see that a public office is not held by usurper without any legal authority."

51. The Hon'ble Division Bench of the High Court of Kerala in the case of *State of Kerala v. The Chancellor, APJ Abdul Kalam Technological University, Kerala and Ors.*¹³, held as under:

"9. Coming to the question related to the issuance of quo warranto, it is preeminently based on public interest and related to the public office. That is the reason the rule relating to locus standi is dispensed with, in respect to the remedy to invoke quo warranto....."

*** (emphasis supplied)

52. To examine this question, we need to understand the true meaning of the word "public office". "Public Office" has not been defined under the Act of 1949. "Public Office" as explained by the Major Law Lexicon 4th Edition 2010 is as under:

"A position whose occupant has legal authority to exercise a government's sovereign powers for a fixed period."

*** (emphasis supplied)

13 Judgment dated 16 February 2023 in W.A. No.1847/2022



53. The concept of “public office” has been succinctly explained by the Hon’ble Supreme Court in *Sashi Bhusan Ray v. Pramatha Nath Bandopadhyay*¹⁴, replying upon *Ferris Extraordinary Legal Remedies*. In *Ferris Extraordinary Legal Remedies*, the law is stated to be that, a public office is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by Law. In other words, it implies a delegation of a portion of the sovereign power. It is a trust conferred by public authority for a public purpose embracing the ideas of tenure, duration, emolument and duties. The determining factor, the test, is whether the office involves a delegation of some of the solemn functions of government, either executive, legislative or judicial, to be exercised by the holder for the public benefit. [Per A.N. Ray, J. paragraph 45]. The same view is reiterated by the Hon’ble Supreme Court in *V. C. Shukla v. State (Delhi*

14 1966 SCC OnLine Cal 153: (1968) 72 Calcutta Weekly Notes 50



Administration)¹⁵, at paragraph 26, relying upon the Extraordinary Legal Remedies, by Ferris.

54. We found it necessary to refer to an Allahabad High Court judgment in *Dr. Neetu Singh v. State of UP, Through, Secretary Medical Health and Others*¹⁶, wherein the petitioner, a Professor in the Centre for Advanced Research of King George's Medical University, invoked Article 226 of the Constitution seeking issuance of a writ of quo warranto against Respondent No. 4, who was also functioning as a Professor in the same department. The challenge was founded on the allegation that Respondent No. 4 did not possess the requisite educational qualifications prescribed for appointment as Professor in the Stem Cell/Cell Culture Laboratory and was therefore ineligible to hold the said post. It was contended that such ineligibility rendered his appointment illegal and liable to be questioned through a writ of quo warranto. The University, constituted under the Uttar Pradesh King George's Medical University Act, 2002 and governed by the First Statutes, 2011, was arrayed as a respondent, and the

15 (1980) Supp SCC 249 : 1980 CriLJ 965

16 2019 SCC Online All 5871



dispute centered on the legality of the appointment and the maintainability of a quo warranto petition against a Professor in a statutory educational institution. The Court held that a writ of quo warranto would lie only in respect of a “public office”, which necessarily involves a delegation of sovereign functions of the State—executive, legislative, or judicial—to be exercised for the benefit of the public at large. Upon examining the nature of the post, it was found that the office of a Professor in King George’s Medical University, though under a statutory body, does not involve the discharge of any sovereign functions of the Government. The duties attached to the post are academic in nature and do not amount to an exercise of State power affecting the public at large in the manner required to qualify as a “public office”. Consequently, the Court held that the writ of quo warranto was not maintainable against such a post, and the writ petition was dismissed.

55. The pre-requisites for issuing a writ of quo warranto can thus be summoned as under:

1. The **office** must be of a **public nature**.



2. The **office** must have been created by **charter, statute or Constitution**.
3. The **office** must be of a **substantive character**.
4. The **holder** must have been in **actual occupation of the office**.

[See *Rajesh Aswathi v. Nand Lal Jaiswal*¹⁷ and *Central Electricity Supply Utility of Odisha* (supra)]

56. Now, regarding the maintainability of the public interest litigation in service matters except for a writ of quo warranto, there are a series of decisions of the Hon'ble Supreme Court, which lay down the principles that are to be followed. But, we limit our discussion to the case of *Ashok Kumar Pandey v. State of W.B.*¹⁸, wherein the Hon'ble Supreme Court held thus:

“16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases,

¹⁷ AIR 2013 SC 78 : (2013) 1 SCC 501

¹⁸ (2004) 3 SCC 349



yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra [(1998) 7 SCC 273 : 1998 SCC (L&S) 1802] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.”



57. Public interest litigations in service matters are, as a rule, not maintainable, except in the limited circumstance of seeking a writ of quo warranto. The position being so, as rightly held by the Hon'ble Supreme Court, every court must exercise circumspection and decline to entertain such petitions when they are found to be motivated, frivolous, or filed under the guise of public interest.

58. Thus, from the above cases, it can be concluded by stating that the term "public office" is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by law. It implies a delegation of a portion of sovereign power. It is a trust conferred by public authority for a public purpose, embracing the idea of tenure, duration, emoluments and duties. A public office is, thus, to be distinguished from a mere employment or agency resting on contract, to which such powers and functions are not attached. The Common Law Rule is that



in order for the writ of quo warranto to lie, the office must be of a public nature. The determining fact, the test, is whether the office involves a delegation of some of the solemn functions of Government either executive, legislative or judicial, to be exercised by the holder of such office for general public benefit at large. Unless his powers are of this nature, he is not a public officer.

59. Therefore, the most important conditions which the person seeking a writ of quo warranto must satisfy is that the office in question is a public office and the same is of a public nature. If this condition is satisfied, only in such a case the Court may proceed further to inquire as to whether the appointment to the public office is really in violation of statutory rules and regulations or any provision of law. In the present case, it is a case that the Respondents 6 and 7 being the employees of KTDC are not holding any statutory office but one arising out of contract of employment regulated by service rules. The said post does not have an independent statutory existence nor does it involve discharge of sovereign functions.



60. On a question whether a Writ of Quo-warranto can be decided on merits of the case, it has to be noted that the same can be discussed on merits only after satisfying preliminary conditions such as the office must be a substantive public office held by a usurper without legal authority, and the appointment must be contrary to statutory rules or provisions.

61. Considering the above observations and findings, it is to be seen that the concept of a public office presupposes a post which has clear public trappings and must be an office where the incumbent is associated with duties of a public nature. The functional realm of the holder of the office should travel into the public domain. In the present case, respondent Nos. 6 and 7 are initially appointed as Executive trainees and were made the Managers of the KTDC after completing their two years training period. It is to be noted that the said post is contractual in nature and is not of a permanent one. It has also to be noted that the said respondents are not exercising any sovereign or governmental functions and do not fall under the term “public office” as interpreted in the



above definitions and findings. Due to this reason, the writ of quo warranto would not lie against them.

62. The learned counsel for the petitioner has referred to a judgment of the learned Single Judge of this Court dated 25th January 2021 in W.P. (C) No. 7481 of 2011 (**K. T. Santhosh Kumar v. Kerala Tourism Development Corporation and Another**). It appears from the said judgment that in allowing the writ petition, the learned Single Judge has observed that the said judgment in any manner does not fetter the rights of the KTDC in proceeding against the petitioner on the basis of a complaint against the petitioner that he had secured the employment without acquiring the minimum qualifications. The complainant was not the writ petitioner.

63. It appears that the Board of Directors of the 4th respondent Corporation in its 302nd Board meeting held on 04.09.2024 has constituted a sub committee to study and submit a report on the issues involved in the appeals placed before the Board. It appears that the appeals are yet to be disposed of and the matter is still pending with the Board.



64. It would not be proper at this stage to make any observation with regard to the issues raised by respondent Nos. 6 and 7 in the appeal. It is for the 4th respondent to take appropriate steps in the appeal and to inform the Government with regard to the steps taken in this regard.

65. In the light of the letter dated 27.07.2024 and now that we are disposing of the writ petition, there is no impediment for the Corporation to dispose of the appeal and inform the Government regarding the steps taken or proposed to be taken pursuant to the letter addressed to the Secretary and the Managing Director, KTDC, on 27.07.2024.

66. The Writ Petition accordingly, stands disposed of. However, there shall be no order as to costs.

**Sd/-
SOUMEN SEN,
CHIEF JUSTICE**

**Sd/-
SYAM KUMAR V. M.,
JUDGE**

APPENDIX OF WP(C) NO. 41806 OF 2024

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE COVERING LETTER BEARING NO. 2191919-IW-A1/38/2022-FIN DATED 01/04/2024 ADDRESSED TO 2ND RESPONDENT ALONG WITH ENQUIRY REPORT OF 3RD RESPONDENT BEARING NO. IW- A1/38/2022 DATED 26-03-2024 OBTAINED UNDER RIGHT TO INFORMATION ACT
Exhibit P2	TRUE COPY OF THE NOTICE BEARING NO. TOUR-B1/102/2022-TOUR DATED 27/07/2024 ISSUED BY THE ADDITIONAL SECRETARY ON BEHALF OF THE 2ND RESPONDENT