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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11416/2023 & CM APPL. 44428/2023

INDEPENDENT SCHOOL FEDERATION OF INDIA & ANR.

..... Petitioners

Through: Mr.Ravi Prakash Gupta, Advocate

versus

THE UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Manisha Agrawal Narain, CGSC
with Ms.Shivangi Gumber, Advocate
for R-1 and 2

Mr.M.A. Niyazi, Standing Counsel
for CBSE with Ms. Anamika Ghai
Niyazi, Ms. Kirti Bhardwaj, Ms.
Nehmat Sethi and Mr. Arquam Ali,
Advocates for R-3

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

11.10.2023

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1. Briefly stated the facts of the instant petition are the petitioner has asserted that the respondent no.3, Mrs Nidhi Chibber has been appointed at the position of Chairman, CBSE by way of bureaucratic re-shuffle. The petitioner has contended that the respondent no. 3 did not fulfil the requisite terms and conditions for appointment to the said position. Hence, the petitioner has preferred a writ of quo- warranto challenging the appointment of the respondent no.3, the continuation of the respondent no.3 at the said post and further prayed that the entire record may be produced before this Court pertaining to the eligibility and experience of the respondent no. 3



pertaining to the appointment of the respondent no. 3 to the said position.

2. During the course of the proceedings on the last date of hearing i.e. 29th August, 2023, this Court directed learned counsel for respondent No.3, appeared on advance notice, was directed to file a short affidavit along with the requisite documents pertaining to the respondent no.3 being a qualified person to be appointed at the said position and did not issue notice to the respondents.

3. In compliance with the order dated 29th August, 2023, the learned counsel appearing on behalf of respondent No.3 has filed a short affidavit along with the requisite document annexed as Annexure R-5 to the petition, *qua* her qualification for the purposes of appointment as Chairperson, CBSE. He has referred to the serials No.8, 18, 19 and 22 of the document annexed as Annexure R-5 to the petition submitting to the effect that respondent No.3 has worked in the Education department for a period of 48 months in the Cadre of Director and above.

4. The learned counsel appearing on behalf of respondent No.3 submitted that the allegations made in the instant petition *qua* the qualification of respondent No.3, that the respondent No.3 does not possess the minimum experience of three years, in the field of education, are incorrect and submitted that the executive record sheet annexed as Annexure R-5 to its affidavit is also available on the website of Department of Personal and Training, Ministry of Personnel, Public Grievance and Pensions, Government of India.

5. It is further submitted that respondent no. 3 has the requisite qualification and experience in the field of Education as per the criteria in the vacancy circular issued in 2015 for the said post.



6. *Per contra*, learned counsel appearing on behalf of petitioners vehemently opposed the submissions advanced on behalf of respondent No.3 and prayed for some time to file reply to the short affidavit filed on behalf of respondent No.3.

7. Heard learned counsel for the parties and perused the record, including the short affidavit along with requisite document filed on behalf of respondent No.3.

8. Before delving on the merits of the case, it deems apposite to enunciate the scope of writ of quo-warranto. The said writ is a remedy under common law as per which the person holding office is not entitled to hold such office and the appointment of the office- holder is contrary to the statutory rules, then the Court under its writ jurisdiction may be removed by issuance of such writ. It is used to determine whether the person has the necessary qualification to hold the said position or not.

9. The above-said principle has been enunciated by the Hon'ble Supreme Court in the judgment of ***Gambhirdan K. Gadhvi v. State of Gujarat***, (2022) 5 SCC 179 as follows:

“16. When a writ of quo warranto will lie has been dealt with by this Court in Rajesh Awasthi v. Nand Lal Jaiswal [Rajesh Awasthi v. Nand Lal Jaiswal, (2013) 1 SCC 501 : (2013) 1 SCC (Cri) 521 : (2013) 1 SCC (L&S) 192] . In para 19, it has been observed and held as under : (SCC p. 514)

“19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy to Govt. of Haryana [Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy to Govt. of Haryana, (2002) 6 SCC 269] held that a writ of quo



warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy [B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] , this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bansh Lal [Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules.”

17. In 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 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.



18. Thus, as per the law laid down in a catena of decisions, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one, which can only be issued when a person is holding the public office does not fulfil the eligibility criteria prescribed to be appointed to such an office or when the appointment is contrary to the statutory rules. Keeping in mind the law laid down by this Court in the aforesaid decisions on the jurisdiction of the Court while issuing a writ of quo warranto, the factual and legal controversy in the present petition is required to be considered.”

10. Now advertent to the facts of this case, the respondent no. 3 has by way of the Annexure R-5 to its short affidavit has filed information pertaining to its appointment at the said position and has drawn attention of this Court to serials no.8, 18, 19 and 22 of the said Annexure.

11. As per serial no. 8 of the said Annexure, the respondent no. 3 has served as Secretary Joint Secretary in the Technical Education Department at AIS cadre for the period of 21st February 2012 to 17th September 2013, as per Serial no. 18 of the said Annexure, the respondent no. 3 has served as Commissioner Joint Secretary at AIS cadre for the period of 15th July 2008 to 20th May 2009 and as per serial no. 19 of the said Annexure, the respondent no. 3 has served as Commissioner Joint Secretary in D/O School Education Public Instructions at AIS cadre for the period of 22nd April 2008 to 22nd May 2009. Moreover, as per serial no. 22 of the said Annexure, the respondent no. 3 served as Director of D/O School Education Public Instructions at AIS cadre for the period of 21st August 2007 to 21st April 2008.

12. Upon perusal of the Annexure R-5 to respondent no.3's short affidavit, this Court, *prima facie*, is not satisfied with the averments made in the instant writ petition. Since, the respondent no. 3 fulfills the said criteria



of being eligible to the said position as per the executive record sheet of the respondent no. 3 filed as Annexure R-5 to respondent no.3's short affidavit.

13. The writ of quo warranto is issued in cases where there is a finding by this Court under its writ jurisdiction that the person holding the public office does not possess the requisite qualification to be appointed to the position. The said writ is issued by the Courts to prohibit the unqualified person to occupy the said position.

14. In the instant case, this Court is not inclined to issue a writ of Quo Warranto, as no *prima facie* case is made out by learned counsel for the petitioner and the respondent no. 3 has the qualification to be appointed as the Chairperson, Central Board of Secondary Education.

15. In view of the foregoing discussion, this Court is of the view that the instant writ petition filed by the petitioner is nothing but a gross misuse of process of law.

16. Accordingly, the instant petition, alongwith pending application, stands dismissed.

17. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 11, 2023

Dy/db

Click here to check corrigendum, if any