

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1871 of 2017

Date of Order : August 22, 2017

Hem Raj

...Petitioner.

Versus

State of H.P. & others

...Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice.

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting? Yes.

For the Petitioner : Mr. Rajnish Maniktala, Advocate.

For the Respondents : Mr. Shrawan Dogra, Advocate General, with Mr. Anoop Rattan, Mr. Romesh Verma, Additional Advocates General; Mr. J.K. Vema & Mr. Kush Sharma, Deputy Advocates General, for respondent No1.

Mr. D.K. Khanna, Advocate, for respondent No.2.

Order

By way of a preliminary objection, so raised by the learned Advocate General, we are called upon to decide the issue of locus of the present petitioner, in filing the present petition.

Whether reporters of the local papers may be allowed to see the judgment?

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2. Petitioner lays challenge to the appointment of Ms Meera Walia (hereinafter referred to as the private respondent), as a Member of the Himachal Pradesh Public Service Commission (hereinafter referred to as the Commission). Also, in the alternative, a prayer is made, seeking direction to the State for framing guidelines for appointing the Chairman and Members of the Commission.

3. Petitioner, inter alia, alleges that no criteria stands prescribed for appointment of Chairman and Members of the Commission; there has been no deliberative process in the appointment of private respondent; per se the appointment, without any deliberative process, as per the desire of Hon'ble the Chief Minister of the State of Himachal Pradesh, is in violation of rules of conduct of business of the Government and in excess of the executive power of the State; appointment made is without verifying the antecedents of private respondent, who allegedly is not a person of impeccable integrity to be considered for appointment to a constitutional post.

4. It is not disputed that petitioner is a student of law. A reading of the petition reveals that prior to the filing of the instant petition, with regard to process of selection and appointment of respondent, petitioner had obtained information, under the provisions of the Right to Information Act, 2005 (hereinafter referred to as RTI Act),.

5. Prayer is twofold - (a) quash the order of appointment, which obviously is with a prayer for the issuance of the writ of quo warranto, (b) direction to frame guidelines and lay down parameters for appointment of Chairman and Members.

6. Learned Advocate General points out that the letter and spirit of Article 316 of the Constitution of India (hereinafter referred to as Constitution) stands complied with and there is no breach of any of the conditions so prescribed therein. Further, the apex Court in *Hari Bansh Lal v. Sahodar Parasad Mahto & others*, (2010) 9 SCC 655, has dealt with the maintainability of Public Interest Litigation and deprecated the practice of filing of frivolous petitions in matters relating to appointments to public offices

(Paras 11 to 19). Our attention is also invited to the earlier decisions rendered by the Apex Court in *Dr. B. Singh v. Union of India & others*, (2004) 3 SCC 363; and *Ashok Kumar Pandey v. State of W.B.*, (2004) 3 SCC 349.

7. Writ, in the nature of quo warranto, by a student, pursuing his studies in the subject of law, is not maintainable, is primarily what stands argued.

8. Chapter-II of Part-XIV of the Constitution deals with the establishment of and appointment of President and Chairman/Members of the Public Service Commission by the Union and the State Governments. Appointments are made by virtue of and in consonance with Article 316 of the Constitution. Any person appointed as Chairman or a Member can be removed or suspended from office by virtue of Article 317. Article 318 enables the State to regulate and make provisions with regard to conditions of service of Members and staff of the Public Service Commission.

9. In *State of Punjab v. Salil Sabhlok & others*, (2013) 5 SCC 1, to which our attention is invited by Mr. Maniktala, the Apex Court had the occasion to deal

with the issue of appointment of Chairman of State Public Commission (State of Punjab). The Court specifically framed the question: “whether High Court in exercise of its writ jurisdiction under Article 226 of the Constitution can lay down the procedure for the selection and appointment of the Chairman of the State Public Service Commission and quash his appointment in appropriate cases”? The question, so framed, came to be answered in the affirmative.

10. In *Salil Sabhlok (supra)*, appointment of Chairman to Punjab Public Service commission was assailed by a practicing Lawyer of Punjab and Haryana High Court, by way of Public Interest Litigation. In Paras 88 & 89 of the Report, the Court observed as under:

“88. The significance of these decisions is that they prohibit a PIL in a service matter, except for the purposes of a writ of quo warranto. However, as I have concluded, the appointment of the Chairperson in a Public Service Commission does not fall in the category of a service matter. Therefore, a PIL for a writ of quo warranto in respect of an appointment to a constitutional position would not be barred on the basis of the judgments rendered by this Court and mentioned above.

89. However, in a unique situation like the present, where a writ of quo warranto may not be issued, it becomes necessary to mould the relief so that an aggrieved person is not left without any remedy, in the public interest. This Court has, therefore, fashioned a writ of declaration to deal with such cases. Way back, in *T. C. Basappa v. T. Nagappa*, 1955 1 SCR 250 it was said:

"6. The language used in articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions of our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges."

11. Now significantly, by referring to and relying upon its earlier decisions in *Inderpreet Singh Kahlon v. State of Punjab*, (2006) 11 SCC 356; *In R/o Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission*, (2000) 4 SCC 309; and *Ashok Kumar Yadav v. State of Haryana*, (1985) 4 SCC 417, the Court reiterated the principle that only persons of integrity

can be considered for selection and appointment to a constitutional post or public office of significance and importance.

12. A four-Judges Bench of the Apex Court in *Ashok Kumar Yadav (supra)*, while dealing with selection and appointment of Member of Public Service Commission, clarified that the posts are to be manned by “competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merit”.

13. When the issue relates to the appointment of a person to a constitutional post, the locus that of the student, who is pursuing law, in our considered view, cannot be assailed. It is not that a fishing or roving enquiry is sought for by the petitioner, as prior to the filing of the instant petition, he has obtained relevant information from the authorities, under the provisions of the RTI Act. Allegedly, finding the appointment to be illegal or at least questionable, in

the absence of prescribed procedure for appointment of persons to the constitutional posts, petitioner has filed the instant petition, inter alia, claiming relief of quo warranto. ◇

14. In our considered view, reliance on the decision in *Hari Bansh Lal (supra)* is misplaced. No doubt, as was held by the Court, strangers and a busybody cannot be allowed to indulge into misadventure of assailing appointments to public posts, but this was in the backdrop where on merit, the Court found the person so appointed to be suitable and having been appointed in accordance with and not contrary to the statutory provisions.

15. In *Ashok Kumar Pandey (supra)*, the Court emphasized the need of striking balance between two conflicting interests – (a) a person indulging in wild and reckless allegations besmirching the character of others, (b) avoidance of public mischief so filed with oblique motives. In fact, in the very same report, the Court dwelt on the question as to what really is “public interest”. It need not be an interest gratifying the curiosity or a love for information and amusement, it

must have some interest by which legal rights or liabilities are affected. It should also be such which a citizen generally is concerned with, like the affairs of the local, State or National Government.

16. Relying on *Dr. P. Nalla Thampy Thera v. Union of India & others*, (1992) 4 SCC 305, the Court clarified "PIL" to mean a legal action initiated in a Court of law for enforcement of public or general interest, in which the public or a class of the community have some interest by which their legal rights and liabilities are affected.

17. In *Dr. B. Singh (supra)*, the Apex Court only reiterated the aforesaid position, by further clarifying that it is the duty of the Court to ensure that the complaint so filed is prima facie genuine and aimed at redressal of public wrong or public injury.

18. A Constitution Bench (Five Judges) of the Apex court in *Sheonandan Paswan v. State of Bihar & others*, (1987) 1 SCC 288, in fact held the proceedings initiated for the purpose of punishment to the offender in the interest of society to be maintainable by a public spirited person, including a political opponent.

19. A Constitution Bench (Five Judges) of the Apex Court in *Manoj Narula v. Union of India*, (2014) 9 SCC 1, has held as under:

“82. In a democracy, the citizens legitimately expect that the Government of the day would treat the public interest as primary one and any other interest secondary. The maxim *Salus Populi Suprema Lex*, has not only to be kept in view but also has to be revered. The faith of the people is embedded in the root of the idea of good governance which means reverence for citizenry rights, respect for Fundamental Rights and statutory rights in any governmental action, deference for unwritten constitutional values, veneration for institutional integrity, and inculcation of accountability to the collective at large. It also conveys that the decisions are taken by the decision making authority with solemn sincerity and policies are framed keeping in view the welfare of the people, and including all in a homogeneous compartment. The concept of good governance is not an Utopian conception or an abstraction. It has been the demand of the polity wherever democracy is nourished. The growth of democracy is dependant upon good governance in reality and the aspiration of the people basically is that the administration is carried out by people with responsibility with service orientation.”

20. At this stage, it cannot be said that the petition is motivated or so filed with extraneous considerations, for the objection with regard to

maintainability of the petition came to be raised prior to issuance of notice.

21. In the instant petition, challenge to the appointment of private respondent is alleged on the ground that at certain stage, i.e. in the year 2014, challan for having committed offences under the provisions of the Prevention of Corruption Act, 1988 was filed against the private respondent, in relation to which, eventually, closure report was filed. Also, prosecution sanction, in relation to the very same crime, never came to be accorded by the appropriate authority in the case of her husband, who allegedly is working in the Office of the Hon'ble Chief Minister of the State of Himachal Pradesh.

22. At this stage, we are deliberately not going into the correctness of the factual matrix, as also the aspect of ineligibility or unsuitability of private respondent, who stands appointed as a Member of the Commission.

23. However, applying the law discussed supra to these alleged facts, can it be said that the petitioner, a student of law, has no locus to enforce the rule of

law. In our considered view, the answer has to be in the negative. Petitioner, per se, cannot be said to be a stranger in pursuing the enforcement of rule of law and justice. ◇

24. We clarify that we have not expressed any opinion on the merits of the petition, as also suitability of private respondent No.3 - Ms Meera Walia as a Member of the Commission.

25. However, the issues raised by the present petitioner are of vital public importance and significance, hence, the petition cannot be dismissed in limine, solely on the ground of locus, for we have already held that a student of law can have as much interest in the enforcement and upholding the rule of law as an Advocate would have, as was so held by the Apex Court in *Salil Sabhlok (supra)*.

26. As such, we are inclined to issue notice in the petition to all the respondents.

27. Notice. Mr. Kush Sharma, learned Deputy Advocate General, and Mr. D.K. Khanna, Advocate, appear and waive service of notice on behalf of respondents No.1 and 2, respectively. Separate notice

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be issued to private respondent No.3. Steps for service be taken within two days. Service upon respondent No.3 be also effected through respondent No.2. Notice be made returnable for 12.9.2017.

List on 12.9.2017.

(Sanjay Karol),
Acting Chief Justice

August 22, 2017^(sd)

(Ajay Mohan Goel),
Judge.

High Court