

(2020) 09 CHH CK 0016

Chhattisgarh High Court

Case No: Writ Petition (S) No. 2401 Of 2020

Naresh Chandra Gupta

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Sept. 15, 2020

Acts Referred:

- Chhattisgarh Lok Sewa (Anusuchit Jatiyon, Anusuchit Janjatiyon Aur Anya Pichhade Vergon Ke Liye Arakshan) Adhiniyam, 1994 - Section 8
- Indian Penal Code, 1860 - Section 109, 120B, 409, 420
- Prevention Of Corruption Act, 1988 - Section 13(1)(d), 13(2)
- Evidence Act 1872 - Section 123
- Chhattisgarh Civil Services (Contract Appointment) Rules, 2012 - Rule 4, 5, 5(1), 6, 6(1), 8, 9, 9(3), 17
- Chhattisgarh Civil Services (General Conditions Of Service) Rules, 1961 - Rule 5, 6
- Constitution Of India, 1950 - Article 166(3), 226

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Gary Mukhopadhyay, Vivek Sharma, S.C. Verma, Animesh Tiwar, Avi Singh, Ayush Bhatia

Final Decision: Dismissed

Judgement

Goutam Bhaduri, J

1. Heard.

2. By way of the present petition, the writ of quo warranto is prayed for challenging the appointment of respondent No.3 namely Alok Shukla made

on:-

30.05.2020 whereby the respondent No.3 was appointed on contract basis as Principal Secretary, Parliamentary Affairs, State of Chhattisgarh and

has been given the additional charge of Principal Secretary, School Education Department, State of Chhattisgarh vide Annexure P-1.

01.06.2020 whereby the respondent No.3 has been given the additional charge of President, Chhattisgarh Madhyamik Shiksha Mandal, President

Chhattisgarh Professional Examination Board and the Principal Secretary, Skill Development, Technical Education and Employment Department vide

Annexure P-2.

3. The facts are, after retirement of respondent No.3, he has been appointed on contract basis by State. The appointment is made by the

respondents/State in exercise of powers under Chhattisgarh Civil Services (Contractual Appointment) Rules, 2012 (hereinafter referred to as 'the

Rules, 2012'). The respondent No.3 was an officer of Indian Administrative Services and held the different posts in the Government. It is contended

that while respondent No.3 was posted as Chairman, Civil Supplies Corporation committed mass irregularities for which after a raid was conducted

and an offence bearing crime No.9/2015 was registered by the Anti Corruption Bureau of the Economic Offence Wing and initially charge-sheet was

filed against few accused thereafter additional charge-sheet was filed against the respondent No.3 and another on 05.12.2018. It is further contended

that since the respondent No.3 was not appearing before the trial Court after filing of the charge-sheet in the year 2018, the First Additional Sessions

Judge, District Raipur had issued the arrest warrant against the respondent No.3. Subsequently, the respondent No.3 was granted the anticipatory bail

on 16.10.2019 in M.Cr.C.(A) No.788 of 2019.

4. It is further contended that after formation of the new government, the steps were taken to suspend the respondent No.3 and all of sudden the State

Government instead of acting against respondent No.3, provided him patronage and appointed him to the various important posts. It is further

contended that the investigation by the Enforcement Directorate is also being conducted against the respondent No.3.

5. It is further contended that the State of Chhattisgarh notified the Chhattisgarh Civil Services (Contract Appointment) Rules, 2012 (hereinafter

referred to as 'the Rules, 2012') by its notification on 31.12.2012 which have been amended from time to time and the last Rules which stand amended

uptill 2019 (filed as Annexure P-7) purport that Rules 4 & 5 of the Rules, 2012 deal with the appointment to be made on the contract. It is further

contended that Section 9 of the Rules, 2012 contemplates the disqualification for contractual appointment and purports, if any departmental

enquiry/prosecution is pending against him person would be disqualified to be appointed. It is further pleaded that despite the fact that the prosecution

is pending against respondent No.3, he has been appointed on the contract basis against the Rules, 2012.

6. The State on the other hand in its reply have stated that the State Government being subjectively satisfied about the suitability and the eligibility of

the respondent No.3 for contractual appointment to the post of Principal Secretary has provided the appointment. State further contended that the

State Government has exercised its discretion to appoint respondent No.3 by exercising the power of relaxation conferred to the State Government

under Rule 17 of the Rules, 2012. It is further stated that the State Government has not committed any illegality in exercise of relaxation of the rule to

appoint respondent No.3 as the rule itself empowers the State to do so. It is further contended that the vires of the legality of Rule 17 of the Rules,

2012 is not under challenge in the present petition. Therefore, as the State has exercised the discretion, the same cannot be questioned.

7. Further the State in their reply have stated that prior to attending the age of superannuation on 31.05.2020, the respondent No.3 was serving as

Principal Secretary, School Education Department and while in service served in the project named as "Padhai Tohar Dwar" and the said project

was designed by respondent No.3 in the web portal of the State, wherein he played the material role. It is further contended that the said project was

inaugurated on 7th of April, 2020 and which had resulted in extreme benefit to the 20 Lakhs students and 2 Lakhs teachers. It is further stated that

under the extreme situation, the engagement of the services of respondent No.3 was continued for successful execution of the project instead of

bringing in new incumbent to the fore.

8. It is further stated that respondent No.3 was instrumental in development a system to provide vegetables and other necessary items to the doorsteps of the citizens. It is further stated that respondent No.3 was also instrumental in developing the telemedicine application in order to provide facilities for the general public, particularly the labour class, who are situated at the extreme ends of the State. It is further contended that respondent No.3 has also executed the computerization of PPDS operation under the public administration, for which he was awarded by the Prime Minister for his distinguished work. Since the multiple projects as well as the pending schemes need to be executed, as a result of which the State Government deemed it proper to continue with the engagement of respondent No.3.

9. The respondent No.3 in its reply has stated that he is the recipient of the Prime Minister Award for excellence for his outstanding work in streamlining and computerizing in paddy procurement and PDS in the State of Chhattisgarh. This is the highest award for bureaucrats in the country.

It is further contended that his books namely; ambush, tales of ballot and EVM, the true story, have been very well recognized. Further the respondent

No.3 contended that PDS of Chhattisgarh developed by the respondent No.3 had received the National E-Governance Award for 2008-09 and this

system has received several other National Level Awards. It is further contended that the said system in excellence of PDS process re-engineering is

considered the best in the country and has been adopted by many other states and it has also been praised by the Supreme Court in the judgment

passed in the case of People's Union for Civil Liberties (PDS Matters) Vs. Union of India & Ors. {(2011) 14 SCC 559}.

10. The respondent No.3 further contended that before his superannuation on line education system was developed due to nation wide lock down

within a short span of 15 days, which was launched on 7th of April, 2020 by the State of Chhattisgarh which has given wide benefit to 22 Lakhs

students and 2 Lakhs teachers all over the State. It is further stated that respondent No.3 has developed a website for home delivery of fruits,

vegetables and other essential commodities during the lockdown period and also has developed the health volunteers programme known as Mitani

programme to provide public health. Therefore, it is stated in the reply that quo-warranto as prayed for is not maintainable as the petitioner is not aggrieved by the appointment and non-appointee can only challenge the order of appointment and can seek the writ of quo-warranto.

11. It is further contended by respondent No.3 that the petitioner though has described himself as a social and political worker but actually is a member of Bhartiya Janta Party, which is currently in opposition in the State, therefore, the petition is outcome of political/personal vendetta and is tainted with malafide. It is further contended that the respondent No.3 is the senior most bureaucrat serving with the State and the State Government is facing acute shortage of senior IAS officers as only 4 officers are of Additional Chief Secretary rank and 3 officers are of Principal Secretary rank are in the State, therefore, under the circumstances by using the power of relaxation by the State Government, the respondent No.3 has been appointed.

12. It is further submitted by respondent No.3 that in the criminal case bearing charge-sheet No.26/2015, the petitioner was not initially named and after the gap of two years, while the Vidhan Sabha election results were awaited on 05.12.2018 a supplementary charge-sheet was filed by the EOW, Raipur. It is further submitted that no departmental enquiry had ever been initiated against the respondent No.3 and no loss to the State Exchequer was incurred. It is further contended that on 24.09.2019, the High Court of Chhattisgarh was pleased to stay the proceedings before the trial Court for the offence arising out of the FIR and consequent upon the charge-sheet and the supplementary charge-sheet the further proceedings are stayed. As on date the said order of stay of proceedings is continuing. It is further contended that the charges have not been framed till date in this case and the respondent No.3 in the meanwhile has been granted the anticipatory bail on 16.10.2019 in M.Cr.C.A. No.788 of 2019.

13. Shri Gary Mukhopadhyay, learned counsel appearing on behalf of the petitioner, would submit that the appointment made is de hors the Rules,

2012. It is contended the Rules 4 & 5 of the Rules, 2012 would show that when appointments are to be made for sanctioned post, wherein the

petitioner has been appointed and when such appointments are made under Rule 4 (1), it requires to be advertised. He would further submit that before appointment selection committee is required to be formed and departmental recruitment process would be applicable. The counsel would submit therefore by appointment violation of Rule 5 (1) & 6 (1) of the Rules, 2012 was done as no advertisement was made and no selection committee was formed. He further refers to the Rule 8 & 9 of the Rules, 2012 and would submit that the Rule 8 touches upon the eligibility criteria and Rule 9 specially contains the ineligibility criteria. Rule 9 (3) of the Rules, 2012 purports that if any departmental enquiry/prosecution is pending, the person would be ineligible to be appointed.

14. Learned counsel for the petitioner would further refer to the FIR and the charge-sheet and would submit that against the respondent No.3 a supplementary charge-sheet was filed in the year 2018 and thereafter on 05.12.2018 (Annexure P-4) the arrest warrant was issued against respondent No.3. He would further submit that after the FIR was lodged in the NAAN scam, the petitioner was not given any charge. He would further submit in the rejoinder that the respondent No.3 is also subjected to enquiry by the Enforcement Directorate, therefore, he filed a bail petition before this Court, wherein he has been enlarged on bail.

(o) He further submits that the document filed along with the rejoinder would show that in a PIL which includes the name of the respondent No.3 in other matter, the CBI enquiry was ordered, however, in the reply when the objection was raised that the order of the PIL has already been stayed by the Supreme Court, it has not been denied by the petitioner counsel. He would further submit that after filing of the instant petition, the appointment of respondent No.3 has been further approved by the cabinet of State ignoring the fact that the notices were issued by this Court and no documents have been placed on record to show that under what circumstances, the relaxation clause was invoked. He placed his reliance in the cases of Central

Electricity Supply Utility of Odisha Versus Dhobei Sahoo and others {(2014) 1 SCC 161}, Renu and others Versus District and Sessions Judge, TIS

Hazari Courts, Delhi and Another {(2014) 14 SCC 50} and Rajesh Awasthi Versus Nand Lal Jaiswal and Others {(2013) 1 SCC 501} and would

submit that the petitioner can very well maintain the petition of quo-warranto and it is an exception to general rule. He further placed his reliance in the case of K. Anbazhagan Versus Superintendent of Police and others {(2004) 3 SCC 767} and would submit that the petitioner is entitled to raise such ground as he can raise the ground about the appointment of respondent No.3 and nothing has been brought on record to show that as to how the rule was relaxed. He would further submit that though the submission has been made that the relaxation of the rule is exercised but how it has been done it is not clear and no document has been placed, therefore, the appointment of respondent No.3 on contract basis would be against the statute i.e. the Rules, 2012 and accordingly, the same is required to be set aside.

(xvi) Per contra, Shri S.C. Verma, learned Advocate General along with Animesh Tiwari, Dy. AG for the State would submit that the petitioner is the president of legal cell of the opposition party in State, therefore, the petition is motivated. With respect to the PIL filed along with the rejoinder

(Annexure P-12) he would further submit that the presence of the parties in the PIL bearing WP (PIL) No.53/2018 would show that the private

parties were not noticed and he would submit that even the order passed in the aforesaid PIL is completely stayed by the Supreme Court and the petitioner has deliberately avoided to place those facts before this Court, as such mischief is being committed by concealment.

(xvii) It is further contended that the supplementary charge-sheet under Section 173 was filed at the behest of one police officer namely Mukesh

Gupta as on earlier occasion deliberately some part of offence was investigated and some was not investigated. It is contended that under those

circumstances when challenged, the trial has been stayed by one co-ordinate Bench of this Court and another co-ordinate Bench of this Court has

granted the anticipatory bail to the respondent No.3. He would further submit that the Rule 17 of the Rules, 2012 gives the power of relaxation as the

government is conferred power to relax any of the provisions of these Rules. He would further submit that the Rules still holds the field, and even

clause 17 of Rules, 2012 is not under challenge. Therefore, the State in its wisdom having relaxed the Rule of 2012, the petitioner cannot question the

same as Rule 17 of the Rules, 2012 still is intravires. He would further submit that the reply of the State would reflect that considering the merit of

respondent No.3, he was appointed for various reasons, therefore, State would have the unfettered right to do so.

18. Learned Advocate General would further refer to the case of Satish Chandra Anand Vs. Union of India {AIR 1953 SC 250} and would submit

that it is the prerogative of the State to appoint a person on contract basis, which cannot be questioned. He further placed reliance in the case of B.

Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association and others {(2006) 11 SCC 731 (II)} and would

submit that the government is in ultimate charge of the administration and it is the Government and cabinet which is politically answerable to the

people for the achievements and failures of the Government and in the instant case the government in the larger interest of the administration has

appointed respondent No.3, therefore, it cannot be termed as violative of any legal or constitutional rights of the petitioner. He would further submit

that considering the multiple activities which the State has to discharge, the respondent No.3 was found to be suitable officer to discharge such duty

and the appointment is made on the ground of administrative exigencies. Therefore, the sovereign power of State was exercised, which cannot be

questioned by the petitioner.

19. He further placed reliance in the case of The University of Mysore and another Vs. C.D. Govinda Rao and another {AIR 1965 SC 491} that in

this case the eligibility of the respondent No.3 is not in question and the petitioner who claims the writ of quo-warranto, he should satisfy the Court that

the office in question is a public office and is held by usurper without legal authority and that inevitably would lead to the enquiry as to whether the

appointment of the alleged usurper has been made in accordance with law or not?

20. He would, therefore, submit that in this case applying the aforesaid principles, it would show that the appointment was made by relaxation of Rule

17 of the Rules, 2012, therefore, no illegality can be said to have been done as Rule 17 of the Rules, 2012 is not under challenge. He further placed

reliance in the judgment passed in WP (PIL) No.30 of 2018 {Rakesh Choubey Vs. State of Chhattisgarh & ors.} by the Division Bench of this Court

on 05.08.2019 and would submit that the reading of the judgment passed by the Division Bench of this Court would show that on the similar ground

when the challenge was made about the appointment of retired IAS Officers to the post of Information Commissioner, the same was held to be

justified and the said petition was dismissed. He further placed reliance in the judgment passed by the Division Bench of Madhya Pradesh High Court

in the case of Dr. Avinash Mishra & others Vs. State of Madhya Pradesh & others (WP No.12747 of 2018) on 22.06.2018 and would submit that the

State has a right to assess the suitability of the candidate for appointment with or without interview and the power of relaxation when used under the

recruitment rules, the same cannot be questioned. Henceforth, the petition is devoid of all merits, tainted with malafide and liable to be dismissed.

21. Shri Avi Singh, learned counsel with Shri Ayush Bhatia, learned counsel for respondent No.3 would submit that the writ at the behest of the

petitioner is not maintainable. He would further submit that it is not a case of the petitioner that he is eligible to be appointed. He would further submit

that the petitioner has further concealed the material facts, therefore, the inequitable jurisdiction how far can be extended for the petitioner is a

question to be decided. Referring to the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association

and others {(2006) 11 SCC 731 (II)} he would submit that only aggrieved person can file a petition of quo-warranto and the Court will not sit over the

decision of the Government or will enquire into. He would further submit that it is not a case that the petitioner wanted to get himself appointed and

the petitioner has failed to show his locus.

(xxii) The counsel for respondent No.3 further referring to the law laid down in the case of P.K. Sandhu (MRS.) Vs. Shiv Raj V. Patil {(1997) 4 SCC

348} would submit that the scope of enquiry by the Court in the likewise appointment is limited and if it is only illegal, the appointment can be subjected

to scrutiny. However, when it is the case of the State that the Rules were relaxed, the writ under Article 226 of the Constitution of India of the like

nature would not be maintainable. He would further submit that the appointment was made contractual in nature and the appointment on the said post

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(ii) Likewise of 1st June, 2020 further additional charge was given to the respondent No.3, which reads as under which is Annexure P-2:-

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Â 25. Admittedly respondent No.3 attained the age of superannuation and after his retirement he is appointed. The scope of locus of the petitioner

along with the power of Court for judicial scrutiny of likewise appointment are to be examined. The Supreme Court in the case of Centre for PIL Vs.

Union of India {(2011) 4 SCC 1}, which is further relied in the case of Central Electricity Supply Utility

of Odisha Vs. Dhobei Sahoo and others {(2014) 1 SCC 161}, and the Court observed that the Government is not accountable to the Courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decision when impugned under the judicial review jurisdiction. At para 21 of the said judgment, the Court observed that 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. Herein this case, with respect to the eligibility criteria, it is not in dispute by the parties that the respondent No.3 is eligible therefore only its correctness as to whether the appointment is contrary to the statutory rules along with locus of petitioner is to be examined. The Court further held 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. It further held that 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.

26. The Court in Dhobei Sahoo (supra) has held that there is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a relator to the Court on the other. It further held that the doctrine of delay and laches will not have a large application and the Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds. At para 23 of the judgment after dealing different case laws right from Hari Bansh Lal v. Sahodar Prasad Mahto {(2010) 9 SCC 655}, where the learned judges referred to the principles laid down in Duryodhan Sahu v. Jitendra Kumar Mishra {(1998) 7 SCC 273}, Ashok Kumar Pandey v. State of W.B. {(2004) 3 SCC 349}, B. Singh v. Union of India {(2004) 3 SCC 363}, Dattaraj Nathuji Thaware v. State of Maharashtra {(2005) 1 SCC 590} and Gurpal Singh v. State of Punjab {(2005) 5 SCC 136} and expressed the view thus: {Hari Bansh Lal case (supra)} at para 15, which is reproduced hereinbelow:-

15. The above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters.

27. Further the Supreme Court in the case of Renu & others Vs. District and Sessions Judge, Tis Hazari Courts, Delhi and Another {(2014) 14 SCC

50} at para 15 held that 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. It further held that

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. Para 15 of the said judgment of Renu (supra) is reproduced

hereinbelow:-

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 (AIR 1965 SC

491), Kumar Padma Prasad v. Union of India (AIR 1992 SC 1213), B.R. Kapur v. State of T. N. (AIR 2001 SC 3435), Mor Modern Coop. Transport

Society Ltd. v. State of Haryana ((2002) 6 SCC 269), Arun Singh v. State of Bihar ((2006) 9 SCC 375), Hari Bansh Lal v. Sahodar Prasad Mahto

((2010) 9 SCC 655) and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo (2014) 1 SCC 161).

28. The Supreme Court in the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association and others

{(2006) 11 SCC 731 (II)} has held thus at para 43:-

Whether a writ of quo warranto lies to challenge an appointment made "until further orders" on the ground that it is not a regular appointment ?

Whether the High Court failed to follow the settled law that a writ of quo warranto cannot be issued unless there is a clear violation of law? The order

appointing the appellant clearly stated that the appointment is until further orders. The terms and conditions of appointment made it clear that the

appointment is temporary and is until further orders. In such a situation, the High Court, in our view, erred in law in issuing a writ of quo warranto the

rights under Article 226 which can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus.

29 Further the Supreme Court in the case of Rajesh Awasthi Vs. Nand Lal Jaiswal and others {(2013) 1 SCC 501} at para 31 held as under:-

Â From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater.

He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same

as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in Kashinath G. Jalmi v. Speaker

(AIR 1993 SC 1873).

30 On reading of the aforesaid principles as laid down, I am of the opinion that the petitioner though may not be a contender for the post but would

have the right to challenge the appointment of respondent No.3 as he will have the locus to challenge the same. The instant petition is filed in the

individual capacity not as an PIL. The High Court of Chhattisgarh Rules, 2007 prescribes certain procedure to be followed to maintain an PIL. Most importantly, as per Rule 79

2. disclosure are required to be made that he has no personal interest in the subject matter. This petition has not been preferred as a PIL. Therefore,

applying the aforesaid principles of Supreme Court, it is held that petitioner though might have locus to challenge the action of State for appointment of

respondent No.3, but since the petitioner himself is not an eligible or contestant for the post, the petition for writ of quo-warranto cannot be maintained

other than PIL.

31 Now another issue comes for consideration as to whether the respondent No.3, who is holding the post is authorized to hold the same as per

statutory provisions or not and whether the Court can look into the legality of such decision making process?

32. The initial appointment of respondent No.3 was made on 30th May, 2020 under the Rules, 2012. The Rules 4, 5 & 6 of the Rules, 2012 pertain to

Posts of Contract Appointment, Method of Appointment Selection Committee, the relevant part of Rules, 2012 read as under:-

Â Post of Contract Appointment. - The following posts shall be called as contract appointment post:-

Â Such posts sanctioned as contract appointment posts in the departmental set up.

Â Such sanctioned posts in regular establishment in the departmental set up which are likely to remain vacant for a period of one year or more due to

unavoidable reasons.

Â Such posts, which are likely to remain vacant for a period of one year or more due to non-availability of government servants having minimum

eligibility requirement or because unavoidable reasons it is not possible to fill up the post by promotion, with approval of General Administration

Department.

Â Such posts, notwithstanding anything contained in departmental recruitment rules, which require specialization, experience and special qualification

declared as contract appointment post by a general or special order in exceptionally special cases by the State Government to maintain the efficiency

in public administration, except such post for which legal experience in the judicial service field is required under any law or rules for the time being in force.

^ Posts sanctioned in the personal establishment of Chief Minister/ Ministers on which appointments are to be made till the tenure of Chief Minister/Ministers (co-terminus).

5 Method of Appointment. - Contractual appointment may be made in the following manner :-

for the posts mentioned under Rule 4(1), by way of public advertisement;

for the posts mentioned in Rule 4(2) and (3), by contract appointment of retired government servants; for the post mentioned in Rule 4(4) in

exceptional special cases, directly by contract appointment, of specific non-government person or retired government servant on the basis of

specialization, experience, special qualification and his suitability for the post after approval of the Finance Department;

^ for the Posts mentioned under Rule 4(5), person recommended by Chief Minister/Ministers considering the prescribed qualification, eligibility and suitability of the person for the post.

6. Selection Committee. - (1) Selection committee for contract appointment to the posts prescribed under rule 4(1) or (2) shall be same as prescribed

in the departmental recruitment rules :

Provided that in the selection committee for contract appointment for the posts to be filled by the Chhattisgarh Public Service Commission, the state

Government may nominate any Additional Chief Secretary, Principal Secretary or Secretary in place of the Chairman/Member of the Chhattisgarh

Public Service Commission.

^ The Provisions of Section 8 of the Chhattisgarh Lok Sewa (Anusuchit Jatiyon, Anusuchit Janjatiyon Aur Anya Pichhade Vergon Ke Liye

Arakshan) Adhiniyam, 1994 (No. 21 of 1994) shall also be applicable for the constitution of the Selection Committee.

33. Likewise the Rules 7, 8 & 9 pertain to age limit, eligibility criteria and qualifications for appointment and in-eligibility for contract appointment of

retired Government servants which read as under:-

7. Age Limit. - (1) Age limit for contract appointments shall be the same as prescribed in the departmental recruitment rules for the concerned post for service :

Provided that orders/instructions issued by the General Administrative Department from time to time relating to relaxation in age limit shall also be applicable for contract appointment.

(b) In the case of retired government servant contract appointment may be given for a maximum period of 10 years or up to the age of 70 years, whichever is earlier.

(8) Eligibility Criteria and qualification for appointment. - (1) The eligibility criteria and qualification for contract appointment, in all cases except the contract appointment of retired government servant, shall be the same as prescribed in rule 5 and 6 of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961.

2 (a) Minimum educational qualification and other qualifications for contractual appointment on the post of direct recruitment shall be the same as prescribed in departmental recruitment rules for such post;

2. There shall be no restriction of educational qualification for appointment in the case of contract appointment of retired government servant on the post equivalent to the post held prior to retirement, except such post for which legal experience in the judicial service field is required under any law or rule for the time being in force;

3. In the case of contract appointment of retired government servants, in special cases, contract appointment may be given on higher post, except such post for which legal experience in the judicial service field is required under any law or rule for the time being in force, on the basis of their special experience, exemplary service record and evaluation of performance.

9 In-eligibility for contract appointment of retired government servants. - (1) On integrity not being certified in service records;

Â Evaluation of confidential reports/performance of past three years service record not being Very Good/or above category;

Â Pending departmental enquiry/prosecution;

- Â Punished during the last year of service;
- Â Punished by way of stoppage of pension;
- Â Dismissed/removed or compulsorily retired from service;
- Â On being convicted; and
- Â Other general ineligibilities for government service.â€

34. Rule 17 of the Rules, 2012 deals with the power to relax the rules, which reads as under:-

(q) Power to relax rules. - Government shall have the power to relax any of the provisions of these rules.

35. The parties to the dispute herein have not questioned the eligibility of respondent No.3 to be appointed but the question is about the legality and suitability. The Supreme Court in the case of Mahesh Chandra Gupta V. Union of India and others {(2009) 8 SCC 273} has drawn a line in between â€œeligibilityâ€ and â€œsuitabilityâ€. It held that the suitability pertains to realm of opinion and is therefore, not amenable to any judicial review. The

Court at para 43 held as under:-

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.

36. The stand of the State that the contractual appointment of respondent No.3 was made as the government was subjectively satisfied about the suitability and the eligibility of respondent No.3. The state at para 6, 22 & 23 of the reply has stated that in exercise of Rule 17 of the Rules, 2012, the government has relaxed the provisions of the Rules and appointed respondent No.3. The suitability of respondent No.3 has also been stated for the various job done.

37. Wade, in his Administrative Law, at page 59 quotes Lord Halsbury's remark:-â€..... 'discretion' means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private

opinion.....according to law, and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular. According to the State Rule 17 of the

Rules, 2012 was exercised to relax the Rules of 2012 for the reason stated that respondent No.3 who was earlier serving as a Principal Secretary has

developed the project/system in the name of "Padhai Tohar Dwar" in the web portal of the State Government and the respondent No.3 he played

a key role in developing the said project and was in know of the substantial work continued in all the entire project which provided help in teaching to

the 22 Lakhs students and 2 Lakhs teachers, therefore, under the extreme situation, the State though continued the engagement of respondent No.3

for successful execution of the project instead of bringing new incumbent into the fore.

38. The State has further contended that respondent No.3 was instrumental in development a system under which vegetables and other items of

necessity were provided at the doorsteps of the citizens. Further it is stated respondent No.3 was instrumental in developing the telemedicine

application in order to provide facilities for the general public, particularly the Labour Class and he further executed the computerization of PPDS

operation under public administration, for which he was even awarded by the Prime Minister. Therefore, the multiple projects as well as the pending

schemes need to be executed and as a result of which the State Government deemed it proper to continue with the engagement of respondent No.3

and the Rule 17 of the Rules, 2012 was exercised and appointment was given. In such situation, when the question of correctness of reasons for a

decision taken by the Government comes under the RADAR, then it is not a matter of concern in the judicial review and the Court will not step into

this unless the policy decision is offending.

39. The decision on relaxation having been exercised by the State, which the State has explained in its reply for the various projects pending, the

engagement of respondent No.3 would be necessary, it would be a policy matter of the Government. Therefore, this Court cannot substitute its

wisdom on the ground that better, fairer or wiser alternative would have been available. Legality of the policy and not the wisdom or soundness of the

policy is the subject of judicial review. The legality of the appointment by exercise of Rule 17 of the Rules, 2012 which gives the power of 'relaxation'

to the State, if has been exercised in the backdrop of certain facts or demand, this Court will not sit as an appellate authority examining the

correctness, suitability and appropriateness of the policy. The Court also cannot work as advisors to the executive, which the executive is entitled to

formulate.

40. The Division Bench of High Court of Madhya Pradesh in the case of Dr. Avinash Mishra & others Vs. State of Madhya Pradesh & others (WP

No.12747 of 2018) has laid down the principle that when the Rules permit the relaxation power and if it has been exercised then the same cannot be

put to subject of question. The Court reiterated the law laid down in the case of Keshav Chandra Joshi and others etc. Vs. Union of India and others

{AIR 1991 SC 284} wherein at para 32 the Court has held thus:-

“32.....Therefore, the rule which effects the right to confirmation or similar provision is a condition of service. The rules relating to recruitment

to the service either under R.5 (a) or 5 (b) or the manner of recruitment to service as per Appendix 'A' or 'B' are basic rules of recruitment to service.

Satisfaction of the Governor that the operation of the rules regarding the conditions of service would cause undue hardship in a particular case or

cases and the need to relieve hardship and to cause just and equitable results is a pre-condition. Even otherwise the court cannot substitute its

satisfaction to the satisfaction of the Governor in exercise of the power of deemed relaxation. In Narendra Chadha vs. Union of India's case (AIR

1986 SC 638) the power to relax was wide enough to cover 'any rule' and there was no pre-condition of objective satisfaction by the Governor. We

hold that R. 5(a) and (b) and Appendices 'A' and 'B' are basic rules of recruitment and would not be subject to R.27.”

41. With respect to the criminal cases/charge-sheet, the orders have been placed on record to show that the respondent No.3 has been enlarged on

anticipatory bail by the co-ordinate Bench of this Court. One order is dated 16.10.2019 on record. The order shows the anticipatory bail is granted to

respondent No.3 in crime No.9 of 2015, for which the charge-sheet has been filed by the Anti Corruption Bureau of the Economic Offence Wing

under Sections 109, 120B, 409, 420 of the IPC and Sections 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act. According to the respondent No.3 at para 8.4, the charges have not been framed yet. The respondent No.3 further stated that by order dated 24.09.2019 the High Court of Chhattisgarh has been pleased to stay the proceeding before the trial Court for which the supplementary charge-sheet is also pending and the stay of the proceeding is continuing as on date. Since the charges having not been framed, the trial has not commenced as on date and no presumption can be drawn as of now by this Court. Beside all when the State laments the fact that it has exercised its power by relaxation of the Rules, 2012 for appointment on a contractual basis, the power to relax cannot be gone into when vires of Rule 17 of the Rules, 2012 is not under challenge. Therefore, when the relaxation of the Rules, 2012 was exercised in absence of any breach of fundamental right of the citizen, to open an enquiry would amount to judicial overreach.

42. The Supreme Court in the case of B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association and others {(2006) 11 SCC 731} while dealing with the contract appointment after superannuation of a public officer has held that when a competent and experienced officer of an outstanding merit is appointed to a higher post on contract basis after his superannuation from service in the larger public interest, it does not suffer from any legal malice at all.

43. The petitioner contended during the course of argument that while this petition was pending before this Court, the respondent/State has accorded cabinet approval to the appointment of respondent No.3. Reading of entire pleading would show that power of relaxation of Rule by Government is stated to be to undermine the authority of Court. In the rejoinder by petitioner it is pleaded that appointment of respondent No.3 was ratified by cabinet on 14.07.2020. Therefore, considering those averments, the power having been exercised by Government for appointment, fair administration of justice would not suffer by non-disclosure of such decision making process. The absence of denial of fact about decision, the act of State would be saved under Section 123 of the Evidence Act read with Article 166 (3) of the Constitution of India and is not fair for this Court to make a roving

enquiry in respect of lawfulness/legality of decision. Therefore, the judicial determination can only be confined to the integrity of the decision making process in terms of statutory provisions.

44. With respect to the challenge in like nature appointments, the Supreme Court in B. Srinivasa Reddy Vs. Karnataka Urban Water Supply &

Drainage Board Employees' Association and others {(2006) 11 SCC 731} has held that the burden of establishing mala fides is very heavy on the

person who alleges it. The allegations of malafides are often more easily made than proved. It held that the anxiety of the Court should be all the

greater to insist on a high degree of proof. The Court would therefore, be slow to draw dubious inferences from incomplete facts placed before it by a

party particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the

administration. In the para 91 of the said judgment the Court has held thus:-

91. "-----". The Chief Minister as a Head of the Government is in ultimate charge of the administration and it is he who is

politically answerable to the people for the achievements and failures of the Government. If the Chief Minister (sic places) confidence on the

appellant, he may legitimately in the larger interests of administration appoint him until further orders as M.D. of the Board. It does not involve

violation of any legal or constitutional rights. Secondly, given the vast multitudinous activities in which a modern State is engaged, there are bound to be

some posts which require for adequate discharge of their functions, high degree of intellect and specialized experience. It is always a difficult problem

for the Government to find suitable officers for such specialized posts. There are not ordinarily many officers who answer the requirements of such

specialized posts and the choice with the Government is very limited and this choice becomes all the more difficult, because some of these posts,

though important and having onerous responsibilities, do not carry wide executive powers and officers may not, therefore, generally be willing to be

transferred to those posts. The Government has in the circumstances to make the best possible choice it can, keeping in view the larger interests of

the administration. When in exercise of this choice, the Government transfers an officer from one post to another, the officer may feel unhappy

because the new posts does not give him the same amplitude of powers which he had while holding the old post. But that does not make the appointment arbitrary. So long as the appointment is made on account of the exigencies of administration, it would be valid and not open to attack under Articles 14 & 16. Here the post of M.D. was admittedly a selection post and after careful examination of the merits, the Chief Minister selected the appellant for the post of M.D. It was not the case of the respondents that the appellant was not found qualified to the task or that his work was not satisfactory.

45. Applying the aforesaid principles, when according to the State counsel, the appointment of respondent No.3 has been made in the larger exigencies of the administration, the Court will not take the role of execution as it would certainly amount to exceeding constitutional bounds. The grievance which is experienced by the petitioner cannot be considered by this Court as a valid ground to strike down the appointment. The Court cannot run the Government nor into the administration indulgence. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the constitution casts on it a great obligation as the sentinel to defend the values of the constitution and rights of the individuals. The Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. Consequently, as has been consistently held by the Courts that in matters of policy, the Court will not interfere. In the facts of this case, the government having exercised the power of Relaxation of Rule 17 of the Rules, 2012 for appointment, the appointment having been made at the advice of Government, the appointment cannot be called in question. As a result of discussions as narrated above, I am not inclined to entertain this petition. It is accordingly dismissed. No order as to cost.