

(2012) 09 CAL CK 0021

Calcutta High Court

Case No: MAT No. 39 of 2012

Union of India and Others

APPELLANT

Vs

Shri. Raj Kumar and Another

RESPONDENT

Date of Decision: Sept. 29, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16(1), 226, 26

Citation: (2013) LabIC 617**Hon'ble Judges:** I.P. Mukerji, J; Debasish Kar Gupta, J**Bench:** Division Bench**Advocate:** Anjili Nag, S. Samanta and P.C. Das, for the Appellant; Roshan George, for the Respondent**Final Decision:** Dismissed

Judgement

Debasish Kar Gupta, J.

Two appeals bearing MAT No. 39 of 2012 and MAT No. 36 of 2012 respectively have been preferred against the judgment dated July 17, 2012 delivered in WP No. 023 of 2012. By virtue of the impugned judgment the learned single Judge issued a writ of quo warranto against the appointment of one Shri Dharam Raj to the post of Inspector (Weight and Measures). The aforesaid Shri Dharam Raj is respondent No. 2 in MAT No. 39 of 2012 and the appellant in MAT No. 36 of 2012. The aforesaid appeal bearing MAT No. 39 of 2012 has been preferred by the Administration of the A and N Islands Administration and its officers. The aforesaid appeal bearing MAT No. 36 of 2012 has been preferred by the person against whom a writ of quo warranto was issued.

2. The fact of the case in a nutshell is as under:--

The aforesaid Shri Dharam Raj was appointed to the post of Lower Grade Clerk w.e.f. April 11, 1990. He participated in a training programme at the Indian Institute of Legal Metrology, Ranchi.

3. The aforesaid Shri Dharam Raj filed an application bearing OA No. 42/AN/1996 before the learned Central Administrative Tribunal, Calcutta Bench (Circuit Bench at Port Blair) for consideration of his case for appointment to the post of Inspector (Weights and Measures) under the A and N Administration. The above application was dismissed by the learned Tribunal on June 04, 1996.

4. Subsequently, the aforesaid Shri Dharam Raj filed another application before the learned Tribunal bearing OA No. 197/AN/2010 on the self same cause of action claiming a change in the circumstances due to amendment of the Recruitment Rules. The learned Tribunal disposed of the above application on September 08, 2010 with a direction upon the Chief Secretary, A and N Administration to consider the representation of the aforesaid Shri Dharam Raj for his appointment to the post of Inspector (Weights and Measures).

5. The case of the aforesaid Shri Dharam Raj was considered by the A and N Administration on the basis of the above direction of the learned Tribunal. Ultimately, by an order No. 842 dated May 31, 2011 he was informed that the Lieutenant Governor (Administrator), A and N Islands had been pleased to appoint him to the post of Inspector (Weights and Measures) Group-B Non-Gazetted post under the A and N Islands Administration.

6. The above appointment was challenged by Shri Raj Kumar, the respondent in both the aforesaid appeals, in WP No. 023 of 2012 praying for issuing a writ in the nature of quo warranto on the ground of usurpation of the office under reference without having requisite qualifications. The above writ application was allowed by the learned single Judge by an order dated July 17, 2012 by issuing a writ in the nature of quo warranto against the aforesaid Shri Dharam Raj so far as his appointment to the post of Inspector (Weights and Measures) was concerned. Hence these appeals.

7. Mrs. Anjili Nag, learned advocate appearing on behalf of the appellants in appeal bearing MAT No. 39 of 2012 submits that Shri Raj Kumar, the writ petitioner had no locus standi to file the writ application under reference. According to Mrs. Nag, the impugned judgment was delivered violating the principles of natural justice because extraneous consideration had been taken into account by the learned single Judge. According to Mrs. Nag, the challenge to the power of relaxing the provisions of eligibility criteria of the Recruitment Rules concerned was absent in the pleading of the writ application. The third ground for preferring this appeal is this, the power of relaxation was exercised in accordance with the Recruitment Rules in vogue. According to Mrs. Nag, it was not taken into consideration by the learned single Judge while delivering the impugned judgment.

8. Mrs. Nag relied upon the decisions of [Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others](#), [Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.](#), and [Arun Kumar Agarwal Vs. Union of India and](#)

Others,

9. It is submitted by Shri P.C. Das, learned advocate appearing for the appellant in the aforesaid appeal bearing MAT No. 36 of 2012 that the writ application suffered from vices of suppression of material fact. According to him, his client filed two applications before the Central Administrative Tribunal, Calcutta Bench (Circuit Bench at Port Blair). The first application was dismissed by the learned Tribunal on June 4, 1996. According to Mr. Das, his client filed the second application bearing O.A. No. 197/AN/2010 relying upon the amended Recruitment Rules and the above application was disposed of on September 8, 2010 with a direction upon the Chief Secretary, A and N Administration to consider the case of his client for appointment to the post of Inspector (Weights and Measures). Pursuant to the above order of the learned Tribunal, Shri Dharam Raj was appointed by an order No. 842 dated May 31, 2011 in the post of Inspector (Weights and Measures).

10. Reliance is placed by Mr. P.C. Das on a decision of High Court of [High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others,](#)

11. According to Mr. S. Samanta, learned Advocate of the respondent No. 1/writ petitioner, a journalist is a watchdog and in a case where a person holds a public office without having requisite qualifications, the question of filing an application under Article 226 of the Constitution of India praying for issuing a writ in the nature of quo warranto cannot be dismissed at the threshold on the ground of locus standi. Mr. Samanta further submits that the learned single Judge took into consideration all the grounds raised in these appeals.

12. We have heard the learned advocates appearing for the respective parties at length and we have given our thoughtful considerations to the facts and circumstances of these cases.

13. The first ground for our consideration is the locus standi of the writ petitioner Raj Kumar in filing the application under Article 226 of the Constitution of India asking for issuing a writ in the nature of quo warranto for the purpose of setting aside the appointment of the aforesaid Dharamraj.

14. Admittedly, the writ petitioner had no individual cause to agitate in the above writ application.

15. For the purpose of considering a case for issuing a writ in the nature of quo warranto the following three tests are to be fulfilled:--

(i) The office must be created by statute or by the Constitution;

(ii) The office must be public in nature; and

(iii) The office must be substantive in character.

16. Once these three tests are fulfilled it matters little that who has approached the Court under Article 226 of the Constitution of India to issue a writ in the nature of quo warranto. The question of locus standi of a petitioner to pray for writ of quo warranto is an exception to the general rule that only a person who has been individually aggrieved may move High Court for a Writ. Further, even assuming that the filing of the writ application is an outcome of personal vendetta, when the allegation is of usurping a public office by the aforesaid Shri Dharam Raj, the Court is under obligation to take up the issue on merit. The above proposition of law is settled by the Hon'ble Supreme Court in the matter of [Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others](#), and the relevant portions of the above decision are quoted below:--

(8) The first question is whether the appellant had locus standi to file a petition in the High Court under Art. 26 of the Constitution. This Court in [The Calcutta Gas Company \(Proprietary\) Ltd. Vs. The State of West Bengal and Others](#), dealing with the question of locus standi of the appellant in that case to file a petition under Art. 226 of the Constitution in the High Court observed:--

Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the Court seeking a relief thereunder. The Article in terms does not described the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.....The right that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

(Emphasis supplied)

17. In view of the ratio laid down by the Hon'ble Supreme Court, we don't think that the decision of [Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others](#), and [Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.](#), have any manner of application here. In the first judgment relied upon by Mrs. Nag, it was a public interest litigation and the question of issuing a writ of quo warranto was not involved. Similarly, the law laid down in the second decision is also not applicable in view of the distinguishable facts and circumstances of that case in the light of the tests discussed hereinabove.

18. So far as the second ground is concerned, it is ground of violation of principles of natural justice. After perusing the impugned judgment, we find that the learned counsel appearing for the A and N Administration had advanced his argument with regard to the question of relaxation of the provisions of the recruitment rules and it was taken into consideration by the learned single Judge while delivering the

judgment. But it is true that the ground of exercising the power of relaxation which was a part of the statutory Recruitment Rules concerned was not taken into consideration by the learned single Judge. Therefore, that has to be considered. Since, it is a question of law which is to be decided on the basis of the admitted facts and circumstances, we are of the view that the above ground can be examined by us.

19. In the matter of [Swaran Lata Vs. Union of India and Others](#),) the Hon"ble Supreme Court held that in a case of direct recruitment the advertisement should prescribe requisite qualification and the candidature of the applicants must be examined in accordance with those provisions and the relevant portions of the above decision are quoted below:--

51. It is undisputed that there is no statute or regulation having the force of law, by which any qualifications are prescribed for the post of Principal of the Institute. Nor has the Administrator framed any rules to regulate the method of recruitment to such post, or laying down the qualifications necessary for appointment to the post of the conditions of service attached to the post. The Chandigarh Administration accordingly while sending up its requisition dated August 14, 1974 to the Union Public Service Commission, suggested certain essential and desirable qualifications, keeping in view the qualifications prescribed by the Government of India in the Training Manual quoted above. The nature and duties of the post of Principal of the Institute are primarily administrative in nature, but the qualifications prescribed were, however, essentially technical. The Commission, therefore, by its letter September 15, 1974 returned the requisition to the Chandigarh Administration, with the observation that they should lay down the qualifications keeping in view the nature and duties of the post. The Chandigarh Administration accordingly on January 2/4, 1975 forwarded a fresh requisition revising the qualifications for the post, i.e., including "Administrative Experience for three years". Thereafter, the Commission on February 1, 1975 advertised the post with the essential qualifications as suggested, with a relaxation clause. It will, therefore, appear that in the instant case, the essential qualification were prescribed by the Chandigarh Administration in consultation with the Commission and also that the Commission had, in the advertisement issued, reserved to itself the power to relax the qualifications in case of suitable candidates. Where qualifications for eligibility are not prescribed by rules, broad decisions as to the method of recruitment are taken in consultation with the Commission. This requirement was fulfilled in this particular case. The Chandigarh Administration was fully aware that the Commission had reserved to itself the power to relax the essential qualifications. The Commission, therefore, acted within its powers in relaxing the qualifications of the candidates called for interview. In fact, the Chandigarh Administration ratified the action of the Commission in making the appointment. The appointment of respondent 6, Smt. Prem Lata Dewan cannot, therefore, be challenged on the ground that either the Commission had not power to relax the qualifications or that she did not possess

the minimum qualifications prescribed for the post.

(Emphasis supplied).

20. Subsequently, in the matter of [Virendra Nath Gupta and another Vs. Delhi Administration and others](#), the Hon"ble Supreme Court considered a case of exercising statutory power of relaxation of the provisions of Recruitment Rules by the employer under a compelling circumstances of non-availability of eligible candidate and that too in a reasonable manner. The relevant portion of the above decision are quoted below:--

5. There is no dispute that the recruitment/appointment to the post of Vice-Principal in the Government aided schools and recognized schools in the Union Territory of Delhi is regulated by the Rules published on April 7, 1980, a copy of which has been placed before us, framed u/s 8(1) of the Act reads with Rule 100. Since the institution is an aided and recognized school the aforesaid Rules were applicable for the purpose of recruitment to the post of Vice-Principal. According to the Rules recruitment to the post of Vice-Principal is to be made by selection. The Rules prescribe educational and other qualifications. The Rules provide that the post of Vice-Principal should be filled by promotion failing which by direct recruitment as stated in column 8 of Annexure-B to the Rules. As noticed earlier the management made attempt to fill the post by promotion and the DPC had considered the case of teachers of the institution for promotion to the post of Vice-Principal and it recommended respondent 5, but the same was not approved by the Director of Education. The Selection Committee, had considered the appellants also but it did not find them suitable for promotion, instead it recommended respondent 5 for promotion but the recommendation of the Selection Committee was not approved by the Director of Education. The Director of Education by his letter dated May 2, 1981 directed the management of the institution to fill the post by direct recruitment-Pursuant to that direction the management issued advertisement for making the recruitment. The Rules thus contain express provision for direct recruitment to the post of Vice-Principal and as such we find no merit in the submission made on behalf of the appellants.

6. Admittedly, respondent 5 did not possess Master"s Degree in second division, which was an essential qualification but column 5 to Annexure-B to the Rules which prescribes essential qualifications, states: "Condition of second relaxable in case of candidates belonging to the same school and also in case of Scheduled Castes/Scheduled Tribes." The Rules further contain a note: "Competent authority may relax the essential qualifications in exceptional cases of the candidates of the same school, after recording reasons therefor". The Selection Committee as well as the competent authority granted relaxation to respondent 5 as he belonged to the same school. Further he had ten years" experience as Trained Graduate Teacher and as such he was eligible for direct recruitment under the Rules the appellants" peal that since the management was interested in appointing respondent 5 to the

post of Vice-Principal, it manipulated to get his selection made for appointment to the said post, is without any foundation. The Selection Committee consisted five members out of which three were representatives of the Education Department appointed by the Director of Education. The Selection Committee made the selection in accordance with the Rules and found respondent 5 suitable for appointment to the said post. In this view there is no merit in the second submission made on behalf of the appellants.

(Emphasis supplied)

21. A conjoined reading of the aforesaid two decisions of Swaran Lata (supra) and [Virendra Nath Gupta and another Vs. Delhi Administration and others](#), leads to the settled principles of law that the recruitment rule has to be invoked strictly and not in breach. In case of an anticipated situation of exercising power of relaxation of statutory provision of the concerned Recruitment Rule, it has to be circulated widely to the prospective candidates who can claim such relaxation and the power of such relaxation can be exercised in absence of availability of eligible candidates in accordance with the Recruitment Rules.

22. On the basis of the admitted facts and circumstances of these cases, we find that it was a case of direct recruitment in accordance with the Recruitment Rules in vogue. Taking into consideration the admitted position on the basis of the submissions made on behalf of the A and N Administration, the Recruitment Rules published under the Gazette Notification dated December 5, 1994 were the Recruitment Rules in vogue. It was also recorded by the learned single Judge in its order dated June 15, 2012. We do not find any substance in the submissions made on behalf of the selected candidate that his case was considered on the basis of the Recruitment Rules dated July, 2005 which were allegedly in vogue at the material point of time. Neither it was the contention of the A and N Administration nor any material is placed on record to show that the above Recruitment Rules were brought into force at the material point of time in accordance with law.

23. We find that the learned single Judge held that in the event the Recruitment Rules are pitted against the exercise of power of relaxation, the former must prevail. We do not agree with that conclusion. A conjoined reading of the decisions of Swaran Lata (supra) and [Virendra Nath Gupta and another Vs. Delhi Administration and others](#), leads to a settled proposition that it was open to the employer to exercise the statutory power of relaxing the provisions of statutory Recruitment Rules. But the decision making process of exercising such power has to be considered on the basis of the settled principles of law. In a case of direct recruitment, the process of selection must be conducted after wide circulation of the recruitment process to the eligible candidates. It was not done. The case of Shri Dharam Raj, who was holding the post of Lower Grade Clerk in the department, was taken up for consideration in isolation in the guise of complying with the order passed by the learned Tribunal in the application bearing OA No. 197/AN/2010. But

the learned Tribunal never directed the employer to consider the case of aforesaid Shri Dharam Raj alone. It was not considered adhering to the principles of fundamental right guaranteed under Articles 14 and 16(1) of the Constitution of India. At the cost of reputation, we find as a corollary to the decisions of Swaran Lata (supra) and Virendra Nath Gupta (supra) that the power of relaxation can only be used taking care of the provisions of Articles 14 and 16(1) of the Constitution of India by circulating such intention to the prospective participants widely and in a case where no eligible candidate was available. In the facts and circumstances of this case, none of the aforesaid tests was followed.

24. We further find that it was a case of gross deviation from the provisions of eligibility criteria in the light of the Recruitment Rules concerned because a candidate having graduation in Arts was appointed where the minimum eligibility criteria for the post concerned was graduate in Science. Therefore, the selection and appointment of the aforesaid Shri Dharam Raj was an instance of wrongful exercise of power so far as the function of the A and N Administration was concerned in the matter of his appointment.

25. We do not find that the decisions of [Arun Kumar Agarwal Vs. Union of India and Others](#), and High Court of Gujarat [High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others](#), have any manner of application herein view of the distinguishable facts and circumstances discussed hereinabove.

26. On the basis of the observations and discussions made hereinabove, both the appeals are dismissed. There will be, however, no order as to costs.

27. Urgent photostat certified copy of this judgment, if applied for, be given to the parties forthwith.

I.P. Mukerji, J.

I agree.