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(2018) 07 PAT CK 0037

Patna High Court

Case No: Civil Writ Jurisdiction Case No.10671 of 2017

Lalan Jha Lallan Jha	APPELLANT
Vs	
Union Of India & Ors	RESPONDENT

Date of Decision: July 31, 2018

Acts Referred:
Administrative Tribunals Act, 1985 â€" Section 3(q), 4(2), 5(4)#Constitution of India, 1950 â€" Article 226, 311, 312, 315, 317(1)

Citation: (2018) 07 PAT CK 0037

Hon'ble Judges: MOHIT KUMAR SHAH, J

Bench: Single Bench

Advocate: Madhurendra Kumar, S.D Sanjay, Sheela Sharma, Shivendra Kr. Roy

Final Decision: Dismissed

Judgement

1. The present writ petition has been preferred to issue direction for removal of respondent no. 6 from the post of Cashier at UCO Bank, Sangrampur

Branch, Munger, Bihar since it is alleged that the said respondent no. 6 has obtained employment on the basis of forged certificates. The petitioner

claims to be a citizen of India and residing within the territorial jurisdiction of this HonÃ¢â‚¬â„¢ble Court.

2. It is the submission of the learned counsel for the petitioner that though the petitioner has filed a complaint before the Managing Director, Head

Office, UCO Bank, Kolkatta against the respondent no. 6 alleging therein that the said respondent no. 6 has obtained employment on the basis of

forged certificates, no action has been taken by the respondent-Bank.

3. The learned counsel for the respondent-Bank has raised a preliminary objection regarding the maintainability of the present writ petition at the

behest of the petitioner herein on the ground that petitions in public interest are not entertainable in service matters and moreover, the petitioner has

got no locus standi to prefer the instant writ petition.

4. In reply, the learned counsel for the petitioner has submitted, by relying on the judgment of the HonÃ¢â‚¬â„¢ble Apex Court, that the present writ

petition is fully maintainable. At this juncture, it would be relevant to first refer to the judgment rendered to by the learned counsel for the petitioner i.e.

the one reported in (2010) 9 SCC 655 (Hari Bansh Lal v. Sahodar Prasad Mahto). Paragraphs no. 11, 12, 13, 14, 16, 18 and 19 whereof are

reproduced hereinbelow:-

Ã¢â‚¬Å“11. About maintainability of the public interest litigation in service matters except for a writ of quo warranto, there are a series of decisions of this

Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection

was not raised and agitated before the High Court. Even otherwise in view of the fact that the appellant herein was initially appointed and served in

the State Electricity Board as a member in terms of Section 5(4) and from among the members of the Board, considering the qualifications specified in

sub-section (4), the State Government, after getting a report from the Vigilance Department, appointed him as Chairman of the Board, it is

impermissible to claim that the issue cannot be agitated under service jurisprudence.

12. We have already pointed out that the person who approached the High Court by way of a public interest litigation is not a competitor or eligible to

be considered as a member or Chairman of the Board but according to him, he is a Vidyut Shramik leader. Either before the High Court or in this

Court, he has not placed any material or highlighted in what way he is suitable and eligible for that post.

13. In Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra1 a three-Judge Bench of this Court held: (SCC p. 281, para 18)

Ã¢â‚¬Å“18. Ã¢â‚¬Â¦ If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of

service matters would get defeated.Ã¢â‚¬â€‹ In para 21, this Court reiterated as under: (SCC p. 283)

Ã, Ã¢â‚¬Å“21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot

entertain a public interest litigation at the instance of a total stranger.Ã¢â‚¬â€‹

14. In Ashok Kumar Pandey v. State of W.B.2 this Court held thus: (SCC pp. 358-59, para 16)

Ã¢â‚¬Å“16. As noted supra, a time has come to weedout the petitions, which though titled as public interest litigations are in essence something else. It is

shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately

be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet

unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be

otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v.Jitendra Kumar Mishra1 this Court held that inservice matters

PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained.

The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official

documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting

answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found

copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the

petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as

aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.Ã¢â‚¬ The same

principles have been reiterated in the subsequent decisions, namely, B. Singh (Dr.) v.Union of India, Dattaraj Nathuji Thaware v. Stateof Maharashtra

and Gurpal Singh v. State of Punjab.

16. A writ of quo warranto lies only when appointment is contrary to a statutory provision. In High Court of Gujarat v. Gujarat Kishan Mazdoor

Panchayat (three-Judge Bench) Honâ€Ÿble S.B. Sinha, J. concurring with the majority view held: (SCC pp.730-31, paras 22-23)

Ã, Ã¢â‚¬Å“22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has

been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a

limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or

other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India, SCC para 74.)

Ã, Ã¢â‚¬Å“23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport

Society Ltd. v. Govt. of Haryana.)Ã¢â‚¬â€‹

18. In B. Srinivasa Reddy v. Karnataka Urban WaterSupply & Drainage Board Employeesâ€Ÿ Assn. thisCourt held: (SCC p. 754, para 49)

Ã¢â‚¬Å“49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to

whether a case has been made out for issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a

limited one which can only be issued when the appointment is contrary to the statutory rules.Ã¢â‚¬â€‹

19. It is clear from the above decisions that even for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary

to the statutory rules. In the latter part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and

whether he satisfied the relevant statutory provisions.Ã¢â‚¬â€‹

5. I have heard the learned counsel for the parties and I would like to discuss the law laid down by the HonÃ¢â‚¬â„¢ble Apex Court in a catena of

decisions hereinbelow :-

(I) Re :- Judgement rendered by the HonÃ¢â‚¬â„¢ble Apex Court in the case of Rajesh Awasthi v. Nand Lal Jaiswal reported in (2013) 1 SCC 501,

paragraphs no. 29 and 30 whereof are reproduced hereinbelow :-

Ã¢â‚¬Å“29. In B.R. Kapur v. State of Tamil Nadu and another [1], in the concurring opinion Brijesh Kumar,J., while dealing with the concept of writ of

quo warranto, has referred to a passage from Words and Phrases Permanent Edition, Volume 35, at page 647, which is reproduced below: -

Ã, Ã¢â‚¬Å“The writ of Ã¢â‚¬Å“quo warrantoÃ¢â‚¬Â¬ is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to

prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as

such from usurping a power which they do not have. State ex inf. Mc. Kittrick v. Murphy, 148 SW 2d 527, 529, 530, 347 Mo. 484.Information in

nature of Ã¢â‚¬Å“quo warrantoÃ¢â‚¬â€‹ does not command performance of official functions by any officer to whom it may run, since it is not directed to officer

as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether

he is rightfully entitled to exercise functions claimed. State Ex. Inf. Walsh v. Thactcher, 102 SW 2d 937, 938, 340 Mo.

30. In The University of Mysore v. C.D. Govinda Rao and another[2], while dealing with the nature of the writ of quo warranto, Gajendragadkar,J has

stated thus: -

Ã¢â‚¬Å“Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or

franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder

of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto

confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant

statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these

proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some

cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive

or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted

and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court,

inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to

whether the appointment of the said alleged usurper has been made in accordance with law or not. From the aforesaid paragraphs of the judgment

rendered in the case of Rajesh Awasthi (supra), it is clear that the procedure of quo warranto confers jurisdiction upon an authority on the judiciary to

control executive action in the matter of making appointment to public office against the relevant statutory provisions.

Ã, (II) Re:- The judgment of the HonÃ¢â‚¬â„¢ble Apex Court reported in (2013) 5SCC 1 (State of Punjab v. Salil Sabhlok). Paragraphs no. 71 to 78 and

85 to 87 are reproduced hereinbelow :-

Ã, Ã¢â‚¬Å“71 A couple of years ago, in Hari Bansh Lal v. Sahodar Prasad Mahto16 this Court considered the position at law and, after referring to

several earlier decisions, including R.K. Jain v. Union of India, Mor Modern Coop. Transport Society v. Govt. of Haryana, High Court of Gujarat v.

Gujarat Kishan Mazdoor Panchayat and B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employeesâ€Ÿ Assn. held that: (Hari

Bansh Lal case, SCC p. 662, para 19)

Ã, Ã¢â‚¬Å“19. ... even for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.Ã¢â‚¬â€‹

72. This principle was framed positively in Mahesh Chandra Gupta v. Union of India38 wherein it was said: (SCC p. 305, para 71)

Ã¢â‚¬Å“71. ... In cases involving lack of Ã¢â‚¬Å¾eligibilityâ€Ÿ writ of quo warranto would certainly lie.Ã¢â‚¬â€‹ (ii) Is it a service matter?

73. Is the appointment of a person to a constitutional post a Ã¢â‚¬Å“service matterÃ¢â‚¬? The expression Ã¢â‚¬Å“service matterÃ¢â‚¬ is generic in nature and has

been specifically defined (as far as I am aware) only in the Administrative Tribunals Act, 1985. Section 3(q) of the Administrative Tribunals Act is

relevant in this regard and it reads as follows:

Ã¢â‚¬Å“3. Definitions.Ã¢â‚¬"In this Act, unless the context otherwise requiresÃ¢â‚¬" (q) Ã¢â‚¬Å¾service mattersâ€Ÿ, in relation to a person, means all matters relating

to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India

or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as

respectsÃ¢â‚¬

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;Ã¢â‚¬â€‹

74. It cannot be said that the Chairperson of the Public Service Commission holds a post in connection with the affairs of the Union or the State. He

or she is not a government servant, in the sense of there being a master and servant relationship between the Union or the State and the Chairperson.

In view of the constitutional provisions pertaining to the security of tenure and the removal procedure of the Chairperson and Members of the Public

Service Commission, it can only be concluded that he or she holds a constitutional post. In this context, in Reference under Article 317(1) of the

Constitution of India, In re, it was held: (SCC p. 269, para 9)

Ã, Ã¢â‚¬Å“9. The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case

of a Member of the Commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different

aspects of his office as envisaged by Articles 315 to 323 of Chapter II of Part XIV of the Constitution.Ã¢â‚¬â€‹

75. Similarly, in Bihar Public Service Commission

v. Shiv Jatan Thakur40, the Public Service Commission is referred to as a Ã¢â‚¬Å“constitutional institutionÃ¢â‚¬ and its Chairperson and Members as

Ã¢â‚¬Å“constitutional functionariesÃ¢â‚¬â€‹.

76. In Ram Ashray Yadav, In re a reference was made to the Ã¢â‚¬Å“constitutional duties and obligationsÃ¢â‚¬ of the Public Service Commissions. It was

also observed that the Chairperson of the Public Service Commission is in the position of a constitutional trustee.

77. In Ram Kumar Kashyap v. Union of India, the obligations of the Public Service Commission were referred to as Ã¢â‚¬Å“constitutional obligationsÃ¢â‚¬

and on a review of the case law, it was held that: (SCC p.383, para 16)

Ã, Ã¢â‚¬Å“16. since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of

dismissals of government employees cannot be extended to the proceedings for the removal and suspension of the members of the said

Commissions.Ã¢â‚¬â€‹

78. Finally, in Mehar Singh Saini, In re4, a distinction was made between service under the Government of India or a State Government and a

constitutional body like a Public Service Commission. It was observed that: (SCC p. 599, para 4)

Ã, Ã¢â‚¬Å“4. A clear distinction has been drawn by the Framers [of our Constitution] between service under the Centre or the States and services in the

institutions which are creations of the Constitution itself. Article 315 of the Constitution commands that there shall be a Union Public Service

Commission for the Centre and State Public Service Commissions for the respective States. This is not, in any manner, linked with the All India

Services contemplated under Article 312 of the Constitution to which, in fact, the selections are to be made by the Commission. The fact that the

Constitution itself has not introduced any element of interdependence between the two, undoubtedly, points to the cause of Commission being free

from any influence or limitation.Ã¢â‚¬â€‹

85. What then is the remedy to a person aggrieved by an appointment to a constitutional position like the Chairperson of a Public Service Commission?

86. About twenty years ago, in a case relating to the appointment of the President of a statutory tribunal, this Court held in R.K. Jain v. Union of India

that an aggrieved personÃ¢â‚¬"a Ã¢â‚¬Å“non-appointeeÃ¢â‚¬Ã¢â‚¬"would alone have the locus standi to challenge the offending action. A third party could seek a

remedy only through a public law declaration. This is what was held: (SCC p. 174, para 74)

Ã¢â‚¬Å“74. ... In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action.

Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the

petitioner, a public-spirited person.Ã¢â‚¬ This view was reiterated in B. Srinivasa Reddy. Therefore, assuming the appointment of the Chairperson of a

Public Service Commission is a Ã¢â‚¬Å“service matterÃ¢â‚¬, a third party and a complete stranger such as the writ petitioner cannot approach an

Administrative Tribunal to challenge the appointment of Mr Dhanda as Chairperson of the Punjab Public Service Commission.

87. However, as an aggrieved person he or she does have a public law remedy. But in a service matter the only available remedy is to ask for a writ

of quo warranto. This is the opinion expressed by this Court in several cases. One of the more recent decisions in this context is Hari Bansh Lal16

wherein it was held that: (SCC p. 661, para

15) Ã¢â‚¬Å“15. ... except for a writ of quo warranto, public interest litigation is not maintainable in service matters.Ã¢â‚¬ This view was referred to (and not

disagreed with) in Girjesh Shrivastava v. State of M.P. after referring to and relying on Duryodhan Sahu v. Jitendra Kumar Mishra, B. Srinivasa

Reddy, Dattaraj Nathuji Thaware v. State of Maharashtra, Ashok Kumar Pandey v. State of W.B. and Hari Bansh Lal.Ã¢â‚¬â€‹

The aforesaid dictum of the HonÃ¢â‚¬â„¢ble Apex Court, as is apparent from the aforesaid paragraphs, reproduced hereinabove, in the judgment rendered

in the case of Salil Sabhlok (Supra), is that firstly for issuance of a writ or quo warrant, the High Court has to satisfy that the appointment is contrary

to the statutory rule and secondly the cases of government servant is subject to the special provisions governed by the law of masters and servants.

(III) Re:- The judgment of the HonÃ¢â‚¬â„¢ble Apex Court rendered in the case of B.R. Kapur v. State of Tamilnadu reported in (2001) 7 SCC 231,

paragraph no. 80 whereof is reproduced hereinbelow :-

Ã¢â‚¬Å“80. In the same volume of Words and Phrases, Permanent Edn., at p. 647 we find as follows: Ã¢â‚¬Å“The writ of Ã¢â‚¬Å¾quo warrantoâ€Ÿ is not a substitute

for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and

its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex

inf. McKittrick v. Murphy. Information in the nature of quo warrantoâ€Ÿ does not command performance of official functions by any officer to whom it

may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing

official duties, but only to ascertain whether he is rightfully entitled to exercisefunctions claimed. State ex inf. Walsh v. Thatcher.Ã¢â‚¬â€‹

(IV) Re:- Judgment of the HonÃ¢â‚¬â„¢ble Apex Court rendered in the case of B. Sriniwasa Reddi v. Karnataka Urban Water Supply and Drainage

Board EmployeesÃ¢â‚¬â„¢ Association & ors., paragraphs no. 43, 44 and 51 to 56 whereof are reproduced hereinbelow :-

43. Whether a writ of quo warranto lies to challenge an appointment made Ã¢â‚¬Å“until further ordersÃ¢â‚¬ 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.

44. In the instant case, the power to appoint the Managing Director of the Board is vested in the Board under Section 4(2) of the Act. Neither the Act

nor the Rules prescribed any mode of appointment or tenure of appointment. When the mode of appointment, tenure of appointment have been left to

the discretion of the Government by the Act and the Rules, and the Act makes it clear that the Managing Director shall hold office at the pleasure of

the Government, the High Court could not have fettered the discretion of the Government by holding that Section 4(2) of the Act does not expressly

give the power to the State Government to make ad hoc or contractual appointment. When the Act and the statutory Rules have not prescribed any

definite term and any particular mode, the High Court could not have read into the statute a restriction or prohibition that is not expressly prohibited by

the Act and the Rules. It is well settled that when the statute does not lay down the method of appointment or term of appointment and when the Act

specifies that the appointment is one of sure tenure, the appointing authority who has the power to appoint has absolute discretion in the matter and it

cannot be said that discretion to appoint does not include the power to appoint on contract basis. An appointment which is temporary remains

temporary and does not become permanent with the passage of time. The finding recorded by the learned Single Judge that the appointment is bad for

the reason that the appointment which was made on temporary basis has continued for nearly 2 years is wholly contrary to law particularly when the

Act and the Rules do not stipulate maximum period of appointment. The High Court, in our view, gravely erred in issuing a writ of quo warranto when

there is no clear violation of law in the appointment of the appellant.

51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be

appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v.

Union of India was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation

and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled

law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus

standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a

public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been

candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of quo warranto so very well

delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought

before the Court by an aggrieved party who was a candidate for the post.

52. The judgment impugned in this appeal not only exceeds the limit of quo warranto but has not properly appreciated the fact that the writ petition

filed by the Employeesâ€Ÿ Union and the President of the Union, Halakatte was absolutely lacking in bona fides. In the instant case, the motive of the

second respondent Halakatte is very clear and the Court might in its discretion decline to grant a quo warranto.

53. This Court in A.N. Shashtri v. State of Punjab13 held that the writ of quo warranto should be refused where it is an outcome of malice or ill will.

The High Court failed to appreciate that on 18-1-2003 the appellant filed a criminal complaint against the second respondent Halakatte, that

cognizance was taken by the criminal court in CC No. 4152 of 2003 by the Jurisdictional Magistrate on 24-2-2003, process was issued to the second

respondent who was enlarged on bail on 12-6-2003 and the trial is in progress. That apart, the second respondent has made successive complaints to

the Lokayukta against the appellant which were all held to be baseless and false. This factual background which was not disputed coupled with the

fact that the second respondent Halakatte initiated the writ petition as President of the 1st respondent Union, which had ceased to be a registered

trade union as early as on 2-11-1992 suppressing the material fact of its registration having been cancelled, making allegations against the appellant

which were no more than the contents of the complaints filed by him before the authorities which had been found to be false after thorough

investigation by the Karnataka Lokayukta, would unmistakably establish that the writ petition initiated by Respondents 1 and 2 lacked in bona fides and

it was the outcome of the malice and ill will the 2nd respondent nurses against the appellant. Having regard to this aspect of the matter, the High Court

ought to have dismissed the writ petition on that ground alone and at any event should have refused to issue a quo warranto, which is purely

discretionary. It is no doubt true that the strict rules of locus standi are relaxed to an extent in a quo warranto proceedings. Nonetheless an imposter

coming before the Court invoking public law remedy at the hands of a constitutional court suppressing material facts has to be dealt with firmly.

54. This Court in B. Singh (Dr.) v. Union of India14 held that only a person who comes to the Court with bona fides and public interest can have

locus. Coming down heavily on busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for

personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, this Court at

para 14 of the Report held as under:

(SCC p. 373, para 14) Ã¢â‚¬Å“14. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of

information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court

has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the

character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive

actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public

grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while

dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of

justice. They pretend to act in the name of probono publico, though they have no interest of the public or even of their own to protect.Ã¢â‚¬â€‹

55. It is useful to refer to University of Mysore v. C.D. Govinda Rao15, SCR at pp. 580-81: Ã¢â‚¬Å“As Halsbury has observed: Ã¢â‚¬Å¾An information in the

nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise,

or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.â€Ÿ 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 judicial order. In otherwords, 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 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 the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.Ã¢â‚¬‹

56. It is also beneficial to refer to the decision of this Court in Ghulam Qadir v. Special Tribunal16, SCC p. 54, para 38 which reads thus: Ã¢â‚¬Å“38.

There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved

person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ

petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the

jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court

has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal

approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy

that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such

a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having

no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.Ã¢â‚¬â€‹

(V) Re:- The Judgment of the HonÃ¢â‚¬â„¢ble Apex Court rendered in the case of B. Sriniwasa Reddi v. Karnataka Urban Water Supply and Drainage

Board EmployeesÃ¢â‚¬â„¢ Association & ors. reported in (2006) 11 SCC 731 (2), paragraphs no. 43 and 60 whereof are reproduced herein below :-

Ã¢â‚¬Å“43. Whether a writ of quo warranto lies to challenge an appointment made Ã¢â‚¬Å“until further ordersÃ¢â‚¬ 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.

60. Thus it is seen that a writ of quo warranto does not lie if the alleged violation is not of a statutory provision.Ã¢â‚¬â€‹

(VI) Re:- The Judgment of the HonÃ¢â‚¬â„¢ble Apex Court rendered in the case of Statesman (Private) Ltd. v. H. R. Deb and others reported in AIR

1968 SC 1495, relevant portion whereof is reproduced hereinbelow:-

Ã¢â‚¬Å“The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law.Ã¢â‚¬â€‹

6. From a conjoint reading of the law laid down by the HonÃ¢â‚¬â„¢ble Apex Court in a catena of decisions as discussed hereinabove in the preceding

paragraphs, it is clear that firstly for issuance of a writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the

statutory rule in service jurisprudence, secondly it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action and a third

party has got no locus standi to canvass the legality or correctness of the action, thirdly only a public law declaration can be made at the behest of a

public spirited person, fourthly, the case of a government servant is subject to the special provisions governed by the law of masters and servants and

lastly, a writ of quo warranto is not a substitute for mandamus and injunction nor for a appeal or writ of error and is only to be used to prevent an

improper exercise of power wrongfully possessed, as such information in the nature of quo warranto does not command performance of official

functions and cannot be used for the purpose of dictating or prescribing an official duty.

7. It is equally a well settled law that equality of opportunity in matters of employment can be predicated only as between persons who are either

seeking the same employment or have obtained the same employment.

8. Now coming back to the facts of the present case, what has been alleged by the petitioner herein is not that the appointment of the respondent no. 6

has been made contrary to the statutory rules but the petitioner has alleged that the appointment of the respondent no. 6 has been made on the basis of

forged and fabricated documents, which on the own showing of the petitioner, as stated in paragraph no. 5 of the writ petition, has been found to be

baseless by the respondent-Bank. Thus the clinching issue in the present case is that since there is no allegation that the appointment of the respondent

no. 6 has been made contrary to the statutory rules, no writ of quo-warranto can be issued in a service matter like the present one.

9. Having regard to the facts and circumstances of the case and the law laid down by the HonÃ¢â‚¬â„¢ble Apex Court as also the present case of the

respondent no. 6 being governed by the law of masters and servants and further having regard to the provisions contained under Article 311 of the

Constitution of India, I find that the instant writ petition is not maintainable in its present form and substance, hence the same is dismissed.