Before K. Kannan, J

MAHENDER KUMAR SINGH — *Petitioner*

versus

UNION OF INDIA AND OTHERS — *Respondents*

CWP No. 11540 of 2013

December 1, 2014

A. ***Service Law—Constitution of India,1950 — Writ jurisdiction —Nature of — Quo warranto — Rule of standing — Laches — LLB Degree — Whether qualifies to be a post-graduate degree since it is obtained after graduation — Held, no — Whether quo warranto lies against non-statutory post that does not require a statutory minimum as educational qualification and, therefore, is not a public office — Held, yes — Rule of standing substantially reduced in case of quo warranto — A usurper in an office cannot be allowed to continue — Duty of court to vacate him form the post he holds — Petitioner may not be a competitor for the post — Laches not an impediment — Unqualified person cannot legitimise his position by any length of time — But scope of quo warranto limited and issues only when the appointment is contrary to statutory rules.***

Held that there is a preponderance of case law to the effect that a quo-warranto, unlike certiorari need not to be at the instance of a person who is directly affected. The rule of standing is substantially reduced in a case of quo-warranto, for, the moment a person points outs that a holder of a public office is not qualified to hold the post, it mean that an usurper in an office cannot be allowed to continue and it shall be the duty of the Court to vacate him from the post he holds. The fact the petitioner himself was not a competitor for the post is, therefore, irrelevant. In will not also take the issue of laches as in any way relevant, for, so long as there had been no fresh qualification obtained, a person who occupies a post which if he was not qualified cannot legitimize his position by any length of time. The issue of laches is also not crucial.

(Para 6)

Further held, that we have examined the law that quo-warranto is issued only to usurper of a public office who holds a post without authority and whose appointment itself is suspect on account of want of qualification or eligibility for occupying the posts. All the decisions that I have examined when the quo-warranto could be issued have

unexceptionally held that the writ petition to quo-warranto is a limited one which could only be issued when the appointment was contrary to statutory rules (see: B. Srinivasa Reddy Versus Karnataka Urban Water Supply & Drainage Board Employees' Association & others-2006 (11) SCC 731). The eligibility criteria laid down ought to be with reference to a statutory rule which prescribes the educational qualification for the Registrar. A requirement in prospectus or advertisement may itself cannot be taken as a statutory mandate. In B. Srinivasa Reddy (supra), the Supreme Court held that no quo-warranto could be issued on the ground that even though the appointment was not contrary to the statutory rules, it was contrary to administrative instructions. The Supreme Court held by referring to previous case law on the subject that quo-warranto does not lie if the alleged violation is not of a statutory nature. There is no warrant for an interference made, for, the petitioner's challenge fails in the important test that is necessary for judicial intervention in his favour. The writ petition is dismissed.

(Para 9)

B. ***Words and phrases — Public Office — Constitution of India 1950 — Art. 311—Not expressly defined anywhere — Driven through case law — Two tests to be applied — One, whether it is an office of the State or its functionary attached to a sovereign function of State — Two, whether the service is amenable to Article 311 of the Constitution of India, i.e., a civil post governed by statutory rules.***

Held, that there are cases that have examined the definition of "public office", for, it is not expressly defined anywhere and it is only driven through case law. There are two tests which have been applied to such a situation. One test is that it is an office of the State or its functionary that is attached to a sovereign function of the State. The sovereign function itself has gone through a fairly large grind through judicial pronouncements, for, there is no one activity except issues of defence and foreign affairs that are in the exclusive domain of the State. Every other activity is actively collaborated by private enterprise. Even education which was till some time back been the exclusive preserve of State governance have found large scale operations through private enterprise. The best institutes of health are not any longer the monopoly of the State. Amongst educational institutes private Universities and deemed Universities have attracted greater talent and produced larger research output than perhaps even the State run educational institutes. If the sovereign function of the State by itself cannot answer, the other approach has been that the service is amenable to Article 311 which is a

civil post governed the statutory rules. Even if a Vice Chancellor or a Registrar may not be a civil servant, the same way as any other lowest grade government servant in a revenue department or a Tehsildar or a Revenue Inspector. Case law abounds that the post of Vice Chancellor and Registrar of Universities are statutory offices which the respective statutes that established Universities invariably stipulate. If, therefore, a University is established under an enactment and it creates the categories of office or delineates the functions of various important offices that would run the administrative machinery of the University, it would qualify as a public office.

(Para 7)

Petitioner in person.

None for respondents 1 and 2.

J.S. Puri, Advocate, for respondent No.3.

Ashish Bansal, Advocate, for respondent No.4.

K. KANNAN, J.

(1) The petition is brought at the instance of an Information Scientist in the National Brain Research Centre seeking for issuance of a writ of quo warranto to declare the 4th respondent as an usurper of an office and to vacate him since he does not hold the qualifications essential for holding the post of a Registrar of the 3rd respondent-institute and deemed University declared as such under Section 3 of the UGC Act.

(2) The petitioner would state that the educational qualifications as prescribed in the advertisement notification issued in 2004 for Registrar was as follows:-

> "6. Registrar: (Pay scale Rs.14,300-400-18,300) Method of recruitment: Direct recruitment/Deputation Essential Qualification: A distinguished academic career with Pot Graduate/Ph.D. degree from a university of repute with a total experience of 12 years in managing scientific and academic activities in Scientific Research/Teaching Institutions. Candidates with at least 5 years experience in the scale of Rs.12,000-375-16,500/- or equivalent in an organization of repute may also apply."

(3) The petitioner would state that the information secured under the RTI revealed that he had passed B.Sc. from MR College

Vizianagaram, Andhra University; B.L. from Law College, Andhra University, and Diploma in English from Arts College, Andhra University. As regards his experience as brought in Column 9, he had served as assisting the scientist incharge from 1988 to 1998 which cannot be taken to be a managerial position, but he had worked as assisting the Head of the Institute, namely, the Principal from 17.02.1998 to 17.09.2001 and only from 19.09.2001 till the filing of the application for appointment, he had been the Incharge of the Administration and Accounts of the Institute. According to him, even apart from the deficit in educational qualification, he also did not have the requisite 12 years of experience in a management procedure. The petitioner would bring to his support a judgment of the Supreme Court in ***Juthika Bhattacharya*** *versus* ***State of Madhya Pradesh and others***[1] where the challenge was to appointment of a Principal to a Higher Secondary School. The court had to consider the issue of whether the requirement of postgraduate degree would include a BT degree after his graduation. The Supreme Court explained and gave an illustration of a LL.B. Degree as well in para 3 in the judgment as follows:-

> "The B.T. course of studies, we are informed, is open only to graduates and in dictionary manner of speaking, the degree of "Bachelor of Teaching" may be said to be a "post"-graduate degree in the sense that the degree is obtainable only "after" graduation. That is the sense in which the word "post" is used in expressions like "post-nuptial", "post-prandial", "post-operative", "post-mortem" and so forth. In these expressions, "post"means simply "after", the emphasis being on the happening of an event after a certain point of time, But the expression "postgraduate degree" has acquired in the educational world a special significance, a technical content. A Bachelor's degree like the B.T., or the LL.B is not considered to be a post-graduate degree even though those degrees can be taken only after graduation. In the refined and elegant world of education, it is the holder of a Master's degree like the M.Ed. or the LL.M. who earns, recognition as the holder of a post-graduate degree.

(4) The Supreme Court was explaining that the postgraduate degree had acquired an expression of special significance and it ought to be understood as a master's degree. The contention, therefore, is that although a degree in law was taken after graduation, it could still not qualify for the expression "postgraduate degree". He would also place

[1] AIR 1976 2534

his reliance on a decision of the Central Administrative Tribunal, Principal Bench, New Delhi in ***R.P. Singh*** *versus* ***Secretary, Social Welfare Department and others*** in Original Application No.1530 of 2011, dated 02.11.2011 that dealt with the issue of whether a LL.B. could qualify for a 'postgraduate degree' for consideration of appointment of non-official member of the Maintenance Tribunal which required a postgraduate degree.

(5) The counsel appearing on behalf of respondent No.3 would mount for the principal objection to the petitioner's case, firstly, that the 2nd respondent is not a University established under an enactment but only a deemed University and the qualifications mentioned for the Registrar were not as per any requirement under any statute. If it was not a statutory post that required a statutory minimum as educational qualification, it could not be taken as a pubic office which is amenable for a challenge in quo-warranto. The second objection is that the postgraduate course is not to be treated as a master's course, for, that was not how the advertisement had sought the requirements. He would refer me to the nomenclature of a 'postgraduate' as including LL.B. course from the perception of several Universities which have declared LL.B. as falling within postgraduate course. He would refer to the courses offered by various Universities including the University of Delhi that shows LL.B. as a postgraduate course; Andhra University that records LL.B. as among the 44 postgraduate courses; the University of Jammu declares LL.B. in the same manner as well as the Jaipur National University that shows not clear under the caption of a postgraduate course offered by the University. Thirdly, the contention that the appointment of the 4th respondent was made 9 years ago, and that the petitioner had been guilty of laches in approaching this court to seek for a challenge of his appointment when he had also been regularized and shown his mettle as a Registrar. The last contention is that the Supreme Court's judgment stating that the LL.B. is not a postgraduate course was not the point at issue. In that case, the point was whether a BT course which a person had, was a postgraduate course and the LL.B. course itself was not put in challenge for consideration of whether it was a postgraduate course or not. The 4th respondent defends himself by stating that a personal bias attributed to the 4th respondent is without any basis, for, he had no relative on the selection board to use his offices to select him and puts the petitioner to strict proof of such an insinuation made in the petition. He otherwise broadly supports for his own cause, the arguments placed by the counsel for the 3rd respondent.

(6) There is a preponderance of case law to the effect that a quo-warranto, unlike a certiorari need not to be at the instance of a person who is directly affected. The rule of standing is substantially reduced in a case of quo-warranto, for, the moment a person points out that a holder of a public office is not qualified to hold the post, it would mean that an usurper in an office cannot be allowed to continue and it shall be the duty of the court to vacate him from the post he holds. The fact that the petitioner himself was not a competitor for the post is, therefore, irrelevant. I will not also take the issue of laches as in any way relevant, for, so long as there had been no fresh qualification obtained, a person who occupies a post which if he was not qualified cannot legitimize his position by any length of time. The issue of laches is also not crucial.

(7) There are cases that have examined the definition of "public office", for, it is not expressly defined anywhere and it is only driven through case law. There are two tests which have been applied to such a situation. One test is that it is an office of the State or its functionary that is attached to a sovereign function of the State. The sovereign function itself has gone through a fairly large grind through judicial pronouncements, for, there is no one activity except issues of defence and foreign affairs that are in the exclusive domain of the State. Every other activity is actively collaborated by private enterprise. Even education which was till some time back been the exclusive preserve of State governance have found large scale operations through private enterprise. The best institutes of health are not any longer the monopoly of the State. Amongst educational institutes private Universities and deemed Universities have attracted greater talent and produced larger research output than perhaps even the State run educational institutes. If the sovereign function of the State by itself cannot answer, the other approach has been that the service is amenable to Article 311 which is a civil post governed the statutory rules. Even if a Vice Chancellor or a Registrar may not be a civil servant, the same way as any other lowest grade government servant in a revenue department or a Tehsildar or a Revenue Inspector. Case law abounds that the post of Vice Chancellor and Registrar of Universities are statutory offices which the respective statutes that established Universities invariably stipulate. If, therefore, a University is established under an enactment and it creates the categories of office or delineates the functions of various important offices that would run the administrative machinery of the University, it would qualify as a public office.

(8) The test now, therefore, shall be whether a Registrar in a deemed University would also qualify for such a consideration. An University is creature of statute established by an Act of Parliament or a State legislature. A deemed University is that it is deemed to be a University by an order of UGC passed under Section 3 of the UGC Act. The degrees conferred by such University have accreditation in there own right and would require no further imprimatur from any other agency. A Registrar of a deemed University would certainly therefore must still to be considered only as a Registrar of any other University and the fact that it was not established by an Act of Parliament would hardly make a difference.

(9) We have examined the law that quo-warranto is issued only to usurper of a public office who holds a post without authority and whose appointment itself is suspect on account of want of qualification or eligibility for occupying the posts. All the decisions that I have examined when the quo-warranto could be issued have unexceptionally held that the writ petition to quo-warranto is a limited one which could only be issued when the appointment was contrary to statutory rules (see: ***B. Srinivasa Reddy*** *versus* ***Karnataka Urban Water Supply & Drainage Board Employees' Association & others***[2]. The eligibility criteria laid down ought to be with reference to a statutory rule which prescribes the educational qualification for the Registrar. A requirement in prospectus or advertisement may itself cannot be taken as a statutory mandate. In ***B. Srinivasa Reddy*** (supra), the Supreme Court held that no quo-warranto could be issued on the ground that even though the appointment was not contrary to the statutory rules, it was contrary to administrative instructions. The Supreme Court held by referring to previous case law on the subject that quo-warranto does not lie if the alleged violation is not of a statutory nature. There is no warrant for an interference made, for, the petitioner's challenge fails in the important test that is necessary for judicial intervention in his favour. The writ petition is dismissed.

S.Gupta

[2] (2006) 11 SCC 731