

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 1775/2022

Reserved on 19.09.2022

Pronounced on 30.09.2022.

Mohammad Anwar Chowdhary and others

..... petitioner (s)

Through :- Mr. S.M.Chowdhary Advocate

V/s

UT of Jammu and Kashmir and others

.....Respondent(s)

Through :-

Mr. Suraj Singh G.A

Mr. Vishal Sharma DSGI.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGEMENT

1 The petitioners have filed the instant writ petition claiming various reliefs which are reproduced as under:

“(i). Mandamus quashing the S.O (Statutory Order) No.127 dated 20.04.2020 issued by the respondent No.1 by virtue of which the amendments have been made in the relevant rules of Jammu and Kashmir Reservation Rules 2005, wherein 4% reservation has been provided to “Pahari Speaking People” in respect of each service, class category, grade in the services and post under the State/Union Territory as per amended Rules 2005;

(ii). Mandamus quashing the Govt order No. 66-SW of 2013 dated 09.03.2013 issued by the respondent No.1 by virtue of which a committee of experts headed by Dr. Peerzada Mohd Amin was constituted with other members to conduct a detailed study of the socio-economic status and common ethnic characteristics of “pahari speaking people” in the erstwhile Jammu and Kashmir State;

(iii) Mandamus quashing the report dated 14.08.2015 submitted by the committee of experts headed by Dr. Peerzada Mohd Amin pursuant to Government order No. 66-SW of 2013 dated

09.03.2013 and subsequent approval by the State Government vide Cabinet Decision No.63-09/2016 dated 28.07.2016;

(iv). Mandamus quashing the communication dated 09.08.2017 of the State Commission for Backward Classes, recommending the case of Pahari Speaking People to be considered/treated as class of people suffering from socio economic backwardness/inadequacy of representation; and,

(v). Mandamus quashing the communication of respondent No.1 No. SWB/PSP/18/GO/6-III dated 10.08.2016 addressed to respondent No.4 for grant of ST status to Pahari Speaking People of J&K on the basis of committee of experts constituted by the Government vide order No. 66-SW of 2013 dated 09.03.2013.”

2 From a perusal of the aforequoted reliefs prayed in the writ petition, it is clear that the petitioners are aggrieved of Statutory Order No. 127 dated 20.04.2020 issued by respondent No.1, by virtue of which, amendments have been made in the Jammu and Kashmir Reservations Rules, 2005 and 4% reservation in favour of ‘Pahari Speaking People’ in respect of each service, class, category, grade in the services and post under the State/UT has been provided.

3 Mr. Suraj Singh, learned Government Advocate appearing for the UT of Jammu and Kashmir and Mr. Vishal Sharma, learned DSGI, appearing on behalf of the Union of India have raised preliminary objection with regard to the maintainability of the writ petition. According to them, the petitioners are not the “aggrieved persons” as is clear from the contents of the writ petition and, as such, they cannot maintain the instant writ petition. Accordingly, on 01.09.2022, the petitioners were asked by this Court to advance arguments as regards the maintainability of the writ petition.

4 I have heard learned counsel for the parties and perused the contents of the writ petition and the documents attached thereto.

5 A perusal of the writ petition reveals that, in para (1) of the writ petition, it has been averred that petitioners No.1 and 3 are the practicing

Advocates of Jammu and Kashmir High Court, where as petitioner No.2 is a social activist. It is claimed that since the petitioners are residents of UT and citizens of India, as such, they are entitled to invoke extraordinary constitutional jurisdiction of this Court. The petitioners claim that they are aggrieved of Statutory Order No.20.04.2020 which provides for 4% reservation in favour of Pahari Speaking People.

6 Learned counsel appearing for the petitioners has submitted that the petition raises important constitutional issues, inasmuch as, the petitioners have thrown challenge to the constitutional validity of impugned Statutory Order, as such the petition involves questions of general public importance. Thus, according to the learned counsel for the petitioners, the petitioners are well within their rights to invoke the extraordinary writ jurisdiction of this Court. Learned counsel has submitted that the scope of Article 226 of the Constitution of India is wide and anyone can invoke the said provisions to raise questions of public importance. In this regard, reliance has been placed upon the judgment of Andhra Pradesh High Court in the case of **Dhronamraju Satyanarayana vs. N.T. Rama Rao and others, AIR 1988 Andhra Pradesh 144** and the judgments of Supreme Court in the cases of **B.R.Kapur vs. State of Tamil Nadu and another, AIR 2001 Supreme Court 3435, Dwarka Nath vs. Income Tax Officer and another, 1966 AIR Supreme Court 81 & Deepak Bajaj vs. State of Maharashtra and another, AIR 2009 Supreme Court 628.**

7 *Per contra*, Mr. Vishal Sharma, DSGI appearing for the Union of India has submitted that, if at all, it is assumed that the petition involves questions which are of public importance, the petitioners were obliged to file a public interest petition after following the procedure provided under the relevant provisions of J&K Writ Proceedings Rules, 1997.

8 Before determining the merits of rival contentions raised by learned counsel for the parties,, it has to be borne in mind that the the petitioners have sought a writ of certiorari and a writ of mandamus against the respondents. Though, while challenging the impugned Statutory Order, the petitioners have sought a writ of mandamus, but, in fact, they have sought its quashment meaning thereby that they are seeking a writ of certiorari as well.

9 The question as to who can invoke the jurisdiction of the High Court under Article 226 of the Constitution of India seeking a writ of certiorari or a writ of mandamus, has been a subject matter of discussion in a number of cases before the Supreme Court. It would be apt to notice some of these decisions.

10 In **Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and others, (1976) 1 Supreme Court Cases 671**, the Supreme Court, while discussing the scope of Article 226 of the Constitution has observed as under:

“10. Constitution empowers the High Court to issue to any person or authority, including the Government, within its territorial jurisdiction, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of fundamental rights and for any other purpose.

11. As explained by this Court in [Dwarka Nath v. ITO](#), the founding fathers of the Constitution have designedly couched the Article in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. In a sense, the scope and nature of the power conferred by the Article is wider than that exercised by the writ courts in England. However, the adoption of the nomenclature of English writs, with the prefix "nature of" superadded, indicates that the general principles grown over the years in the English Courts, can, shorn of unnecessary technical procedural restrictions, and adapted to the special conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by this Court, be

usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well-recognised rules of practice.

12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and, in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances.

13. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of rigid, exact and comprehensive definition. At best, its features can be described in a broad, tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction."

11 After making observations as quoted hereinbefore, the Supreme Court went on to hold that, in order to have the *locus standi* to invoke the extraordinary jurisdiction under [Article 226](#), an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though, in the case of some of the writs, like habeas corpus or quo warranto, this rule is relaxed or modified. The Court went on to observe that as a general rule, infringement of some legal right or prejudice to some legal interest in hearing the petitioner is necessary to give him a *locus standi* in the matter.

12 In **Ghulam Qadir vs. Special Tribunal and others, (2002) 1 SCC 33**, the Supreme Court, while considering the scope of Article 226 of the Constitution, has observed as under:

“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 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 hyper-technical 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 having not 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”.

13 From the aforesaid enunciation of law on the subject, it is clear that a writ petition under Article 226 of the Constitution can be maintained only by an aggrieved person, whose legal or constitutional right has been infringed.

14 In **State of Rajasthan vs. Union of India, (1977) 3 SCC 592**, the Supreme Court has held that a ‘legal right’ means an entitlement arising out of legal rules. The Court went on to observe that a ‘legal right’ may be defined as an advantage conferred upon a person by the rule of law and it was also held that the expression “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury. The Court went on to held that a

person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized.

15 In Anand Sharadchandra Oka vs. University of Mumbai, (2008) 5 SCC 217, a similar view was taken by the Supreme Court by observing that if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

16 Again in A. Subash Babu vs. State of AP, (2011) 7 SCC 616, the Supreme Court interpreted the expression “aggrieved person” in the following manner:

“The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant”.

17 Taking note of the aforesaid judgments, the supreme Court, in the case of Ayaubkhan Noorkhan Pathan vs. State of Maharashtra and others, (2013) 4 SCC 465 held that a person who raises a grievance, must show how he has suffered legal injury.. It was further held that a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others. The observations of the Supreme Court in paras (9) & (13) to (15), are relevant to the context and the same are reproduced as under:

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal

injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression, 'next friend' means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody.

14 This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it.

15. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned".

18 From the foregoing enunciation of law on the subject, it is clear that under ordinary circumstances, a third person, having no concern with the case, cannot claim to have any *locus standi* to raise any grievance whatsoever. However, if the actual persons aggrieved, because of ignorance, illiteracy etc., are unable to approach the Court and a person, who has no personal agenda, approaches the Court, then the Court may examine the issue. Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that legal injury is threatened and the affected class of persons is unable to approach the Court on account of their poverty etc.

19. Coming to the facts of the instant case, the petitioners have not, at all, disclosed as to how they are aggrieved of the impugned Statutory Order and they have not stated as to which of their legal rights have been affected by the impugned action of the respondents. The petitioners, therefore, do not qualify as “aggrieved persons” who can maintain a writ of certiorari or a writ of mandamus against the respondents. They have not even disclosed their credentials. It is not discernible as to which class of persons the petitioners are representing. They have not even averred in the petition that they are filing the petition in public interest. Therefore, the instant petition cannot even be treated as a public interest petition. The judgments relied upon by learned counsel for the petitioners, either relate to public interest petitions or the same relate to cases where a writ of *quo warranto* has been sought. In such matters, as already noticed, *locus standi* of the petition becomes immaterial, as such, the ratio laid down in these cases is of no help to the case of the petitioners.

20 In the instant case, neither the petitioners have shown as to how they are aggrieved of the impugned Statutory Order, nor they have shown as to which of their legal or constitutional right has been infringed by issuance of the

impugned Statutory Order. As already noted, the petitioners do not even claim to represent any class of persons, nor do they allege that the petition is being filed in public interest.

21 For the foregoing reasons, the writ petition is found to be not maintainable and is dismissed, as such. It is, however, open to the petitioners to file a public interest petition in respect of the grievances projected by them in the instant writ petition after adhering to the procedure laid down for the said purpose.

(SANJAY DHAR)
JUDGE

JAMMU
30 .09.2022

Sanjeev

Whether order is speaking: Yes

Whether order is reportable" Yes

