

THE HIGH COURT OF MADHYA PRADESH

Case Number	W.P. NO.11298/2021
Parties Name	Arun Singh Chouhan Vs. State of MP & Ors.
Date of Judgment	30.07.2021
Bench	<u>Division Bench:</u> Justice Sujoy Paul Justice Anil Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Petitioner Shri Arun Singh Chouhan present in person. Shri Vivek Dalal, learned A.A.G for respondents/State.
Law laid down	<p>Article 226 of the Constitution – Writ of Quo Warranto - Can be issued to test the validity of appointment to a public office. The said writ cannot be issued to examine the posting or working of an officer to particular place.</p> <p>Writ of Quo Warranto – Necessary party - The person against whom writ is prayed for is a necessary party.</p> <p>Public Interest Litigation – Conduct of petitioner - A practising Advocate has chosen not to answer the repeated queries regarding maintainability of a petition seeking issuance of writ of <i>quo warranto</i> and regarding non impleadment of necessary party. The practise deprecated.</p> <p>Exemplary cost – Since writ of <i>Quo Warranto</i> was not maintainable and there is no other public interest element involved, the petition was dismissed with exemplary cost.</p> <p>Writ of Quo Warranto – Can be issued to question an appointment on the substantive post. The working of an officer on officiating posting or a particular station cannot be subject matter of the petition for issuance of writ of Quo Warranto.</p>
Significant paragraph numbers	6 to 19

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The High Court of Madhya Pradesh Bench at Indore

WRIT PETITION NO. 11298/2021

Arun Singh Chouhan Vs. State of MP & Ors.

Indore, Dated: 30.07.2021

Petitioner Shri Arun Singh Chouhan present in person.

Shri Vivek Dalal, learned A.A.G for respondents/State.

Heard finally with consent.

ORDER

Sujoy Paul,J:-

The petitioner, a practising Advocate has filed this Public Interest Litigation wherein it is prayed as under:-

(a) Issue appropriate writ of *Quo Warranto* and may direct to respondents to take serious disciplinary action against Respondent No.4 and if he is unable to show or prove such an authority he may be ousted and restrained from functioning in the office and future bar also may be directed, which he has unlawfully usurped and intruded into or is unlawfully holding.

(b) Issue appropriate writ and may cost penalty on respondent for being on such post without proper authority for so long (one and half year)

(c) Issue appropriate writ and if he is not able to prove his authority then all the actions and proceedings taken by him must be suspended with immediate effects.

(d) Issue any other further order/orders or direction/directions as this Hon'ble Court may deem fit and appropriate to the facts and the circumstances of this case.”

02. In para three of the petition, it is averred as under:-

“That the Petitioner is shattered by that an officer of different district is how liable to become an SDO/SDM of different district as the matter of fact is that the Respondent No.4 was an Administrative Officer of District Dhar on the post of Land Acquisition and Rehabilitation Officer, NHDC Kukshi, District Dhar and then he was transferred to District Alirajpur on the post of Dy.Collector but during both the posting he was not there and during above both the postings he was performing his duty and taking action from last one and

half year in district Indore on the post of SDO/SDM of various subdivision of district Indore, even he is not the officer of district Indore, which is totally illegal and unlawful as the appointment of Respondent no.4 in Indore district on the post of SDO/SDM is not in accordance of law. And on remaining on the same post as SDO/SDM he defamed common people by posting their punishing image on personal handled Instagram page.”

(emphasis supplied)

03. The petitioner submits that on 14/12/2020 an order was passed by State government whereby 10 officers were transferred. Respondent No.4 was also transferred as Dy.Collector, Alirajpur from NHDC, Kukshi. The respondent No.4 never joined at District Alirajpur and started performing duty of SDM/SDO, Kanadiya Indore. Thus, writ of *quo warranto* may be issued against respondent No.4 to show under which authority he has working as SDM/SDO, Kanadia, Indore. The respondent No.4 SDO/SDM is misusing authority and making fun of common people and publishing those photographs on instagarm. Hence, a writ of *quo warranto* may be issued.

04. *Per contra*, Shri Vivek Dalal, learned A.A.G submits that writ of *quo warranto* is not maintainable. The petitioner has not impleaded the concerned officer *eo nomine* and, therefore, petition is not maintainable. There is no public interest element involved in the matter and petition appears to have been filed either for publicity or settle the personal score.

05. No other point is pressed by learned counsel or parties.

06. The petitioner has not filed the appointment order of the concerned officer/respondent No.4. The order dated 14th December, 2020 (Annexure P/4) shows that respondent No.4 is an officer of State Civil Services. The order further shows that he was posted as Dy.Collector. The appointment of respondent No.4 is not called in question. Indeed his posting and performance of a duty at a particular place namely Kanadia, Indore is called in question. This is clearly

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outside the scope of writ of *quo warranto*. We may hasten to mention that on more than one occasion the Court enquired from the petitioner, a practising Advocate as to how a writ of *quo warranto* is maintainable when petitioner is not challenging the appointment of respondent No.4 and has not chosen to implead him by name. Sadly, petitioner decided to avoid the said question repeatedly asked.

07. The Apex Court in ***B.R. Kapoor Vs. State of Tamil Nadu AIR 2001 SC 3435*** opined that a person against whom the writ of *quo-warranto* is prayed for is a necessary party.

08. In HALSBURY'S LAWS OF ENGLAND, it is observed: "Broadly stated, the *quo warranto* proceedings affords a judicial inquiry 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. If the finding is 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. It confers jurisdiction and authority on the judiciary to control executive action in the matter making appointment to public offices against the relevant statutory provision; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that these proceedings are subject to the condition 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 continue to hold them as a result of the convenience 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 persons 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 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.”

[See HALSBURY;’S LAWS OF ENGLAND, 3rd Edn.; Vol.II. p.145]

09. In *R. Vs. Speyer (1916) 1 K.B. 595* the appointment of a Privy Counselor was allowed to be questioned by a private person who had no personal interest in the matter. In India, the principle laid down in *R. Vs. Speyer* (supra) is followed and it was held that:-

“In a proceeding of a writ of *quo warranto* to test the validity of appointment to a public office, the applicant does not seek to enforce any right of his as such, nor does he complain of non-performance of any duty towards him. What is in question is the right of the non applicant to hold the office. Hence, it is not necessary in such a case that the applicant must have some personal interest in the matter.”

[See *R. Speyer*,(1916) 1 KB 595]

(emphasis supplied)

10. It is trite that a writ of *quo warranto* can be issued against a person and related to a post which he is substantively holding. It is relevant to examine the legal journey on this aspect.

11. The Constitution bench of Apex Court in the matter of *University of Mysore v. C.D. Govinda Rao (1964) 4 SCR 575* has held as under:-

“6.....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.....”

(emphasis supplied)

12. In the matter of *B.Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees’ Assn; (2006) 11 SCC 731(2)*, the Apex Court has held as under:-

“43.....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

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such a situation, the High Court, in our view, erred in law in issuing a writ of *quo warranto* the right 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*”.

(emphasis supplied)

13. In the matter of *N. Kannadasan v. Ajay Khose (2009) 7 SCC 1* the Supreme Court has held as under:-

“131.....The writ of *quo warranto* proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title he would be directed to be removed from the said office by a judicial order.....”

(emphasis supplied)

14. The Delhi High Court in the matter of *S.K. Dubey vs. Union of India, 1983 SCC Online Del 32* has held as under:-

“7.....An information in the nature of *quo warranto* lay only if the office was substantive in character, that is, an office independent in title, and if the holder of the office was an independent official, not one discharging the functions of a deputy or servant at the will and pleasure of others. An information in the nature of a *quo warranto* lay in respect of an office held at pleasure, provided that the office was one of a public and substantive character.”

“26..... “The test to be applied is whether there has been usurpation of an office of a public nature and an office substantive in character, that is, an office independent in title.” [R. v. Speyer (1916) 1 KB 597 at page 609]. The office must be a substantive office, that is, an office of independent character as contrasted with the employment of a deputy or mere servant.....”

(emphasis supplied)

15. This Court also in the matter of *Anand Selot vs. Chief Secretary, Govt. Of MP & Ors. 2010 ILR (MP) 1357* has held as under:-

“18.....As respondent No.3 is not substantively holding the post of Engineer-in-Chief, petitioner cannot question the said appointment, when it is not a substantive appointment to the post and seek a Writ of *Quo Warranto*”.

“20. If the judgment of the Supreme Court in the case of B.Srinivasa Reddy (supra) and N. Kannadasan (supra) and the Allahabad High Court alongwith the powers to be exercised by an incumbent holding post on current charge basis are evaluated in the light of the facts that have come on record, it is clear that a writ of Quo Warranto would not be maintainable in the case of such an appointment.”

(emphasis supplied)

16. In the instant case, the petitioner has not challenged the appointment of respondent No.4. The posting and working of respondent No.4 cannot be a reason for issuing the writ of *quo warranto*.

17. For issuance of writ of *quo warranto* the *locus standi* is insignificant but to maintain a regular writ petition, the petitioner must show that he is a “person aggrieved”. This petition for issuance of *quo warranto* by no stretch of imagination can be treated to be a public interest litigation. In the matter of ***Retd. Armed Forces Medical Association and others Vs. Union of India & Ors. (2006) 11 SCC 731 (I)*** the Apex court held that “a petition praying for a writ of *quo warranto* being in the nature of public interest litigation, it is not maintainable at the instance of a person who is not unbiased. The proceedings of *quo warranto* is not meant to settle personal scores.....”. In the same judgment, the Supreme Court opined that if petition for issuance of writ of *quo warranto* is filed with impropriety or mala-fide intentions, exemplary cost should be imposed.

18. As analysed above, the petition for writ of *quo warranto* is not maintainable. It appears that petition is filed to either settle personal score or gain publicity. We deprecate such practice and deem it proper to dismiss the petition with cost of Rs.10,000/- (rupees ten thousand). Petitioner shall deposit Rs.5,000/- (rupees five thousand) before High Court Legal Aid Committee, Indore within 30 days and remaining Rs.5000/- (five thousand) in the fund of High Court Bar Association, Indore within the aforesaid time. The bar association

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may utilise the said fund for the purpose of relief to be given to the Covid affected lawyers/family members. Petitioner shall deposit the receipts obtained from said bodies before the Registry of Court within 30 days from today failing which Registry shall apprise the Court regarding non compliance so that suitable proceedings/contempt proceedings may be initiated.

19. The petition is **dismissed with cost**.

(SUJOY PAUL)
Judge

(ANIL VERMA)
Judge

Digitally signed by
SOUMYA RANJAN
DALAI
Date: 2021.07.31
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vm

