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HIGH COURT OF CHHATTISGARH, BILASPU

Division Bench: **Hon'ble Shri Sunil Kumar Sinha &**
Hon'ble Shri Inder Singh Uboweja, JJ

W.P. (PIL) No. 42 of 2012

Nitin Sinha

Vs.

Union of India & Others

ORDER

For consideration

Sd/-
Sunil Kumar Sinha
Judge

HON'BLE SHRI JUSTICE INDER SINGH UBOWEJA

Sd/-
Inder Singh Uboweja
Judge

Post for Order : /04/2014

Sd/-
Judge
/04/2014



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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: **Hon'ble Shri Sunil Kumar Sinha &**
Hon'ble Shri Inder Singh Uboweja, JJ

W.P. (PIL) No. 42 of 2012

PETITIONER

Nitin Sinha, aged about 43 years,
S/o Late Rajiv Sinha, R/o House
No. 31, SBI Colony, Sundar
Nagar, Raipur (C.G.)

Versus

RESPONDENTS

- 1 Union of India Through: its
Secretary, Ministry of Personnel,
Department of Personnel &
Training, New Delhi
- 2 State of Chhattisgarh, Through: Its
Chief Secretary, Government
Secretariat, Raipur (C.G.)
- 3 Secretary, Finance Department
State of Chhattisgarh,
Government Secretariat, Raipur
(C.G.)
- 4 Secretary, General Administration
Department, State Government of
C.G. Secretariat, Raipur (C.G.)
- 5 Secretary, Department of
Personnel Chhattisgarh
Government Secretariat, Raipur
(C.G.)
- 6 Mr. Aman Singh, Secretary to the
Government of Chhattisgarh ,
Secretariat D.K.S. Bhawan, Raipur
(C.G.)

(Petition under Article 226 of the Constitution of India)

Appearance:

Mr. V.G. Tamaskar, Advocate for the petitioner.

Mr. Vivek Shrivastava, Advocate for respondent No.1/Union of India.

Advocate General with Mr. A.S. Kachhawaha, Dy. Advocate General, Mr. Sushil Dubey, Govt. Advocate and Mr. Apoorv Kurup, Panel Lawyer for the State/respondents 2 to 5.

Mr. Ravindra Shrivastava, Sr. Advocate with Mr. Ashish Shrivastava, Mr. Animesh Verma, Mr. Anoop Jain and Mr. Soumya Rai, Advocates for respondent No.6.

ORDER
(11.04.2014)

Following order of the Court was delivered by
Sunil Kumar Sinha, J.

(1) Petitioner- Nitin Sinha is a *Bardana* (gunny bag) Trader. He has filed this petition, styled as Public Interest Litigation (PIL), for issuance of a writ of *quo warranto* to quash the contractual appointment of 6th respondent on the post of Principal Secretary, Information Technology and Bio Technology (I.T. & B.T.) and giving him additional charge of Principal Secretary, Energy; Principal Secretary, Chief Minister and Principal Secretary, Public Relation.

(2) The 6th respondent was a member of Indian Revenue Services (Custom and Central Excise). He resigned from the said post and thereafter was appointed on the post of Secretary, I.T. & B.T.

Government of Chhattisgarh on 27.1.2010 on contractual basis for a period of 3 years. The conditions of contractual appointment were notified vide order dated 21.4.2010 (Annexure-P/1). The instant PIL was filed on 22.8.2012 challenging the validity of the said order.

(3) Later on, during the pendency of the writ petition, on 16.1.2013 the 6th respondent was again appointed on contractual basis for a period of 2 years. Accordingly, the writ petition was amended and relief(s) relating to quashment of the second appointment order dated 16.1.2013 was added.

(4) On 17.12.2013 the post of Secretary I.T. & B.T. was upgraded to the post of Principal Secretary I.T. & B.T. and the earlier appointment of the 6th respondent was terminated and he was appointed afresh on contractual basis on the above upgraded posts and was given additional charge of Principal Secretary, Energy; Principal Secretary, Chief Minister and Principal Secretary, Public Relation. The writ petition was again amended making challenge to the order dated 17.12.2013 and the appointment of the 6th respondent on contractual basis on the said post. Thus in sum and substance, the writ petition (PIL) is now for quashment of the order dated 17.12.2013 by which the 6th respondent was appointed as Principal Secretary (I.T. & B.T.) on contractual basis for a period of 5 years and given additional charges as above.

(5) Mr. V.G. Tamaskar, learned counsel for the petitioner, has argued that the 6th respondent does not fulfill the requisite qualification for being appointed on the post of Secretary, I.T. & B.T. and Secretary to the Chief Minister. His appointment is illegal for want of requisite and necessary qualifications. It was also contended that the 6th respondent is not a member of Indian Administrative Service (IAS) Cadre, whereas, the post held by him are cadre post(s). Therefore, his appointment on the cadre post(s) is illegal and void. Reference was made to various provisions of All India Services Act, 1951 (for short the 'Act 1951'); Indian Administrative Service (Cadre) Rules, 1954 (for short the 'Rules 1954') and Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 (for short the 'Regulations, 1955'). Over and above all, it was contended by Mr. Tamaskar that the appointment was made in violation of the relevant Rules framed for appointments on contractual basis.

(6) On the other hand, learned Advocate General firstly raised objection relating to maintainability of a Public Interest Litigation (PIL) in service matter. Thereafter he argued at length showing justification of the appointment. He referred to the decision of Dattaraj Nathuji Thaware -Vs- State of Maharashtra and Others, (2005) 1 SCC 590.

(7) Mr. Ravindra Shrivastava, learned Sr. Counsel appearing on behalf of the 6th respondent, argued that the post held by the 6th respondent is not a cadre post; the 6th respondent fulfill the entire qualification to hold the post of Principal Secretary, I.T. & B.T. and the additional charge of other posts presently held by him. It is not a case of usurpation or violation of any statutory rules relating to qualification for appointment on contractual basis, therefore, the writ petition is liable to be dismissed.

(8) Mr. Vivek Shrivastava, learned Standing Counsel representing the Union of India, has supported the arguments of counsel for other respondents.

(9) We have heard counsel for the parties.

(10) Firstly we shall deal with the question of maintainability of a PIL in service matter.

(11) In *Dattaraj* (supra), the Advocate General has referred to Para-16, wherein it has been contended that "Though in *Duryodhan Sahu (Dr.) -Vs- Jitendra Kumar Mishra, (1998) 7 SCC 273*, it was held that in service 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 (earlier noted) decisions."

(12) Taking note of *Duryodhan Sahu* (supra) and many other decisions, in *Hari Bansh Lal -Vs- Sahodar Prasad Mahto and Others*, (2010) 9 SCC 655, while examining the scope of PIL in service matters, the Supreme Court observed in Paras 13 to 15 as follows:-

13. In *Duryodhan Sahu (Dr.) v. Jitendra Kuamr Mishra*, (1998) 7 SCC 273 a three-Judge Bench of this Court held: (SCC p. 281, para 18)

"18. 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."

In para 21, this Court reiterated as under: (SCC p. 283)

"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."

14. In *Ashok Kumar Pandey v. State of W.B.*, (2004) 3 SCC 349 this Court held thus: (SCC pp. 358-59, para 16)

"16. As noted supra, a time has come to weed out 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 utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra*, (1998) 7 SCC 273 this Court held that in service 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 aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

The same principles have been reiterated in the subsequent decisions, namely, *B. Singh (Dr.) v. Union of India*, (2004) 3 SCC 363, *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 590 and *Gurpal Singh v. State of Punjab*, (2005) 5 SCC 136.

15. The above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters.

(13) In *Central Electricity Supply Utility of Odisha -Vs- Dhobei Sahoo and Others & A Connected Civil Appeal*, (2014) 1 SCC 161,

the Supreme Court once again reiterated the law on Public Interest

Litigation (PIL) qua a writ of quo warranto and quoting *Hari Bansh Lal* (supra) observed that in relation to a service matter a Public Interest Litigation (PIL) would not be maintainable except as far as it relates to a writ of quo warranto. However in such cases implications of the writ of quo warranto and misuse thereof in the garb of PIL has to be looked into.

(14) In the instant case, the petitioner has prayed for quashment of the appointment of 6th respondent by issuing a writ of quo warranto. We have examined the PIL which challenges appointment of the 6th respondent on many aspects including those which we have mentioned while narrating the facts, and one cannot deny that the PIL in substance is a service matter. Even counsel for both the parties have also not denied that it is a service matter. Whether the petitioner is entitled for issuance of such writ or to get a declaration of such kind is a different matter which we would discuss in the later part of the judgment, but the objection raised by the Advocate General regarding maintainability of the Public Interest Litigation (PIL) in the matter of appointment of the 6th respondent stands concluded by the above authoritative pronouncements of the Supreme Court holding that "except for a writ of quo warranto, Public Interest Litigation (PIL) is not maintainable in service matters."

(15) Now we shall proceed to examine the matter on merits.

(16) The nature of writ of quo warranto and the conditions for issuance thereof have been discussed at many times by the Supreme Court. It confers jurisdiction to control executive action in making appointments to public offices and also protects the public from usurpers of public offices, and a citizen from being deprived of a public office to which he may have a legal right. Such writ cannot be issued against holding of the office at the pleasure of the master. A proceedings for quo warranto is an exception to the general rule that only a person who has been individually aggrieved can apply for issuance of the same (Vide: University of Mysore -Vs- Govinda Rao, C.D., AIR 1965 SC 491 ; Jagram -Vs- Gwalior Town and Country Development Authority, AIR 1987 MP 11 and Venkateswara Rao, Godde -Vs- Govt. of A.P., AIR 1966 SC 828).

(17) In *University of Mysore* (supra), also quoted in *Central Electricity* (supra), it was held that "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 recognized 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."*

(18) By quoting many other decisions ultimately in *Central Electricity* (supra), it was held that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and it can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the

statutory rules. The Supreme Court also laid down that the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority (Vide: *Para- 21*). Another aspect which also was incidentally dealt with, is that the doctrine of delay and laches in filing a writ of quo warranto would not come on the way because the person holds the public office is an usurper and such continuance is to be prevented by the Court in the larger public interest and good governance.

(19) It is on these broad principles we will examine the appointment of the 6th respondent to the above post(s) and the validity thereof.

(20) The 2 earlier appointments dated 27.1.2010 and 16.1.2013 are not in existence and presently the 6th respondent is holding the above post(s) on the strength of the appointment order dated 17.12.2013. The said order reads as under:-



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**“छत्तीसगढ़ शासन
सामान्य प्रशासन विभाग
मंत्रालय, महानदी भवन, नया रायपुर**

// आदेश //

नया रायपुर, दिनांक 17.12.2013

क्रमांक एफ-9-2/2010/1-8 :: राज्य शासन एतद् द्वारा सचिव, सूचना प्रौद्योगिकी एवं जैव प्रौद्योगिकी के गैर-संवर्गीय सचिवालयीन पद को प्रमुख सचिव, सूचना प्रौद्योगिकी एवं जैव प्रौद्योगिकी के गैर-संवर्गीय सचिवालयीन पद में उन्नयन करते हुए विभागीय समसंख्यक आदेश दिनांक 16 जनवरी, 2013 के अधिक्रमण में छत्तीसगढ़ सिविल सेवा (संविदा नियुक्ति) नियम, 2012 के नियम -4(4) सहपठित नियम-3 के अंतर्गत संविदा नियुक्ति का पद घोषित करता है ।

2. उपरोक्त वर्णित पद उन्नयन के फलस्वरूप सचिव, सूचना प्रौद्योगिकी एवं जैव प्रौद्योगिकी के पद पर समसंख्यक आदेश दिनांक 16 जनवरी, 2013 द्वारा की गई श्री अमन कुमार सिंह की संविदा नियुक्ति तत्काल प्रभाव से समाप्त मानी जाती है ।

3. प्रमुख सचिव, सूचना प्रौद्योगिकी एवं जैव प्रौद्योगिकी के पद पर नियम-5 (तीन) सहपठित नियम-8 (2) (ग) के अंतर्गत श्री अमन कुमार सिंह को उनके कार्य अनुभव तथा उपादेयता के आधार पर आगामी पांच वर्ष के लिये अथवा आगामी आदेश पर्यन्त एतद् द्वारा नवीन संविदा नियुक्ति दी जाती है; साथ ही, श्री सिंह को प्रमुख सचिव, उर्जा तथा प्रमुख सचिव मुख्यमंत्री एवं प्रमुख सचिव, जनसंपर्क का अतिरिक्त प्रभार भी सौंपा जाता है ।

4. श्री अमन सिंह की प्रमुख सचिव, सूचना प्रौद्योगिकी एवं जैव प्रौद्योगिकी के पद पर संविदा नियुक्ति अवधि में उन्हें प्रमुख सचिव पद का वेतनमान एवं देय अन्य अनुषांगिक लाभ कार्यभार ग्रहण करने के दिनांक से देय होगा ।

5. श्री सिंह की संविदा नियुक्ति की सेवा-शर्तें पृथक से प्रसारित होंगी ।

6. उपरोक्तानुसार पद उन्नयन हेतु वित्त विभाग द्वारा सहमति प्रदान की गई है ।

छत्तीसगढ़ के राज्यपाल के नाम से
तथा आदेशानुसार

Sd/-17.12.13
(सुनील कुमार)
मुख्य सचिव
छत्तीसगढ़ शासन

पु.क्रमांक एफ-9-2/2010/1-8

नया रायपुर, दिनांक 17/12/2013

प्रतिलिपि:-

1. अपर मुख्य सचिव, छत्तीसगढ़ शासन, वित्त विभाग, मंत्रालय, रायपुर ।
2. प्रमुख सचिव, छत्तीसगढ़ शासन, मुख्यमंत्री सचिवालय, मंत्रालय, रायपुर ।
3. सचिव, छत्तीसगढ़ शासन, सामान्य प्रशासन विभाग, मंत्रालय, रायपुर ।
4. श्री अमन कुमार सिंह, रायपुर ।
5. महालेखाकार, छत्तीसगढ़ रायपुर ।
6. अवर सचिव, मुख्य सचिव कार्यालय, मंत्रालय, रायपुर ।
7. अवर सचिव (अधीक्षण), छत्तीसगढ़ शासन, सामान्य प्रशासन विभाग, मंत्रालय, रायपुर ।
8. मुख्य लेखाधिकारी, छत्तीसगढ़ मंत्रालय, रायपुर ।
9. जिला कोषालय अधिकारी, जिला रायपुर ।

Sd/-17.12.13
(तीरथ प्रसाद लड़िया)
अवर सचिव
छत्तीसगढ़ शासन,
सामान्य प्रशासन विभाग

(21) The first contention of Mr. Tamaskar was that the post(s) held by the 6th respondent are the cadre post(s). He is not an officer of the IAS cadre, therefore, he should not have been appointment against the cadre post(s). The respondents have contended that the substantive post held by the 6th respondent is not the cadre post.

(22) To settle the controversy, it would be beneficial to go through various provisions in this regard. The All-India Services Act, 1951 [No. 61 of 1951] (hereinafter referred to as the 'Act' or 'Act 1951') was enacted on 29.10.1951. This is an Act to regulate the recruitment, and the conditions of service of persons appointed to the All-India Services common to the Union and the States. In this Act, the expression "an All-India Service" means the service known as the Indian Administrative Service or the service known as the Indian Police Service, or any other service specified in Section 2A. Section 3 of the Act provides many provisions relating to regulation of recruitment and conditions of service. Sub-section (1) of Section 3 gives power to the Central Government to make Rules after consultation with the Government of the State. In exercise of such powers conferred under sub-section (1) of Section 3, the Central Government has made the Rules namely the Indian Administrative Service (Cadre) Rules 1954 (for short 'Rules, 1954 or the Rules). Rule 2(a) defines 'cadre officer' which means a member of the Indian

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Administrative Service. Likewise Rule 2(b) defines 'cadre post' which means any of the post specified under item I of each cadre in schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 (for short the 'Regulations' or the 'Regulation 1955'). A perusal of the Schedule to the Regulations 1955 would show that the post of Principal Secretary, I.T. & B.T. is not a cadre post.

(23) An affidavit was also called from the State in this regard. The State in its affidavit dated 1.3.2013, while the second appointment was in force, has stated on oath that the post of Secretary I.T. & B.T. was not a cadre post. It was also declared by the State that the post of Secretary (I.T. & B.T.) is not included among the 11 posts of Secretaries to the Government or the 5 posts of Principal Secretaries to the Government as per notification dated 20.5.2010 by which the Schedule relating to Chhattisgarh was inserted in the Regulations.

(24) About given additional charge of Principal Secretary, Energy; Principal Secretary, Chief Minister; and Principal Secretary, Public Relation, it has been categorically stated in the affidavit that the Principal Secretary, Energy and Principal Secretary, Public Relation are also not the cadre post(s) and against the one cadre post of Secretary to the Chief Minister, Shri N. Baijendra Kumar had already been appointed from the cadre as Principal Secretary to the

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Chief Minister. Thus it is clear that the 6th respondent has not been appointed against any cadre post and the argument in this regard cannot be accepted.

(25) The second contention of Mr. Tamaskar was about the qualification of the 6th respondent to hold the above post(s).

(26) A perusal of the records would show that the 6th respondent was a member of Indian Revenue Service (Custom and Central Excise). He resigned from the said post and thereafter he was appointed on the post of Secretary (I.T. & B.T.). The petitioner has not brought on record as to how the 6th respondent was lacking in qualification or the eligibility criteria. Except the Chhattisgarh Civil Sewa (Samvida Niyukti) Niyam, 2012, no Rules/Regulations/Policy or Guidelines relating to essential qualifications etc. have been brought to the notice of this Court to show that the 6th respondent was lacking in such qualifications. We are dealing with a writ of quo warranto, wherein it is the obligation of the relator to satisfy us that the office in question is a public office and is held by the usurper without the legal authority and qualifications (Vide: Central Electricity). The petitioner has utterly failed to satisfy us that the 6th respondent was lacking in qualifications for appointment on the above post(s).

(27) The State in its affidavit dated 1.3.2013 has brought on record the reasons for appointment of the 6th respondent on the post of Secretary (I.T. & B.T.). They have come with the case that the State of Chhattisgarh, upon reorganization, received grossly insufficient manpower of officers and government servants at all levels and the shortage of officers was prevailing. With a view to give special emphasis and impetus to governance in conjunction with the advancement of Information Technology, the State Government sanctioned and set up a separate department of Information Technology & Biotechnology (I.T. & B.T.) vide notification dated 6.1.2006 and thereafter it also sanctioned the post of Secretary (I.T. & B.T.) in pay scale of Rs.18400 - Rs.22400/- vide order No. Part F 2-22/2004/1-8 dated 20.3.2008. This was in addition to the senior duty post(s) under the IAS Regulations and then the 6th respondent, who was member of Indian Revenue Service (Customs & Central Excise), was appointed on the said post. Receiving less number of the officers on reorganization, paucity of the officers in the Secretariat and other Government Departments and necessity of a separate department of Information Technology and Biotechnology (I.T. & B.T.) have not been controverted by the petitioner in any manner. Moreover, it is wisdom of the concerned Government as to which department would be necessary for good governance and what set-up would be sufficient to run the said department. All this cannot be

examined by a court, particularly while considering a matter for issuance of a writ of quo warranto which jurisdiction is quite limited to see whether the alleged person who holds the public office lacks in qualification and whether the appointment is made contrary to the statutory rules.

(28) Mr. Tamaskar has also contended that the 6th respondent was earlier serving in Custom & Central Excise, therefore, he was not suitable for the said post(s).

(29) We may reiterate that the court while hearing a writ of quo warranto does not sit to judge the suitability or eligibility of the candidate. It completely falls within the domain of the appointing authority and the State. In this connection, our scrutiny is limited to see that the provisions of concerned Act(s) or statutory rules are not violated and a public post(s) or a public office is not held by an usurper or disqualified person in violation of any statutory rules.

(30) Mr. Tamaskar has lastly contended that the appointment was in violation of the Rules framed for contractual appointments.

(31) The relevant Rules for contractual appointments are "the Chhattisgarh Civil Sewa (Samvida Niyukti) Niyam, 2012". These Rules came into existence from their publication in official gazette

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on 31st December, 2012. The contents of the appointment letter dated 17.12.2013 would show that while appointing the 6th respondent, the State has exercised power conferred under Rule 4 (4) and Rule 5 (3) read with Rule 8 (2) (c). Rule 3 provides that these rules shall apply in relation to every such post/posts and to such persons appointed or who may be appointed under these rules on the post/posts declared as contract appointment post by the State Government under rule 4. Rule 4 defines the **Posts of Contract Appointment**.

Sub-rule (4) of Rule 4 reads as under :-

The following posts shall be called as contract appointment post:-

- (1) xxx xxx xxx.
- (2) xxx xxx xxx.
- (3) xxx xxx xxx.
- (4) Such posts, notwithstanding anything contained in departmental recruitment rules, which require specialization, experience and special qualification declared as contract appointment post by a general or special order in exceptionally special cases by the State Government to maintain the efficiency in public administration, except such post for which legal experience in the judicial service field is required under any law or rule for the time being in force.
- (5) xxx xxx xxx.



(32) Rule 5 deals with Method of Appointment. Sub-rule (3) of Rule 5 provides that contractual appointment may be made for the posts mentioned in Rule 4 (4) in exceptional special cases, directly by contract appointment, of specific non-government person or retired government servant on the basis of specialization, experience, special qualification and his suitability for the post after approval of the Finance Department.

(33) The term "Retired Government Servant" has been defined in Rule 2 (f) which means Government servant superannuated or voluntarily retired or Government servant relieved from Government service on tendering resignation.

(34) The eligibility criteria and qualifications for contractual appointment have been defined in Rule 8. Rule 8 (2) (c) provides that in the case of contract appointment of retired Government servants, in special cases, contract appointment may be given on higher post, except such post for which legal experience in the judicial service field is required under any law or rule for the time being in force, on the basis of their special experience, exemplary service record and evaluation of performance.

(35) The 6th respondent, as we have already stated, was member of Indian Revenue Services, who resigned from the post held by him

and after the resignation he was appointed to the above post(s). He would be covered under the definition of a 'Retired Government Servant' as per Rule 2 (f). Thus he was eligible for appointment under Rule 5 (3) and Rule 8 (2) (c). It could not be shown as to how his contractual appointment was bad-in-law on account of violation of the Rules. Thus we find no force in the argument advanced on the ground of violation of statutory rules.

(36) For the foregoing reasons, we find no substance in the Writ Petition (PIL). The same is liable to be dismissed and is hereby dismissed.

(37) No cost.

Sd/-
Sunil Kumar Sinha
Judge

Sd/-
Inder Singh Uboweja
Judge

vatti

HEADLINE

1. Public Interest Litigation (PIL) - Except for a *writ of quo warranto*, PIL is not maintainable in service matters.
1. जन हित याचिका - को वारन्टो के निवेदन के अतिरिक्त सेवा सम्बंधी मामले में जन हित याचिका प्रतिपालनीय नहीं होगी ।

B.O.

R.K. Vatti

(R.K. Vatti)

Private Secretary