A

B. SRINIVASA REDDY

v.

KARNATAKA URBAN WATER SUPPLY AND DRAINAGE BOARD EMPLOYEES' ASSOCIATION AND ORS.

AUGUST 28, 2006

B

[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

Service Law—Appointment—Contractual appointment—Appellant was C *Managing Director of Karnataka Urban Water Supply and Drainage Board—Pursuant to retirement he was re-appointed by State Government on the same post on contract basis "until further orders"—Challenge to—Upheld by High Court—Held: Government had undoubted power to make contractual appointment until further orders—The power included the power to make appointment on substantive basis, temporary basis, officiating basis, ad hoc* D *basis, daily wages or contractual basis—There was no violation of any statutory provision because the appellant had requisite experience and capacity before appointment—Writ petition filed by Employees' Union and its President was motivated—Findings of legal* **mala fides** *by High Court unsustainable—Karnataka Urban Water Supply and Drainage Board Act, 1973 and the Rules made thereunder—Sections 4(2)& 6(1) / Rule 3.*

E

Industrial Disputes Act, 1947—Section 2(q)(q)—Trade Unions Act, 1926—Chapter III—Managing Director of Karnataka Urban Water Supply and Drainage Board pursuant to retirement re-appointed on the same post on contract basis—Writ petition filed by Employees' union challenging the F *same—Union not registered on the date of filing writ petition—Maintainability of the writ petition—Held, not maintainable—Constitution of India, 1950—Article 226.*

*Constitution of India, 1950—Article 226—***Quo Warranto***—Writ of* **Quo Warranto** *does not lie if the alleged violation is not of a statutory provision.*

G

Constitution of India, 1950—Article 226—Petition praying for Writ of **Quo Warranto***—Is in the nature of public interest litigation—Hence it is not maintainable at the instance of a person who is not unbiased.*

Equity—Relief—Courts not to grant relief to person who comes to

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Court with unclean hands and with **malafide** *intention/motive.* A

Appellant retired as Managing Director of the Karnataka Urban Water Supply and Drainage Board (Respondent No.4) on 31-01-2004. He was re-appointed on the same post on 01-02-2004 on contract basis "until further orders". This was challenged by Respondent No.1, the Karnataka Urban Water Supply & Drainage Board Employees' Association, by filing writ petition. High B **Court allowed the writ petition.**

In appeals to this Court, the questions which arose for consideration are 1) Whether the writ petition framed at the instance of Respondent No.1 was not maintainable since it was not a registered trade union on the date of filing of the writ petition which information was withheld from the Court; 2) C **Whether the writ petition was also motivated as Respondent No.1 had earlier lodged a false complaint to the Lokayukta against the Appellant which was found to be baseless and 3) Whether the State Government had the requisite power to make the contractual appointment "until further orders" without specifying the period of appointment and no writ of *Quo Warranto* could be issued in that regard.** D

Allowing the appeals, the Court

HELD: 1.1. The petitioners in the writ petition, respondent No.1 which is an unregistered Association under the Trade Unions Act, 1926 cannot maintain the writ petition. [503-E] E

1.2. Chapter-III of the Trade Unions Act, 1926 sets out rights and liabilities of the registered Trade Unions. Under the said enactment, an unregistered trade union or a trade union whose registration has been cancelled has no manner of right whatsoever, even the rights available under the I.D. Act have been limited only to those trade unions which are registered F **under the Trade Unions Act 1926 by insertion of clause 2 (q)(q) in the I.D. Act w.e.f. 21.08.1984 defining a trade union to mean a trade union registered under the Trade Unions Act. 1926. The High Court miserably failed and gravely erred in holding that respondent Nos. 1 and 2 have *locus standi* to question the appointment of the appellant in the light of the change of law** G **that has been brought about by insertion of Section 2(q)(q) of the I.D. Act and having regard to the provisions of Chapter-III of the Trade Unions Act, 1926. [481-A-D]**

1.3. In the instant case, the employees association approached the High Court with unclean hands. It has approached this Court by suppressing the H

A material facts and has snatched an order on the basis of wrong averments when the employees union has no *locus standi* to maintain the writ petition on the date relevant in question. Courts cannot grant any relief to a person who comes to the Court with unclean hands and with *mala fide* intention/ motive. The writ petition filed by the employees association is liable to be thrown out on this single factor. The writ petitioner union made a false B averment that it is a registered trade union, and that itself is a ground to dismiss the writ petition. Though it is eminently a fit case for awarding exemplary costs, considering the employees financial aspect and taking a lenient view of the matter, this Court is not ordering any costs.

[481-E, G, H; 482-A]

C

Naraindas v. *Government of Madhya Pradesh and Ors.*, AIR (1974) SC 1252, relied on.

Parshotam Lal Dhingra v. *Union of India,* AIR (1958) SC 36; *Mahinder Kumar Gupta and Ors.* v. *Union of India, Ministry of Petroleum Natural Gas,* D [1995] 1 SCC 85; *Coinpar and Anr.* v. *General Manager, Telecom District and Ors.*, [2004] 13 SCC 772; *Parents Teachers Association and Ors.* v. *Chairman, Kendriya Vidyalaya Sangathan and Ors.*, AIR (2001) Rajasthan 35 and *Fertilizer Corporation Kamgar Union (Regd.) Sindri and Ors.* v. *Union of India and Ors.*, [1981] 1 SCC 568, referred to.

E 2.1. The appellant was not disqualified for appointment as Managing Director w.e.f. 1-2-2004. There is no bar for appointment to the post in question on contract basis. The Government has absolute right to appoint persons on contract basis. [503-A-B]

F 2.2. The power to appoint the Managing Director of the Board is vested in the Board under Section 4(2) of the Karnataka Urban Water Supply and Drainage Board Act, 1973. Neither the 1973 Act nor the Rules made thereunder 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 1973 Act and the Rules made thereunder G and the 1973 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 1973 Act does not expressly give the power to the State Government to make *ad hoc* or contract appointment. When the Act and the statutory rules have not prescribed any definite term and any particular mode, the High Court could H 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 power to appoint has absolute discretion in the matter and it cannot be said that discretion to appoint does not include power to appoint on contract basis. [482-E-G] A

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2.3. There is no violation of Section 4(2) of the 1973 Act and Rule 3 of the Rules made under the said Act as held by the High Court because the appellant having been the Chief Engineer of the Board had experience in administration and capacity in commercial matters before he was appointed as M.D. on contract basis by the Government. [491-D]

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2.4. The Government has no doubt power to make contractual appointment until further orders. The power included the power to make appointment on substantive basis, temporary basis, officiating basis, *ad hoc* basis, daily wages or contractual basis. The terms and conditions of the order appointing the appellant made it clear that the appointment is temporary and is until further orders. An appointment which is temporary remains temporary and does not become permanent with passage of time. The finding recorded by the High Court 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 Rule do not stipulate maximum period of appointment. The High Court gravely erred in issuing a *Writ of Quo Warranto* when there is no clear violation of law in the appointment of the appellant. 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. D E

[482-C, G, H; 483-A; 484-D; 503-D]

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Ramachandran v. *A. Alagiriswami, Govt. Pleader High Court, Madras & Anr.*, AIR (1961) Madras 450; *High Court of Gujarat & Anr.* v. *Gujarat Kishan Mazdoor Panchayat & Ors.*, [2003] 4 SCC 712 and *Mor Modern Coop. Transport Society Ltd.* v. *Financial Commissioner & Secretary to Government of Haryana*, [2002] 6 SCC 269, relied on.

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R.K. Jain v. *Union of India*, [1993] 4 SCC 119; *A. N. Sashtri* v. *State of Punjab and Ors.*, [1988] Supp SCC 127; *Dr. B. Singh* v. *Union of India and Ors.*, [2004] 3 SCC 363; *The University of Mysore and Anr.* v. *C.D. Govinda Rao and Anr.*, [1964] 4 SCR 575; *Ghulam Qadir* v. *Special Tribunal and Ors.*, [2002] 1 SCC 33; *Union of India* v. *K.P. Joseph & Ors.*, [1973] 1 SCC 194; *Statesman (Private) Ltd.* v. *H.R. Deb*, [1968] 3 SCR 614; *Dr. Umakant Saran* H

A v. *State of Bihar,* [1973] 1 SCC 485; *Kumari Chitra Ghose* v. *Union of India,* [1969] 2 SCC 228; *P.L. Lakhanpal* v. *Ajit Nath Ray,* AIR (1975) Delhi 66; *Rajendra Prasad Yadav* v. *State of Madhya Pradesh,* [1997] 6 SCC 678; *Satish Chandra Anand* v. *Union of India,* [1953] SCR 655 and *P.K. Sandhu (Mrs.)* v. *Shiv Raj V. Patil,* [1997] 4 SCC 348, referred to.

B 3.1. It is settled law by a catena of decisions that 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 prescribed qualification and is otherwise eligible for appointment. In the instant case, the discretion available to the competent authority under the Rules has been exercised by the appointing authority in making the appointment of the appellant. That could C not have been annulled by the High Court. [485-C; 495-H; 496-A]

3.2. The finding of legal *mala fides* by the High Court is unsustainable being based on a misunderstanding of the law and facts. When a competent and experienced officer of an outstanding merit is appointed to a higher post D on contract basis after his super-annuation from service in larger public interest does not suffer from legal malice at all. The appointment was made in the interest of the Board and the State at a time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element of urgency involved in making the appointment because of impending negotiations with the World Bank. The writ E petition was motivated as respondent No.1 had lodged a false complaint to the Lokayukta against the appellant which was found to be baseless by the Lokayukta. 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 second respondent is the President of the first F respondent- Union. He has chosen this forum to settle personal scores against his erstwhile superior officer after his retirement. The proceedings is not meant to settle personal scores by an employee of the department. The High Court ought to have dismissed the writ petition filed by respondent No.1 at the threshold. In any event, respondent No.1 failed to discharge the heavy burden to substantiate the plea of *mala fides.* [497-F-H; 498-A-C]

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3.3. The post of Managing Director is a highly respectable post. It is a post of great confidence - a lynchpin in the administration and smooth functioning of the administration requires that there should be complete rapport and understanding between the Managing Director and the Chief Minister. The Chief Minister as a Head of the Government is in ultimate

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charge of the administration and it is he who is politically answerable to the people for the achievements and failures of the Government. If the Chief Minister forfeits the confidence on the appellant, he may legitimately in the larger interests of administration appoint him until further orders as M.D. of the Board. It does not involve violation of any legal or constitutional rights. Secondly that the vast multitudinous activities in which a modern State is engaged, there are bound to be some posts which require for adequate discharge of their functions, high degree of intellect and specialized experience. It is always a difficult problem for the Government to find suitable officers for such specialized posts. There are not ordinarily many officers who answer the requirements of such specialized posts and the choice with the Government is very limited and this choice becomes all the more difficult, because some of these posts, though important and having onerous responsibilities, do not carry wide executive powers and officers may not, therefore, generally be willing to be transferred to those posts. The Government has in the circumstances to make the best possible choice it can, keeping in view the larger interests of the administration. When in exercise of this choice, the Government transfers an officer from one post to another, the officer may feel unhappy because the new post does not give him the same amplitude of powers which he had while holding the old post. But that does not make the appointment arbitrary. So long as the appointment is made on account of the exigencies of administration, it would be valid and not open to attack under Arts. 14 & 16 of the Constitution. Here the post of M.D. was admittedly a selection post and after careful examination of the merits, the Chief Minister selected the appellant for the post of M.D. It was not the case of the respondents that the appellant was not found qualified to the task or that his work was not satisfactory. [499-H; 500-A-F]

3.4. The High Court erred in probing the mind of the Government and acted contrary to its own finding on the role of appointing authority in Quo *Warranto* proceedings. The Division Bench was not right in quashing the appointment of the appellant as Managing Director on the misconception that he has been re-appointed to the said office, whereas it was a fresh appointment under the provisions of the Act and in accordance with the prescribed qualification and eligibility under the Act. Further the appointee holds the office during the pleasure of the Government as provided under Section 6(1) of the 1973 Act. The Division Bench was not correct in holding that the Government is not affected by allowing the *writ of Quo Warranto* against the appointee and in observing that the Government ought not have filed the appeal. The Bench failed to appreciate that it is the duty of the Government to justify

A **the appointment as such there is no wrong in filing the writ appeal.**

[502-E-H]

Centre for Public Interest Litigation & Anr. **v.** *Union of India & Anr.,* **[2005] 8 SCC 202, distinguished**

B *E.P. Royappa* **v.** *State of Tamil Nadu,* **[1974] 2 SCR 348 and** *B.R. Kapur* **v.** *State of Tamil Nadu & Anr.,* **[2001] 7 SCC 231, referred to.**

4. The Division Bench of the High Court ordered cost in the writ appeal. There is no justification in ordering cost in the facts and circumstances of the case. Therefore, the appellant, State Government and respondent No.4 are
C **entitled to refund the cost, if it has already been paid. However, this Court is not ordering cost against respondent Nos. 1 & 2 taking into consideration of the financial constraint of the employees and by taking a lenient view of the matter. Appellant has already been released and in his place a person has already been appointed as a Managing Director of the Board on contract basis.**
D **Keeping this admitted fact in mind, this Court, therefore, keeps it on record that the Government or the Board would be at liberty to consider and appoint a candidate, if occasion arises, on contract basis. If such a situation does arise in that case it would be open to the State or the Board to consider the candidature of the appellant with others. [503-H; 504-A, B]**

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3719 of 2006.

From Final Judgment and Order dated 3/4.4.2006 of High Court of Karnataka at Bangalore in Writ Appeal/No. 86/2006.

WITH

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C.A. No. 3722 of 2006.

P.P. Rao, P.S. Rajagopal, Lalit Mohini Bhat, Naveen R. Nath, Hetu Arora and Sanjay R. Hegde for the Appellant.

G Raju Ramachandran, Devashish Bharuka, Hansa Bharuka, Ruchi Kohli, Alok Sangwan and Sushil Balwada for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted in both the special leave
H petitions.

These appeals have raised substantial questions of law involving interpretation of certain provisions of the Karnataka Urban Water Supply and Drainage Board Act, 1973 (for short "the Act") and the Rules made thereunder and also the principles of law governing the *Writ of Quo Warranto* and the power of the Government to make a contractual appointment under Section 4(2) of the Act.

Civil Appeal No._____ of 2006

(Arising out of SLP (C) No. 9393 of 2006)

This appeal was filed by Mr. B. Srinivasa Reddy (hereinafter called Mr. Reddy) seeking leave to appeal against the final judgment and order dated 04.04.2006 passed by the High Court of Karnataka at Bangalore in Writ Appeal No. 86 of 2006. By the impugned order, the High Court dismissed the writ appeal filed by the appellant-herein against the order dated 10.01.2006 passed by a learned Judge of the said Court in Writ Petition No. 9852 of 2004 and has declared that the appellant is not entitled to hold the post of Managing Director of the Karnataka Urban Water Supply & Drainage Board (hereinafter called 'the Board') (respondent No.4).

Civil Appeal No._____ of 2006

(Arising out of SLP (C) No. 10388 of 2006)

The above appeal was filed by the Government of Karnataka against the very same judgment passed by the Division Bench of the High Court in Writ Appeal No. 254 of 2006 whereby the Division Bench dismissed the writ appeal filed by the State.

FACTS:

The Karnataka Urban Water Supply & Drainage Board Act, 1973 was enacted to provide for the establishment of water supply and drainage Board and the regulation and development of drinking water and drainage facilities in the urban areas in the State of Karnataka. The Board, with the previous sanction of the Government of Karnataka, framed the Karnataka Urban Water Supply & Drainage Board Services (Cadre and Recruitment) Regulations, 1985. An amendment to serial No. 1 of the Schedule to the Regulations was introduced by the Board whereby even the Chief Engineers of the Board were made eligible for appointment to the post of Managing Director. Respondent

A No.1 is the Karnataka Urban Water Supply & Drainage Board Employees' Association represented by its President Halakatte. He is also respondent No.2 in his capacity as President of the Employees' Association. The State of Karnataka and the Board are also the contesting respondents 3 and 4 in this appeal. Respondent No.1 (hereinafter called the Employees' Association) filed writ petition No. 44001 of 1995 in the High Court of Karnataka challenging B the appointment of one S. Ramamurthy as the Managing Director of the Board on the ground that by virtue of Section 7(1)(d) of the Act, the said Ramamurthy, being an officer/servant (Chief Engineer earlier) of the Board, could not have been appointed as the Managing Director of the Board.

C The Government of Karnataka, vide notification No. UDD/14/UB/91 dated 28.04.1997, nominated the appellant who was a Chief Engineer of the Board as one of the Directors of the Board "with immediate effect and until further orders". The Board, after due approval of the State, vide G.O. No. HUD 15 UWE 93 dated 11.12.1997, amended the method of recruitment for the post of Managing Director of the Board in serial No. 1 of the Schedule to the D Regulations to the effect that a Managing Director can be selected only from amongst the Chief Engineers of the Board. Other criterias were removed.

On 28.01.1998, the Government of Karnataka, through the Urban Development Department, vide Notification No. UDD 4 UWE 98 dated 28.01.1998, pursuant to Section 53 of the Act read with Rule 27 of and serial E No. 1 of the Schedule to the Regulations, promoted the appellant on officiating basis and appointed him as the Managing Director of the Board w.e.f. 31.01.1998 afternoon and "until further orders" since S. Ramamurthy, the then Managing Director of the Board took voluntary retirement.

F The Employees' Union filed an amended version of the writ petition before the High Court also challenging the above-mentioned amendment to the Regulation which relates to making of a provision of appointing the Chief Engineer of the Board as its Managing Director. The writ petition was further amended to include the challenge to the promotion/appointment of the appellant as the Managing Director of the Board pursuant to the said amendment.

G The learned Single Judge of the High Court allowed the writ petition on 12.04.2002 and held:

(a) that the impugned amendment of the Regulations was illegal since the same was contrary to Section 7(1)(d) of the Act;

H (b) that the appointment of the appellant is illegal since, being a

Chief Engineer of the Board, he was disqualified under Section 7(1)(d) of the Act and hence his appointment was contrary to the provisions of Sections 7(1)(d), 68 and 69 of the Act, Rules and Regulations;

(c) that the appointment was further held to be illegal since it was also contrary to Regulation 27 of the Regulations as the appointment was not restricted to one year but until further orders.

The High Court quashed the appointment orders and directed the State to take immediate steps to appoint the Managing Director of the Board.

Writ appeals were filed by the Board, the Government and the appellant-Mr. Reddy.

The Division Bench of the High Court in Writ Appeal No. 2877-78 of 2002, issued notice and stayed the order of the learned Single Judge for a period of two months which was later continued. By virtue of this order, the appellant continued to enjoy the post of Managing Director.

The appellant retired as Managing Director of the Board on 31.01.2004. The Relieving Order reads thus:

"Sri B. Srinivasa Reddy, Managing Director, KUWS&DB who retired from service on attaining super annuation as 31-01-2004 is relieved from his duties on the afternoon of 31-01-2004."

He was re-appointed as Managing Director of the Board *until further orders* on 01.02.2004. Writ Petition No. 9852 of 2004 was filed for a *Writ of Certiorari*, *Writ of Quo Warranto* and any other writ, order or direction under Article 226. Learned Single Judge allowed the Writ Petition No. 9852 of 2004. Writ Appeal No. 86 of 2006 was admitted and the operation of the learned Single Judge's order was stayed on 16.01.2006 and Writ Appeal No. 86 of 2006 was finally dismissed on 04.02.2006.

The Court also imposed costs of Rs.10,000/- against the appellant and also imposed cost against the State Government and respondent No.4 at Rs.5,000/- each separately.

It is pertinent to notice that in 2002, a complaint was made to the Lokayukta against the Chairman and the appellant - Mr. Reddy by Mr. Halakatte,

A President of the Employees' Association (R2 herein). By order dated 13.08.2003 Lokayukta held that the allegation against the appellant is baseless. Lokayukta after absolving the appellant of false allegations directed action against the then FA & CAO of the Board. The Lokayukta closed the complaint on 01.02.2005 after Government has taken action against FA & CAO.

B We heard Mr. P.P. Rao, learned senior counsel assisted by Mr. P.S. Rajagopal, learned counsel for the appellant and Mr. Sanjay R. Hegde for the State of Karnataka and Mr. Raju Ramachandran, learned senior counsel assisted by Mr. Devashish Baruka and Mrs. Hansa Baruka, learned counsel for the contesting respondent - the Employees' Union.

C Mr. P.P. Rao, learned senior counsel made elaborate submissions on facts and on law with reference to the pleadings, annexures, judgments and the relevant provisions of the Act. He made submissions on the following issues:-

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1. Writ petition as framed not maintainable at the instance of an unregistered Trade Union;
2. Locus of the writ petitioners - Employees' Union;
3. No Writ of *Quo Warranto* unless there is violations of statutory provisions in making appointment;

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4. No violation of Section 4(2) and or Rule 3 of Rules as held by the High Court;
5. Government has always the power to make contractual appointment until further orders and finding to the contrary is *ex facie* erroneous;

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6. High Courts reliance on official Memorandum dated 23.12.1994 is erroneous;
7. Pleasure of the Government under Section 6(1) of the Act and Rule 3 of the Rules which envisages the qualifications;

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8. *Until further orders*—pleasure of the Government and discretion;
9. Legal malice-finding is unsustainable;
10. Writ petition by R1, R2 was motivated as R1 had lodged a false complaint to the Lokayukta against the appellant Reddy which was found to be baseless.

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The above submissions will be dealt with in *extenso* in paragraphs *infra*. A

Mr. Sanjay R. Hegde adopted the arguments of Mr. P.P. Rao. He invited our attention to Article 310(2) of the Constitution of India.

Article 310 deals with tenure of office of persons serving the Union or a State. Under the pleasure doctrine, a servant of the Government holds office during the pleasure of the sovereign. But in order to protect civil servant against the political interference Article 311 introduces certain safeguards. Moreover, a specific contract can override the doctrine of pleasure as reported in *Parshotam Lal Dhingra* v. *Union of India,* AIR (1958) SC 36. B C

Mr. Raju Ramachandran in his usual fairness fairly conceded that he is not questioning the State Government's power in appointing persons on contract basis. According to him, the entire case is not based on end of lack of power but an abuse and mis-use of that power by the State Government. According to him, non-specification of a period of appointment amounts to abuse of power, mis-use of power and illegal *malafides* and that power is not used for the purpose for which it is vested in the Government. According to him, form of the writ should not be a matter which should inhibit the Court. This argument was advanced in regard to the prayer made in the writ petition on the maintainability of the writ petition. Mr. Raju Ramachandran submitted though the employees association was not a registered body on the date of filing of the writ petition, the association was registered again as a trade union under the Trade Unions Act on 20.01.2005 and that though the employees union was not a registered trade union but was a recognized union by all and, therefore, the association is entitled to maintain the writ petition as framed. He also made elaborate submissions with reference to the records, annexures and the judgments and of the Government orders. D E F

Mr. Raju Ramachandran also submitted that the civil appeal has now become infructuous in view of the developments which have taken place subsequent to the orders of this Court dated 08.05.2006 by which notice was issued to the respondents in view of the fact that the Government of Karnataka has now appointed one Mr. P.B.Ramamurthy as the Managing Director of the Board with immediate effect by an order contained in the notification dated 17.05.2006 and pursuant to the above order the appellant Mr.Reddy has already made over the charge of the office of Managing Director of the Board to the said P.B. Ramamurthy who had received charge of the said office on G H

19.05.2006. It was submitted that the appellant has no substantive right left qua the post of Managing Director of the Board since even as per his appointment order dated 31.01.2004 he is to have charge only "until further orders". In view of the above subsequent developments, learned counsel for the Union submitted that the present appeal has become infructuous.

According to Mr. Raju Ramachandran, though the power to appoint is vested with the State Government under Section 4(2) of the Act the same is not unfettered or uncontrolled. It cannot be based on mere *ipsi dixit* of the Government the discretion of the Government cannot be said to be without any bounds. If the High Court on the facts of a particular case finds that such discretion has been mis-used, the High Court would be within its power to check such actions of the Government.

According to him, a *Writ of Quo Warranto* would lie to challenge an appointment made until further orders on the ground that it is not a regular appointment. Merely because the appointment is for until further orders would oust the jurisdiction of the High Court to issue a *Writ of Quo Warranto* when it is found that the very appointment was illegal and not warranted within the provision of law.

It is submitted that the words-pleasure of the Government found in Section 6(1) of the Act cannot be given a meaning so as to grant arbitrary and un-fettered powers to the Government with respect to appointment of a Managing Director to the Board. It is submitted that the words cannot mean as absolute and unconditional will of the Government, for that would go counter to the constitutional scheme and to the rule of law itself.

In the instant case, under the guise of temporary appointment made until further orders, the Government in fact by misusing its discretionary powers ensured that the appellant's appointment continues without any limit as to tenure or term. It is submitted the High Court rightly passed the impugned order since the appointment was in violation of the provisions of law. It is submitted that no appointment to a public post can be made without a specific tenure. According to Mr. Raju Ramachandran, the official memorandum dated 23.12.1994 squarely applies to the Board in question and that the said memorandum in express terms provide that procedure contained therein shall apply, *inter alia*, to Boards which are subordinate to or under the control of the Government. It is thus submitted that the Board is covered with the said memorandum.

It is further contended that Section 7(1) (d) of the Act read with the above official memorandum would make it clear that retired employees cannot be appointed the post of Managing Director of the Board. The purpose of Section 7(1)(d) and the office memorandum dated 23.12.1994 has to be looked into while deciding the legality of the appointment of the appellant to the post of Managing Director of the Board. According to Mr. Raju Ramachandran it has nowhere come on record that the appellant possessed such exceptional and high qualifications as to warrant the Government to deviate from its own policy and appointed the appellant. In fact any experience gained by the appellant during his tenure as the Managing Director prior to his retirement is of no consequence since such appointment was held to be illegal and invalid by the High Court. No exceptional circumstances has been shown that the appointment of the appellant to the post of Managing Director in deviation to regular mode of appointment of IAS officers on deputation.

In regard to the maintainability of the writ petition Mr. Raju Ramachandran submitted that the High Court did not rely upon the status of the writ petitioners as registered trade union but rather accepted their *locus standi* as employees of the Board and their right to form trade unions associations though unregistered and on such basis permitted them to challenge the appointment in writ proceedings. According to him, the unregistered unions, in the eyes of law can contend that it has to come and knock the doors of this Court seeking justice by pointing out the illegalities of the State Government in appointing the appellant as Managing Director of a Statutory Board wherein public interest is involved. The purpose, according to him, is to espouse the cause of the workers. Therefore, the writ petitioners were employees of the Board and cannot be considered as wayfarers and that the employees approached the High Court in public interest and have been attempting to dissuade the Government from granting favour to the appellant herein by appointing him at the post of Managing Director of the Board for long.

We have carefully considered the rival submissions with reference to the entire records.

(1) *Locus of the unregistered Trade union* = Maintainability:

Respondent No. 1 association was a recognized association. It is registered again as a trade union on 20.01.2005 i.e. before the pronouncement of judgment of the learned single judge. Respondent No.2 Halakatte, who is the President of Respondent No.1 in his individual capacity has also challenged

A the appointment. In *Quo Warranto* proceedings any concerned person can file a writ petition. While dealing with the locus, the High Court has relied upon the right of persons to form association and consequently to file a *Writ in Quo Warranto* proceedings.

In fact, Mr. Rao distinguished the cases referred to by the respondents
B on the issue of non-registered associations having no locus to file writ petitions as distinguishable and inapplicable in the present facts and circumstances.

In *Mahinder Kumar Gupta and Ors.* v. *Union of India, Ministry of*
C *Petroleum and Natural Gas,* [1995] 1 SCC 85, this Court held that the writ petition filed by an Association is not maintainable as Association has no fundamental right under Article 32 of the Constitution of India.

In *Coinpar and Anr.* v. *General Manager, Telecom District and Ors.,*
[2004] 13 SCC 772, the appellant before this Court was an Association which
D claims working in public interest preferred an appeal against the judgment of the High Court with an application for permission to file special leave petition. The said permission was granted. After the matter was heard, this Court found that the appellant was neither party in the case before the Forum nor before the High Court. It was also not shown before this Court in what manner the appellant was aggrieved by the judgment of the High Court. This
E Court held that the appellant has no *locus standi* and cannot be permitted to challenge the judgment of the High Court.

Our attention was also drawn to the proceedings of the Deputy Registrar of the Trade Union Dharwad (Division) Hubli dated 02.11.1992 Government
F of Karnataka (Department of Labour). The said proceedings reads thus:-

"Subject: Cancellation of registration of Trade Unions, under Trade Union Act, 1926.

Reference: This office notice No. TUA/AR.1991 dated 30.7.1992

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WHEREAS a notice was issued from this office to the General Secretary/ Secretary, Karnataka Urban Water Supply & Drainage Board Employees Association, Hubli, cause as to why the registration of trade union should not be cancelled owing to the violation of the provisions of
H section 28 of the Trade Union Act, 1925, by not submitting the

Annual Return of the union for the year ending 31st December, 1991. A

AND whereas the union was not complied with the above requirements, even after notice, contravened the above provisions of law. Therefore in exercise of my powers conferred under Section 10(b) of the Act, I hereby order that the Registration of the Water Supply & Drainage Board Employees Association, Hubli Bearing Registration B No. 544/85 be cancelled with effect from the date of this order.

The General Secretary is hereby directed to surrender the certificate of registration."

In the instant case, the appellant was appointed w.e.f. 01.02.2004. The C Employees Union filed the writ petition on 08.03.2004. On the said date, the respondent-Union was not a registered trade union and the Certificate of Registration of the Trade Union in Form 'C' was issued by the Government of Karnataka, Department of Labour only on 20.01.2005 which reads thus:-

"It is hereby certified that the D
Karnataka Nagar Niru Sarbaraju Mattu Olacharandi Noukarar Sangha, Dharwa.
has been registered under the Indian Trade Unions Act, 1926.
Dated: 20th January 2005

Sd/ E
Deputy Registrar of Trade Unions
Assistant Labour Commissioner,
Dharwad Division, Hubli."

In *Parents Teachers Association and Ors.* v. *Chairman, Kendriya Vidyalaya Sangathan and Ors.*, AIR (2001) Rajasthan 35, speaking for the F Bench, Chief Justice Dr. AR. Lakshmanan, in paras 12 and 13 observed as under:-

"(12). The appellant-petitioners have not placed before this Court any document to show that the Parents-Teachers Association is a registered and recognised association. The writ petition has been allegedly filed G in public interest and the alleged large interest of the students. It is evident that the so-called Parents- Teachers Association is an unregistered and unrecognised association and, therefore, in our view, has no fundamental right to approach this Court under Article 226 of the Constitution. This point has been concluded by the decision of H

A .the Apex Court in the case of *Mahendra Kumar Gupta* (supra) and by the decision of Full Bench of this Court in the case of *RSEB Accountant's Association* (supra). A reply to the preliminary objection raised by the respondents was also made by the appellants. It is stated that the Parents-Teachers Association has been recognised by the KVS and that the Principal is the Vice Chairman of the said Association and hence, the Association is competent to file the writ petition on behalf of the students. In our view, the above reason cannot be considered as a valid reason for maintaining the writ petition. It is not in dispute that the Association is not a registered body and recognised Association. Thus, after examining this point of law in detail and placing reliance on various judgments delivered by the Apex Court from time to time, the Full Bench of this Court in the case of *RSEB Accountant's Association* (supra) held as under:-

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> "It may also be observed that an unregistered association has no fundamental right to approach this Court under Art. 226 of the Constitution and this point is concluded by the decision in the case of *Shri Maninder Kumar Gupta* v. *Union of India, Ministry of Petroleum and Natural Gas,* JT (1995) 1 SC 11. A decision in the case of *Akhil Bharatiya Soshit Karamchari Sangh* v. *Union of India and Ors.*, AIR (1981) SC 298 was relied where the non-registered Association was held to apply under Art. 32 of the Constitution. We may observe that there had been number of the instances of public interest litigation where large body of persons is having the grievance against inaction of the State. Even letters have been considered to be a writ petition but all these are the matters where large section of public is affected and the personal interest of any person or a smaller section as in the present case, is not involved. Even in the case of *People's Union for Democratic Rights* v. *Union of India*, AIR (1982) SC 1473 when the question of *locus standi* was considered, the Hon'ble Supreme Court had taken into consideration the poverty, illiteracy and the ignorance obstructing and impeding accessibility of the judicial process and on that ground it was considered that the writ petition can be filed. In *D.S. Nakara & Ors.* v. *Union of India,* AIR (1983) SC 130 the old pensioners individually were unable to undertake journey through labyrinths of costly and protracted legal judicial process for allowing to espouse their cause. In case of *S.P. Gupta and Ors.* v. *President of India*, AIR (1982) SC 149 poverty,

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helplessness and disability or social or economic disadvantaged, position was considered a sufficient ground for maintaining the writ petition. There had been other decisions of the Apex Court as well and principles which emerge from all of them are as under:- A

(a) That the members of the said association should have sufficient strength so as to come in the category of a large sect of public. B

(b) That the members should be identifiable.

(c) That the members must be of the category of poor/illiterate/helpless or disabled. C

(d) That the individual member must not be capable of filing a writ petition.

(e) That the entire body of the members must authorise the association to protect their legal rights. D

(f) That such an association must have its own Constitution, and

(g) That there must be authority to file a writ petition on behalf of all the members."

(13). In the instant case, none of the grounds mentioned above in (a) to (g) have been satisfied by the present appellants to maintain the writ petition. Since the above conditions are not fulfilled such an unregistered association cannot file writ petition in respect of the legal rights of the said association for the alleged breach of fundamental right as the association itself has no fundamental right of its own." E F

We shall now advert to the provisions of the Industrial Disputes Act with reference to the registration of Trade Unions. Section 2(q)(q) defines trade union which means a trade union registered under the Trade Unions Act, 1926 (16 of 1926). Section 36 of the Industrial Disputes Act, 1947 says that the workman who is a party to dispute shall be entitled to be represented in any proceedings under this Act by any member of the executive or other office bearer *of a registered trade union* of which he is a member or by any member of the executive or other office bearer of a federation of trade unions to which the trade unions referred to in clause A is affiliated. The writ petitioner union made a false averment that it is a registered trade union that itself, in our opinion, is a ground to dismiss the writ petition. The writ G H

A petitioner has made an averment to the following effect in its writ petition which is also reflected in the order passed by the High Court in the writ petition which runs thus:

"The *petitioner is a registered Trade Union* of employees of 2nd respondent Karnataka Urban Water Supply & Drainage Board (hereinafter referred to as
B 'the Board') constituted under the Karnataka Urban Water Supply and Drainage Board Act, 1973 (hereinafter referred to as 'the Act')."

In the writ petition filed by respondent Nos. 1 and 2 their *locus standi* to challenge the appointment of the appellant was asserted in the following words:-

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> *"The petitioner Association is Trade Union registered under the Trade Unions Act, 1926. The petitioner is the only registered trade union existing in the 2nd respondent-Board.* The Board has held several negotiations with the petitioner Union in regard to the service conditions of the employees of the 2nd respondent-Board since its
> D formation in the year 1986. The Board has entered into several settlements with the petitioner Union with regard to their service conditions. The petitioner which is a recognized trade union is entitled to agitate the matter with regard to the appointment of the 3rd respondent to the Board. The petitioner is concerned about the
> E functioning of the 2nd respondent-Board, and as such is entitled to question the appointment of the 3rd respondent as Managing Director on contract basis. Hence, the petitioner has *locus standi* to file this Writ Petition."
>
> (Emphasis supplied)

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These averments were established to be false. The registration of the first respondent under the Trade Unions Act had been cancelled as early as on 02.11.1992. It is not a registered and recognized union. In fact, it was pointed out that recognized association is one Karnataka Urban Water Supply and Drainage Board Officers and Employees Association and the first
G respondent does not have even a handful of members. The fact of cancellation of registration of the first respondent came to the knowledge of the appellant long after the disposal of the earlier writ petition No. 44001 of 1995 wherein the Court had given a finding that the first respondent has *locus standi* to challenge the appointment of the appellant to the post of Managing Director
H of the Board solely on the ground that it is a registered Trade Union. In our

opinion, the High Court gravely erred in refusing to examine the question of *locus standi* on the ground that it is decided in the earlier writ petition which operates as *res judicata* and that the petitioners even otherwise have *locus standi*. Chapter-III of the Trade Unions Act, 1926 sets out rights and liabilities of the registered Trade Unions. Under the said enactment, an unregistered trade union or a trade union whose registration has been cancelled has no manner of right whatsoever even the rights available under the I.D. Act have been limited only to those trade unions which are registered under the Trade Unions Act 1926 by insertion of clause 2 (q)(q) in the I.D. Act w.e.f. 21.08.1984 defining a trade union *to mean a trade union registered under the Trade Unions Act, 1926.*

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The High Court, in our opinion, miserably failed and gravely erred in holding that the respondent Nos. 1 and 2 have *locus standi* to question the appointment of the appellant in the light of the change of law that has been brought about by insertion of Section 2(q)(q) of the I.D. Act and having regard to the provisions of Chapter-III of the Trade Unions Act, 1926. This Court, in many judgments, held that the Union has *locus standi* in the facts and circumstances of that case, however, cautioning that if a citizen is no more than a wayfarer or officious intervener without any interest or concern that what belongs to anyone of the 660 million people of this country. *Fertilizer Corporation Kamgar Union (Regd.) Sindri and Ors.* v. *Union of India and Ors.*, [1981] 1 SCC 568. The doors of the Court will not ajar for him.

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In the instant case, the employees association approached the High Court with unclean hands. The employees who approaches the Court for such relief must come with frank and full dis-closure of facts. If they failed to do so and suppress material facts their application is liable to be dismissed.

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The Constitution Bench of this Court in *Naraindas* v. *Government of Madhya Pradesh and Ors.*, AIR (1974) SC 1252 held that if a wrong or mis-leading statement is deliberately and wilfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of judicial proceeding and thus amount to contempt of court.

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It is thus crystal clear that the Employees' Union have approached this Court by suppressing the material facts and has snatched an order on the basis of wrong averments when the employees union has no *locus standi* to maintain the writ petition on the date relevant in question. Courts cannot grant any relief to a person who comes to the Court with unclean hands and

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A with *mala fide* intention/motive. The writ petition filed by the employees association is liable to be thrown out on this single factor. Though it is eminently a fit case for awarding exemplary costs, considering the employees financial aspect and taking a lenient view of the matter, we are not ordering any costs.

B (2) *Writ of Quo Warranto:*

Whether a *Writ of Quo Warranto* lies to challenge an appointment made "until further orders" 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
C 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 can be enforced only by an aggrieved person except in the case
D where the writ prayed for is for *Habeas Corpus* or *Quo Warranto.*

In the instant case, the power to appoint the Managing Director of the Board is vested in the Board under 4(2) of the Act. Neither the Act nor the Rule prescribed any mode of appointment or tenure of appointment. When the mode of appointment, tenure of appointment have been left to the discretion
E 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 contract appointment when the Act and
F 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 power to appoint has
G absolute discretion in the matter and it cannot be said that discretion to appoint does not include power to appoint on contract basis. An appointment which is temporary remains temporary and does not become a permanent with passage of time. The finding records by the learned Single Judge that the appointment is bad for the reason that the appointment which was made on
H temporary basis has continued for nearly 2 years is wholly contrary to law

particularly when the Act and the Rule 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.

The official memorandum dated 23.12.1994 on a plain reading of it applies only to Government servants. It has no manner of the application to the employees or servants of the statutory boards. The appellant is not a retired government servant. His appointment as Managing Director of the Board is not a post in Government service. The High Court has erred in law in applying the said official memorandum to the appointment of the appellant which is governed only by the Act and the Rules, even otherwise the High Court has failed to appreciate that the official memorandum running counter to the statutory provisions are ineffective and at any event cannot be enforced in a *quo warranto* proceedings.

The appellant joined the services of the State in the public health engineering segment of its Power Works Department in the year 1967. From the time, the Karnataka Urban Water Supply & Drainage Board was established in the year 1975, he has been working in the Board having initially been appointed to its services as Assistant Engineer, thereafter, absorbed in its services and by his consistently good performance and unblemished record reached the post of Chief Engineer of the Board. He has apart from about 34 years of experience in development, establishment, maintenance and management of drinking water and drainage facilities in the urban areas has undergone several training programmes abroad in planning, appraisal implementation of water and sanitation projects and management development programme for senior public health engineers.

Section 4(2) of the Act, 1973 mandates that the Managing Director shall possess the prescribed qualification and he shall be appointed by the Government. Rule 3 of the Rules, 1974 prescribes the qualification for appointment of Managing Director in these words:

> "The Managing Director shall be a person having experience in administration and capacity commercial matters."

There was not even a pleading that the appellant does not have experience in administration and capacity in commercial matters. The appointment of the appellant has been made by the Government in exercise of powers conferred on it by Section 4(2) of the Act. The High Court does not dispute the power

A of the Government to make the appointment. Mr. Raju Ramachandran, learned senior counsel for the Union does not dispute that the power of the Government to make contractual appointment. A perusal of the judgment of the High Court would only go to show that the High Court did not record any finding that the appellant does not possess the qualification prescribed by the acts and rules. The disqualification for appointment as a Director of the Board are set B out in Section 7 of the Act. The only disqualification that the appellant suffered was under Section 7(1)(d) of the Act. He being an employee of the Board and this disqualification disappeared on 31.01.2004 when the appellant retired from service of the Board on superannuation. The High Court having regard to the technical nature of *quo warranto* proceedings could not have C ousted the appellant from the office on the ground of an inapplicable qualification prescribed by administrative instruction dated 23.12.1994 which had no manner of application for appointment to the post of Managing Director of the Board.

The law is well settled. The High Court in exercise of its writ jurisdiction D 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.

E The official memorandum dated 23.12.1994 deals with re-appointment of retired government servants and granting extension of service to retired government servants. As already stated, the appellant is not a government servant nor a retired government servant. The official memorandum is an administrative instruction which is contrary to the provisions of the Act and F statutory Rules neither the Act nor the Rules prescribe any age of retirement for the Managing Director of the Board. On the other hand, having regard to the dis-qualification prescribed by Section 7(1)(d) of the Act to the effect that an officer or servant of the Board cannot be appointed as Managing Director. The High Court could not have read an additional dis-qualification that a retired officer or a servant of the Board also cannot be appointed as Managing G Director of the Board. The memorandum dated 23.12.1994 is no manner of application to the appointment in question and it is even otherwise ineffective inasmuch as it is an administrative instruction which is contrary to the provisions of the Act and the Rules. The High Court, in our opinion, erred in ousting the appellant from his service by issue of a *Quo Warranto* on the H ground that the appellant having retired from this service of the Board on

31.01.2004 suffered dis-qualification under the said memorandum by a reading of the Act and the Rules the appellant acquired qualification for appointment on 31.01.2004 on his retirement and the view of the High Court that the appellant is dis-qualified on 31.01.2004 on his retirement from service of the Board is not only contrary to the Act and the Rules is also plainly opposed to the language of the memorandum itself. Even otherwise, no *Writ of Quo Warranto* could have been issued on the ground that even though the appointment is contrary to any statutory rule it is contrary to the administrative instruction which the High Court holds as disclosed the policy of the Government. There is no warrant to have taken such a view at all.

It is settled law by a catena of decisions that 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 prescribed qualification and is otherwise eligible for appointment. This Court in *R.K. Jain* v. *Union of India,* [1993] 4 SCC 119 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, it may 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 third party has no *locus standi* to canvass the legality or correctness of the action. Further, it was declared that only public law declaration would be made at the behest of public spirited person coming before the Court as a petitioner having regard to the fact that the neither of respondent Nos. 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.

The judgment impugned in this appeal not only exceeds the limit of *Quo Warranto* but has not properly appreciated the fact that writ petition filed by the Employees' Union and the President of the Union - Halakatte was absolutely lacking in *bonafides*. In the instant case, the motive of the second respondent Halakatte is very clear and the Court might in its discretion declined to grant a *Quo Warranto.*

This Court in *A.N. Sashtri* v. *State of Punjab and Ors.*, [1988] Supp SCC 127 held that the *Writ of Quo Warranto* should be refused where it is an

A outcome of malice or ill-will. The High Court failed to appreciate that on 18.01.2003 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 24.02.2003, process was issued to the second respondent who was enlarged on bail on 12.06.2003 and the trial is in progress. That apart, the second respondent has made successive complaints B 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 02.11.1992 suppressing the material fact of its registration C 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 the respondent Nos. 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 D 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* is relaxed to an extent in a *Quo Warranto* proceedings. Nonetheless an imposture coming before the Court invoking E public law remedy at the hands of a Constitutional Court suppressing material facts has to be dealt with firmly.

This Court in *Dr. B. Singh* v. *Union of India and Ors.*, [2004] 3 SCC 363 held that only a person who comes to the Court with *bonafides* and public interest can have *locus*. Coming down heavily on busybodies, meddlesome F 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:-

> "The court has to be satisfied about: (a) the credentials of the applicant; G (b) the *prima facie* correctness or nature of information given by him; and (c) the information being 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 H 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 busybodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of *pro bono publico*, though they have no interest to the public or even of their own to protect."

It is useful to refer to the case of *The University of Mysore and Anr.* v. *C.D.Govinda Rao and Anr.*, [1964] 4 SCR 575 at pages 580 and 581

"As Halsbury has observed:

"An 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."

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 not title, he would be ousted from that office by judicial order. In other words, the procedure of *quo warranto* gives the Judiciary a weapon to control the Executive from making appointment 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."

A It is also beneficial to refer to the decision of this Court in *Ghulam Qadir* v. *Special Tribunal and Ors.*, [2002] 1 SCC 33 para 38 which reads thus:-

> "There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only
B 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
C 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 dis-lodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy
D 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,
E he cannot be non-suited on the ground of his not having the *locus standi*.

It is settled law that *Writ of quo warranto* does not lie if the alleged violation is not of a statutory nature. Three judgments relied on by Mr. P.P. Rao can be usefully referred to in the present context.

F In *A. Ramachandran* v. *A. Alagiriswami, Govt. Pleader High Court, Madras & Anr.*, AIR (1961) Madras 450, the Court observed in paragraphs 74 and 104 as under:

> "....Where an authority has power to make rules relating to a
G subject matter and also the power to decide disputes arising in the field occupied by that subject matter, the two powers and functions must be kept distinct and separate. This dispute must be decided with reference to the rules in force at the time the adjudication had to be made and, the rule making power cannot be invoked in relation to that adjudication."

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A ".....It was also contended that it was incumbent on the State Government to follow the principle of appointment as laid down in 1932 G.O. so as to avoid arbitrariness of nepotism. Reliance was placed upon the decision in 1955-2 Mad LJ 49: (AIR 1955 Mad 305) (FB) for the position that even non-statutory regulations and rules contained in the Board's Standing Orders are binding on the State B Government, and that it cannot depart from such rules arbitrarily and capriciously to suit the exigencies of a particular situation. In that case the Government purported to exercise a revisional power over the Orders of the Board of Revenue which it did not have as per Board's Standing Orders count at any time be modified or amended and that if the Government had power to bring about such modifications it C followed that the Government had power of revision though in terms such power was not conferred upon it."

In *High Court of Gujarat & Anr.* v. *Gujarat Kishan Mazdoor Panchayat & Ors.*, [2003] 4 SCC 712, it was held by this Court that a *Writ of Quo Warranto* can only be issued when the appointment is contrary to the statutory D rules. The judgment in *Mor Modern Coop. Transport Society Ltd.* v. *Financial Commissioner & Secretary to Government of Haryana,* [2002] 6 SCC 269 was also relied on.

Thus it is seen that *Writ of Quo Warranto* does not lie if the alleged violation is not of a statutory provision. E

The Official Memorandum of 1994 dated 23.12.1994 of the Government of Karnataka reads thus:

"GOVERNMENT OF KARNATAKA"

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No. DPAR/15/SDE 94
Karnataka Government Secretariat
Vidhana Soudha
Bangalore dated 23.12.1994

OFFICIAL MEMORANDUM

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Sub: Regarding re-appointment of retired Government Employee and extension of their services after Retirement.

Ref : (i) O.M. No. DPAR 42 SSR 77 dated 15.12.1977

(ii) O.M. No. DPAR No. 2 SDE 90 dated 22.02.1990

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1. In the O.M. referred at (1) above in respect of the teaching staff *viz.*, Teachers, Lecturers, Professors who are working in educational institutions of the Education Department retiring in the middle of the academic year, it was permitted to continue their services till the end of the educational year with the permission of the concerned officer.

2. In the O.M. referred at (2) above, it was instructed not to re-appoint the retired Government servants and not to give them extension of service.

3. It has come to the notice of Government that retired Government officers/officials have been re-appointed on contact basis. Hence it is ordered that the officers/officials who have been re-appointed on contract basis and continuing in service shall be removed from service forthwith.

4. If the teaching staff working in educational institutions of the Education Department are retiring in the middle of the academic year, the instructions given in O.M. No. DPAR 42 SSR 77 dated 15.12.1977 are applicable.

5. The procedure contained in the above paragraphs are also applicable to the Autonomous/Grant-in-Aid institutions, Boards and the Companies which are subordinate to or under the control of the Government."

Sd/-

(A.V. Ramamurthy)
Joint Secretary to Government
D.P.A.R. (SR)"

Paragraph 5 of the Memorandum makes it amply clear that Boards are included within the said memorandum and hence the procedure adopted for Government employees will equally apply to the Board. The initial appointment of the appellant as Managing Director was on 28.1.1998. He was relieved vide relieving Order dated 31.1.2004 as M.D. His pension order stated that he has retired as M.D. Thereafter he was re-appointed as M.D. on 31.1.2004. The said Notification reads as follows:

"In exercise of the powers conferred under Section 4(2) of the KUWS&D B Rules, 1973 (Karnataka Act 25/1974) Sri B. Srinivasa Reddy, No. 427 12th Main, RMV Extension, Bangalore-560 080 is

appointed as Managing Director, KUWS&D B on contract basis w.e.f. 01.02.2004 until further orders. A

The terms and conditions will be issued separately."

Therefore, the official memorandum squarely applies to the appellant.

B

In *Union of India* v. *K.P. Joseph & Ors.*, [1973] 1 SCC 194, it was held by this Court that administration instructions made to fill gaps or to supplement the statutory rules and affecting conditions of service would be binding and enforceable by Writ under Art. 226 of the Constitution of India.

A close scrutiny of the official memorandum would show that it is C restrictive to appointment to any post but as a general application to all the posts and that the intention of the memorandum is that retired person should not be appointed again.

No violation of Section 4(2) of the Act and Rule 3 of the Rules:

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There is no violation of Section 4(2) and Rule 3 as held by the High Court because the appellant having been the Chief Engineer of the Board had experience in administration and capacity in commercial matters before he was appointed as M.D. on contract basis by the Government. Section 4(2) of the Act reads as under:

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"4(2) The Chairman and the Managing Director shall possess the prescribed qualification. They and the other directors shall be appointed by the Government."

Rule 3 of the Rules deals with Qualification for appointment of the Chairman and the Managing Director. F

Rule 3 reads thus:

"The Chairman shall be a person having experience in matters concerning public welfare. The Managing Director shall be a person having experience in Administration and capacity in commercial G matters."

In this context, it is useful to peruse the original file produced by Mr. Sanjay R. Hegde, learned counsel appearing for the State, before us. A note was prepared by the Secretary to Government, Urban Development Department, in regard to the appointment of M.D. of the Board: H

A "Subject : Appointment of Managing Director of KUWSDB

1. Shri B. Srinivasa Reddy, Managing Director of KUWSD will retire from service on 31.1.2004.\

2. As per Section 4(2) of the Karnataka Urban Water Supply and Drainage Board Act, 1973, the Managing Director shall be B appointed by the government as per Section 6(1). He shall hold office during the pleasure of the government. As per Rule 3 of the KUWSDB Rules 1974, the Managing Director shall be a person having experience in administration and capacity in commercial matters. As per KUWSDB Rule 4(2), the Managing C Director shall be a whole time officer of the Board and shall be paid remuneration as prescribed.

3. Therefore, it is necessary for the Government to appoint the Managing Director. The Managing Director can be a serving Officer of the Government who can be sent on deputation to the D KUWSDB. It is even open to the Government to appoint a retired official to the post of Managing Director. But generally Government has not appointed any retired official either to KUWSDB or other Boards and Corporations of the Government.

4. A decision has to be quickly taken as the Managing Director of E KUWSDB has to hold negotiations with the World Bank on 9.2.2004 regarding the new Water Supply and Sanitation Improvement Programme.

5. In my view, an Engineer in water supply/public health engineering would be most ideal for the post of Managing Director, F KUWSDB."

The file was placed before Shri S.M. Krishna, Chief Minister. The order passed by the Chief Minister is at page 2 of the File which reads thus:

"This is a critical juncture for Karnataka Urban Water Supply and Sewerage Board. Considering the projects on hand and the need to G complete them within a definite time frame, there should be continuity in leadership and management. The services of Shri B. Srinivasa Reddy, are need for the present.

Shri Srinivasa Reddy's continuation will help in the important negotiations with the World Bank scheduled to be held in February, H

regarding the new Water Supply and Sanitation programme. A

Considering the adverse seasonal conditions prevailing and prolonged drought, there is likelihood of severe water scarcity in urban areas in the coming months. For this, a sum of Rs.15 crores by way of relief has been earmarked in the period February to June 2004. The Urban Water Supply Board will be required to augment water B availability, especially in chronic places like Bagalkot, Pavagada and Hubli-Dharwad. For planning and executing these contingency measures, Shri Srinivasa Reddy's presence is essential.

Shri Srinivasa Reddy who has retired today may be appointed on Contract basis from 1.2.2004 until further orders." C

It is thus seen that the Chief Minister after considering the relevant material, experience in administration and capacity in commercial matters of the appellant accepted the office note put up by the Secretary to Government and appointed a retired official to the post of M.D. Ample reasons are given for considering the name of the appellant and the consequential appointment D made by the Government.

In the instant case, there is no violation of statutory provision and, therefore, in our view, a writ of *Quo Warranto* does not lie. If there be any doubt, it has to be resolved in favour of upholding the appointment. E

In *Statesman (Private) Ltd.* v. *H.R. Deb,* [1968] 3 SCR 614, Hidyatullah, C.J., speaking for the Constitution Bench indicated:

"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." F

In the circumstances which we have narrated above in paragraphs supra, it is indeed difficult to hold that the appellant did not have the requisite qualification.

The above ruling was followed in *A.N. Shashtri* v. *State of Punjab & Ors.,* [1988] Supp SCC 127. We are of the view that in the facts of this case, the reasonable conclusion to reach should have been that the writ petitioners had failed to establish that the appellant did not possess requisite qualification and the appeals are, therefore, be allowed and the judgment of the High Court has to be set aside and the writ petition has to be dismissed. G H

A The finding of disqualification given in the earlier round of litigation while the appellant was holding a lien on the post of Chief Engineer i.e. while he was an officer of the Board, ceased to hold good after the appellant retired from the service of the Board on 31.1.2004 (AN) and the appointment impugned in the second round of litigation was effective from 1.2.2004 after the appellant had ceased to be an officer of the Board.

B

Contractual appointment/powers of the Government

Mr. Raju Ramachandran, learned senior counsel appearing for the Trade Union, fairly conceded that the Government has unrestricted power to make contractual appointment. Even otherwise, the Government, in our opinion, has C the undoubted power to make a contractual appointment until further orders. The finding to the contrary is *ex facie* erroneous.

The Notification dated 31.1.2004 clearly states that the appointment is on contract basis and until further orders. While laying down the terms of D appointment in its order dated 21.4.2004, the Government of Karnataka clearly stated that "term of contractual appointment of Sri B. Srinivasa Reddy shall commence on 1st February, 2004 and will be in force until further orders of the Government and this is a temporary appointment." Section 6(1) of the Act categorically states that the Managing Director shall hold office during the pleasure of the Government. Power and functions of the Board are laid in E Chapter V of the Act. A reading of the Act clearly shows that neither the Board nor its Managing Director is entrusted with any sovereign function. Black's Law Dictionary defines public office as under:

> "Public Office: Essential characteristics of "public office" are (1) authority conferred by law, (2) fixed tenure of office, and (3) power to F exercise some portion of sovereign functions of government, key element of such test is that "officer" is carrying out sovereign function. *Spring* v. *Constantion,* 168 Conn.563, 362 A.2d 871, 875. Essential elements to establish public position as "public office" are position must be created by Constitution, legislature or through authority G conferred by legislature, portion of sovereign power of government must be delegated to position, duties and power must be delegated to position, duties and powers must be defined, directly or impliedly, by legislature or through legislative authority, duties must be performed independently without control or superior power other than law, and position must have some permanency and continuity, *State ex rel. E.li* H *Lilly & Co.* v. *Gaertner,* Mo.App 619 S.W. 2d 6761, 764."

Carrying out sovereign function by the Board and delegation of a portion of sovereign power of Government to the Managing director of the Board and some permanency and continuity in the appointment are quintessential features of public office. Every one of these ingredients are absent in the appointment of the appellant as Managing Director of the Board. This aspect of the matter was completely lost sight of by the High Court.

The High Court, in the instant case, was not exercising *certiorari* jurisdiction. *Certiorari* jurisdiction can be exercised only at the instance of a person who is qualified to the post and who is a candidate for the post. This Court in *Dr. Umakant Saran* v. *State of Bihar,* [1973] 1 SCC 485 held that the appointment cannot be challenged by one who is himself not qualified to be appointed. In *Kumari Chitra Ghose* v. *Union of India,* [1969] 2 SCC 228, a Constitution Bench of this Court held as under:

> "The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no *locus standi* in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded."

But the High Court of Delhi in *P.L. Lakhanpal* v. *Ajit Nath Ray,* AIR (1975) Delhi 66 held as under:

> "Another facet of the preliminary objection relates to the allegations of *mala fides* made in the petition. It will bear repetition to state that the preliminary objection is on the assumption and not admission that the appointment of Justice A.N. Ray was *mala fide.* It is indisputable that mala fide action is no action in the eye of law. But, to my mind, the *mala fides* of the appointing authority or, in other words, the motives of the appointment authority in making the appointment of a particular person are irrelevant in considering the question of issuing a *writ of quo warranto*....."

The discretion available to the competent authority under the Rules has

A been exercised by the appointing authority in making the appointment of the appellant. That could not have been annulled by the High Court. In Writ Petition No. 44001 of 2005 decided on 12.4.2002, the very High Court had directed the Government by a direction akin to mandamus to immediately take steps to appoint the Managing Director of the Board in accordance with the Act and the Rules. The present appointment of the appellant was made under
B the provisions of the Act and the Rules. This appointment could not have been interdicted by a writ of *Quo Warranto* as it amounted to issuance of writ of *Quo Warranto* to disobey the *mandamus* already issued and is in operation. Such a course adopted by the High Court is contrary to law declared by this Court *Rajendra Prasad Yadav* v. *State of Madhya Pradesh,* [1997] 6 SCC 678.

C

In *Satish Chandra Anand* v. *Union of India,* [1953] SCR 655, a Constitution Bench of this Court while dealing with a case of a contract appointment which was being terminated by notice under one of its clauses, this Court held that Articles 14 & 16 had no application as the petitioner therein was not denied equal opportunity in a matter relating to appointment
D or employment who had been treated just like any other person to whom an offer of temporary employment under these conditions was made. This Court further held as under:

> "The State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent
E with the Constitution, and those who choose to accept those terms and enter into the contract are bound by them, even as the State is bound."

In *P.K. Sandhu (Mrs.)* v. *Shiv Raj V. Patil,* [1997] 4 SCC 348, it was held
F by this Court as under:

> "The power to make an appointment includes the power to make an appointment on substantive basis, temporary or officiating basis, *ad hoc* basis, on daily wages or contractual basis."

Legal Malice:

G

It was argued by Mr. Raju Ramachandran, learned senior counsel appearing for the respondents, that there was no reason for the State to re-appoint the appellant on the post of M.D., specially in view of the following facts:

H

(i) His initial appointment to Managing Director on 28.01.1998 was admittedly in contravention of Section 7(1)(d) of the Act. Yet, he continued till 31.1.2004. He, thereafter, withdrew his appeal thereby confirming that his entire tenure as M.D. from 1998 to 2004 was illegal and in contravention of the Act. A

(ii) He was relieved from his duty as "Managing Director" and is receiving pension accordingly. B

(iii) Reports pertaining to malpractices committed by the petitioner of which he has not exonerated so far reveal that he is not a person with an undoubtful character.

(iv) List of persons appointed at the post of Managing Director of the Board since its inception show that only IAS Officers or PWD officials have been appointed at this post. For the first time, a retired Board servant was brought as the Managing Director for "until further orders". C

(v) The note sheet of the Chief Minister, though proposes certain exigencies, do not indicate that he is the only person who can cater to such demands. D

(vi) There was no need for an appointment for "until further orders" where admittedly, the purpose of appointment would have been accomplished at the most by June,2004. E

According to him something was done by the State without excuse and that it is an act done wrongfully and wilfully without reasonable or probable cause. He also referred to the findings of the High Court on legal malice.

In our opinion, the finding of legal *mala fides* is unsustainable being based on a misunderstanding of the law and facts. When a competent and experienced officer of an outstanding merit is appointed to a higher post on contract basis after his super-annuation from service in larger public interest does not suffer from legal malice at all. The decision of the then Chief Minister, Shri S.M. Krishna, recorded in the file which is also extracted by the High Court at page 69 of S.L.P. Paper book, Vol.II. In the context of the note put up by the Secretary of the Department, it is again extracted at pages 67 & 68 which clearly bring out the fact that the appointment was made in the interest of the Board and the State at a time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element of urgency involved in making the F G H

A appointment because of impending negotiations with the World Bank scheduled for 9.2.2004. The writ petition, in our opinion, was motivated as respondent No.1 had lodged a false complaint to the Lokayukta against the appellant which was found to be baseless by the Lokayukta (Annexure P-9). 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 B unbiased. The second respondent is the President of the first respondent-Union. He has chosen this forum to settle personal scores against his erstwhile superior officer after his retirement. The proceedings, in our view, is not meant to settle personal scores by an employee of the department. The High Court, in our view, ought to have dismissed the writ petition filed by respondent C No.1 at the threshold.

In any event, respondent No.1 failed to discharge the heavy burden to substantiate the plea of *mala fides* (*E.P. Royappa* v. *State of Tamil Nadu,* [1974] 2 SCR 348.

D The finding of the High Court that the appointments from legal *mala fides* is wrong. The Court relied on the judgment in *Centre for Public Interest Litigation & Anr.* v. *Union of India & Anr.,* [2005] 8 SCC 202. It was a case of appointment of an officer against whom criminal proceedings were pending even the Commission will look into the charges against the officer, therefore, the above ruling has no application at all in the present case.

E

The Division Bench noted that certain allegations were made against the appellant and observed in paragraph 3 that the complaint was stated to be pending before the Lokyukta in the matter relating to financial irregularities of the Board and that the Comptroller and Auditor General submitted a report F for the year ending 31.3.2000 wherein the appellant has paid the amounts to contractor even before they became due resulting in loss of interest of Rs.15.40 lakhs to the Board. However, the Division Bench did not take notice of that fact that Lokayukta had completely exonerated the appellant.

Until further orders

G

Mr. Raju Ramachandran, learned senior counsel appearing for the respondents, submitted that the pleasure of the Government and discretion cannot be completely discretionary and at the *ipse dixit* of the executive. Even a contractual appointment has to be made with a certain ascertainable period and cannot be open-ended. According to him, use of words "*until*

H

further orders" is not a safety notch but is rather prone to misuse. Even in the constitutional scheme, under Chapter XIV of the Constitution, a contractual appointment presumes a specific period. Art. 310(2) of the Constitution provides that:

> "(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."

In *E.P. Royappa* v. *State of Tamil Nadu and Anr.* (supra), further question before us is whether the appointment made by the Government includes any component of *mala fides*. The burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a higher order of credibility. Here respondents 1 & 2 have flung a series of charges of oblique conduct against the then Chief Minister through their advocate. The anxiety of the Court should be all the greater to insist on a high decree of proof. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.

This Court, in the above judgment, held that such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up, these considerations are wholly irrelevant in judicial approach-but because otherwise, functioning effectively would become difficult in a democracy.

Two important considerations must weigh with us in determining our approach to these questions. First, the post of Managing Director is a highly respectable post. It is a post of great confidence - a lynchpin in the

A administration and smooth functioning of the administration requires that there should be complete rapport and understanding between the Managing Director and the Chief Minister. The Chief Minister as a Head of the Government is in ultimate charge of the administration and it is he who is politically answerable to the people for the achievements and failures of the Government. If the Chief Minister forfeits the confidence on the appellant, he may legitimately in the larger interests of administration appoint him until further orders as M.D. of the Board. It does not involve violation of any legal or constitutional rights. Secondly that the vast multitudinous activities in which a modern State is engaged, there are bound to be some posts which require for adequate discharge of their functions, high degree of intellect and specialized experience. It is always a difficult problem for the Government to find suitable officers for such specialized posts. There are not ordinarily many officers who answer the requirements of such specialized posts and the choice with the Government is very limited and this choice becomes all the more difficult, because some of these posts, though important and having onerous responsibilities, do not carry wide executive powers and officers may not, therefore, generally be willing to be transferred to those posts. The Government has in the circumstances to make the best possible choice it can, keeping in view the larger interests of the administration. When in exercise of this choice, the Government transfers an officer from one post to another, the officer may feel unhappy because the new posts does not give him the same amplitude of powers which he had while holding the old post. But that does not make the appointment arbitrary. So long as the appointment is made on account of the exigencies of administration, it would be valid and not open to attack under Arts. 14 & 16. Here the post of M.D. was admittedly a selection post and after careful examination of the merits, the Chief Minister selected the appellant for the post of M.D. It was not the case of the respondents that the appellant was not found qualified to the task or that his work was not satisfactory.

It was argued by Mr. P.P. Rao, learned senior counsel, appearing for the appellant that the Division Bench while answering Point No.2 in paragraph 25 that the order of appointment passed by the State Government is not a regular appointment. It has further been observed that Section 4(2) of the Act and Rule 3 of the Rules framed do not permit the Government to appoint the Managing Director on contractual basis. It was submitted that the finding of the Division Bench as well as the single Judge are legally unsustainable. The Act makes clear distinction between appointments to the Board and appointment of Officers and servants of the Board. All appointments of

Directors are "appointments at the pleasure of the Government". He drew our attention to Section 6(1) of the Act which reads thus:

> "6(1) All directors including the Chairman and the Managing Director shall hold office during the pleasure of the Government. The expression 'contract basis' is only to indicate that the appointment was to subsist till the withdrawal of the pleasure of the Government. It could not be said that the contractual appointment is made contrary to the Rules that contemplate regular appointment."

It is pertinent to point out that there are no separate conditions of service or tenure prescribed for 'Directors', which expression under the Act includes the Managing Director. Appointments at the pleasure of the Government are not the same as ordinary appointments. It was further submitted that ordinary principles of recruitment applicable to posts governed by Chapter I of Part XIV of the Constitution of India would not apply to the instant appointment being an appointment at the pleasure of the Government. This is also for the simple reason that ordinary appointments in public service entail security of tenure which has an essential feature of such appointment. These characteristics are noticeably absent in the instant case.

Our attention was also drawn to the conclusion reached by the High Court that the appellant was not qualified for the post and under Rule 3 of the Rules, the qualification for appointment is explicitly provided. No age of retirement is prescribed for Director including Managing Director. Neither any age limit for appointment is prescribed. These qualifications do not prescribe any age limit. Section 8 of the Act itself suggests that even a legal practitioner could be appointed as a Director. The only limitation or disqualification is with regard to a serving officer or servant of the Board from being appointed as Director. Section 7(1)(d) does not apply to an officer or servant who ceased to be such on the date of his appointment as Managing Director. Section 7 stipulates all disqualifications for appointment as Director. It is not the case of the contesting respondent that the appellant was disqualified from holding the post on any other grounds.

Our attention was also drawn to the judgment of the Division Bench holding that the State Government and the Board could not have filed an appeal against the order of the learned single Judge. Reference has been made to the judgment of this Court in *B.R. Kapur* v. *State of Tamil Nadu and Anr.*, [2001] 7 SCC 231. The said judgment is wholly in applicable to this case inasmuch the issue therein did not pertain to the appointment under service

A Rules. In the said case, no question relating to the issuance of Writ of Quo Warranto pertaining to service jurisprudence was involved. That case related to appointment by the Governor of a person convicted of a criminal offence by which she stood disqualified under the provisions of the Representation of Peoples Act, 1951. Moreover, the *Writ of Quo Warranto* in that case was issued in the light of several provisions of the Prevention of Corruption Act, B the Representation of Peoples Act, 1951 and various other enactments which clearly prohibited the appointment of a convicted person to a public office. There is no legal postulation in the said judgment which seeks to restrain any interested party from challenging a judgment. In the instant case, the appellant did not solicit or engineer his appointment. His appointment was at the C instance of the State Government in accordance with provisions of the Act and the Rules. The State Government has power to take its own decision for deciding on a suitable candidate for appointment as long as the eligibility criteria was satisfied. The appointment in the instant case is not one of recruitment, but of a different species of appointment for rendering services. It is more in the nature of a contract for service. This is specially required D considering fact that the functions of the Board are essentially technical in nature as would be evident from a perusal of Sections 16 & 17 of the Act.

At any event implicit in the finding of the Division Bench that the appointing authority has no right to appeal in *Quo warranto* proceedings is E that the Court cannot probe the mind of the appointing authority in a motion for *Quo Warranto*. The High Court erred in probing the mind of the government and acted contrary to its own finding on the role of appointing authority in *Quo Warranto* proceedings. The reasons felt out by the learned Judges of the Division Bench are not sustainable in law and the impugned judgment is liable to be interfered with in these appeals. The learned Judges are not right in F quashing the appointment of the appellant as Managing Director on the misconception that he has been re-appointed to the said office, whereas it was a fresh appointment under the provisions of the Act and in accordance with the prescribed qualification and eligibility under the Act. Further the appointee holds the office during the pleasure of the Government as provided under Section 6(1) of the Act. The learned Judges are not correct in holding G that the Government is not affected by allowing the *writ of Quo Warranto* against the appointee and observed that the Government ought not have filed the appeal. It is unfortunate that the learned Judges have observed that the Government has filed the appeal at the instance of the appointee. The learned Judges, in our opinion, failed to appreciate that it is the duty of the Government H to justify the appointment as such there is no wrong in filing the writ appeal.

In the result, we hold : A

(a) that the appellant was not disqualified for appointment as Managing Director w.e.f. 1.2.2004.

(b) There is no bar for appointment to the post in question on contract basis. The Government has absolute right to appoint B persons on contract basis.

(c) Writ of *Quo warranto* does not lie if the alleged violation is not of a statutory provision.

(d) There is no violation of Section 4(2) of the Act and Rule 3 of the Rules because the appellant had experience in administration and C capacity in commercial matters before he was appointed as Managing Director on contract basis by the Government.

(e) The Government has no doubt power to make contractual appointment until further orders. The power included the power to make appointment on substantive basis temporary, officiating D basis, *ad hoc* basis, daily wages or contractual basis.

(f) Writ filed by respondents 1 & 2 is motivated.

(g) The petitioners in the writ petition, respondent No.1 herein-which is an unregistered Association under the Trade Unions Act cannot E maintain the writ petition.

(h) The findings of legal *mala fides* is unsustainable and has no basis.

The finding of legal *mala fides* suffers from other infirmities as far as placing reliance on the complaints against the appellant without adverting to the F orders of the Lokyukta detail examination, the appellant is unequivocal terms in both the cases.

For the foregoing reasons, the appeals are allowed and the order impugned in this appeal passed by the Division Bench of the High Court in G W.A. No. 86/2006 affirming the judgment of the learned single Judge is set aside.

The Division Bench of the High Court ordered cost in the writ appeal. There is no justification in ordering cost in the facts and circumstances of the case. Therefore, the appellant, State Government and respondent No.4 are H

A entitled to refund the cost, if it has already been paid. However, we are not ordering cost against respondent Nos. 1 & 2 taking into consideration of the financial constraint of the employees and by taking a lenient view of the matter.

In view of this judgment, we allow the appeals filed by Mr. B. Srinivasa
B Reddy and by the State of Karanataka. As noted herein earlier, the appellant has already been released and in his place a person has already been appointed as a Managing Director of the Board on contract basis. Keeping this admitted fact in mind, we, therefore, keep it on record that the Government or the Board would be at liberty to consider and appoint a candidate, if occasion arises, on contract basis. If such a situation does arise in that case it would be open to the State or the Board to consider the candidature of the appellant (B. Srinivasa Reddy) with others.

B.B.B. Appeals allowed.