

HARI BANSH LAL

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v.

SAHODAR PRASAD MAHTO AND ÓRS.  
(Civil Appeal No. 7165 of 2010)

AUGUST 30, 2010

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**[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]**

*Public interest litigation:*

*Appointment of appellant as Chairman of State Electricity Board – Challenged on the ground that appointment was arbitrary, and integrity of appellant was doubtful and he, being 90 years of age, was not capable to perform duties – Before the High Court, stand of the State Government and the Electricity Board was that the appellant had rendered excellent service in the Board and received appreciation – High Court held the appointment as not only arbitrary but also contemptuous – While quashing the appointment, the High Court relied upon the note of the Chief Secretary to the Chief Minister which stated that the appellant was suspended earlier and a raid was also conducted and that his integrity was doubtful – On appeal, held: It was unfair on the part of the Chief Secretary to prepare such a note – For this, the appellant had sworn an affidavit denying the raid by any department – Regarding the order of suspension of the appellant, proceedings of the Government clearly showed that the State Government itself revoked the punishment – The appointment of appellant was not contrary to the statutory rules – Also there was no age limit prescribed for the appointment of a Chairman of the Board under the Electricity (Supply) Act, 1948 – In such circumstances, the conclusion by High Court in this regard was erroneous, contrary to the record of proceedings placed before it and, therefore, liable to be set aside – The appellant is entitled to continue as Chairman of*

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A *the Board – Service law – Electricity (Supply) Act, 1948 – s.5(5) – Bihar State Electricity Board Rules, 1960 – r.4.*

*Maintainability of PIL in service matters – Held: Except for a writ of quo warranto, PIL is not maintainable in service matters – Service law – Writ.*

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*Writ:*

*Writ of quo warranto – Held: Lies only when appointment is contrary to a statutory provision – Service law.*

C

*Administrative law:*

*Administrative authority – Appointment to a post – Suitability or otherwise of a candidate for appointment to a post is a function of the appointing authority and not of the*

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*court unless the appointment is contrary to statutory provisions/rules – Service law.*

*Plea:*

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*Change in stand – State Government taking before Supreme Court a stand different from the one taken by it before the High Court – Held: It is impermissible for the State to take a different view in the absence of any change of circumstances.*

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**Respondent no.1, claiming himself to be a vidyut shramik leader, filed a Public Interest Litigation before the High Court challenging the appointment of the appellant as Chairman, Jharkhand State Electricity Board on the ground that the appellant aged about 90 years was a person of doubtful integrity and his appointment as the**

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**Chairman was without following the rules or procedure. Various allegations were made in the writ petition against the appellant regarding the shortfall in generation, transmission and supply of electricity and regarding**

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**incapacity of the appellant to perform his duties as**

Chairman due to his age. The prayer was made for removal of the appellant. The counter affidavits, filed by the State Government, State Electricity Board as well as the appellant denying all the averments, were to the effect that the appellant had rendered excellent service in the Board and received appreciation and there was no age limit prescribed for the appointment of a Member or Chairman of the Board under the Electricity (Supply) Act, 1948, and the appointment of the appellant was made after obtaining vigilance clearance. The High Court held that appointment of the appellant as Chairman of the Board was not only arbitrary but also contemptuous. While quashing the appointment, the High Court relied upon an earlier note of the Chief Secretary addressed to the Chief Minister wherein he had objected to the appointment of the appellant on the ground that the appellant was suspended earlier and a raid was also conducted and that his integrity was doubtful. The said order was challenged by the appellant by filing the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. From the analysis of various judgments of the Court, the following principles emerge: (a) Except for a writ of *quo warranto*, Public Interest Litigation is not maintainable in service matters; (b) For issuance of writ of *quo warranto*, the High Court has to satisfy that the appointment is contrary to the statutory provision; (c) To consider suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules. [Para 20] [582-C-E]

*The State of Mysore and Another v. Syed Mahmood and Others* (1968) 3 SCR 363; *Statesman (Private) Ltd. v. H.R. Deb and Others* (1968) 3 SCR 614; *State Bank of India and*

- A. *Others v. Mohd. Mynuddin* (1987) 4 SCC 486; *The State of Mysore & Anr. v. Syed Mahmood & Ors.* (1968) 3 SCR 363 – relied on.

B 1.2. In the instant case, it is not seriously disputed  
 that the matter in issue is not a service matter. Besides  
 this objection was not raised before the High Court. Even  
 otherwise, in view of the fact that the appellant was initially  
 appointed and had served in the State Electricity Board  
 as a Member in terms of Section 5(4) of Electricity  
 (Supply) Act, 1948 and considering the qualifications  
 specified in sub-section (4), the State Government, after  
 getting a report from the vigilance department, appointed  
 him as Chairman of the Board, therefore, it is  
 impermissible to claim that the issue cannot be agitated  
 under service jurisprudence. The person who  
 approached the High Court by way of a Public Interest  
 Litigation is not a competitor or eligible to be considered  
 as a Member or Chairman of the Board but, according to  
 him, he is a vidyut shramik leader. Either before the High  
 Court or in this Court, he did not place any material or  
 highlighted on what way he was suitable and eligible for  
 that post. [Paras 6] [572-G-H; 573-A-C]

F *Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others* (1998) 7 SCC 273; *Ashok Kumar Pandey v. State of W.B.* (2004) 3 SCC 349; *Dr. B. Singh v. Union of India and Others*, (2004) 3 SCC 363; *Dattaraj Nathuji Thaware v. State of Maharashtra and Others* (2005) 1 SCC 590; *Gurpal Singh v. State of Punjab and Others* (2005) 5 SCC 136; *High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors.* (2003) 4 SCC 712; *Mor Modern Cooperative Transport Society Ltd. v. Financial Commissioner & Secretary to Govt. of Haryana and Another* (2002) 6 SCC 269; *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and Ors.* (2006) 11 SCC 731 – relied on.

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2.1 As regards the reference to the note of the Chief Secretary in the earlier writ petition wherein the appellant was not a party, it was unfair on the part of the Chief Secretary to prepare a note to the Chief Minister to the effect that probably during the service period of the appellant, he was suspended and a raid had also been conducted. For this, the appellant had sworn an affidavit denying the raid by any department. As far as order of suspension of the appellant was concerned, proceedings of the Government dated 21.11.1975 clearly showed that the State Government itself revoked the punishment. The said order was passed in the name of the Governor. In such circumstance, the conclusion by the High Court in this regard is erroneous, contrary to the record of proceedings placed before it and liable to be set aside. [Paras 17] [578-H; 579-A-B; 580-D-E]

*E.P. Royappa v. State of Tamil Nadu and Another (1974)*  
4 SCC 3 – relied on.

2.2. Curiously, the State Government which had defended the qualification, service and ultimate appointment of the appellant as Chairman of the Board before the High Court, changed their stand before this Court and supported the order of the High Court. The State Government and State Electricity Board had filed separate detailed counter affidavits before the High Court highlighting the meritorious qualification of the appellant. Though the appellant himself had filed a detailed counter affidavit denying all the allegations made by the writ petitioner and highlighting his qualifications and achievements in the State Government, more particularly, in the Electricity Board, there was no need to traverse the same in the light of the specific stand as well as encomium by the State Government and the Electricity Board. In view of the same, it is impermissible for the State to take a different view in the absence of any change of circumstance. In fact, the State was unable to apprise

A this Court for changing their stand than that of the one asserted before the High Court. Accordingly, stand of the State Government which is contrary to their assertion before the High Court is rejected. [Paras 20, 21, 24] [582-F, G-H; 583-A; 585-F-G; 586-A]

B *Badrinath vs. Government of Tamil Nadu (2000) 8 SCC 395* – relied on.

3. Though, in the PIL, the writ petitioner mentioned the age of the appellant as 90, it was factually incorrect and the appellant himself sworn an affidavit and asserted, and it is not disputed by the State, that he is 84 years old as on date and according to him, he is hale and healthy. It was nobody's case that his appointment was contrary to any of the statutory provisions. In fact, it was described that his appointment was in terms of the provisions of the Act and Bihar State Electricity Board Rules, 1960. Though he continued as Chairman as on date when this Court issued notice and also directed his continuance on 01.05.2009, the fact remains that he could not be continued and the State Government had appointed another person. It is relevant to point out that in the appointment order relating to the present incumbent, the State Government has specifically mentioned that his appointment is subject to the result of the appeal filed by the appellant. Taking note of all these relevant factors and of the fact that admittedly, there is no age limit prescribed in the rules for appointment to the post of Chairman and also with regard to the stand of the State Government about the qualification as well as good service rendered by the appellant, in the event of quashing the High Court's order, he should be allowed to continue as Chairman of Electricity Board. The impugned judgment of the High Court is set aside. The appellant is permitted to join duty forthwith and continue as Chairman of the State Electricity Board in terms of his appointment order.

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His continuance in the post of Chairman is subject to the ultimate decision of the Government, however, the same shall be in accordance with Section 5(5) of the Act and Rule 4 of the Rules. [Paras 25, 26] [587-G-H; 588-A-F] A

Case Law Reference:

(1998) 7 SCC 273	relied on	Para 7	B
(2004) 3 SCC 349	relied on	Para 8	
(2004) 3 SCC 363	relied on	Para 9	
(2005) 1 SCC 590	relied on	Para 9	C
(2005) 5 SCC 136	relied on	Para 9	
(2003) 4 SCC 712	relied on	Para 10	
(2002) 6 SCC 269	relied on	Para 11	D
(2006) 11 SCC 731	relied on	Para 12	
(1968) 3 SCR 363	relied on	Para 13	
(1968) 3 SCR 614	relied on	Para 14	E
(1987) 4 SCC 486	relied on	Para 15	
(1968) 3 SCR 363	relied on	Para 15	
(1974) 4 SCC 3	relied on	Para 18	
(2000) 8 SCC 395	relied on	Para 25	F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7165 of 2010.

From the Judgment & Order dated 27.04.2009 of the High Court of Jharkhand at Ranchi in WP (PIL) No. 5067 of 2008. G

P.P. Rao, K.K. Rai, Manish Kumar Saran, Pandey Neeraj Rai, Alok Kumar, Hari Priya, Prerna Kumari, Purushottam S.T.,

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A Sam Priti Phukan, Filza Moonis, Krishnanad Pandey, S.K. Pandey, Prashant Kumar, Merusagar Samantaray, Mohit Kumar Shah, Gopal Prasad for the appearing parties.

The Judgment of the Court was delivered by

B **P. SATHASIVAM, J.** 1. Leave granted.

C 2. This appeal is directed against the judgment and order dated 27.04.2009 passed by the High Court of Jharkhand at Ranchi in Writ Petition (PIL) No. 5067 of 2008 in and by which the High Court allowed the Public Interest Litigation filed by Sahodar Prasad Mahto, Respondent No. 1 herein and quashed the appointment of Hari Bansh Lal, appellant herein as Chairman of the Jharkhand State Electricity Board and directed the State Government to make fresh appointment to the post of Chairman of the Board in place of the appellant herein.

D **3. Brief facts:**

E a) Sahodar Prasad Mahto, Respondent No.1 herein, claiming himself as Vidyut Shramik Leader, filed Writ Petition No. 5067 of 2008 before the High Court of Jharkhand challenging the appointment of Mr. Hari Bansh Lal, the appellant herein (Respondent No.5 before the High Court) as Chairman, Jharkhand State Electricity Board (in short "the Board") on the ground that the Board has been constituted in an arbitrary manner and he is a person of doubtful integrity, aged about 90 years, appointed as a Chairman without following the rules or procedure. Even before filing the present writ petition, the said Mahto and his colleague Sideshwar Prasad Sinha filed Public Interest Litigation seeking general direction not to appoint corrupt persons as Chairman and Members of the Board.

F According to the writ petitioner, various allegations and insinuations have been made against Respondent No.5 therein who was appointed as Chairman of the Board and during the period there had been shortfall in generation transmission and supply of Electricity. He also alleged that Mr. Hari Bansh Lal

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retired from service of the Board in the year 1976, considering his age, he is not in a position to perform his duties as Chairman. He also contended that because of age factor as well as want of knowledge and latest advanced technologies in the field of electricity, prayed for appropriate direction for his removal by way of a Public Interest Litigation.

b) The State Government, Jharkhand State Electricity Board as well as the appellant, who was Respondent No.5 therein, filed counter affidavit specifically denying all the averments. On the other hand, the Board has highlighted that Mr. Lal rendered excellent service in the Board, received appreciation and there is no age limit prescribed for appointment of a Member or Chairman of the Board under the Electricity (Supply) Act, 1948. In the same way, the State Government, in their counter affidavit, reiterated that Mr. Lal has all the required technical qualification in the field of Electricity. He possessed a number of Indian and foreign degrees to his credit. All appointments were made after obtaining vigilance clearance. In the case of Mr. Lal also, vigilance clearance was obtained before his appointment as Chairman of the Board. In a separate counter affidavit, Hari Bansh Lal enumerated full details of his qualifications, experience and expertise in the electricity field. It is also stated that the then Chief Minister of Jharkhand, after considering the merits of several candidates, had ordered the appointment of Mr. Lal as Chairman of the Board in the year 2004 and continued till 2005 when he tendered his resignation from the post during political instability. He also highlighted the relevant provisions relating to appointment to the post of Chairman from the Electricity (Supply) Act, 1948 as well as the Bihar Electricity Board Rules, 1960 which is applicable to the State of Jharkhand.

(c) On going through the rival contentions, the Division Bench of the High Court, after holding that appointment of Respondent No.5 therein, as Chairman of the Board is not only arbitrary but also contemptuous and ultimately quashed his

A appointment. The said order is under challenge by the  
appellant-Hari Bansh Lal, by way of special leave before this  
Court.

B 4. Heard Mr. P.P. Rao, learned senior counsel for the  
appellant, Mr. Prashant Kumar, learned counsel for Respondent  
No.1 and Mr. K.K. Rai, learned senior counsel for the State  
Government.

**Statutory provisions:**

C 5. Chapter III of the Electricity (Supply) Act, 1948  
(hereinafter referred to as "the Act") deals with constitution and  
composition of State Electricity Boards, Generating  
Companies, State Electricity Consultative Councils and Local  
Advisory Committees. Among the other provisions, we are  
D concerned about Sections 2 (2) and 5 which read thus:

"2. (2) "Board" means a State Electricity Board constituted  
under section 5;"

E "5. Constitution and composition of State Electricity  
Boards.- (1) *The State Government shall, as soon as may  
be after the issue of the notification under sub-section (4)  
of section 1, constitute by notification in the Official  
Gazette a State Electricity Board under such name as  
shall be specified in the notification.*

F (2) The Board shall consist of not less than three and not  
more than seven members appointed by the State  
Government.

G (4) Of the members –

(a) one shall be a person who has experience of, and has  
shown capacity in, commercial matters and administration;

H (b) one shall be an electrical engineer with wide  
experience; and

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(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electricity supply undertaking. A

(5) One of the members possessing any of the qualifications specified in sub-section (4) shall be appointed by the State Government to be the Chairman of the Board. B

(6) A person shall be disqualified from being appointed or being a member of the Board if he is a member of Parliament or of any State Legislature or any local authority. C

(7) No act done by the Board shall be called in question on the ground only of the existence of any vacancy in, or any defect in the constitution of, the Board."

By virtue of power conferred by Section 78 of the Act, the Governor of Bihar framed the Bihar State Electricity Board Rules, 1960. Rules 2 (5) and 4, which are relevant, read thus: D

"2. (5) "Chairman" means the Chairman of the Board appointed under sub-section (5) of section 5." E

"4. Powers of the Chairman, and terms of office, remuneration, allowances and conditions of service of the Chairman and other Members of the Board.- (i) Subject to such directions as may be issued by State Government from time to time, and such delegation as may be made by the Board in this behalf, the Chairman shall be responsible for the day-to-day administration, and for properly carrying out the directions and decisions of the Board. He shall function as a liaison between the State Government and the Board in matters arising out of the administration of the Act to the extent the State Government is concerned. F G

(ii) The Chairman may bring to the notice of the State Government any difference of opinion, on matters of policy, H

A arising between him and the other members of the Board. He may also similarly refer any other matters of policy to the State Government and place the directions received from the State Government, for the consideration and action by the Board.

B (iii) The Chairman and other Members shall hold office for such period not exceeding five years and shall, on the expiration of their term of office, be eligible for re-appointment under such conditions as the State Government may, from time to time, by order, direct.

C Xxx xxx”

The above provisions make it clear that the State Government is empowered to constitute a State Electricity Board by issuance of a notification in the official gazette. As per subsection (4) of Section 5, one of the members having qualification is eligible to be appointed by the State Government as Chairman of the Board. As per rule 4(3), the Chairman and other members shall hold office for a period not exceeding five years. The said rule also makes it clear that on the expiration of the term of office, if they are eligible for re-appointment, the State Government is empowered to appoint those persons on such conditions. It is not in dispute that there is no prescribed age limit for holding the post of Chairman.

F **PIL in service matters:**

6. About maintainability of the Public Interest Litigation in service matters except for a writ of *quo warranto*, there are series of decisions of this Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection was not raised and agitated before the High Court. Even otherwise, in view of the fact that the appellant herein was initially appointed and served in the State Electricity Board as a Member in terms of Section 5(4) and from among the Members of the Board,

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considering the qualifications specified in sub-section (4), the State Government, after getting a report from the vigilance department, appointed him as Chairman of the Board, it is impermissible to claim that the issue cannot be agitated under service jurisprudence. We have already pointed out that the person who approached the High Court by way of a Public Interest Litigation is not a competitor or eligible to be considered as a Member or Chairman of the Board but according to him, he is a Vidyut Shramik Leader. Either before the High Court or in this Court, he has not placed any material or highlighted on what way he is suitable and eligible for that post.

7. In *Dr. Duryodhan Sahu and Others vs. Jitendra Kumar Mishra and Others*, (1998) 7 SCC 273, a three-Judge Bench of this Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated". In para 21, this Court reiterated as under:

"21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

8. In *Ashok Kumar Pandey vs. State of W.B.*, (2004) 3 SCC 349, this Court held thus:

"16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as

A noted above, could be otherwise utilized for disposal of  
 genuine cases. Though in *Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra* this Court held that in service  
 matters PILs should not be entertained, the inflow of so-  
 called PILs involving service matters continues unabated  
 B in the courts and strangely are entertained. The least the  
 High Courts could do is to throw them out on the basis of  
 the said decision. The other interesting aspect is that in  
 the PILs, official documents are being annexed without  
 C even indicating as to how the petitioner came to possess  
 them. In one case, it was noticed that an interesting answer  
 was given as to its possession. It was stated that a packet  
 was lying on the road and when out of curiosity the  
 petitioner opened it, he found copies of the official  
 documents. Whenever such frivolous pleas are taken to  
 D explain possession, the courts should do well not only to  
 dismiss the petitions but also to impose exemplary costs.  
 It would be desirable for the courts to filter out the frivolous  
 petitions and dismiss them with costs as aforesaid so  
 that the message goes in the right direction that petitions  
 E filed with oblique motive do not have the approval of the  
 courts.”

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

The above principles make it clear that except for a writ of *quo  
 G warranto*, Public Interest Litigation is not maintainable in  
 service matters.

### Writ of Quo Warranto

10. Writ of *quo warranto* lies only when appointment is  
 H contrary to a statutory provision. In *High Court of Gujarat and*

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*Another vs. Gujarat Kishan Mazdoor Panchayat and Others*, (2003) 4 SCC 712, (three-Judges Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held:

"22. The High Court in exercise of its writ jurisdiction 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 certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India 2, SCC para 74.)

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules: (See *Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana*)"

11. In *Mor Modern Cooperative Transport Society Ltd. vs. Financial Commissioner & Secretary to Govt. of Haryana and Another*, (2002) 6 SCC 269, the following conclusion in para 11 is relevant.

"11. .... The High Court did not exercise its writ jurisdiction in the absence of any averment to the effect that the aforesaid officers had misused their authority and acted in a manner prejudicial to the interest of the appellants. In our view the High Court should have considered the challenge to the appointment of the officials concerned as members of the Regional Transport Authority on the ground of breach of statutory provisions. The mere fact that they had not acted in a manner prejudicial to the interest of the appellant could not lend validity to their appointment, if otherwise, the appointment was in breach of statutory provisions of a mandatory nature. It has, therefore, become necessary for us to

A consider the validity of the impugned notification said to have been issued in breach of statutory provision.”

12. In *B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and Others*, (2006) 11 SCC 731, this Court held:

B “49. The law is well settled. The High Court in exercise of its writ jurisdiction 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.”

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D It is clear from the above decisions that even for issuance of writ of *quo warranto*, the High Court has to satisfy that the appointment is contrary to the statutory rules. In the later part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and whether he satisfied the relevant statutory provisions.

E **Suitability of a candidate for appointment**

F 13. In *The State of Mysore and Another vs. Syed Mahmood and Others*, (1968) 3 SCR 363 = AIR 1968 SC 1113, it was held that suitability or otherwise, appointing authority is the best person and the court cannot issue a positive writ without giving the authority/Government opportunity in the first instance to consider his/her claim for promotion.

G 14. The same view has been reiterated in *Statesman (Private) Ltd. vs. H.R. Deb and Others*, (1968) 3 SCR 614 = AIR 1968 SC 1495.

H 15. In *State Bank of India and Others vs. Mohd. Mynuddin*, (1987) 4 SCC 486, after adverting to earlier decision of this Court in *The State of Mysore & Anr. vs. Syed Mahmood & Ors.*, (1968) 3 SCR 363 this Court held:

“.....The ratio of the above decision is that where the State Government or a statutory authority is under an obligation to promote an employee to a higher post which has to be filled up by selection the State Government or the statutory authority alone should be directed to consider the question whether the employee is entitled to be so promoted and that the court should not ordinarily issue a writ to the government or the statutory authority to promote an officer straightway. The principle enunciated in the above decision is equally applicable to the case in hand.”

It is clear from the above decisions, suitability or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules.

**Materials relied on by the High Court**

16. Before considering the materials relied on by the High Court, it is relevant to mention CWJC No. 924 of 2001 which was filed to ensure that persons of unimpeachable integrity alone are made members of the Board. The High Court issued an interim order holding that any appointments made would be subject to the final outcome of the writ petition. Mr. Rajiv Ranjan and Mr. Sachidanand Akhauri were appointed as Chairman and Member of the Board respectively. The appellant herein was not a party to the said writ petition. By order dated 21.09.2001, the High Court allowed the said writ petition and set aside the appointment of Mr. Rajiv Ranjan and others. Certain aspects in the judgment are relevant to the present case. They are, while discussing the facts antecedent to the appointment of Mr. Rajiv Ranjan and others, the fact that the appellant herein was originally chosen by the Chief Minister for the post of Chairman of the Board was discussed and the fact that the Chief Secretary of the State noted in his objections that probably the appellant herein was suspended earlier when he was in government service and a raid was conducted was

A noted by the High Court in the said judgment. The High Court, however, made it amply clear at the end of the judgment that its observations regarding the appellant and others is not to be construed as an opinion with respect to the correctness of those observations. It is relevant to point out that review petitions were  
 B filed by the State of Jharkhand and Sachidanand Akhauri who was one of the persons appointed to the Board and whose appointment was also quashed. By order dated 04.04.2002, the High Court allowed both review petitions, primarily on the  
 C ground that Mr. Rajiv Ranjan and Mr. Sachidanand whose appointments were quashed were not parties in the writ proceedings and they should have been heard before setting aside their appointment. When Mr. H.B. Lal filed impleadment application in the review petition in view of certain observations made about him in the original judgment, the High Court made  
 D it clear that no adverse order was passed and no adverse observations were made against him and that the judgment does not operate adversely or prejudicially against him.

17. Mr. Rao, learned senior counsel has pointed out that the High Court committed an error in quashing the appointment  
 E on the wrong assumption that his integrity was doubtful, he was suspended and a raid was also conducted. In para 14, the High Court has extracted note of the Chief Secretary to the Chief Minister. We are concerned with the following passage which the High Court heavily relied on

F “..... I have no knowledge regarding image of Shri Hari Bansh Lal during his past service, but probably during his service period he was suspended and a raid had also conducted. It is proper to get information as to what finally  
 G happened in those related matters. ....

Sd/-  
 (Vijay Shankar Dubey)”  
 (Emphasis supplied)

H First of all, it is unfair on the part of the Chief Secretary to prepare a note to the Chief Minister in such a way that

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"...probably during his service period he was suspended and a raid had also conducted....". For this, the appellant has sworn an affidavit denying the raid by any department as mentioned and no other material produced before the Court to substantiate this claim. As far as order of suspension of the appellant is concerned, proceedings of the Government dated 21.11.1975 clearly shows that the State Government itself revoked the punishment. It is useful to refer the entire proceeding of the State Government.

"Resolution No. 114 Patna, Dated :21-11-1975"

Since Sh. Harbansh Lal (who is a permanent Officer, Electricity Department, Government of Bihar and at present is posted as Electrical Superintending Engineer in Purnea) has given his representation against the punishment inflicted through resolution No. 1962 dated 13-8-75 and

Since upon his representation and the opinion received from Bihar State Electricity Board and after considering the recommendations from the Cabinet (Vigilance) Department, he has not been directly found guilty for the charge No.4.

*Therefore the Government has decided to lift the punishment inflicted upon him through Departmental Resolution No. 1962 dated 13-8-75.*

*Order:- It is ordered that the copy of this resolution be forwarded to Sh. Hari Bansh Lal and other concerned officials for information and necessary action.*

**(Emphasis supplied)**

From the order of the Governor of Bihar  
Sd/-  
Indra Dev Jha  
Additional Secretary of Government,  
Electricity Department

A Memo No. 116/Dated, Patna 21-11-1975 A.D.

Copy to:

(A) Additional Secretary, Electricity Department, Patna

B (B) Chairman, Bihar State Electricity Board, Patna

(C) Sh. H.B. Lal, Electrical Superintending Engineer  
Purnea Division.

C In pursuance to Departmental, Memo 1962 dated 13-8-75  
is being forwarded for information and necessary action.

Sd/- Indra Dev Jha  
Additional Secretary to Government,  
Electricity Department."

D The above proceeding makes it clear that even the one  
punishment of suspension had been revoked by the State  
Government by a regular order dated 21.11.1975. The said  
order came to be passed in the name of the Governor. In such  
circumstance, the conclusion by the High Court in this regard  
is erroneous, contrary to the record of proceedings placed  
E before it and liable to be set aside.

18. It is highly useful to refer a decision of the Constitution  
Bench of this Court in *E.P. Royappa vs. State of Tamil Nadu  
and Another*, (1974) 4 SCC 3. The facts are that the petitioner  
F was a member of Indian Administrative Service. On July 11,  
1969 he was posted to act on the post of Additional Chief  
Secretary temporarily created in the grade of Chief Secretary  
for one year. On November 13, 1969 he was posted to act as  
Chief Secretary. On April 7, 1971 he was appointed Deputy  
G Chairman of the State Planning Commission created  
temporarily for a period of one year in the grade of Chief  
Secretary to Government. The petitioner went on leave and  
even after returning from leave he did not join the said post.  
By order dated June 27, 1972 Government created another  
H temporary post of Officer on Special Duty for one year in the

grade of Chief Secretary to Government and the petitioner was transferred to the said post but he did not join the duties and in July, 1972 the petitioner filed the writ petition under Article 32 of the Constitution before this Court asking for a writ of mandamus or any writ, direction or order directing the respondent to withdraw and cancel the order dated June 27, 1972.

19. After considering various issues, the Constitution Bench highlighted about the role of the Chief Secretary and the ultimate decision of the Chief Minister in appointing a person for a highest post in the State, namely, Chief Secretary, which reads as under:

“87. Now, two important considerations must weigh with us in determining our approach to these questions. First, the post of Chief Secretary is a highly sensitive 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 Chief Secretary and the Chief Minister. The Chief Minister as the 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, therefore, *for any valid reason* the Chief Secretary forfeits the confidence of the Chief Minister, the Chief Minister may legitimately, in the larger interests of administration, shift the Chief Secretary to another post, *provided of course that does not involve violation of any of his legal or constitutional rights*. There can be no question in such a case as to who is right and who is wrong. The displacement of the Chief Secretary from his post in such a case would not be arbitrary and it would not attract the inhibition of Articles 14 and 16. It may, however, be pointed out that such an action would not, we think, ordinarily be taken except for the most compelling reasons, because,

A if resorted to without proper justification, it would tend to affect the political neutrality of the public service and lead to demoralisation and frustration amongst the public servants.”

B If we apply the same principles to the appellant, who was appointed as Chairman of the Electricity Board by the Chief Minister, after fulfilling the criteria, the said appointment cannot be interfered lightly without adequate material about his integrity or inefficiency in service.

C 20. From the discussion and analysis, the following principles emerge:-

a) Except for a writ of *quo warranto*, PIL is not maintainable in service matters.

D b) For issuance of writ of *quo warranto*, the High Court has to satisfy that the appointment is contrary to the statutory rules.

E c) Suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules.

F Curiously, but unfortunately, the State Government which had defended the qualification, service and ultimate appointment of Mr. Lal (appellant herein) as Chairman of the Board before the High Court, changed their stand before this court for the reasons best known to them and supported the order of the High Court.

G 21. Now, it is necessary to highlight the stand of the State Government before the High Court. The State has filed a separate counter affidavit. The State Government, State Electricity Board and the appellant herein, as Chairman of the Board, have filed separate detailed counter affidavits. In the counter affidavit dated 27.11.2008 (Annexure-P12) filed on  
H behalf of the State of Jharkhand, the following extraction would

clearly show about the meritorious qualification of the appellant and the ultimate decision of the Government in appointing him as a Chairman of the Board: A

"4. That the public interest litigation filed by the writ petitioner is thoroughly misconceived and is liable to be dismissed. B

7. That it is stated and submitted that the Respondent No.5 has all the required educational qualifications as well as vast experience in the field of electricity. He has a number of Indian and foreign degrees to his credit. The Respondent No.5 is a B.Sc. in the Electrical and Mechanical Engineering from the Banaras Hindu University (B.H.U.) and M.Sc. in Electrical Engineering from Illinois Institute of Technology, Chicago (U.S.A.). The Respondent No.5 was awarded D.Sc. by TGPU, Opeinde (Netherland). He has been in generation, transmission and distribution of electricity and rural electrification for about 35 years. He was also awarded a Colombo Plan Scholarship in U.K. for 1 and ½ years and he was a graduate student in U.S.A. for 2 years where he undertook training as well as study and practices of the latest technologies connected with Electric Power System Engineering. C D E

8. That it is stated and submitted that the Respondent No.5 has also had tenure as a Consultant of National Hydro Electric Power Corporation (NHPC) a public sector undertaking of the Govt. of India. A bare perusal of the resume of the Respondent No.5 shows that he is fully and completely capable and qualified in every manner to hold the post of the Chairman of the Jharkhand State Electricity Board. F G

10. That with regard to the prayer made in para-1 of the writ petition that all appointments should be made in the Electricity Board only subsequent to obtaining vigilance H

A clearance it is stated that the said clearance had been duly obtained and the case of the appointment of the Respondent No.5 from the Government of Bihar vide letter No. 5532 dated 6.10.2004.

B 11. That the statements made in para-1 of the writ application are the reliefs as sought for by the petitioner. With regard to para 1(a) and (b) of the writ petition, it is stated that there is no arbitrariness in the reconstitution of the Jharkhand State Electricity Board. The Chairman (Respondent No.5) was earlier appointed after obtaining due vigilance clearance. His age has not prevented him from functioning and performing his duties as required of him. He possess vast knowledge and experience in the field of electricity as is clear from Annexure-A to the instant affidavit.”

D 22. In the second supplementary counter affidavit with regard to suspension or raid, the following is the stand of the Government before the High Court.

E “That the answering respondents however state that there are no records regarding the suspension or raid against respondent No.5 available in the Bihar State Electricity Board, Patna.”

F 23. On behalf of the Jharkhand State Electricity Board, Law Officer of the Board has filed a counter affidavit. The following information about the appellant herein are relevant.

G “5. That it is stated that the respondent No.5 after successful completion of his service superannuated from the Bihar State Electricity Board as Technical Member. The respondent no.5 has rendered his excellent service in the Board and has received appreciation all along his working period, and considering the excellent performance of the respondent no.5, he has been allowed to get the entire

H

pension and other retiral benefits in full which are sanctioned only after vigilance clearance. A

7. (A) The point of law formulated by the question whether a person of more than 90 years of age can be allowed to hold the post of Chairman of the State Electricity Board is based on ill information. As stated above, earlier also Electricity (Supply) Act, 1948 had not prescribed any upper age limit for appointment as member or Chairman of the Board. It is further relevant to mention here that the respondent No.5 is not 90 years of age and he was retired in 1985. B  
C

12. That with regard to the statements made in para 15 of the instant PIL, it is stated that the same is disputed and therefore, denied. It is further stated that during the short tenure of working of the respondent no.5 as Chairman Electricity Board i.e. for 8-9 months, from 18th October, 2004 to 27th July, 2005 the condition of electricity in the State had improved. Besides, the said improvement the respondent no. 5 had taken steps for enhancement in electric supply and rural electrification implementing different schemes. .... ..” D  
E

24. Though the appellant himself has filed a detailed counter affidavit denying all the allegations made by the writ petitioner and highlighted his qualifications and achievements in the State Government, more particularly, in the Electricity Board, there is no need to traverse the same in the light of the specific stand as well as encomium by the State Government and the Electricity Board. In view of the same, we hold that it is impermissible for the State to take a different view in the absence of any change of circumstance. In fact, in spite of several queries from the Bench, Mr. K.K. Rai, who represented the State was unable to apprise this Court for changing their stand than that of the one asserted before the High Court. He is not in a position to put-forth any compelling circumstance to take such a stand except change of Government and persons F  
G  
H

A in power. Accordingly, we reject his present stand which is  
contrary to their assertion before the High Court. For all these  
reasons, the impugned order of the High Court is liable to be  
set aside.

B 25. Now, we have to consider the eligible relief or  
entitlement by the appellant in view of our conclusion. Mr. P.P.  
Rao, learned senior counsel, by drawing our attention to the  
decision of this Court in *Badrinath vs. Government of Tamil*  
*Nadu and Others*, (2000) 8 SCC 395 submitted that if this  
C Court accepts the appellant's case, it is entitled to issue a  
positive mandamus and permit him to continue as Chairman  
of the State Electricity Board. In the reported decision,  
accepting the stand of the appellant and rejecting the  
unreasonable stand taken by the State Government, this Court  
issued the following direction.

D "90. In the light of the above precedents, we have  
considered whether this is a fit case where this Court  
should issue a mandamus or remit the matter back to the  
State Government. After giving our anxious consideration  
E to the facts of the case, we are of the view that having  
regard to our findings on Points 1 to 5 and to the  
continuous unfair treatment meted out to the appellant by  
the State of Tamil Nadu — even as accepted by the Central  
Government in its comments — this is a pre-eminently fit  
F case requiring the issue of a mandamus. We are,  
therefore, constrained to exercise all the powers of this  
Court for rendering justice and to cut short further  
proceedings. The consideration of the appellant's case for  
the said promotion has been hanging fire and going up and  
G down for the last twenty-five years. Disgusted with the  
delays, the appellant has also taken voluntary retirement.  
In the light of our decision on Points 1 to 5, we declare the  
censure in the fourth case as void and without jurisdiction  
and in the alternative also, as liable to be quashed under  
H *Wednesbury* principles. The adverse remarks of bygone

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AND ORS. [P. SATHASIVAM, J.]

years prior to 1972 have lost all their sting. The positive factors in the appellant's favour both recorded (at the compulsion of the Central Government) and others to which we have referred to earlier as meriting consideration are, in our opinion, sufficient to entitle him for promotion to the super-time scale. The appellant's case is, in our view, no less inferior to the cases of the other officers who were conferred the similar benefit of super-time scale by the State of Tamil Nadu, details of which have been profusely given in the writ petition. For the aforesaid reasons, we quash the punishment of censure, the assessment made by the Joint Screening Committee, the Orders passed by the State and Central Government refusing to grant him super-time scale and in rejecting the appeal of the appellant and we further direct as follows:

In the special and peculiar circumstances of the case, we direct the respondents to grant the appellant the benefit of the super-time scale from the date on which the appellant's junior Shri P. Kandaswamy was granted super-time scale. The respondents are accordingly directed to pass an Order in this behalf within eight weeks of the receipt of this order and to give him all consequential benefits, attendant thereto. The said benefits shall also be reflected in his pension and other retiral benefits. They shall be worked out and paid to him within the time aforementioned."

Relying on this and pointing out that the present appellant – Hari Bansh Lal was similarly placed like Mr. Badrinath prayed similar direction for his continuance as Chairman of the State Electricity Board. Though, in the PIL, the writ petitioner has mentioned the age of Mr. Lal as 90, it is factually incorrect and Mr. Lal himself sworn an affidavit and asserted and not disputed by the State that he is 84 as on date and according to him, he is hale and healthy. We have already reproduced the stand of the State Government before the High Court about his qualification and service rendered as Member and Chairman

- A in the State Electricity Board. It is not anybody's case that his appointment was contrary to any of the statutory provisions. In fact, it was described that his appointment was in terms of the provisions of the Act and Rules. It is also pointed out that though he continued as Chairman as on date when this Court issued
- B notice and also directed his continuance on 01.05.2009, the fact remains that he could not be continued and the State Government had appointed another person. It is relevant to point out that in the appointment order relating to the present incumbent Mr. Shiv Basant, the State Government has
- C specifically mentioned that his appointment is subject to the result of the appeal filed by Hari Bansh Lal. Taking note of all these relevant factors and of the fact that admittedly, there is no age limit prescribed in the rules for appointment to the post of Chairman and also with regard to the stand of the State
- D Government about the qualification as well as good service rendered by the appellant, we feel that in the event of quashing the High Court's order, he should be allowed to continue as Chairman of Electricity Board.

- E 26. In the light of the above discussion, the impugned judgment of the High Court is set aside. The appellant is permitted to join duty forthwith and continue as Chairman of the State Electricity Board in terms of his appointment order. We make it clear that his continuance in the post of Chairman is subject to the ultimate decision of the Government, however,
- F the same shall be in accordance with Section 5(5) of the Act and Rule 4 of the Rules.

27. With the above direction, the appeal is allowed. No costs.

D.G.

Appeal allowed.