LABOUR LAW – Paper IV

WRITS RELATING TO SERVICE MATTERS

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Writ Petitions:

Both the Supreme Court and the High Court have got concurrent jurisdiction to issue writs or orders for the enforcement of fundamental rights. Under Article 32 of the Constitution of India any person can file a Writ Petition in the Supreme Court of India seeking to protect his/her fundamental rights, guaranteed by the Constitution of India. Any person can directly approach the Supreme Court of India only in the above mentioned situation. A civil servant is entitled to approach the Supreme Court directly for violation of Fundamental rights in relation to his conditions of service[1]. Otherwise, in cases where their statutory rights or natural justice rights are violated by the State or any organization which can be termed as State, High Court can be approached by a Writ Petition under 226 of the Constitution of India in the first instance and thereafter the Supreme Court in appeal if he is aggrieved by the decision of the High Court under articles 132, 133 or 136 of the Constitution. Many public interest litigations are filed by individuals and organizations seeking to protect the fundamental rights of the public. But a Writ Petition cannot be filed against Private Companies or private organizations or individuals.

Service Matters:

The Administrative Tribunal Act, 1985 defines "Service Matters"[2], in relation to a person, to mean all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-

i. Remuneration (including allowances), pension and other retirement benefits;
ii. Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
iii. Leave of any kind;

[1] Deokinandan Prasad v/s State of Bihar, AIR 1971 SC 1409
[2] Section 3 (p)

iv. Disciplinary matters; or

v. Any other matter whatsoever;

Tribunals:

Till 1970, adjudicating service matters fell under the jurisdiction of Civil Courts. With the passage of time, this branch of Law grew more complex and complicated, hence need was felt for specialized courts and Advocates to deal with the same.

The post 1970 era witnessed the setting up of specialized courts or Public Services Tribunals (hereinafter referred to as the Tribunal) which took up cases concerning only service matters. A Tribunal is basically a specialized court, concerning a specific or particular branch of Law. A Tribunal is empowered by the State to decide disputes, concerning a specific matter. Special and specific Tribunals like Debt Recovery Tribunal, Income Tax Appellate Tribunal and Public Services Tribunal etc. are located in different parts of the State. The Public Services Tribunal, its jurisdiction and functioning are governed by Article 323-A of the Constitution of India which runs as follows: Parliament may, by Law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to Public services and posts in connection with the affairs of the Union or of any State or of the Government of India or of any corporation owned or controlled by the Government.

The article further provides for the establishment of Administrative Tribunal for the Union and the States, specifies the jurisdiction and powers of such Tribunals, procedure to be followed by the Tribunals, excludes the jurisdiction of all courts except that of the Supreme Court under article 136 of the Constitution of India , etc. A question arises by what virtue the State can regulate recruitment and conditions of service of its employees. In service matters, the rule making power is essentially derived from the Constitution of India by virtue of Article 309 which reads as Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. The article further provides that the President incase of Union and the Governor in the case of State may direct such persons to make rules and regulations of services and posts in connection with the affairs of the State, to such services and posts until provision in that behalf is made by

or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act. It is essential to point out that only Government Servants throughout a State can file their respective cases in the Tribunal, to get their grievances redressed. In other words the Tribunal only hears the cases of servants working in the employment of the State. Employees working for Private companies or organizations which are not owned by the State cannot file a case in the Tribunal and such employees are governed by the Industrial Disputes Act and their cases are dealt with by Labour Courts and Industrial Tribunals.

In 1985, The Administrative Tribunal Act was passed to provide for the adjudication or trial by Central Administrative Tribunal known as CAT or the Administrative Tribunals to adjudicate disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto.

The establishment of the Central Administrative Tribunal under the Administrative Tribunals Act, 1985 is one of the important steps taken in the direction of development of Administrative Law in India.

i. It established Administrative Tribunals for dealing exclusively with service matters of government servants.
ii. It also provides for exclusion of jurisdiction of all the courts excepting the Supreme Court.
iii. Even before Article 323-A was enacted tribunals existed in various areas and their existence was recognised by the Constitution, but they were not intended to be an exclusive forum, and therefore, they were subject to judicial review by the High Courts under Articles 226 and 227. Distinct from this existing tribunal system, a new experiment has been introduced by Article 323-A which provides for exclusion of the jurisdiction of the High Courts under Articles 226 and 227, notwithstanding any other provisions in the Constitution.
iv. The object of this experiment is to lessen the backlog of cases pending before the High Courts and to provide an expert and expeditious forum for disposal of

disputes of Government servants relating to service matters. As this experiment was to affect the existing constitutional arrangement relating to tribunal system, it was introduced as a constitutional provision through the Forty-second Amendment of the Constitution. Whatever might have been the motive and peculiarities of the circumstances in which the Forty-second Amendment was passed, it cannot be denied that Article 323-A was one of the plus points of this Amendment[3].

Central Administrative Tribunals and Their Power to Issue Directions, Orders or Writs Under Articles 226 and 227 of the Constitution:

The tribunal system as envisaged by Article 323-A has been established under the Administrative Tribunals Act, 1985 and the Central Administrative Tribunal(hereinafter also referred as the Tribunal) has started working since 1st November, 1985. The statutory provisions about the power, jurisdiction and authority of the Tribunal are as follows:

Section 14(1) which vests in the Tribunal the jurisdiction of all the courts in respect of service matters, says:

Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, *all the jurisdiction, powers and authority exercisable* immediately before that day *by all courts* (*except the Supreme Court*) in relation to .... service matters.

Section 28(1) which excluded jurisdiction of the courts says:

"On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to service matters concerning members of any service or post, *no Court except* (*a*) *the Supreme Court*, or (*b*) any Industrial Tribunal .... *shall have or be entitled to exercise any jurisdiction, powers or authority* in relation to such .... service matters.

Section 29(1) which provides for transfer of the pending cases says:

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[3] 'Central Administrative Tribunals and Their Power to Issue Directions, Orders or Writs under Articles 226 and 227 of the Constitution', *by* Anupa V. Thapliyal – www.ebc-india.com.

"Every suit or *other proceeding pending before any court or other authority* immediately before the date of establishment of a Tribunal under this Act being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it has arisen after such establishment, within the jurisdiction of such Tribunal shall stand transferred on that date to such Tribunal.

Constitutional validity of Section 28 of the Act was challenged before the Supreme Court in *S.P. Sampath Kumar* v/s *Union of India*[4]. It was argued mainly that judicial review is a fundamental aspect of the Constitution and as the impugned provision takes away judicial review by the High Courts under Articles 226 and 227, it affects the basic structure of the Constitution. This argument was rejected by the Court; Ranganath Misra, J. held that the "judicial review" envisaged as the basic structure of the Constitution does not suggest that effective alternative institutional arrangements cannot be made. Therefore, once the judicial review by the Supreme Court is left wholly unaffected, the exclusion of the jurisdiction of the High Courts under Articles 226 and 227 does not render the impugned provision of the Act as unconstitutional because it does not affect the basic structure. Also, referring to the various provisions of the Act, Ranganath Misra, J. pointed out that the Act has been enacted to implement the object of Article 323-A of the Constitution which itself provides for exclusion of the High Court's power of judicial review, and therefore Section 28 of the Act is not violative of the Constitution. Referring to Article 323-A, constitutional validity of which was not questioned, P.N. Bhagwati, C.J. and Ranganath Misra, J. further clarified that this article impliedly requires that the alternative institutional arrangement must be equally effective and efficacious as the High Courts. Consequently the Court struck down Section 6(1) (*c*) of the Act, and also directed certain amendments in it. Through this holding the Court mainly ensured that (*i*) the Tribunal shall have as its Chairman a legally trained person who is equal to the Chief Justice of a High Court with respect to qualifications; (*ii*) the Tribunal has benches at the seat of all the High Courts; (*iii*) a bench of the Tribunal should consist of at least one judicial member and one administrative member; (*iv*) the appointments to the Tribunal should be fair and objective so that the impartiality of its Chairman, Vice-Chairman, and members is assured. Speaking about the status of the Tribunal, thus created, Ranganath Misra, J. rightly observed:

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[4] (1987) 1 SCC 124

"Thus the Tribunal is a substitute of the High Court and is entitled to exercise the powers thereof.

It is clear from the above observation of the Supreme Court that the Tribunal is a substitute of the High Court and has inherited the power to issue "any direction, order or writ ...." under Articles 226 and 227 of the Constitution with respect to the service matters.

Once it is clear that the power under Articles 226 and 227 is vested in the Tribunal with respect to the disputes relating to service matters of the Central Government servants, no jurisdiction in these matters should remain with the High Courts. In *Dharam Dev v/s Union of India*[5] the Delhi High Court rightly held that in 'service matter' Tribunal alone has jurisdiction. The Supreme Court has also made it clear in *J.B. Chopra* v/s *Union of India*[6] that as the Tribunal is the substitute of the High Courts' it has power, jurisdiction and authority to deal with the questions pertaining to constitutional validity of laws, notifications, rules etc.

[5] (1988) 4 SLR 7 (Del)
[6] (1987) 1 SCC 422

Service Appeals:

According to The Administrative Tribunal Act, 1985, section 29 provides that where any decree or order has been made or passed by any court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie –

(a) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986 receives the assent of the President , or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or

(b) to any other Tribunal, within ninety days from its establishment or within ninety days, from the date of receipt of the copy of such decree or order, whichever is later.

After the order of the tribunal the aggrieved party has to go to the High Court under Article 227 of the Constitution of India. The final orders of the High Court either upholding or reversing the orders of the CAT can be challenged in the Supreme Court again under Article 136 of the Constitution of India within 60 days from the date of passing of the order by the High Court. To which such matters are heard for admission within 15 days from the date of numbering. The Apex Court normally entertains the petitions which are filed challenging the Final judgments only.

High Court Cannot Entertain Writ Petitions On Service Matters Directly: Supreme Court.

Supreme Court in a judgment has held that the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of the Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal established under the Administrative Tribunal Act, 1985, which has jurisdiction concerning service matters of all categories of central government servants including those working in the State of Jammu and Kashmir. It further held that it is not open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislation - except where the legislation which creates the particular Tribunal is challenged - by overlooking the jurisdiction of the concerned Tribunal.

A Bench comprising Justice S.N. Phukan and Justice P. Venkatarama Reddi in a suit filed by Kendriya Vidyalaya Sangathan and another V/S Subhas Sharma etc. and Dr. R.D. Vishwakarma and others[7], set aside the impugned orders of the High Court and further directed it to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench.

The case pertains to the employees of the Kendriya Vidyalaya who had filed two writ petitions under Article 226 of the Constitution before the High Court for adjudication, in a dispute regarding their service conditions.

The Kendriya Vidyalaya in turn had filed two separate applications for transfer of the writ petitions to the Central Administrative Tribunal on the ground that under the Administrative Tribunal Act, 1985, the Tribunal has got jurisdiction to decide the disputes. The High Court however passed orders dismissing both the applications. The Kendriya Vidyalaya approached the Supreme Court in appeal against the orders of the High Court.

The Court while deciding the appeal, held that "the Kendriya Vidyalaya is an autonomous body registered under the Societies Registration Act and controlled by the Government of India and that being the position the Administrative Tribunal has

[7] Supreme Court of India, Civil Appeal No. 5448 of 2000 (with Civil Appeal No. 5021 of 2001)

jurisdiction concerning service matters of the employees of the Kendriya Vidyalaya in view of sub-clause (iii) of Section 14(1)(b) of the Administrative Tribunal Act, 1985. In this connection, the learned Additional Solicitor General has also drawn our attention to the notification of the Government of India dated 17th December, 1998 issued under sub-section (2) of Section 14 of the Act by which the Central Government specified that the Act shall apply to the organisations mentioned in the schedule to the notification and the Kendriya Vidyalaya has also been included in the said notification at item no. 34. Therefore, Mr. Ahmed has rightly submitted that the service disputes concerning the employees of the Kendriya Vidyalaya would come under the jurisdiction of the Central Administrative Tribunal. It does not make any difference that the institution is located in Jammu and Kashmir and the respondent is working there.

It further observed, "The Constitution Bench of this Court has clearly held that Tribunals set up under the Act shall continue to act as the only courts of first instance 'in respect of areas of law for which they have been constituted'. It was further held that it will not be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal."

The Court ruled, "In view of the clear pronouncement of this Court, the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of the Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal. We, therefore, hold that the High Court committed an error by declining to transfer the writ petition to the Central Administrative Tribunal. Consequently, we set aside the impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench which may, in its turn, make over the case to the circuit bench in the State of Jammu and Kashmir for disposal in accordance with law."

In the matter of *P. Pugalenthi V/s High Court of Judicature at Madras & Ors* [8] The Hon'Ble Court in deciding the question as to 'whether any writ petition under the name and style of 'public interest litigation' will lie in service matters', relied upon the following judgments.

1. In Dr.Duryodhan Sahu v/s Jitendra Kumar Mishra, reported in AIR 1999 SC 114, a three Judge Bench of the Honourable Apex Court has held that 'in service matters PILs should not be entertained'.
2. In Ashok Kumar Pandey v/s State of West Bengal, reported in (2004) 3 SCC 349, the Honourable Apex Court has held as follows:

   A time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra , this Court held that in service matters, PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision.
3. In N. Veerasamy v/s Union of India, reported in (2005) 2 MLJ 564, while considering a public interest litigation filed by a treasurer of a political party, praying to take action again Mrs. Lakshmi Pranesh, IAS, the fifth respondent therein, under the All India Services (Discipline and Appeal) Rules, 1969, for allegedly making allegations against leader of a political party in a suit filed before the Honourable Apex Court, a Division Bench of this Court has held that; It is settled law that no writ in the form of public interest litigation will lie under Article 226 of the Constitution in service matters. The petitioner has no locus standi to file the public interest litigation. The extraordinary powers of the High Court under Art.226 of the Constitution in matters of this kind; is required to be

[8] Writ Petition No. 991 of 2013

used sparingly and only in extraordinary cases. The service matters are essentially between the employer and the employee and it would be for the State to take action under the Service Rules and there is no question of any public interest involved in such matters. The petition is not only non maintainable either in law of facts but also would amount to abuse of the process of Court.

Thus ARUNA JAGADEESAN, J. held that: In view of the catena of judgments on the point and following the above judgments of the Honourable Apex Court and that of this Court, we have no hesitation to hold that this writ petition, filed as public interest litigation, in a service matter, is not maintainable and that the petitioner has no locus standi to file this petition.

No PIL in 'service law matters': Supreme Court

In a recent decision in the case of *Hari Bansh Lal v. Sahodar Prasad Mahto & Ors*[9] the Supreme Court has declared that the law to this regard is settled that the Courts will not entertain public interest litigation in a matter relating to service law. The only exception to this rule, the Court pointed out, was when the writ of 'Quo Warranto' was sought wherein the Courts may require the respondents to justify as to why they should not be removed from the post they occupied.

This decision, which succinctly explains the law to this aspect, notes *inter alia* as under;

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, 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.

In *Dr. Duryodhan Sahu and Others V/S Jitendra Kumar Mishra and Others*[10], 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

[9] Civil Appeal No. 7165 OF 2010 (Arising out of S.L.P. (C) No. 11013 of 2009)

[10] (1998)7 SCC273

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."

In *Ashok Kumar Pandey V/S State of W.B*[11]., this Court held thus: "As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr) v/s 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 in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as afore stated so that the message goes in the right directions that petitions filed with oblique motive do not have the approval of the courts."

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

[11] (2004) 3 SCC 349

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 Warranto, Public Interest Litigation is not maintainable in service matters**.

Writ of Quo Warranto

Writ of quo warranto lies only when appointment is contrary to a statutory provision.

Appointment of an unqualified person- quo warranto will issue: A person who possesses the qualification prescribed under a statutory provision, for appointment to a post to which statutory powers and duties are entrusted, alone can be appointed to such post. Therefore the appointment of a person who did not possess any one of the alternative qualifications prescribed for appointment, as presiding officer of a labour court under section 7 of the I. SD. Act is invalid. An award made by such person is without authority of law[12]. It was held that, if averments necessary for the issue of a qua warranto are made in the petition, mere failure to incorporate a specific prayer for the issue of a quo warranto is no ground to decline to issue the writ of quo warranto. It was further held that any provision in a statute, which provides that no appointment made under the provisions of that statute can be called in question in any court of law only bars the jurisdiction of civil courts, and not the jurisdiction of the High Court under Article 226.

Violation of a directory procedural rule in making appointment: An appointment to a post in public service cannot be set aside by the issue of writ of quo warranto if the violation of a rule complained of is only directory and not mandatory. Therefore, when an appointment is made of a qualified person after selection by a competent authority, any violation of a procedural rule which is directory in nature cannot be a ground for the issue of a writ of quo warranto.

[12] State of Haryana v/s Haryana Co-operative Transport, SLR 1977(1) SC 247

Writ will issue only in respect of a public office: to sustain the writ of quo warranto the court has to be satisfied not only that the office in question is a substantive public office but also that the incumbent is holding the post without legal authority and in appointing him the government has contravened the statutory provisions.

The appointment of a law officer of the governemt is no appointment to a public office. After appointment as a law officer he continues to be an advocate for the government and the relationship between him and the state is that of counsel and client. Therefore, no writ of quo warranto could be issued in respect of such appointment[13].

In *High Court of Gujarat and Another V/S Gujarat Kishan Mazdoor Panchayat and Others*[14], (three-Judges Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held:

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.)

A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. In *Mor Modern Cooperative Transport Society Ltd. V/S Financial Commissioner & Secretary to Govt. of Haryana and Another*[15], 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

[13] Sudhansu Sekhar Misra V/s State of Orissa, SLR 1976(1) Ori 477
[14] (2003) 4 SCC 712
[15] (2002) 6 SCC 269,

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

In *B. Srinivasa Reddy V/S Karnataka Urban Water Supply & Drainage Board Employees' Assn. and Others*[16], this Court held:

"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."

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.

Writ of Mandamus

It is well settled that rules regulatoing recruitment sand conditions of service are enforceable by issue of writs under Article 226. It is settled opinion of the judiciary that writ of Mandamus is a discretionary remedy and the high court has full discretion to refuse to issue then writ in unsuitable cases[17]. In *Harinarayan Singh v/s Ganesh Singh*[18] it was held that, in a given situation if the court finds that the demand for justice would be an idle formality, the court can issue a writ of Mandamus.

However the court can interfere only to a limited extent. The scope of interference in such matters under Article 226 is as follows:

[16] (2006) 11 SCC 731.
[17] State of Kerala v/s K. P. W. S. W. L. C. Coop. Society Ltd., AIR 2001 SC 60
[18] AIR 1995 Pat 1

1. Mandamus in relation to promotion: In respect of promotion on the basis of seniority and merit, the High Court can issue a writ directing the appointing authority to consider the case of a senior official for promotion if his cas4e has not been considered according to the rules according to his seniority. The court can issue writ of Mandamus only to direct the authority to exercise discretion according to law[19]. The High Court cannot issue a writ of Mandamus directing the appointing authority to promote an official. Where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone.

2. When writ of Mandamus can be issued to promote: But an exception to the general rule is that if even after issue of a wit directing the authority to consider the case of an officer for promotion, if the authority to whom such a writ is issued, arbitrarily refuses to promote an officer, it is competent for the high court to issue a writ directing the authority to promote the officer. However, when it is found that the only ground on which promotion is denied is untenable a direction to promote can be issued.

3. Promotion by selection-right for consideration: In case of promotion by selection also every civil servant who is eligible for consideration according to rules has got a right for consideration. In such cases if persons who are eligible for consideration for promotion in respect of posts to be filled by promotion by selection, complain that inspite of eligibility their cases were not considered, it is competent for the high court to issue a writ under Article 226 of the Constitution to consider their cases for selection according to the rules to re-do the selections after such consideration.

[19] State of Haryana Narash Kumar Bali, (1994) 4 SCC 448

Death of a civil servant during pendency of a writ petition:

If a civil servant who has challenged an order of termination passed against him by the state in a writ petition dies during the pendency of such writ petition, the legal representatives of such civil servants are entitled to be brought on record. The legal representatives are entitled to recover the salary due to the deceased till the date of his death if the order of termination is set aside by the court.

But where the cause of action of a civil servant in the writ petition is only personal, the cause of action does not survive after his death. In such cases, there is no question of bring the legal heirs on record and they have no right to be brought on record.

Futile writs will not be issued:

In issuing writs under Article 226 of the Constitution if the writ to be issued is likely to become futile and no useful purpose will be served in issuing it, the High Court would refrain from issuing a writ of that nature. Therefore, in a case where a person who was temporarily continued in a post subject to being removed on the selected candidate being appointed to his place, the mere fact that there are certain infirmities in the select list is no ground for issuing a writ when it is brought to the notice of the court that there is a subsequent valid list and the petitioner is bound to vacated his office on the appointment of a person in such a valid select list. The court will not issue a writ as it would become futile[20].

Similarly where a writ petition of Quo Warranto against a person appointed to a public office on the ground that he did not possess the requisite qualification, the High Court refuses to issue a writ if during the pendency of the writ petition, the person has acquired the necessary qualification for appointment of the post in question.

[20] S. V. Krishna v/s State of Mysore, 1972(1) Mys LJ 629

Conclusion:

The working of the Tribunal and the approach of the Supreme Court do not support the opinion that the Tribunal does not/cannot have power to issue any orders, directions or writs under Articles 226 and 227 of the Constitution. Theoretically also, it cannot be convincingly argued that the Tribunal has no power under Articles 226 and 227. As there is no doubt that while deciding the cases before it the Tribunal has to apply the law relating to service conditions available in various statutes, rules, notifications, administrative instructions, etc., but this law relating to service conditions is not the source of the Tribunal's power. The source of the Tribunal's power is Article 323-A of the Constitution, read with Sections 14, 28 and 29 of the Administrative Tribunals Act; and under these provisions the Tribunal can issue any order, directions or writs.

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