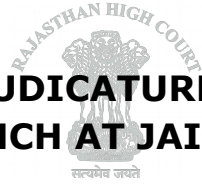




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 5992/2024

Vishnu Kumar Saini, S/o Bhagwan Sahai Saini, Aged About 45
Years, R/o Ashok Vihar, Chomu, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Local Self Government Department, Secretariat, Jaipur.
2. The Director And Joint Secretary, Department Of Local Self Government, Government Of Rajasthan, G-3, Rajmahal Residency Area, Near Civil Lines Phatak, C-Scheme, Jaipur.
3. The Deputy Director (Regional), Department Of Local Self Government, Government Of Rajasthan, New Colony, Opposite Hotel Welcome, Panch Batti, Jaipur.
4. Shubham Gupta, Executive Officer - Iii, Nagar Parishad, Chomu, Rajasthan.

----Respondents

For Petitioner(s) : Mr. R. B. Mathur, Sr. Advocate with
Mr. Nikhil Simlote, Mr. Falak Mathur
Mr. Varmit Jain, Mr. Salim Khan
Mr. Yug Singh & Mr. Devyansh Mathur

For Respondent(s) : Mr. G. S. Gill, AAG with
Mr. Surya Pratap Singh
Dr. Abhinav Sharma with
Mr. Vikas Kumawat

HON'BLE MR. JUSTICE SAMEER JAIN

Order

Reserved on **30/05/2024**

Pronounced on **25/07/2024**

1. The instant petition is filed with the following prayers:-
"i) Please to call for the record and allow the writ petition filed by the petitioner.
ii) Remove the Respondent No. 4 from the post of the Executive Officer, Chomu.
iii) Cancel/quash the order dated 22.02.2024, quo respondent No. 4.
iv) Pass any other appropriate order which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case in favour of the petitioner."



2. Learned Senior Counsel, Mr. R.B. Mathur, appearing on behalf of the petitioner has submitted that the instant petition is filed being aggrieved of the illegal appointment of respondent no.4 i.e. Mr. Shubham Gupta, as the Executive Officer of Nagar Parishad Chomu.

3. In order to substantiate upon the noted grievance, learned counsel submitted that the petitioner herein is the Chairman of the Nagar Parishad, Chomu. It was averred that vide notification dated 01.08.2023, as issued by the Department of Local Self Government, the Nagar Palika Chomu was declared as a Nagar Parishad (Municipal Council). Meanwhile, vide order dated 10.08.2023, respondent no. 4- Mr. Shubham Gupta, who belongs to the Executive Officer-III Category, was transferred /posted as Executive Officer of Nagar Parishad Chomu.

4. Being aggrieved of the respondent no.4's appointment as Executive Officer, the petitioner's father filed a representation before respondent nos. 1 and 2 alleging that such appointment is illegal *per se*, as only a person who belongs to the category of Commissioner can be appointed as Executive Officer of any Municipal Council as per the Rajasthan Municipal Service (Administrative and Technical) Rules, 1963 (hereinafter, Rules of 1963). In this regard, it was averred that subsequent to the notification dated 01.08.2023, Nagar Palika Chomu was declared as Nagar Parishad (Municipal Council). Therefore, the Executive Officer so appointed therein, ought to fulfil the aforementioned criteria, which in the facts of the present case, is not met by the



credentials of the respondent no. 4, as Mr. Shubham Gupta is merely an Executive Officer-Grade III.

5. Learned counsel further submitted that pursuant to the said representation, the Department of Local Self Government vide order dated 21.02.2024, made the respondent no. 4 the APO from the post of Executive Officer, Chomu. However, much to the shock and surprise of the petitioner, the very next date i.e. vide order dated 22.02.2024, the posting of the respondent no. 4 as APO was cancelled whilst he continued to serve as Executive Officer. Therefore, being aggrieved of the arbitrary actions of the respondents, the petitioner has preferred the instant petition seeking a writ of quo warranto.

6. At this juncture, learned counsel for the petitioner reiterated that the posting and charge given to the respondent no. 4 as an Executive Officer is against the provisions of law encapsulated in the Rules of 1963 as only a person who belongs to the category of Commissioner can be appointed and posted as Executive Officer of any Municipal Council. Therefore, the respondent no. 4 could have only become the Executive Officer, Chomu prior to the Nagar Palika being declared as a Nagar Parishad (Municipal Council). In support of the arguments advanced, learned counsel also placed reliance upon the dictum of the Coordinate Bench of this Court as enunciated in the order dated 15.02.2021 passed in **S.B. Civil Writ Petition No. 2185/2021** titled as **Shrawan Ram and Ors. vs. State of Rajasthan and Ors.**

7. Learned counsel, in conclusion, stressed that the respondent nos. 1 and 2 are expected to act in accordance with law whilst



making such public postings. The action of the respondents in giving posting to respondent no. 4 as an Executive Officer, Chomu is not sustainable in the eyes of law, as Mr. Shubham Gupta does not possess the due authority to hold such post as per the Rules of 1963.

8. *Per contra*, learned counsel for the respondents submitted that the instant petition ought to be dismissed at the threshold as the same is politically charged, having been filed with malice and concealed facts. In this regard, learned counsel drew the attention of this Court to Annexure R-4/6 i.e. letter dated 11.08.2023 and submitted that the father of the petitioner wanted to get one of his relatives appointed on the post of Executive Officer as opposed to the respondent no. 4 and when the said wish did not come to fruition, the petitioner approached this Court maliciously. In order to further highlight malice, learned counsel averred that the petitioner was involved in allotment of certain forged pattas, in relation with which, respondent no. 4 initiated enquiry and as a result, being vindictive, the petitioner preferred the instant petition.

9. Furthermore, learned counsel averred that the petitioner has failed to challenge the substantive order i.e. order dated 10.08.2023 which appointed the respondent no.4 as the Executive Officer. Rather, the petitioner has merely challenged the order dated 22.02.2024, by way of which, the posting as APO was cancelled/withdrawn. In this regard, learned counsel averred that the order dated 21.02.2024 appointing the respondent no. 4 as



APO was withdrawn merely on account of administrative exigencies and not undue influence.

10. Learned counsel further submitted that the order of respondent no.4's appointment as Executive Officer is not a regular/permanent one but only temporary in nature. At this juncture, learned counsel placed reliance upon the dictum enunciated in **B. Srinivasa Reddy vs. Karnataka Urban Water Supply and Drainage Board Employees Association and Ors.: AIR 2006 (SC) 3106, P.L. Lakhanpal vs. A.N. Ray and Ors.: AIR 1975 (Delhi) 66 and A.N. Shastri vs. State of Punjab and Ors.: (1988) Supp. SCC 127** and submitted that when the language of the orders is very clear and administrative appointments are made considering factum of administrative exigencies on a temporary basis, then competency of the appointee cannot act as a bar. Accordingly, it was argued that the order dated 10.08.2023 appointing the respondent no. 4 as Executive Officer was passed on account of the subsisting exigency of limited staff, forthcoming elections and change in the status of Nagar Palika. Therefore, in the facts of the present case, judicial interference in administrative decision-making is unwarranted.

11. Heard and considered the arguments advanced by learned counsel for both the sides, scanned the record of the petition and perused through the judgments cited at Bar.

12. At the outset, this Court deems it appropriate to formulate the following questions of law, redressal of which, shall efficaciously adjudicate the *lis* before this Court, namely:-





(i) Whether the petitioner possesses the *locus standi* to file the instant petition seeking a writ of quo warranto?

(ii) Whether in the facts and circumstances of the present case, the petitioner has approached this Court with unclean hands?

(iii) Whether respondent no.4 is competent to hold the office of Executive Officer at the Nagar Parishad (Municipal Council), Chomu?

13. Prior to penning down observations on the questions of law formulated, this Court deems it appropriate to take note of certain germane stipulations, which emerge from the record of the instant petition. They are noted herein-under:-

13.1 That vide Annexure No.3 i.e. notification dated 01.08.2023, Nagar Palika Chomu was declared as a Nagar Parishad (Municipal Council) by the Department of Local Self Government.

13.2 That vide Annexure-4 i.e. order dated 10.08.2023, various transfers were made by the Department of Local Self Government whereby respondent no.4 i.e. Mr. Shubham Gupta, who belongs to the Executive Officer-III category, was transferred/posted as Executive Officer, Chomu from Bandikui, Nagar Palika. In the said order dated 10.08.2023, Mr. Shubham Gupta's name was reflected at Serial No. 44.

13.3 That immediately after the said order was passed, father of the petitioner, who is a resident of Chomu and also, an ex-member of the State's legislative assembly, made a representation before respondent nos. 1 and 2 for the removal of respondent no.4 from the post Executive Officer, Nagar Parishad Chomu



(Municipal Council), citing incompetency and non-fulfilment of the eligibility criteria encapsulated within the Rules of 1963.

13.4 That the Rules of 1963, marked as Annexure-9, lay down the following criteria for appointment in respective Municipal Councils/Municipalities, wherein for Municipal Councils including those of the municipalities of Jaipur, the officer so appointed ought to belong to the category of Commissioner, as noted herein-under:

“ *Matters Relating to first appointment by way of Integration*

S. No.	Post Held on 31.03.1960	Category with gradation of post for which eligible
1.	2.	3.
Administrative Officers		
1.	Municipal Commissioners of Municipal Councils including Municipalities of Ajmer, Alwar, Bikaner, Jaipur, Jodhpur, Udaipur, Beawar and Koath	Municipal Commissioner Municipality Class I (Municipal Councils)
2.	Executive Officers of Class II Municipality and Secretary Class I Municipality (X X X)	Executive Officer, Class II, Municipality
3.	Executive Officer or Secretary of Class III Municipality (including Municipality of Kekri)	Executive Officer Class III Municipality

13.5 That vide Annexure R/2 i.e. letter dated 25.08.2023, Executive Officers working in the newly constituted/upgraded Municipal Councils were authorized to continue discharging their functions on the post of Commissioner, only if they held such office on 01.08.2023. The relevant extract of the letter dated 25.08.2023 is reproduced herein-under:-

“राज्य में हाल ही में 17 नवीन जिलों का गठन होने से जिला मुख्यालय स्थित व अन्य नगर पालिकाओं का नगर परिषद में क्रमोन्नयन/गठन किया गया है। वर्तमान में कतिपय नगर परिषदों में राजस्थान नगर पालिका सेवा के आयुक्त सतर के अधिकारी नहीं होने से नगरीय निकायों के दैनिक व विकास कार्य प्रभावित हो रहे हैं।



अतः विभाग के समसंख्यक पत्रांक : 6126 दिनांक 21.08.2023 की निरन्तरता में स्पष्ट किया जाता है कि नगर पालिका से क्रमोन्नत/नवगठित नगर परिषदों में पूर्व से कार्यरत अधिशाषी अधिकारी सम्बन्धित नवक्रमोन्नत/नवगठित नगर परिषद के आयुक्त पद का कार्य करने हेतु अग्रिम आदेशों तक अधिकृत होंगे तथा जिन नवक्रमोन्नत/नवगठित नगर परिषदों में आयुक्त/अधिशाषी अधिकारी का पद रिक्त है, उन नगर परिषदों में आयुक्त के रिक्त पद का अतिरिक्त चार्ज जिले में पदस्थापित राजस्थान प्रशासनिक सेवा (RAS) के किसी अधिकारी को देने हेतु सम्बन्धित जिला कलेक्टर अधिकृत होंगे।”

14. Having taken note of the foregoing stipulations, this Court deems it appropriate to answer the questions of law so formulated, in the following manner:-

Issue No.1: Whether the petitioner possesses the *locus standi* to file the instant petition seeking a writ of quo warranto?

15. In order to ascertain the maintainability of a writ of quo warranto and the corresponding *locus standi* of the petitioner, this Court deems it appropriate to place reliance upon the dictum of the Division Bench of this Court as enunciated in **Officer KV Agarwal vs. State of Rajasthan** reported in **(2023) 4 WLC 77**. The relevant extract of the judgment rendered in **Officer KV Agarwal (Supra)** is reproduced herein-under:-

“13. In View of the aforesaid judicial pronouncements, the settled legal position which emerges is that though PIL in service matters would not be maintainable, a writ of quo warranto could well be maintained by a citizen. Thus, a citizen can claim issuance of writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the public office is authorised to hold the same as per law and in such matters, delay and laches does not constitute any



impediment to deal with the lis on the merits. It has also been held that the judicial determination can be confined to the integrity of the decision making process in terms of statutory provisions.

31. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in Kashinath G. Jalmi v. Speaker (1993) 2 SCC 703."

16. From a bare perusal of the aforesaid, the mere fact that the petitioner is a bonafide resident of Chomu, who also happens to be the elected Chairman of the Nagar Parishad Chomu, automatically qualifies the petitioner to be a 'relater' who may claim the issuance of a writ of quo warranto against a perceived injustice/legal derailment, in the larger public interest, without having any special/person interest.

17. As a result, being a bonafide resident of Chomu, the petitioner is well within their rights to seek a writ of quo warranto in order to ascertain whether the respondent no. 4 i.e. Mr. Shubham Gupta is authorized to hold the public office as Executive Officer, especially looking to their qualifications/credentials. The implications of a perceived irregular appointment, insofar as the same is beyond the prescribed statutory qualifications, are far reaching and wide. The very purpose of seeking a writ of quo warranto is to prevent the abuse or usurpation of public offices





and to ensure that those who hold such positions do so legitimately and within the bounds of the law. The foregoing view was also adopted by the Coordinate Bench of this Court in **S.B Civil Writ Petition No. 4166/2024** titled as **Kamlesh Kumar Meena vs. State of Rajasthan and Ors.**

18. Therefore, it can be conclusively said that the petitioner possesses due *locus standi* to file the present petition seeking a writ of quo warranto, being a resident of Chomu, which automatically qualifies him to be a 'relater' to the said appointment.

Issue No.2: Whether in the facts and circumstances of the present case, the petitioner has approached this Court with unclean hands?

19. The argument advanced by the learned counsel for the respondents, that the instant petition is politically charged, having been filed with unclean hands, cannot be countenanced, for the following reasons:-

19.1 That being aggrieved of the order dated 10.08.2023, by way of which the respondent no.4 was appointed as Executive Officer, Nagar Parishad (Municipal Council) Chomu, the father of the petitioner immediately on 11.08.2023 itself, furnished a representation before the respondent nos. 1 and 2, citing irregular appointment on account of non-eligibility (Annexure-R-4/6). The immediate representation signifies promptness on part of the petitioners in raising a challenge against the order dated 10.08.2023, which prima facie precludes the underlining plausibility of malice and/or the challenge being made as an after





afterthought on account of subsequent events, such as the initiation of inquiry as argued by the counsel for the respondents.

19.2 That the filing of the representation dated 11.08.2023, against the order dated 10.08.2023 also negates the argument advanced by the respondents, regarding the failure of the petitioners to raise a challenge against the substantive order dated 10.08.2023 as opposed to the subsequent cancellation order qua the post of APO dated 22.02.2024. The representation dated 11.08.2023 categorically signifies the perceived injustice and/or grievance on part of the petitioners, being residents of Chomu, viz-a-viz the appointment of respondent no.4, at the first instance itself.

19.3 That the contention of the learned counsel for the respondents that the petitioners filed the instant petition at a belated stage i.e. after substantial delay from the date of appointment of the respondent no.4, with malice on account of the fact that the respondent no.4 initiated inquiry against the petitioner in certain criminal proceedings, cannot be accepted by this Court for the simple reason, that as established above, the initial grievance qua respondent no.4's appointment was highlighted immediately after the latter's appointment, the very next day on 11.08.2023 itself. Moreover, qua the aspect of malice, it is noted that pursuant to the initiation of enquiry, no other steps could have been taken by the respondent no.4 in the criminal proceedings against the petitioner, as the same formed part of the criminal proceedings. Therefore, the mere initiation of enquiry by respondent no.4 against the petitioner cannot be accepted as a



ground to negate a challenge raised against eligibility of an officer on a public post i.e. respondent no.4.

19.4 In support of the foregoing observation(s), reliance can be placed upon the dictum of the Hon'ble Apex Court as enunciated in **Dr. Kashinath G. Jalmi and Anr. vs. The Speaker and Ors.** reported in **(1993) 2 SCC 708**, wherein it was held that a writ in the nature of class action alleging usurpation of public office shall be maintainable, as long as the alleged illegality continues, and factors such as delay, motive and conduct of petitioner shall not act as a bar *per se*. The said conduct/motive, if at all proved, can only be considered for denying the petitioners costs. The underlying rationale being the writ of quo warranto being an action in the general interest of the public at large.

Issue No.3: Whether respondent no.4 is competent to hold the office of Executive Officer at the Nagar Parishad, Chomu?

20. Upon a co-joint analysis of Annexure-9 i.e. Rules of 1963, the relevant extract of which is reproduced above, with the letter dated 25.08.2023 (Annexure R/2), it becomes evident that in order to be appointed as an administrative officer in the Municipal Council of Chomu, the officer ought to be of the designation/rank of a Commissioner. In this regard, it is noted that an officer of the designation/rank of Executive Officer-III, such as respondent no.4, can only be made the Executive Officer of a Class III Municipality, as is reflected at Serial No.3, reproduced above. Therefore, as the Municipal Council of Chomu falls within the Municipality of Jaipur, reflected at Serial No.1, the administrative officer so appointed



therein, ought to be of the designation/rank of a Commissioner, which admittedly, the respondent no.4 is not.

21. At this juncture, this Court deems it appropriate to note that the reliance placed upon the letter dated 25.08.2023, by the learned counsel for the respondents, in support of the respondent no.4 being permitted to continue rendering services on the post of Executive Officer of Municipal Council, Chomu until future/permanent appointments were made, cannot be accepted, as the same is misconstrued. In this regard, it is noted that the letter dated 25.08.2023, made it categorically clear that Executive Officers working in the newly constituted/upgraded Municipal Councils were authorized to continue discharging their functions on the post of Commissioner, only if they held such office on 01.08.2023. However, in the facts and circumstances of the present case, it is an admitted fact that respondent no.4, Mr. Shubham Gupta, was only appointed as Executive Officer of Municipal Council, Chomu only on 10.08.2023. Therefore, by facts, it is established that as the respondent no.4 did not hold the said post on 01.08.2023, he cannot assume the benefit of continuance, as provided vide letter dated 25.08.2023. In this regard, the reliance placed upon the ratio enunciated in **Shrawan Ram (Supra)** becomes noteworthy, which stated that even in emergency situations, where handing over the charge on an administrative post to a person other than Commissioner was inevitable for reasons beyond control, even then, the same could only be done for a period not exceeding 15 days.



22. Therefore, *sans* competency/eligibility for appointment, which requires the administrative officer to be of the rank of a Commissioner, the respondent no.4, who happens to be an Executive Officer-III, cannot be permitted to continue to hold office in the Municipal Council of Chomu.

23. At this juncture, it is also noted that the reliance placed by the learned counsel for the respondents on the dictum enunciated in **B. Srinivasa Reddy (Supra)** is distinguishable in the facts of the present case, for the following reasons:-

23.1 That the Rules of 1963 categorically spell out the class and grade of officers competent to hold office in the Municipal Council of Chomu, which is that of a Commissioner, as opposed to the respondent no.4's designation of an Executive Officer-III.

23.2 That the relief envisioned by the letter dated 25.08.2023 was limited for those officers, who had already been serving on the concerned post, *sans* eligibility, as on 01.08.2023, whereas the respondent no.4 only came to be appointed subsequently i.e. on 10.08.2023.

23.3 That when the Rules of 1963 prescribe a particular scale of officer for appointment in office, the same cannot be substituted by way of an executive order, as the same shall frustrate the entire object and purpose sought to be achieved by the Rules of 1963.

24. Therefore, upon a cumulative consideration of the fact that the petitioner possesses due *locus standi* to file the present petition seeking a writ of quo warranto, being a resident of Chomu, which automatically qualifies him to be a 'relater' to the



said appointment; that the mere initiation of enquiry by respondent no.4 against the petitioner cannot be accepted as a ground to negate a challenge raised against the eligibility of an officer on a public post i.e. respondent no.4; that the filing of the representation dated 11.08.2023 categorically signifies the perceived injustice and/or grievance on part of the petitioners, being residents of Chomu, viz-a-viz the appointment of respondent no.4, at the first instance itself; that as the post of Municipal Council of Chomu fell within the Municipality of Jaipur, reflected at Serial No.1 (Annexure No. 9-Rules of 1963), the administrative officer so appointed therein, ought to be of the designation/rank of a Commissioner, which admittedly, the respondent no.4 is not and relying upon the dictum enunciated in **Dr. Kashinath G. Jalmi and Shrawan Ram (Supra)**, this Court deems it appropriate to allow the instant petition.

25. Accordingly, in light of the foregoing observations, the instant petition is allowed. Consequently, the order impugned dated 22.02.2024 is quashed and set aside.

26. Pending applications, if any, stand disposed of.

(SAMEER JAIN),J

Pooja /563