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IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
(ORIGINAL JURISDICTION)

W. P. No /2020 (GM-RES-PIL)

BETWEEN  
UMAPATHIS

..... Petitioner

AND

- 1) **The State of Karnataka,**  
Represented by its Chief Secretary,  
Vidhana Soudha, Bangalore-560001.
- 2) **The State of Karnataka,**  
Represented by its Addl. Chief Secretary,  
Department of Personnel and Administrative services,  
Vidhana Soudha, Bangalore-560001.
- 3) **Mr. Santosh N.R**  
Political Secretary to Chief Minister,  
Room No. 432, 4<sup>th</sup> Floor,  
Vikasa Soudha, Bangalore-560001.  
Also at Non aveenaKere Village,  
Tiputur Taluk, Tumkur district.

**MEMORANDUM OF WRIT PETITION UNDER ARTICLES  
226 AND 227 OF THE CONSTITUTION OF INDIA.**

THE PETITIONER ABOVE NAMED SUBMITS AS FOLLOWS.

1. The present writ petition is submitted in Public Interest

*[Handwritten signature]*

considering the arbitrary exercise of power by the Government in appointing Third Respondent as the Political Secretary to The Chief Minister of the State with Cabinet status without any authority of law. The Chief Minister of the State issued a note directing the First Respondent to appoint a Third Respondent as the Political Secretary to the Chief Minister with immediate effect. Pursuant to the same note, the Second Respondent issued Notification appointing Third Respondent as the Political Secretary to the Chief Minister with Cabinet status. The certified copies of the note of the Chief Minister dated 28-05-2020 and Notification by the Government dated 29-05-2020 is hereby enclosed as **Annexure-A and B** for the kind reference of this Hon'ble Court. Since Annexure-A and B are in Kannada, the translated copies are also enclosed along with the Petition.

2. It is submitted that due to certain opposition within the Government and Party Workers, the said Notification dated 29-05-2020 was not given effect. However, the Chief Minister of the State issued another note dated 22-06-2020 directing First Respondent to appoint Third Respondent as the Political Secretary to the Chief Minister of the State. On the Same day, the Second Respondent issued Notification appointing the Third Respondent as the Political Secretary to the Chief Minister of the State. The certified copies of the note of the Chief Minister and Government Notification dated 22-06-2020 are hereby enclosed as **Annexure-C and D**. Since Annexure-C and D are in Kannada, the translated copies are hereby also enclosed along with the petition.

3. Pursuant to the above development, the Petitioner submitted a

representation on 09-10-2020 against the illegal appointment of Third Respondent as the Political Secretary to the Chief Minister with Cabinet status. The said representation was submitted to the First and Second Respondent Office by hand under seal and signature of the concerned Officials. However, the Third Respondent and their Staff refused to receive the representation stating to send the same by Post. Though all the Offices in Vikasa Soudha are Public Offices, yet the Office of Third Respondent in Vikasa Soudha is fully staffed by Political followers and are working in Public Office as if they are Government Servants without any authority of law. There is no name, designation or nature of duty assigned to them when enquired. The representation which was refused to be received by hand, when sent by registered post too was returned unclaimed to the sender. From this, it is clear that the Third Respondent and their Staff who are occupying the Public Office are acting in arbitrary and dictatorial fashion abusing Public Office for Political advantage. The copy of the representation submitted to the Respondents dated 09-10-2020 is hereby enclosed as Annexure-E for the kind reference of this Hon'ble Court.

4. Considering the above facts of the case and also the arbitrary exercise of power by the State Government in appointing the Third Respondent as the Political Secretary to Chief Minister without any authority of law, the Petitioner is preferring the instant Writ Petition in the nature of Public Interest. The petitioner is not having any other alternative and efficacious remedy. No Petition has been filed by the Petitioner on the same cause of action or is pending before this Hon'ble Court. Further,

the Petitioner, being Practicing Advocate and Member of the Bar, seeks the kind permission of this Hon'ble Court, to prosecute the present case as Party-In-Person in the interest of justice and equity.

### GROUND

5. The present appointment of Third Respondent as the Political Secretary to the Chief Minister of the State is tainted with arbitrariness, favoritism and non-transparency since neither the State Government or the Chief Minister can create such Post of "Political Secretary" to himself by giving Cabinet Status. There is no legislation by the Assembly of State of Karnataka codifying the method of appointment, functions and perks of a 'Political Secretary'. Not even proper Rule or Regulation in exercise of its Executive Power, so far, has been framed by the State creating the Post of Political Secretary. Since there is no regular Cadre carrying this nomenclature originating from any statute or deriving authority from the Constitution of India, Political Secretary can't be the part of the regular State Services nor Executive authorities forming part of the bodies involved in Governance of the State. Therefore, Third Respondent can't continue the Public Office in the name of Political Secretary to the Chief Minister with Cabinet Status. Accordingly, the exercise of Chief Minister Power to create the Post of Political Secretary to accommodate his relative and Political followers of his Party is unconstitutional and liable to be set aside.
6. Appointment of a Third Respondent as political secretary to the Chief Minister with Cabinet Status with full fledged Staff in the

Public Office is against Public Interest since a lot of Public Money is being spent on the Third Respondent, his Staff and other expenses of the Office. Further, since there is no provision for appointment of Private Person as the Political Secretary with cabinet status, there is no accountability nor any transparency in their functioning. The office of Political Secretary is created to achieve collateral Political purpose and not for any discharge of Public duties. The office and the power of Cabinet Status granted to Third Respondent shows that, for all intents and purposes, the office of the Political Secretary has trappings of the post of Hon'ble Ministers of State without independent charge. This mode of appointment will work as a device available to the Chief Minister to appoint any Person who is not even the Members of the Legislative Assembly and Legislative Council of his choice as Political Secretary. When the appointment of any Citizen to the Public Post is regulated by laid down guidelines, rigorous recruitment process and background check, appointment of a Private Person as Political Secretary with Cabinet Status is clear abuse of power by the respondents. The Chief Minister of the State can't act at his own whims by appointing the Person of his choice as Political Secretary with cabinet status; this is clear abuse of power. Therefore the Third Respondent can't continue to hold the Public Post any longer.

7. Appointment of Private Persons to the Office of Public Office with Cabinet Status would mean that he is entitled for all the privileges and perks of the Minister. His Office Staff is equivalent to that of a Minister. It cannot be said that he does not have access to the Government Records and Government Files.
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Thus allowing the Private Persons and Political followers directly into the administration of the State with Cabinet Status of the Minister is unconstitutional. The Third Respondent can't continue the Office of Profit any longer. Apart from above, the State is also incurring huge expenditure out of Public money to run his office as Political Secretary.

In the present case, the Third Respondent has no legal right to occupy the Public Office with Cabinet Status. The Third Respondent is the Grandson of the Chief Minister who abused his power to allow his relatives for Political and other collateral purposes. It is settled law that Writ of Quo Warranto, sought in the present petition, is used to prevent an improper exercise of power and its purpose is solely to prevent an Officer or corporation or Persons purporting to act as such from usurping a power which they do not have. The Hon'ble Supreme Court in the case of *The University of Mysore v. C.D. Govinda Rao* and another while dealing with the nature of the Writ of Quo Warranto, stated as under

*"Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It*

*would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."*

In the instant case, the Third Respondent has usurped Public Office with no legal right to occupy the Public Office. Accordingly, this Hon'ble court is justified in issuing the Writ of Quo Warranto, to oust him by judicial order.

#### **GROUNDS FOR INTERIM PRAYER**

8. The State Government does not have unlimited discretion or power to appoint anybody that it chooses to do as is done in the present case. The Third Respondent is occupying Public Office Post with Cabinet status though he is not legally entitled to continue as such in gross violation of the law, Political considerations, arbitrary and abuse of power by the First and Second Respondent at the behest of the Chief Minister of the State. The Public Office is literally being run by the Chief

Minister's relatives and political followers to achieve their Political agenda by misusing the Public Office. This is a grave violation of rule of law and goes against the very basic objectives of good Governance. If the Third Respondent is allowed to continue the Public Office, then the abuse of Public Office by a Private Person would continue uninterrupted. In case the stay order is not granted, the Third Respondent would continue to work till the disposal of the present Petition and may become in fructuous by the time the Petition is disposed of. In the present case, the Third Respondent, appointed by Chief Minister for Political and extraneous consideration, being highly influential and powerful, is still managing to hold the Public Post and Office without any hindrance. Therefore, it is just and proper for this Court to issue necessary orders directing the Third Respondent to vacate the Office forthwith as the Political Secretary to the Chief Minister.





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PRAYER

9. Wherefore, in view of facts and the grounds narrated in this Petition, the Petitioner most respectfully prays this Hon'ble Court be pleased to call for the entire records on the file of Second Respondent bearing No. DPAR 56 protocol 2020 dated 22-06-2020 pertaining to appointment of Third Respondent and on perusal of the same:
- A. Issue a Writ in the nature of Quo Warranto or any other appropriate Writ prohibiting Third Respondent from exercising the duties as the Political Secretary to the Chief Minister
- B. Pass any other order or issue a Writ or direction which this Hon'ble Court deems fit in the circumstances of the case.

INTERIM PRAYER

10. For the reasons stated in Para 11, this Hon'ble Court may be pleased to stay the operation of the Notification bearing No. DPAR 56 Protocol 2020 dated 22-06-2020 issued by the Second Respondent produced as Annexure-D and further prohibit Third Respondent from exercising the duties as the Political Secretary to the Chief Minister of the state during the pendency of the present Writ Petition, in the interest of justice and equity.

Place: Bangalore

UMAPATHI.S

Date: 24.11.2020

(Advocate and Party in Person)

Address for Services:

UMAPATHI.S.