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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

WRIT APPEAL No. 1598 of 2019

BETWEEN:-

**SANDEEP KULSHRESETHA S/O LATE SHRI
V.D.KULSHRESTHA, AGED- 50 YEARS, OCCUPATION:SERVICE,
R/O I.I.T.T.M. GWALIOR (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI PAWAN DWIVEDI - ADVOCATE)

AND

- 1. MANOJ PRATAP SINGH YADAV S/O SHRI S.S.YADAV, AGE – 34
YEARS, OCCUPATION – PRESENTLY UNEMPLOYED, R/O
D.H.-86, DEENDAYAL NAGAR, GWALIOR (MADHYA
PRADESH)**
- 2. UNION OF INDIA, MINISTRY OF TOURISM, THROUGH ITS
SECRETARY, GOVERNMENT OF INDIA, TRANSPORT
BHAWAN, NEW DELHI**
- 3. THE CHAIRMAN (MINISTRY OF TOURISM DEPARTMENT),
BOARD OF GOVERNORS, IIITM, TRANSPORT BHAWAN,
NEW DELHI**
- 4. THE DIRECTOR, CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI**
- 5. THE SUPERINTENDENT OF POLICE, GWALIOR (MADHYA
PRADESH)**

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6. THE STATION HOUSE OFFICER, POLICE STATION UNIVERSITY, GWALIOR (MADHYA PRADESH)
- 7 SMT. USHA SHARMA, ADDITIONAL SECRETARY, FORMER ADDITIONAL DIRECTOR GENERAL (ADG), MINISTRY OF TOURISM, GOVERNMENT OF INDIA, NEW DELHI
- 8 SMT. NEELA LAD, DEPUTY DIRECTOR GENERAL, MINISTRY OF TOURISM, TRANSPORT BHAWAN, NEW DELHI
- 9 THE CHIEF VIGILANCE OFFICER, MINISTRY OF TOURISM, GOVERNMENT OF INDIA, TRANSPORT BHAVAN, NEW DELHI

.....RESPONDENTS

(SHRI S.S.KUSHWAHA – ADVOCATE FOR RESPONDENT NOS. 2,3 AND 9;
RESPONDENT NO.1 – MANOJ PRATAP SINGH YADAV IS PRESENT IN PERSON)

&

WRIT APPEAL No. 1994 of 2019

BETWEEN:-

1. UNION OF INDIA, MINISTRY OF TOURISM, THROUGH ITS SECRETARY, GOVERNMENT OF INDIA, TRANSPORT BHAWAN, NEW DELHI
2. THE CHAIRMAN (MINISTRY OF TOURISM DEPARTMENT), BOARD OF GOVERNORS, IITM, TRANSPORT BHAWAN, NEW DELHI
3. THE CHIEF VIGILANCE OFFICER, MINISTRY OF TOURISM, GOVERNMENT OF INDIA, TRANSPORT BHAVAN, NEW DELHI

.....APPELLANTS

(BY SHRI S.S.KUSHWAHA – ADVOCATE)

AND

1. MANOJ PRATAP SINGH YADAV S/O SHRI S.S.YADAV, AGE – 34 YEARS, OCCUPATION – PRESENTLY UNEMPLOYED, R/O

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- D.H.-86, DEENDAYAL NAGAR, GWALIOR (MADHYA PRADESH)**
- 2. THE DIRECTOR, CENTRAL BUREAU OF INVESTIGATION, NEW DELHI**
 - 3. THE SUPERINTENDENT OF POLICE, GWALIOR (MADHYA PRADESH)**
 - 4. THE STATION HOUSE OFFICER, POLICE STATION UNIVERSITY, GWALIOR (MADHYA PRADESH)**
 - 5. SANDEEP KULSHRESETHA S/O LATE SHRI V.D.KULSHRESTHA, AGED-50 YEARS, OCCUPATION: SERVICE, R/O I.I.T.T.M. GWALIOR (MADHYA PRADESH)**
 - 6. SMT. USHA SHARMA, ADDITIONAL SECRETARY, FORMER ADDITIONAL DIRECTOR GENERAL (ADG), MINISTRY OF TOURISM, GOVERNMENT OF INDIA, NEW DELHI (PROFORMA RESPONDENT)**
 - 7. SMT. NEELA LAD, DEPUTY DIRECTOR GENERAL, MINISTRY OF TOURISM, TRANSPORT BHAWAN, NEW DELHI (PROFORMA RESPONDENT)**

.....RESPONDENTS

**(RESPONDENT NO.1 IS PRESENT IN PERSON.
SHRI PAWAN DWIVEDI – ADVOCATE FOR RESPONDENT NO.5)**

Reserved on : 11/10/2023
Pronounced on : 20/11/2023

These appeals having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Rohit Arya pronounced the following:

JUDGMENT

These appeals, under section 2(1) of the Madhya Pradesh (Uchcha Nyayalaya Ki Khand Peeth Ko Appeal) Adhiniyam, 2005, are directed against the impugned order dated 27/08/2019 passed in W.P. No.4308/2016 and, thus are being decided by this common judgment.

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For the sake of convenience, reference to parties is in accordance with title of W.A. No.1598/2019.

2. By the order under challenge, the learned Single Judge, while exercising his discretionary jurisdiction under *quo warranto*, has quashed the order dated 30/9/2003 of appointment of appellant Sandeep Kulshrestha on the post of Professor (Tourism) in Indian Institute of Tourism and Travel Management (for short "IITTM"), Gwalior, as also his regularization on the said post vide order dated 15/6/2007 and appointment to the post of Director IITTM, Gwalior vide order dated 25/6/2014 having found that he had secured appointment on the post of Professor (Tourism) by furnishing incorrect information. Besides, the learned Judge also directed that since at the time of appointment to the post of Professor (Tourism), the appellant was working on the post of Reader, therefore, he should also refund the difference of salary between the pay of Reader and Professor (Tourism)/Director IITTM-Gwalior, within a period of three months therefrom failing which the delayed refund would carry interest at the rate of 6% per annum. That apart, the learned Single Judge *inter alia* issued directions to the CBI to start investigation against the appellant and all the OICs.

3. The factual matrix of the case may be summarized thus:

(i) In the month of January, 2003, respondent no.2/UOI issued an advertisement for recruitment on the post of Professor in Tourism at IITTM, Gwalior. The minimum qualifications as mentioned in the

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advertisement were as under:-

“Max Age : 50 years

Educational Qualifications:

An eminent scholar with published work of high quality, actively engaged in research in which 10 years of experience in post graduate teaching and/or research at the University/National level institutions including experience of guiding research at doctoral level OR an outstanding scholar with established reputation who has made significant contribution to knowledge.”

(ii) In pursuance of the said advertisement, appellant Sandeep Kulshrestha also applied for the post of Professor (Tourism) and submitted his Curriculum Vitae (CV) disclosing his educational qualification and work experience together with experience certificates. The relevant portion of his CV reads thus:

| S.No | Post held & payscale | Year | Classes taught | Department |
|-------------|---|--------------------------|----------------------------|---|
| 1. | Reader (12000-18300) | 26-02-98 to till date | PGDBM, DTM, MDP, EDP | Indian Institute of Tourism & Travel Management, Govt. of India, Govindpuri, Gwalior |
| 2. | Reader (3700-5700) | 29-01-97 to 25-02-97 | DTM, MDP, EDP | Business Studies IITTM, ETC, Bhubaneswar, Orissa |
| 3. | Sr. Assistant Professor (3000-5000) | 25-02-96 to 27-01-97 | M.Com, MBA, MPA | Commerce Department, Madhav Post Graduate College |

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|---|---------------------------------|-------------------------|-----------------------|--|
| 4 | Asstt. Professor (2200-4000) | 25-02-91 to 24-02-96 | M.Com, MBA, MPA | Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior |
| 5 | Lecturer (2200-4000) | 25-08-90 to 24-02-91 | M.Phil, MBA | School of Commerce and Management Studies, Jiwaji University, Gwalior |
| 6 | Lecturer | 20-03-90 to 22-08-90 | M.Com | School of Commerce and Management Studies, Jiwaji University, Gwalior |

As such, the appellant claimed a total of more than 11 years of teaching experience, whereas for appointment on the post of Professor (Tourism), the requirement was 10 years post Graduate Teaching Experience in advertisement and 8 years under the recruitment rules.

(ii) The Selection Committee met on 24/02/2003. It interviewed 5 candidates for the post of Professor and also considered request of two candidates including the present appellant being considered *in absentia*. Based on their academic record, earlier background, experience and performance, the selection committee unanimously recommended that the qualification of 10 years post graduate experience may be waived since none of the applicants had 10 years PG experience in Tourism. The Committee did not find any of the candidates interviewed

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suitable for the post and decided that the applicants who had requested for consideration *in absentia*, may be called for an interview on a subsequent date. The minutes of the Selection Committee meeting dated 24/2/2003 have been placed on record as Annexure P/7 and Annexure P/8. As it transpires from the record, the contents of Annexure P/7 and P/8 are exactly the same except for the fact that Annexure P/7 reflects Mrs. Rashmi Verma, ADG, Dept of Tourism as Chairperson with members as Prof. Kapil Kumar and Dr. Ravi Bhoothalingam (Subject Experts) and Mr. D.Singhal (Director IITTM), whereas in Annexure P/8 name of Mrs. Rathi Vinay Jha, Secretary (Tourism) is mentioned as Chairperson with members as Mrs. Rashi Verma, ADG, Deptt. Of Tourism (Nominee) together with the names of same three members as mentioned in Annexure P/7. However, both Annexure P/7 and P/8 have not been signed by the Chairpersons.

(iii) The next meeting of Selection Committee was held on 4/7/2003 in which the appellant and one more person were interviewed. The Committee recommended for appointment of the appellant. The recommendation of the selection Committee was considered by the Board of Governors in its 27th meeting dated 21/7/2003 (pages 309, 310 & 313) in which the Board authorised the Chairperson of the BOG to approve the appointment of the appellant. The Chairperson approved the appointment of the appellant and he was appointed as Professor w.e.f.

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1/10/2003. The appointment of the appellant was then approved by the Board of Governors in its 28th meeting held on 25/11/2003 (pages 312 & 314).

(iv) The appellant was then regularized on the post of Professor (Tourism) vide order dated 15/6/2007 (Annexure P/6). Thereafter, on 12/6/2014, the appellant was appointed as Director, IITTM for a fixed tenure of 3 years which was further extended for a period of 2 years. It is pertinent to mention here that minimum qualification for recruitment on the post of Director is that the person should hold post in the payscale of Rs.16000-22400 (pre-revised) or equivalent having 3 years regular service in grade. Since the post of Professor carried such payscale, the appellant was appointed having rendered 3 years service on the post of Professor.

(v) It appears that respondent no.1 Manoj Pratap Singh had made a complaint to the CBI with the allegation that appellant had procured appointment on the post of Professor by furnishing false information, upon which he was informed by the CBI vide letter/communication dated 18/3/2016 that the Bhopal Branch of CBI had registered a complaint against appellant Dr. Sandeep Kulshrestha on 9/7/2014 with regard to his procuring employment and after completion of verification the matter had been referred to the CVO, Ministry of Tourism, Govt. of India with a request to enquire into his role and if deemed fit, the local police could be approached for taking necessary

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action against him. The instant writ petition was initially filed seeking quashment of the above mentioned letter dated 18/3/2016 and for direction to the CBI to register an FIR and investigate the matter. Thereafter, in pursuance of order dated 22/10/2018 amendment was carried out on 23/10/2018 thereby converting the petition into one seeking writ of *quo warranto* against appellant Sandeep Kulshrestha and also to recover his salary.

(vi) In the writ petition, in essence, *inter alia* the following allegations were made:-

(a) During the period 1991 to 1997, there were no MBA or MPA classes in Madhav College, Gwalior and thus claim of six years teaching experience made by Dr.Sandeep Kulshrestha was false.

(b) During the period 1997 to 2002, the IITTM was not running the classes of Post Graduate Level. Thus, it had been claimed that appellant Sandeep Kulshrestha had submitted a false declaration with regard to his work experience of teaching Post Graduate Classes.

(c) The selection committee had met twice on the same day 24/2/2003 and the minutes were not signed by their Chairperson.

(d) An enquiry had been done at the level of Ministry of Tourism, Govt. of India and it was found that Dr. Kulshrestha had not been able to substantiate his claim that he had taught MBA/MPA Classes at

Madhav College and that he had provided certificates about teaching these courses in Jiwaji University and that too for short period as guest faculty.

(e) On 1/9/2014 the petitioner made a complaint before the CBI which was registered and it was claimed that the CBI had found that the allegations/complaint is true. However, the CBI instead of registering the FIR diverted the matter to CVO, MoT which should not have been done.

(f) On 12/6/2014, the appellant had been appointed as Director- IITTM. One of the essential requirements was that the candidate should have vigilance clearance given by the Secretary/Vice Chairman of the Department. However, no such Vigilance Clearance was obtained. It was pleaded that appellant Sandeep Kulshrestha had obtained employment in collusion with competent Authorities and such an appointment deserved to be quashed. It was further pleaded that appellant had further got appointment to the post of Director, with undue favoritism from the competent Authority as well as in violation of the rules of selection process, particularly, the candidature of one Mr. A.R. Subramaniam was rejected on similar allegations.

(g) Despite the fact that an enquiry was pending against the appellant at the time of selection process for the post of Director, IITTM, the candidature of

appellant was taken into consideration. It was claimed that such an appointment was *dehors* the rules based on illegal and colorable exercise of power.

- (vii) Refuting the contentions made in the writ petition, counter-affidavit was filed by appellant Dr.Sandeep Kulshrestha, claiming that petitioner being a dismissed employee of IITTM was habitual of making complaints. He was continuously uploading obnoxious material on Facebook against the Institute , as well, as the appellant. It was further pleaded that appellant had taught M.Com classes in Madhav College, Gwalior from 25/02/1991 to 27/01/1997. He had also taken MBA and MPA Classes at Jiwaji University, Gwalior as Guest Faculty. He had been teaching as Reader IITTM since 29-01-1997 to 2003 (upto the date of submission of application for the post of Professor (Tourism)) in post graduate course as course of diploma in Tourism is available after graduation and its duration is of more than 12 months, therefore, as per AICTE norms, it is Post Graduate Course. So far as work experience is concerned, it had been duly verified by Jiwaji University, as well as, Madhav College. It was further claimed that no vigilance enquiry was pending against the appellant and vigilance clearnace was also given. It was further claimed that CVO and CVC had found that no incorrect declaration had been made. It was further claimed that the petitioner/appellant had misconstrued the letter (Annexure P/1). The CBI had

referred the matter to CVO with a request of enquiry. The CVC has already made an enquiry which has not been challenged by the petitioner/appellant. So far as two minutes of Selection Committee are concerned, it was pleaded that there is no difference between the two and both of them are identical in contents. In fact the first minutes (Annexure P/7) are draft minutes. Since name of Chairperson had been wrongly mentioned therein as Mrs. Rashmi Verma in Annexure P/7, therefore, the minutes were correctly re-drafted as Annexure P/8 showing her as one of the members. It was also pleaded that all necessary work certificates were produced by the appellant at the time of appointment on the post of Professor (Tourism).

(viii) It appears that an application (I.A. No.1700/2017) was moved on behalf of the respondents through counsel Shri Vivek Khedkar, supported by an affidavit of one K.P.Gautam, who was in service of IITTM, Gwalior. In the said application, it was pleaded that the petitioner had no *locus standi* because neither he was an employee of IITTM nor had applied for appointment on the post of Professor (Tourism) or Director. Even otherwise, the matter was sent by the CBI to CVO and CVO has investigated the matter and vide office memorandum dated 8/2/2017, it has been decided to close the action at the end of CVO. In its return, the CBI *inter alia* averred that the complaint received against the appellant on 1/9/2014 was verified, and in view of the fact that no offence had

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been made out under the Prevention of Corruption Act, 1988, the same was referred to the CVO, Ministry of Tourism, through Self Contained Note (SCN) with a request to enquire into the role of appellant and if deemed fit the local police could be approached for taking necessary action. Respondent no.3/CBI also brought a clarification on record by way of Document No. 5643/18 elucidating that CVC is the supervisory authority under which CBI functions and as per the provisions of the Central Vigilance Act, 2003, the CBI which is constituted by Delhi Special Police Establishment, is required to inquire into the matter as per the instructions and submit its report to the CVC. In the instant case, through self contained note, the matter was forwarded to the CVO and the entire enquiry was required to be conducted by the CVO of the concerning department. As mentioned above, on the basis of report of CBI, the CVO examined the case and decided to close it. The Central Vigilance Commission (CVC) vide its letter dated 20/10/2015 (Annexure A/2 filed along with Document No.5643/18) had also advised closure of the matter in pursuance of Ministry of Tourism's letter dated 27/7/2015. It was clarified therein that CVC is the competent Authority under which CBI functions and if any direction or decision has been taken by the CVC, then the CBI is bound by that decision.

(ix) In the return filed by respondent nos. 1 and 2, it was pleaded that the petitioner had misconstrued and

misinterpreted the letter Annexure P/1. It was further mentioned that the CVC is the apex vigilance body of the Union of India and it had perused the report and had advised closure of matter vide office memorandum dated 20-10-2015. The Ministry of Tourism (Vigilance Division) has also closed the matter after investigation. The closure report has not been put to challenge by the petitioner and, therefore, nothing survives in this petition and it has become infructuous. The CBI cannot take up cases for investigation involving offences under the IPC. The petitioner has an alternative remedy against non-registration of FIR. So far as 6 years teaching experience of appellant/respondent no.8 at PG level between 1997 to 2003 is concerned, it is submitted that Shri Sitikantha Mishra, Chairman, All India Board of Hospitality and Tourism Management, AICTE, has clarified by e-mail dated 22/1/2015 that teaching in Diploma in Tourism Management Courses run by IITTM from the year 1997 to 2002 was approved by AICTE. Therefore, teaching by Faculty Members of IITTM in the said diploma course is a Post Graduate Teaching as the entry qualification for this course was minimum graduation from a recognized University. Further, it was mentioned that the Board of Governors had waived the requirement of ten years experience of PG teaching. Ministry has taken approval of Secretary(T) for the appointment of appellant/respondent no.8 as Professor (Tourism) in IITTM who was the

Chairman, Board of Governors of IITTM. The Selection Committee in its meeting held on 4/7/2003 had recommended waiver of 10 years PG experience which has been approved by the BOG in its 27th meeting held on 21/7/2003 and the appellant/respondent no.8 was appointed as Professor (Tourism) w.e.f. 1/10/2003. It was further pleaded that appointment of appellant/respondent no.8 had not been put to challenge by the petitioner. There is no difference between Annexure P/7 and P/8. No two committees were constituted. Although it was admitted that during 1991 to 1997, there were no MBA or MPA classes at Madhav College, Gwalior, but PG (M.Com) classes were being conducted there and it was denied that appellant/respondent no.8 had secured appointment by providing false information as PG classes.

(x) Again on 11/7/2018, an additional return was filed by respondent nos. 1 and 2, wherein it was pleaded that there was only one meeting which was held under the Chairpersonship of Mrs.Rathi Vinay Jha who was Secretary (T), as well as, Chairperson of IITTM. Though she had not signed the minutes of meeting held on 24/2/2003, but she is the appointing and competent Authority for appointment and the appointment of appellant/respondent no.8 was approved in the 27th meeting of Board of Governors held on 21/7/2003 and later on it was approved by her being appointing Authority. It was further pleaded that minutes of another

meeting dated 24/2/2003 were merely draft, therefore, the contention of the petitioner that two meetings were held on 24/2/2003 was denied. It was further pleaded that the note of Government of India, Ministry of Tourism (HRD) had been received from the Office of Minister of State for Tourism (IC) without any signature of anybody, therefore, the case was re-examined and re-submitted to Minister (Tourism) indicating the actual facts and it was conveyed that Dr. Sandeep Kulshrestha had taught MBA/MPA classes in Jiwaji University, Gwalior as Guest Faculty, on honorary basis. The PS to HM(T) recorded on the concerned file on 24/7/2015 that "HM(T) has been apprised of the situation. Page 55 of the file is not an official communication and may not be treated so".

(xi) Further, additional return was filed by respondent nos. 1 and 2 *inter alia* pleading that initially the petitioner had made a complaint before the Central Vigilance Commission and, thereafter, the case was closed by CVC. Later on, the complaint was filed with CBI, Bhopal. Without conducting any investigation, the Bhopal office of CBI forwarded the Self Contained Note to CVO and the CVO has also closed the matter.

(xii) Again the appellant/respondent no.8 filed additional reply by way of document No.7072/2019, wherein *inter alia* it was submitted that in his CV he had clearly mentioned that he had taught classes of M.Com, MBA, MPA in Commerce Department, Madhav Post Graduate

College and Jiwaji University. M.Com was taught at Commerce Department of Madhav College and MBA & MPA were taught at Jiwaji University a Guest Faculty and proof thereof was already submitted along with the return previously. The petitioner has filed incomplete documents. No mandamus can be issued for registration of FIR. The CVC has already closed the matter.

4. In the aforesaid backdrop, the impugned order has been passed under various captions. In paragraph 49, while relying on various decisions of the Apex Court, learned Single Judge reached the conclusion in paragraph 50 that the manner in which the appointment was made and the procedure was adopted, can also be considered while considering the Writ of Quo Warranto.

In paragraph 52, the learned Single Judge found that although appellant/respondent no.8 might be an employee of a registered Society, but since the IITTM-Gwalior is under the control of the Central Government, therefore, he is certainly a Public Servant.

In paragraphs 58 to 64, the learned Single Judge considered the aspect of two selection committee minutes (Annexure P/7 and P/8). In paragraph 61, learned Single Judge questioned the need of preparing draft minutes of the meeting. He observed that if the contention of respondent nos.1 and 2 is accepted that the minutes of meeting dated 24/2/2003, filed as Annexure P/7, are draft, then it is clear that the minutes of meeting of Selection Committee which have been filed as Annexure P/8 are nothing but a farce because everything was

already pre-decided. He further observed that it is not the case of any of the respondents that the Selection Committee had any authority to waive the PG teaching Experience and if the Selection Committees were of the view that the requirement of 10 years PG experience should be waived, then instead of proceeding further with the interview, it should have taken further instructions from BoG. However, that was not done and without any authority, the Selection Committees in its meetings dated 24/2/2003, not only waived the requirement of 10 years PG experience, but also rejected the candidature of 5 candidates. In paragraph 62, the learned Single Judge, while relying upon the Self Contained Note of CBI, observed that in fact two Selection Committees met on the same day – one under the Chairmanship of Secretary (T) and another under the Chairmanship of ADG(T). Since the respondent nos. 1 and 2 have failed to show as to why two selection committees were constituted for the same purpose on the same day i.e. 24-2-2003, therefore, it appears that in fact the minutes of both the Selection Committees have been fraudulently prepared. Learned Single Judge also took strong exception to the fact that both the minutes were not signed by their respective Chairpersons, which proved that they were not present in the meetings. Learned Single Judge also raised a question as to when once the candidates were directed to appear before the Selection Committee then why special treatment was given to appellant/respondent no.8 by accepting his request for his consideration in absentia ? In paragraph 63, the learned Single Judge also rejected the stand of the respondents that since

the Secretary (Tourism) had approved the appointment of appellant/respondent no.8, therefore, non signing the minutes of Selection Committee held on 24-2-2003 loses its significance for the reason that name of appellant/respondent no.8 was recommended by Selection Committee on 4/7/2003 and not 24/2/2003 and, therefore, it could not be said that Secretary (T) had validated the minutes of meeting dated 24/2/2003. In the aforesaid backdrop, in paragraph 64, the learned Single Judge observed that it was beyond conciliation that why two selection committees were constituted and why both the selection committees had interviewed the candidates ? At what time the interviews were held was also not explained. Thereafter, while referring to Ministry's view, as quoted in paragraph 65 of the impugned order, the learned Single Judge in paragraph 66 held that the entire selection process was *prima facie* vitiated.

In paragraphs 67 to 79, learned Single Judge considered the aspect as to whether the BoG had waived the minimum qualification of 10 years PG experience and while taking note of Supplementary Agenda Item No.3, relevant minutes of 27th meeting of BoG dated 25/11/2003, minutes of meeting of BoG dated 25/2/2003, notesheet dated 18/2/2015 written by Shri A.K.Bose Consultant (HRD), and notesheet dated 20/3/2015 (Annexure P/26) and reached the conclusion that in fact minimum qualification of 10 years PG experience was never waived by BoG.

Further, in paragraph 80, the learned Single Judge took strong exception to the fact that minutes of meeting dated

4/7/2003 by which name of appellant/respondent no.8 is said to be recommended for appointment by the Selection Committee, were not brought on record and drew an adverse inference against the respondents.

Thereafter, in paragraph 83 the learned Single Judge, while considering the experience certificates of appellant, found that he had taught few classes of MBA and MPA in the capacity of Guest Faculty. The learned Single Judge observed that instead of disclosing that appellant had taken classes as Guest Faculty, it had been disclosed by him that he had taken MBA and MPA classes as Sr. Asstt. Professor and Asstt. Professor, whereas the admitted position is that there were no MBA or MPA classes in Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior. Accordingly, the learned Single Judge held that appellant/respondent no.8 had given wrong information in his CV about his 10 years experience of PG classes.

In paragraphs 84 to 86, the learned Single Judge negated the experience of appellant of teaching post-graduate classes in the capacity of Reader, IITTM, Gwalior mentioned at S.Nos.1 and 2 of the CV on the premise that respondent nos.1 and 2 had not placed any document of the year 1998 on record to suggest that AICTE was treating Diploma in Tourism Management Courses run by IITTM as post graduate course. Further no document had been filed to show that what were the norms for PGDM Programme in the year 1998 onwards.

Besides in paragraphs 87 to 92, learned Single Judge, while taking note of the advertisement published, held that

requirement of 10 years post-graduate experience has to be read as 10 years post-graduate experience in Tourism and if the advertisement was vague, appellant/respondent no.8 cannot take advantage of the same and respondents were under an obligation to re-advertise the post.

In paragraphs 90 and 91, the learned Single Judge, while referring to note-sheet of Vigilance Division dated 16/7/2015, observed that according to Vigilance Division, the appellant/respondent no.8 Sandeep Kulshrestha was not having 10 years of post-graduate experience. In paragraph 93, while reiterating the settled position of law that qualifications cannot be changed in mid of recruitment process, learned Single Judge observed that if the respondents were of the view that the condition of 10 years post-graduate experience is liable to be waived, then a fresh advertisement should have been issued, so that other desirous candidates could have applied for the post of Professor (Tourism).

Accordingly, in paragraph 96, the learned Single Judge held that the appellant/respondent no.8 did not have the minimum qualification for holding the post of Professor (Tourism), but in view of the waiver of the minimum qualification of 10 years post-graduate experience, and that too without approval by the Board of Governors, the entire selection process for the post of Professor (Tourism) stood vitiated.

Further, in paragraphs 97 to 99, the learned Single Judge while referring to the call letter issued to one of the candidates, held that the Selection Committee was not justified in permitting

two candidates to participate in absentia. That apart in paragraph 102, the learned Single Judge found that without there being any post of Professor in Tourism, the appellant/respondent no.8 had been given appointment on that post.

Inter alia with the aforesaid findings and observations, the impugned order has been passed.

5. Legality, propriety and validity of the impugned order has been challenged by learned counsel for the appellant Dr. Sandeep Kulshrestha *inter alia* on the following grounds:-

(i) It is well settled that 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. The learned Single Judge has travelled beyond the scope of *quo warranto* by entering into a roving enquiry and substituting his own views for those of experts. The suitability of a candidate for appointment does not fall within the realm of writ of *quo warranto*. To buttress his contentions, learned counsel has placed reliance on decisions of the Apex Court in the cases of **B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. ((2006)11 SCC 731)** and **Rajesh Awasthi vs. Nand Lal Jaiswal and others ((2013)1 SCC 501)**. Further, while placing reliance on decision in the case of **A.N.Shastri Vs. State of Punjab (1988 Supp SC 127)**, learned counsel contended that writ of *quo warranto* ought to have been refused, as it was sought due to malice or ill will. The conduct of petitioner is writ large. He is an ousted employee of

IITTM and is habitual of making complaints against the appellant. He was also continuously posting unpalatable material on Facebook against him as well as the Institute. Indeed the impugned order is of the nature of *certiorari*, and such jurisdiction could not have been exercised by the learned Single Judge at the instance of petitioner who was not a candidate for the post of Professor (Tourism). In fact, petitioner changed the nature of petition to *quo warranto* only in order to escape the onus of proving his *locus standi*.

(ii) While negating the experience of appellant, the learned Single Judge has totally glossed over the fact that his CV was accompanied by relevant certificates (Annexure R/7, page 228 & R/8, pages 231 and 237). The learned Single Judge committed patent error of fact. In fact, the CV was not read in isolation, but the Selection Committee had also perused and appreciated the corresponding certificates filed along with the CV. Moreover, it was for the appointing Authority and the Selection Committee which could have said that they were misled by the appellant by clubbing his teaching experience. But the said Authority has clearly stated in its return that there was no misleading information. Even the matter was re-examined on the complaint of petitioner and the Union of India has clearly stated vide letter dated 22/9/2015 (Annexure R/1-8, page 328) that Principal of Madhav College has verified the teaching experience of the appellant (vide letter dated 15.06.2015, Annexure R/3-3, page 215). Even the Jiwaji University verified the educational qualification and teaching experience of the appellant vide letter

dated 27/7/2012 (Annexure R/3-1, page 213), wherein against point no.5 it has been mentioned that Dr. Sandeep Kulshrestha had taken MPA classes as Guest Faculty in Political Science and Public Administration Departments of Jiwaji University. Further, Principal, Madhav College, Gwalior had issued certificates (Annexure R/7, page 228 and Annexure R/8, page 231) in favour of the appellant that he had done teaching in post graduate and under-graduate classes since 25/2/1991 to 27/1/1997. Thus, the findings of learned Single Judge as regards experience of the appellant are not only perverse to the record but also speculative. The learned Single Judge is forcing the fact that the Authority was misled by the appellant while the Authority itself is saying that it was not misled.

Even otherwise, the appellant was having more than 11 years of PG teaching experience. He undisputedly taught M.Com classes as Assistant Professor in Madhav College, Gwalior from 25/2/1991 to 27/1/1997 (Annexure R/7, page 228 and 229) and then taught DTM and PGDBM (AICTE called it MBA but IITTM mentioned it as Post Graduate Diploma in Business Management) from 29.01.1997 to 30.09.2003 (Annexure R/8, page 237) as Reader in IITTM itself. The DTM was considered post graduate teaching by AICTE as per their communication dated 22.01.2015 (Annexure R/1-3, page 280), which was confirmed by the AICTE again vide its communication dated 30.9.2019 (Annexure A/4, page 27 along with I.A. No. 8268/2023). As per affiliation granted by AICTE to IITTM, the entry level for course of DTM was bachelor's degree in any

subject. The first affiliation was granted by AICTE to the IITTM was on 3/5/1995 (Page 9 of I.A. No.8302/2023 of respondent nos. 2,3 and 9) and for PGDBM in 2001 (they initially called it MBA then renamed it as PGDBM in 2006, page 24 of said IA); this continued up to 2014 (page 44-50 of said IA). Further, the validity of the MBA course (now PGDBM) has been upheld by the Division Bench of this Court vide common order dated 11/8/2017 passed in W.P. No. 8593/2016 and W.P. No. 4602/2017 (PIL). Significantly these courses were considered by the Selection Committee and the appointing Authority as post graduate teaching in IITTM. The petitioner before his selection was teaching in IITTM itself as Reader and he was selected and appointed as Professor in IITTM itself for teaching those very courses. Thus, the learned Single Judge should not have substituted his opinion for expert's opinion in absence of any rules contrary to the stand taken by the experts. As such, the appellant not only fulfilled the requirement of recruitment rules but even fulfilled the requirement of advertisement.

(iii) So far as two selection committee minutes (Annexures P/7 and P/8) are concerned, it has been submitted that the learned Single Judge did not consider the fact that the minutes of both Annexure P/7 and P/8 are identically worded. The learned Single Judge has not considered very significant aspects of the matter. The composition of two committees was the same except one person i.e. Secretary (T) in the second minutes of the meeting. In fact, in the minutes of Selection Committee meeting dated 24/2/2003 enclosed as Annexure P/7

(page 178), names of four persons are mentioned i.e. Rashmi Verma, D.Singhai, Kapil Kumar and Ravi Bhuthalingam. In the minutes of meeting enclosed as Annexure P-8 (page 179) same four persons are there namely Rashmi Verma, D. Singhai, Kapil Kumar and Ravi Bhuthalilingam with the addition of name of Rathi Vinay Jha who was the Chairperson of the selection committee in her *ex officio* capacity being the Secretary (Tourism) at the relevant point of time. The recruitment in the IITTM is governed by Chapter 3 of the service by-laws which provides that appointment to any post by direct recruitment in accordance with Second Schedule may be made on the recommendation of the selection committee. In the case of professor, the composition of selection committee is provided in Schedule II appended to the by-laws which provides that the selection committee would consist of Secretary (Tourism) as Chairman, D.G.(T) as member, Director as member and one member from academic field. The actual reason for the two minutes is that the concerned ministerial person while preparing the minutes had wrongly recorded that the meeting was held in the Chairmanship of Mrs. Rashmi Verma, ADG, Department of Tourism, whereas the meeting was held in the Chairmanship of Mrs. Rathi Vinay Jha, Secretary (Tourism). Thus, when the officials had perused the minutes of meeting they pointed out the mistake, thus, the minutes were immediately re-drafted and the correct fact regarding Chairmanship was recorded. Except this, there is no deviation in the entire contents of two meeting. It is beyond comprehension to understand that what would be the

benefit extended by Selection Committee to the appellant by recording two minutes of the meeting which are identically worded. The first minutes of meeting were not properly drawn because of incorrect recording of Chairmanship. Thus, they were written again. In fact, Annexure P/7 and P/8 have not made any difference on the entire selection process with respect to merits of any of the candidates.

Further, as regards non-signing of minutes by the Chairpersons and adverse inference of learned Single Judge in that behalf, it has been submitted that the observation of learned Single Judge is based on an incorrect presumption that two meetings of the Selection Committee had taken place on 24/2/2003. In fact, as already explained, there was only one meeting of the Selection Committee which was held on 24/2/2003. Thereafter, the minutes of meeting were drawn. On the first occasion, the concerned ministerial person had wrongly recorded that the meeting was held in the Chairpersonship of Mrs. Rashmi Verma. Thus, when she went through the minutes of meeting, she did not sign and thus the minutes were re-drawn recording correct Chairpersonship. In these correct minutes of meeting, Mrs. Rashmi Verma has duly signed in the capacity of member. As regards signature of Mrs. Rathi Vinay Jha, she was the appointing Authority at the relevant point of time as per the rules. Thus, the matter was forwarded to the BoG without her signatures but with the signatures of all other members of Selection Committee and when the BoG approved the appointment of appellant in its 27th meeting held on 21/7/2003

(Annexure R/1-6, pages 309, 310, 313 and 314), the same person Mrs. Rathi Vinay Jha approved the appointment of the petitioner and the order of appointment was issued by the Chairperson who was the very same person. Thus, the non-signature of Chairperson on the minutes of 24.02.2003 are well explained and can be understood in the seriatim of facts. In view of the fact that the same Chairperson approved the appointment and issued the appointment order, the significance of non-signature on the minutes of 24.02.2003 loses its sheen. Even otherwise also, the final consideration of the Selection Committee was in the meeting held on 4/7/2003 and the petitioner did not obtain the said minutes under Right to Information and did not raise aspersions on the same. The Selection Committee meeting held on 4/7/2003 has recommended for the appointment of the name of appellant on the post of Professor (Tourism). These minutes were never put to challenge by the petitioner.

(iv) As far as finding of learned Single Judge that BoG had not waived the minimum qualification of 10 years post graduate experience is concerned, it has been submitted that while recording the said finding the learned Single Judge has completely ignored the fact that the BoG in its 27th meeting (page 310, 313) has approved the minutes of the meeting of selection committee dated 24.02.2003 and 4.7.2003, this decision of BoG was not challenged either by petitioner or any of the candidates. It is further submitted that there is no pleading by the petitioner in the writ petition.

(v) It is further submitted that the learned Single Judge

perversely recorded the finding that the Selection Committee had departed from its norms in allowing the appellant to be considered *in absentia*. In fact, a bare perusal of the minutes of meeting dated 24/2/2003 (Annexure P/8, page 179) would show that all 5 candidates who appeared for interview on 24/2/2003 were not found suitable for the post, thus the committee decided to call appellant and one other candidate for interview on the next date of meeting which was held on 4/7/2003. Hence, it is clear that the case of the appellant was not considered *in absentia*. Even the BoG had recorded in its supplementary agenda item no.3 (page 310) and approved it (page 313) that earlier 3 times the post was advertised but the committee could not find suitable candidate and in absence of professor, the work in the Institute was suffering. Thus, all this was to be considered by the BoG, which has not only considered everything but has explicitly approved the selection of the appellant and has also appointed him on the post of Professor (Tourism) (page 310, 312, 313, 314). In fact, there has been no challenge to the appointment of the appellant.

(vi) So far as finding of learned Single Judge in para 100-102 is concerned that there was no post of Professor (Tourism), it has been submitted that this issue was not raised by the petitioner in his pleading nor it was canvassed at the time of arguments, thus there was no occasion for the respondents to address this issue but the learned Single Judge decided the same without there being any arguments on the same by any of the parties. Even otherwise, such assumption is misplaced and

dehors the record.

(vii) Appellants/respondents No.1 to 3 i.e. (1) Union of India; (2) the Chairman (Ministry of Tourism Department), Board of Governors, IITTM; and (3) the Chief Vigilance Officer, Ministry of Tourism in WA No.1994/2019 contended that the reliance placed by learned Single Judge on the 'self contained note' of the CBI dated 7/10/2015 for the purposes of rendering various findings in the impugned orders is completely erroneous, unsustainable and clearly contrary to the records, inasmuch as pursuant to a complaint filed by the writ petitioner, the CBI had prepared a 'self contained note' forwarding it to appellants MoT for necessary action vide its communication dated 7/10/2015. The aforesaid report of the CBI was examined by the Ministry and after due consideration and deliberation on the same by a letter dated 8/2/2017, it was decided that the complaint against Dr. Sandeep Kulshrestha filed by the petitioner be closed. It is also pertinent to mention that pursuant to a similar complaint by the writ petitioner making the same allegation against Dr. Sandeep Kulshrestha, the matter had been enquired into by the appellant/Ministry and the report whereof was forwarded to the CVC which after due examination advised closure of the matter vide memorandum dated 20/10/2015 (Annexure A/2 filed along with clarification, document no. 5643/18). Hence, the allegation made by the writ petitioner against Dr. Sandeep Kulshrestha were enquired into on more than one occasion and were not found to be made out. As such, the reliance placed on the purported 'self contained note' of the CBI by the learned Single

Judge for the various self styled findings returned in the impugned order are erroneous, unsustainable and liable to be set aside. It is further submitted that in Para-65 of the impugned order, the learned Single Judge has relied upon the certain portion of a file noting that were given in a sealed cover. The appellants crave leave to submit and refer to the entire file that contains the aforesaid portion. It is submitted that a perusal of the said relevant file will establish that the learned Single Judge has erroneously relied upon the said portion as 'Ministry's view'. It is submitted that the perusal of the file would indicate that after making all the necessary enquiries the appellant No.1/Union of India, Ministry of Tourism had sent its report to the CVC for closure of the matter regarding allegations of petitioner against Dr. Sandeep Kulshrestha; the appellant.

It has been further submitted that so far as the advertisement is concerned, the requirement thereof is "10 years experience in post graduate teaching". Merely because such experience was gained as guest faculty, it does not *ipso facto* disentitle the candidate from counting such experience towards post-graduate teaching. It is further submitted that the learned Single Judge has grossly erred in Para 86 of the impugned order in rejecting the teaching experience of Dr. Sandeep Kulshrestha for the period 1997-2003 during which he was a faculty member as a reader in IITTM taking classes in various PG level courses. The entry qualification for all such regular courses that were being taught by Dr. Sandeep Kulshrestha was under-graduate qualification. Further, it has been brought on record vide

communication dated 22/01/2015 (Ann. R-1/3, page 280) of the Chairman, Hospitality in Tourism Board, AICTE that the courses being taught by Dr. Sandeep Kulshrestha were PG Courses. Further by relying upon various precedents of the Apex Court, it has been submitted that the learned Single Judge has exceeded the scope of *quo warranto* and indeed, has exercised *certiorari* jurisdiction which could not have been embarked upon at the instance of petitioner who was not in the fray of candidates appearing for the post of Professor (Tourism).

With the aforesaid submissions, it has been submitted that the impugned order being patently erroneous and without jurisdiction is liable to be set aside.

On the other hand, petitioner reiterated the submissions advanced before the learned Single Judge while supporting the impugned order.

6. Having heard learned counsel for the parties, petitioner in person and on perusal of the material available on record, the following issues emerge for consideration :

(i) The scope of interference in writ jurisdiction of writ of *quo warranto*.

(ii) Whether appellant/respondent no.8 had the requisite experience at the relevant point of time for consideration of his candidature on the post of Professor (Tourism).

7. *Scope of 'Quo Warranto'*

In somewhat similar facts and circumstances, the Apex Court in the case of the **University of Mysore Vs. Govinda Rao (AIR 1965 SC 491)** pointed towards the technical nature of the

writ of *quo warranto* which was claimed by the respondent therein against one Annih Gowda who was holding the post of Research Reader in English in the Central College, Bangalore. The High Court had upheld the contentions of the respondent and quashed the appointment of appellant No.2. In such circumstances, the Apex Court, while setting aside the order of High Court, held thus:

6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

12. In our opinion, in coming to the conclusion that appellant No. 2 did not satisfy the first qualification, the High Court is plainly in error. The judgment shows that the learned Judges concentrated on the question as to whether a candidate obtaining 50 per cent marks could be said to have secured a high Second Class Degree, and if the relevant question had to be determined solely by reference to this aspect of the matter, the conclusion of the High Court would have been beyond reproach. But what the High Court has failed to notice is the fact that the first qualification consists of two parts-the first part is: a high Second Class Master's Degree of an Indian University, and the second part is: its equivalent which is an equivalent qualification of a foreign University. The High Court does not appear to have considered the question as to whether it would be appropriate for the High Court to differ from the opinion of the Board when it was quite likely that the Board may have taken the view that the Degree of Master of Arts of the Durham University. which appellant No. 2

had obtained was equivalent to a high Second Class Master's Degree of an Indian University. This aspect of the question pertains purely to an academic matter and Courts would naturally hesitate to express a definite opinion, particularly, when it appears that the Board of experts was satisfied that appellant No. 2 fulfilled the first qualification. If only the attention of the High court had been drawn to the equivalent furnished in the first qualification, we have no doubt that it would not have held that the Board had acted capriciously in: expressing the opinion that appellant No. 2 satisfied all the qualifications including the first qualification. As we have already observed though the High Court felt some difficulty about the two remaining qualifications, the High Court has not rested its decision on any definite finding that these qualifications also had not been satisfied. On reading the first qualification, the position appears to be very simple; but unfortunately, since the equivalent qualification specified by cl. (a) was apparently not brought to the notice of the High Court, it has failed to take that aspect of the matter into account. On that aspect of the matter, it may follow that the Master's Degree of the Durham University secured by appellant No. 2, would satisfy the first qualification and even the second. Besides, it appears that appellant No. 2 has to his credit published works which by themselves would satisfy the second qualification. Therefore, there is no doubt that the High Court was in error in coming to the conclusion that since appellant No. 2 could not be said to have secured a high Second Class Master's Degree of an Indian University, he did not satisfy the first qualification. It is plain that Master's Degree of the Durham University which appellant No. 2 has obtained, can be and must have been taken by the Board to be equivalent to a high Second Class Master's Degree of an

Indian University, and that means the first qualification is satisfied by appellant No. 2. That being so, we must hold that the High Court was in error in issuing a writ of quo warranto, quashing the appointment of appellant No. 2

13. Before we part with these appeals, however, reference must be made to two other matters. In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the experts with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decisions. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show 'that the

High Court applied tests 'Which would legitimately be applied in the case of writ of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinions expressed by the Board & its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.

(emphasis supplied)

Taking note of decisions in *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* ((2003)4 SCC 712), *Gujarat Mazdoor Panchaat V. State of Gujarat*, 2001 SCC OnLine Guj 76, *Mor Modern Coop. Transport Society Ltd. v. State of Haryana* ((2002)6 SCC 269) and *R.K.Jain v. Union of India* ((1993)4 SCC 119), the Apex Court in the case of **Bharti Reddy Vs. State of Karnataka and Others** ((2018)6 SCC

162), has held *infra*:-

36. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*, in a concurring judgment S.B.Sinha, J (as his Lordship then was) noted that 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 writ of certiorari or a writ of quo warranto. However, 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 writ of certiorari. The Court went on to observe that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules as held in *Mor Modern Coop. Transport Society Ltd. v. State of Haryana*. The Court also took notice of the exposition in *R.K.Jain v. Union of India*. The Court noted that with a view to find out as to whether a case has been made out for issuance of writ of quo warranto, the only question which was required to be considered was as to whether the incumbent fulfilled the qualifications laid down under the statutory provisions or not. This is the limited scope of enquiry. **Applying the underlying principle, the Court ought not to enquire into the merits of the claim or the defence or explanation offered by the appellant regarding the manner** of issuance of income and caste certificate by the jurisdictional authority or any matter related thereto which may be matter in issue for scrutiny for scrutiny concerning the validity of the caste certificate issued by the jurisdictional statutory authority constituted under the State Act of 1990 and the Rules framed thereunder...

39. We have adverted to some of those decisions in the earlier part of this judgment. Suffice, it to observe that unless the Court is satisfied that the

incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, **which satisfaction should be founded on the indisputable facts**, the High Court ought not to entertain the prayer for issuance of a writ of quo warranto.”

(Emphasis supplied)

In the case of **Rajesh Awasthi Vs. Nandlal Jaiswal [2013 (1) SCC 501]**, the Apex Court, while referring to **Mor Modern Coop. Transport Coop. Transport Society Ltd Vs. Govt. of Haryana [2002 (6) SCC 269]** and **B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees Assn. [2006 (11) SCC 731]** has held as under :-

“19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Coop. Transport Society Ltd. v. Govt. of Haryana (2002) 6 SCC 269* held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy (supra)*, this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in *Hari Bans Lal (supra)* wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.”

In the case of **Dr. M.C.Gupta Vs. Dr. Arun Kumar Gupta ((1979)2 SCC 339)**

“7. Before the rival comments are probed and analysed, it would be necessary to keep in view the twilight zone of Court's interference in appointment to posts requiring technical experience made consequent upon selection by Public Service Commission, aided by experts in the field, within the framework of Regulations framed by the Medical Council of India under Section 33 of the Indian Medical Council Act, 1956, and approved by the Government of India on 5th June 1971. When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching/research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of mala fides against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. Undoubtedly, even such a body if it were to contravene rules and regulations binding upon it in making the selection and recommending the selectees for appointment, the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226. Even then the Court, while enforcing the rule of law, should give due weight to the opinions expressed by the experts and also show due regard to its recommendations on which the State Government acted. If the recommendations made by the body of experts keeping in view the relevant rules and regulations manifest due consideration of all the relevant factors, the Court should be very slow to interfere with such recommendations.....”

(Emphasis supplied)

In Bihar Public Service Commission Vs. Kamini ((2007)5 SCC 519), the Apex Court held thus:

“8. Again, it is well settled that in the field of education, a court of law cannot act as a expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications, should better be left to educational institutions (vide University of Mysore v. C.D.Govinda Rao (AIR 1965 SC 491 : (1964)4 SCR 575). This is particularly so when it is supported by an Expert Committee.The Division Bench was in error ignoring the well-considered report of the Expert Committee and in setting aside the decision of the learned Single Judge”

(Emphasis supplied)

In the case of **All India Council for Technical Education Vs. Surinder Kumar Dhawan ((2009)11 SCC 726)**, it has been held as under:-

16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education.....

17. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In J.P.Kulshreshtha

(Dr.) v. Allahabad University [1980 (3) SCC 419]
this Court observed:

"11. Judges must not rush in where even educationists fear to tread...

17.While there is no absolute bar, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

18. In *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* [1984 (4) SCC 27] this court reiterated :

".....the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

(Emphasis supplied)

8. Thus, from the aforesaid decisions, the settled position with regard to exercise of discretionary jurisdiction under *quo warranto* is *ex facie* explicit. The jurisdiction of the High Court to issue a writ of *quo warranto* is a limited one. A writ of *quo warranto* will lie only when the appointment is made contrary to the statutory provisions. Normally, whether or not a student/candidate possesses requisite qualifications and/or experience, should better be left to educational institutions. This is particularly so when it is supported by an Expert Committee. Unless the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or

elected to the public office or that he/she has incurred disqualification to continue in the said office, *which satisfaction should be founded on the indisputable facts*, the High Court ought not to entertain the prayer for issuance of a writ of *quo warranto*.

It cannot be lost sight of that in the instant case, the learned Single Judge was not exercising certiorari jurisdiction. Certiorari jurisdiction can be exercised only at the instance of an aggrieved person who is qualified to the post and who is a candidate for the post. On the other hand, although strict rules of *locus standi* are relaxed to an extent in a *quo warranto* proceedings, however, as indicated above, the said jurisdiction is a limited one and can only be issued when the appointment is contrary to the statutory rules. Moreover, a writ of *quo warranto* should be refused when it is an outcome of malice or ill will. A petition praying for a writ of *quo warranto*, being in the nature of public interest litigation, is not maintainable at the instance of a person who is not un-biased and the forum cannot be chosen to settle personal scores (**B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. ((2006)11 SCC 731**, referred to). At the cost of repetition, it is worth mentioning that the writ petitioner was an ousted employee of IITM and was habitual in making complaint against the appellant, besides uploading obnoxious material against IITM on Facebook. Moreover, he was not a candidate to the post in question.

9. This brings us to the pivotal question as to whether

appellant Dr. Sandeep Kulshrestha possessed the requisite experience at the relevant point of time for being appointed as Professor (Tourism).

However, before proceeding further, it is expedient to reiterate the recognized concepts of “Experience” and “Qualification” in the fraternity of academia, of which judicial notice has also been taken by the Hon'ble Apex Court in catena of decisions. As a matter of fact, “experience” typically refers to practical knowledge and skills gained through doing a job or engaging in various activities over time, while “Qualification” usually refers to former credentials, degrees, certifications or achievements acquired through education or training that demonstrates a person's abilities in a particular field. **Reckoning of experience** can be based on combination of factors including nature of work done, skills acquired, duration of involvement and endorsement or validation by recognized entity within a given Industry or profession. Ultimately it is a mix of technical know-how and acknowledgment by relevant bodies within a field.

As per the advertisement quoted above, he was required to possess 10 years of experience in post graduate teaching. Now, let us examine as to whether he had this qualification at the relevant point of time or not. For this, it would be propitious to re-quote his CV as infra:

| S.N o | Post held & payscale | Year | Classes taught | Department |
|----------|-------------------------|------|-------------------|------------|
|----------|-------------------------|------|-------------------|------------|

| | | | | |
|----|---|--------------------------|-------------------------------|---|
| 1. | Reader (12000-18300) | 26-02-98 to till date | PGDBM, DTM, MDP, EDP | Indian Institute of Tourism & Travel Management, Govt. of India, Govindpuri, Gwalior |
| 2. | Reader (3700-5700) | 29-01-97 to 25-02-97 | DTM , MDP, EDP | Business Studies IITTM, ETC, Bhubaneswar, Orissa |
| 3. | Sr. Assistant Professor (3000-5000) | 25-02-96 to 27-01-97 | M.Com , MBA, MPA | Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior |
| 4 | Asstt. Professor (2200-4000) | 25-02-91 to 24-02-96 | M.Com , MBA, MPA | Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior |
| 5 | Lecturer (2200-4000) | 25-08-90 to 24-02-91 | M.Phil, MBA | School of Commerce and Management Studies, Jiwaji University, Gwalior |
| 6 | Lecturer | 20-03-90 to 22-08-90 | M.Com | School of Commerce and Management Studies, Jiwaji University, Gwalior |

This advertisement was issued in the January, 2003. Therefore, the experience claimed by him at S.No.1 as Reader is to be read till Jan.2003. In other words, he has claimed experience in

teaching courses such as PGDBM, DTM, MDP and EDP from 26/02/1998 till Jan. 2003 at IITTM-Gwalior, as well as, at S.No.2 of teaching DTM, MDP and EDP from 29-01-97 to 25-02-97. Meaning thereby, the experience claimed by him of teaching as Reader at S.Nos. 1 and 2 clubbed together would come to 5 years. This experience has been nullified by the learned Single Judge in paragraph 86 of the impugned order on the premise that no document had been filed by respondent nos. 1 and 2 therein of the year 1998 to suggest that AICTE was treating Diploma in Tourism Management Courses run by IITTM as Post Graduate Course. However, in this regard, the e-mail sent by Dr. Sitikantha Mishra, Chairman, All India Board of Hospitality & Tourism Management, AICTE, New Delhi (Annexure R-1/3) is noteworthy and the same reads as under:-

“Dear Sir,

With reference to your email dated 21/01/2015 i would like to clarify that the teaching in the Diploma in Tourism Management course run by IITTM from the year 1997 to 2002 was approved by AICTE. It may be noted that in 1997 AICTE had not instituted Post Graduate Certificate in Management/Tourism Management courses with the duration of more than 12 months and less than 24 months. Therefore the Teaching by the Faculty Members of IITTM in the said Diploma course is a 'Post Graduate Teaching' as the entry qualification for this course was minimum graduation from a recognized university. There are number of Indian Universities and government institutions those are running one year Post Graduate Certificate/Diploma courses with minimum eligibility of graduation degree.”

(Emphasis supplied)

In this regard, a clarification dated 30/9/2019 sent by Dr. Ajeet Singh, Assistant Director, RIFD to Dr. Sandeep Kulshrestha, filed as Annexure A/4 along with I.A. No. 8268/23 (page no.27) is also worth noting. The relevant part thereof reads thus:

“Please refer to your letter dated September 14, 2019. In this connection, it is to inform you that The Indian Institute of Tourism and Travel Management is an autonomous body under the Ministry of Tourism, Govt. of India and was accorded approval for running Diploma in Tourism Management of 14 month duration in year 1995 onwards. Although, conventionally entry level qualification to the Diploma Program is 10th or 10+2, but the entry level qualification for the said diploma program is bachelor's degree in any subject, hence, implicitly it is a Post Graduate level Diploma Program. The teaching experience for teaching this program may be considered as teaching experience of post graduate level.”

(Emphasis supplied)

That apart, initial affiliation was granted by the AICTE to IITTM-Gwalior on 3/5/1995. The same has been filed at Page No. 9 of I.A. No.8302/2023. The relevant extract thereof reads thus:

| Name of course | of | Entry level | Duration | Annual intake | Period of approval |
|---|----|----------------------------------|---------------------|---|--------------------|
| Diploma in Travel & Tourism Industry Management | | Bachelor's degree in any subject | 16 months Part Time | 150 (50 in each chapter at Delhi, Lucknow & Trivandrum) | 1995-97 |

| | | | | |
|--------------------------------------|---|----------------------------|-----------|----------------|
| | | |) | |
| Diploma in Tourism Management | Bachelor's Degree in any subject | 14 months Full Time | 50 | 1995-97 |
| Diploma in Destination Management | Bachelor's degree in any subject | 8 months Full Time | 50 | 1995-97 |

The same was regularly extended from time to time (yearwise). The said documents were brought on record by respondent nos. 2,3 and 9 by way of I.A. No. 8302/23. Thus, from the above it is very much clear that Diploma in Tourism Management (DTM) course was being run right from 1995 at IITTM having entry level qualification as Bachelor's degree in any subject. Similarly, the MBA program was approved for IITTM by the AICTE in the year 2001 and later on re-named as PGDBM. As such, the appellant's experience of teaching DTM course right from 1997 till 2003 could not have been negated by the learned Single Judge on the ground that there was no document to show that it was a PG course. Even otherwise, it was for the writ petitioner to bring on record evidence to suggest that entry-level qualification for DTM was 10th or 12th and not graduation. Such is not the case in hand. On the contrary, these courses have been treated by the expert body viz. Selection Committee, BoG and the Appointing Authority as post graduate teaching. In our opinion, the learned Single Judge was not right in substituting his opinion over that of expert body in this behalf, that too while exercising extraordinary jurisdiction under *quo warranto*.

10. The experience mentioned by appellant Dr.Sandeep Kulshrestha at S.Nos. 3 and 4 of Sr.Assistant Professor and Assistant Professor respectively from 1991 to 1997 is the bone of contention. It has been the case of the petitioner that MBA and MPA were not taught at Madhav College, Gwalior at the relevant point of time and, therefore, the experience at S.No.3 and 4 was incorrectly mentioned, whereas it has been contended on behalf of the appellant that appellant had taught M.Com at Madhav College, Gwalior and MBA, MPA at Jiwaji University, Gwalior as Guest Faculty and in fact those experiences had been clubbed by him in the CV. The CV was supported by relevant certificates, which were scrutinized by the Screening Committee, as well as, BoG. In this behalf, certificates issued by Madhav College, Gwalior on 5/8/1999 and 27/6/2012 have been brought on record as Annexure R/7 (Page 228) and Annexure R/8 (Page 231) respectively. For ready reference, relevant extract of both are reproduced below:

Date – 5-8-1999

CERTIFICATE

This is to be certified that DR. SANDEEP KULSHRESTHA S/O DR. V.D.KULSHRESTHA was working as Asstt. Professor (Under UGC Pay Scale Rs. 2200 – 4000 and Senior Grade Rs.3000 – 5000) in commerce department since 25th Feb. 1991 to 27th Jan. 1997.

This College is affiliated to Jiwaji University, Gwalior (M.P.) India.

Sd/-
Principal
Madhav College, Gwalior

Letter No. 2012/679

Date – 27-6-2012

CERTIFICATE

This is to be certified that DR. SANDEEP KULSHRESTHA S/O DR. V.D.KULSHRESTHA was working as Asstt. Professor (Under UGC Pay Scale Rs. 2200 – 4000 and Senior Grade Rs.3000 – 5000) in the Department of commerce and Teaching Post Graduate and Under Graduate Classes since 25th feb. 1991 to 27th Jan. 1997 .

This College is affiliated to Jiwaji University, Gwalior (M.P.) India.

Sd/-
Principal
Madhav College, Gwalior

From the above certificates, it is well neigh clear that the appellant had done Post Graduate Teaching in Madhav College, Gwalior from 25/2/1991 to 27/1/1997 i.e. for about 5 years and 11 months, though certainly not MBA & MPA at that College. The said fact is also reiterated in the reply given by Principal, Madhav College, Gwalior to Ministry of Tourism vide letter dated 15/6/2015 (Annexure R/3, page 215) wherein it is categorically mentioned that during the relevant period appellant worked at Madhav College, Gwalior as Assistant Professor Commerce and that MBA and MPA courses were not being taught in that College. Referring to that communication, vide letter dated 22/9/2015 (Annexure R/1-8, page 328) of Dy. Director General (HRD), Ministry of Tourism is noteworthy, the

relevant part whereof reads thus:

“2. In this connection, it is clarified that a note was received from the office of the Hon. Minister of State for Tourism (IC) without any signature authenticating the note which was found to be incorrect. The case was re-examined and re-submitted to HM(T) indicating the actual facts of the case and drawing attention to the reply received from the Principal, Madhav College, Gwalior in which it was conveyed that Dr. Sandeep Kulshrestha had taught MBA/MPA classes in Jiwaji University, Gwalior as Guest Faculty, on Honorary basis. The PS to HM(T) has recorded on the concerned file on 24.07.2015 that “HM(T) has been apprised of the situation. Page “55” of the file is not an official communication and may not be treated so” (Photocopy of the note on page 59 of the File No. 67(21)/2011-IITTM-Vol.II is enclosed for reference).

Thus, it is evident from the above communication of Ministry of Tourism that Dr. Sandeep Kulshrestha had taught MBA/MPA Classes in Jiwaji University, Gwalior as Guest Faculty. The communication also has a mention about Page “55”. This Page 55/note-sheet had been brought on record by the petitioner as Annexure P/9 at page 182 suggesting that Dr. Kulshrestha had submitted fake documents. However, by the aforesaid communication, it was clarified that Page “55” of the file was not an official communication and may not be treated so. Thus, it cannot be disputed that appellant took M.Com classes at Madhav College, Gwalior during the above said period of 5 years and 11 months and it is also evident that he taught as Guest Faculty at Jiwaji University, Gwalior teaching MBA & MPA Classes during that period.

As such, his experience of post graduate teaching mentioned at S.Nos. 1,2 and 3 goes beyond 10 years. The learned Single Judge in paragraph 90 of the impugned order has referred to a note-sheet dated 16/7/2015 of the Vigilance Division wherein it is mentioned - "As none of the candidate, including Shri Sandeep Kulshrestha had the requisite teaching experience, the relaxation was given". In fact, this note-sheet contains the remarks of Vigilance Division vis-a-vis various allegations levelled against the appellant by the petitioner. All the allegations were found to be vague in nature by the Vigilance Division and comments were furnished to the CVC for closure of complaint against the appellant by this note-sheet only. So far as the aforesaid remark of Vigilance Division is concerned, the same is *ex facie* reiteration of the observations of Selection Committee in its minutes (Annexures P/7 & P/8). The contents of both the minutes are exactly the same except for the Chairperson. In both the minutes it is mentioned that qualification of 10 years post graduate experience may be waived since none of the applicants has 10 years PG experience in Tourism. It is noteworthy that, as indicated above, appellant has more than 11 years' PG experience (though not entirely in Tourism) although requirement under the advertisement was of 10 years' experience and that under the recruitment rules was of 8 years' experience. So the observations of the Screening Committee or for that matter its reiteration in the Vigilance Division note-sheet dated 16/7/2015 (Supra) can well be understood in that context. As a matter of fact, statutory rules assume precedence over

advertisement in the event of variation between the two (**Ashish Kumar Vs. State of Uttar Pradesh ((2018)3 SCC 55**, referred to). However, the advertisement did not require PG teaching experience in Tourism. It only warranted *10 years of experience in post graduate teaching*. The observation of the learned Single Judge in paragraphs 88 and 89 that looking to the caption of advertisement calling for applications for the post of Professor (Tourism) the requirement of 10 years' Post Graduate teaching experience has to be read as 10 years' Post Graduate teaching experience in Tourism, in our view, is based on self perceived notion and is in excess of the requirement under the advertisement and the recruitment Rules. We may hasten to add that while exercising jurisdiction under Article 226 of the Constitution, the Court is not expected to add or subtract contents in a given document to facilitate/enforce its own perspective, particularly while reading the terms of the advertisement or rules having legal sanction. Moreover, it does not matter if we accept or reject this proposition of learned Single Judge, for if we accept it then the 10 years experience was recommended to be waived by the Selection Committee (ultimately approved by the BoG as discussed later) and if we reject this proposition then as elicited above the appellant had more than ten years PG teaching experience. At this juncture, we are attracted to the finding of the learned Single Judge in paragraph 79 that minimum qualification of 10 years post graduate experience was never waived by the BOG in its 25th meeting dated 25-2-2003 and also in its 27th meeting dated 25-

11-2003, which in turn brings us to the alleged dichotomy between the selection committee minutes (Annexures P/7 and P/8) and the events thereafter.

11. The learned single Judge in paragraph 60 to 63 has called in question the authenticity of the minutes of selection committee meeting dated 24-2-2003 (Annexure P/7 and P/8) primarily on the premise that firstly the names of Chairperson in both the meetings are different and secondly both the minutes were not signed by the Chairpersons. However, it is noteworthy that candidature of appellant was not considered in the aforesaid meeting, but was considered in subsequent meeting dated 4/7/2003. Even otherwise, the learned single Judge has not considered a very important aspect that contents of both the minutes dated 24/2/2003 are exactly the same except for the name of Chairpersons. It is beyond comprehension as to what meaningful gain could be obtained by drawing two identically worded minutes. In this behalf, the explanation of the appellant appears to be plausible. He has submitted that the actual reason for two minutes of meeting is that the concerned ministerial persons by preparing the minutes of meeting had wrongly recorded that the meeting was held in the Chairpersonship of Mrs. Rashmi Verma ADG, Department of Tourism whereas it had been held in the Chairpersonship of Mrs. Rathi Vinay Jha, Secretary (Tourism). Thus, when the officials had perused the minutes of meeting, they pointed out the mistake and the minutes were immediately re-drafted and the correct fact regarding the Chairpersonship was recorded. Except this, there is no deviation

in the entire contents of two minutes of meeting. In fact, there was only one meeting of the selection committee which was held on 24-2-2003. So far as non signing of the minutes of Chairpersons are concerned, it has been submitted that when the minutes were drawn on first occasion, the concerned ministerial person had wrongly recorded that the meeting was held in the Chairpersonship of Mrs. Rashmi Verma. Thus, when she went through the minutes of meeting, she did not sign and thus the minutes were re-drawn by recording correct Chairpersonship. In these correct minutes of meeting (Annexure P/8), Mrs. Rashmi Verma has duly signed in the capacity of member. As regards the signature of Mrs. Rathi Vinay Jha, Chairperson, since she was the appointing authority at the relevant point of time, as per the rules the matter was forwarded to the BOG without her signatures but with the signatures of all other members of the selection committee and when the BOG approved the appointment of the appellant in its 27th meeting held on 21-7-2003, the same person i.e. Mrs. Rathi Vinay Jha approved the appointment of the appellant and the order of appointment was issued by the Chairperson who was the very same person. Thus, the non-signature of Chairperson on the minutes of 24-2-2003 are well explained and can be understood in the seriatum of facts. In view of the fact that the same Chairperson approved the appointment and issued the appointment order, the significance of non-signature on the minutes of 24-2-2003 loses its sheen.

In fact, as is evident from the selection committee minutes (Ex.P/7 and P/8), the committee did not find any of the

candidates interviewed suitable for the post and decided that the applicants who had requested for consideration in absentia may be called for an interview **on a subsequent date**. Thus, it is clear that the candidature of appellant was deferred for consideration on 24-2-2003 and it was only on 4-7-2003 that the same came up for consideration wherein name of Dr. Sanjeev Kulshrestha for appointment on the post of Professor (Tourism). However, the learned single Judge has drawn an adverse inference in paragraph 80 of the impugned order on the premise that the said minutes were not brought on record. Here it is noteworthy that there was no challenge to the minutes dated 4/7/2003. Further, in the Supplementary Agenda Notes for the 27th Meeting of Board of Governors dated 21/7/2003 (Annexure R-1/6), there is a categorical reference to the meeting of 4/7/2003. Even otherwise, it cannot be lost sight of that selection of appellant had been challenged after a gap of more than 13 years and at this distance of time, no exception could be taken to non availability of such minutes on record and the same could not have been construed otherwise, as contended by learned counsel for the appellant/Institute while referring to affidavit of its Director dated 8/8/2023 filed in compliance of order of this Court dated 27/7/2023. In such a scenario, the learned single Judge was not right in out-rightly drawing an adverse inference with regard to non availability of such minutes.

12. In paragraph 79, the learned single Judge has returned a finding that the ten years PG experience was never waived by the BOG in its 25th meeting dated 25-2-2003 and also in its 27th

meeting dated 25-11-2003. In this regard, Supplementary Agenda Notes for the 27th Meeting of the Board of Governors held on 21st July 2003 (Annexure R-1/6) again assume importance. The said meeting was conducted in the Chairpersonship of Smt. Rathi Vinay Jha, Secretary (Tourism). The supplementary Agenda item No.3 has been reproduced by the learned single Judge in paragraph 71. A bare reading thereof makes it clear that it contains categorical references to two things - (i) that the selection committee met on 4-7-2003 and recommended that Dr. Kulshrestha be appointed on the post of Professor Tourism and (ii) the selection committee on 24th February 2003 recommended that the qualification of 10 years' post graduate experience may be waived since none of the applicants had ten years PG experience in tourism. The minutes of this meeting were recorded in the following terms :

“Supp.Agenda Item No.3 : Appointment of Professor in Tourism at IITTTM, Gwalior

Board considered the matter and authorized the Chairperson of the BOG to approve the appointment of Professor.”

Thereafter the appointment of appellant was approved by Chairperson Smt. Rathi Vinay Jha. Thus, when the Board had authorized the Chairperson to approve the appointment of appellant as Professor Tourism after going through the Suppl. Agenda Item No.3, which contained categoric reference to recommendation of selection committee to waive the ten years' PG experience as none of the candidates had that experience in tourism, then certainly in the decision of the Board of approving

the candidature of appellant, the decision of waiving 10 years' experience was implicit. Thus, the contrary observation of learned Single Judge in this behalf, being hyper-technical, cannot be countenanced. Even otherwise, as indicated above as culled out from AICTE e-mails (Annexures R-1/3, A/4 filed with I.A. 8268/23), documents pertaining to DTM & MBA/PGDBM filed along with I.A. 8302/23, certificates of Madhav College Annexures R/7 and R/8, the appellant had more than 11 years of Post Graduate teaching experience

13. Learned Single Judge in paragraph 93 has reiterated the settled canon of law that qualification cannot be changed in the mid of recruitment process, to harp upon the selection committee's recommendation of waiving 10 years' experience. For this learned Single Judge has placed reliance on various precedents of the Apex court. There is no scintilla of doubt to the aforesaid settled legal position, yet the learned Single Judge lost sight of the fact that he was exercising discretionary jurisdiction under *quo warranto* and was not in *certiorari* jurisdiction. *Certiorari* could not have been invoked by the petitioner who was not in the fray. The dictums referred to by the learned Single Judge in paragraph 94 do not relate to exercising jurisdiction under *quo warranto* which, as discussed above, is a writ of technical nature with limited scope. Even otherwise, as indicated above, the appellant had more than 11 years of PG teaching experience.

As a matter of fact, as indicated *in extenso (Supra)*, the distinction between writ of *quo warranto* and *certiorari* under

Article 226 of the Constitution, the writ Court is expected to exercise such jurisdiction with care and caution, subject to the limitations recognized in law. In our opinion, the learned Single Judge remained totally oblivious of delineation between writ of *quo warranto* and certiorari and not only exceeded the jurisdiction entering into certiorari jurisdiction but also invoked unwarranted inherent jurisdiction issuing manifold mandatory directions for which there was no foundation.

In view of the aforesaid discussion, the finding of learned Single Judge with regard to non eligibility of appellant Dr. Sandeep Kulshrestha for being appointed on the post of Professor (Tourism) cannot be sustained, being in excess of jurisdiction. In fact, the learned Single Judge has embarked upon a roving enquiry at the behest of a person who was not a candidate to the post in question that too while exercising the limited jurisdiction of *quo warranto* after 16 years of appointment of appellant.

14. Now, we advert to the observations and host of omnibus directions of exceptional nature given to the CBI in paragraphs 106 to 108 and 131 of the impugned order with regard to CV of appellant/respondent no.8 wherein besides M.Com, MBA & MPA are mentioned as post graduate teaching experience at Madhav Post Graduate College at S.No. 3 and 4 during the period 25/2/1996 to 27/1/1997 and 25/2/1991 to 24/2/1996 respectively. The directions so issued in paragraph 131, *inter alia*, in essence are to investigate for the offences punishable under sections 13(1)(d)(ii) or (iii) of the Prevention of

Corruption Act, 1988 from the stage where it was left, besides to investigate that all the OICs had acted on the instructions of MoT or not etc. (para 131 (iii)).

Firstly, the said directions by a writ Court exercising *quo warranto* jurisdiction are explicitly far-in-excess of constitutional jurisdiction. The jurisdiction of the writ Court has been reduced to investigation through roving enquiry based on assumed facts with little care and concern about the scope of jurisdiction of *quo warranto*; a limited one of technical nature. The approach of the learned Single Judge in the aforesaid context spreading from paragraphs 100 to 120 based on assumed facts tantamounts to witch-hunting exercise and hair-splitting. Moreso after closure of enquiry by Chief Vigilance Officer, Ministry of Tourism vide Office Memorandum dated 8/2/2017 (filed along with IA N.1700/17) and by the the Central Vigilance Commission (CVC) which exercises supervisory jurisdiction over CBI vide its letter dated 20/10/2015 (Annexure A/2 filed along with Document No.5643/18), direction to the CBI to conduct investigation, in our opinion, was not warranted either on facts or in law, inasmuch as the teaching experience of Post Graduate Classes at Madhav College during the relevant period was certified by the Principal of Madhav College vide certificates (Annexures R/7, Page 228 and R/8, Page 231) quoted above. There is not even an iota of doubt that Post Graduate Classes were not being taught at Madhav College. There is nothing on record contrary to the certificates so issued. At the cost of repetition, we reiterate that the assessment/evaluation of teaching experience has been done

by the expert body. The High Court should refrain from substituting its opinion for that of the expert body which has assessed the experience, as has been held in catena of decisions of Hon'ble Supreme Court.

In para 131(ii), the learned Single Judge directed the appellant/respondent no.8 to refund the difference of salary between the pay of Reader and Professor (Tourism)/Director IITTM-Gwalior within a period of three months therefrom failing which the delayed refund would carry interest at the rate of 6% per annum.

To say the least, the aforesaid direction issued in unusual enthusiastic approach by the writ Court, is in ignorance of and contrary to the dictum of Apex Court in **Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others ((2014)1 SCC 161)** wherein it has been held as under:-

“53. In view of the aforesaid analysis we are of the resolute opinion that even while issuing a writ of quo warranto there cannot be any direction for recovery of the sum. While entertaining a PIL pertaining to a writ of quo warranto we would add that it is the obligation of the Court to pave the path which is governed by constitutional parameters and the precedential set-up. It is to be borne in mind that laws are commended to establish a society as required by the paradigms laid down by law. The courts while implementing law may not always be guided by total legalistic approach but that does not necessarily mean to move on totally moralistic principle which has no sanction of law. We have been constrained to say so as we find that there is a temptation to say something in a public interest litigation which can be construed as the overreach. It needs no special emphasis to state that formulations

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of guidelines or directions issued are bound to be within the constitutional parameters.

(Emphasis supplied)

Further, the observation of learned Single Judge in para 108 of the impugned order that offences under sections 13(1)(d) (ii) and (iii) of the Prevention of Corruption Act, 1988 are attracted to the facts in hand, is also not palatable, inasmuch as the aforesaid sections talk of obtaining valuable thing or pecuniary advantage by abusing one's position as public servant, which has no relevance to the factual matrix in hand and we fail to comprehend as to how appointment by way of selection through Selection Committee approved by Board of Governors and done by Chairman would fall within the fold of such section.

15. We may hasten to add that the jurisdiction under Article 226 of the Constitution conferring extraordinary constitutional jurisdiction is neither unbridled nor uncanalised, instead is subject to self-imposed limitations. The Constitutional Courts are expected to exercise such jurisdiction with care, caution and circumspection ensuring that judicial discipline is not sacrificed in any manner whatsoever. One should not lose sight of the fact that scope and dimension of each of the five writs has been well delineated meticulously and vividly by the Hon'ble Supreme Court in catena of decisions. The writ of *quo warranto* being of technical nature cannot be expanded to cover anything under the sky, much less for reducing the writ Court to a Court of investigation with un-warranted manifold directions to Authorities forcing investigation without contextual facts having relevance to exercise of *quo warranto* jurisdiction.

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16. In view of the aforesaid, the impugned order could not withstand judicial scrutiny and thus cannot be sustained. The same is accordingly set aside.

The writ appeals stand allowed. The status of appellant Sandeep Kulshrestha shall be restored to the post of Director, IITTM, Gwalior.

(ROHIT ARYA)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

(and)