

AFR**THE HIGH COURT OF MADHYA PRADESH, JABALPUR**

Writ Petition No.	6608 Of 2020
Parties Name:	Ravi Shanker Chouksey Vs. The State of M.P. and others
Bench Constituted	Hon'ble Shri Justice Vishal Dhagat
Whether approved for reporting	Yes/No
Name of Advocates for parties	For Petitioner:- Shri Sanjay Ram Tamrakar, learned counsel. For Respondents/State: Shri Devendra Gangrade, learned Panel Lawyer.
Law laid down	Writ of <i>quo warranto</i> can be issued to control executive action in making appointment to public offices. Public office must be office in which public is interested and of substantive importance and character. Writ of <i>quo warranto</i> cannot be issued for employees holding Class III and Class IV position.
Significant paragraph numbers	Para 6

(O R D E R)
19/07/2021

The petitioner has called in question compassionate appointment of respondent No.5 i.e. Aatish Kumar Dagoria and has prayed for issuance of writ of *quo warranto* thereby quashing of appointment order dated 31.12.2007 and to issue writ of *mandamus* to consider and decide the representation of the petitioner.

2. On 18.01.2021 this Court asked the petitioner to explain delay and laches in filing of writ petition. The petitioner has challenged the order of the year 2007 in the year 2020. Later on this Court vide order dated 15.06.2021 asked the petitioner to argue on issue of *locus standi*

of petitioner whether the writ of *quo warranto* can be issued for removal of a Class IV employee.

3. Learned counsel for the petitioner submitted that petitioner and respondent No.5 both are in zone of consideration for promotion, therefore, petitioner is having direct interest in challenging the appointment of respondent No.5, therefore, he has *locus standi* to file the present writ petition.

4. Leaned counsel for the petitioner has further submitted that respondent No.5 is holding public office and therefore, writ of *quo warranto* is maintainable. It is submitted that writ of *quo warranto* is issued to correct the appointment if any person is appointed illegally *de hors* the rules. The person is appointed in the public office for which he is not legally entitled to and thus writ of *quo warranto* can be issued in this case. It is submitted that as soon as the petitioner learnt about the illegal appointment of respondent No.5, he had immediately filed writ petition before this Court. The petitioner was not having knowledge of appointment of respondent No.5 in the year 2007. As soon as he learnt about the order of appointment, he filed writ petition, therefore, there is no delay and laches on the part of the petitioner. On these grounds, learned counsel for the petitioner made a prayer for issuance of writ of *quo warranto*, *mandamus* or in alternative to direct respondents to consider his representation.

5. Heard the learned counsel for the parties on aforesaid issues.

6. Literal meaning of the word *quo warranto* is "Where is your warrant of appointment?". *Quo warranto* is remedy or proceeding whereby State enquires into the legality of claim which a party asserts in office of franchise to oust him from enjoyment if the claim is not well founded. As held by Apex Court in the case of **University of Mysore Vs. Govinda Rao reported in 1965 SC 491**, the Court has jurisdiction under Article 226 of the Constitution of India to control executive action in making appointments to public offices. The test of public office is whether the duties of the office are public in nature in

which public is interested or not ? This court in the case of **Jagram Vs. Gwalior Town and Country Development Authority** reported in **AIR 1987 MP 11** held that public office must be of substantive in character i.e. an office independent in title. It is not applicable to ministerial officers, who hold office at the pleasure of master.

7. The definition of Public Office given in Black's Law Dictionary is as under :-

“**Public Office** – Essential characteristics of 'Public Office' are (1) authority conferred by law (2) fixed tenure of Office and (3) power to exercise some portion of sovereign functions of government; key element of such test is that "Officer" is carrying out sovereign function. *Spring v. Constantino*, 168 Conn.563,362 A 2d 871, 875. Essential elements to establish public position as "Public Office' are position must be created by Constitution, Legislature, or through authority conferred by legislature, portion of sovereign power of government must be delegated to position, duties and powers must be defined, directly or impliedly, by legislature or through legislative authority, duties must be performed independently without control of superior power other than law, and position must have some permanency and continuity. *State v. Taylor*, 260 Iowa 634, 144 NW 2d 289, 292.”

8. The petitioner is challenging the appointment of respondent No.5 on compassionate ground on Class IV post. The said office cannot be held to be a public office, therefore, petition for issuance of writ of *quo warranto* for that office is not maintainable.

9. Learned counsel for the petitioner submitted that father and mother of respondent No.5 both were in government service. Respondent No.5 was granted compassionate appointment on the death of his mother. Respondent No.5 had suppressed the fact that his father is also in service in the same establishment. Since father of respondent No.5 was in service and respondent No.5 has obtained compassionate appointment suppressing the aforesaid fact, if any person is illegally benefited then he is required to disgorge illegal benefits he has obtained. The petitioner was not aware of the appointment order of respondent No.5. In cases of fraud limitation is to run from date of discovery of fraud. He immediately filed petition as soon as he learnt

about the order. There is no specific pleading when and how he learnt about order. In view of the same petitioner fails to explain delay and laches satisfactorily.

10. **Petitioner** has no *locus* to challenge order dated 31.12.2007. Petitioner has no direct and substantial interest in challenging compassionate appointment of respondent No.5. Only incidental of indirect interest will not give *locus* to petitioner to file writ petition.

11. Court must strike at illegality and injustice wherever it is found. Court cannot perpetuate illegality, therefore, it is directed that respondent No.2 shall look into the matter and if any fraud and suppression is found to be practiced by respondent No.5 then action shall be taken in accordance with law after giving opportunity of hearing to respondent No.5.

12. No opinion is expressed on the merits of the case.

13. Accordingly, the writ petition filed by the petitioner is **disposed off**.

C.C. As per rules.

(VISHAL DHAGAT)
JUDGE