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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3620 of 2016

Order reserved on: 9-11-2016

Order delivered on: 1-12-2016

Narayan Singh Chauhan, S/o Late Dhoor Singh Chauhan, aged about 69 years, R/o Bortara, P.O. Jarod, P.S. Bhatapara Rural, District Baloda Bazaar-Bhatapara (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Chief Secretary, Government of Chhattisgarh, Mantralaya, Naya Raipur (C.G.)

2. Secretary, Forest Department, Mantralaya, Naya Raipur (C.G.)

3. Arvind Anil Boaz, Principal Chief Conservator of Forests, Government of Chhattisgarh, Aranaya Bhawan, Jail Road, Raipur - 492 001 (C.G.)

---- Respondents

For Petitioner: Ms. Rajni Soren, Advocate.
For State of Chhattisgarh/Respondents No.1 and 2: -
Mr. Prasoon Kumar Bhaduri, Govt. Advocate.
For Respondent No.3: Not noticed.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, petitioner herein Shri Narayan Singh Chauhan seeks issuance of writ of quo warranto against respondent No.3 Shri Arvind Anil Boaz questioning his selection and appointment on the post of Principal Chief Conservator of Forests (PCCF) and for his consequent

removal from the said post of PCCF.

2. Essential facts shorn of all paraphernalia requisite to adjudicate the lis are as under: -

2.1) The petitioner claims to be former senior journalist and further claims to have held senior positions in editorial boards of several newspapers like Deshbandhu and Jansatta and also claims to be a whistle-blower and an activist.

2.2) Respondent No.3, a member of Indian Forest Service, was selected by the selection committee for the post of PCCF on 30-8-2013 and thereafter, he was appointed on the said post of PCCF by order of the State Government dated 30-6-2015. The petitioner herein has challenged respondent No.3's selection and appointment seeking writ of quo warranto mainly on the ground that the Departmental Promotion Committee which considered selection for the post of PCCF did not apply the standard prescribed by itself in promotion for the post of PCCF, as the Committee acted arbitrarily in considering the ten confidential reports of respondent No.3. It was further pleaded that the Departmental Promotion Committee (DPC) constituted under the Chairmanship of Chief Secretary and two other members for the purpose of considering promotion from the post of Additional Principal Chief Conservator of Forests to the post of Principal Chief Conservator of Forests, on 30-8-2013 approved the name of respondent No.3 for the

said post. It was also pleaded that the said DPC had decided that the confidential reports of past ten years would be considered, eight of which at least should have been grade as "Very Good" and remaining two should be graded as "Good" and in case a particular year's confidential report was not available or was not capable of being considered, then the previous year's confidential report will be considered. It was also pleaded that the respondents while considering the case of respondent No.3 for the post of PCCF as per the rules laid down were supposed to consider the confidential reports from the year 2002-2003 to 2011-2012, but confidential reports for the years 2005-2006, 2006-2007, 2007-2008 and 2008-2009 were said to be unavailable, as during that period respondent No.3 was said to be posted in SACEP (South Asia Co-operative Environment Programme) at Sri Lanka and since these confidential reports were unavailable, four confidential reports of the years 1995-96, 1996-97, 1999-2000 and 2001-2002 were taken into consideration and on this basis, respondent No.3 was considered and found fit for promotion to the post of PCCF. It has also been pleaded that as per the Government of India's circular dated 12-9-1997, Annual Confidential Report (ACR) has to be written when an officer is on deputation in an international organization. It has further been pleaded that the Rules provide that ACR is not required to be written in respect of a member of the All India Services

for the period of service in an international organization and the Rules further provide that any Assessment Report for the period of service shall not form part of ACR dossier but shall be kept along with other personal records maintained by the Central Government / State Government. It has finally been argued that respondent No.3 was wrongly appointed on the post of PCCF for the reason that the Selection Committee did not follow the procedure laid down by it and there was no reason not to take into account the Confidential Reports while he was posted in SACEP, Sri Lanka. The Committee had taken into consideration the confidential reports much prior to posting of respondent No.3 in SACEP, Sri Lanka which ought not to have been taken into consideration and did not take into consideration the confidential reports which ought to have been taken into consideration and this view of the Selection Committee is wholly erroneous and the Departmental Promotion Committee has arbitrarily selected the Confidential Reports without following the chronological order, as the DPC has erred in exempting production of Confidential Reports of four years when respondent No.3 was on deputation in SACEP, Sri Lanka, and therefore respondent No.3 was not selected properly and his selection and appointment on the post of PCCF be declared to be null and void by issuance of writ of quo warranto.

3. Ms. Rajni Soren, learned counsel appearing for the petitioner,

would submit that selection of respondent No.3 on the post of PCCF is made as per the guidelines dated 16-4-2009 issued by the Ministry of Environment and Forests, Government of India formulated under the Indian Forest Service (Pay) Second Amendment Rules, 2008, which have been made by the Central Government in exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951. As per the guidelines, parameters of selection on the post of PCCF are outstanding merit, competence, absolute integrity and having specific suitability for the post. She would further submit that the Departmental Promotion Committee without any explanation deviated from its own procedure and dropped the confidential reports of the years 1997-98, 1998-99 and 2000-2001 and hence there is no transparency to ensure the parameters laid down in the guidelines dated 16-4-2009 issued by the Central Government and a person with a tainted reputation has been appointed as PCCF in violation of the prescribed guidelines and rules, and this is a fit case where a writ of quo warranto deserves to be issued for removal of respondent No.3 from the post of Principal Chief Conservator of Forests.

4. Mr. Prasoon Kumar Bhaduri, learned Government Advocate appearing on behalf of the State/respondents No.1 and 2 on advance copy, would submit that respondent No.3's selection and appointment on the post of PCCF, which is a "service

matter" within the meaning of Section 2(q) of the Administrative Tribunals Act, 1985, has been challenged by the petitioner herein therefore the petitioner is required to move an application under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act of 1985') for redressal of his grievance, if any, and as such, by virtue of the provisions contained in Section 28 of the Act of 1985, the petitioner has effective statutory alternative remedy to file application before the Central Administrative Tribunal, therefore, the writ petition as framed and filed under Article 226 of the Constitution of India before this Court would not be maintainable. Learned State counsel would rely upon the judgment of the Supreme Court in the matter of **L. Chandra Kumar v. Union of India and others**[1] to buttress his submission. Alternatively, he would submit that the petitioner has questioned the suitability of respondent No.3 on the post of PCCF which is not the scope of writ of quo warranto, as such, the writ petition deserves to be dismissed.

5. In reply to the submissions made by Mr. Prasoon Kumar Bhaduri, learned Government Advocate, on the question of maintainability of writ petition; Ms. Rajni Soren, learned counsel for the petitioner, would submit that the petitioner is a third party/public-spirited person and application under Section 19 of the Act of 1985 can be maintained only by aggrieved

1 (1997) 3 SCC 261

person before the Central Administrative Tribunal, and only the writ of quo warranto / public-law declaration is being sought therefore, the instant writ petition before this Court would be maintainable and application under Section 19 of the Act of 1985 would not be maintainable at the instance of the writ petitioner.

6. I have heard learned counsel for the parties, given thoughtful consideration to the submissions raised therein and gone through the record with utmost circumspection.

7. I shall first consider the preliminary objection raised on behalf of the writ petitioner.

8. By virtue of the provisions contained in the Administrative Tribunals Act, 1985, all service matters within the meaning of Section 2(q) of the Act of 1985 with respect to recruitment of Indian Forest Service have to be decided by the provisions contained in the Act of 1985 by virtue of Section 14 of the said Act. Section 14(1)(a) of the Act of 1985 provides that all issues with respect to recruitment of a post under the Union of India have to be decided by the Central Administrative Tribunal. Section 19(1) of the Act of 1985 provides that a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application for the redressal of his grievance.

9. The preliminary question would be whether the petitioner, who

is a third party / claiming to be public-spirited person and not an aggrieved person in real sense, can maintain an application under Section 19 of the Act of 1985 for writ of quo warranto or this writ petition before this Court is maintainable.

10. A Constitution Bench of the Supreme Court in **L. Chandra Kumar** (supra) has considered the following three questions: -

> "(1) Whether the power conferred upon Parliament or the Stale Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323-A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/ 227 and on the Supreme Court under Article 32 of the Constitution?
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> (2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?
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> (3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?"

Their Lordships after consideration answered the above-mentioned questions as under: -

> "99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of

> the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

11. Thereafter, in the matter of **Dr. Duryodhan Sahu and others etc. etc. v. Jitendra Kumar Mishra and others etc. etc.**[2], the question before the Supreme Court was whether an Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 can entertain a public interest litigation. Their Lordships of the Supreme Court reiterating the law laid down in **L. Chandra Kumar** (supra) have held that the Tribunals have to perform only, a 'supplemental - as opposed to a substitutional - role' in discharging the powers conferred

2 AIR 1999 SC 114

by Articles 226/227 and 32 of the Constitution. It has been further held that the powers of the High Courts under Articles 226/227 are not taken away by the Act of 1985. Their Lordships further considered the provisions contained in Sections 14 and 19 of the Act of 1985 and held that in order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. In paragraph 21, Their Lordships held finally that "the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger".

12. In the matter of **R.K. Jain v. Union of India**[3], the Supreme Court has held that an aggrieved person--a "non-appointee"--would alone have the locus standi to challenge the offending action. A third party could seek a remedy only through a public law declaration. Their Lordships observed in paragraph 74 as under: -

> "74. ... In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person."

13. Way back in the year 1957, in the matter of **Rajendarkumar Chandanmal v. Government of State of M.P. and others**[4],

3 (1993) 4 SCC 119
4 AIR 1957 MP 60

the Madhya Pradesh High Court has laid down the law when the writ of quo warranto can be issued, which states as under:-

> "16. ... For the issue of a writ of quo-warranto no special kind of interest in the relator is needed nor is it necessary that any of his specific legal right be infringed. It is enough for its issue that the relator is a member of the public and acts bona fide and is not a mere pawn in the game having been set up by others. If the Court is of the view that it is in the interest of the public that the legal position with respect to the alleged usurpation of an important public office should be judicially cleared, it can issue a writ of quo-warranto at the instance of any member of the public. ...
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> 19. It therefore follows that the petition cannot be thrown out merely on the ground that the petitioner has no special interest in the matter nor on the ground that none of his special legal right is in jeopardy. The offices to which the petition relates are of public nature and are statutory and the petitioner as a member of public can move this Court to examine the validity of the claim of respondents Nos. 3, 4, 6 and 7 to the same."

14. Thereafter, in the matter of **State of Punjab v Salil Sabhlok and others**[5], the Supreme Court has followed the law laid down in **R.K. Jain** (supra) and held that third party has no locus standi to canvass the legality or correctness of the action and further relying upon the matter of **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.**[6] has held that a third party and a complete stranger cannot approach an Administrative Tribunal to challenge the appointment of Chairperson of the Punjab Public Service Commission and held the writ of quo warranto to be

5 (2013) 5 SCC 1
6 (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)

maintainable. Paragraphs 86 and 87 of the report {**Salil Sabhlok's** case (supra)} state as under: -

> "86. About twenty years ago, in a case relating to the appointment of the President of a statutory tribunal, this Court held in R.K. Jain v. Union of India (supra) that an aggrieved person–a "non-appointee"–would alone have the locus standi to challenge the offending action. A third party could seek a remedy only through a public law declaration. This is what was held: (SCC p. 174, para 74)
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> > "74. ... In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person."
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> This view was reiterated in B. Srinivasa Reddy (supra). Therefore, assuming the appointment of the Chairperson of a Public Service Commission is a "service matter", a third party and a complete stranger such as the writ petitioner cannot approach an Administrative Tribunal to challenge the appointment of Mr. Dhanda as Chairperson of the Punjab Public Service Commission.
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> 87. However, as an aggrieved person he or she does have a public law remedy. But in a service matter the only available remedy is to ask for a writ of quo warranto. This is the opinion expressed by this Court in several cases. One of the more recent decisions in this context is Hari Bansh Lal[7] wherein it was held that: (SCC p. 661, para 15)
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> > "15. ... except for a writ of quo warranto, public interest litigation is not maintainable in service matters."
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> This view was referred to (and not disagreed with) in Girjesh Shrivastava v. State of M.P.[8] after referring to and relying on Duryodhan Sahu v.

7 Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771

8 (2010) 10 SCC 707 : (2011) 1 SCC (L&S) 192

> Jitendra Kumar Mishra (supra), B. Srinivasa Reddy (supra), Dattaraj Nathuji Thaware v. State of Maharashtra[9], Ashok Kumar Pandey v. State of W.B.[10] and Hari Bansh Lal (supra)."

15. Therefore, in light of principle of law laid down by Their Lordships of the Supreme Court in **Salil Sabhlok** (supra), I am unhesitatingly of the opinion that the instant writ of quo warranto being public-law declaration would be maintainable at the behest of the petitioner being a third party and a total stranger to the appointment of respondent No.3 and as such, the objection raised on behalf of the State/respondents No.1 and 2 that the instant writ petition seeking writ of quo warranto at the instance of the writ petitioner is not maintainable and application would lie before the Central Administrative Tribunal under Section 19 of the Act of 1985, is hereby overruled.

16. Aforesaid conclusion would bring me back to question as to whether the petitioner is entitled for issuance of a writ of quo warranto.

Meaning of Quo Warranto: -

17. According to the Stroud's Judicial Dictionary, 4th Edition,

> "Quo Warranto is a writ that lies against a person who usurps any franchise, liberty or office."

18. Corpus Juris Secundem defines quo warranto as follows: -

> "Quo Warranto is a proceeding to determine the right to the exercise of franchise or office and to oust the holder if his claim is not well-founded or if he has forfeited his right."

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9 (2005) 1 SCC 590
10 (2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865

19. In Halsbury's Laws of England Fourth Edition Reissue Volume-I, para 265, this writ has been defined as follows: -

> "An information in the nature of quo warranto took the place of obsolete writ of quo warranto which is against a person who claimed or usurped an office, franchise, or liberty to enquire by what authority he supported his claim in order that the right to the office or franchise might be determined."

20. In **B.R. Kapur v. State of T.N.**[11], the Supreme Court after referring to the Halsbury's Laws of England, Words and Phrases and leading decisions on the point has observed that a writ of quo warranto is a writ which lies against the person who is entitled to an office of public nature and is only a usurper in office, that it directed to such person to show by what authority he was entitled to hold the office. It is pointed out that challenges can be made on various grounds, including the ground that the possession of the office does not fulfill the required qualifications or suffers from a disqualification, which debars him from holding the office. It has been further stated that if such person fails to do so, a writ of quo warranto shall be directed against him.

Principles governing issuance of writ of quo warranto: -

21. It is well settled that issuance of writ of quo warranto is a discretionary remedy, authority of a person to hold a public office can be questioned inter alia in the event the appointment is violative of statutory provision and

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11 AIR 2001 SC 3435

unquestionably a writ of quo warranto can be issued inter alia when the appointment is contrary to statutory rules and holder of the office lacks eligibility.

22. Way back in the year 1963, the Constitution Bench of the Supreme Court in the matter of **The University of Mysore and another v. C.D. Govinda Rao and another**[12] while dealing with the nature of writ of quo warranto has held in no uncertain terms that before a citizen can claim a writ of quo warranto, he must satisfy the Court that the office in question is a public office and is held by usurper without legal authority by observing as under: -

> "7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the enquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office, in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the

12 AIR 1965 SC 491 : (1964) 4 SCR 575

> usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

23. Similarly, in the matters of **High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others**[13] and **R.K. Jain** (supra) similar proposition of law has been propounded with regard to writ of quo warranto.

24. In the matter of **Centre for PIL and another v. Union of India and another**[14], Their Lordships of the Supreme Court have laid down the requisites and object of issuance of writ of quo warranto. Paragraph 51 of the report states as under:-

> "51. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the court inter alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority."

25. Similarly, in the matter of **Rajesh Awasthi v. Nand Lal Jaiswal and others**[15], it has been held that writ of *quo warranto* lies when appointment is made contrary to statutory provisions and laid down the test to issue a writ of *quo*

13 (2003) 4 SCC 712
14 (2011) 4 SCC 1
15 (2013) 1 SCC 501

warranto to see whether person holding the office is authorised to hold the same as per law. Thus, the petitioner seeking issuance of writ of quo warranto has to satisfy that the appointment of respondent No.3 Arvind Anil Boaz is contrary to statutory rules and he lacks eligibility.

26. In the matter of **Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others**[16], Their Lordships of the Supreme Court have held in no uncertain terms that writ of quo warranto can be issued only when person holding public office lacks eligibility or when appointment is contrary to statutory rules and held as under in paragraph 21: -

> "21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."

27. In a decision in the matter of **Mahesh Chandra Gupta v. Union of India and others**[17], Their Lordships of the Supreme Court have pointed out the distinction between "eligibility" and "suitability" and held that "eligibility" is based on objective

16 (2014) 1 SCC 161
17 (2009) 8 SCC 273

factor and it is therefore liable to judicial review, but “suitability” pertains to realm of opinion and is therefore, not amenable to any judicial review, and held as under in paragraphs 39, 43 and 44: -

> “39. At this stage, we may state that, there is a basic difference between "eligibility" and "suitability". The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of "suitability". Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under Article 217(2)(b). This dichotomy between suitability and eligibility finds place in Article 217(1) in juxtaposition to Article 217(2). The word "consultation" finds place in Article 217(1) whereas the word "qualify" finds place in Article 217(2).
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> 43. One more aspect needs to be highlighted. "Eligibility" is an objective factor. Who could be elevated is specifically answered by Article 217(2). When "eligibility" is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of "suitability", stands excluded from the purview of judicial review.
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> 44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in the case of Supreme Court Advocates-on-Record Assn. v. Union of India[18] and Special Reference No. 1 of 1998, Re[19].”

Their Lordships further concluded that in case involving lack of

18 (1993) 4 SCC 441
19 (1998) 7 SCC 739

eligibility, writ of quo warranto would certainly lie and observed in paragraphs 71 and 74 as under: -

> “71. "The overarching constitutional justification for judicial review, the vindication of the rule of law, remains constant, but mechanisms for giving effect to that justification vary".
>
> Mark Elliott
>
> "Judicial review must ultimately be justified by constitutional principle."
>
> Jowett
>
> In the present case, we are concerned with the mechanism for giving effect to the constitutional justification for judicial review. As stated above, "eligibility" is a matter of fact whereas "suitability" is a matter of opinion. In cases involving lack of "eligibility" writ of quo warranto would certainly lie. One reason being that "eligibility" is not a matter of subjectivity. However, "suitability" or "fitness" of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion.
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> 74. It is important to note that each constitutional functionary involved in the participatory consultative process is given the task of discharging a participatory constitutional function; there is no question of hierarchy between these constitutional functionaries. Ultimately, the object of reading such participatory consultative process into the constitutional scheme is to limit judicial review restricting it to specified areas by introducing a judicial process in making of appointment(s) to the higher judiciary. These are the norms, apart from modalities, laid down in Supreme Court Advocates-on-Record Assn. (supra) and also in the judgment in Special Reference No. 1 of 1998, Re. (supra). Consequently, judicial review lies only in two cases, namely, "lack of eligibility" and "lack of effective consultation". It will not lie on the content of consultation.”

28. In the matter of **N. Kannadasan v. Ajoy Khose and others**[20] the Supreme Court has clearly held that it is not for the court

20 (2009) 7 SCC 1

to embark upon an investigation of its own to ascertain the qualifications of the person concerned and observed in paragraphs 134 and 139 as under: -

> "134. Indisputably, a writ of quo warranto can be issued inter alia when the appointment is contrary to the statutory rules as has been held by this Court in High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat[21] and R.K. Jain (supra). (See also Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana[22].) In Duryodhan Sahu (Dr.) (supra), this Court has stated that it is not for the court to embark upon an investigation of its own to ascertain the qualifications of the person concerned. (See also Arun Singh v. State of Bihar[23].) We may furthermore notice that while examining if a person holds a public office under valid authority or not, the court is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. [See Kashinath G. Jalmi (Dr.) v. Speaker[24].]
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> 139. In R.K. Jain (supra), consultation by the executive which the Chief Justice having found to be not necessary, it was held that no case for issuance of writ of quo warranto has been made out, stating: (SCC p. 173, para 73)
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> > "73. Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. Exercise of judicial review is to protect the citizen from the abuse of the power, etc. by an appropriate Government or department, etc. In our considered view granting the compliance with the above power of appointment was conferred on the executive and confided to be exercised wisely. When a candidate was found

21 (2003) 4 SCC 712 : 2003 SCC (L&S) 565
22 (2002) 6 SCC 269
23 (2006) 9 SCC 375
24 (1993) 2 SCC 703

> qualified and eligible and was accordingly appointed by the executive to hold an office as a Member or Vice-President or President of a Tribunal, we cannot sit over the choice of the selection, but it be left to the executive to select the personnel as per law or procedure in this behalf."
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> In that case, it was held that no case for issuance of a writ of certiorari had been made out as a third party had no locus standi to canvass the legality or correctness of the action seeking for issuance of a writ of certiorari. Only public law declaration would be made at the behest of the appellant who was a public-spirited person."

29. Judgment rendered by the Supreme Court in **Mahesh Chandra Gupta** (supra) has been followed with approval by Their Lordships of the Supreme Court in the matter of **M. Manohar Reddy and another v. Union of India and others**[25].

30. In the matter of **Valsala Kumari Devi M. v. Director, Higher Secondary Education and others**[26], the Supreme Court has defined the word "suitability" as under: -

> "The expression "suitability" means that a person to be appointed shall be legally eligible and "eligible" should be taken to mean "fit to be chosen"."

31. Very recently, in the matter of **Registrar General, High Court of Madras v. R. Gandhi and others**[27], the Supreme Court has reiterated the principle of law laid down in **Mahesh Chandra Gupta** (supra) and held that judicial review is permissible only on assessment of eligibility and not on suitability of an

25 (2013) 3 SCC 99
26 (2007) 8 SCC 533
27 (2014) 11 SCC 547

appointee.

32. In the matter of **Renu and others v. District and Sessions Judge, Tis Hazari Courts, Delhi and another**[28], Their Lordships of the Supreme Court have reiterated that for issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it, and observed as under: -

> "15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. ..."

28 (2014) 14 SCC 50

33. In light of law laid down in afore-cited cases, if the facts of the present case are examined, it is quite apparent that the petitioner herein is questioning selection and appointment of respondent No.3 on the post of Principal Chief Conservator of Forests. It is also quite vivid from the afore-cited judgments that in a writ of quo warranto, the writ petitioner is entitled to question the eligibility of respondent No.3 only that he lacks eligibility for the said post and suitability on the said post cannot be challenged.

34. Their Lordships in the matter of **Mahesh Chandra Gupta** (supra) further followed in **R. Gandhi's** case (supra) and **M. Manohar Reddy** (supra) have clearly held that only "eligibility" is a matter of fact whereas "suitability" is a matter of opinion. In cases involving lack of "eligibility" writ of quo warranto would certainly lie and in case of challenge to "suitability", no writ of quo warranto would lie.

35. A careful perusal of the writ petition would show that the petitioner's only challenge is not eligibility of respondent No.3 on the post of PCCF, but suitability of respondent No.3 who has been found suitable for the said post by the departmental promotion committee on 30-8-2013. The entire petition from para 8.1 clearly indicates that it is the case of the petitioner that the DPC did not properly apply the standard prescribed in promotion from the post of Additional Principal Chief Conservator of Forests to the post of Principal Chief

Conservator of Forests; the guidelines dated 16-4-2009 have not been followed in its letters and spirit; and ACRs of the years 1995-96, 1996-97, 1999-2000 and 2001-2002 were taken into consideration, as ACRs of the years 2005-2006, 2006-2007, 2007-2008 and 2008-2009 were said to be unavailable though same were required to be written but were not written, and thus, respondent No.3 has been wrongly held to be suitable on the basis of consideration of ACRs for particular years which ought not to have been considered and non-consideration of ACRs which ought to have been written and considered by the DPC. In the considered opinion of this Court, the petitioner's only challenge is confined to assessment of suitability of respondent No.3 on the post of PCCF which is not the scope of writ of quo warranto. The petitioner has not even alleged the ineligibility of respondent No.3 for the said post alleging that he is not eligible and qualified for the post of PCCF or he lacks eligibility, either in this petition or during the course of argument and the question of suitability cannot be gone into in the petition for writ of quo warranto.

36. Their Lordships of the Supreme Court in a Constitution Bench judgment in the matter of **Statesman (Private) Ltd. v. H. R. Deb and others**[29] have held that in an unclear case, writ of quo warranto should not be issued and observed as under:-

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29 AIR 1968 SC 1495

> "The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law."

37. The aforesaid judgments have been followed by the Supreme Court in the matter of **A. N. Shashtri v. State of Punjab and others**[30].

38. Thus, on the basis of aforesaid analysis, this Court is satisfied that the petitioner seeking a writ of quo warranto has demonstrably failed to plead and establish that appointment of 3rd respondent Arvind Anil Boaz as Principal Chief Conservator of Forests is in violation of the statutory provisions. The law laid down by Their Lordships of the Supreme Court in **Statesman** (supra) sounding a note of caution for this Court to slow in issuing a writ in the nature of quo warranto in unclear case aptly and squarely applies to the factual score of the present case, as the petitioner has failed to establish clear infringement of law for the writ claimed in the nature of quo warranto and as such, the petitioner is not entitled for any of the reliefs claimed in the writ petition.

39. As a fallout and consequence of aforesaid discussion, the writ petition being *sans substratum*, deserves to be and is accordingly, dismissed at the admission stage itself leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

30 1988 Supp SCC 127

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3620 of 2016

Narayan Singh Chauhan

Versus

State of Chhattisgarh and others

HEAD NOTE

In a writ of quo warranto, suitability of the public officer cannot be gone into.

अधिकार पृच्छा रिट में लोक अधिकारी की उपयुक्तता नहीं देखी जा सकती है।