

Jammu & Kashmir High Court

Reserved On: 30.09.2022 vs Union Territory Of J&K And Others on 17 October, 2022

S. No.75

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

WP(C) No. 847/2022

CM No. 2544/2022

Reserved on: 30.09.2022

Pronounced on: 17.10.2022

Ashutosh Sharma

...Petitioner(s)

Through: Mr. Ajay Vaid, Advocate

Vs.

Union Territory of J&K and Others

...Respondent(s)

Through: Mr. Amit Gupta, AAG

Mr. K. D. S. Kotwal, Dy.AG

Ms. Anshuja Tak, Advocate

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

1. The petitioner in the instant petition filed under Article 226 of the Constitution craves the indulgence of this Court for grant of the following reliefs: -

a) Quo-Warranto with respect to Order No. 93- JK(GAD) of 2021 dated 30.01.2021 passed by the respondent no. 1 qua the respondent no. 2 and may kindly set aside the same with the respect to respondent no. 2 in the interest of justice.

b) Any other writ, order or direction which this Hon'ble Court deems fit and proper and in the fact and circumstances of the case may please be issued in favour of the petitioner and against the respondents.

2. The factual matrix of the petition as propounded in the petition is that the Jammu and Kashmir State Sports Council (for short 'the Council') having its own Constitution incorporating therein Memorandum of Articles of Association and Rules and Regulations (for short 'the Articles and Rules respectively) besides other matters provide for the mode of filling up of the post of Secretary to the Council to be filled up by deputation from Govt., by an officer of the rank of Special Secretary. An information in regard to above is stated to have been obtained by one Mr. Gagan Kohli through RTI furnished by the Public Information officer/Administrative Officer of the Council vide information dated 04.08.2022.

3. The respondent no. 1 is stated to have issued Government order No. 93-JK (GAD) of 2021 dated 31.01.2021, posting, upon transfer the respondent no 2 herein as Secretary to the Council. The posting of the respondent no. 2 herein as Secretary to the Council is being alleged to be illegal owing to the reason that the respondent no 2 is not holding the post of Special Secretary as provided in

Rules supra and thus, lacking qualification for holding the post of Secretary to the Council.

4. Objections to the petition have been filed by respondents.

5. In the objections filed by respondents 1 and 3 while opposing the petition it is averred that the petitioner has no locus standi to maintain the petition and that the Council is a Society registered under Jammu and Kashmir Societies Registration Act, 1998, being run and administered by its governing body and that in terms of the Rules supra, the Council does not bar the Govt from transferring and posting an officer other than a Special Secretary in the interest of administration, more so when the Recruitment Rules of the Council are not applicable to the Govt.

6. Respondent No. 2 in the objections filed to the petition while resisting the same has stated that petitioner has no legal, statutory or fundamental right to invoke the extraordinary writ jurisdiction of this Court. The order impugned in the petition is stated to have been thrown challenge to, by the petitioner after a considerable period of time of more than one year and is aimed at to pressurize the respondents to revoke the de-recognition of the petitioner's sports association, to which he has been affiliated to. The posting of a Secretary/ Joint Secretary on deputation/transfer by the Government to the Council of the rank of Special Secretary is stated to be neither eligibility condition nor a qualification to be possessed for holding the post of a Secretary to the Council. The seeking of writ of quo-warranto by the petitioner in the writ petition is being also resisted in the objections on the ground that there has been neither violation of any statutory Rule nor any of the provisions of the Constitution. It is being further averred that the petitioner has been a chronic litigant having filed number of baseless cases against the Council detailed out in para 8 of the objections with the sole aim to safeguard his vested interests being a self styled president of the J&K Olympic Association and is stated to have entered into vexatious litigations coupled with malafide intentions for creating hurdles into the working of the Council.

It is being lastly stated in the objection stated that the respondent no. 2 came to be posted as a Secretary of the Council taking into account her various sports activities/achievements in the field.

Heard learned counsel for the parties and perused the record.

7. Learned counsel for the petitioner while making his submissions would reiterate the contentions raised in the petition, whereas, appearing counsel for the respondents in the first instance raised a preliminary and maiden objection regarding the maintainability of the petition and would contend that having regard to the facts and circumstances of the case the prayer for grant of writ of quo-warranto is not available to the petitioner In view of the preliminary objection supra raised, it is deemed appropriate to address to the said preliminary objection in the first instance.

8. Law is settled that the High Court in exercise of its writ jurisdiction in the matter of issuance of writ of quo-warranto is required to determine at the very outset as to whether a case for issuance of such a writ is made out or not, in that, the jurisdiction of the High Court to issue a writ of quo-warranto is limited one, being also discretionary which Court may grant, according to the facts and circumstances of the each case. The basic fundamental principle for issuance of a writ of

quo-waranto is that there should be violation of mandatory provisions of the Constitution or a statute.

9. Reverting back to the case in hand, it is not in dispute that the Council is a Society registered under Jammu and Kashmir Societies Registration Act, 1998, and its affairs are being run and operated under a Constitution incorporating therein Memorandum of Articles of Association and Rules and Regulations. Perusal of the said Constitution reveals that the Society has the following objects: -

- a) To plan the all round development of sports and games in the State
- b) To inculcate discipline, to build character.
- c) To promote team spirit and patriotism through games.
- d) To foster spirit-de-corps among the different associations.

10. Perusal of the Memorandum of Articles of Association and Rules and Regulations reveals that the affairs of the Society are run, regulated and operated by the Council as defined in the Rules and Regulations consisting of seven official members and eight non- official members with Secretary as the member Secretary.

11. The office bearers of the Council as per the Rules and Regulations supra are President, Vice President, Secretary, Treasurer, and Joint Secretaries.

12. Under the Rules and Regulations supra the Secretary is the Chief Executive Officer of the Council having administration powers for day to day administration of the Council.

13. Rule 6 of the Rules and Regulations of the Council provides as under: -

Rule-6 Secretary & Joint Secretaries:

The Government shall post the following officers on deputation basis:-

- (i) Secretary: To be of the rank of Special Secretary to the Government.
- (ii) Joint Secretaries: To be of the rank of Additional Secretary to the Government.

14. As is evident from above in terms of Rule 6 supra Secretary to the Council has to be posted by the Government on deputation basis to be of the rank of Special Secretary to the Government.

15. Having regard to the nature of controversy involved in the petition in general and in particular the seeking of writ of quo-warranto by the petitioner herein, it becomes imperative to know the legal character, nature and status of the Memorandum of Articles of Association and Rules and

Regulations incorporated in the Constitution of the Council, admittedly being a Society registered under the Jammu and Kashmir Society Registration Act, 1998. The law in this regard is no more res-integra and stands settled by the Apex Court in case titled as "Illachi Devi (dead) by Lrs. And Others vs. Jain Society, Protectionn of Orphans India and Ors." Reported in 2003 (8) SCC 413", "wherein it has been provided that a Society even though registered under the Societies Registration Act is not possessed of the characteristics of a juristic person and as such, does not have any statutory recognition as a juristic person even though the said Society is endowed with an existence separate from that of its members yet is connected and even contingent upon the persons who originally formed it. The Memorandum of Articles of Association or Rules and Regulations, in essence form a contract amongst members and though the Articles of Association or Rules and Regulations may have been registered under a statute, yet they themselves do not acquire any statutory character by such registration".

16. Keeping in mind the aforesaid legal position qua the nature, character and status of the Articles of Association and Rules and Regulations of the Council in question being a Society registered under the Act of 1998, it can safely be said that the said Articles of Association and Rules and Regulations are not statutory in character, a breach whereof could entail issuance of writ of quo- warranto as the law in this regard is also settled By the Apex Court in case titled as "Rajesh Awasthi Vs. Nand Lal Jaiswal and ors. Reported in 2013 (1) SCC 501" wherein at para 19 following has been provided 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 Society Ltd. V. Govt. of Haryana held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy, 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 Hri Bansh Lal wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules."

17. Thus in absence of violation of a statutory Rule or a provision of the Constitution, a writ of quo-warranto cannot be granted by the High Court. Moreover it seemingly is evident that the posting by deputation of the Secretary to the Council of the rank of Special Secretary of the Government in essence is an enabling provision contained in Rule, however, not making it obligatory or mandatory upon the Government to send on deputation an officer of the rank of Special Secretary alone to be as Secretary to the Council. Furthermore the suitability or otherwise of an officer for posting as Secretary of the council is the function of the Government and not of the Courts. A reference in this behalf to the judgement passed by the Apex Court in case titled as "B. Srinivasa Reddy V. Karnataka Urban Water Supply & Drainage Board Employees Association reported in 2006 (11) SCC 731", would be significant and relevant.

18. In view of the aforesaid analysis and upon examining the parameters laid for issuance of a writ of quo-warranto this Court do not find either violation of a constitutional provision or any statutory Rule and thus, is not persuaded to issue a writ of quo- warranto to quash the transfer and posting of respondent no. 2 as Secretary of the J&K Sports Council.

19. In view of aforesaid finding on the aforesaid preliminary objection rest of the issues raised in the petition pale into insignificance and need not to be adverted to.

20. For all what has been observed, considered and discussed hereinabove, the instant petition is held not maintainable and accordingly, dismissed along with connected application(s).

(JAVED IQBAL WANI) JUDGE SRINAGAR 17.10.2022 Ishaq Whether approved for reporting Yes