

Before Jaswant Singh & Sant Parkash, J.
LABH SINGH AND ANOTHER—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No.5337 of 2021

March 05, 2021

A) *Constitution of India, 1950—Arts. 226 and 16(1)—Writ of Certiorari—Challenge to appointment of Advisor to Chief Minister, without issuing advertisement—Dismissed— Advisor to Chief Minister not a post but an office, not regulated by any statutory rules—Not a civil appointment—Article 16 (1) not attracted.*

Held that, the Chief Minister, being an elected representative has manifold Constitutional duties to discharge including good governance towards the residents of the State. In fulfilment of said obligation, the Chief Minister has complete authority to choose his advisors. Since an Advisor to Chief Minister is not a post but an office which is not regulated by any statutory rules, the argument that an advertisement should be issued is completely misplaced. The appointment in question is not a civil appointment, but for the purposes of perks and rank only and thus, Article 16(1) of Constitution is not attracted. In case the appointment, as argued by petitioners, is only to accommodate some person which will put burden on ex-chequer, then it is for the public to take its call during the next elections. However, for the purpose of adjudicating the present petition, petitioners have not been able to point out violation of any Constitutional or statutory provision which would disentitle respondent No.4 from appointment to the post of Principal Advisor.

(Para 6)

B) *Maintainability—Service matters—Public Interest Litigation is not maintainable— Only writ of Quo Warranto maintainable if appointment is challenged being contrary to the statutory rules.*

Held that, this apart we have no hesitation to hold that present writ petition itself is not maintainable on two counts:

- (i) Petitioners have filed a writ of certiorari while seeking to espouse public interest. Reference in this regard can be made to judgment passed by Hon'ble Supreme Court in "Hari Bansh Lal Vs.

Sahodar Prasad Mahto and others” 2010(9) SCC 655; “Gurpal Singh Vs. State of Punjab and others” 2005(5) SCC 136, whereby it has been held that in service matters no Public Interest Litigation is maintainable;

- (ii) Even if a challenge can be laid to any appointment, then only a writ of Quo Warranto can be maintained and that also if it is against statutory rules. Reference is made to “Central Electricity Supply Utility of Odhisha Vs. Dhobei Sahoo & Ors.” 2014(1) SCC 161; “High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors.” 2003(4) SCC 712, whereby it has been held that a writ of Quo Warranto would be maintainable if challenge is laid to any appointment which is contrary to statutory rules. Concededly, no violation of any statutory provision has been pointed out in the instant case.

(Para 8)

Baltej Singh Sidhu, Advocate
for the petitioners.

Atul Nanda, Advocate General, Punjab, assisted by
Rameeza Hakeem, Additional Advocate General, Punjab and
Malvika Singh, Assistant Advocate General, Punjab

JASWANT SINGH, J. oral

(1) The two petitioners, namely, Labh Singh and Satinder Singh (petitioner Nos. 1 & 2, respectively) have filed the present petition seeking a writ in the nature of certiorari for quashing of order of appointment dated 01.03.2021 (**Annexure P-1**) whereby respondent No. 4 - Mr. Prashant Kishore has been appointed as Principal Advisor to the Chief Minister, Punjab.

(2) Petitioner No. 1- Labh Singh is a Boxing Coach based at Khanna and has won various medals in Boxing at national level. Petitioner No. 2-Satinder Singh is a practicing advocate of Chandigarh, who has remained Municipal Councilor of Municipal Corporation, Chandigarh.

(3) Learned counsel for the petitioners has argued that without issuing any advertisement or conducting any interview after framing criteria, the post in question has been filled up. It is argued that in matters of appointment to any office under State, no post can be filled up without following Article 16(1) of the Constitution which provides for equality of opportunity for all citizens in matters relating to

employment or appointment to any office under the State. Since respondent No. 4 has been appointed as Principal Advisor to the Chief Minister of Punjab with a status of a Cabinet Minister, he will be provided for all pay, perks and facilities from the State Exchequer, therefore it was imperative for the State to issue an advertisement as there are a large number of educated and well qualified persons in the State of Punjab, including the petitioners. Hence prayer has been made for allowing the writ petition.

(4) On the other hand, learned Advocate General Punjab, who has put in appearance on behalf of official respondents, being on advance notice, has argued that the present petition suffers from lack of locus and maintainability as in service matters no PIL is maintainable seeking a writ in the nature of certiorari. It is further argued that Article 16(1) of the Constitution which provides for equal opportunity in the matter of appointment to a post cannot be made a ground by a person who is a stranger to the process and can only be taken recourse to by a person who falls in the same class/category of employment. It is lastly argued that the challenge to the appointment of Advisors to the Chief Minister without advertisement, as contended by petitioners, already stands covered against them vide an order dated 19.07.2013 passed by a Coordinate Bench of this Court in *CWP No. 1320 of 2013*, titled *Dinesh Chadha* versus *State of Punjab*. Hence prayer has been made for dismissal of the writ petition.

(5) We have heard learned counsel for the parties at length and have scrutinized the paper-book.

(6) We are of the firm opinion that the petitioners have no locus to challenge the appointment of respondent No. 4. The Chief Minister, being an elected representative has manifold Constitutional duties to discharge including good governance towards the residents of the State. In fulfillment of said obligation, the Chief Minister has complete authority to choose his advisors. Since an Advisor to Chief Minister is not a post but an office which is not regulated by any statutory rules, the argument that an advertisement should be issued is completely misplaced. The appointment in question is not a civil appointment, but for the purposes of perks and rank only and thus, Article 16(1) of Constitution is not attracted. In case the appointment, as argued by petitioners, is only to accommodate some person which will put burden on ex-chequer, then it is for the public to take its call during the next elections. However, for the purpose of adjudicating the present petition, petitioners have not been able to point out violation of any

Constitutional or statutory provision which would disentitle respondent No. 4 from appointment to the post of Principal Advisor.

(7) Further, we do not think that the issue involved in the present case needs a deeper deliberation, as the contentions raised in this petition are squarely covered by the Judgment passed by a co-ordinate bench of this court in ***Dinesh Chadha's*** case (supra) whereby it has been held as under:-

“The petitioner is aggrieved by the appointment of Political Advisors and OSDs to Chief Minister without advertising the same. In our view it is trite to say that the requirement for such appointments would be to the confidence of the Chief Minister itself. That appears to be the reason that while issuing notice on 23.1.2013 the matter was confined to the grant of Cabinet Rank to such Political Advisors.

Learned Advocate General, Punjab, has pointed out that this issue is no more res-integra in view of various judgments including *Aires Rodrigues Versus State of Goa, 2009 Law Suit (Bom) 1999*, which carves out a distinction between equivalence in status and rank and making appointment to public office or post with status and rank of that post. The appointments in question are not civil appointments, but are for purposes of perks, benefits and equivalence only. It is thus, submitted that this is within domain and powers of the State.

We are inclined to accept the aforesaid submissions and do not think this matter to proceed any further through PIL.

Dismissed. ”

(8) This apart we have no hesitation to hold that present writ petition itself is not maintainable on two counts:

a. Petitioners have filed a writ of certiorari while seeking to espouse public interest. Reference in this regard can be made to Judgments passed by Hon'ble Supreme Court in ***“Hari Bansh Lal Vs. Sahodar Prasad Mahto and others” 2010(9) SCC 655***; ***“Gurpal Singh Vs. State of Punjab and others” 2005(5) SCC 136***, whereby it has been held that in service matters no Public Interest Litigation is maintainable;

b. Even if a challenge can be laid to any appointment, then only a writ of *Quo Warranto* can be maintained and that also

if it is against statutory rules. Reference is made to “*Central Electricity Supply Utility of Odhisha Vs. Dhobei Sahoo & Ors.*” 2014(1) SCC 161; “*High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors.*” 2003(4) SCC 712 , whereby it has been held that a writ of Quo Warranto would be maintainable if challenge is laid to any appointment which is contrary to statutory rules. Concededly, no violation of any statutory provision has been pointed out in the instant case.

(9) In view of above, we find no merit in the instant petition, and therefore, the same is ordered to be dismissed.

Shubreet Kaur