

Waseem Abdullah Vs. J and K Academy of Art, Culture and Languages and ors.

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Court : Jammu and Kashmir

Decided On : Apr-23-2004

Reported in : 2004(3)JKJ407

Judge : V.K. Jhanji, J.

Acts : [Constitution of India](#) - Articles 14, 16 and 226; ;Jammu and Kashmir Academy of Art, Culture and Languages Recruitment Rule

Appeal No. : SWP No. 1244/2002

Appellant : Waseem Abdullah

Respondent : J and K Academy of Art, Culture and Languages and ors.

Advocate for Def. : A.H. Naik, AG for 1 to 3 and; P.N. Goja, Adv. for No. 4

Advocate for Pet/Ap. : S.S. Ahmad, Adv.

Disposition : Writ petition dismissed

Judgement :

V.K. Jhanji, J.

1. Vide order dated 2nd June, 2001 issued by Secretary, Jammu and Kashmir Academy of Art, Culture and Languages, Srinagar, one Mrs. Deepali Wattal, respondent No. 4 herein, was appointed temporarily against the post of Assistant Instructor, Vocal, available in the Institute of Music and Fine Arts, Jammu, carrying the pay scale of Rs. 5000-8000 plus usual allowances. Two petitioners in this writ petition have challenged her appointment on the ground that the appointment was made surreptitiously without the post being advertised.

2. Petitioner No. 1 is stated to be an Agricultural Graduate and petitioner No. 2 holder of Master's Degree in Business Administration. In the petition it is stated that the services in Jammu and Kashmir Academy of Art, Culture and Languages are governed by the Jammu and Kashmir Academy of Art, Culture and Languages Recruitment Rules, 1996. The post of Assistant Instructor, Vocal, is a direct recruitment post and the qualifications prescribed for the post are (i) Matriculation; (ii) Sangeet Vishard (B. Music) in concerned field from a recognised University/Institute. It is stated that respondent No. 4 is not eligible to man the post of Assistant Instructor, Vocal, in the Academy and is thus a usurper of the post. Petitioners have, accordingly, sought a writ of quo-warranto in addition to writs in the nature of certiorari and mandamus.

3. Respondent No. 4 in her reply has stated that she has obtained Bachelor's Degree in Arts with Music as one of the subjects from University of Kashmir. Thereafter, she has obtained Master's Degree in Music from Punjab University. She is also Senior Diploma Holder in the subject of 'Vocal' from Prayag Sangit Samiti, Allahabad . She has also obtained Diploma in the subject of 'Vocal Classical' from Pracheen Kala Kendra, Chandigarh. It is also averred in the reply that respondent No. 4 has earned awards and prizes from various institutions, including the Jammu and Kashmir Academy of Art, Culture and Languages. She has also been conferred the highest musical award by Sharika Peeth Sanstha, Jammu. She is also registered as a Music Artist with Government of India through Radio Kashmir, Jammu. Respondent No. 4 in paragraphs I(f) to I(i) of her reply has further given details of the awards and certificates of merit awarded to her various institutions. All these factual averments are supported by relevant certificates copies whereof have been appended with the reply as exhibits 'RD/A to RD/F'

4. I have heard learned counsel for the parties and have carefully gone through the record.
5. Admittedly, the petitioners, who are challenging the appointment of respondent No. 4, are not qualified to hold the post of Assistant Instructor, Vocal, in the Academy. On the other hand, respondent No. 4 is not only holder of Degree of Master of Arts in Music, but also holds Diplomas in Music (Vocal) from two renowned Music Centres. The averment that respondent No. 4 was not eligible is belied by the certificates produced by respondent No. 4, which are not denied by the petitioners.
6. The ground of challenge taken by the petitioners is that her appointment is violative of Articles 14 and 16 of [Constitution of India](#) as no applications were invited from eligible candidates. Learned counsel for respondent No. 4 has argued that the writ petition is not maintainable, as the writ of quo-warranto cannot be issued because the post against which she has been appointed is not a public post, nor Service Recruitment Rules of the Jammu and Kashmir Academy of Art, Culture and Languages are statutory in nature.
7. After hearing learned counsel for the parties, I find merit in the submission of learned counsel for respondent No. 4.
8. A brief background of the establishment of the Academy may be noticed. The State of Jammu and Kashmir has always had the distinction of rare and unparalleled, diverse and variegated art, culture and languages. The framers of the State Constitution thought it fit to make provisions in the Constitution to provide for establishment of an Academy of Art, Culture and Languages where opportunities could be afforded and availed of for the development of Art and Culture of the State and for the development of Hindi, Urdu and other regional languages of the State. In accordance with the provisions of Section 146 enshrined in the Constitution of Jammu and Kashmir, it was considered expedient to establish an Academy to foster and coordinate activities in the spheres of general culture, music, dance and drama, visual and plastic arts, letters and languages in the State of Jammu and Kashmir and to promote through them all the cultural unity of the State and of the State with other States of the Country. As

a sequel to the achievement of aforesaid objectives, the Jammu and Kashmir Academy of Art, Culture and Languages was established vide SRO No. 340 dated 14th August, 1963. In terms of the Organisational set-up of the Academy, the Governor of the State is the Patron of the Academy and Chief Minister of the State is its President. Besides, the Vice-President, the Secretary and the Financial Advisor are other Officers of the Academy. The Secretary is the principal executive officer of the Academy with authority to exercise all the powers, administrative and financial for the Academy as are vested in the Major Head of Department of Jammu and Kashmir Government and execute all contracts approved by the Central Committee on behalf of the Academy and further to exercise such other powers as may be assigned to him by the President. The General Council of the Academy is to consist of the President, Minister incharge of Education or, if there is a Minister for Cultural Affairs, the Minister for Cultural Affairs; the Secretary; the Financial Advisor and six persons to be nominated by the Government of Jammu and Kashmir of whom one has to be from the Department of Information and one from the Department of Education. Besides, one person each to represent different languages and arts, such as Urdu, Hindi, Kashmiri, Dogri, Punjabi, Ladakhi and such other languages as may be specified in this behalf by the Academy. The powers and functions of the General Council, inter alia, are to frame the regulations, byelaws and rules of procedure for the Academy. Apart from the General Council, the Academy is to have Central Committee with power and functions, inter alia, to create such posts, as it may consider necessary for carrying on the work of the Academy and to prescribe the terms and conditions of appointment for these posts. The Academy is an autonomous corporate body with perpetual seal. It may sue or may be sued in the name of the Secretary. In exercise of the powers conferred by the Constitution, the Academy vide order dated 20th September, 1996 has framed the Jammu and Kashmir Academy of Art, Culture and Languages Service Recruitment Rules, 1996. It is thus seen that power to frame Regulations and Service Recruitment Rules are with the Academy and the power to contract and to appoint vests with the Secretary of the Academy. The Service Recruitment Rules thus framed by the Academy are not statutory Rules. The question that arises is whether writ of quo-warranto can be issued if the rules governing the appointment are not statutory in nature. .

9. The petitioners in this petition have prayed for three writs, namely, quo warranto, certiorari and mandamus. Since the petitioners are not themselves fulfilling the prescribed qualifications, certiorari and mandamus cannot be issued as the question of infringement of the mandate of Articles 14 and 16 of the Constitution would not arise. Knowing that what cannot be urged for the other two writs can be urged for a writ of quo warranto, the petitioners have sought for the writ of quo warranto. The scope of a quo warranto is very limited. In such a motion, this Court is required only to see whether the appointment of the respondent is by a proper authority and in accordance with a statutory law, if there is any, governing such appointments.

10. Admittedly, it is the Secretary of the Academy who has issued the impugned order. It is not the case of the petitioners that Secretary does not have the power to appointment. In fact, as seen above, the Secretary of the Academy is empowered to exercise all administrative powers and execute all contracts. Therefore, the impugned order is by the proper authority.

11. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*, (2003) 4 SCC 712 Their Lordships of the Supreme Court opined that the High Court in exercise of its writ jurisdiction in a matter of the nature of the present case is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one and 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 a writ of certiorari. In paragraph 23 of the judgment, their lordships have emphatically held that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules.

12. In the present case, as already observed, the Rules governing the appointment to various posts in the Academy are framed by the Academy itself. Rules framed by an autonomous corporate body are not statutory in nature or character. Therefore, no quo warranto can be issued.

13. In view of the above, this writ petition deserves to be dismissed and is, accordingly, dismissed.

14. There shall be no order as to costs.

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