

**Reserved**

**Court No. - 2**

**Case :-** SERVICE BENCH No. - 1345 of 2014

**Petitioner :-** Junaid Ahmad

**Respondent :-** Visitor Inter al University Lko./His Excellency  
The Governor

**Counsel for Petitioner :-** Santosh Kumar Tripathi, Sudeep Seth

**Counsel for Respondent :-** C.S.C., Brijesh Kumar Shukla,  
H.G.S.Parihar, Nishant Shukla, S.P.Shukla, Shailesh Kumar,  
Tanveer Ahmad Siddiqui

**Hon'ble Shri Narayan Shukla,J.**

**Hon'ble Sheo Kumar Singh-I,J.**

**(Per : Hon'ble Shri Narayan Shukla, J.)**

Heard Mr. Gaurav Mehrotra, learned counsel for the petitioner as well as learned counsel for the respondents.

It is a case of issuing a writ of quo warranto to respondent no.8 as to under what authority, he is functioning as Vice Chancellor, Integral University, Dasauli, Kursi Road, Lucknow.

The petitioner has claimed the eighth respondent's appointment being in violation of Section 10 of the Integral University Act, 2004<sup>1</sup> as well as in violation of Regulations 7.3.0 and 7.4.0 of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education, 2010<sup>2</sup>.

In order to understand the illegality as alleged in

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<sup>1</sup> Act, 2004

<sup>2</sup> UGC Regulations, 2010

appointment of eighth respondent on the post of Vice Chancellor, we first and foremost quote the relevant provisions as aforesaid:

**“Section 10 of the Act, 2004:**

(1) The Vice Chancellor shall be appointed by the Chancellor in such manner as may be prescribed for a period of five years.

(2) The Vice Chancellor shall be the chairman of the Executive and the Academic Council of the University, and shall exercise general supervision and control over the affairs of the University and give effect to the decision of all the authorities of the University.

(3) The Vice Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall convey to such authority the action taken by him on such matters:

Provided that if the authority concerned is of the opinion that such action ought not to have been taken, it may refer the matter to the Chancellor whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this subsection shall have the right appeal against such action to the Chancellor within one month of the date on which a decision on such action is communicated to him and thereupon the Chancellor may confirm, modify or reverse the action taken by the Vice-Chancellor.

(4) The Vice-Chancellor shall exercise such other powers and the Pro-Vice-Chancellor perform such other functions as may be prescribed.

**The UGC Regulations, 2010:**

**Regulation 7.3.0.: Vice Chancellor:**

i. Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice Chancellors. The Vice Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Prof in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

ii. The selection of Vice Chancellor should be through proper identification of a Panel of 3 -5 names by a Search Committee through a public Notification or nomination or a talent research process or in combination. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with University concerned or its colleges. While preparing the panel, the Search Committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Visitor/Chancellor. In respect of State and Central Universities, the following shall be the Constitution of the Search Committee:

- (a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee;
- (b) a nominee of the Chairman, University Grant Commission;
- (c) a nominee of the Syndicate/Executive Council/Board of Management of the University.

iii. The Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by

the Search Committee.

iv. The conditions of service of the Vice Chancellor shall be prescribed in the Statutes of the Universities concerned in conformity with these regulations.

v. Term of office of the Vice Chancellor shall form part of the service period of the incumbent concerned making him/her eligible for all service related benefits.

#### **7.4.0.**

The Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within 6 months of adoption of these Regulations.”

Regulation 7.3.0. deals with the minimum qualifications for appointment of Vice Chancellor. It provides that the Vice Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Prof in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization. Regulation 7.4.0.(iv) provides that the term of office of the Vice Chancellor in Central/State Universities shall be five years and shall not hold office beyond 70 years age. It is stated that the eighth respondent does not possess any distinguished academic qualification and further do not have ten years experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

Regulation 7.3.0.(ii) provides for constitution of Search Committee comprising of; (a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee; (b) a nominee of the Chairman, University Grant

Commission; (c) a nominee of the Syndicate/Executive Council/Board of Management of the University. Sub clause (iii) provides that the Visitor/Chancellor shall appoint the Vice Chancellor out of the Panel of names recommended by the Search Committee. Hon'ble The Governor of State is the Visitor of the University. The eighth respondent had been the General Secretary of the Society which had been formed to manage the institution prior to the promulgation of the Integral University Act and after promulgation of the Act, he was appointed to function as Vice Chancellor of the University for one year. After one year, in March, 2005 an Executive Council of the University constituted a panel of three persons to be in the Search Committee for the purposes of selection of a Vice Chancellor.

It is submitted that the appointment of eighth respondent was made vide order dated 21.03.2005, passed by the Chancellor of the University, who is none else than the President of the society which was formed to run the institution prior to enforcement of the Integral University Act. The said society still exists. The Registrar of the University issued an appointment order dated 21.03.2005 appointing the eighth respondent on the post of Vice Chancellor for a period of five years w.e.f. 01.04.2005. The University had framed Statutes, which were approved by the State Government on 29.03.2006. In terms of appointment letter, the petitioner had to complete his five years tenure by 31.03.2010, however, before completion of his tenure vide letter dated 22.08.2008 another appointment letter was issued for a term of five years w.e.f. 18.08.2008 to 17.08.2013. On 27.07.2013, the Executive

Council again recommended the extension of his tenure for one more term i.e. five years w.e.f. 17.08.2013 to 16.08.2018 and the Chancellor approved the same on 30.07.2013.

Mr. Gaurav Mehrotra, learned counsel for the petitioner has submitted that the office of Vice Chancellor of Integral University being created under Statute i.e. Integral University Act, 2004, is a public office. The Vice Chancellor has to discharge the public functions. It is stated that under Section 10(i) of the Act, 2004 or under the Statutes 3.03 and 3.05 framed by the University, a person can be appointed only for a term of five years and under the Statutes, there is no provision for extension or reappointment. Statute 3.03 provides that a person appointed as Vice Chancellor for five years shall, if he completes the age of 65 years during the terms of his office, retire from the office, which establishes that maximum age of appointee to function as Vice Chancellor would be 65 years even it reaches prior to completion of tenure.

In view of the aforesaid submissions, the petitioner has claimed the eighth respondent's functioning as Vice Chancellor being in violation of the Act as well as Statutes framed by the University. Thus, the petitioner has claimed the eighth respondent as usurper of the office of the Vice Chancellor of the Integral University, Dasauli, Kursi Road, Lucknow.

Per contra, the eighth respondent has raised a preliminary objection against the maintainability of the writ petition on the ground that the petitioner has filed the present writ petition in his private interest and the respondent no.3 i.e. Integral University, Dasauli, Kursi Road, Lucknow is a minority educational institution and it is not receiving any aid or grant

from the State Government or the Central Government. Hence the office of the Vice Chancellor in no manner can be treated to be public office.

On merit the answering respondent has submitted that the Hon'ble Supreme Court in the case of **Kalyani Mathivanan v. K.V. Jeyaraj & Ors**<sup>3</sup> held that the qualification and method of appointment for the post of Pro Chancellor and Vice Chancellor of a University cannot be considered as having 'direct impact on the standards of education'. He has further stated the UGC Regulations, 2010 is not binding upon the University in question. It is only governed by the Act, 2004. Earlier also some persons had come forward to challenge his appointment in which questions were raised over the answering respondent's appointment, those writ petitions were dismissed for non prosecutions.

It has been submitted that on establishment of Integral University in 2004, the eighth respondent was appointed as Vice Chancellor of Integral University for one year, initially, which was a transit period of the University and thereafter he was appointed for five years in accordance with Rules as per recommendation of the Search Committee. It has further been stated that the Vice Chancellor in any manner was required to preside the Executive Council meetings as the Chairman and this Executive Council was required to give names of two members of the Search Committee, therefore, it cannot be said that the Vice Chancellor had played any role in recommending the names of the candidates for appointment. The answering respondent has also alleged his qualification to be in

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<sup>3</sup> (2015) 6 SCC 363

accordance with Statutes framed by the University.

Regard being had to the aforesaid submissions, we consider the matter as under:

Recently, in the case of **Rajesh Awasthi v. Nand Lal Jaiswal and others**<sup>4</sup>, the Hon'ble Supreme Court has discussed the scope of writ of quo warranto. In this case, the respondent before the Supreme Court had challenged the appointment of the appellant and prayed for issuing of a writ quo warranto. It was contended that the selection committee had not followed the provisions contained in sub section (5) of Section 85 of the Electricity Act, 2003. The appellant questioned the locus standi of the first respondent and contended that he was not an aspirant for the post and that the writ petition was filed after a period of more than two years after his assumption of charge as the Chairperson of the Commission. Paragraph Nos. 19, 29, 30, 31 and 32 of the judgment are extracted below:

“**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*, (2002) 6 SCC 269 held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy* (supra), 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 *Hari Bans Lal* (supra) wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

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4 (2013) 1 SCC 501

**29.** In *B.R. Kapur v. State of Tamil Nadu and another*[1], in the concurring opinion Brijesh Kumar,J., while dealing with the concept of writ of quo warranto, has referred to a passage from *Words and Phrases Permanent Edition, Volume 35*, at page 647, which is reproduced below: -

“80. .. 'The writ of “quo warranto” is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. *State ex inf. Mc. Kittrick v. Murphy*, 148 SW 2d 527, 529, 530, 347 Mo. 484.

Information in nature of “quo warranto” does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. *State Ex. Inf. Walsh v. Thactcher*, 102 SW 2d 937, 938, 340 Mo.

**30.** In *University of Mysore v. C.D. Gonda Rao and another*, while dealing with the nature of the writ of quo warranto, Gajendragadkar,J. has stated thus: -

“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 inquiry 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 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.”

**31.** From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in *Dr. Kashinath G. Jalmi and another v. The Speaker and others*.

**32.** In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* it has been laid down by this Court that a writ of quo warranto can be issued when there is violation of statutory provisions/rules. The said principle has been reiterated in *Retd. Armed Forces Medical Association and others v. Union of India and others*.”

In view of the aforesaid decisions of the Supreme Court, it has been clear that a citizen can claim a writ of quo warranto and he stands in a position of relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. A writ of quo warranto can be issued when there is a violation of statutory provisions/rules.

This is not disputed that vide order dated 21.03.2005, the eighth respondent was appointed as Vice Chancellor of the Integral University for a period of five years w.e.f. 01.04.2005 even before his five years' tenure vide letter dated 22.08.2008, he was issued afresh appointment order again for five years w.e.f. 18.08.2008 and further vide office order dated 16.08.2013 his term has been extended for another five years w.e.f. 17.08.2013 to 16.08.2018. Section 10 (1) of the Act, 2004 provides that the Vice Chancellor shall be appointed by the Chancellor in such manner as may be prescribed for a period of five years. Regulations 3.03 of the first Regulation, 2006 framed by the University reads that a person appointed as Vice Chancellor for five years shall, if he completes the age of 65 during the term of his office, retire from office.

Admittedly, the eighth respondent has crossed the age of 60 years, therefore, in view of the provisions of Section 10 (1) of the Act, 2004 as well as Regulations 3.03 of the Regulations, 2006 framed by the University, we are of the view that the eighth respondent's appointment as well as his continuation as Vice Chancellor even after five years after his first appointment made for five years and particularly after completion of 65 years' age are in violation of statutory provisions of the Act as

well as Regulations. Therefore, we arrived at conclusion that the answering respondent no.8 has failed to satisfy his authority to act as Vice Chancellor of the Integral University.

In the result, we hereby direct the competent authority to remove the eighth respondent from the post of Vice Chancellor of the University forthwith and stop his functioning as Vice Chancellor and further proceed for appointment of new Vice Chancellor in accordance with Rules expeditiously within one month from the date of communication of this order.

Accordingly, the writ petition stands allowed. There shall be no order as to costs.

**Order Date :-7.3.2017**  
Anupam S/-

**(Sheo Kumar Singh-I,J.) (Shri Narayan Shukla,J.)**