

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 756 of 2024

Petitioner :- Sachin Yadav

Respondent :- State of U.P. and 4 others

Counsel for Petitioner :- Rakesh Pandey, Sr. Advocate, Umesh Vats

**Counsel for Respondent :- Manish Goyal, AAG, A.K. Goyal,
A.C.S.C., Shashi Prakash Rai, Shobhit Mohan Shukla**

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

(Per: Vikas Budhwar, J.)

1. Heard Shri Rakesh Pandey, Senior Advocate assisted by Shri Umesh Vats, learned counsel for the petitioner, Shri Manish Goyal, learned AAG and Shri A.K. Goyal, learned counsel for the State-Respondents as well as Shri Shobhit Mohan Shukla and Shri Shashi Prakash Rai, learned counsel for Respondent No. 5.

2. A joint statement has been made by the learned counsels for the rival parties that the pleadings have been exchanged and they do not propose to file any further affidavits and the writ petition be decided at the fresh stage. With the consent of the parties, the writ petition is being decided at the first stage.

Facts:

3. The fact of the case as discernible from the record are that the State Government in order to review the functioning of the Zila Panchayat and to strengthen them issued a Government Order dated 30.03.1992 constituting "Zila Panchayat Monitoring Cell" for reviewing and monitoring the financial and physical achievements of Zila Parishads and Zila Panchayats of the State of Uttar Pradesh. In order to man the

Monitoring Cell, several posts were created namely, three post of Deputy Director, two posts of Engineer, two posts of Karya Adhikari, two posts of Senior Clerk, three post of Stenographer and one post of Peon. Since the Monitoring Cell was newly born thus post which stood sanctioned was temporary for the period till 28.02.1993. In order to regulate the procedure for the selections of the incumbents who were to man the newly created post, the State Government issued an office order dated 01.04.1992. As regards, the posts of engineer which were two in number is concerned, the same was to be filled through a selection committee constituted by the State Government from the eligible candidates who had the qualification of Bachelor of Engineering (Civil). The fifth respondent after being subjected to the selections conducted by the selection committee was issued an appointment order dated 17.10.1992 appointing him on the post of Engineer (Civil) on ad hoc basis in the pay scale of Rs. 2200-75-2800 EB 100-4000.

4. Pleadings reveal that the proceedings were initiated for making the temporary post as permanent, on 14.10.1998 with the concurrence Governor of the State of Uttar Pradesh, an order came to be issued according approval for making the temporary posts which stood created by virtue of the Government order dated 30.03.1992 as permanent. Thereafter on 29.11.2000, an office order came to be issued by the Deputy Secretary, Panchayati Raj Anubhag-II, Uttar Pradesh, U.P. Government wherein the fifth respondent along with 9 others were made regular. In the meantime in exercise of the powers conferred by proviso to Article 309 of the Constitution of India, the Rules by the name of "Uttar Pradesh Zila Panchayat Monitoring Cell Gazetted Officers Service Rules, 2004" (in short 'Rule 2004') came to be enacted which was gazetted on 12.07.2004, Rule 5 of the said Rules provided for recruitment, according to which, the post of Deputy Director was to be filled up 33-1/2 % by promotion through the selection committee from amongst substantively appointed engineer who had completed eight years of service as such on the first day

of the recruitment, 33-1/2 % by promotion through selection committee from amongst substantively appointed Karya Adhikari who had completed 8 years of service as such on the first day of recruitment and 33-1/2% by promotion through the selection committee from amongst substantively appointed medical officers who have completed eight years of service on the first day of recruitment. As regards, the post of engineer, the same was to be filled up by direct recruitment through Commission. On 18.07.2006 an order came to be passed by the Principal Secretary/ Chief Secretary Panchayati Raj Civil Secretariat, U.P. Lucknow whereby the fifth respondent services was made regular while substituting the word “ad hoc” as recited in the order dated 17.10.1992 as ‘regular’. On 25.02.2013, an order came to be passed by the Principal Secretary/ Additional Chief Secretary Panchayati Raj Civil Secretariat, U.P. Lucknow whereby the fifth respondent was accorded promotion on the post of Deputy Director in the pay scale of Rs. 15600-33100 GP 6600.

5. On 10.04.2023, the State Government in exercise of the powers conferred under Rule 4 (1) of the Rules, 2004 proceeded to restructure the cadres while converting the post of Deputy Director (Technical) to the post of Executive Engineer (Civil) and two post of Medical Officer and one post of Deputy Director, Medical Officer was surrendered and in its place, one post of Superintending Engineer (Civil) and one post of Chief Engineer (Level-II) was created. On 30.06.2023, the Uttar Pradesh Zila Panchayat Monitoring Cell Gazetted Officers (first Amendment) Service Rules, 2023 (in short ‘Amendment Rules, 2023’) came to be notified amending the 2004 Rules, whereby one post of Chief Engineer (Civil), one post of Superintending Engineer (Civil), two post of Executive Engineer (Civil) one post of Deputy Director (Karya Adhikari), two post of Engineer and two post of Karya Adhikari was created. Rule 5 also stood amended whereby for recruitment on the post of Executive Engineer (Civil), the same was to be made by promotion through selection committee amongst substantively appointed Engineer of Zilla Panchayat

Monitoring Cell who have completed at least 7 years of service as such on the first day of recruitment, Superintending Engineering (civil) by promotion through selection committee from amongst substantively appointed Executive Engineer of Uttar Pradesh Zila Panchayat Monitoring Cell Gazetted Officers Cadre who have completed total 15 years of substantive service on the first day of the year of recruitment including minimum 6 years of service as Executive Engineer followed by Chief Engineer (Level-II), by promotion through selection committee from amongst substantively appointed Superintending Engineer on the first day of selection year who have completed a total of 25 years of substantive service Uttar Pradesh Zila Panchayat Monitoring Cell Gazetted Officers Cadre. The fifth respondent thereafter by virtue of an order dated 14.07.2023 was promoted on the post of Superintending Engineer (Civil) in the pay scale of Rs. 1,23,100-2,15,900 (Pay Matrix Level 13) on probation till 31.08.2024 followed by an order on the same day whereby he was assigned additional charge of Chief Engineer (Civil) (Level-II) without any monetary benefits. The fifth respondent is stated to superannuate on 31.08.2024.

6. The writ petitioner herein who claims to be elected as a member of Zila Panchayat, Etawah and continuing since July, 2021 has filed the present Public Interest Litigation (Writ of Quo Warranto) seeking following reliefs:

“A. Issue writ, order or direction in the nature of Quo Warranto to declare the appointment of respondent No.5 Shri Arvind Kumar Rai as Deputy Director, Superintending Engineer & Chief Engineer in the Uttar Pradesh Zila Panchayat Monitoring Cell, Lucknow as void ab initio.

B. Issue any other appropriate writ, direction and order directing the respondents to recover from respondent No.5 Shri Arvind Kumar Rai all consequential benefits of the post with retrospective effect that have been extended to him by virtue of his illegal appointments on the post of Deputy Director, Superintending Engineer and Chief Engineer in the Uttar Pradesh Zila Panchayat Monitoring Cell, Cell, Lucknow.

C. Issue a writ, order or direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case.

D. To award the cost of the writ petition.”

7. The present writ petition was entertained on 15.05.2024 while issuing notice to the fifth respondent and seeking response from the respondents.

8. A counter affidavit has been filed by the State official respondents as well as the Respondent No. 5 and supplementary counter affidavit has also been filed to which rejoinder affidavits have been filed.

Argument of learned counsels for the writ petitioner

9. Shri Rakesh Pandey, Senior Advocate assisted by Shri Umesh Vats, learned counsel for the writ petitioner has sought to argue that the appointment of fifth respondent, Arvind Kumar Rai as Deputy Director, Superintending Engineer & Chief Engineer in the Uttar Pradesh Zila Panchayat Monitoring Cell, Lucknow is void ab initio inasmuch as the entire selection criteria has been tailored in order to confer undue benefits upon him. Elaborating the said submission, it is being sought to be argued that the appointment of the fifth respondent on the post of Engineer in the Monitoring Cell was on Ad hoc basis that too against a temporary post which was to be in existence till 28.02.1993 from the issuance of the Government order dated 30.03.1992. It is submitted that in the year 2004, the Uttar Pradesh Zila Panchayat Monitoring Cell Gazetted Officers Service Rules, 2004 came to be enforced and in view of Rule 3(k), the appointment of the fifth respondent by no stretch of imagination can be said to be legal as appointment was made on ad hoc basis and thus there was no question of making him regular on 18.07.2006. It is also contended that once the fifth respondent was made regular on the post of Engineer (civil) on 18.07.2006 then, 8 years of substantive service was required for being promoted on the post of Deputy Director whereas on 25.02.2013 when the fifth respondent granted promotion on the post of Deputy Director, he did not have 8 years of substantive service. It is also submitted that on 10.04.2023, an office order came to be issued for restructuring of the cadre strength of various posts but there was no post

sanctioned as Deputy Director (Technical) while converting the same as Executive Engineer (Civil) giving a room to the fifth respondent thus, it is a classic example of undue favouritism. It is also the submission of learned Senior Counsel for the writ petitioner that Rules were amended in order to confer undue benefit to the fifth respondent whereby the post of Superintending Engineer (Civil) and post of Chief Engineer (Civil) was created and thereafter promotion was accorded to the fifth respondent on 14.07.2023 on the post of Superintending Engineer (Civil) and in order to perpetuate illegality, a dedicated avenue of promotion was created in favour of the fifth respondent while giving him the additional charge of Chief Engineer (Civil) Level-II in order to promote him on regular basis while dispensing with the minimum working as Superintending Engineer (Civil) while making it 25 years of substantive service in the Zila Panchayat Monitoring Cell Gazetted Officers Cadre. In nutshell, the submission is that at different stages manoeuvring and manipulating has been done in order to give unjust benefits to the fifth respondent as the Rules have been framed in order to suit the circumstances which would be in favour of the fifth respondent. During the course of the argument, a document has been forwarded to the Court dated 23.08.2024 whereby charge has been handed over to the fifth respondent on the post of Chief Engineer (Civil) (Level II).

11. Reliance has also been placed upon the judgement in the case of ***Gambhirdan K. Gadhvi v. State of Gujarat, 2022 (5) SCC 179, Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S., 2022 (4) SCT 711*** and the judgment in the case of ***Premchandran Keezhoth and Ors. v. The Chancellor Kannur University and Ors., AIR 2024 SC 135*** so as to contend that a writ of quo warranto is maintainable, in case, the appointment is *void ab initio* and a person who is usurping the post has no authority under law to hold the same. It is, therefore, prayed that the writ petition be allowed *in toto* and appointment of the fifth respondent be set aside.

Argument of the learned counsel for the respondent

12. Countering the submission of the learned Counsel for the petitioner, Shri Manish Goyal, learned AAG assisted by Shri A.K. Goyal for the State-respondents has sought to argue that the Public Interest Litigation couched as writ of quo warranto is not maintainable since the fifth respondent does not hold a public office. It is also submitted that the present writ petition is actuated by malicious intent other than *bona fide*, particularly, in view of the fact that the writ petitioner as per his own saying is the member of the Zila Panchayat, Etawah and being aggrieved against the monitoring being done with regard to the affairs of the Zila Panchayat it became a basis for filing of the present writ petition. Reliance has also been placed upon the judgement in the case of *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. And Others, 2006 (11) SCC 731, Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and Others, 2014 (1) SCC 161* and *Arun Kumar Agrawal v. Union of India and Others, 2014 (2) 609* so as to contend that the present proceedings are not maintainable at the behest of the writ petitioner. On merits, it has been submitted that the entire pleadings set forth in the writ petition at the instance of the writ petitioner, centres around favouritism and manoeuvring in order to give undue benefits to the fifth respondent, however, the records explicitly depicts that the Monitoring Cell stood created on administrative exigency on 30.03.1992 whereby besides the post of Engineer various other posts were created followed by the modalities, according to which, selections were to be made for various posts on 01.04.1992 and in the line with the same, the fifth respondent after being subjected to selection committee was accorded appointment on the post of Engineer on *ad hoc* basis on 17.10.1992 and on 14.10.1998, the temporary post stood converted into regular and on 06.11.1998, a Government order also came to be issued in that regard pursuant whereto on 29.11.2000, the fifth respondent along with others were made regular and post enactment of the 2004 Rules after

completing 8 years of service as Engineer, the fifth respondent was promoted on the post of Deputy Director on 25.02.2013.

13. Owing to the need for cadre restructuring which is permissible in view of Rule 4(1) of the 2004, Rules, the cadre restructuring was done whereby consequent to the surrendering of certain post, the post of Executive Engineer, Superintending Engineer (Civil) and Chief Engineer Level-II was created and after the enforcement of Uttar Pradesh Zila Panchayat Monitoring Cell, Gazetted Officers (First Amendment), Rules 2023, the fifth respondent was granted promotion post completion of 6 years of service as Executive Engineer on the post of Superintending Engineer (civil) on 14.07.2023 and since he was senior-most on the post on completion of 25 years of substantive service in the Monitoring Cell, he was assigned the additional charge of Chief Engineer Level II without any monetary benefits.

14. Submission is that in absence of challenge to the Statutory Rules/ Government Order/ Appointment and promotion orders issued in favour of the fifth respondent, the writ petitioner cannot succeed, particularly, when the orders and the Rules are *intra vires* and within the competence of the State Government issued in administrative exigencies which is unquestionable.

15. Additionally, it has been argued that the fifth respondent is to superannuate on 31.08.2024 and it is not a case wherein the writ petitioner was not aware about the movement of the fifth respondent as he being the member of the Zila Panchayat since 2021 cannot be said to be ignorant in this regard.

16. Lastly, it has been contended that it is the domain and the province of the State Government to create avenues from promotion and to accord placement and once it is not the case of the writ petitioner that the fifth respondent does not possess eligibility/ qualification then the entire challenge sans merit. Therefore, the writ petition be dismissed.

Argument of learned counsel for respondent No. 5

17. Sri Shobhit Mohan Shukla along with Sri Shashi Prakash Rai, have adopted the arguments of learned AAG while adding that there is no illegality in selection, appointment and promotion of the fifth respondent on the post of Engineer, Deputy Director, Superintending Engineer and Chief Engineer (Level-II). It is also submitted that whatever benefits have been extended to the fifth respondent they are as per the statutory rules and the Government Orders issued from time to time and in absence of challenge to the same, the writ petitioner is not entitled for any relief.

18. Before delving into the tenability of the arguments of the rival parties, it would be apposite to quote the Government Order/office order and the statutory rules:

Statutory Rules/ Documents

“Uttar Pradesh Zila Panchayat Monitoring Cell Gazetted Officer’s Service Rules, 2004”

3. Definitions- In these rules, unless there is anything repugnant in the subject or context-

(h) - Member of the Service' means a person substantively appointed under these rules or the rules or orders in force prior to the commencement of these rules to a post in the cadre of the service;

(k) Substantive appointment' means an appointment, not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the Rules and, if there were no rules, in accordance with the procedure prescribed for the time being by executive instructions issued by the Government;

Cadre of Service. - (1) The strength of the service and each category of posts therein shall be such as may be determined by the Government from time to time.

(2) The strength of the service and of each category of posts therein shall, until orders varying the same are passed under sub-rule (1), be as given below:

SI. No.	Name of Post	Number of Posts		
		Permanent	Temporary	Total

1.	Deputy Director	3	-	3
2.	Engineer	2	-	2
3.	Karya Adhikari	2	-	2
4.	Medical Officer (Allopathic and Ayurvedic or Homeopathic)	2	-	2

Provided that-

(i) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensation; or

(ii) The Governor may create such additional permanent or temporary post as he may consider proper.

5. Source of recruitment. - Recruitment to the various categories of posts in the service shall be made from the following sources:-

- 1) **Deputy Director** (i) 33-1/2 per cent by promotion through the Selection Committee from amongst substantively appointed Engineers who have completed eight years service as such on the first day of the year of recruitment.
- (ii) 33-1/2 per cent by promotion through the Selection Committee from amongst substantively appointed Karya Adhikari who have completed eight years service as such on the first day of the year of recruitment.
- (iii) 33-1/2 per cent by promotion through the Selection Committee from amongst substantively appointed Medical Officers (Allopathic and Ayurvedic or Homeopathic) who have completed eight years service as such on the first day of the year of recruitment.

(2) **Engineer** By direct recruitment through the Commission.

The Uttar Pradesh Zila Panchayat Monitoring Cell Gazetted Officers (First Amendment) Service Rules, 2023

4.(1) The strength of service and each category of posts therein shall be such as may be determined by the Government from time to time.

(2) The strength of service and each category of posts therein shall, until orders varying the same are passed under sub nule (1), be as given below:

Serial No.	Name of Post	Number of Post		
		Permanent	Temporary	Total
1.	Chief Engineer (civil)	-	01	01
2.	Superintending Engineer (civil)	-	01	01
3.	Executive Engineer (Civil)	01	01	02
4.	Deputy Director (Karya Adhikari)	01	-	01
5.	Engineer	02	-	02
6.	Karya Adhikari	02	-	02

Provided that-

(i) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post without thereby entitling any person to compensation; or

(ii) the Governor may create such additional permanent or temporary post as he/she may consider proper.

5. Recruitment to the various category of posts in the service shall be made from the following sources:-

(1) **Karya Adhikary** - By direct recruitment through the Commission.

(2) **Engineer** - By direct recruitment through the Commission.

(3) **Deputy Director** - By promotion through the Selection Committee from amongst substantively appointed Karya Adhikaris who have completed eight years service as such on the first day of the year of recruitment.

(4) **Executive Engineer (Civil)** - By promotion through the Selection Committee from amongst substantively appointed Engineers of Zila Panchayat Monitoring Cell, who have completed at least seven years service as such on the first day of the year of recruitment.

(5) **Superintending Engineer (Civil)** - By promotion through the Selection Committee from amongst substantively appointed Executive Engineers of Zila Panchayat Monitoring Cell Gazetted Officer Cader, who have completed Total

fifteen years substantive service on the first day of the year of recruitment including minimum six years service as Executive Engineer.

(6) Chief Engineer (Civil) (level-II) - By promotion through Selection Committee from amongst the substantively appointed Superintending Engineers on the first day of selection year, who have completed a total of 25 years of substantive service in the Zila Panchayat Monitoring Cell Gazetted Officer Cader.”

संख्या: 5446/33-2-98-83 जी/91

प्रेषक,

डा० ओम प्रकाश,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,

उप सचिव/ प्रभारी अधिकारी,
जिला पंचायत अनुश्रवण कोष्ठक,
पंचायती राज विभाग,
उ०प्र० शासन।

पंचायती राज अनुभाग-2

लखनऊ: दिनांक 06 नवम्बर, 1998

विषय:- जिला पंचायत अनुश्रवण कोष्ठक, पंचायती राज विभाग, उ०प्र० शासन के अन्तर्गत अस्थायी पदों का स्थायीकरण।

महोदय,

उपर्युक्त विषय पर मुझे आपसे यह कहने का निदेश/निर्देश हुआ है कि श्री राज्यपाल महोदय जिला पंचायत अनुश्रवण कोष्ठक, पंचायती राज विभाग, उ०प्र० शासन के अन्तर्गत संलग्नक में उल्लिखित अस्थायी पदों को दिनांक 14-10-98 से स्थायी पदों में परिवर्तित किये जाने की सहर्ष स्वीकृति प्रदान करते हैं।

2- उक्त पदों के पदधारकों को शासन द्वारा समय-समय पर जारी किये गये आदेशों के अनुसार मंहगाई एवं अन्य भत्ते, जो अनुमन्य हो, भी देय होंगे।

3. मुझे यह भी कहने का निदेश/निर्देश हुआ है कि उक्त अस्थायी पदों के दिनांक 14-10-98 से स्थायी पदों में परिवर्तित हो जाने के फलस्वरूप संलग्नक के कालम-6 में उल्लिखित शासनादेश संख्या 4181/33-2-98-83 जी/91 दिनांक 27 अगस्त, 1998 को जिसमें इन पदों को वर्ष 1998 में दिनांक 28-2-99 तक अस्थायी रूप से चलते रहने की स्वीकृति प्रदान की गयी थी, इस सीमा तक संशोधित माना जायेगा कि उक्त पदों की निरन्तरता केवल दिनांक 28-2-99 तक के लिये दी गयी थी।

उपर्युक्त पदों पर होने वाला व्यय आय-व्ययक के अनुदान संख्या-14 के अन्तर्गत लेखा शीर्षक 2515-अन्य ग्राम्य विकास कार्यक्रम-आयोजनेत्तर-101-पंचायती राज-800-अन्य व्यय-06-जिला पंचायत अनुश्रवण कोष्ठक की सुसंगत प्राथमिक इकाईयों के नामे डाला जायेगा।

प्रमाणित किया जाता है कि इन पदों का स्थायीकरण कार्यालय-ज्ञाप संख्या:ए-2-797/दस-87-24(12)-86 दिनांक 25 मई, 1987 में निहित सभी शर्तों की पूर्ति के बाद किया जा रहा है।

भवदीय
ह०
(डा० ओम प्रकाश)
सचिव।

उत्तर प्रदेश शासन
पंचायती राज अनुभाग-2
सं०- 4445/33-2-2000-83 जी/91
लखनऊ: दिनांक: 29 नवम्बर, 2000

कार्यालय ज्ञाप

जिला पंचायतों की वित्तीय एवं भौतिक उपलब्धियों की समीक्षा करने, उन पर प्रभावी नियन्त्रण रखने एवं जिला पंचायतों का सुदृढीकरण किये जाने के उद्देश्य से शासनादेश संख्या 1969 बी / 33-2-92-83 जी/91, दिनांक 30.03.1992 द्वारा सचिव, पंचायती राज के प्रशासकीय नियन्त्रणाधीन जिला पंचायत अनुश्रवण कोषक का गठन किया गया था। इस शासनादेश के अन्तर्गत सृजित पदों को शासनादेश संख्या 5446/33-2-90-83 जी/91, दिनांक 06 नवम्बर, 1998 द्वारा स्थायी किया जा चुका है। शासन के कार्यालय ज्ञाप संख्या 1995 बी/ 33-2-92-83 जी/91, दिनांक 01 अप्रैल, 1992 द्वारा जारी कार्यकारी आदेशों के अन्तर्गत विभिन्न पदों पर कोषक के नियुक्ति किये गये निम्नलिखित अधिकारियों एवं कर्मचारियों को उनकी दीर्घकालीन संतोषजनक सेवाओं को दृष्टिगत रखते हुए नीचे अंकित सूची के कालम-3 में अंकित पदों पर तात्कालिक प्रभाव से स्थायी किया जाता है। ये अधिकारी/कर्मचारी चूंकि कोषक के लिए हैं अतः इनकी नियुक्ति/तैनाती केवल कोषक के लिए ही रहेगी।

उत्तर प्रदेश जिला पंचायत अनुश्रवण कोषक की समाप्ति पर यह पद स्वतः समाप्त हो जायेंगे।

क्र०सं ०	अधिकारी/कर्मचारी का नाम	पद नाम
1	श्री अरविन्द कुमार राय	अभियन्ता
2	श्री प्रवीण कुमार	अभियन्ता
3	श्री प्रदीप कुमार गुप्ता	कार्य अधिकारी
4	श्रीमती पुष्पलता पालीवाल	कार्य अधिकारी
5	श्री विजय प्रकाश श्रीवास्तव	वरिष्ठ लिपिक
6	श्री कमलेश चन्द्र पाण्डेय	वरिष्ठ लिपिक
7	श्री सन्तोष कुमार	आशुलिपिक
8	श्री कृष्ण चन्द्र चौधरी	आशुलिपिक
9	श्री राजेश कुमार	आशुलिपिक
10	श्री राम सुखी	चपरासी

भवदीय
ह०
(बी०बी० सिंह)
उप सचिव

Analysis

19. We have heard the learned counsel for the parties and perused the record carefully.

20. The facts are not in issue. It is not in dispute that the Monitoring Cell came to be created by virtue of the Government Order dated 30.03.1992 for reviewing the financial and the physical achievements and to have control over the Zila Panchayat. It is also not in dispute that several posts stood created including the post of Deputy Director (three in number) and Engineer (two in number) respectively. In order to regulate the procedure according to which selections are to be made for various posts an office order came to be issued on 01.04.1992 with respect to various posts including Engineer (two posts) to be filled through selection committee amongst the candidates who have to their credit their Bachelor of Engineering (Civil).

21. Records reveal that the fifth respondent faced the selection Committee and he was accorded appointment on the post of Engineer on ad hoc basis in the pay scale of Rs. 2200-75-2800-ev-100-4000. On 14.10.1998, the State Government declared the post which were to be made temporary pursuant to the Government Order dated 30.03.1992 to be regular and a Government Order also came to be issued on 06.11.1998. On 29.11.2000, the fifth respondent was made regular along with the others on the post of Engineer thereafter, the Uttar Pradesh Zila Panchayat Monitoring Cells Gazetted Officer Service Rules, 2004 came to be gazetted on 12.07.2004. A consequential order was passed in favour of the fifth respondent on 18.07.2006 whereby the word "ad hoc basis" was substituted with the word 'regular' implying that the fifth respondent was made regular.

22. The bone of contention is whether it was open for the State Government to have made the fifth respondent regular on 18.07.2006 post enforcement of the Uttar Pradesh Zila Panchayat Monitoring Cell Gazetted Officer Service Rules, 2004 on the face of the provisions contained under Rule 3(k) of Rules, 2004. Evidently, at the time when the fifth respondent was appointed as Engineer on ad hoc basis on 17.10.1992 against the temporary post created of Engineer on 30.03.1992, there were no statutory rules in force, meaning thereby, that the selections and the condition of services were to be governed by Government Orders issued from time to time. Apparently, the posts which were temporary in nature for a limited period till 28.02.1993 vide Government Order dated 30.03.1992 was made permanent on 14.10.1998 which stands recited in the Government Order dated 06.11.1998. The fifth respondent prior to the enforcement of the 2004 Rules was made regular on 29.11.2000. Though the Rule 3(h) defines member of service, a person substantively appointed under the rules or the rules or orders in force prior to commencement of the rules to the post in the cadre of the service and Rule 3(k), substantive appointment means an appointment not being an ad hoc appointment on the post in the cadre of the service made after selection in accordance with the procedure prescribed for the time being by the executive instructions issued by the Government. However, the same would not in any manner whatsoever invalidate any proceedings or action taken by the State Government while conferring benefit particularly when the 2004 rules came into effect from 12.07.2004.

23. To put it otherwise, the law does not contemplate vacuum as in case, there is no statutory rules then the Government Orders would govern the condition of the services. As regards the challenge raised to the promotion of the fifth respondent on the post of Deputy Director is concerned, the same is meritless inasmuch once the appointment of the fifth respondent on the post of Engineer followed by according regular status has not been questioned, then the benefits which will flow from

Rule 5(1) of the 2004 Rules, for promotion on the post of Deputy Director after completing 8 years of service as Engineer. The entire challenge has been based upon the fact that the fifth respondent was accorded regular status on 18.07.2006 and, thus, he did not complete 8 years of substantive service while being accorded promotion as Deputy Director on 25.02.2013. The said argument is fallacious as the fifth respondent was accorded regular status on 29.11.2000 and the said document was not placed on record with the writ petition, however, it stood available on record only by means of a counter affidavit filed by the State-respondents treating the date 29.11.2000 as the date of regular status accorded to the fifth respondent, the natural consequences would be that in view of Rule 5(1) of the 2004 rules the fifth respondent becomes eligible for being promoted as Deputy Director.

24. With regard to the submissions advanced on behalf of the writ petitioner that the promotion accorded to the fifth respondent on the post of Superintendent Engineer (Civil) is tailor made just in order to give undue benefits while framing the rules to suit him is also thoroughly misplaced particularly when the State Government in terms of Rule 4 of the 2004 rules is competent to re-structure the cadre while varying the cadre strength of different post. It is not necessary that Rules are to be framed, however, the same can be done through administrative Orders as the same is an exigency which is required as and when the same stands occasioned. On 10.04.2023 an office order came to be issued by the State Government whereby for the various posts Executive Engineer and Chief Engineer Level-II cadre re-structuring was done whereby the post of Deputy Director (Technical) was converted into the post of Executive Engineer (Civil) and two posts of Medical Officer and one post of Deputy Director, Medical Officer was surrendered and in its place a post of Superintendent Engineer (Civil) and Chief Engineer (Level-II) was created. Since the fifth respondent had to his credit substantive service of more than 15 years as an Executive Engineer of the Zila Panchayat

Monitoring Cell Gazetted Officer cadre and out of which 6 years as Executive Engineer, the fifth respondent was accorded promotion as Superintendent Engineer (Civil) on 14.07.2003 and thereafter accorded additional charge as Chief Engineer (Level-II) without monetary benefits in the wake of the fact that he had 25 years of substantive service in Zila Panchayat Monitoring Cell Gazetted Officer as per the amendments made in the Amendment Rules, 2023. Neither the 2004 rules nor the 2023 amendment rules have been questioned in the present writ petition. Nonetheless this Court is not required to intervene and come to the rescue of the writ petitioner particularly when there is no challenge to the competency of the State Government in issuing Government Orders and the statutory rules in question.

25. As regards the contention raised on behalf of the writ petitioner that the office order dated 10.04.2023 speaks of the post of Deputy Director (Technical) which is not a sanctioned post is concerned, the same is also of no merit particularly when the factum of the creation of the post of Deputy Director (Technical) stood noticed in the proceedings initiated by the writ petitioner questioning the promotion of one Sri Praveen Kumar in Writ Petition No. 3966(S/B) of 2016 (Arvind Kumar Rai Vs. State of U.P. decided on 04.10.2016 against which review is also stood dismissed on 29.11.2018. This Court does not find it appropriate to delve into the said issue particularly when the issue regarding the appointment of the fifth respondent and claim for promotion as Deputy Director stood noticed in the said writ petition.

26. So far as the contention raised by the learned counsel for the respondents that the present proceedings which have been titled as public interest litigation couched as writ of quo warranto is not maintainable as the fifth respondent does not hold a public office suffice it to say that the Hon'ble Supreme Court in the case of *Renu and others Vs. District and Sessions Judge, Tis Hazari Courts, Delhi and another reported in 2020 (14) SCC 50* wherein the following was observed.-

“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 warrant, 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. (*Vide University of Mysore v. C.D. Govinda Rao, Kumar Padma Prasad v. Union of India, B.R. Kapur v. State of T.N., Mor Modern Coop. Transport Society Ltd. v. State of Haryana, Arun Singh v. State of Bihar, Hari BanshLal v. Sahodar Prasad Mahto and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo.*”

27 A Division Bench of this Court in the case of ***Anil Kumar Verma Vs. U.P. State Industrial Development Corporation Ltd.*** 2014 (8) ADJ 152 had exercised its jurisdiction while issuing a writ of quo warranto setting aside the appointment/promotion of a Chief Engineer in U.P. State Industrial Development Corporation.

28. Nevertheless we are of the firm opinion that the selection, appointment and promotion of the fifth respondent on the post of Engineer, Deputy Director, Superintending Engineer and Additional Charge as Chief Engineer is in consonance and conformity with the Statutory Rules and the Government Orders issued from time to time and the writ petitioner has miserably failed to show any illegality committed by the respondents.

29. Accordingly, the writ petition being devoid of merits is liable to be dismissed and is **dismissed**.

Order Date :- 28.8.2024

A.Prajapati/Rajesh

(Vikas Budhwar, J) (Arun Bhansali, CJ)