

GAHC010050022025



2025:GAU-AS:2814-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/18/2025

ROHIT CHOUDHURY,
S/O- DEBI PRASAD AGARWAL,
RESIDENT OF VILLAGE-GORMUR,
P.O-LOKHUJAN, BOKAKHAT,
DIST-GOLAGHAT, ASSAM, PIN-785612

.....Petitioner

-VERSUS-

1.THE STATE OF ASSAM,
REPRESENTED BY THE CHIEF SECRETARY
TO THE GOVERNMENT OF ASSAM,
JANATA BHAWAN, DISPUR, GUWAHATI-06.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF PERSONNEL (PERSONNEL-A)
ASSAM SECRETARIAT, BLOCK-A 3RD FLOOR
DISPUR GUWAHATI- 781006

3:SHRI MK YADAVA,
SPECIAL CHIEF SECRETARY (FOREST)
ASSAM E-BLOCK, JANATA BHAWAN
DISPUR, GUWAHATI- 781006.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) : Mr. A. Phukan, Advocate.

For the Respondent(s) : Mr. P.N. Goswami, Additional Advocate General, Assam, assisted by Mr. D.K. Sarmah, Additional Senior Government Advocate, Assam for respondent Nos.1 & 2.

Date of Hearing : 10.03.2025.

Date of judgment : 18.03.2025.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. A. Phukan, learned counsel for the petitioner. Also heard Mr. P.N. Goswami, learned Additional Advocate General, Assam, assisted by Mr. D.K. Sarmah, learned Additional Senior Government Advocate, Assam appearing for the respondent Nos.1 & 2 on the issue of maintainability of this PIL petition.

2. The petitioner has approached this Court while stating that he is an Environmental Activist, who has taken up various issues relating to wildlife and the environment before the various Courts and Tribunals. It is further stated that the petitioner has successfully taken up various causes relating to the violation of wildlife laws in the Kaziranga National Park and Tiger Reserve, Manas Tiger Reserve and Deepor Beel Wetlands. The petitioner has also highlighted that he has approached the National Green Tribunal (NGT), Eastern

Zone Bench, Kolkata in the year 2024 pertaining to diversion of 28 hectares of forest land at Geleky Reserve Forest, Sibsagar Territorial Division without obtaining the mandatory prior Forest Clearance from the Ministry of Environment, Forest and Climate Change (MoEFCC) under the Forest (Conservation) Act, 1980.

3. The present writ petition in the design of Public Interest Litigation (PIL) is filed by the petitioner claiming the following reliefs:

- “A. Issue a writ in the nature of quo warranto or any other appropriate writ for the removal of Respondent No.3 from the post of Special Chief Secretary (Forest), Department of Environment and Forest, Government of Assam.*
- B. Issue a writ in the nature of certiorari against the Notification dated 16.02.2024 issued by the Chief Secretary to the Government of Assam;*
- C. Pass any other order(s)/direction(s) as this Hon’ble Court may deem fit and proper under the facts and circumstances of the case.”*

4. The brief facts of the case are that the respondent No.3, who was a member of Indian Forest Service (IFS), while serving as Principal Chief Conservator of Forests & Head of Forest Force, was due to retire on 29.02.2024 on attaining the age of superannuation, however, on 29.02.2024 itself, the Secretary to the Government of Assam, Personnel Department has issued a Notification dated 29.02.2024 by the orders of the Hon’ble Governor and re-engaged him as Special Chief Secretary (Forest) for a period of 1(one) year with effect from 01.03.2024.

In the Notification, it is mentioned that the remuneration of the respondent No.3 will be decided on the basis of last pay and allowances drawn as they have been at the time of superannuation minus pension. It is further mentioned that other benefits like GPF, GIS and other additional allowances will not be admissible to the incumbent and medical reimbursement will be allowed

as per the rules of the service before retirement and other terms and conditions for engagement in respect of the incumbent will be applicable as per Office Memorandum dated 18.07.2018 and Office Memorandum dated 16.02.2024.

5. After issuance of the Notification dated 29.02.2024, another Notification dated 11.03.2024 was issued in continuation of the Notification dated 29.02.2024 which says that the respondent No.3 is appointed as Special Chief Secretary (Forest) for a period of 1(one) year i.e. with effect from 01.03.2024 after his superannuation on 29.02.2024 with full Financial and Administrative Powers. The terms of the said engagement of the respondent No.3 are similar as mentioned in the Notification dated 29.02.2024.

6. It is to be noticed that on 21.02.2025, the Secretary to the Government of Assam, Personnel Department, under the orders of the Hon'ble Governor, has issued another Notification extending the period of re-engagement of the respondent No.3 as Special Chief Secretary (Forest) with effect from 01.03.2025 for one more year. It is mentioned in the Notification that the said extended re-engagement of the respondent No.3 is co-terminus with the current term of the State Government after completion of his present tenure of re-engagement on 28.02.2025, with full Financial and Administrative Powers. The terms and conditions of the extended re-engagement are same as was in the initial re-engagement order.

7. At this stage, the petitioner has filed this PIL petition seeking writ of quo warranto challenging the re-engagement of the respondent No.3 as Special Chief Secretary (Forest) broadly on the following grounds:

(i) That the engagement of the respondent No.3 is in violation of Rules 16(1) and 16(1A) of the All India Services (Death-cum-Retirement Benefits)

Rules, 1958 (hereinafter to be referred as "Rules of 1958") as well as Fundamental Rules, particularly, Rule 56(d) thereof.

(ii) That the engagement of respondent No.3 is in violation of the Government guidelines relating to engagement of retired Government officers on contractual assignment issued vide Office Memorandum dated 18.07.2018.

(iii) That the conduct of the respondent No.3, while discharging the duties on the post of Director, Kaziranga National Park, Principal Conservator of Forest, Assam and in various other capacities cannot be termed that the respondent No.3 belongs to the category of outstanding officer.

(iv) While engaging/re-engaging the respondent No.3 as Special Chief Secretary (Forest) vide Notification dated 29.02.2024, 11.03.2024 and 21.02.2025, no reasons has been assigned for re-engaging him which may result in inevitably affecting the moral of concerned cadre which undoubtedly has many deserving officers.

(v) That conferment of full Financial and Administrative powers on the respondent No.3 as Special Chief Secretary (Forest) is in total violation of the Office Memorandum dated 18.07.2018 which stipulates that the work may be allotted to the re-engaged officer by the Senior most Secretary as per official exigencies. Granting such wide and unfettered power to a Special Officer effectively renders the entire organization and hierarchical structure of the Department of Environment and Forest perfunctory. With the re-engagement/engagement of the respondent No.3 as Special Chief Secretary (Forest) effectively resulted in usurpation of statutory rules which would have otherwise deemed to be filled up by Senior most officers in the cadre. Further, Office Memorandum dated 18.07.2018 clearly stipulates that under no

circumstances in-service promotion of any employee should be allowed to be affected due to re-employment of a retired Government officer.

(vi) That there is all possibility, looking to the past conduct of the respondent No.3, that he is prone to misuse/abuse the powers of the public office.

(vii) That the respondent authorities have failed to provide any reason and need for re-engagement of the respondent No.3 as Special Chief Secretary (Forest) in the concerned Notifications whereas Office Memorandum dated 18.07.2018 clearly stipulates that the engagement of retired Government officer should be made only in rare and exceptional circumstances.

(viii) That the Government has not taken into consideration the fact that looking to the adverse material available in public domain regarding the conduct of the respondent No.3 may result in plundering of natural resources and the State respondent has failed to take note of the instances wherein pursuant to the order passed by the NGT, show-cause notice dated 14.05.2024 was issued to the respondent No.3 by Deputy Director, of Forests (C), Regional Office, MoEFCC, alleging violation of provisions of the Van (Sanrakshan Evam Samvardhan) Adhinyam, 1980 (hereinafter to be referred as "the Adhinyam of 1980") and the Van (Sanrakshan Evam Samvardhan) Rules, 2023 (hereinafter to be referred as "the Rules of 2023").

(ix) that the engagement/re-engagement of the respondent No.3 as Special Chief Secretary (Forest) is contrary to the rules and guidelines holding the field.

8. Though the petitioner has prayed for issuance of writ in the nature of certiorari against the Notifications dated 16.02.2024 issued by the Chief

Secretary to the Government of Assam, however, no specific ground is taken in the writ petition challenging the validity of the Notification dated 16.02.2024. However, in para No.27 of the writ petition, it is stated by the petitioner that vide Office Memorandum dated 16.02.2024, the State Government has completely negated the necessity of consideration of the cases by the State Empowered Committee (SEC) which may result in arbitrariness and high-handedness in re-engaging the retired Government servants.

9. In support of the above grounds, the petitioner has pleaded in the writ petition that the Hon'ble Supreme Court vide order dated 11.12.2028 passed in Writ Petition(s) (Civil) No(s).202/1995 [*In Re: T. N. Godavarman Thirumulpad Vs. Union of India & Ors.*] has directed the Ministry of Environment, Forests and Climate Change to declare Pobitora Sanctuary of the State of Assam and other sanctuaries and National Parks of other States as Eco Sensitive Zone. It is contended that despite the clear direction that the area of 10 kms of 21 National Parks and Wildlife Sanctuaries including Pobitora Sanctuary be declared as Eco Sensitive Zone by the Ministry of Environment, Forests and Climate Change, however, the respondent No.3, during his continuous tenure as Additional Principal Chief Conservator Forest-cum-Chief Wildlife Warden, Assam and Principal Chief Conservator, Forest (Wildlife)-cum-Chief Wildlife Warden, Assam and thereafter, as the Principal Chief Conservator of Forests and Head of Forest Force-cum-Chief Wildlife Warden, Assam has taken no measures to safeguard the interest of the Wildlife, even the boundary of the Pobitora Wildlife Sanctuary is not demarcated.

10. The Petitioner has also placed reliance on information received pursuant to an application under Right to Information Act, 2005, contending

that during the respondent No.3's tenure as Director, Kaziranga National Park and Tiger Reserve from 10.02.2014 to 05.03.2016, an alarming 44(forty-four) rhinoceros were reported to be poached/killed in Kaziranga National Park and Tiger Reserve which demonstrates negligence and shortcomings of the respondent No.3 in discharging duties.

11. It is also contended that the respondent No.3 as Chief Wildlife Warden, Assam was involved in mis-utilization of funds of Kaziranga Tiger Conservation Foundation to make arrangements of visit of the Hon'ble President of India to the Kaziranga National Park on 26-27.02.2022.

12. The petitioner has also placed reliance upon a newspaper report published in a newspaper accusing the respondent No.3 of illegally developed 44 hectares of protected forest land by bypassing the mandatory provisions under the Forest (Conservation) Act, 1980, granting permission for construction of Battalion Headquarters inside the Inner Line Reserved Forest in Hailakandi District.

13. It is contended that the National Green Tribunal has taken suo moto cognizance of the aforesaid fact and 3 and pursuant to the same, the Deputy Director of Forests (C), MoEFCC (Regional Office) has issued a show-cause notice dated 14.05.2024 to the respondent No.3 deeming him guilty of violating the provisions of the Act of 1980 and the Rules framed thereunder. It is contended that when the conduct of the respondent No.3 is questioned by the NGT as well as MoEFCC, the continuation of the respondent No.3 as Special Chief Secretary (Forest) is detrimental to the interest of Forest land and Wildlife of the State at large.

14. The petitioner has also highlighted that he has filed a complaint with the MoEFCC on 27.01.2023 highlighting the anomalies in sample survey conducted on 28.03.2022 in contravention of the existing Standard Operating Procedure wherein the respondent No.3 was directly involved with other two persons.

15. The Petitioner has also placed reliance on a copy of the newspaper report wherein the response of the respondent No.3 is highlighted wherein he has termed the complaint filed by the petitioner as false alleging that the same are leveled to disrepute the Kaziranga National Park and urged the Centre to take action against the petitioner.

16. We have taken note of the pleadings of the writ petition and also taken into consideration the material placed on record by the petitioner in support of the writ petition.

17. Since the petitioner is claiming that he has filed the quo warranto writ petition challenging the engagement/re-engagement of the respondent No.3 as Special Chief Secretary (Forest) vide Notifications dated 29.02.2024, 11.03.2024 and 21.02.2025, we would like to take into consideration the scope of writ of quo warranto in service matters as examined by the Hon'ble Supreme Court.

18. The petitioner has placed reliance upon two judgments rendered by the Hon'ble Supreme Court in (i) ***Hari Bansh Lal Vs. Sahodar Prasad Mahto & Ors.***, reported in (2010) 9 SCC 655 and (ii) ***State of West Bengal Vs. Anindya Sundar Das & Ors.***, reported in (2022) 16 SCC 318.

19. The Hon'ble Supreme Court has held in various pronouncements that in service matters a Public Interest Litigation is not maintainable except a writ of

quo warranto. The Scope of PIL petitions seeking writ of quo warranto is elaborated by the Hon'ble Supreme Court in the above referred two decisions relied upon by the petitioner.

20. In *Hari Bansh Lal* (supra), the Hon'ble Supreme Court has held as under:

“Writ of quo warranto

16. A writ of quo warranto lies only when appointment is contrary to a statutory provision. In High Court of Gujarat and Another v. Gujarat Kishan Mazdoor Panchayat and Others, (2003) 4 SCC 712, (three-Judge Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held: (SCC pp. 730-31, paras 22-23)

‘22. The High Court in exercise of its writ jurisdiction in a matter of this nature 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. 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. (See R.K. Jain v. Union of India, (1993) 4 SCC 119, SCC para 74.)

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana, (2002) 6 SCC 269)’

17. In Mor Modern Coop. Transport Society Ltd. v. Financial Commissioner & Secretary to Govt. of Haryana and Another, (2002) 6 SCC 269, the following conclusion in para 11 is relevant.

"11. The High Court did not exercise its writ jurisdiction in the absence of any averment to the effect that the aforesaid officers had misused their authority and acted in a manner prejudicial to the interest of the appellants. In our view the High Court should have considered the challenge to the appointment of the officials concerned as members of the Regional Transport Authority on the ground of breach of statutory provisions. The mere fact that they had not acted in a manner prejudicial to the interest of the appellant could not lend validity to their appointment, if otherwise, the appointment was in breach of statutory provisions of a mandatory nature. It has, therefore, become necessary for us to consider the validity of the impugned notification said to have been issued in breach of statutory provision."

18. In B. Srinivasa Reddy vs. Karnataka Urban Water Supply &

Drainage Board Employees' Assn. and Others, (2006) 11 SCC 731, this Court held:

"49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules."

19. It is clear from the above decisions that even for issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules. In the later part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and whether he satisfied the relevant statutory provisions.

Suitability of a candidate for appointment

20. In State of Mysore and Another v. Syed Mahmood and Others, (1968) 3 SCR 363 : AIR 1968 SC 1113, it was held that suitability or otherwise, appointing authority is the best person and the court cannot issue a positive writ without giving the authority/Government opportunity in the first instance to consider his/her claim for promotion. The same view has been reiterated in Statesman (Private) Ltd. vs. H.R. Deb and Others, (1968) 3 SCR 614 : AIR 1968 SC 1495.

21. In State Bank of India and Others v. Mohd. Mynuddin, (1987) 4 SCC 486, after adverting to earlier decision of this Court in The State of Mysore & Anr. vs. Syed Mahmood & Ors., (1968) 3 SCR 363 this Court held : (Mohd. Mynuddin case, SCC p. 491, para 5)

"5.....The ratio of the above decision is that where the State Government or a statutory authority is under an obligation to promote an employee to a higher post which has to be filled up by selection the State Government or the statutory authority alone should be directed to consider the question whether the employee is entitled to be so promoted and that the court should not ordinarily issue a writ to the Government or the statutory authority to promote an officer straightway. The principle enunciated in the above decision is equally applicable to the case in hand."

22. It is clear from the above decisions, suitability or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules."

21. In **Anindya Sundar Das** (supra), the Hon'ble Supreme Court has held

as under:

“28. These rival submissions would need to be analyzed. However, before we enter into a substantive analysis of the submissions, it would be appropriate to deal with the procedural objection regarding the limits of the writ of quo warranto.

29. Through a line of cases, this Court has laid out the terms on which the writ of quo warranto may be exercised. In University of Mysore v. C.D. Govinda Rao, 1963 SCC OnLine SC 15: (1964) 4 SCR 575, a Constitution Bench of this Court, speaking through Justice Gajendragadkar, J (as he then was), held that: (SCC OnLine SC para 6)

6. 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 recognized 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. (emphasis supplied)

30. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712 in his concurring opinion in a three-judge Bench, Justice SB Sinha, held that: (SCC pp. 730-31, paras 22-23)

“22. The High Court in exercise of its writ jurisdiction in a matter of this nature 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. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India, (1993) 4 SCC 119 SCC para 74.)”

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. [See Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana, (2002) 6 SCC 269]

31. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731(2), the limitations of the writ of quo warranto were elaborated upon by a two-judge Bench of this Court. The court observed: (SCC 99. 754-55, paras 49 & 51)

“49. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.

* * *

51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v. Union of India [(1993) 4 SCC 119] was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into in a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner.”

(emphasis supplied)

32. In Central Electricity Supply Utility, Odisha v. Dhobei Sahoo, (2014) 1 SCC 161, another two-judge Bench of this Court reiterated that: (SCC p. 174, para 21)

21. the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

(emphasis supplied)

33. More recently, in Bharati Reddy v. State of Karnataka, (2018) 6 SCC 162, a three-judge Bench of this Court, of which one of us (D.Y. Chandrachud, J) was a part, noted the line of precedent clarifying the remit of the writ of quo warranto.

34. *Through these decisions, the Court has settled the position that the writ of quo warranto can be issued where an appointment has not been made in accordance with the law.....”*

22. So, it is settled that a writ of quo warranto can only be issued where an appointment to a public office is made in violation of statutory provisions/rules.

23. The main contention of the petitioner in the writ petition is that the engagement/re-engagement of the respondent No.3 as Special Chief Secretary (Forest) is in violation of Office Memorandum dated 18.07.2018.

It is to be noticed that the Office Memorandum dated 18.07.2018, whereby guidelines have been issued by the State Government for engaging the retired Government officers on contractual assignments, are mere administrative instructions/orders which are not statutory in nature.

24. The Hon'ble Supreme Court in ***B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Association and Ors.***, reported in ***(2006) 11 SCC 731 (II)*** has held that a writ of quo warranto cannot be issued on the ground that it is in violation of administrative instructions which are not statutory in nature.

25. We have taken into consideration the Office Memorandum dated 18.07.2018 as well as dated 16.02.2024. Otherwise also we found no force in the contention of the petitioner that the engagement/re-engagement of the respondent No.3 is in clear violation of the Office Memorandum dated 18.07.2018.

26. It would be apposite to quote the office memorandum dated 18.07.2018 as well as the Office Memorandum dated 16.02.2024, which reads

as under:

“OFFICE MEMORANDUM

Dated Dispur, the 18 July/2018

Sub : Engagement of Retired Government Officers on Contractual Assignment.

The State Government has reviewed the existing strength of the employees against the current increased volume and demand for efficient & timely disposal of works by various Departments. In the last three decades, due to certain constraints and other procedure related issues, the recruitment for various levels of posts in the State Government has not been regular, systematic and as per the requirements of the public service delivery. At the same time, of late, it has been noticed that the attrition rate of employees of the State Government due to superannuation has hastened due to the increase in the average age of the existing employees. A to shortage has been felt mostly at the Grade-1 and Grade-II level which has created a serious challenge in implementing various development schemes. Although the State Government has started the process of regular recruitment of the existing vacancies, this would take considerable time and new recruits also require sufficient time to gather expertise and skill in their respective fields

In the above circumstances, while it is expedient that wherever needs arises, the State Government shall make all possible efforts to increase the overall capacity of its administration through new recruitment, timely promotions and increasing the capacity building, it is also felt necessary to utilise the services of outstanding and willing officers for a reasonable period of time beyond their superannuation. However the engagement of retired officers should be made only in rare and exceptional circumstances.

In view of the above Governor of Assam is pleased to notify the following guidelines for engagement of suitable retired Government Officials on contractual basis in supersession of the earlier Government OM No. AAP/182/2012/49 dated 20 May 2015 and the same will be reviewed after three years.

Therefore superseding the earlier Govt OM No. AAP/182/2012/49 Dated 20th May 2015, the following guidelines are issued for engagement of suitable retired Govt. Officials on contractual basis.

1. Period of Contractual engagement

The period of engagement will not be more than 1(one) year. Engagement can be terminated by the appointing authority at the notice of 1(one) month or honorarium in lieu thereof without assigning any reason whatsoever at any time.

2. Remuneration

Remuneration of the contractual person will be decided on the basis of last pay and allowances drawn as they would have been at present minus pension. Other benefits like GPF, GIS and other additional allowances will not be admissible to the officer engaged. Medical reimbursement will be allowed as per the rules of the Service to which the retired officer belonged before retirement.

3. Procedure of engagement

- (A) *Administrative Departments will assess the need for employment of retired Govt. Officers upto the age of 65 or below and prepare a proposal with eligibility criteria like work experience required to man the position. Initial appointment shall be maximum for one year and the same can be renewed annually subject to the satisfactory performance of the person so engaged. However, overall tenure of such engagement shall not exceed 5 years or 65 years of age whichever is earlier.*
- B) *The proposal for re-employment will be placed by the Senior Most Secretary for consideration and approval of the Minister-in-charge of the Department.*
- C) *On the boots of the proposal so approved, the Department will submit detailed proposals including Bio-data of the officer proposed to be engaged. Justification for employment, deliverable, copy of agreement etc. to the Personnel (A) Department*
- D) *Personnel (A) department will place all such proposals both fresh and renewal before State Empowered Committee (SEC) for consideration/ approval.*

Composition of SEC will be as follows-

- (i) Chief Secretary - Chairman.
- (ii) Senior most Secretary of Personnel Department - Member Secretary.

- (iii) Senior most Secretary of Finance Department - Member.
- (iv) Senior most Secretary of Department concerned . - Members.
- (E) After approval of the SEC, the Personnel Department will be seek approval of HCM and intimate the Department concerned accordingly
- (F) Thereafter Department concerned may engage the retired officers so approved through an agreement.
- (G) The officers so engaged may be assigned a suitable designation like Consultant, Officer on Special Duty, Special Executive Officer etc. as deemed fit by the Department.
- (H) Each Department will draw the remuneration/ honorarium of the so engaged employees/officers from their own budget.
4. The re-employed officer may be allotted the works by the Senior Most Secretary as per the official exigencies.
5. The above provisions/principles should strictly be adhered to by all authorities without any exception.
6. Under no circumstances in-service promotion of any employee should be allowed to be affected due to re-employment of retired Govt. Officer in any department.”

“OFFICE MEMORANDUM

Dated Dispur, the 16th February, 2024

Sub : Engagement of Retired Government Officers on Contractual Assignment.

It is seen that at different times, the Administrative Department engage retired Government officials in the Department with prior approval of Hon’ble Chief Minister and such proposals are placed before the State Empowered Committee (SEC) at a later stage for its consideration/approval. It is stated that the recommendations of the State Empowered Committee (SEC) are effected only with the approval of Hon’ble Chief Minister. Hence, it is felt that placing of such proposals having prior approval of the Hon’ble Chief Minister before the State Empowered Committee (SEC) is not required in such cases.

The State Government has since reviewed the whole matter of engagement of suitable retired Government Official on contractual basis and in

partial modification of this Department's OM No.AAP.98/ 2017/30, dated 18th July, 2018 the following is inserted after Sub-Point (H) under Point (3) of Procedure of engagement.

(I) In cases where Administrative Department receives the approval of the Hon'ble Chief Minister, the Administrative Department may engage the retired officer so approved by the Hon'ble Chief Minister through an agreement. The concerned Administrative Department will however keep the SEC informed. The SEC will take note of the same and include the same in the minutes of its meeting for convenience of maintenance of records.

Other guidelines as laid down in this Department's O.M. No. APP.98/2017/30, dated 18th July, 2018 will remain the same."

27. In the introductory portion the Office Memorandum dated 18.07.2018, particularly, in para No.2 thereof, it is mentioned that the engagement of the retired officers should be made only in rare and exceptional circumstances, however, the actual Guidelines start from Point No.1 which is regarding period of contractual engagement. Point No.2 is regarding remuneration and Point No.3 speaks about the procedure of engagement. Point No.4 says that the re-employed officer may be allotted the works by the Senior Most Secretary as per the official exigencies. Point 5 says the guidelines should strictly be followed and Point 6 says that under no circumstances in-service promotion of any employee should be allowed to be affected due to re-employment of retired Government officer in any Department.

28. Vide Notification dated 16.02.2024, the said sub-point (I) under Point 3 is added in the Office Memorandum dated 18.07.2018 wherein it is provided that where the Hon'ble Chief Minister has approved engagement of a retired officer, the matter need not be placed before the State Empowered Committee (SEC), however, the concerned Administrative Department shall inform the SEC about the engagement and SEC will take note of the same and include the same

in the minutes of its meeting for convenience of maintenance of records.

29. The State has added the sub-point (I) under Point (3) of the O.M dated 18.07.2018 for the reason that even the approval of the SEC regarding engagement of a retired officer needs approval of the Hon'ble Chief Minister. Therefore, where the Hon'ble Chief Minister has approved the engagement of a retired officer, the same is not required to be placed before the SEC and it is only to inform the SEC about the said engagement.

We are of the view that it is purely a policy matter whether the State Government requires to seek approval of the SEC or not before engaging a retired Government officer where the Hon'ble Chief Minister has already approved such engagement because even the approval of proposal by the SEC is further required to be approved by the Hon'ble Chief Minister as per the Office Memorandum dated 18.07.2018. There is hardly any scope for this Court to interfere in such a policy decision.

30. As noticed earlier, the petitioner has failed to demonstrate violation of any provisions of Office Memorandum dated 18.07.2018 which provides guidelines for re-engagement of retired Government officers on contractual basis.

31. Another contention of the petitioner regarding violation of the Rules of 16(1) and 16(1A) of the Rules of 1958 is concerned, we find that those rules are only applicable on re-employment of officer(s) by the Central Government and not by the State Government and the same is evident from the different Office Memorandums issued by the Central Government wherein the criteria for granting extension/re-employment of Central Government employee is provided.

The letter dated 26.08.1974 issued by the Department of Personnel and Administrative Reforms clearly suggests that the State Government may keep in mind these instructions while deciding the cases of re-employment/ extension of service of All India Services Officers under it. It nowhere suggests that the criteria and procedure laid down by the Central Government under Rule 16 of Rules of 1958 is *ipso facto* applies the State Government in cases of re-employment/extension of service of all India officers under it.

32. Similarly, FR 56(d), on which the petitioner has placed reliance, is also not applicable in the present case.

33. The petitioner has placed reliance on RTI information obtained by him for highlighting that the respondent No.3, while working as Director, Kaziranga National Park from 10.02.2014 to 05.02.2016, as many as 44 rhinoceros were killed by the poachers. The petitioner has also placed reliance on a letter issued by the Principal Chief Conservator of Forests, Wildlife and Chief Wildlife Warden, Assam dated 25.02.2022, wherein it is mentioned that a part of money spent on the visit of Hon'ble President of India to Kaziranga National park on 26-27.02.2022, was paid from the Kaziranga Tiger Conservation Foundation and has alleged that the respondent No.3 has misused the said fund for Hon'ble President's visit.

The petitioner has also relied on a show-cause notice dated 14.05.2024 issued by the Deputy Director of Forests (C), MoEFCC (Regional Office), whereby the respondent No.3 was asked to show-cause as to why a complaint should not be filed in the Court of law having jurisdiction for the offence committed under Section 3-A and 3-B of the Adhiniyan of 1980 read with Rule 15(3) of the Rules of 2023.

These facts have been highlighted by the petitioner to buttress his contention that the respondent No.3 is not a deserving officer to be appointed as Special Chief Secretary (Forest).

However, from the above material, it is difficult to conclude that the conduct of the respondent No.3 disentitles him to continue as Special Chief Secretary (Forest) because the allegations leveled by the petitioner against the respondent No.3 are mere allegations and the petitioner has failed to produce any material to show that the respondent No.3 has ever been held guilty in relation to those allegations. It is also not demonstrated by the petitioner that pursuant to the show-cause notice dated 14.05.2024 issued to the respondent No.3 by the Deputy Director of Forests (C), MoEFCC (Regional Office), any prosecution is launched against him under the provisions of the Adhinyam of 1980 and the Rules of 2023. Merely on the allegations, which are not substantiated by any material, no writ of quo warranto can be issued.

34. It also appears that the petitioner has personal grudge against the respondent No.3 and the same is evident from the averments made in the PIL petition, wherein the petitioner has claimed that he has filed a complaint regarding the anomalies found in sample survey conducted on 28.03.2022 into the Rhino Population Estimation, 2022, wherein the respondent No.3 was directly involved.

35. The petitioner himself has annexed a news article of the newspaper [Annexure P-15] wherein the respondent No.3 has refuted the allegations leveled in the said complaint alleging that the same are false and are being made by the petitioner to disrepute the Kaziranga National Park. The respondent No.3 has also urged the Centre to take action against the petitioner.

36. It is also evident from the averments made in the writ petition that the petitioner has filed Original Application No.105/2024/EZ before the NGT, Eastern Zone Bench, Kolkata, wherein serious allegations have been leveled against the respondent No.3 and in that Original Application, the respondent No.3 has vehemently countered the said allegations and the matter is still pending consideration before the NGT, Eastern Zone Bench, Kolkata.

37. Taking note of the above facts, we have a doubt in our minds that the challenge of the petitioner to the engagement/re-engagement of the respondent No.3 as Special Chief Secretary (Forest) is *bona fide*.

38. The Hon'ble Supreme Court in ***B. Srinivasa Reddy (II)*** (supra) has observed that it is settled law by a catena of decisions that the Court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. The Hon'ble Supreme Court has held that the Court should refuse to issue writ of quo warranto where it is an outcome of malice or ill will.

The relevant para of the above referred judgment are reproduced hereunder:

“51. It is settled law by a catena of decisions that Court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain vs. Union of India, (1993) 4 SCC 119 was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, it may be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non- appointee to assail the legality or correctness of the action and that third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that only public

law declaration would be made at the behest of public- spirited person coming before the Court as a petitioner. Having regard to the fact that the neither of Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of Quo Warranto so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post.

* * *

53. *This Court in A.N. Sashtri vs. State of Punjab and Others, (1988) Supp SCC 127 held that the Writ of Quo Warranto should be refused where it is an outcome of malice or ill will. The High Court failed to appreciate that on 18-01-2003 the appellant filed a criminal complaint against the second respondent Halakatte, that cognizance was taken by the criminal court in CC No. 4152 of 2003 by the jurisdictional magistrate on 24-02-2003, process was issued to the second respondent who was enlarged on bail on 12-06-2003 and the trial is in progress. That apart, the second respondent has made successive complaints to the Lokayukta against the appellant which were all held to be baseless and false. This factual background which was not disputed coupled with the fact that the second respondent Halakatte initiated the writ petition as President of the 1st respondent Union which had ceased to be a registered trade union as early as on 02-11-1992 suppressing the material fact of its registration having been cancelled, making allegations against the appellant which were no more than the contents of the complaints filed by him before the authorities which had been found to be false after thorough investigation by the Karnataka Lokayukta, would unmistakably establish that the writ petition initiated by the Respondents 1 and 2 lacked in bona fides and it was the outcome of the malice and ill will the 2nd respondent nurses against the appellant. Having regard to this aspect of the matter, the High Court ought to have dismissed the writ petition on that ground alone and at any event should have refused to issue a Quo Warranto which is purely discretionary. It is no doubt true that the strict rules of locus standi is relaxed to an extent in a Quo Warranto proceedings. Nonetheless an imposter coming before the Court invoking public law remedy at the hands of a constitutional court suppressing material facts has to be dealt with firmly.*

54. *This Court in Dr. B. Singh vs. Union of India and Others, (2004) 3 SCC 363 held that only a person who comes to the Court with bona fides and public interest can have locus. Coming down heavily on busybodies,*

meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, this Court at para 14 of the report held as under:-

"14. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest to the public or even of their own to protect."

(Emphasis supplied)

39. It is also to be noted that the respondent No.3 was initially engaged as Special Chief Secretary (Forest) on contractual basis for a period of one year with effect from 01.03.2024 and the period of engagement was to be expired on 28.02.2025, however, during the said period of one year, the petitioner did not challenge the engagement of the respondent No.3 as Special Chief Secretary (Forest) and has filed this writ petition only in the first week of March, 2025 when the respondent No.3 was re-engaged as Special Chief Secretary (Forest) for one more year vide Notification dated 21.02.2025.

Though the continuance of the incumbent in the office without any authority could have been challenged by the petitioner at any point of time, the petitioner did not challenge the same for whole one year when the respondent No.3 was working as Special Chief Secretary (Forest) from March, 2024 to February, 2025 and the silence of the petitioner for whole one year further

creates a doubt in our mind regarding *bona fide* of the action of the petitioner of challenging the engagement/re-engagement of the respondent No.3 as Special Chief Secretary (Forest).

40. Recently vide order dated 07.06.2024 passed in PIL No.36/2023 (***Balen Baishya Vs. the State of Assam & Ors.***), wherein one Mr. Balen Baishya has challenged the appointment of the Vice Chancellor of the Assam Agricultural University on the ground of violation of UGC Regulations, this Court, while deciding the issue of maintainability of a PIL petition in service matters, has held that the PIL petition is maintainable, however, the Hon'ble Supreme Court vide order dated 17.02.2025 passed in Special Leave Petition (Civil) Diary No(s).40118/2024 has stayed the said order.

41. In view of above discussions, we are of the view that the present PIL petition challenging the re-engagement of the respondent No.3 as Special Chief Secretary (Forest) is not maintainable.

42. Hence, this PIL petition is dismissed.

43. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant