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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3714 of 2015

Dr. Avinash Samal, S/o Late Shri Gopinath Samal, aged about 47 years, Assistant Professor and Member, Executive Council, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through the Principal Secretary, Department of Law and Legislative Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur, Mandir Hasod, District Raipur (C.G.)

2. Hidayatullah National Law University, through its Registrar, Post Uparwara, Naya Raipur, Raipur, Chhattisgarh

3. Chancellor, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, Chhattisgarh

4. Vice-Chancellor, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, Chhattisgarh

5. Prof. (Dr.) Sukh Pal Singh, Vice-Chancellor, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, Chhattisgarh

6. Dr. Dipak Das, Associate Professor, the then Registrar In-Charge and Secretary, Executive Council, Hidayatullah National Law University, Post Uparwara, Naya Raipur, Raipur, Chhattisgarh

---- Respondents

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|---|---|
| For Petitioner: | Mr. Amrito Das, Advocate. |
| For Respondent No.1/State: | Mr. Arun Sao, Deputy A.G. |
| For Respondents No.2, 3 and 4: | - |
| | Mr. Sumesh Bajaj & Mr. Shashank Thakur, Advocates. |
| For Respondent No.5: | Mr. B.D. Guru, Advocate. |
| For Respondent No.6: | None present. |

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

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29/04/2016

1. Invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein calls in question the order Annexure P-1 dated 2-12-2014 whereby and whereunder, respondent No.4 – Hon'ble Chancellor of Hidayatullah National Law University, Raipur (for short 'the HNLU') in exercise of his power conferred under Section 8(2) of the Hidayatullah National University of Law, Chhattisgarh, Act, 2003 read with Statute 19 of the Statutes contained in the Schedule to the said Act and in view of the amendment to the Statute of the University published on 25-11-2014, extended the tenure of respondent No.5 – Prof. (Dr.) Sukh Pal Singh as Vice-Chancellor of the University for a further period of five years or until he attains the age of seventy years, whichever is earlier.

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2. The aforesaid challenge has been made by the petitioner on the following factual backdrop: -

2.1) The HNLU is a University established by the Hidayatullah National University of Law, Chhattisgarh, Act, 2003 (for short 'the Act of 2003'). Respondent No.5 was appointed as Vice-Chancellor for a period of five years on 5-3-2011 and he assumed the charge of the Office of Vice-Chancellor on 29-3-2011. The University by its resolution

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dated 11-1-2014 made an amendment in the Statute enhancing the age of retirement for the Vice-Chancellor from 65 to 70 years.

2.2) On 6-9-2014, meeting of the Executive Council was held for consideration of various agendas inter alia including two agendas namely formal amendment in the appointment of Vice-Chancellor of the University enhancing the age of superannuation to 70 years and also it was proposed that amendment in Statute 19(5) of the Statutes incorporating Statute 19(5)(A), whereby on the basis of satisfactory services, after the expiry of normal tenure of five years, the Executive Council may recommend to Hon'ble the Chancellor to extend the service tenure of Vice-Chancellor for a period of next five years provided it does not exceed 70 years.

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2.3) Both the agendas were discussed, passed and approved by the Executive Council on the said date. Apart from those two agendas, the Executive Council in its meeting dated 6-9-2014 also resolved after considering the satisfactory services of respondent No.5 – Prof. (Dr.) Sukh Pal Singh as Vice-Chancellor of the University, to request the Hon'ble Chancellor of the University to extend the existing tenure of respondent No.5 beyond his initial tenure for a period of next five years or up to the age of 70 years, whichever is earlier. Minutes of meeting dated 6-9-2014

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was duly approved by the Hon'ble Visitor on 16-9-2014 and thereafter, it was circulated amongst the members of the Executive Council by letter dated 9-12-2015 and minutes of Executive Council meeting dated 6-9-2014 was approved in its meeting dated 22-8-2015 in which the petitioner was also present and participated. Thereafter, acting upon the resolution made by the Executive Council to extend the existing tenure of respondent No.5 as Vice-Chancellor of the University, the Hon'ble Chancellor of the University by its order dated 2-12-2014 (Annexure P-1) extended the tenure of respondent No.5 as Vice-Chancellor of the University beyond its initial tenure for a further period of five years or until he attains the age of 70 years, whichever is earlier, subject to the “doctrine of pleasure”.

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2.4) The petitioner being member of the Executive Council of the University as on 6-9-2014, now has filed this writ petition questioning the resolution-cum-decision of the Executive Council on agenda No.4 making recommendation by the Executive Council to the Hon'ble Chancellor to extend the tenure of respondent No.5 as Vice-Chancellor of the University and also seeks to challenge the order Annexure P-1 by which the Hon'ble Chancellor of the University has extended the existing tenure of respondent No.5 as Vice-Chancellor of the University for a period of five years.

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2.5) Challenge to Annexure P-2 – decision of the Executive Council, is made mainly on two grounds. Firstly, neither such a resolution was tabled before the Executive Council on 6-9-2014 nor it was discussed and passed recommending extension of tenure for a period of five years, as no service records were placed before the Executive Council on the said date of meeting for application of mind with regard to satisfactory service of respondent No.5. It was alternatively also pleaded that the said amendment in the shape of Statute 19(5)(A) came to be published only on 25-11-2014 and therefore there was no occasion for the Executive Council to pass a resolution making recommendation to extend the service tenure of respondent No.5 on 6-9-2014. The order Annexure P-1 has been challenged on the ground that since the order Annexure P-1 extending the tenure of respondent No.5 as Vice-Chancellor has been made on the basis of recommendation dated 6-9-2014, which is non est in law, therefore, the recommendation (in shape of resolution by the Executive Council, Annexure P-2) be declared illegal as it relates to extension of service tenure of respondent No.5 and the order Annexure P-1 deserves to be set-aside in exercise of extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

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2.6) Respondents No.2 and 4 have filed their detailed

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counter affidavit stating inter alia that the petitioner was member of the Executive Council on 6-9-2014, resolution No.4 was duly tabled on the said date before the Council, it was discussed at length and passed accordingly in presence of the petitioner and the draft minutes of the Executive Council meeting dated 6-9-2014 was duly approved by the Hon'ble Visitor on 16-9-2014 and thereafter, it was circulated to all the eleven members of the Executive Council by memo dated 9-12-2014, however, copy of the minutes of meeting was supplied to the petitioner by hand. It was further pleaded that minutes of meeting dated 6-9-2014 were placed in the Executive Council Meeting dated 22-8-2015 which was duly approved and in which also the petitioner was present as no objection was raised and his presence was duly recorded in the attendance sheet Annexure R-2/24, and the petitioner has even not opposed while signing the minutes of the meeting. It has also been pleaded that the petitioner is neither qualified for the post of Vice-Chancellor nor he has made any candidature for the said post of Vice-Chancellor for which respondent No.5 was appointed by order dated 2-12-2014 and his service tenure was extended by said order Annexure P-1 and therefore the petitioner is not the “person aggrieved” for invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, as such,

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he is not entitled to maintain the writ petition having no "locus standi" to question the order Annexure P-1 and the resolution Annexure P-2. Thus, respondents No.2 and 4 have prayed for dismissal of the writ petition.

2.7) The writ petition was admitted for final hearing by this Court by order dated 18-2-2016 and thereafter, parties have completed the pleadings by exchanging the pleadings and on 8-4-2016, when the case was taken-up for hearing, learned counsel for respondents No.2 and 4 Mr. Sumesh Bajaj raised preliminary objection with regard to "locus standi" of the petitioner to maintain the writ petition stating *inter alia* that neither the petitioner was qualified for the post nor he was non-appointee on the post of Vice-Chancellor and therefore he is not the person aggrieved for maintaining the writ invoking certiorari jurisdiction. Mr. Sumesh Bajaj, learned counsel, would also submit that the petitioner being party to the Executive Council meeting dated 6-9-2014 is bound by the decision of the Executive Council and he cannot, therefore, question the decision dated 6-9-2014 taken by the Executive Council of the HNLU, as such, the writ petition deserves to be dismissed on this preliminary objection, as the petitioner having no "locus standi" is not the "person aggrieved" to maintain this writ petition, and would submit that the writ petition deserves to be dismissed by upholding the preliminary objection.

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3. Mr. Amrito Das, learned counsel for the petitioner, opposing vehemently and replying the said submission made by learned counsel appearing on behalf of respondents No.2 and 4, would vociferously submit that the petitioner was admittedly the member of Executive Council on 6-9-2014 when the meeting was held for considering the agenda with regard to amendment in Statute 19(5) of the Statutes, the date on which the recommendation was made for extending the tenure of respondent No.5 as Vice-Chancellor. He would further submit that the said recommendation for extension of tenure of respondent No.5 was neither tabled for consideration nor such a resolution was passed and the service records of respondent No.5 were never placed before the Executive Council on the said date and being the member of the said Executive Council, the petitioner has a right to object to such an illegality which was being done arising from the recommendation made by the Executive Council in the meeting in which the petitioner participated. He would rely upon the decisions of the Supreme Court in the matters of **Gadde Venkateswara Rao v. Government of Andhra Pradesh and others**[1], **Bar Council of Maharashtra v. M.V. Dhabolkar and others**[2] and **Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed**

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1 AIR 1966 SC 828
2 (1975) 2 SCC 702

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**and others**[3] to buttress his submission.

4. I have heard learned counsel for the parties at considerable length and after hearing them and upon consideration, I am of the considered opinion that the preliminary objection raised on behalf of respondents No.2 and 4 with regard to "locus standi" of the petitioner to maintain the instant writ petition deserves to be decided at the outset before entering into the merits of the matter, as the said question would go to the root of the matter. (See **National Highway Authority of India v. Ganga Enterprises and another**[4].) Therefore, the preliminary objection raised by learned counsel for respondents No.2 and 4 is considered first which is formulated as under: -

> "Whether the petitioner is an aggrieved person to maintain the writ petition invoking extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India questioning the order dated 2-12-2014 (Annexure P-1) passed by the Hon'ble Chancellor of HNLU and resolution dated 6-9-2014 (Annexure P-2) passed by the Executive Council of HNLU?"

For the sake of convenience, the above-stated question is bifurcated into following two questions: -

1. Whether, the petitioner is aggrieved person to question the order Annexure P-1 passed by the

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3 (1976) 1 SCC 671
4 (2003) 7 SCC 410

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Hon'ble Chancellor of the University extending the service tenure of respondent No.5 as Vice-Chancellor of HNLU in exercise of its statutory power and jurisdiction under the Act of 2003?

2. Whether, the petitioner is entitled to question the resolution/decision dated 6-9-2014 Annexure P-2 passed by the Executive Council of HNLU?

**Answer to question No.1**: -

5. The order Annexure P-1 has been passed by the Hon'ble Chancellor of the University on 2-12-2014 in exercise of power conferred under Section 8(2) of the Act of 2003 read with Statute 19 of the Statutes contained in the Schedule of the said Act extending the tenure of respondent No.5 as Vice-Chancellor of the University for a further period of five years or until he attains the age of 70 years, whichever is earlier. The petitioner calls in question the said order claiming *inter alia* that it was passed on the basis of recommendation dated 6-9-2014 which is illegal and *non est* in law and therefore the order (Annexure P-1) dated 2-12-2014 is liable to be quashed.

6. The preliminary objection raised on behalf of respondents No.2 and 4 is that the petitioner was neither qualified nor claimed to be appointed on the post of Vice-Chancellor of the University and therefore he is not the “person aggrieved”

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to maintain this writ petition invoking the extra-ordinary jurisdiction of this Court for quashing the same.

7. At this stage, it would be appropriate to notice the dictionary meaning of "person aggrieved" to resolve the question raised at the Bar.

7.1) Corpus Juris Secundum, Volume 3 page 510, defines "**aggrieved party or person**" as under: -

> "In its broadest signification it denotes one who has suffered an injury to person or to property; one who has been injuriously affected by the act complained of; one who is prejudiced; one having a substantial grievance; one who is afflicted, oppressed, injured, vexed or harassed, or one to whom pain or sorrow is given.
>
> In legal acceptation, or in a legal sense, and when used with reference to legal remedies the words have been construed as having a sufficiently definite meaning which must be determined with reference to the context and subject matter. They may be and have been used as meaning or having reference to any one who is injured in a legal sense, one adversely affected in respect of legal rights; or who suffers from the aggressions of others."

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7.2) Black's Law Dictionary (Sixth Edition) defines "**person aggrieved**" as under: -

> "Aggrieved party. One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation. See Party; Standing.
>
> Person aggrieved. To have standing as a

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> "person aggrieved" under equal employment opportunities provisions of Civil Rights Act, or to assert rights under any federal regulatory statute, a plaintiff must show (1) that he has actually suffered an injury, and (2) that the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute in question. Foust v. Trans-america Corp., D.C.Cal., 391 F. Supp. 312, 314."

8. In order to decide the "**locus standi**" of the petitioner raised at the bar, it would also be appropriate to notice relevant judgments rendered by Their Lordships of the Supreme Court from time to time defining the meaning of word 'person aggrieved' with reference to issuance of writ(s).

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9. Way back in the year 1961, the Supreme Court in the matter of **Calcutta Gas Company (Prop.) Ltd. v. State of West Bengal and others**[5] (Constitution Bench) has held that a person who has a legal right to enforce, can apply under Article 226 of the Constitution of India. Paragraph 5 of the report states as under: -

> "5. Article 226 in terms does not describe the classes of persons entitled to apply there-under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226. The legal right that can be enforced under Article 226 like Article 32, must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. The right that can be forced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the

5 AIR 1962 SC 1044

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> case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

9.1) In **Sidebotham, Re, ex P Sidebotham**[6], it was observed by Jamesh, LJ:

> "But, the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced, which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something."

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9.2) The above-stated passage was relied upon with approval by the Supreme Court in the matter of **Thammanna v. K. Veera Reddy and others**[7] and **Shobha Suresh Jumani v. Appellate Tribunal, Forfeited Property and another**[8].

9.3) In the matter of **Gadde Venkateswara Rao** (supra), Their Lordships of the Supreme Court have held that ordinarily, the person who seeks a relief under Article 226 of the Constitution of India must have personal or individual right in the subject-matter and the word "ordinarily" includes, a person who has been prejudicially affected by an act or omission of an authority. Their Lordships observed in paragraph 8 as under: -

> "... That apart, in exceptional cases, as the expression "ordinarily" indicates, a person

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6 (1880) 14 Ch D 458 at page 465
7 (1980) 4 SCC 62
8 (2001) 5 SCC 755

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> who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof.

9.4) In the matter of **Bar Council of Maharashtra** (supra) (Constitution Bench), Their Lordships considered the meaning of "person aggrieved" and held as under: -

> "28. ..... The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests". It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette."

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9.5) Likewise, in the matter of **Jasbhai Motibhai Desai** (supra), the Supreme Court (Constitution Bench) has held

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that in order to maintain the writ of certiorari, the petitioner must be prejudicially affected by an act or omission of an authority and in exceptional cases, the rule can be relaxed, and laid down the law as under: -

> "34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter. (See State of Orissa v. Madan Gopal Rungta[9]; Calcutta Gas Co. v. State of W.B.[10]; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa[11]; Gadde Venkateswara Rao v. Government of A.P.[1]; State of Orissa v. Rajasaheb Chandanmall[12]; Dr. Satyanarayana Sinha v. M/s. S. Lal & Co.[13].)
>
> 35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.
>
> 37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these

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9 1952 SCR 28 : AIR 1952 SC 12
10 1962 Supp 3 SCR 1 : AIR 1962 SC 1044
11 (1967) 1 SCA 413
12 (1973) 3 SCC 739
13 (1973) 2 SCC 696 : 1973 SCC (Cri) 1002

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categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

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48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a 'person aggrieved' and has no locus standi to challenge the grant of the no-objection certificate.

49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc., can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public

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time and money.

50. While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a 'stranger' unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a 'stranger', and not a busybody, then also, there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will, in effect, seriously injure the fundamental rights of respondents Nos.1 and 2, which they have under Article 19(1) (g) of the Constitution, to carry on trade or business subject to 'reasonable restrictions' imposed by law."

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9.6) In the matter of **Dr. Umakant Saran v. State of Bihar**[14], Their Lordships of the Supreme Court have held that appointment cannot be challenged by one who is himself not qualified to be appointed. Report (paras 10 and 15) state as under: -

"10. ..... Dr. Saran, who was not eligible for consideration for appointment at the time, had no right to question the appointments since he was not aggrieved.

15. ..... It would, thus, follow that while Respondents 5 and 6 were eligible for appointment as Lecturers on March 31, 1965 the appellant was not and, therefore, he cannot be regarded as aggrieved for the purpose of the relief claimed by him."

9.7) In the matter of **D. Nagaraj and others v. State of**

14 (1973) 1 SCC 485

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**Karnataka and others**[15], the Supreme Court has held that the petitioner approaching the High Court must possess a right. The report states as under: -

> "7. ..... It is well settled that though Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder, the existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under the said Article. It is also well established that a person who is not aggrieved by the discrimination complained of cannot maintain a writ petition. ....."

9.8) Likewise, in the matter of **Dr. N.C. Singhal v. Union of India and others**[16], Their Lordships of the Supreme Court have held in paragraph 21 as under: -

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> "21. Having examined the challenge to the promotion of respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to question their promotions. Each one of them was promoted to a post in supertime grade II in a speciality other than Opthalmology and appellant admittedly was not qualified for any of these posts. Even if their promotions are struck down appellant will not get any post vacated by them. ....."

9.9) Likewise, similar is the proposition of law laid down by the Supreme Court in the matter of **State Bank of India v. Yogendra Kumar Srivastava and others**[17] in paragraph 27, which states as under: -

> "27. Moreover, there is some force in the contention made on behalf of the Bank that as the Probationary/Trainee Officers are not in the Junior Management Grade which is a different cadre, they have no locus standi to

15 (1977) 2 SCC 148
16 AIR 1980 SC 1255
17 AIR 1987 SC 1399

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> challenge any benefit conferred on 'the officers of the Junior Management Grade comprising erstwhile Officers Grade-I and Officers Grade-II, as were in the employment of the Bank prior to October 1, 1979."

9.10) In the matter of **R.K. Jain v. Union of India and others**[18], it has again been held by Their Lordships of the Supreme Court that offending action can be questioned only by the non-appointee and non-appointee can only be considered to be the person aggrieved, and it has been held in paragraph 74 as under: -

> "74. ..... In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person."

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9.11) In the matter of **Utkal University, etc. v. Dr. Nrusingha Charan Sarangi and others**[19] relying upon the matter of **Jasbhai Motibhai Desai** (supra), it has been held that in order to invoke the writ jurisdiction, the writ petitioner must be a person who has suffered illegal injury and a meddlesome interloper cannot maintain the writ petition, and observed in paragraph 8 as under: -

> "8. It is in this context that the submission of the University regarding the locus standi of the first respondent to file the writ petition must also be considered. The University has rightly pointed out that the original writ petition does not disclose any legal injury to the original petitioner/present first respondent, because

18 AIR 1993 SC 1769
19 AIR 1999 SC 943

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there is no reason to come to a conclusion that he would have been selected even if all his contentions in the writ petition were accepted. The University has relied upon the decision of this Court in Jashbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed, reported in (1976) 3 SCR 58 at page 71 : (AIR 1976 SC 578 at p. 586) for the purpose of pointing out that the first respondent stands more in the position of a meddlesome interloper than a person aggrieved. There is much force in this contention also."

9.12) In the matter of **Vinoy Kumar v. State of U.P. and others**[20], the Supreme Court has clearly held that writ of certiorari must be claimed by the person aggrieved and third party has no locus standi to file writ petition alleging legal wrong or injury suffered by any individual unless it is a writ of quo warranto or habeas corpus or it is a PIL, and observed as under in paragraph 2: -

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"2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an

20 (2001) 4 SCC 734

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effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief."

9.13) In the matter of **B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees' Association and others**[21], it has been held by Their Lordships of the Supreme Court 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 third party has no locus standi to canvass the legality or correctness of the action and observed in paragraphs 49 and 51 as under: -

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"49. 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

21 AIR 2006 SC 3106

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legality or correctness of the action.

75. The High Court, in the instant case, was not exercising certiorari jurisdiction. Certiorari jurisdiction can be exercised only at the instance of a person who is qualified to the post and who is a candidate for the post. This Court in Dr. Umakant Saran v. State of Bihar, (1973) 1 SCC 485, held that the appointment cannot be challenged by one who is himself not qualified to be appointed."

10. Conspectus of the above-stated judgments of the Supreme Court would show that in order to maintain a writ petition, a writ petitioner or a person filing writ petition must be the "person aggrieved" who has suffered some legal wrong or legal injury and he must be qualified for the post or must be the non-appointee invoking extra-ordinary jurisdiction to question the appointment of an individual who has been appointed to some post, as relief under Article 226 of the Constitution of India is based on the existence of legal right in favour of person invoking extra-ordinary jurisdiction of this Court and exception to this Rule is in case of writ of quo warranto, habeas corpus or in public interest litigation.

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11. Concededly and doubtlessly, the petitioner has not claimed himself to be qualified for the said post of Vice-Chancellor nor he is a non-appointee of the post of Vice-Chancellor of the University, as he has not claimed for the post of Vice-Chancellor of the University in the writ petition. He claims to be the person aggrieved holding that he is committed for the welfare of the University and since he was the member of

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Executive Council on 6-9-2014. As the recommendation Annexure P-2 is also non-existent, therefore, he has “locus standi” to maintain the writ petition.

12. In the judgments of the Supreme Court noticed herein-above in foregoing paragraphs, it is quite vivid that in order to maintain the writ petition under Article 226 of the Constitution of India, particularly certiorari jurisdiction, as admittedly the petitioner is not invoking the quo warranto jurisdiction of this Court in this writ petition, the petitioner must be the person who has suffered some legal injury by the act of the official respondents herein or non-appointee, as the case may be. Merely because the recommendation has been made in the meeting of the Executive Council and on the basis of that recommendation, the order Annexure P-1 extending the service tenure of respondent No.5 as Vice-Chancellor of HNLU has been passed, that would not bring the petitioner within the meaning of “person aggrieved”, as undisputedly, the petitioner has neither suffered legal injury on account of passing of order extending the service tenure of respondent No.5 as Vice-Chancellor of HNLU Annexure P-1 by the Hon'ble Chancellor of the University nor he is a non-appointee for the post of Vice-Chancellor. In view of the authoritative decisions rendered by Their Lordships in the above-stated cases noticed herein-above, it cannot be held that the petitioner is the “person aggrieved” and entitled

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to invoke extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. I hold unreservedly and unhesitatingly that the petitioner has no locus standi to approach this Court for the relief of quashing the order Annexure P-1 passed by the Hon'ble Chancellor of HNLU extending the service tenure of respondent No.5 as Vice-Chancellor of the University.

**Answer to question No.2**: -

13. Determination of first question would bring me to the next question as to whether the petitioner is entitled to question the recommendation of the Executive Council of the University in shape of resolution dated 6-9-2014.

14. It is not in dispute that on 6-9-2014, meeting of the Executive Council was convened in which the petitioner had also participated and resolutions were passed on that day recommending insertion of clause (A) to Statute 19(5) in the Statutes contained in the Schedule of the Act of 2003. Recommendation was also made for extending the tenure of respondent No.5 as Vice-Chancellor of the University which now, the petitioner challenges that decision of the Executive Council recommending the extension of tenure of respondent No.5 as Vice-Chancellor stating that it was never tabled and discussed, nor it was passed. Whereas, it is the case of respondents No.2 and 4 that it was duly tabled, discussed and passed unanimously in presence of

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all the members including the petitioner and copies of the minutes were circulated to all members including the petitioner right in time and no objection was raised, even it was approved by the Hon'ble Visitor on 16-9-2014 and the said minutes of meeting were approved in the next Executive Council meeting dated 22-8-2015 in presence of the petitioner and therefore he has no “locus standi” to question the said resolution in a writ petition filed as late as on 9-10-2015, as such, the writ petition has been filed to wreck vengeance on account of the disciplinary action taken by the University against him.

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15. In the matter of **Bihar Public Service Commission and another v. Dr. Shiv Jatan Thakur and others**[22], Their Lordships of the Supreme Court while considering the question as to member of a Public Service Commission can question the validity or correctness of the functions performed or duties discharged by the Public Service Commission in exercise of jurisdiction under Article 226 of the Constitution of India, answered the question in negative and held as under in paragraph 28: -

> “28. ..... Whatever that be, no member of a Public Service Commission, in our considered view, could be allowed to question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body, while he was its member. It ought to be so for the simple reason that, such member must be regarded

22 AIR 1994 SC 2466

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> to be a party to the function required to be performed or the duty required to be discharged by the Public Service Commission as a body or institution, even though he might have been a dissenting member or a member in a minority or a member who had abstained from taking part in such function performed or duty discharged. Discretionary remedy vested in the High Court under Article 226 of the Constitution cannot, therefore, be allowed to be invoked by a member of the Public Service Commission to question the correctness or validity of functions performed or duties discharged by the Public Service Commission as a body or institution, according to well established procedures."

16. Following the authoritative proposition of law laid down by Their Lordships of the Supreme Court in the aforesaid case of **Bihar Public Service Commission** (supra) and applying the ratio to the facts of the present case, it is quite vivid that the petitioner being a party to the Executive Council meeting dated 6-9-2014 cannot be allowed to question the validity or correctness of the decision rendered on 6-9-2014, as in that meeting, resolution was passed unanimously in presence of all members including the petitioner as per law, as such, now, he is estopped from questioning the legality, validity or correctness of the functions performed in the meeting of the Executive Council of the University, which was duly approved by the Hon'ble Visitor, and circulated among all the members and thereafter, it was ratified in the next Executive Council meeting in presence of the petitioner on 22-9-2015, which he had not objected throughout and filed the writ petition only on 9-10-2015 after the recommendation

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dated 6-9-2014 was accepted and order dated 2-12-2014 was passed by the Hon'ble Chancellor extending the service tenure of respondent No.5 as Vice-Chancellor of the University.

17. As an upshot of aforesaid discussion made herein-above, it is clearly established on record that the petitioner was neither qualified for the post nor he claimed to be qualified for the said post and he is not a non-appointee for said post of Vice-Chancellor and has not suffered any legal injury or grievance on account of the order Annexure P-1 passed by the Hon'ble Chancellor of the University extending the service tenure of respondent No.5 as Vice-Chancellor of HNLU and he is also not entitled to question Annexure P-2, the recommendations made by the Executive Council on 6-9-2014 duly ratified in the meeting dated 22-8-2015, and acted upon which has already culminated in the order dated 2-12-2014 (Annexure P-1). Thus, the petitioner is not entitled for the discretionary relief under Article 226 of the Constitution of India.

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18. As a fallout and consequence of the finding recorded herein-above, the preliminary objection raised on behalf of respondents No.2 and 4 is upheld and it is accordingly, held that the petitioner is not entitled to maintain this writ petition for the reliefs claimed in the writ petition not being a “person aggrieved” to question the order Annexure P-1 and the

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resolution Annexure P-2. Accordingly, by allowing the preliminary objection, the writ petition is dismissed but without imposition of cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.3714 of 2015

Dr. Avinash Samal

Versus

State of Chhattisgarh and five others

HEAD NOTE

In order to maintain a writ petition questioning appointment of a person, the writ petitioner must be a person qualified for the post/ non-appointee.

एक रिट याचिका जिसमें किसी व्यक्ति की नियुक्ति पर प्रश्न उठाया गया हो, उसके पोषणीय होने के लिए रिट याचिकाकर्ता ऐसा व्यक्ति ही होना चाहिए जो उस पद हेतु अर्हता प्राप्त हो / जिसकी नियुक्ति ना की गई हो।

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