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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on:- 23.05.2025
Date of Decision:- 06.06.2025

\+ W.P.(C) 9382/2021,CM APPL. 29131/2021, CM APPL. 22984/2022, CM APPL. 22985/2022, CM APPL. 15225/2023 & CM APPL. 52793/2023

DR VED PRAKASH TYAGI .....Petitioner

Through: Mr. Ashok Kumar Panigrahi, Mr Nabab Singh, Ms. Apurva Upamanyu and Mr. Suryadeep Singh, Advocates.

versus

UNION OF INDIA THROUGH SECRETARY MINISTRY OF AYUSH & ORS. .....Respondents

Through: Mr. Chetan Sharma, ASG and Mr. Subhash Tanwar, CGSC with Mr. Sandeep Mishra, Mr. Naveen, Mr. Amit Gupta and Ms. Bhavi Garg, Advocates for R-1/UOI.
Ms. Archana Pathak Dave, ASG with Mr. Kumar Prashant and Mr. Avnish Dave, Advocates for R-2.
Ms. Monika Arora, CGSC with Mr. Subhodeep Saha, Mr. Prabhat Kumar and Ms. Anamika Thakur, Advocates for UOI.
Mr. Arun Bharadwaj, Sr. Adv and Ms. Ruchi Kohli, Sr. Adv. with Ms. Ankita Chaudhary, Mr. Shreyas Balaji, Mr. Chand Kapoor, Ms. Srishti Mishra and Ms. Neha Mishra, Advs. for R-5.

\+ W.P.(C) 9455/2021,CM APPL. 22824/2022, CM APPL. 22825/2022, CM APPL. 37581/2023 & CM APPL. 37582/2023

DR RAGHUNANDAN SHARMA .....Petitioner

Through: Mr. Ashok Kumar Panigrahi, Mr Nabab Singh and Ms. Apurva Upamanyu, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Chetan Sharma, ASG and Mr. Subhash Tanwar, CGSC with Mr. Sandeep Mishra, Mr. Naveen, Mr. Amit Gupta and Ms. Bhavi Garg, Advocates for R-1/UOI.
Ms. Archana Pathak Dave, ASG with Mr. Kumar Prashant and Mr. Avnish Dave, Advocates for R-2.
Ms. Monika Arora, CGSC with Mr. Subhodeep Saha, Mr. Prabhat Kumar and Ms. Anamika Thakur, Advocates for UOI.
Mr. Arun Bharadwaj, Sr. Adv and Ms. Ruchi Kohli, Sr. Adv. with Ms. Ankita Chaudhary, Mr. Shreyas Balaji, Mr. Chand Kapoor, Ms. Srishti Mishra and Ms. Neha Mishra, Advs. for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

DEVENDRA KUMAR UPADHYAYA, C.J.

1. Since these two petitions raise common questions of law and facts, the same have been heard together and are being decided by this common judgment and order. For convenience, W.P.(C) 9382/2021 is being treated as the lead petition, and for deducing the facts necessary for appropriate

adjudication of the issues involved in these petitions, W.P. (C) 9382/2021 shall be referred to.

-CHALLENGE-

2. Instituting these petitions under Article 226 of the Constitution of India and impeaching the appointment of respondent no.5- Sh.Vaidya Jayant Yeshwant Deopujari to the post of Chairperson, National Commission for Indian System of Medicine (hereinafter referred to as "the Commission") constituted under Section 3 of the National Commission for Indian System of Medicine Act 2020 (hereinafter referred to as NCISM Act, 2020), a prayer has been made for issuing a writ of Quo Warranto as well as writ of Certiorari quashing and setting aside the said appointment.

-CONTENTIONS ON BEHALF OF THE PETITIONERs-

3. It has been argued by learned counsel for the petitioners that the appointment of the respondent no.5 has been made dehors the statutory provisions contained in Section 4(2) of the NCISM Act, 2020 and, therefore, such an appointment having been made in contravention of provisions of the statute, is not sustainable. It has been further argued that the respondent no.5 does not possess the statutorily provided requisite essential eligibility qualification in terms of Section 4(2) of the NCISM Act, 2020 hence, he is an usurper of the office of Chairperson of the Commission and, accordingly his appointment deserves to be quashed by issuing a writ of Quo Warranto.The submission on behalf of the petitioners further is that the respondents have utterly failed to establish that the respondent no.5 fulfils the essential eligibility qualification as prescribed under Section 4(2) of the Act NCISM Act, 2020, and hence he is not entitled to hold the said office any further.

4. Referring to Section 4(2) of the NCISM Act, 2020, it has been stated that as per the statutory requirement, a person possessing a post-graduate degree in any discipline of Indian System of Medicine from a recognized University and having experience of not less than 20 years in any field of Indian System of Medicine, out of which at least 10 years shall be as a leader in the area of healthcare delivery, growth and development of Indian System Medicine or its education, shall be eligible to be appointed as Chairperson of the Commission, however the respondent no.5 neither possesses a post-graduate degree nor has 10 years experience as a leader in the area of healthcare delivery, growth and development of Indian System of Medicine or its education and, therefore, he lacks eligibility qualification and, accordingly, his appointment is liable to be set aside.

-SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1- UNION OF INDIA-

5. Mr. Chetan Sharma, learned ASG appearing for the respondent no.1-Union of India has opposed the prayer made in these petitions and has argued that the instant petition as public interest litigation (hereinafter referred to as PIL) is not maintainable in view of the law laid down by the Hon'ble Supreme Court in its various pronouncement including in the case of ***Dr. D.B. Singh v. Union of India*** *(2004) 3 SCC 363* and ***Neetu v. State of Punjab (2007)*** *10 SCC 614.* His submission is that in the said pronouncements, the Hon'ble Supreme Court has clearly held that in service matters, PIL is not maintainable and, accordingly, this petition also is not maintainable.

6. Mr. Sharma has further argued that the petitions have not been filed with *bona fide* intentions for the reason that the petitioners claim themselves

to be the former President of Central Council for Indian Medicine (hereinafter referred to as the CCIM), which is the predecessor of the Commission, and was earlier functioning under the provisions of the Indian Medicine Central Council Act 1970 (hereinafter referred to as IMCC Act, 1970), and thus being an interested party in the present case, they cannot be permitted to file the PIL.

7. It has further been stated by Mr. Sharma that the requisite qualification for appointment as Chairperson of the Commission as per Section 4(2) of the NCISM Act, 2020 and also as per the advertisement dated 16.01.2021 is experience of not less than 20 years in the field of Indian System of Medicine out of which at least 10 years as head of department or head of organization in the area of healthcare delivery, growth and development of Indian System of Medicine or its education, and that the respondent no.5 fulfills the eligibility criteria since he was the head of R&D and F&D departments of Shivayu Ayurved Limited, Nagpur for more than 11 years. He has further stated that the respondent no.5 was an elected member of CCIM from 2015-2020 and its President from 2018 till April 2020, and thereafter he was the Chairman of Board of Governors of the CCIM from April 2020 to June 2021. He has further stated that additionally, the respondent no.5 was also Chairman of institutional ethics committee of Central India Institute of Medical Sciences, Nagpur, since 2008, and, therefore, he fulfills the requisite qualification of being head of the department or head of the organization for a period of more than 10 years.

8. Mr. Sharma has also argued that the respondent no.5 holds bachelor's degree in Ayurvedic Medicine and Surgery (BAMS) and a Ph.D degree in Kayachikitsa from University of Pune, which, according to Mr. Sharma, is a

post-graduate degree obtained after graduation and a higher qualification in the same line and, therefore, it cannot be said that the respondent no.5 lacks the requisite statutory eligibility criteria.

9. Drawing our attention to Section 5(1) of the NCISM Act, 2020, Mr. Sharma has stated that in terms of the said provision Chairperson of the Commission shall be appointed on the recommendations of the Search Committee, which is to be constituted under the Chairmanship of the Cabinet Secretary, and in the instant case the Search Committee was constituted under the Chairmanship of the Cabinet Secretary, and comprised of experts in the relevant field, which after scrutinizing all the documents regarding qualification found the respondent no.5 eligible to be appointed as Chairperson, which cannot be faulted with.

10. It has also been argued by Mr. Sharma on behalf of the respondent no.1 that a candidate having a higher qualification is eligible to be considered for appointment to a post where a lower qualification is fixed as the requisite qualification. In this regard, the decision of the Coordinate Bench of this Court dated 26.05.2016 in *W.P.(C) 8089/2015*, ***GNCTD v. Monika Sharma***, ***Jyoti K.K. & Ors. v. Kerala Public Service Commission & Ors.****[(2010) 15 SCC 596]*, ***Chadrakala Trivedi v. State of Rajasthan &Ors****.[(2012) 13 SCC 129]*, ***Parvaiz Ahmad Parry v. State of Jammu and Kashmir & Ors.*** decided on 06.11.2015 in *C.A.No.13668/2015* and judgment of Punjab and Haryana High Court in *W.P.(C)451/2008* ***Manjit Singh v. State of Punjab & Ors.*** have been cited. It is thus the submission of Mr. Sharma that the respondent no.5 has a Ph.D degree, which is a higher qualification than the qualification mentioned in Section 4(2) of the NCISM Act, 2020, in the same line which

has been considered by the eminent experts constituting the Search Committee and, therefore, appointment of respondent no.5 as Chairperson of the Commission is valid being in accordance with law.

-SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 5-SH.VAIDYA JAYANT YESHWANT DEOPUJARI -

11. Mr. Arun Bharadwaj, learned Senior Counsel representing the respondent no.5, has vehemently opposed the petitions and has argued that the petitions are ill-motivated in the garb of PIL, which have been filed as a tool of vengeance however, the petitioners have failed to demonstrate their locus to file the instant PIL.

12. Relying upon the judgment in the case of ***Janta Dal v. H.S. Chowdhary*** *[(1992) 4 SCC 305]*, it has been argued that the petitioners lack the *locus standi* and in ***Janta Dal*** (supra), by stating that the Hon'ble Supreme Court has, in the said judgment, observed that it is needless to emphasize that the requirement of *locus standi* of a party to a litigation is mandatory because the legal capacity of the party to any litigation, whether in private or public action, in relation to any specific remedy sought for has to be primarily ascertained at the threshold.

13. He has further stated that the petitioners have raised service dispute in the garb of PIL however, it is a settled law as laid down by Hon'ble Supreme Court in ***Dr. Duryodhan Sahu v. Jaitendra Kumar Mishra*** *[AIR 1999 SC 114]*, ***Dattaraj Natthuji Thaware v. State of Maharashtra*** *[AIR 2005 SC 540]* and ***Neetu*** *(supra)*, that in service matters PIL is not maintainable and, therefore, the instant petitions also deserve to be dismissed at the threshold.

14. Mr. Bharadwaj has further argued that the respondent no.5 is an Ayurvedic Doctor having more than 36 years of experience in the field of Indian System of Medicine and that he has been member of the erstwhile CCIM, which was the apex statutory body to administer the profession and management of education in AYUSH system of medicine in the country. He has also stated that the respondent no.5 has served as elected President of the erstwhile CCIM, and thereafter, he was appointed as Chairman on the Board of Governors of the said body. His submission further is that the respondent no.5 completed BAMS course, which is a full-time degree course, from Nagpur University in the year 1984 and thereafter got himself enrolled with Maharashtra Council of Indian Medicine in 1984 and started practice as an Ayurvedic Practitioner. Emphasis has been laid by Mr. Bharadwaj to the fact that the respondent no.5 also holds a Ph.D degree (Doctor of Philosophy) in Kayachikitsa, which was conferred to him in the year 1999 by the University of Pune. His submission further is that the respondent no.5 was admitted to the Ph.D. program by the Pune University under Rule 6 of the "Rules for Admission to Degree of Doctor of Philosophy (Ph.D.)" framed by the Pune University vide circular bearing no.286 of 1983-84, which reads as under:-

> *"6. Notwithstanding the above rules, in the professional Faculties of Medicine, Ayurvedic Medicine, Engineering and Law a candidate may be admitted directly to the Ph.D. programme subject to the condition that he/she successfully gives Pre-Ph.D. seminar within 2 years of his/her Ph.D. registration. If his/her performance at the Pre-Ph.D. seminar is considered unsatisfactory by the Ph.D. committee in the subject concerned, his/her Ph.D. registration shall be cancelled"*

15. It has also been pointed out that the respondent no.5 registered himself for Ph.D. degree after completing the entire process i.e. pre-Ph.D. seminar, doctoral research under the supervision of a Guide, submission of Ph.D. thesis and defending the thesis successfully and thereafter, Pune University awarded the Ph.D. degree to him in Kayachikitsa. He thus submits that Ph.D. is a higher qualification than a post-graduate degree, and the same can also be obtained after completing graduation in a particular stream.

16. It is the further submission of Mr. Bharadwaj that neither the provisions contained in Section 4(2) of the NCISM Act, 2020 nor the advertisement issued for the post in question exclude or disqualify the holder of Ph.D. degree or a degree higher than the post graduate degree i.e. M.D. and, accordingly, it cannot be said that the respondent no.5 lacks the requisite qualification for appointment to the post in question.

17. It has further been argued by learned counsel representing the respondent no.5 that the appointment of the respondent no.5 was made on the recommendations of a Search Committee comprising of Experts in the field and, therefore, as laid down by the Hon'ble Supreme Court in ***The University of Mysore& Anr. V. C.D.Govinda Rao & Anr.*** *[AIR 1965 SC 491]* and ***Basavaiah (Dr.) v. Dr. H.L.Ramesh*** *[(2010) 8 SCC 372]* the opinion of experts cannot be subjected to judicial scrutiny by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

18. Referring to the judgment of Hon'ble Supreme Court in ***Jyoti K.K.****(supra)* it has been urged by Mr. Bharadwaj that it has been held therein that if a person acquires a higher qualification, such qualification would presuppose the acquisition of the lower qualification and that a degree holder

would be eligible to apply for a post where minimum qualification prescribed is diploma and in such a situation, in case, the rules do not *per se* disqualify holder of a higher qualification, it would be appropriate to hold those with higher qualification would be eligible. Reference in this regard has also been made to the judgment of the Punjab and Haryana High Court in ***Manjit Singh v. State of Punjab*** *[CWP No.451/2008]*. Mr. Bharadwaj has also stated that the respondent no.5 was an Executive Director in Shivayu Ayurved Limited Nagpur, which is an Ayurvedic drug manufacturing company having corporate identity number CIN:U51397 MH2009 PLC 195443, which was incorporated under the Companies Act 1956, since it is an inception on 02.09.2009 till 01.06.2021. It is stated further that the respondent no.5 was head of Research & Development (R&D) and Formulation Development (F&D) department of the said organization, and hence he was in a leadership position for more than 11 years. Various other submissions have been made highlighting the achievements of the respondent no.5 in the field of Ayurveda, and it has been contended for these reasons that the writ petition ought to be dismissed.

-SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.2-NATIONAL COMMISSION FOR INDIAN SYSTEM OF MEDICINE-

19. Ms. Archana Dave, learned ASG representing the respondent no.2 has reiterated the submissions made on behalf of the respondent nos.1 and 5 and has argued that for all the aforesaid reasons the writ petitions deserve to be dismissed as it cannot be said that the respondent no.5, in any manner, lacks the requisite qualification in terms of the provisions contained in Section 4(2)

of NCISM Act, 2020 and the advertisement issued for appointment to the post in question. She, thus, has also prayed that the writ petitions be dismissed.

-ISSUES-

20. Based on the competing arguments advanced by learned counsels representing the respective parties and the pleadings available on record, the following issues emerge for our consideration and decision:

(a) Whether the question of locus needs to be gone into in a petition filed under Article 226 of the Constitution of India where prayer is made for issuance of a writ of Quo warranto?

(b) What is the scope of Writ of Quo Warranto and what are the parameters consideration of which is required to be made by a Writ Court for issuing the said Writ.

(c) As to whether the respondent No.5 fulfils the requisite qualification statutorily laid down for appointment to the post of Chairperson of the Commission under Section 4(2) of the NCISM Act, 2020.

-ANALYSIS-

ISSUE (a) & (b)

21. Before adverting to the issue of locus of the petitioners in these PIL petitions, we may discuss the nature of Quo Warranto proceedings. Quo warranto literally means "by what authority", and it can be issued to the holder of a public office. Writ of Quo Warranto, in fact, also calls upon the holder of a public office to show the Court as to under what authority he holds the said office and, in case, it is found by the Court that the holder has no authority to hold the office, the writ of Quo Warranto can be issued effecting

his ouster from such public office. Article 226 of the Constitution of India vests the High Court power to issue certain writs, including the writs in the nature of Quo Warranto.

22. The most celebrated case where the legal contours circumscribing the Quo Warranto proceedings have been discussed by the Hon'ble Supreme Court is ***The University of Mysore*** *(supra).* The said judgment was rendered by a Constitution Bench comprising of five judges of the Supreme Court, wherein it has been *inter alia* held that proceedings of Quo Warranto affords a judicial remedy 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. It has further been held by the said Constitution Bench that if in such a judicial scrutiny, a finding is arrived at that the holder of the office has no valid title to it, the writ of Quo Warranto can be issued for ousting him from the office. Paragraph 6 of ***The University of Mysore*** *(supra)* is relevant to be referred at this juncture, which runs as under:-

> *"6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.*
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> *As Halsbury has observed [Halsbury's laws of England, 3rd Edn. Vol., II, p. 145] :*
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> *"An information in the nature of a quo warranto took the place of the obsolate writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined."*

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

23. It is true that with the development of jurisprudence surrounding PIL in our country, the strict rule of locus has been relaxed. However, even for filing a PIL, locus of unscrupulous petitioners can be challenged, and an indulgence by the High Court in a PIL filed for extraneous purposes or *mala fide* reasons can also be denied. However, insofar as the writ of Quo Warranto is concerned, as has been held by the Hon'ble Supreme Court in ***Rajesh Awasthi v. Nand Lal Jaiswal & Ors.*** *[(2013) 1 SCC 501]* a writ of Quo Warranto lies when the appointment is made contrary to the statutory provisions.

24. In ***Rajesh Awasthi*** *(supra)* Hon'ble Supreme Court reiterated the legal principle held in ***Mor Modern Cooperative Transport Society v. Financial Commissioner & Secretary to Govt. of Haryana & Anr.*** *[(2002) 6 SCC 269]*, wherein it was held that a writ of Quo Warranto can be issued when an appointment is contrary to the statutory provisions. ***Rajesh Awasthi*** *(supra)* also notices the judgment of Hon'ble Supreme Court in case of ***B.Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Association*** *[(2006) 11 SCC 731]*, where the legal position that jurisdiction of the High Court to issue a writ of Quo Warranto is limited which can only be issued if the appointment is contrary to the statutory rules, was reiterated.

25. The aforesaid legal position was also expressed in ***Hari Bansh Lal v. Sahodar Prasad Maht & Ors.****[(2010) 9 SCC 655]*. Para 19 and 20 of the judgment in ***Rajesh Awasthi*** *(supra)* are extracted hereinbelow:-

> *"19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana [(2002) 6 SCC 269] held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] , this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bansh Lal [(2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules.*
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> *20. We are of the view that the principle laid down by this Court in the abovementioned judgment squarely applies to the facts of this case. The appointment of the appellant, in our considered view, is in*

clear violation of sub-section (5) of Section 85 of the Act. Consequently, he has no authority to hold the Post of Chairperson of the U.P. State Electricity Regulatory Commission."

26. In ***Rajesh Awasthi*** *(supra),* Deepak Misra, J (as his lordship then was) concurring with the opinion expressed by Radhakrishnan, J (as his lordship then was) has discussed the nature of writ of Quo Warranto relying upon the judgment of Hon'ble the Supreme Court in ***B.R.Kapur v. State of T.N. & Anr.****[(2001) 7 SCC 231]* and ***The University of Mysore*** *(supra).* Para 29 and 30 of the decision in ***Rajesh Awasthi*** *(supra),* wherein ***B.R.Kapur*** *(supra)* and ***The University of Mysore*** *(supra)* have been discussed are extracted hereinbelow:-

"29. In B.R. Kapur v. State of T.N. [(2001) 7 SCC 231 : AIR 2001 SC 3435] , in the concurring opinion Brijesh Kumar, J., while dealing with the concept of writ of quo warranto, has referred to a passage from Words and Phrases, Permanent Edn., Vol. 35, at p. 647, which is reproduced below:

"80. ... 'The writ of "quo warranto" is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf McKittrick v. Murphy [347 Mo 484 : 148 SW 2d 527 (1941)] , SW 2d pp. 529-30.

*Information in the nature of "quo warranto" [**Ed.**: The words "quo warranto" have been emphasis herein.] does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions*

claimed. State ex Inf Walsh v. Thatcher [340 Mo 865 : 102 SW 2d 937 (1937)] , SW 2d p. 938.'"

30. In University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491 : (1964) 4 SCR 575] , while dealing with the nature of the writ of quo warranto, Gajendragadkar, J. has stated thus:

"7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

27. In para 31 of the said judgment, it has been concluded that a citizen can claim a writ of Quo warranto and he stands in a position of a relater and

further that he need not have any special interest or personal interest. Para 31 of the judgment in ***Rajesh Awasthi*** *(supra)*is also extracted hereinbelow:-

> *"31. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in Kashinath G. Jalmi v. Speaker [(1993) 2 SCC 703 : AIR 1993 SC 1873]"*

28. Thus, for maintaining a petition under Article 226 of the Constitution of India before a writ Court, the person approaching the Court need not establish any interest or any special or personal interest in the matter and, accordingly, we hold that locus of the petitioners in these two PIL petitions, since a writ of Quo Warranto has been sought, is of no relevance. What all the Court is required to consider is as to whether the appointment of respondent no.5 to the post in question was made in accordance with the statutory prescription contained in Section 4(2) of the NCISM Act, 2020 and as to whether he fulfils the requisite eligibility qualification as statutorily prescribed. If the Court comes to the conclusion that the respondent no.5 does not fulfil the requisite eligibility qualification, the prayer made in the petition for issuance of writ of Quo Warranto can be granted otherwise, the same can be refused irrespective of the fact as to whether the petitionershave any interest in the matter or not.

29. Reference in this regard ought to be made to another judgment of the Hon'ble Supreme Court in the case of ***Shri Kumar Padma Prasad v. Union***

of India & Ors.*[(1992) 2 SCC 428]* where the appointment of a High Court Judge was quashed by the Hon'ble Supreme Court, finding that the person concerned did not fulfil the requisite qualification. In ***Gambhirdan K Gadhvi v. State of Gujarat & Ors.****[(2022) 5 SCC 179]* the appointment of Vice Chancellor of Sardar Patel University was held to be illegal on account of want of fulfilment of the requisite qualification, and hence a writ of Quo Warranto was issued quashing and setting aside the appointment.

30. In ***Rajesh Awasthi*** *(supra)* and in ***Retd. Armed Forces Medical Association & Ors. v. Union of India& Ors.*** *[(2006) 11 SCC 731(1)]* referred to by the Hon'ble Supreme Court in ***Gambhirdan K Gadhvi*** *(supra)*, it has been held that strict rules of *locus standi* are relaxed in Quo Warranto proceedings and that the jurisdiction of the High Court to issue a writ of Quo Warranto is though limited, however such a writ can be issued when a person is found to be holding public office without possessing the eligibility criteria prescribed for such appointment or when the appointment is contrary to statutory rules. Para 16, 17 and 18 of the judgment in ***Gambhirdan K Gadhvi*** *(supra)* is extracted hereinbelow:-

> *"16. When a writ of quo warranto will lie has been dealt with by this Court in Rajesh Awasthi v. Nand Lal Jaiswal [Rajesh Awasthi v. Nand Lal Jaiswal, (2013) 1 SCC 501 : (2013) 1 SCC (Cri) 521 : (2013) 1 SCC (L&S) 192] . In para 19, it has been observed and held as under :*
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> *"19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy to Govt. of Haryana [Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy to Govt. of Haryana, (2002) 6 SCC 269] held that a writ of quo warranto can be issued when*

appointment is contrary to the statutory provisions. In B. Srinivasa Reddy [B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] , this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bansh Lal [Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules."

17. In Armed Forces Medical Assn. v. Union of India [Armed Forces Medical Assn. v. Union of India, (2006) 11 SCC 731 (1) : (2007) 1 SCC (L&S) 548 (1)] , it has been observed by this Court that strict rules of locus standi are relaxed to some extent in a quo warranto proceedings. It is further observed in the said decision that broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by a judicial order. It is further observed that in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect citizens from being deprived of public office to which they have a right. These proceedings also tend to protect the public from usurpers of public office. It is further observed that it will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry, as to, whether, the appointment of the alleged usurper has been made in accordance with law or not.

18. Thus, as per the law laid down in a catena of decisions, the jurisdiction of the High Court to issue a writ of quo warranto is a

limited one, which can only be issued when a person is holding the public office does not fulfil the eligibility criteria prescribed to be appointed to such an office or when the appointment is contrary to the statutory rules. Keeping in mind the law laid down by this Court in the aforesaid decisions on the jurisdiction of the Court while issuing a writ of quo warranto, the factual and legal controversy in the present petition is required to be considered."

31. The Hon'ble Supreme Court yet in another judgment in the case of ***Dr. Amaragouda L Patil v. Union of India & Ors.*** decided on 12.02.2025 [Civil Appeal Nos.301-303/2025] has discussed the scope of writ of Quo Warranto and after reviewing the entire law on the subject has concluded that though it is not within the domain of the Courts exercising the power of judicial review to enter into the merit of the selection process, which is a task entrusted to and lies in the domain of a selection committee, however such principle bears a caveat that if there are allegation of violation of statutory rules, the Courts can intervene.

32. As noted above, in ***Dr.Amaragouda L Patil*** *(supra)* the Hon'ble Supreme Court has undertaken a review of various judgments on the issue of scope of interference in the matter of a selection to a post and has concluded that in the matter of essential qualification prescribed by the statute, there cannot be any deviation from the statutory requirement unless power to relax the qualifications exists. The said conclusion has been drawn in ***Dr.Amaragouda L Patil*** (supra), para 51 whereof is being extracted hereinbelow:-

"51. We hold that in the matter of essential qualifications prescribed by the statute, there should neither be any deviation from the statutory requirements nor the advertisement inviting

applications while conducting any selection process, unless power to relax the qualifications is shown to exist.'

33. Accordingly, we hold, in view of the discussion made above, that in case any public office is said to be occupied by holder of its office who does not possess the requisite eligibility qualification prescribed by the statute, or if appointment has been made in violation of statutory rules, locus of the person challenging such appointment by way of a prayer for issuance of writ of Quo Warranto losses its relevance. In case, it is shown and established that holder of the public office lacks the requisite qualification as prescribed by the statute or his appointment is dehors the statutory rules, a writ of Quo Warranto can be issued by the Courts, though, so far as the opinion of the selection/search committee of the merit on the candidate is concerned, since this Court would not act as an appellate authority over such opinion, interference in such a situation may be impermissible.

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34. As to whether the respondent No.5 fulfils the essential qualification for being appointed to the office in question in terms of provisions contained in Section 4(2) of NCISM Act, 2020 is a crucial issue to determine if the prayer made in these petitions for issuance of a writ of Quo Warranto is to be granted. Section 4(2) of NCISM Act, 2020 is extracted herein below:

*"**4.** (1) …….*
(2) The Chairperson shall be a person of outstanding ability, proven administrative capacity and integrity, possessing a postgraduate degree in any of the disciplines of Indian System of Medicine from a recognised University and having experience of not less than twenty years in any field of Indian System of

Medicine, out of which at least ten years shall be as a leader in the area of healthcare delivery, growth and development of Indian System of Medicine or its education.
(3) …….
(4)……..
Explanation.—For the purpose of this section and section 19, the term "leader" means the Head of a Department or the Head of an Organisation."

35. A perusal of the afore-quoted Section 4(2) of the NCISM Act, 2020 reveals that a person to be appointed as a Chairperson of the Commission has to be a person of outstanding ability, proven administrative capacity and integrity and who possesses the following qualifications:(a) he should have a post-graduate degree in any of the disciplines of Indian System of Medicine from a recognized University; and, (b) he should also have experience of not less than 20 years to his credit in any field of Indian System of Medicine, out of which at least 10 years shall be as a "leader" in the area of healthcare delivery, growth and development of Indian System of Medicine or its education.

36. The explanation appended to Section 4 provides that for the purposes of the said Section and for Section 19, "leader" means the 'Head of a Department' or the 'Head of an Organization'.

37. Admittedly, the respondent No.5 after obtaining his graduation degree in Ayurveda (BAMS) from Pune University registered himself as an Ayurvedic Practitioner and, thereafter directly enrolled himself to Ph.D Degree in Kayachikitsa (Discipline in Ayurveda). It is also indisputable that he does not have a Master's Degree (MD) in any discipline of Indian System of Medicine. The question, therefore, which falls for our

determination is as to whether in the absence of any post-graduate degree the respondent No.5 can be said to be possessed of the statutory qualification as specified in Section 4(2) of the NCISM Act, 2020.

38. It has been argued by learned counsel representing the respondents that any degree awarded to a person post such a person obtaining a graduation degree will be a post-graduate degree and since the respondent No.1 has a Ph.D degree to his credit which was awarded after the graduation degree, he will be said to be possessed with a post-graduate degree for the purposes of fulfilling the requisite of appointment to the post in question i.e. Chairperson of the Commission. In other words, the submission is that if a candidate is possessed of either the M.D. degree, M.Phil Degree, Ph.D degree or a D.Sc., which are degrees awarded post award of graduation degree, he shall be said to be possessed of the requisite qualification of a post-graduate degree.

39. The contention is that since the respondent No.5 was directly admitted to Ph.D degree in terms of the relevant rules prevalent at Pune University at the relevant point of time, immediately after obtaining his BAMS Degree and without obtaining a post-graduate degree (MD), the respondent No.5 having obtained Ph.D degree will be said to have possessed a post-graduate degree in terms of the requirement of Section 4(2) of the NCISM Act, 2020 and, therefore, he cannot be said to be lacking the requisite qualification as specified in Section 4(2) of the NCISM Act, 2020.

40. The aforesaid submission raised on behalf of the respondents though appear to be attractive, however, the same merits rejection. In common

parlance, any degree awarded by a recognized university after a candidate acquires a graduation degree can be termed to be a post-graduate degree, however, when we consider the expression 'Post-Graduate Degree' occurring in Section 4(2) of the NCISM Act, 2020, we are of the opinion that the Post-Graduate Degree in this provision shall mean a degree awarded after completion of certain period/ course of study undertaken by a person who already has a graduation degree for the reason that Ph.D is not an educational qualification; rather it is a research qualification. It is further to be noticed that a research scholar does not have to undergo any regular course, but he has to undergo research work. For a Ph.D degree no regular course of study is generally prescribed nor a candidate has to appear in any traditional examination in which minimum standards are fixed. The Ph.D degree is awarded to a scholar as a recognition of his research work on a particular topic.

41. We are of the considered opinion that every degree awarded by a university after graduation cannot be termed to be a "post-graduation qualification" for the reason that in the domain of higher education in our country 'Post-Graduate Degree' has acquired a special meaning and significance and post-graduate degree means a Master's Degree like M.A., M.Sc, M.D., LL.M or M.Ed. In our country, LL.B degree where three-year course is prescribed (except in five years integrated courses) is awarded only to a candidate who is already possessed of a graduation degree, however, that will not mean that LL.B Degree is a post-graduate degree in law. Similarly, B.Ed. degree is also awarded to a candidate who already is in possession of a graduation degree (except in four-year integrated

courses), however, B.Ed. degree in the higher education world cannot be termed to be a post-graduate degree. Post-graduate degree in education will be either M.A. (Education) or M.Ed. As a matter of fact, B.Ed. or LLB Degrees are not construed to be a post-graduate degree even though these degrees are obtained only after graduation.

42. Reference in this regard may be had to a judgment of Hon'ble Supreme Court in ***Juthika Bhattacharya v. State of M.P***., (1976) 4SCC 96 where it has clearly been held that merely because a degree is awarded "post" graduation, the same cannot be termed to be a post-graduate degree for the reason that the expression "post-graduate degree" though in a broad sense mean "any" degree obtained after graduation and which a graduate can obtain, however, in the world of higher education in our country and even abroad by "post-graduate degree" it is meant a Master's Degree like M.A. or M.Sc Paragraph 7 of the judgment in ***Juthika Bhattacharya*** (supra) is apposite to be quoted which reads as under:

> *"7. As regards the second limb of the argument that since the appellant holds the qualification of B.A., B.T., she ought to be considered as holding a "post-graduate degree", regard must again be had to the context in which the particular expression occurs and the purpose of the prescription. It is not inconceivable that the expression "post-graduate degree" may in a broad and general sense mean in a given context any degree obtained after graduation and which a graduate alone can obtain. But that is not the sense in which the memorandum uses the particular expression. By "post-graduate degree" is meant a master's degree like the M.A. or M.Sc. and not a bachelor's degree like the B.T. In other words, the expression connotes the successful completion of a course of studies at a higher level in any speciality, after the acquisition of a basic qualification at the graduate level. The B.T. course of studies, we are informed, is open only to graduates and in a dictionary*

manner of speaking, the degree of "Bachelor of Teaching" may be said to be a "post"-graduate degree in the sense that the degree is obtainable only "after" graduation. That is the sense in which the word "post" is used in expressions like "post-nuptial", "post-prandial", "post-operative", "postmortem" and so forth. In these expressions, "post" means simply "after", the emphasis being on the happening of an event after a certain point of time. But the expression "post-graduate degree" has acquired in the educational world a special significance, a technical content. A bachelor's degree like the B.T., or the LL.B. is not considered to be a post-graduate degree even though those degrees can be taken only after graduation. In the refined and elegant world of education, it is the holder of a master's degree like the M.Ed. or the LL.M. who earns recognition as the holder of a post-graduate degree. That is the sense in which the expression is used in the memorandum. Mr Sen says that in some foreign universities even a bachelor's degree, obtainable only after graduation, is considered as a post-graduate qualification. We are concerned with the interpretation of an indigenous instrument and must have regard for local parlance and understanding. Such awareness and understanding compel the construction for which we have indicated our preference. Indeed, everyone concerned understood the rule in the same sense as is evident from the permission sought by the appellant herself to appear for the M.A. examination. She asked for that permission in order to qualify for the Principal's post."

(emphasis supplied by the Court)

43. On behalf of the respondents much emphasis has been laid on the argument that Ph.D degree is a higher qualification than post-graduate degree in the same line and, therefore, Ph.D degree will subsume the post-graduate degree, and accordingly, a person having a higher degree will also be qualified for the office in question. The submission, thus, is that since the respondent No.5 holds a Ph.D degree which is a higher qualification than the post-graduation degree in the same stream/ line and in absence of any exclusion in the rules of a Ph.D degree holder to be eligible,

it cannot be said that respondent No.5 does not hold the requisite qualification. Reference in this regard has been made by learned senior counsel representing the respondent No.5 on two judgments of the Hon'ble Supreme Court: ***Jyoti K.K.*** (supra) and ***Puneet Sharma and Others v. Himachal Pradesh State Electricity Board Limited and Another***, (2021) 16SCC 340.

44. We have given our anxious consideration to the judgments relied upon by learned senior counsel for the respondent No.5 in ***Jyoti K.K.*** (supra) and ***Puneet Sharma*** (supra). ***Puneet Sharma*** (supra) has referred to ***Jyoti K.K.***(supra) and has noticed that the judgment in ***Jyoti K.K.***(supra) was referred to in a later judgment in ***Zahoor Ahmad Rather v. Imtiyaz Ahmad***, (2019) 2SCC 404 where it was observed that the decision in ***Jyoti K.K.*** (supra) turned on the provisions of Rule 10(a) and that in absence of such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes acquisition of lower qualification. Paragraphs 25, 28 and 29 of the judgment in ***Puneet Sharma*** (supra) are extracted herein below:

> *"25. The next judgment is Jyoti K.K. v. Kerala Public Service Commission [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , where the issue was whether degree-holders could be considered for the post of Sub-Engineer (Electrical) in the Kerala State Electricity Board, which had prescribed diploma in Electrical Engineering or SSLC or its equivalent as the eligibility criteria. This Court took into consideration Rule 10-A and inter alia observed as follows : (SCC pp. 598-99, paras 6-9)*
>
> > *"6. Rule 10(a)(ii) reads as follows:*
> >
> > *'10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications*

recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.'

7. It is no doubt true, as stated [Jyothi K.K. v. Kerala Public Service Commission Original Petition No. 9602 of 1998, order dated 30-3-2000 (Ker)] by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.

8. Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.

9. In the event the Government is of the view that only

diploma-holders should have applied to post of Sub-Engineers but not all those who possess higher qualifications, either this Rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree-holder shall not be eligible to apply for such post. When that position is not clear but on the other hand the Rules do not disqualify per se the holders of higher qualifications in the same Faculty, it becomes clear that the Rule could be understood in an appropriate manner as stated above. In that view of the matter the order [Jyothi K.K. v. Kerala Public Service Commission [Jyothi K.K. v. Kerala Public Service Commission Original Petition No. 9602 of 1998, order dated 30-3-2000 (Ker)]] of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory Rules have been published and those Rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such Rules or make himself aware of the Rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of the appellants would amount to fraud on the public."

(emphasis in original)

XXXXX

28. In Zahoor Ahmad Rather [Zahoor Ahmad Rather v. Imtiyaz Ahmad, (2019) 2 SCC 404 : (2019) 1 SCC (L&S) 353] the post in question was "Technician III" in the Power Development Department in the State of Jammu and Kashmir. The relevant stipulation with respect to qualification was "Matric with ITI in the relevant trade". The appellants held diploma in Electrical Engineering and were included in the list of disqualified candidates. This resulted in litigation which ultimately culminated in the judgment of this Court. This Court held in its judgment [Zahoor Ahmad Rather v. Imtiyaz Ahmad, (2019) 2 SCC 404 : (2019) 1 SCC (L&S) 353] : (SCC p. 411, para 20)

"20. Under the above provisions as well as in the

advertisement which was issued by the Board, every candidate must possess the prescribed academic/professional/technical qualification and must fulfil all other eligibility conditions. The prescribed qualifications for the post of Technician III in the Power Development Department is a Matric with ITI in the relevant trade. The Board at its 116th meeting took notice of the fact that in some districts, the interviews had been conducted for candidates with a Diploma in Electrical Engineering while in other districts candidates with a diploma had not been considered to be eligible for the post of Technician III. Moreover, candidates with an ITI in diverse trades had also been interviewed for the post. The Board resolved at its meeting that only an ITI in the relevant trade, namely, the Electrical trade is the prescribed qualification specified in the advertisement."

29. Thereafter, the Court discussed the previous rulings in P.M. Latha [P.M. Latha v. State of Kerala, (2003) 3 SCC 541 : 2003 SCC (L&S) 339] , Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] and Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] , then concluded that the candidature of the diploma-holders was correctly rejected and held as follows : (Zahoor Ahmad Rather case [Zahoor Ahmad Rather v. Imtiyaz Ahmad, (2019) 2 SCC 404 : (2019) 1 SCC (L&S) 353] , SCC pp. 414-15, paras 26-27)

"26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] in the subsequent decision in Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment

policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad v. Zahoor Ahmad Rather LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad v. Zahoor Ahmad Rather LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 :

(2013) 3 SCC (L&S) 664] must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned."

45. Thus, the decision in ***Jyoti K.K.*** (supra) was based on a specific statutory rule which provided that qualification recognized as equivalent to a qualification will include such of those higher qualifications which presupposes the acquisition of lower qualification prescribed for the post and in that situation the higher qualification shall also be sufficient for the post. However, in the instant case, neither the NCISM Act, 2020, nor any rules and regulations made thereunder provide any provision similar to Rule10 (a)(ii) as discussed in ***Jyoti K.K.*** (supra) as also in ***Puneet Sharma*** (supra).

46. In the instant case, higher qualification, as has been contended by respondents is a Ph.D degree whereas requisite qualification under the Act is a post graduate degree, namely MD or any other equivalent Master's Degree in any discipline of Indian System of Medicine, however, the Ph.D degree which was awarded to the respondent No.5 by Pune University did not presuppose acquisition of lower qualification (Master's Degree in Ayurveda). The respondent No.5 was admitted to Ph.D Course without undergoing the Master's Degree Course immediately after obtaining his graduation degree in Ayurveda (BAMS). Accordingly, in our opinion, the decision either in ***Jyoti K.K.***(supra) or in ***Puneet Sharma***(supra) do not help the cause of the respondent No.5 at all.

47. The connotation of the phrase "Post-Graduate Degree", as understood and is applied in the Indian higher education system, has clearly been noted by the Hon'ble Supreme Court in ***Juthika Bhattacharya*** (supra) and, accordingly, we have no hesitation to hold that the expression "Post-Graduate Degree" occurring in Section 4(2) of the NCISM Act, 2020 in the context it has been used would mean a Master's Degree (MD) in any discipline of Indian System of Medicine which the respondent does not possess and, therefore, he lacks the requisite qualification for being appointed to the office in question.

48. The Explanation appended to Section 4 of the NCISM Act, 2020 is also to be noticed, according to which, "Leader" means the "Head of a Department" or "Head of an Organization" and these expressions are to be understood in the context in which the said expressions occur in the Act. The NCISM Act, 2020 has been framed to provide for a medical education system and to improve access to quality and affordable medical education and to ensure availability of adequate and high-quality medical professionals of Indian System of Medicine in all parts of thecountry. Accordingly, in our opinion, "Head of a Department" or "Head of an Organization" has to be necessarily associated with medical education in Indian System of Medicine. Section 4(2) of the Act provides that the candidate should have experience of not less than 20 years in the field of Indian System of Medicine, out of which at least 10 years shall be as a "Leader" in the area of healthcare delivery, growth and development of Indian System of Medicine or its education. So far as the experience of 20 years in any field of Indian System of Medicine is concerned, even if a

candidate who has practiced the Ayurvedic System of Medicine for 20 years and has not been associated with academics can be said to fulfil the requisite qualification, however, out of 20 years' experience, 10 years' experience has to be as a "Leader" in the area of healthcare delivery, growth and development of Indian System of Medicine or its education. Healthcare delivery has to be understood to be a sector where healthcare is delivered using Indian System of Medicine, however, growth and development of Indian System of Medicine or its education, in our opinion has to be in relation to research and other academic activities. In the instant case, the respondent No.5 is said to have been associated with a company or firm known as Shivayu Ayurved Limited, Nagpur which appears to be a drug manufacturer company where the respondent No.5 is said to be the Head of the R&D and F&D Departments and, therefore, we find ourselves unable to agree with the submission that experience of working in a drug manufacturing company will qualify the respondent No.5 to hold the requisite experience of a "Leader".

49. The functions of the Commission as prescribed in the NCISM Act, 2020 are to lay down policies for maintaining a high quality and high standards ineducation of Indian System of Medicine and make necessary regulations in that behalf and to further lay down policies for regulating medical institutions, medical researches and medical professionals.

50. Thus, the emphasis of the provisions of the NCISM Act, 2020 on the functions of the Commission are in relation to maintaining of high quality and high standards of education in Indian System of Medicine and, accordingly, the phrases "Head of a Department" and "Head of an

Organization" occurring in Explanation appended to Section 4 are to be understood and construed in the context in which and for the object for which the Parliament has passed the NCISM Act, 2020.

51. Analyzing the alleged experience of respondent No.5 working in a company producing Ayurvedic medicine and products, we are unable to agree with the submission made on behalf of the respondents that such an experience can be said to be an experience of working as a "Leader" in the capacity of "Head of a Department" or "Head of an Organization".

52. The Hon'ble Supreme Court in ***Dr. Amaragouda L Patil*** (supra) has observed that rules prescribing mandatory eligibility criteria must be applied in a strict manner and further that every public appointment must be fair, non-arbitrary and reasonable. Paragraph 57 of the judgment in ***Dr. Amaragouda L Patil*** (supra) is extracted hereinbelow:

> *"57. We hasten to add that whenever appointment to a public office is sought to be made, irrespective of the nature of the office, the rules prescribing mandatory eligibility criteria must be applied in a strict manner; after all, every public appointment under Article 16 of the Constitution must be fair, non-arbitrary and reasonable. Tested on this touchstone, the appointment of the third respondent fails to pass muster"*

53. The respondents have also attempted to impress upon the Court that since in this case the appointment of respondent No.5 was made on the recommendation of a high-powered Search Committee headed by none other than the Cabinet Secretary of the Government of India and comprised of experts, as such, any interference in this petition would amount to sitting in appeal over a decision of a body of experts, which is impermissible in law.

54. As far as the aforesaid submission of learned counsel for the respondents is concerned, we may note the observations made by the Hon'ble Supreme Court in paragraph 20 of the judgment in ***Dr. Amaragouda L Patil*** (supra) wherein it has been stated that merely because the Search Committee is chaired by the Cabinet Secretary and such Committee consists of experts, does not automatically make its recommendations immune from judicial scrutiny; rather in an appropriate case such scrutiny may be warranted. Paragraph 20 of the judgment in ***Dr. Amaragouda L Patil*** (supra) is extracted hereinbelow:

> *"20.We preface further discussion recording our consciousness of what the law is. It is not for the Court to sit in appeal over decisions of selecting bodies, whatever be the nature of the post/office. If the selection made by the selectors, who are experts in the field, is laid to a challenge, a merit review is forbidden; what is permissible is, inter alia, a limited scrutiny of ascertaining the eligibility of the aspirants and the procedure followed, that is, whether a duly qualified aspirant has been selected and whether the procedure followed was fair and in consonance with statutory rules or not. However, merely because the Search Committee is chaired by the Cabinet Secretary and such committee consists of experts, does not automatically make its recommendation immune from judicial scrutiny; rather, in an appropriate case warranting such scrutiny, the writ court would be justified in its interference with the process."*

55. Referring to various earlier judgments of the Hon'ble Supreme Court, ***Dr. Amaragouda L Patil*** (supra) clearly observes that if a case pertains to eligibility of a candidate for appointment to a public office, scope of judicial review is open albeit it may be limited. ***Dr. Amaragouda L Patil*** (supra) refers to the judgment of Hon'ble Supreme Court in ***Mahesh Chandra Gupta v. Union of India***, (2009) 8SCC 273 and extracts

the observations made therein, according to which, when 'eligibility' is put in question, it could fall within the scope of judicial review, however, the question as to who should be appointed, since necessarily involves determination of suitability, stands excluded from the purview of judicial review. Paragraphs 43 and 49 of the judgment in ***Dr. Amaragouda L Patil*** (supra) are extracted hereinbelow:

> *"43.This case pertains to eligibility of the third respondent and therefore scope of judicial review, even though limited, is open. Hon'ble S.H. Kapadia, J. (as the Chief Justice of India then was) speaking for the Court in Mahesh Chandra Gupta v. Union of India neatly delineated the applicability of judicial review in cases of eligibility and suitability, thus:*
>
> > *"43. One more aspect needs to be highlighted. 'Eligibility' is an objective factor. Who could be elevated is specifically answered by Article 217(2). When 'eligibility' is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of 'suitability', stands excluded from the purview of judicial review. 44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review…." (emphasis supplied)*
>
> *XXXXX*
>
> *49. While there can be no gainsaying that interference should be limited, particularly when a merit review is sought as in Tajvir Singh Sodhi (supra), the decision does acknowledge that*

interference could still be made if there are proven allegations of malfeasance or violations of statutory rules, laying bare inherent arbitrariness in the process. This decision too reinforces the legal position that if any of the grounds on which judicial review of administrative action is shown to exist, interference on such ground would be well-nigh permissible. It is not an arena in which intervention is completely barred.

56. Thus, the submission that since the Search Committee on whose recommendation respondent No.5 was appointed as Chairperson of the Commission comprise of experts and was headed by the Cabinet Secretary of Government of India and, therefore, any interference in the appointment in question herein would mean to sit in appeal over the decision of the experts, in the facts of the present case, does not hold good for the reason that it is a case where the respondent No.5 clearly lacked the essential eligibility qualification statutorily prescribed by Section 4(2) of the NCISM Act, 2020.

-CONCLUSION -

57. In view of the discussion made and reasons given above, we find that appointment of respondent No.5 as Chairperson of National Commission for Indian System of Medicine is contrary to Section 4(2) of the NCISM Act, 2020 as he does not fulfil the requisite qualification prescribed for appointment to the said office.

58. Resultantly, the petitions deserve to be allowed.

59. Hence, the writ petitions are allowed, and a writ of Quo Warranto quashing and setting aside the appointment of respondent No.5 as Chairperson of the Commission is issued.

60. We have been informed by learned counsel representing the Commission that the process of selection and appointment of the Chairperson of the Commission has commenced and, accordingly, we direct that the said process shall be completed with expedition and while conducting the process of selection, the observations made hereinabove in this judgment shall be taken into account.

61. There will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

JUNE 06, 2025
S.Rawat/ N.Khanna