

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 591 of 2019

Amalaksha Jana & Ors.

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Samim Ahammed
: Mr. Arka Maiti
: Ms. Ambiya Khatun

For the respondent PSC : Ms. Shraboni Sarkar

For the UGC : Mr. Anil Kumar Gupta

Judgment on : **13.10.2026**

Uploaded on : **13.10.2026**

RaiChattopadhyay, J. :-

(1) In the present writ petition, the petitioner challenges the appointment of the Principal in Government College of Art and Craft (hereinafter referred to as "GCAC"). The petitioner has prayed for the writ of quo warranto quashing the entire selection process, including the recommendations by the Public Service Commission as well appointment of Respondent no. 10/Principal. The petitioner has also prayed for necessary direction for de novo selection to be to be made with eligible candidates by constituting a separate interview board.

- (2) The Public Service Commission vide Advertisement No. 16/2015 sought application for the post of Principal of GCAC. The said advertisement is said to be in consonance with the Recruitment Rules vide Notification No. 1175-Edn(A)/10M-129/11 dated 10.10.2014, framed by the State. The eligibility criteria as mentioned in the said advertisement is shown hereinbelow:

“QUALIFICATIONS:

- (a) Must have a Master’s Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) by a recognized University***

Provided that a relaxation of 5% marks may be provided at the Master’s level for the candidates belonging to the Scheduled Castes/Scheduled Tribes/Differently abled (Physically and visually differently abled) categories for the purpose of eligibility and for assessing good academic record during recruitment.

Provided further that in respect of candidate who has obtained Master’s degree prior to 19th September, 1991, the said relaxation of 5% marks is admissible from 50% marks instead of 55% marks as stated above.

- (b) Must have a Ph.D. degree in concerned/allied/relevant discipline(s) in the institution concerned with evidence of published work and research guidance.***
- (c) Must be an Associate Professor/Professor with a total experience of 15(fifteen) years of teaching/research/administration in Universities/Colleges and other institutions of Higher Education.***
- (d) Must have a minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) as set out in the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 and***
- (e) Must have good power of expression in Bengali or Nepali***

OR

A traditional/professional artist of great eminence with highly commendable professional achievement in the concerned subject, who

- (i) Must have 12 (twelve) years of outstanding performing achievements in the field of specialization***
- (ii) Must have made significant contributions in the field of specializations and has the ability to guide research in the subject;***
- (iii) Must have participated in National/International Seminars/Conferences/Workshops and/or recipient of National/International Awards/Fellowships;***
- (iv) Must have ability to explain the logical reasoning of the subject concerned and adequate knowledge to teach theory with illustrations; and***
- (v) Must have good power of expression in Bengali or Nepali”***

(3) The University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 do not provide for appointment to the post in question on the basis of being a traditional or professional artist of eminence with commendable professional achievement in the concerned subject. The advertisement, however, introduced such eligibility criteria independently of the said Regulations. Consequently, the selection process under the advertisement was based on standards not specifically contemplated under the UGC Regulations, 2010.

(4) Upon submission of applications, a list of 14 (fourteen) names had been published who were called to interview for recruitment to the post of Principal, GCAC, on August 17, 2016. The candidates whose

names were against serial nos. 11 to 14 had an asterisk mark beside their names. The name of Respondent no. 10 appeared against serial no. 11 and contained an asterisk mark. The list is produced hereinbelow:

Interview for recruitment to the post of Principal for the Government College of Art and Craft in the West Bengal Senior Education Service under the Higher Education Department, Govt. of West Bengal vide Commission's advt. no. 16(1)/2015				
S.L. No.	Name	User ID	Time	Date
1	BENOD MUKHERJEE	HOW0019126	11:00 A.M.	17.8.2016
2	SAROJ KUMAR SARKAR	OTH0005917		
3	PAULA SENGUPTA	KOL0025706		
4	PARTHA DASGUPTA	KOL0025689		
5	SUMITABHA PAL	NTP0065327		
6	PRAMATHES CHANDRA	KOL0025700		
7	AKHIL CHANDRA DAS	KOL0025687	1:30 P.M.	
8	SUMAN KUMAR PAL	NTP0065328		
9	ABHIBRATA CHAKRABARTY	KOL0025745		
10	SWAPAN KUMAR JANA	HOW0019147		
11	CHHATRAPATI DUTTA*	KOL0025679		
12	JAYANTA CHAUDHURI*	KOL0025694		
13	MOHAN SHYAM BHASKAR*	MUR0024305		
14	RAJESH BHOWMIK*	OTH0005960		

****You have been called to interview provisionally subject to furnishing of satisfactory documents in support of experience in the field of specialisation as per the advertised criteria within 11th August, 2016 failing which your candidature for the said post are liable to be cancelled***

- (5) Subsequently, a fresh list of twelve candidates was published for interview for the post of Principal, GCAC, scheduled on November 13, 2016, whereas the earlier list had contained fourteen candidates. No reasons were stated for cancellation of the earlier interview or for the reduction in the number of candidates. It was also not disclosed whether Respondent No. 10 had submitted the requisite statutory documents establishing the prescribed experience in the relevant field by August 11, 2016. Unlike the earlier list, the subsequent interview list contained no asterisk against any candidate's name.
- (6) Thereafter, Chhatrapati Dutta, the Respondent no. 10 had been said to be selected by the Selection Committee constituted by the Public Service Commission, West Bengal. A notification dated April 24, 2017, declared that the Respondent no. 10 had been provisionally appointed as the Principal of GCAC, against an unreserved permanent post for two years.
- (7) Petitioner submitted that the impugned appointment of the Principal of GCAC has been done ignoring necessary criteria. PSC did not take into account the guidelines and due process, thereby affecting the entire selection process. According to the writ petitioner, the appointing authority has, inter alia, failed and neglected to consider the following:

- (a) The Selection Committee by the PSC was not constituted as per regulations for selection of candidates for West Bengal Senior Education Service;
- (b) Verification was not properly done, since the same was not referred to an expert in the relevant field;
- (c) Respondent no. 10 does not possess any Ph.D. degree in concerned/allied/relevant discipline(s) in the institution concerned with evidence of published work and Research Guidance, which is necessary for being appointed to such post;
- (d) Respondent no. 10 does not possess 15 (fifteen) completed years of continuous service as an Associate Professor or professor in teaching, research, administration of universities, colleges and other institutions of Higher Education;
- (e) Respondent no. 10 has failed to satisfy the minimum score as stipulated in the academic performance indicator based Performance Appraisal System as laid down by the University Grants Commission for determining the minimum qualification for appointment of teachers in universities and colleges;
- (f) Alternatively, Respondent no. 10 does not possess any illustrious achievement either in the field of Fine Arts or in the field of guiding research in the concerned subject. He cannot claim himself as an eminent professional artist who has made

outstanding contributions in the relevant field of specialisation;

(g) The antecedents and credentials of the Respondent no. 10 should have been verified prior to provisionally appointing him;

(h) The essential requirements as contained in the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010, have not been complied with by the respondent authorities.

(8) The petitioners have learnt that Respondent no. 10/ Principal has been accused of acts involving moral turpitude. He had joined the Rabindra Bharati University on 30.03.1995 as lecturer under the Faculty of Visual Arts and had been dismissed from service from 30.11.2006 as per the recommendation of the Executive Council of the Rabindra Bharati University. The information being obtained from the Public Information Officer of the Rabindra Bharati University under the provisions of the Right to Information Act, 2005 has been quoted hereinbelow:

"Sub: Information sought under the Right to Information Act, 2005

*** *** *** *** *** ***

i. Mr. Chhatrapati Dutta, who had joined Rabindra Bharati University on 30.03.1995, as Lecturer under the Faculty of Visual Arts did not

resign, but was terminated (dismissal of service) w.e.f 30.11.2006 as per recommendation of the Executive Council.

***** *** *** *** *** *****

iii. Mr. Chhatrapati Dutta, without due permission of the competent authority of Rabindra Bharati University compelled a student of 1st year under Visual Arts Faculty, to perform certain activities which was indecent, obscene, unethical, immoral and illegal.

Such activities were not permissible as per the syllabus of Visual Arts of Rabindra Bharati University. Thus a fact finding committee against Mr. Dutta was held due to such “gross misconduct”.

The petitioners maintain that the dismissal order and the adverse report against the Respondent no. 10 have neither been set aside nor has any challenge been mounted upon the same by the Respondent no. 10.

In this respect, let the relevant provision of UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 be also quoted hereinbelow for benefit of discussion: -

“5.1.6 College Principal

(a) The Selection Committee for the post of College Principal shall have the following composition:

1. Chairperson of the Governing Body as Chairperson.

2. Two members of the Governing Body of the college to be nominated by the Chairperson of whom one shall be an expert in academic administration.

3. One nominee of the Vice Chancellor who shall be a Higher Education expert. In case of Colleges notified/declared as minority educational institutions, one nominee of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating university of whom one should be a subject expert.

4. Three experts consisting of the Principal of a college, a Professor and an accomplished educationalist not below the rank of a Professor (to be nominated by the Governing Body of the college) out of a panel of six experts approved by the relevant statutory body of the university concerned.

5. An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor, if any of the above members of the selection committee do not belong to that category.

(b) At least five members, including two experts, should constitute the quorum.

(c) All the selection procedures of the selection committee shall be completed on the day of the selection committee meeting itself, wherein, minutes are recorded along with the scoring proforma and recommendation made on the basis of merit with the list of selected and waitlisted candidates/Panel of names in order of merit, duly signed by all members of the selection committee.

(d) The term of appointment of the college principal shall be FIVE years with eligibility for reappointment for one more term only after a similar selection committee process."

- (9)** The respondent no. 6/PSC submitted that the matter under challenge in a recruitment process in the civil post under the State and as such

the remedy of the petitioner at the first instance lies before the West Bengal Administrative Tribunal pursuant to section 15 and 16 of the Administrative Tribunals Act, 1985.

- (10) Furthermore, petitioners retain no locus standi to challenge the recruitment process as they were not a candidate in the said selection process and in no way affected the selection for the post of Principal for GCAC. To that effect, the writ petition is liable to be dismissed.
- (11) Respondent no. 10/Principal raised the preliminary point of the petitioners having no locus standi to file the writ petition. Petitioner no. 1 is an Advocate having interest in Art and petitioner nos. 2 and 3 claimed to be alumni of GCAC.
- (12) Respondent no. 10 submitted that the Selection Committee's first choice for principal was one Smt. Paula Sengupta. When she did not accept the proposal after several requests were made, Respondent no. 10 was appointed in the alternate category.
- (13) It is further contended that the removal of Respondent no. 10 from the position of Assistant Professor was actually a resignation owing to his personal reasons.
- (14) Following are the judgments relied on by the petitioners:-

(i) Gambhirdan K. Gadhvi v. State of Gujarat(2022) 5 SCC 179

The High Court's power to issue a writ of quo warranto is limited. Such a writ may be issued where a person occupying a public office lacks the prescribed eligibility or qualifications, or where the appointment has been made in violation of the applicable statutory provisions or rules.

It was laid down that in case of conflict between UGC Regulations and the State made recruitment rules, the former would prevail and be binding upon all.

(ii) Mohd. Abdullah Azam Khan v. Nawab Kazim Ali Khan(2022)
20 SCC 233

The Evidence Act, 1872 is fundamentally concerned with the ascertainment of truth by providing rules for proving or disproving facts in issue. Since judicial decisions depend upon the truthfulness of facts asserted by the parties, the Act seeks to balance their competing interests through the proper establishment of relevant facts and evidence.

A judgment may be vitiated where the burden of proof is wrongly placed. Although rules governing burden of proof are founded on considerations of convenience, reasonableness, and policy, where a rebuttable presumption of law operates in favour of one party, the burden lies on the opposing party to rebut that presumption.

Where a fact is especially or exclusively within the knowledge of a party, the burden of proving that fact lies upon that party. This principle operates as an exception to the general rule of burden of proof and does not apply where the fact is equally capable of being known by others. Accordingly, where a person claims an intention different from that ordinarily inferred from the nature and circumstances of an act, the burden rests upon that person to establish such intention. The Evidence Act, 1872 ultimately seeks to facilitate justice by enabling the discovery of truth.

(iii) Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira(2012) 5 SCC 370

Courts are required to discharge both discretionary and mandatory statutory functions in accordance with law while administering justice. Their duty extends beyond merely deciding disputes to ensuring that justice is both done and demonstrably achieved. A fundamental purpose of the judicial system is therefore the discovery, vindication, and establishment of truth, which remains central to the functioning of courts of justice.

(iv) Duryodhan Sahu v. Jitendra Kumar Mishra(1998) 7 SCC 273

Tribunals constituted under the Act were regarded as effective substitutes for the High Courts in service matters, both in law and in practical operation, and were empowered to exercise corresponding jurisdiction. On that basis, the High Courts' judicial review jurisdiction under Articles 226 and 227 was treated as excluded in such matters. However, an Administrative Tribunal cannot entertain a public interest litigation filed by a complete stranger to the dispute.

(v) Central Electricity Supply Utility of Odisha v. Dhobei Sahoo(2014) 1 SCC 161

The High Court's jurisdiction to issue a writ of quo warranto is limited to examining whether the holder of a public office possesses the prescribed eligibility and whether the appointment complies with statutory rules. The strict requirement of locus standi applicable in service matters does not govern quo warranto proceedings, since its object is to enable constitutional courts to prevent a person from

unlawfully usurping or occupying a public office without legal authority.

(15) Following are the cases relied on by the respondents:-

(i) Surinder Kumar v. S. Raghavan 2010 SCC OnLine Mad 6011

A writ of *quo warranto* is a discretionary and technical remedy and cannot be issued as a matter of course. Before granting such relief, the Court must consider the relevant facts and circumstances and must have sufficient material to reach a definite conclusion that the person concerned has no lawful authority to continue in the public office.

(ii) B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. 2006 SCC OnLine SC 887

The Court cannot probe the mind of the appointing authority in a motion for *quo warranto*.

I. Whether the writ petition is maintainable in this Court notwithstanding the jurisdiction of the West Bengal Administrative Tribunal;

(16) The preliminary objection raised on behalf of respondent nos. 6 and 10 is that the dispute relates to recruitment to a civil post under the State and, consequently, the petitioner ought to have approached the West Bengal Administrative Tribunal in terms of Sections 15 and 16 of the Administrative Tribunals Act, 1985. The objection, though requiring consideration, cannot be determined merely by looking at

the identity of the post or the fact that the impugned appointment has been made by a State authority. The true nature of the proceeding, the character of the relief claimed and the source of the alleged illegality must be examined.

- (17) The present proceeding is not founded upon a claim by an unsuccessful candidate seeking appointment, comparative preference, seniority or any other individual service benefit. The petitioner invokes the extraordinary jurisdiction of this Court for a writ of quo warranto, questioning the legal authority of respondent No. 10 to occupy the office of Principal of Government College of Art and Craft. The central controversy is whether the appointment was made in accordance with the binding qualifications and legal requirements governing the office. The challenge, therefore, concerns the legality of the occupation of a public office and not the enforcement of a private service right.
- (18) A writ of quo warranto is distinct in character from the ordinary remedies available in service jurisprudence. Its object is to call upon a person occupying a substantive public office to demonstrate the legal authority under which that office is held. Where the appointment is alleged to contravene mandatory statutory requirements, the question transcends the competing interests of individual candidates and assumes a public-law dimension. The Court is concerned with the lawful constitution of public authority and the enforcement of the rule of law.
- (19) In the case of ***Duryodhan Sahu (supra)*** as referred to by the petitioner, the Supreme Court considered whether an Administrative Tribunal could entertain a public interest litigation. The decision

recognises the significance of the distinction between the jurisdiction of a tribunal over service disputes and the constitutional jurisdiction of a High Court to issue a writ of quo warranto at the instance of a person who need not himself be aggrieved. The reasoning in that decision supports the conclusion that an ordinary stranger cannot be required to convert a public-law challenge of this character into an individual service claim before a tribunal which does not entertain such public interest proceedings.

- (20) It is equally necessary to bear in mind that the jurisdiction of this Court under Articles 226 and 227 of the Constitution has not been wholly excluded by the creation of administrative tribunals. In ***L. Chandra Kumar versus Union of India, (1997) 3 SCC 261***, the Supreme Court affirmed that judicial review by the High Courts under Articles 226 and 227, and by the Supreme Court under Article 32, forms part of the basic structure of the Constitution. Although tribunals are competent to adjudicate matters falling within their statutory jurisdiction, their decisions remain subject to the constitutionally preserved power of judicial review.
- (21) The objection as to the availability of the Administrative Tribunal cannot, therefore, be accepted as an absolute bar to the present proceeding. The Court is not called upon to adjudicate a conventional claim for appointment by an individual candidate. It is called upon to determine whether respondent No. 10 possesses the legal qualification and authority required to hold a public office. The relief sought is directed against an alleged unlawful occupation of that office, and the constitutional remedy invoked is appropriate to that controversy. This conclusion does not imply that every dispute concerning recruitment to a State post may bypass the Tribunal; it is

confined to the distinctive nature of the present challenge by way of quo warranto.

II. Maintainability of the writ petition and locus standi of the petitioner

- (22) The next objection is that the petitioners were not participants in the selection process and, therefore, has no locus standi to question the appointment. Respondent No. 6 relies upon the absence of any direct injury to the petitioners, while respondent No. 10 emphasises that the 1st petitioner is an Advocate having an interest in art and that the other petitioners claim to be alumni of the institution. These objections proceed upon a conception of standing applicable principally to ordinary adversarial litigation. The applicable principle in a proceeding for quo warranto is materially different.
- (23) The essential requirement for the issuance of quo warranto is not that the petitioner should establish a personal legal injury or demonstrate that he would himself have been entitled to the office. Any person may bring to the notice of the Constitutional Court an alleged unlawful occupation of a public office, provided the challenge is bona fide, raises a legally cognisable issue and is supported by sufficient material. The petitioners act, in substance, to secure compliance with the law governing public appointments. The absence of a personal claim to the post does not, by itself, render the proceeding incompetent.
- (24) In ***DhobeiSahoo (supra)***, the Supreme Court has explained that quo warranto jurisdiction is directed towards examining whether a person holds a public office in accordance with the law prescribing eligibility for that office. The strict requirement of personal standing ordinarily

associated with service disputes does not govern a genuine proceeding of this nature. The object is to prevent an individual from continuing in a public office without the legal authority required for its occupation. The principle is also consistent with the decision in ***University of Mysore versus C.D. GovindaRao, AIR 1965 SC 491***, wherein the Supreme Court explained the nature and limitations of the writ of quo warranto. The Court does not undertake a general assessment of the relative merits of candidates, but examines whether the appointment is contrary to law or whether the appointee lacks a qualification prescribed by law.

- (25) The present petitioner does not merely express dissatisfaction with the choice made by the Public Service Commission. The petition raises specific questions concerning the absence of the prescribed Ph.D. qualification, the requisite experience, the stipulated academic performance indicators and the introduction, through the State's recruitment notification and advertisement, of an alternative route based on professional eminence which is alleged to be inconsistent with the UGC Regulations, 2010. These are questions of legal eligibility and the validity of the governing recruitment criteria, rather than questions of comparative suitability.
- (26) The objection founded upon the petitioner's non-participation in the selection process must accordingly fail. The petitioner is not seeking to secure for himself the appointment or to substitute his assessment of merit for that of the Selection Committee. He seeks a determination of whether respondent No. 10 was legally eligible to be appointed at all. The proceeding is maintainable, subject always to the petitioner establishing the alleged legal infirmity by reference to the applicable provisions and the material on record.

III. The governing principles of a writ of quo warranto

- (27) The jurisdiction to issue quo warranto is limited, but its limited character does not diminish its constitutional importance. It is not an appellate jurisdiction over the process of selection. The Court does not sit as a Selection Committee, nor does it determine which of several eligible candidates would have been the better choice. The inquiry is confined to the legality of the appointment, including whether the office is public in character, whether the appointee holds it, and whether the appointment satisfies the qualifications and conditions prescribed by the governing law.
- (28) The writ of quo warranto is an expression signifying an inquiry into the authority by which a person claims to occupy an office. The writ protects the public against an unlawful usurpation of public office. Its foundation is the principle that public power must be exercised, and public office occupied, only in accordance with law. The doctrine is thus an aspect of the rule of law; no appointment, however formally made or administratively approved, can acquire immunity from judicial scrutiny if it is demonstrably contrary to a mandatory legal requirement.
- (29) In ***University of Mysore (supra)***, the Supreme Court cautioned that the Court must not enter into a detailed assessment of the comparative merits of candidates. At the same time, where the appointment is challenged on the ground that the appointee lacks a qualification prescribed by the applicable rules, the Court is competent to determine whether the appointment conforms to those rules. The distinction is between an impermissible substitution of judicial opinion for expert judgment and a permissible determination

of legal eligibility. The principles have been reiterated in ***DhobeiSahoo (supra)***, and more recently in ***Gambhirdan K. Gadhvi (supra)***. The latter decision makes it clear that quo warranto may be issued where the holder of public office does not fulfil the eligibility criteria prescribed by law or where the appointment is contrary to the governing statutory provisions.

- (30) The respondents have relied upon ***Surinder Kumar (supra)***, to contend that quo warranto is a discretionary and technical remedy which cannot issue as a matter of course. That proposition, stated at the appropriate level of generality, is correct. The Court must have sufficient material to reach a definite conclusion that the person concerned lacks lawful authority to hold the office. However, the principle does not assist an appointee where the prescribed legal qualification is demonstrably absent. The requirement of clear proof regulates the exercise of jurisdiction; it does not immunise an appointment from scrutiny.
- (31) Reliance has also been placed upon ***B. Srinivasa Reddy (supra)***, for the proposition that the Court cannot probe the mind of the appointing authority. That proposition is likewise distinguishable. The present Court need not investigate the subjective reasoning or motives of the Selection Committee. The inquiry concerns objective legal conditions: the applicable qualifications, the documents establishing them, and the validity of the criteria under which respondent No. 10 was considered eligible. The Court may not substitute its opinion on comparative merit, but it cannot abdicate its responsibility to determine compliance with law.

IV. What constitutes lawful authority to continue in a public office

- (32) Lawful authority to occupy a public office does not arise merely from the issuance of an appointment letter, a recommendation by a competent commission, or the subsequent assumption of charge. These acts establish the formal fact of appointment. The substantive legal authority to hold the office depends upon compliance with the law governing the appointment, including the qualifications, eligibility conditions, prescribed procedure and other mandatory requirements applicable at the relevant time.
- (33) The doctrine of de jure authority requires that a person occupying a public office derive that authority from a lawful source and continue to satisfy the legal conditions governing the office. Where the appointment is made in breach of an essential statutory qualification, administrative approval or the passage of time cannot, by itself, cure the defect. Nor can the fact that the appointee was recommended by a Selection Committee displace a binding statutory norm.
- (34) In ***Gambhirdan K. Gadhvi (supra)*** the Supreme Court considered a challenge to an appointment to the office of Vice-Chancellor and held, in substance, that an appointment cannot be sustained contrary to the applicable UGC Regulations governing eligibility. The decision is particularly relevant because it recognises that the question whether an appointee possesses the qualifications prescribed by binding regulations is a question of legality amenable to quo warranto. The State cannot rely upon a more permissive local provision to validate an appointment where the applicable national regulations prescribe mandatory standards which the State provision fails to satisfy.

- (35) It follows that the inquiry in the present case must proceed in the following order: first, to identify the legal instrument governing the post of Principal of Government College of Art and Craft; secondly, to determine the qualifications prescribed by that instrument read with the applicable UGC Regulations; thirdly, to ascertain whether the State's Notification No. 1175-Edn(A)/10M-129/11 dated October 10, 2014 and Advertisement No. 16/2015 are consistent with those binding requirements; and, finally, to determine whether respondent No. 10 satisfies the legally applicable criteria. Only after these questions have been answered can the Court properly decide whether respondent No. 10 has lawful authority to continue in the office.

V. The constitutional scheme concerning education and the interrelationship between Central and State law

- (36) The controversy cannot be resolved without considering the constitutional distribution of legislative power concerning education. Under the Seventh Schedule to the Constitution, Entry 25 of List III, the Concurrent List, covers education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I. Entry 66 of List I confers upon Parliament the power to legislate with respect to the coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
- (37) The constitutional arrangement therefore recognises both State competence over education within its allocated field and the overriding importance of nationally coordinated standards of higher education within the Union's legislative domain. The State may regulate the administration of its colleges, the constitution of its

services and the recruitment process for posts within its institutions, subject to the Constitution and applicable Parliamentary legislation and statutory regulations. Such power, however, cannot be exercised so as to defeat binding national standards validly prescribed within the legislative competence of Parliament.

- (38)** The University Grants Commission Act, 1956, was enacted to provide for the coordination and determination of standards in universities and for related purposes. Section 26 empowers the UGC to make regulations within the scope of the Act. The UGC Regulations prescribing minimum qualifications for appointment of teachers and other academic staff in universities and colleges are intended to maintain standards in higher education. Where a particular appointment falls within their field of operation, the State's recruitment framework must be read consistently with those binding requirements.
- (39)** It is necessary to distinguish the existence of a State power to frame recruitment rules from the question whether a particular rule can prevail in the face of an inconsistent binding national standard. The former is not in dispute. The latter must be resolved by examining the source, scope and binding character of the relevant UGC Regulation and the nature of the alleged inconsistency. The State cannot claim an unrestricted power to dilute a mandatory qualification merely because the institution is maintained by the State or the post forms part of a State service.
- (40)** Article 254 of the Constitution addresses inconsistency between Parliamentary law and State law in a field falling within the Concurrent List. Its application must be considered with

care, particularly where the Central norm arises from regulations made under a Parliamentary enactment and the subject also engages Entry 66 of List I. It would be inaccurate to treat every inconsistency between a State notification and a UGC Regulation as automatically resolved by Article 254 without examining the relevant legislative and statutory framework. The question here is whether the applicable UGC Regulations validly prescribe a binding minimum qualification for the post and whether the State instrument purports to permit an appointment inconsistent with that requirement.

- (41) In ***Gambhirdan K. Gadhvi (supra)***, the Supreme Court examined the relationship between State legislation and UGC Regulations in the context of appointment to a senior university office. The Court held that the appointment could not be sustained contrary to the applicable UGC Regulations and rejected the proposition that a State provision prescribing a diluted standard could displace the binding national requirements. The principle is directly material to the present dispute, subject to the necessary verification that the post and the particular qualifications in issue fall within the applicable regulatory framework.
- (42) The result is that the State retains its authority to regulate the selection process, constitute the appropriate selection body and prescribe additional conditions consistent with law. It cannot, however, treat a qualification which is mandatory under an applicable UGC Regulation as optional, or create an alternative route of eligibility which has the effect of dispensing with a mandatory national qualification. A recruitment rule must be interpreted and applied subject to the superior legal norm governing the relevant standard of higher education.

VI. Whether the State Notification of 2014 and Advertisement No. 16/2015 conflict with the UGC Regulations, 2010

- (43) The material placed before the Court shows that Advertisement No. 16/2015, issued by the Public Service Commission for recruitment to the post of Principal of Government College of Art and Craft, was framed in accordance with the State's Notification No. 1175-Edn(A)/10M-129/11 dated October 10, 2014. The advertisement prescribed, under one route, a Master's degree with the stipulated marks, a Ph.D. in the concerned, allied or relevant discipline, fifteen years of teaching, research or administrative experience, the prescribed Academic Performance Indicator score, and the requisite language ability.
- (44) The advertisement, however, also prescribed an alternative route for a traditional or professional artist of great eminence with highly commendable professional achievements. Under that route, the applicant was required to demonstrate twelve years of outstanding professional achievements, significant contributions and the ability to guide research, participation in national or international seminars or receipt of awards or fellowships, and the ability to explain the subject and teach its theory. The advertisement thus permitted consideration under an alternative set of criteria which did not, on its face, reproduce all the qualifications prescribed under the first route.
- (45) The petitioner's challenge is not merely that the alternative route is less stringent or that respondent No. 10 should not have been preferred. It is that the State notification and advertisement introduced a mode of eligibility which is not contemplated by the applicable UGC Regulations, 2010 and thereby permitted the

appointment of a Principal without compliance with mandatory national qualifications. The distinction is fundamental. If the UGC Regulations permit an alternative qualification for the particular post, the State may give effect to that alternative in accordance with law. If, however, the UGC Regulations prescribe an exhaustive and mandatory qualification and do not permit the State to substitute a different route, the State cannot introduce such a route by notification or advertisement.

- (46) In ***Gambhirdan K. Gadhvi (supra)***, the Supreme Court held that an appointment to a senior academic office must conform to the applicable UGC Regulations and cannot be sustained on the strength of a State provision which dilutes their mandatory requirements. The principle is that the State's authority to prescribe recruitment conditions does not extend to derogating from a binding national standard governing the qualification for the post.
- (47) The relevant question, therefore, is not whether professional eminence in the visual arts is valuable or whether a distinguished artist may be capable of contributing to an institution of higher education. Professional accomplishment and academic qualification are not necessarily identical, and a recruitment authority may recognise both where the governing law permits it. The question is whether the particular alternative prescribed by the State is legally compatible with the UGC Regulations applicable to this post. Administrative convenience, institutional preference or the special character of an art institution cannot, by themselves, justify departure from a mandatory qualification.

- (48) In the present writ petition the petitioner asserts that the alternative route of professional eminence is not contemplated by the applicable 2010 Regulations. The propriety and justification of such submission is evident. Relevant texts are quoted above. The petitioner's assertion appears to be borne out by the regulatory text and the relevant provision governing appointment to this particular post. In that case, the State's inconsistent provision cannot be used to validate an appointment that would otherwise be ineligible.
- (49) The Court is consequently unable to accept the proposition that the mere existence of the 2014 notification and the 2015 advertisement concludes the matter in favour of the respondents. A subordinate instrument cannot acquire overriding force merely because the appointing authority has acted in accordance with it. The legality of the instrument itself remains open to examination where it is challenged as inconsistent with a binding superior norm. If the alternative eligibility route is indeed contrary to the applicable UGC Regulations, the relevant provision of the notification and the corresponding part of the advertisement must yield to the superior law and cannot sustain the appointment of respondent No. 10.

VII. Whether respondent No. 10 satisfies the qualifications prescribed by law

- (50) Having considered the legal framework governing the appointment, the Court must now examine whether respondent No. 10 satisfies the qualifications required for appointment to the post of Principal of Government College of Art and Craft. The question must be determined by reference to the applicable legal criteria and the contemporaneous material relating to his educational qualifications,

professional experience and other prescribed requirements. Neither the recommendation of the Public Service Commission nor the subsequent notification of provisional appointment can dispense with the necessity of establishing eligibility in accordance with law.

- (51) The petitioner's case is that respondent No. 10 does not possess a Ph.D. degree in the concerned, allied or relevant discipline with evidence of published work and research guidance; does not possess fifteen completed years of the prescribed teaching, research or administrative experience as contemplated by the relevant eligibility criteria; and has not demonstrated the requisite Academic Performance Indicator score. These are not incidental procedural objections. If the qualifications in question are mandatory under the applicable regulatory framework, the absence of any essential qualification strikes at the legal foundation of the appointment itself.
- (52) The Court must, however, distinguish between an allegation of ineligibility and a finding of ineligibility. The burden initially rests upon the petitioner to place sufficient material before the Court to raise a legally sustainable challenge. Once a specific deficiency in an essential qualification has been demonstrated by relevant material, the appointing authority and the appointee cannot answer the challenge merely by relying upon the fact of selection.
- (53) In ***Mohd. Abdullah Azam Khan versus NawabKazim Ali Khan, (2022) 20 SCC 233***, the Supreme Court discussed the principles governing the burden of proof and the relevance of facts especially within the knowledge of a party. Section 106 of the Indian Evidence Act, 1872, as it then stood, recognised that where a fact is especially within the knowledge of a person, the burden of proving that fact

rests upon that person, subject to the foundational requirements of the general law of evidence. The corresponding principle under Section 109 of the Bharatiya Sakshya Adhiniyam, 2023, must be applied where that enactment governs the evidentiary question. The principle does not relieve the petitioner of establishing the foundational facts of the challenge; it does, however, militate against permitting an appointee to rely upon a qualification which the relevant records fail to establish.

- (54) In the present case, the question of experience assumes particular importance. The first interview list, containing fourteen candidates, marked respondent No. 10 as a provisional candidate whose candidature was subject to furnishing satisfactory documents establishing experience in the field of specialisation by August 11, 2016. A subsequent interview list contained twelve candidates and did not carry the earlier asterisks. The material summarised in the petition does not disclose whether respondent No. 10 furnished the required documents within the stipulated period or how the discrepancy between the two lists was resolved.
- (55) The mere publication of a subsequent interview list without an asterisk cannot, by itself, be treated as conclusive proof that the requisite documents were submitted and duly verified. The relevant inquiry is whether the prescribed experience was established by the material required under the applicable rules and whether the selection authority verified that material before recommending the candidate. To that effect the respondents have failed to produce sufficient material in this case in order to draw a result of examination by Court, in a manner otherwise than pleaded by the writ petitioner. Where the record fails to demonstrate compliance with

an essential eligibility requirement, the selection cannot be sustained merely upon an unexplained alteration in the candidate list.

- (56)** The respondents cannot contend that the selection process is immune from scrutiny simply because the Public Service Commission conducted the interview. The Commission's expertise and institutional independence deserve due respect in matters of comparative assessment. Nevertheless, the verification of minimum eligibility is a legal obligation. A selection authority cannot, by accepting a candidate's credentials without adequate verification, convert an unfulfilled statutory condition into a fulfilled one.
- (57)** The petitioner further contends that respondent No. 10 cannot qualify under the alternative category of a traditional or professional artist of great eminence. The advertisement required, inter alia, outstanding achievements over twelve years, significant contributions to the specialisation, an ability to guide research, and specified professional or academic accomplishments. The question is not whether respondent No. 10 is an artist of ability in a general sense, but whether he satisfies the precise conditions lawfully applicable to the alternative category, assuming that category itself is legally permissible.
- (58)** Professional eminence cannot be presumed merely from participation in the selection process or inferred solely from the fact of appointment. If the alternative category is available under the governing law, the authority must establish that the candidate satisfies its stated conditions. Conversely, if that category is inconsistent with the binding UGC Regulations, proof of professional eminence cannot cure the absence of an essential qualification

required under the superior norm. The two questions must be kept analytically distinct; the legality of the alternative route and the factual eligibility of respondent No. 10 under that route.

(59) The Court is conscious that it cannot sit in appeal over the artistic or academic assessment undertaken by the Selection Committee. It would be impermissible to substitute the Court's own evaluation of the quality of respondent No. 10's artistic work for the judgment of a duly constituted expert body. But that limitation does not prevent the Court from examining whether the expert body applied the correct legal criteria, whether the prescribed documents were obtained, and whether the candidate possessed the minimum qualifications necessary to be considered at all.

(60) On the basis of the material placed before the Court, the petitioner's challenge raises a substantial question concerning the satisfaction of the mandatory eligibility requirements. A final finding against respondent No. 10 must rest upon the relevant qualifications and contemporaneous recruitment records, rather than upon an inference drawn exclusively from the absence of particulars in the petitioner's summary of events. If, upon examination of the complete record, it is established that respondent No. 10 did not possess the mandatory Ph.D. qualification, the requisite experience or the prescribed API score, and that the alternative route cannot lawfully dispense with those requirements, his appointment cannot be sustained.

VIII. The effect of the previous dismissal of respondent No. 10 from RabindraBharati University

(61) The petitioner has also relied upon information obtained under the Right to Information Act, 2005, indicating that respondent No. 10

joined RabindraBharati University as a Lecturer on 30 March 1995 and that his service was terminated with effect from 30 November 2006 pursuant to a recommendation of the Executive Council. The information further refers to a fact-finding committee constituted in relation to alleged misconduct. Respondent No. 10, on the other hand, has contended that his departure from the University was in substance a resignation on personal grounds.

- (62) The conflict between these assertions must be resolved by reference to the actual service record, the relevant resolution and the operative order governing the termination of respondent No. 10's previous service. An information response recording dismissal cannot simply be disregarded in favour of an assertion of resignation; equally, the precise legal consequences of the earlier service event cannot be determined without examining the underlying documents and any subsequent adjudication.
- (63) The Court must also distinguish between the question of eligibility for the post presently in issue and the question of past misconduct. Unless the governing recruitment rules prescribe a relevant disqualification arising from the earlier service event, or the material establishes a legally sustainable ground affecting the appointment, the mere existence of an adverse allegation cannot independently determine the question of lawful authority. The present proceeding is one for quo warranto, not a disciplinary inquiry into respondent No. 10's previous employment.
- (64) Nevertheless, the appointing authority was required to consider all matters which the applicable law made relevant to eligibility and appointment. If the recruitment rules required verification of specified

antecedents or imposed a disqualification arising from a previous dismissal, failure to undertake that exercise would require examination as a possible legal infirmity. The Court does not base its conclusion upon the unproved allegations of misconduct. The decisive question remains whether respondent No. 10 possessed the qualifications and legal eligibility required for the public office at the relevant time.

IX. Whether the appointment can be sustained on the ground that respondent No. 10 was selected as an alternative candidate

- (65) Respondent No. 10 has stated that the Selection Committee initially preferred Smt. Paula Sengupta and that, upon her unwillingness to accept the appointment despite repeated requests, respondent No. 10 was appointed as an alternative candidate. Even if this factual explanation is accepted, it does not resolve the legal controversy. The refusal of a preferred candidate may justify consideration of another candidate who is eligible under the applicable rules, but it cannot confer eligibility upon a person who does not satisfy the mandatory conditions governing the post.
- (66) Recruitment to a public office is regulated by the principle that eligibility precedes comparative selection. The appointing authority may choose among candidates who satisfy the prescribed requirements, subject to the applicable selection procedure. It cannot relax an essential statutory qualification merely because the first-choice candidate declines appointment or because the authority considers the next candidate suitable for the institution.
- (67) The doctrine of legality requires that the appointing authority act within the boundaries of the power conferred upon it. A decision may

be administratively convenient and may even reflect a bona fide desire to fill a vacant post, yet remain legally unsustainable if the person appointed does not possess the qualifications prescribed by law. The Court's inquiry is not whether respondent No. 10 was the next available candidate, but whether he was legally eligible to be appointed.

- (68) Nor can the fact that respondent No. 10's appointment was initially provisional for two years, as recorded in the notification dated 24 April 2017, cure an absence of essential eligibility. A provisional appointment remains subject to the governing law. Where the legal qualification is a condition precedent to appointment, provisional status does not confer an authority to occupy the office in derogation of that condition.

X. The judgments relied on by the respondent do not defeat the petitioner's case

- (69) The authorities relied upon by the respondents establish that quo warranto is not to be issued casually, that the Court cannot investigate the subjective deliberations of a Selection Committee, and that a definite conclusion concerning the absence of lawful authority must be supported by sufficient material. Those propositions are not disputed. They define the limits within which the Court must act.
- (70) The present challenge, however, does not invite the Court to evaluate the comparative merits of candidates or to speculate about the reasons which motivated the Selection Committee. It raises a question of legal competence to hold the office, founded upon the alleged absence of prescribed qualifications and the inconsistency of the State's recruitment framework with binding national regulations.

The respondents' authorities do not prohibit judicial scrutiny of such questions; indeed, the distinction between eligibility and comparative merit is fundamental to the exercise of quo warranto jurisdiction.

(71) The decision in **B. Srinivasa Reddy (supra)** cannot be understood as permitting an appointing authority to disregard a mandatory qualification. The prohibition against probing the mind of the authority is not a prohibition against examining the objective legality of its decision. Likewise, judgment in **Surinder Kumar's case (supra)** does not establish that a public appointment becomes immune from challenge whenever the appointee has been formally selected. Both principles must be applied consistently with the Supreme Court's decision in **Gambhirdan K. Gadhvi (supra)**, which recognises the availability of quo warranto where the appointment violates binding eligibility requirements.

(72) The Court therefore rejects the respondents' preliminary objections as to jurisdiction and locus standi. On the substantive issue, the applicable law must prevail over any inconsistent recruitment condition, and the appointment must be tested against the qualifications legally prescribed for the post. The conclusion cannot be based upon an assessment of personal preference or institutional convenience, but upon the objective legal requirements governing the office.

XI. Conclusion

(73) The office of Principal of Government College of Art and Craft is a public office. The appointment to that office must conform to the applicable statutory and regulatory framework. Neither the State Government nor the Public Service Commission possesses an

unfettered discretion to appoint a person who does not satisfy the mandatory legal qualifications. The authority to make an appointment carries with it the obligation to ensure that the appointment is made in accordance with law.

- (74)** The State's Notification No. 1175-Edn(A)/10M-129/11 dated 10 October 2014 and Advertisement No. 16/2015 cannot be treated as conclusive of the legality of the appointment merely because respondent No. 10 was considered and selected under their terms. If the alternative category for a traditional or professional artist of great eminence is inconsistent with the applicable UGC Regulations, 2010, that category cannot lawfully operate to dispense with a mandatory qualification prescribed by the governing national norm. The relevant provision must yield to the superior applicable law.
- (75)** Equally, where the complete selection record establishes that respondent No. 10 did not possess the requisite Ph.D. qualification, prescribed experience, API score or other mandatory requirement applicable to the post, the appointment is vitiated by a substantive defect of eligibility. Such a defect cannot be cured by the recommendation of the Public Service Commission, by the appointment notification, by the refusal of another candidate, or by the passage of time.
- (76)** The Court is mindful that the jurisdiction of quo warranto is limited and must be exercised on the basis of established facts. The conclusion that respondent No. 10 lacks lawful authority must therefore rest upon the actual regulatory text and the contemporaneous documentary record establishing the absence of the requisite qualification. Subject to that necessary evidentiary

foundation, the appointment cannot be sustained in law. The rule of law does not permit a person to continue in a public office when the legal conditions essential to the occupation of that office remain unfulfilled.

(77) For the reasons aforesaid, the writ petition deserves to be allowed as it is found that the 2014 notification and the 2015 advertisement permit a route inconsistent with the binding UGC Regulations 2010 and respondent No. 10 does not satisfy the qualifications lawfully applicable to the post. In such circumstances, the appointment is not merely irregular in a procedural sense; it is without the legal foundation necessary to sustain the occupation of the public office. A writ of quo warranto is consequently warranted.

(78) In view of the foregoing discussion, and upon the Court being satisfied from the applicable UGC Regulations and the contemporaneous recruitment record that respondent No. 10 does not fulfil the mandatory eligibility criteria, the writ petition is allowed in the following terms:

(i) The preliminary objections concerning the maintainability of the writ petition, the petitioner's locus standi and the availability of a remedy before the West Bengal Administrative Tribunal are rejected for the reasons recorded hereinabove;

(ii) The provisions of Notification No. 1175-Edn(A)/10M-129/11 dated 10 October 2014, and the corresponding conditions of Advertisement No. 16/2015, insofar as they permit appointment to the post of Principal of Government College of Art and Craft in derogation of mandatory

qualifications prescribed by the applicable UGC Regulations, 2010, are declared inoperative to that extent and incapable of sustaining an appointment contrary to the governing law;

(iii) The recommendation of the Public Service Commission in favour of respondent No. 10, and the consequential appointment notification dated 24 April 2017, are set aside insofar as they relate to respondent No. 10, upon the finding that he does not satisfy the mandatory eligibility requirements applicable to the post;

(iv) A writ in the nature of quo warranto is issued against respondent No. 10, declaring that he has no lawful authority to continue to occupy the post of Principal of Government College of Art and Craft;

(v) The State Government and the competent appointing authority shall take immediate consequential steps to give effect to this order and shall ensure that respondent No. 10 ceases to discharge the functions of the said office pursuant to the impugned appointment.

(vi) The competent authority shall make appropriate interim administrative arrangements for the discharge of the functions of the Principal in accordance with law until a duly eligible person is appointed, till a person competent and duly eligible is selected and appointed in the said post;

(79) The writ petition No. WPA 591 of 2019 is allowed and disposed of.

(80) Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(RaiChattopadhyay, J.)