

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

+ **W.P.(C) No. 11146/2016 & CM Nos. 43572-73/2016**

Reserved on: **29th November, 2016**

% Pronounced on: **5th December, 2016**

Mr. S.N.SAHU Petitioner

Through: Mr. Biswajit Das, Adv.

versus

CHAIRMAN, RAJYA SABHA & ORS. Respondents

Through: Ms. Zubeda Begum and Ms. Sana
Ansari, Advocates for R-1 and R-2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. When the present writ petition filed under Article 226 of the Constitution of India came up for admission for the first time on 25.11.2016, it was found that the present writ petition is the sixth writ petition filed by the petitioner which was effectively against the same main respondent being his employer, the Rajya Sabha Secretariat. Accordingly, the following order was passed on 25.11.2016 for calling of the files of the five earlier writ petitions:

“1. This writ petition as per para 1 of the present writ petition is the sixth petition because para 1 of the present writ petition states that five writ petitions are pending but the same be treated as non-existent and nullity. I do not understand that how pending writ petitions can be treated as non-existent and nullity.

2. Counsel for the respondent nos. 1 and 2 has given the details of five other earlier writ petitions which are more or less seeking the same relief on nearly the same issues and causes of action of challenge to certain rules and regulations of the Rajya Sabha Secretariat with respect to appointment of the petitioner as an Additional Secretary. The details of the five writ petitions filed by the same petitioner, and that also through the same counsel, are as under:-

<u>Sl.No.</u>	<u>Case No.</u>	<u>Titled as</u>
1.	W.P.(C) No. 1658/2014	S.N.Sahu Vs. Chairman, Rajya Sabha & Ors.
2.	W.P.(C) No. 4233/2014	S.N.Sahu Vs. Chairman, Rajya Sabha & Ors.
3.	W.P.(C) No. 3178/2014	S.N.Sahu Vs. Chairman, Rajya Sabha & Ors.
4.	W.P.(C) No. 5981/2015	S.N.Sahu Vs. Chairman, Rajya Sabha & Ors.
5.	W.P.(C) No. 9295/2015	S.N.Sahu Vs. Chairman, Rajya Sabha & Ors.

3. Let the files of the aforesaid five writ petitions be sent to this Court on the next date of hearing in order to decide what is the appropriate order to be passed in the present writ petition.

4. List on 29th November, 2016.”

2. In the present writ petition, the petitioner seeks the relief of cancellation of the appointments of Shri Ramacharyulu and Shri Mukul Pande as the Additional Secretaries of the Rajya Sabha Secretariat. In this

regard, writs in the nature of *quo warranto* and *certiorari* are sought. The actions of the employer/Rajya Sabha Secretariat in appointing Shri Ramacharyulu and Shri Mukul Pande are prayed for being declared as illegal, arbitrary and perverse.

3. Following are the relief clauses of this writ petition:-

“a) writ, order or direction in the nature of *quo warranto* on appointment of *Shri Ramacharyulu* and *Shri Mukul Pande* as the Additional Secretary of RSS vide impugned File Noting dated 21.12.2015 approved by Chairman and RSS Notifications No.RS.3/1/4/2015/112-Perl. and RS No.3/1/4/2015/113-Perl. Dated 22.12.2015 etc.,

b) writ, order or direction in the nature of *certiorari* seeking quashing/setting aside the appointment of *Shri. Ramacharyulu* and *Shri Mukul Pande* as the Additional Secretary of RSS vide impugned File Noting dated 21.12.2015 approved by Chairman and RSS Notifications No.RS.3/1/4/2015/112-Perl. and No.RS.3/1/4/2015 113-Perl. dated 22.12.2015 etc.,

c) writ, order or direction in the nature of *mandamus* to respondents declaring that their actions are illegal, arbitrary and perverse which have not only violated Article 14, 21 and 98 of the Constitution of India but also all canons of law and rule of law and

d) pass such other order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

4. A reference to the aforesaid prayer clauses of the writ petition shows that challenge is laid to the appointment of Shri Ramacharyulu and Shri Mukul Pande for cancelling of their appointments as Additional Secretaries in the Rajya Sabha Secretariat by seeking writs in the nature of *quo warranto*, *certiorari* etc. Let us first examine whether the petitioner

can pray for a writ of *quo warranto* with respect to appointments of Shri Ramacharyulu and Shri Mukul Pande as per prayer (a) of the writ petition.

5. It is a settled law that a writ of *quo warranto* can be sought only if there is found to be violation of a statutory provision. This is so held by the Supreme Court in its various judgments and two such judgments are in the cases of ***B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and Others, (2006) 11 SCC 731(2) and Rajesh Awasthi Vs. Nand Lal Jaiswal & Others (2013) 1 SCC 501.*** The relevant paragraphs of the judgment of the Supreme Court in the case of ***B. Srinivasa Reddy (supra)*** are paras 49, 57 and 60 which hold that a writ of *quo warranto* can only be filed if there is found to be violation of a statutory provision. These paras 49, 57 and 60 read as under:-

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

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57. It is settled law that a writ of quo warranto does not lie if the alleged violation is not of a statutory nature. Three judgments relied on by Mr. P.P. Rao can be usefully referred to in the present context.

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60. Thus it is seen that a writ of quo warranto doe not lie if the alleged violation is not of a statutory provision.” (underlining added)

6. A reading of the present writ petition shows that there are no averments whatsoever as regards what are the statutory provisions or statutory rules which are violated. In fact, in the writ petition, there are averments that the rules must be framed because there is an absence of rules. On a query being put to the counsel for the petitioner to show the paragraphs as to where petitioner has averred violation of statutory provisions in the present writ petition, counsel for the petitioner drew the attention of this Court to para 5.4(f) and (g) of the writ petition and which paras read as under:-

“f. Even though, in terms of *Rule 6A of the Rajya Sabha Secretariat (Methods of Recruitment and Qualifications for Appointment) Order, 2009*, Respondent no.1 is the sole authority for making appointments in the RSS, none of the Respondent No.1 & 2 have specified any qualifications through a special or general order for such posts as mandated by the said rule.

Copy of the relevant extracts of the RSS Order 2009 is annexed herewith and marked as **ANNEXURE-P4**.

g. In absence of laid down rules determining the service conditions in the RSS, the rules of Government of India applies as per RSS Rule 1957 Rules. In not invoking the Government of India rules for appointment to the posts of additional secretary in the instant case, the statutory rules of 1957 have been violated.

Copy of the relevant extracts of the RSS Rule 1957 is annexed herewith and marked as **ANNEXURE-P5.**”

7. It is therefore clear that the present writ petition seeking reliefs in the nature of *quo warranto* is not maintainable because there is no pleading in the writ petition as to which statutory provision is violated in the

appointments of Shri Ramacharyulu and Shri Mukul Pande. Prayer (a) therefore is misconceived and the writ petition is liable to be and is accordingly dismissed so far as prayer (a) is concerned.

8. That takes us to the second prayer seeking writ or direction in the nature of *certiorari* for quashing of the appointments of Shri Ramacharyulu and Shri Mukul Pande as Additional Secretaries in the Rajya Sabha Secretariat. A writ petition seeking a relief in the nature of *certiorari* for quashing of the appointments without seeking the relief that petitioner should be appointed as an Additional Secretary, is a relief where petitioner has to plead his locus but the writ petition does not plead any *locus standi* of the petitioner for filing of the writ petition. Putting it in other words, a person has *locus standi* if his personal interest is affected, and then only such a person has a right to file judicial proceedings including a writ petition to quash the appointments of certain persons to certain posts. Once petitioner does not seek his appointment to the subject post as per the prayers made in the writ petition which have been reproduced above, the petitioner would have no *locus standi* to seek writ in the nature of *certiorari* for quashing of the appointments of Shri Ramacharyulu and Shri Mukul Pande because in the absence of locus the only other way for the petitioner to seek quashing of the appointments of Shri Ramacharyulu and Shri Mukul

Pande as Additional Secretaries of the Rajya Sabha Secretariat would be by seeking a writ of *certiorari* or a declaration of illegality of appointments in a Public Interest Litigation (PIL), and admittedly the present writ petition is not a PIL. If a person is wrongly appointed to a public post then for questioning the appointment of such a person to a public post can be done by filing of a Public Interest Litigation as held by the Supreme Court in the cases of *Centre for PIL and Another Vs. Union of India and Another*, (2011) 4 SCC 1; *State of Punjab Vs. Salil Sabhlok and Others*, (2013) 5 SCC 1 and *N. Kannadasan Vs. Ajoy Khose and Others*, (2009) 7 SCC 1, however as already stated above the present petition is not in the nature of Public Interest Litigation as per the averments made in the writ petition and which averments essentially pertain to injustice caused to the petitioner as petitioner is claimed to have been illegally denied the post of Additional Secretary in the Rajya Sabha Secretariat including on account of non-framing of requisite rules, petitioner being downgraded so far his Annual Performance Appraisal Reports (APARs) are concerned etc etc.

9. Therefore, the petitioner cannot be granted the relief of writ of *certiorari* for quashing of the appointments of Shri Ramacharyulu and Shri Mukul Pande as Additional Secretaries of Rajya Sabha Secretariat because the petitioner does not seek his own appointment but only seeks quashing of

the appointments of Shri Ramacharyulu and Shri Mukul Pande and thus the petitioner lacks *locus standi* to question the appointments by way of the present writ petition and the only remedy of the petitioner was to file a PIL. The writ petition therefore so far as the second prayer of claim of writ of *certiorari* is liable to be and is accordingly dismissed.

10. The third prayer in the writ petition is related to the first two prayers and that third prayer would also stand disposed of in terms of the aforesaid discussion rejecting the first two prayers.

11. Let us now refer to the relief clauses and the main causes of action so far as the earlier five writ petitions are concerned, and which will also show that the present writ petition is nothing but an abuse of the process of law on account of the petitioner filing repeated writ petitions on essentially the same set of facts contained in one or more of the earlier writ petitions. No doubt, there may be cosmetic and minor changes here and there in the repeated writ petitions but in essence most of the writ petitions are filed on the same facts and causes of action as will be demonstrated below. The present writ petition is therefore liable to be dismissed as there cannot be repeated litigations on the set of facts and which are essentially the same causes of action which are the subject matter of earlier pending writ petitions.

12. (i) The first writ petition which was filed by the petitioner was W.P.(C) 1658/2014. The memo of parties and prayer clauses as regards this writ petition (as amended) read as under:-

“Memo of parties

W.P. (C) 1658/2014

IN THE MATTER OF:

MR. S.N.SAHU
JOINT SECRETARY
RAJYA SABHA SECRETARIAT,
PARLIAMEN TOF INDIA,
530, PARLIAMENT HOUSE ANNEXE,
NEW DELHI.

.... PETITIONER

VERSUS

1. CHAIRMAN, RAJYA SABHA
AS THE ADMINISTRATIVE HEAD,
THE HONOURABLE CHAIRMAN, RAJYA SABHA,
PARLIAMENT HOUSE,
NEW DELHI
2. SECRETARY-GENERAL,
RAJYA SABHA SECRETARIAT,
PARLIAMENT HOUSE,
NEW DELHI
3. MR. D.B.SINGH
ADDITIONAL SECRETARY
RAJYA SABHA SECRETARIAT,
PARLIAMENT HOUSE,
NEW DELHI
4. UNION OF INDIA,
THROUGH CABINET SEC,
GOVERNMENT OF INDIA,
NEW DELHI
5. SECRETARY
DEPARTMENT OF PERSONNEL,
GOVERNMENT OF INDIA,
NORTH BLOCK, NEW DELHI.

RELIEF CLAUSES

“In view of the above submission, it is therefore, most respectfully prayed, that in the interest of justice and equity, this Hon’ble Court may kindly be pleased to issue:

- (a) Writ, order or direction in the nature of *quo warranto* requiring Respondent No.3 to explain, within a period of three months, in what capacity he is holding the post of Additional Secretary in the Rajya Sabha secretariat and requiring the other Respondents to explain under what provision of law, they have appointed Respondent No.3 as Additional Secretary in the Rajya Sabha secretariat and that too in lieu of the Petitioner; and
- (b) Writ, order or direction in the nature of *certiorari* for quashing/setting aside, within a period of three months, the impugned orders and notifications dated 05.10.2011 by which Respondent No.3 has been appointed as Additional Secretary by the Respondents and is entitled to the rank, remuneration and pensions of an Additional Secretary in violation of all rules and provisions of law as well as Article 14 and 21 of the Constitution;
- (c) Writ order and direction, within a period of two months, to invoke the provision of deemed reversal to the present cadre of Respondent No.3 in consonance with DoPT. OMs No.6/8/2009-Estt. (Pay-II) dated 17th June, 2010, 01.03.2011 and 16.05.2013; and OM No. 14017/30/2006-Estt. (RR) dated the 29.11.2006;
- (d) Writ, order or direction in the nature of mandamus directing the Respondents to immediately frame rules for recruitment of officers of the level of Joint Secretary and above in accordance with the order dated 02/08/1996 of the Hon’ble Supreme Court in WP(C) no. 785/95 titled as “*P.K.Sandhu Vs. Shiv Raj V. Patil*”, and refrain from making appointments to such posts until recruitment rules for the same have been framed;
- (e) Writ, order or direction in the nature of mandamus directing the Respondents to appoint the Petitioner as Additional Secretary in the Rajya Sabha Secretariat in accordance with law with effect from April 2011, the date of retirement of Sri Gopalkrishnan and the subsequent vacancy of Additional Secretary in the Secretariat; or in the alternative, direct the Respondents to lawfully consider the representation of the Petitioner for promotion to the rank of Additional Secretary expeditiously from April, 2011 preferably within a period of two months and restore his seniority as was assured by the Rajya

Sabha Secretariat to the Prime Minister's Office; and that no promotion/appointment must take place till such rules are framed by Rajya Sabha Secretariat for promoting and appointing officers to the post of Secretary General, Secretary, Additional Secretary and Joint Secretary; and

(f) Any other or further relief this Hon'ble Court deems just and appropriate in the light of the facts and circumstances of the case in favour of the Applicants/Petitioners and against the Respondents.

(g) Writ, order or direction in the nature of Certiorari for setting aside Rule 6A of the Rajya Sabha Secretariat (Methods of Recruitment and Qualifications for Appointment) Order, 2009 wherein the Chairman of Rajya Sabha has powers for making appointments to the posts Joint Secretary or higher.

(h) Writ, order and direction in the nature of mandamus directing the Respondents No.1 & 2 not to appoint any, officers to the posts of the level of Joint Secretary and above under the Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1957 or any orders framed thereunder by the Rajya Sabha Secretariat till the time rules are framed for the purpose of recruitment to the said posts.

(i) Writ, order and direction in the nature of mandamus directing Respondent No.1 not to involve officers on deputation from the executive to the Rajya Sabha Secretariat for framing recruitment rules for the post of Joint Secretary and above in that secretariat.

And for this act of kindness the petitioner as in duty bound shall ever pray.”

(ii) It is seen that this writ petition being W.P. (C) No.1658/2014 was filed by the petitioner questioning the denial of his appointment as an Additional Secretary of the Rajya Sabha Secretariat. Petitioner in this writ petition has questioned the discretionary power given to the Chairman of the Rajya Sabha to appoint an Additional Secretary of the Rajya Sabha Secretariat. The discretion which is vested in the Chairman of Rajya Sabha

is as per Rule 6A of the Rajya Sabha Secretariat (Methods of Recruitment and Qualifications for Appointment) Order, 2009 and which Rule 6A was challenged as per the relief clauses of the amended W.P. (C) No.1658/2014 which was filed by the petitioner. Petitioner has also raised the issue that persons who are on deputation from other organizations in the Rajya Sabha Secretariat cannot be appointed as Additional Secretaries in the Rajya Sabha Secretariat. In essence the petitioner therefore in W.P. (C) No.1658/2014 has sought his appointment to the post of Additional Secretary in the Rajya Sabha Secretariat after quashing of the appointment of the respondent no.3 in that writ petition.

13. The next writ petition which was filed by the petitioner is W.P.(C) No.3178/2014 and the basis of the writ petition is that certain representations, which were filed by the petitioner for seeking his appointment as an Additional Secretary in the Rajya Sabha Secretariat, and which were not decided when the first writ petition being W.P.(C) No.1658/2014 was filed, such representations have been decided subsequently and therefore petitioner on account of the decision of those representations got a fresh cause of action for filing the writ petition again to seek his appointment as an Additional Secretary of the Rajya Sabha Secretariat. Besides the facts urged in this W.P.(C) No.3178/2014 and

which were more or less similar to the facts and averments made in the first writ petition being W.P.(C) No.1658/2014, the petitioner in the second writ petition being W.P.(C) No.3178/2014 made an additional prayer for quashing of Rule 4 (1) (b) of the Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1957 as per which the persons who come on deputation to Rajya Sabha could be appointed as Additional Secretaries in the Rajya Sabha Secretariat i.e persons who are not the employees of the Rajya Sabha Secretariat but are persons on deputation can also be considered and appointed to the post of Additional Secretary in the Rajya Sabha Secretariat. Though this second writ petition is not before me for hearing, and therefore I make no final observations one way or the other, really this second writ petition was unnecessary because the main averments and the main causes of action with their bundles of facts were essentially the same as in the first writ petition being W.P.(C) No.1658/2014 since however this second writ petition being W.P.(C) No.3178/2014 has been admitted for hearing by a learned Single Judge of this Court vide order dated 16.7.2015, the same will be decided when it comes up for hearing in its turn.

14. The third writ petition which was filed by the petitioner was W.P. (C) No. 4233/2014. By this writ petition, petitioner questioned the

extension of the contractual appointment of Shri D.B. Singh and who was respondent no.3 in this W.P. (C) No. 4233/2014, and which Shri D.B. Singh was also the respondent no.3 in the earlier writ petitions being W.P. (C) nos. 1658/2014 and 3178/2014. By the earlier two writ petitions being W.P. (C) nos. 1658/2014 and 3178/2014, appointment of respondent no. 3/Shri D.B. Singh as originally made was questioned and in the third writ petition being W.P. (C) No. 4233/2014 the extension given to Shri D.B. Singh of one year from 1.7.2014 was questioned. Once again therefore this writ petition being W.P. (C) No. 4233/2014 was really unnecessary because the original appointment of respondent no.3 was also questioned in the two earlier writ petitions being W.P. (C) 1658/2014 and W.P. (C) 3178/2014 and in case the petitioner would have succeeded in such earlier writ petitions, petitioner obviously would have been granted necessary consequential reliefs including setting aside of the extension given to the respondent no.3/Shri D.B. Singh. This writ petition being W.P. (C) No.4233/2014 has been admitted for hearing by a learned Single Judge of this Court vide order dated 16.7.2015, but, *prima facie* this writ petition is infructuous because the contractual period of Shri D.B. Singh was up to one year and which has expired on 1.7.2015 and as stated above, if the petitioner succeeds in his claim for being appointed as an Additional Secretary in the Rajya Sabha

Secretariat, petitioner in any case would have got consequential reliefs in his earlier two writ petitions being W.P.(C) nos. 1658/2014 and 3178/2014.

15. (i) The fourth writ petition being W.P. (C) No.5981/2015 came to be filed by the petitioner because petitioner's APARs were downgraded and if the down gradation of the petitioner would be correct, then, the petitioner cannot seek appointment as an Additional Secretary in the Rajya Sabha Secretariat. Petitioner, therefore, filed the fourth writ petition being W.P. (C) No.5981/2015 questioning and challenging his down gradation in APARs for certain years. In the meanwhile, one Shri N.K. Singh was appointed as the Additional Secretary in the Rajya Sabha Secretariat and the petitioner in the fourth being W.P. (C) No.5981/2015 also questioned the appointment of Shri N.K. Singh because the petitioner's case consistently has been that he should be appointed as the Additional Secretary of the Rajya Sabha Secretariat.

(ii) Thus, the fact of the matter therefore is that till the petitioner succeeds in getting his downgraded APARs quashed, the petitioner cannot succeed for being appointed as an Additional Secretary in Rajya Sabha Secretariat.

16. Counsel for the petitioner argued before this Court that the present writ petition had to be filed because the Rajya Sabha Secretariat wrongly appointed Shri Ramacharyulu and Shri Mukul Pande as Additional Secretaries in the Rajya Sabha Secretariat although the issue with regard to certain APARs of the petitioner were *subjudice* before this Court in writ petition being W.P.(C) No.5981/2015, however, this argument urged on behalf of the petitioner is a totally frivolous argument inasmuch as merely because a person questions in the judicial proceedings down gradation of his APARs will not mean that there is an automatic stay of operation of such APARs. It is only if the petitioner succeeds in his writ petition being W.P. (C) No.5981/2015 by setting aside the down gradation of his APARS that the petitioner then can at that stage claim that his employer/Rajya Sabha Secretariat should not act on the basis of the downgraded APARs, but, merely because challenge to APARs is pending does not mean that APARs are automatically stayed on the ground that APARs are “*subjudice*” as argued on behalf of the petitioner.

17. The next and the fifth writ petition filed by the petitioner was W.P. (C) No.9295/2015 and which came to be filed because the petitioner’s promotion of the years 2001 and 2007 were cancelled by the Rajya Sabha Secretariat. If the petitioner’s promotion of the years 2001 and 2007 would

be cancelled, then, the petitioner cannot seek appointment as an Additional Secretary of Rajya Sabha Secretariat besides the fact of petitioner losing the benefits on account of promotion being granted for the years 2001 and 2007, and therefore the fifth writ petition came to be filed and which writ petition being W.P. (C) No. 9295/2015 has been admitted for hearing by an order of this Court dated 17.11.2016.

18. The present writ petition is the sixth writ petition filed by the petitioner and which writ petition has already been held to be non-maintainable as per the discussion given hereinabove. I may note that in the present writ petition, the petitioner has alleged malice and illegalities on the part of the Rajya Sabha Secretariat by making averments already made in the earlier writ petitions, and it was argued on behalf of the petitioner before this Court that such averments have been made to show malice of his employer/Rajya Sabha Secretariat for denying the petitioner the post of Additional Secretary in the Rajya Sabha Secretariat and such averments therefore are relevant for showing that the petitioner has been illegally denied the appointment to the post of Additional Secretary and Shri Ramacharyulu and Shri Mukul Pande having been wrongly appointed to the post of Additional Secretaries of the Rajya Sabha Secretariat. However, in the opinion of this Court, the averments made with respect to the alleged

grievances and alleged injustice already made in the earlier writ petitions, have no relevance inasmuch as no reliefs have been prayed in the present writ petition for the petitioner being appointed as an Additional Secretary of the Rajya Sabha Secretariat. Alleged malice and alleged injustice against the petitioner cannot be a ground for quashing of the appointment of Shri Ramacharyulu and Shri Mukul Pande once the petitioner himself is not seeking his appointment to the post of an Additional Secretary of the Rajya Sabha Secretariat in the present case. In fact the petitioner could not even have made a prayer for his appointment as an Additional Secretary to the Rajya Sabha Secretariat in this writ petition inasmuch as if such a prayer was made, the same would arise from the causes of action already pleaded in one or more of the five earlier writ petitions which have been admitted for hearing, and obviously for such reasons the petitioner did not make a prayer in this writ petition for his appointment as an Additional Secretary in the Rajya Sabha Secretariat by being successful in quashing of the appointment of Shri Ramacharyulu and Shri Mukul Pande as then this writ petition would then be directing for the causes of action and reliefs claimed in one or more of the earlier writ petitions, and hence this writ petition would be barred as repeated litigations cannot be initiated on basically the same set of facts and causes of action and reliefs already accordingly prayed in one or more of earlier writ petitions.

19. It is noted that in the present writ petition when the appointments of Shri Ramacharyulu and Shri Mukul Pande are questioned as Additional Secretaries of the Rajya Sabha Secretariat, there are no averments or causes of action alleged in the writ petition of Shri Ramacharyulu and Shri Mukul Pande not meeting the eligibility criteria or in some other way having disqualifications so as not to be appointed to the post of Additional Secretaries in the Rajya Sabha Secretariat. Once there are no disqualifications pleaded or no facts averred as to how Shri Ramacharyulu and Shri Mukul Pande do not have the eligibility criteria for appointment as Additional Secretaries of the Rajya Sabha Secretariat, this writ petition essentially becomes in substance disentitlement of Shri Ramacharyulu and Shri Mukul Pande for being appointed as Additional Secretaries in the Rajya Sabha Secretariat because actually the petitioner should have been so appointed i.e actually the writ petition in law ought to have sought relief of appointment of the petitioner to the post of Additional Secretary in the Rajya Sabha Secretariat instead of Shri Ramacharyulu and Shri Mukul Pande, but that is not so done because if that was done, the present writ petition would be liable to be dismissed because the bundle of facts and causes of action for appointment of the petitioner to the post of Additional Secretary in Rajya Sabha Secretariat are also *subjudice* under such bundle of facts and causes of action in the five earlier writ petitions

filed in this Court. The petitioner therefore is really trying to be clever by half because petitioner could not have filed this writ petition for seeking his appointment to the post of an Additional Secretary of the Rajya Sabha Secretariat, and therefore, he did not claim relief for being so appointed but in essence yet seeks cancellation of appointments of Shri Ramacharyulu and Shri Mukul Pande on the ground of alleged injustice and alleged grievances to the petitioner.

20. It is therefore seen that this writ petition is clearly not maintainable for reasons which are crystallized as under:-

(i) No prayer for writ of *quo warranto* can be granted because the petitioner has not pleaded violation of any statutory provision or rule in the writ petition.

(ii) Relief of *certiorari* cannot be granted because for seeking the relief of *certiorari* as a personal right, the petitioner must plead *locus standi* and which *locus standi* would stand pleaded only if the petitioner seeks his own appointment to the post of Additional Secretary of the Rajya Sabha Secretariat. Petitioner has not sought in this writ petition any prayer for him being appointed as an Additional Secretary of the Rajya Sabha Secretariat and therefore the petitioner does not have the *locus standi* to question the

appointments of Shri Ramacharyulu and Shri Mukul Pande as Additional Secretaries in Rajya Sabha Secretariat by seeking issuance of a writ of *certiorari*. Also, the petitioner deliberately did not make the prayer for his being appointed as the Additional Secretary of the Rajya Sabha Secretariat because if such prayer was made the same would have been predicated on the causes of action which were already *subjudice* in one or more of the five earlier writ petitions which are already admitted for hearing in this Court and thus this writ petition would have been barred as earlier writ petitions are pending.

(iii) The present writ petition is not a writ petition in the nature of a PIL, and therefore, this writ petition cannot be entertained as a PIL for seeking the writ of *certiorari* or a relief of declaration for the alleged appointments of Shri Ramacharyulu and Shri Mukul Pande to be declared as illegal.

(iv) In the present writ petition, there are no averments of disqualifications of Shri Ramacharyulu and Shri Mukul Pande being appointed as Additional Secretaries or that these persons fail to meet the eligibility criteria for being appointed as Additional Secretaries of Rajya Sabha Secretariat, and the present writ petition seeks cancellation of appointment really on the ground of alleged grievances and alleged injustice to the petitioner and which causes of action and bundle of facts are already

subjudice in one or more of the five earlier writ petitions filed by the petitioner, and therefore, this writ petition is in fact not maintainable because simply by clever drafting and pleadings, and avoiding to seek the relief of appointment of the petitioner to the post of Additional Secretary of Rajya Sabha Secretariat, this writ petition by clever drafting and pleadings cannot and does not disclose a cause of action for the reliefs claimed of quashing of the appointments of Shri Ramacharyulu and Shri Mukul Pande more so because there are no disqualifications and lack of eligibility of how these persons fail to satisfy the eligibility criteria for being appointed as the Additional Secretaries of the Rajya Sabha Secretariat.

21. I may finally note that the learned counsel for the respondent nos.1 and 2/Rajya Sabha Secretariat did argue that after all the petitioner was considered along with Shri Ramacharyulu and Shri Mukul Pande for being appointed as an Additional Secretary, and the petitioner can only at best claim a right of consideration and not a right of appointment, however, I am not going into the same inasmuch as that would be going into the merits of the case and which need not be gone into in view of the fact that the present writ petition is not maintainable for the reasons as already stated above. In fact, as already stated above, this writ petition if it sought appointment of the petitioner as an Additional Secretary cannot succeed

unless the petitioner first succeeds not only in his writ petition being W.P. (C) No.5981/2015 wherein petitioner's down gradation of APARs have been questioned and but also in W.P. (C) No.9295/2015 wherein petitioner's cancellation of the promotions of the years 2001 and 2007 are questioned.

22. Before concluding I must note that petitioner in para 1 of the writ petition has stated that this sixth writ petition is filed before this Court treating the five earlier writ petitions as non-existent and nullity but there is no such law that earlier writ petitions which are pending and admitted for hearing can become non-existent and nullity. If the petitioner does not want to pursue the five earlier writ petitions, the petitioner can always file an application for withdrawal of the same. When questioned further, counsel for the petitioner has actually time and again and very vociferously argued that all the earlier writ petitions must be forthwith heard by this Court and which is actually the main grievance of the petitioner that earlier writ petitions should be heard. This Court really fails to understand as to how simply because earlier writ petitions have been admitted for hearing in their turn will mean that the petitioner is prejudiced because there is no reason in service matters writ petitions where ultimately the issue is of monetary benefits either on account of seeking promotion or higher pay scale or a career progression scheme or quashing of the department proceedings etc.

etc that writ petitions should not be heard in their turn and that people who have been standing in queue for hearing of their writ petitions should not be heard in their turn when their writ petitions come up for hearing in the Regular Matters and that the present petitioner's writ petitions though of later years must be given out of turn hearing. This concept of filing a new writ petition essentially for getting earlier admitted writ petitions heard is an unheard concept and argument and needs to be put down with heavy hands. Petitioner cannot expect that there is only one case of his in this Court for being decided and this Court does not have cases of hundreds and thousands of other petitioners who are silently waiting for their turn in queue for their cases to be heard on merits.

23. In view of the above, this writ petition is dismissed with costs of Rs.3 lacs noting that the petitioner has enough money for filing sequential judicial proceedings in this Court. Costs be deposited by the petitioner within four weeks from today with the Prime Minister's National Relief Fund. All the pending C.M.'s also stand disposed of.

DECEMBER 5, 2016
ib/Ne/Atk

VALMIKI J. MEHTA, J