
(2013) 06 JH CK 0022

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 1181 of 2013

Chandra Bhushan Kumar and Ashok Kumar Nag

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Constitution of India, 1950 — Article 124, 14, 148, 156(1), 164(1)
Government of India Act, 1935 — Section 240

Citation : (2013) 4 AJR 189 : (2013) 3 JLJR 416

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajiv Ranjan and Amit Kr. Tiwari W.P.C. No. 1181/2013 and A.K. Mehta and Rahul Kumar W.P.C. No. 1280/2013, for the Appellant; Abdul Allam, Senior Standing Counsel II, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. In both the writ petitions the common impugned notification dated 16.2.2013 issued by the Deputy Secretary, Department of Sports, Art, Culture and Youth Affairs, Government of Jharkhand are under challenge whereby the services of the petitioners have been terminated with immediate effect in exercise of powers under Rule 4(vi) of the Jharkhand State Youth Commission Rules, 2012 (hereinafter referred to as Rules of 2012). Therefore, these two writ petitions are being heard together and decided by this common judgment.

2. The facts of the instant cases are in a very narrow compass. The petitioners were appointed as Chairman and members of Jharkhand Youth Commission by the notification contained in memo No. 21 dated 8.1.2013 issued under the signature of Deputy Secretary of the same department, Government of Jharkhand under the orders of his Excellency Governor of Jharkhand in exercise of powers under Rule 3 of the aforesaid Rules of 2012. Petitioner No. 1 in W.P.C. No. 1181 of 2013 was nominated as chairman and petitioner No. 2 W.P.C. No.

1181 of 2013 and sole petitioner in W.P.C. No. 1280 of 2013 were nominated as members of the said Commission. Under the said notification the term of the commission was fixed for 3 years or attaining the age of 40 years, whichever ever is earlier to be reckoned from the date of joining of the incumbents. The Commission was conferred with powers to make recommendations as required under the relevant provisions of the Rules of 2012 to the State Government and also exercise such other function as contemplated under Rule 6 and 7 thereof.

According to the petitioner No. 1 in W.P.C. No. 1181 of 2013, he possesses the requisite qualification for being appointed as Chairman/member of the Commission as he has wide experience in the field of youth education and also possess a Master Degree in Business Administration. The other two petitioners also claim to fulfill the necessary eligibility criteria as per the Rules of 2012 and are below the age of 40 years. The sole petitioner in W.P.C. No. 1280 of 2013 also claims to be actively associated with youth activities and all these petitioners submitted their application for appointment as members and Chairman of the Youth Commission for consideration of their candidature. By a conscious decision of the State Government they were appointed as Chairman and Member of the said Commission vide the notification dated 8.2.2013 with prescribed tenure of 3 years or attaining the age of 40 years, whichever ever gets completed earlier to be reckoned from the date of their joining. Petitioner No. 1 of W.P.C. 1181 of 2013 joined on 9.1.2013 and petitioner No. 2 joined on 10.1.2013. The sole petitioner in W.P.C. No. 1280 of 2013 joined on 8.1.2013 in the said Commission. It is further stated on behalf of the petitioners that by the common impugned notification these petitioners have been removed from their posts without any show cause or notice in an arbitrary manner invoking Rule 4(vi) of Rules of 2012 with immediate effect stipulating payment of 1 month salary in lieu thereof.

3. The common grounds for assailing the impugned notification on behalf of the petitioners essentially are that the Jharkhand State Youth Commission Rules, 2012 have been framed in exercise of powers conferred under proviso to Article 309 of the Constitution of India by his Excellency, the Governor of Jharkhand. As per Rule 3, the Commission has tenure of 3 years. As per Rule 4(i) and (ii), each member shall have a tenure of 3 years and maximum age for being appointed as Chairman or Member of the Commission would be 40 years. Rule 4(v) prescribes the condition which entails disqualification for removal from the post of Chairman or Member of the said Commission. Proviso to the aforesaid rule stipulates opportunity of hearing before any such action is taken. Rule 4(vi) provides for removal of the Chairman/Member of the Commission by giving them 1 month notice or salary in lieu thereof.

4. According to learned counsel appearing on behalf of the petitioners Rule 4(vi) cannot be read in isolation from the other provisions specifically Rule 4(v). Rule 4(vi) is in nature of "Henry VIII" clause which is alien to the exercise of power in a democratic set up by a competent authority or the State instrumentality without any opportunity of hearing or show cause or without any foundational

basis. It is further submitted that Rule 4(vi) has to be read in conjunction with proviso to Rule 4(v) which contemplates granting proper opportunity of hearing before any action of removal is taken. Learned counsel for the petitioners further submit that in the instant case the respondents have failed to bring on record any foundational basis for exercise of such power. No conditions as are enumerated in Rule 4(v) entailing disqualification for such posts have either been made out on the part of the respondents. The respondent- State and its authorities cannot be permitted to act in arbitrary manner as the incumbents to the post of Chairman or Member of the said Commission are appointed under Rules of 2012 framed under Proviso to Article 309 of the Constitution of India with a security of tenure. Learned counsel has further assailed the impugned action sought to be justified by the respondents on the ground of invoking of Doctrine of Pleasure by his Excellency, Governor of Jharkhand State. It is submitted on their behalf that the Doctrine of Pleasure is not an unqualified power and is subject to restriction imposed by the Constitution and to be read into the Rules framed under Article 309 of the Constitution of India.

5. Learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, (para 19, 99, 106, 11 and 113 thereof). By relying upon the opinion of the Hon'ble Supreme Court rendered in the said judgment it is submitted that the rules under which the power has been exercised cannot be allowed to confer absolute, arbitrary and unguided power upon the respondent- State. They cannot be resorted to in violation of one of the great Rules of natural justice -- "audi alteram partem" Rule. In the absence of proper opportunity to show cause and hearing the exercise of such power becomes arbitrary and violative of Article 14 of the Constitution of India. Learned counsel for the petitioner has further relied upon the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, (Para 186, 194, 225, 229, 263 thereof). He has further supported his aforesaid contention by relying upon the majority opinion rendered in the said case that the impugned action of the respondent trespasses upon the rights guaranteed under Part XIV Chapter I of the Constitution of India relating to security of tenure of office of person serving under Union or State. Learned counsel has further relied upon a decision of the Hon'ble Supreme Court in the case of Union of India (UOI) and Another Vs. Shardinu, (Para 15, 22, 25, 26, 33 thereof). It is submitted that the curtailment of tenure of the petitioners by such an arbitrary action on the part of the respondents cannot be saved by invoking Rule 4(vi) of the Rules of 2012. Learned counsel has further relied upon another decision of the Constitution Bench of the Hon'ble Supreme Court rendered in the case of B.P. Singhal Vs. Union of India (UOI) and Another, (Para 23, 24, 25, 32, 33 thereof). It is further contended on behalf of the petitioners by relying upon the statement of learned author H.W.R. Wade and C.F. Forsyth which has been quoted in the aforesaid judgment that the whole concept of unfettered discretion

is inappropriate to an exercise of power by public authority. The doctrine of Pleasure in its absolute unrestricted application does not exist in India. The said doctrine is severely curtailed in the case of government employment, as will be evident from clause (2) of Article 310 and clause (1) (2) of Article 311. It is further submitted that Doctrine of Pleasure in respect of office held under the State are subject to restriction and cannot be arbitrarily and unreasonably exercised to curtail the constitutional guarantee conferred under the said Article. Learned counsel for the petitioner has also relied upon the judgment rendered by the learned Single Judge of this Court in W.P.C. No. 1294 of 2007 reported in 2007(3) JLR 156 (Annexure-5). In the said case the appointment of the Chairman and Member of the Jharkhand State Women Commission under Jharkhand State Women Commission Act, 2005 were revoked before expiry of their terms without giving notice or opportunity of hearing. The said impugned action were held to be bad in law being uninformed by any reasons and giving no opportunity of hearing to the petitioners.

6. Based upon the aforesaid arguments learned counsel for the petitioners submitted that the respondents have failed to justify their impugned action on the touchstone of Article 14 of the Constitution of India. The respondent--State cannot be permitted to invoke the Doctrine of Pleasure by invoking the said Rule 4(vi) without any foundational basis or any opportunity of hearing to the said persons to curtail their tenure of service as Chairman and Member of the said Commission. The impugned action is bad in law and fit to be quashed.

7. Learned Senior Standing Counsel No. II appearing on behalf of the State, however supported the impugned notification inter-alia on grounds that Rule 4(vi) is not under challenge in the present writ application on any ground of arbitrariness or unguided conferment of powers to the respondent- State. In absence of such a challenge to the rule the respondents are fully justified in invoking the said rule for removing the petitioners from the posts of Chairman and Members of the said Commission. It is further submitted that petitioners, who were holding public post have been removed simplicitor without any stigma or disqualification attached to them by invoking the said rule under the power conferred under the State Government upon giving 1 month notice or salary in lieu thereof. It is submitted on behalf of the State- respondent that the impugned exercise of power invoking the Doctrine of Pleasure by his Excellency, Governor of Jharkhand has been exercised in a proper manner. Learned counsel appearing on behalf of the State has relied upon the judgment rendered by the Hon''ble Supreme Court in the case of J.P. Bansal Vs. State of Rajasthan and Another, so far as the interpretation of Article 310(2) of the Constitution of India is concerned. It is submitted that the impugned Rules in question though do not stipulate any grant of compensation on premature termination but in fact it provides for salary of 1 month in lieu of the notice of such termination. The petitioner under a contract of service, cannot complain exercise of such specially conferred power to the State to remove them after giving 1 month notice or salary in lieu thereof. It is not necessary in such circumstances to give

opportunity of hearing to the petitioners as the impugned actions are not undertaken in exercise of powers under Rule 4(v) removing the Chairman or Members of the Youth Commission on established grounds of disqualification enumerated thereunder. Learned counsel for the State has submitted that the appointment were made in haste by the Government in power at the relevant point of time and after invocation of the President Rule in the State the petitioners have been removed as the appointment itself suffered from lack of following proper procedure for appointment to public post after proper advertisement and consideration of cases of other eligible candidates. The impugned action, therefore, should not be interfered with.

8. I have heard counsel for the parties at length and gone through the relevant materials on record including the impugned notification. It is apparent that the Jharkhand State Youth Commission Rules, 2012 have been framed in exercise of power under proviso to Article 309 of Constitution of India by his Excellency, Governor of Jharkhand. Rule 4(i) provides tenure of 3 years to each member, Rule 4(ii) provides that maximum age for incumbent to the post of Chairman/Member is 40 years. By the notification dated 8.1.2013 issued by the Deputy Secretary, Department of Sports, Art, Culture and Youth Affairs, Government of Jharkhand, the Jharkhand State Youth Commission was constituted in exercise of power under Rule 3 of the said Rules of 2012 nominating 3 persons who are petitioners before this Court as Chairman and Members of the said Commission. The said commission itself provides that the Commission shall have tenure of 3 years or till the incumbents attain the age of 40 years, whichever ever is earlier to be reckoned from the date of joining. The duties and responsibilities of the Commission are enshrined in Rule 6 and 7 of the Said Rules of 2012 which broadly conceive of making recommendations and advise to the State Government on issues relating to youth; for their welfare and improvement; for making recommendations for providing opportunity and avenues for their development as also protection of the youth from falling prey to such social evils like drugs and HIV aids etc. Rule 4(v) provides for the conditions which entails disqualification from the membership of the said Commission such as on being declared insolvent; for conviction in criminal case involving moral turpitude; for being mentally incapacitated on the ground of being rendered incapable to discharge duties or refusing to do so; for remaining absent for minimum of 3 sittings without permission of the Chairman; for having indulged in such acts which are not behaving of the incumbents to the post of Chairman and Member of the said Commission and whose presence may be detrimental to public interest. Proviso to sub rule stipulates that the incumbents should be given proper opportunity of hearing before taking any action for removal from the said posts. Rule 4(vi) stipulates that the State Government may remove the member or Chairman of the Commission by giving 1 month notice or salary for 1 month in lieu thereof.

9. Though counter affidavit and supplementary counter affidavit have been filed on behalf of the State-Respondent, it is not the stand of the respondent that

petitioners have been removed from service on any ground of disqualification enumerated under Rule 4(v) of the Rules of 2012. The respondents have squarely relied upon the Doctrine of Pleasure which according to them is reflected in the power conferred under Rule 4(vi) where under the State Government may remove the incumbents to the post of Chairman/Member of the Youth Commission by giving 1 month notice or salary of 1 month in lieu thereof. It is, therefore, not the case that these petitioners are said to be suffering from any disqualification which has resulted in their removal by the impugned notification.

10. The question, therefore, which falls for consideration is whether the respondent--State is entitled to invoke the Doctrine of Pleasure by removing the petitioners from the post of Chairman/Members by giving them 1 month salary under Rule 4(vi) of the Rules of 2012. As stated herein above, the Rules have been framed in exercise of power under Proviso to Article 309 of the Constitution of India. The Part XIV Chapter I of the Constitution relates to the service under the Union and the State. Article 310 provides for recruitment and conditions of service of the person serving under Union or State. Article 310 provides for tenure of office of person serving under the Union or the State. It provides that any person holding any civil post under a State or Union holds office during the pleasure of the Governor of the State. Article 310(2) provides that notwithstanding the person holding civil post under the Union or State and holding office during the pleasure of the President or Governor of the State, as the case may be, if the President or the Governor, as the case may be deem it necessary in order to secure services of the person having special qualification, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is. for reasons not connected with any misconduct on his part, required to vacate that post. Article 311 provides for manner in which the member of Civil service of the Union or State or holding the Civil post under the Union or State shall be dismissed or removed or reduced in rank. Article 311(2) provides that no such action can be taken except after an inquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges. The second proviso to the Article 311 provides for the conditions in which such an inquiry can be dispensed with. For better appreciation relevant provisions of Article 309 to 311 are quoted herein below:--

Article 309:--Recruitment and conditions of service of persons serving the Union or a State:--Subject to the provisions of this Constitution. Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:--

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the

case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Article 310. Tenure of office of persons serving the Union or a State.--(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Article 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.--(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

11. As stated herein above the aforesaid provisions framed under Part XIV of the Constitution ensure protection of security of tenure to the member holding civil post under the Union or State. The tenure of such persons holding the civil posts under the Union or State can be curtailed only in the manner provided thereunder. The Rules which are framed governing the recruitment and service conditions under proviso to Article 309 of Constitution have to be essentially inconformity with the constitutional protection guaranteed to the persons holding such civil posts. The very question relating to the interpretation of the provision of Article 309 and Doctrine of Pleasure contained in Article 310 and Article 311 have been interpreted by the Hon''ble Supreme Court right after the inception of the Constitution. The said Doctrine was interpreted by the Constitution Bench of the Hon''ble Supreme Court in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., . In the said case Rule 148(3) and 149(3) of the Indian Railway Establishment Code (Vol-1) were under consideration. Under Rule 148(3) the service of Railway employee could be terminated after giving notice for the period specified. Under Rule 149(3) the termination of service of the employees'' concern can be brought about by serving them with notice for the requisite period or paying them salary for the said period in lieu of notice under Rule 149(4). The question which was considered in the said appeal was whether the termination of service of a permanent Railway servant under Rule 148(3) or 149(3) amounts to his removal under Article 311 of the Constitution of India. It was also held that the pleasure of the President was clearly controlled by the provision of Article 311 and ft was not absolute but to be exercised in accordance with requirement of Article 311.

12. The aforesaid provisions have been under consideration by the Hon''ble Supreme Court in a number of judgments and also in the case of B.P. Singhal Mrs. Union of India & another (supra) which related to the removal by Governor by invoking Doctrine of Pleasure by withdrawal of the Presidential pleasure. The judgment rendered by Hon''ble Mr. Justice R.V. Ravindran on behalf of the Constitution Bench after a thorough review of the scope of Doctrine of pleasure as interpreted by the judgments earlier rendered by the Hon''ble Supreme Court came to a definite conclusion that the Doctrine of Pleasure in its absolute unrestricted application does not exist in India. By referring to number of judgments rendered by the Hon''ble Supreme Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, . in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., , in the case of Parshotam Lal Dhingra Vrs. Union of India reported in AIR 1964 SC 600 the

Constitution Bench of Hon"ble Supreme Court has held as under:--

Para 26:- The Constitution refers to offices held during the pleasure of the President (without restrictions), offices held during the pleasure of the President (with restrictions) and also appointments to which the said doctrine is not applicable. The articles in the Constitution of India which refer to the holding of office during the pleasure of the President without any restrictions or limitations are Article 75(2) relating to Ministers. Article 76(4) relating to the Attorney General and Article 156(1) relating to Governors. Similarly Articles 164(1) and 165(3) provides that the Ministers (in the States) and Advocate General for the State shall hold office during the pleasure of the Governor.

Para 27. Article 310 read with Article 311 provides an example of the application of "at pleasure" doctrine subject to restrictions. Clause (1) of Article 310 relates to the tenure of office of persons serving the Union or a State, being subject to doctrine of pleasure. However, clause (2) of Article 310 and Article 311 restricts the operation of the "at pleasure" doctrine contained in Article 310(1). For convenience, we extract below clause (1) of Article 310 referring to pleasure doctrine and clause (2) of Article 311 containing the restriction on the pleasure doctrine:--

310. Tenure of office of persons serving the Union or a State.--(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.--(1)

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Para 28. This Court in *Parshotam Lai Dhingra v. Union of India*, referred to the qualifications on the pleasure doctrine under Article 310: (AIR p.41, para 9)

9. ... Subject to these exceptions our Constitution, by Article 310(1), has adopted the English common law rule that public servants hold office during the pleasure of the President or Governor, as the case may be and has. by Article 311, imposed two qualifications on the exercise of such pleasure. Though the two qualifications are set out in a separate article, they quite clearly restrict the operation of the rule embodied in Article 310(1). In other words the provisions of Article 311 operate as a proviso to Article 310(1).

Para 29. Again, in *Moti Ram Deka v. North East Frontier Railway*, this Court

referred to the qualifications to which the pleasure doctrine was subjected in the case of government servants, as follows:--

The rule of English law pithily expressed in the Latin phrase *durante bene placito* ("during pleasure") has not been fully adopted either by Section 240 of the Government of India Act, 1935 or by Article 310(1) of the Constitution. The pleasure of the President is clearly controlled by the provisions of Article 311, and so, the field that is covered by Article 311 on a fair and reasonable construction of the relevant words used in that article, would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be exercised in accordance with the requirements of Article 311.

Para 30. The Constitution of India also refers to other offices whose holders do not hold office during the pleasure of the President or any other authority. They are: the President under Article 56; Judges of the Supreme Court under Article 124; the Comptroller and Auditor General of India under Article 148; High Court Judges under Article 218; and Election Commissioners under Article 324 of the Constitution of India. In the case of these constitutional functionaries, it is specifically provided that they shall not be removed from office except by impeachment as provided in the respective provisions.

Para 31. The Constitution of India thus provides for three different types of tenure: (i) those who hold office during the pleasure of the President (or the Governor); (ii) those who hold office during the pleasure of the President (or the Governor), subject to restrictions; (iii) those who hold office for specified terms with immunity against removal, except by impeachment who are not subject to the doctrine of pleasure.

Para 32. The Constituent Assembly Debates clearly show that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices. We may conveniently enumerate them; (i) Offices to which the doctrine of pleasure applied absolutely without any restrictions (Ministers, Governors, Attorney General and Advocate General); (ii) Offices to which the doctrine of pleasure applied with restrictions (Members of defence services, Members of civil services of the Union, Member of an All India service, holders of posts connected with defence or any civil post under the Union, Member of a civil service of a State and holders of civil posts under the State); and (iii) Offices to which the doctrine of pleasure does not apply at all (President Judges of the Supreme Court, the Comptroller and Auditor General of India, Judges of the High Courts, and Election Commissioners). Having regard to the constitutional scheme, it is not possible to mix up or extend the type of protection against removal, granted to one category of offices, to another category.

Para 33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office

under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President without any express limitations or restrictions, it should however necessarily be read as being subject to the fundamentals of constitutionalism": Therefore in a constitutional set-up. when an office is held during the pleasure of any authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time. without notice and without assigning any cause.

Para 34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at Pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons.

(under line not part of the original text, has been added to provide emphasis).

13. The existence of such rule was also subject matter for interpretation by the Hon"ble Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . In para 99 of the said report, while interpreting the provisions of Rule 9(i) the Hon"ble Supreme Court held that the said Rule confers absolute, arbitrary and unguided power on the Corporation and it violates one of the 2 great Rules of natural justice "audi alteram partem" Rule. Such rule was also described as "Henry VIII" clause. The said judgment rendered by the Hon"ble Supreme Court has also been approved by the Constitution Bench in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,

14. In the facts of the present case, as has been noted herein above while invoking the said Rule without giving any opportunity of hearing or notice to the petitioners, the respondents have failed to bring on record any foundational facts or reasons for exercising such power. In other words the impugned action are not informed by any reasons which can be subject matter of judicial review under Article 226 of the Constitution of India. Such an arbitrary exercise of power to terminate the tenure of appointment of these petitioners prematurely without any opportunity of hearing or notice, therefore cannot be sustained in law as well as on facts. The reference of Article 310(2) by the learned counsel for the State is also wholly misplaced as admittedly the conditions prescribed under the said

provisions are not applicable to the facts of the case for justifying the impugned action under the provision of Rule 4(vi) of the Rules of 2012 as the petitioners have been removed by only giving 1 month salary and not any compensation. Though the Rules have not been challenged by the petitioners but the exercise of power under the said Rules have to be in conformity with the Principle of Natural Justice by giving opportunity of hearing or notice to the petitioner and cannot be exercised in an unguided, unanalyzed manner without any foundational basis for exercise of such power. Therefore, the impugned notification in exercise of powers under Rule 4(vi) of the Rules of 2012 cannot be upheld in the eye of law. In the background of the aforesaid facts, reasons and the judgment rendered by the Hon''ble Supreme Court of India on the specific issue of the scope of Doctrine of Pleasure the impugned actions are wholly unsustainable in law being arbitrary and violative of Principle of Natural Justice and deserve to be interfered with in exercise of powers of judicial review under Article 226 of Constitution of India. In that view of the matter, the impugned notification terminating the petitioners from the post of Chairman and members vide notification No. 21 dated 16.2.2013 is quashed. Both the writ petitions are accordingly, allowed.