
(2016) 05 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No. 1315 of 2015

Dr. Aasif G. Shaikh

APPELLANT

Vs

Industry, Energy and Labour Department

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Minimum Wages Rules, 1963 — Rule 4
Minimum Wages Act, 1948 — Section 7

Citation : (2016) 150 FLR 230

Hon'ble Judges : Anoop V. Mohta and A.A. Sayed , JJ.

Bench : Division Bench

Advocate : Mr. Sandesh D. Patil and Ms. Megha Laxman Keluskar, Advocates, for the Appellant; Mr. C.P. Yadav, AGP, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Sayed, J.—By this Petition under Article 226/227 of the Constitution, the Petitioner seeks to quash and set aside the Government Resolution/Order dated 3 September 2014, whereby the appointment of the Petitioner as Chairman of the Advisory Board constituted under the Minimum Wages Act, 1948 and Rules framed thereunder was revoked and in his place Respondent No. 3 was appointed.

2. On 23 May 2013, the Respondent No.2-State of Maharashtra under the provisions of Section 7 of the Minimum Wages Act, 1948 (hereinafter referred to as 'the said Act') and Rule 4 of the Maharashtra Minimum Wages Rules, 1963 (hereinafter referred to "Maharashtra Rules") had appointed the Petitioner as Chairman of the Advisory Board. According to the Petitioner, there were about 25 persons appointed as members of the said Board and the Petitioner was appointed as a Chairman of the said Board.

3. It is the case of the Petitioner that he had worked for more than 16 months as a Chairman of the Advisory Board, however all of a sudden by Government

Resolution/order dated 3 September 2014 his appointment was revoked and in his place Respondent No. 3 was appointed. The Petitioner contends that the impugned Government Resolution/order is bad in law and that his appointment ought not to have been revoked without notice and without following principles of natural justice. According to the Petitioner, in the appointment order it is stated that the Advisory Board is constituted as per Rule 4 of the Maharashtra Rules, for a period of 3 years viz. 23 May 2013 to 22 May 2016 and the Respondent therefore could not have curtailed the aforesaid period of three years.

4. We have heard learned Counsel for the Petitioner and the learned AGP.

5. Under Section 4 of the said Act, the minimum wages are required to be fixed. The procedure for fixing and revising the minimum wages is prescribed in Section 5. Section 7 provides that the Advisory Board is to be constituted by the appropriate Government (i.e. State Government, in the present case) for co-ordinating the work of committees and subcommittees appointed under Section 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages. The term of office of member of the Advisory Board is provided under Rule 4 of the Maharashtra Rules. It reads as follows:

"4. Term of office of member of the Board.- (1) Save as otherwise expressly provided in these rules, the term of office of a non-official member of the Board, shall be three years commencing on the date of his nomination: Provided that such member shall, notwithstanding the expiry of the said period of three years, continue to hold office until his successor is nominated.

(2) A non-official member of the Board nominated to fill a casual vacancy shall hold office for the remaining period of the term of office of the member in whose place he is nominated.

(3) The official member of the Board shall hold office during the pleasure of the State Government."

6. According to the Petitioner he was appointed as Chairman and falls in the category of non-official member and therefore his tenure is 3 years. After going through the relevant provisions of the said Act and the Rules, we are of the view that the Petitioner cannot be said to have any vested right to be continued as Chairman of the Advisory Board. It is pertinent to note that under sub-rule (3) of Rule 4 even the official member of the Board is permitted to hold office during the pleasure of the State Government. The Petitioner, therefore, cannot claim any right for continuing him as the Chairman of the Advisory Board for the entire period of three years, as it sought to be contended. It is noticed that the Chairman and members are paid only travelling allowance and daily allowance. As a matter of fact the Government Resolution/Order dated 23 May 2013 by which the Advisory Board was constituted and the Petitioner was appointed as the Chairman, specifically states that except for the travelling allowance and daily allowance the non-official members are not entitled to any other allowance. Inasmuch as the Petitioner did not have any vested right to continue as a

Chairman of the Advisory Board, there was no question of following the principles of natural justice before removing him as the Chairman of the Advisory Board. As stated earlier as per sub-rule (3) of Rule 4 of the Maharashtra Rules even the official member of the Board can hold office only during the pleasure of the State Government. The Petitioner who is stated to be a non-official member cannot claim any higher right than that of an official member of the Advisory Board. In any event, there is no provision in the Act or in the Maharashtra Rules that prior to removal of the Chairman of the Advisory Board, principles of natural justice are required to be followed. It is also not possible to accept the contention on behalf of the Petitioner that if at, all the members of the Advisory Committee ought to have been removed at one time and not merely the Petitioner. Pertinently, there is no averment in the Petition that the removal of the Petitioner was on account of any mala fides on part of the Respondents.

7. In *B.P. Singhal v. Union of India and anr.*, (2010) 6 SCC 331, relied upon by the learned Counsel for the Petitioner to contend that the doctrine of pleasure cannot be applied in the present case, the Constitution Bench of the Supreme Court was dealing with a Public Interest Litigation concerning the removal of the Governors of States of Uttar Pradesh, Gujarat, Haryana and Goa by the President of India on the advice of the Union Council of Ministers. The facts of that case are entirely different.

8. The judgment in the case of *Mr. Jeevanrao V. Gore v. State of Maharashtra* (Writ Petition No. 326 of 2015 and bunch of other connected Writ Petitions) of the Division Bench of this Court also would also not apply to the facts of the present case. That case was under the State Road Transport Corporation Act, 1950 and Rules framed thereunder, which Act and Rules are quite different and distinct from the said Act and the Maharashtra Rules as the same provided for some restrictions before terminating the Chairman appointed under the provisions of that Act/Rules.

9. However, quite apart from the above, it is an admitted position that the tenure of the Petitioner as Chairman of the Advisory Board, in any event comes to an end on 23 May 2016, i.e. about 17 days from today. In these circumstances, even otherwise, we are not inclined to exercise extraordinary writ jurisdiction of this Court to continue the Petitioner as a Chairman of the Advisory Board.

10. For the aforesaid reasons, no case is made out for interference with the impugned Government Resolution/Order. The Petition is dismissed. No order as to costs.