

(1992) 01 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 446 of 1992

Jai Shankar Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-01-1992

Acts Referred:

Citation : (1992) 01 PAT CK 0016

Final Decision : Dismissed

Judgement

1. This writ petition was moved praying for an appropriate writ order in the nature of qua warranto for "ousting respondent No. 6 from the office of the Member of Bihar Public Service Commission" (hereinafter referred to as "the Commission") on the allegation that he has illegally usurped the same and that he is not entitled to continue.

2. The petitioner claims to be a practising Advocate of this Court. The respondents in this petition are State of Bihar (respondent No. 1), the Secretary, personnel and Administrative Reforms Department (respondent No. 2), the Joint Secretary, Personnel and Administrative Reforms Department (respondent No. 3), the Commission through its Secretary (respondent No. 4), the Chairman of the Commission (respondent No. 5), Dr. Shiv Jatan Thakur, Associate Professor, English Department, B. N. College, Patna, a Member of the Commission (respondent No. 6) and the Union of India (respondent No. 7),

3. We may point out that surprisingly enough Mr. Katriar, learned Advocate, made it clear at the very outset, that he has been instructed to appear for respondent Nos. 4 and 5, i.e. the Commission and its Chairman only, but not on behalf of respondent No. 6 who was admittedly appointed as a Member of the Commission. Accordingly, Dr. Thakur, who is admittedly a blind person, has appeared before us in person to defend himself.

4. The admitted fact before us is that Dr. Thakur (respondent No. 6) was appointed as a Member of the Commission on 4th of March, 1991. He is holding

the post of Associate Professor, English Department, B. N. College, Patna. The other admitted fact, which is a very unfortunate one, is that he has been totally blind from the age of eight years. On the basis of his blindness two submissions were sought to be made before us. Firstly, it was submitted that his appointment initially as such was bad in view of the provisions of Article 316(1) of the Constitution of India on the ground that at the time of his appointment he was the seventh non-service Member, which could not be done in view of the said Article 316(1), read with Regulations framed under Article 318 of the Constitution. The second submission made was that in any event Dr. Thakur being a blind person, he must be removed from the office of the Member of the Commission under the provisions of Article 317(3)(c) of the Constitution. On the second point the argument was two fold. Firstly, it was submitted that being a blind person his appointment was congenially void and it was to be treated as a disqualification for the appointment even at the initial stage. Secondly, it was submitted that in any view of the matter, in view of such blindness he was physically unfit and, accordingly, he must be removed under Article 317(3)(c).

5. Mr. P. K. Shahi, learned counsel appearing for respondents Nos. 1 2 and 3, has submitted that there is no such disqualification provided in the Constitution or in the Regulation. Even a totally blind person, otherwise qualified, can be appointed as a Member of the Commission. His second submission was that the power of removal on the ground of physical infirmity of mind or body has been conferred on the President of India and not on any one else and it was submitted that the petitioner is not entitled to pray that such an order on such a ground be passed by the court. In support of his contentions he has relied on a decision in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, .

6. Dr. Thakur (respondent No. 6) the aggrieved person, has appeared in person and we may commend that, even being a totally blind person, who was put in a position to defend himself because the lawyer appointed by the Commission was not allowed by the Commission in his behalf, he has behaved in a very dignified manner with full respect towards this court while making his submissions. He has stated that while it is true that he has become blind since the age of eight years and though that created a great hardship on him, he has always tried to overcome this difficulty since his childhood and has been able to do so in many ways. In spite of this disadvantage he has been able to pursue his educational career successfully and has earned degrees and diplomas. He has submitted that his blindness, though might create some difficulty, for that reason only he cannot be and should not be treated as a physically or mentally infirm person. In this connection, however, he has complained that though in spite of his blindness the State Government had thought it fit and proper to appoint him as a Member of the Commission in March, 1991, and though initially he was provided with all the facilities and amenities as a Member of the Commission, however, since 1st October, 1991, at the instance and behest of the Chairman he is being harassed by way of depriving him of several facilities, particulars of some of which are given hereinbelow;

1. His P.A. has been replaced.
2. His chamber, which contains two almirahs containing documents, has been locked up.
3. The service of the reader, who is to read to him documents and journals and other papers, is not being provided to him and his services have been terminated.
4. Use of staff car by him has been stopped.
5. His orderly has been transferred.
6. The Chairman of the Commission has issued instruction not to receive any document from him or to obey his orders.
7. His telephone bill for the month of October, 1991, for Rs. 598/- only has not been paid though a sum of Rs. 18,154/- on account of telephone bill of the Chairman's residence has been paid.
8. The newspaper allowance payable to him is not being paid.
9. He has not been allowed to attend the meetings of the Commission held on 11th December, 20th December and 31st December, 1991, and he is not aware when (whether) any other meeting has been held thereafter, or not inasmuch as he has not been provided with any notice in respect of the same.
10. He has been physically prevented from going to inside the campus of the Commission since 28th of November, 1991.

7. Before we deal with the submissions made before us we shall set out the relevant provisions of the Constitution herein below;

"Article 315. (1) Subject to the provisions of this article, there shall be a public service Commission for the Union and a public service Commission for each State.

(2) Two or more States may agree that there shall be no public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of the Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The public Service Commission for the Union, if requested so to do by the Governor of a State may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be

construed as reference to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

Article 316. (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State.

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

(1-A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under Clause (1) to the vacant office has entered on the duties thereof, or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

(2) A member of a public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission the age of 65 years, and in the case of a State Commission or a Joint Commission the age of sixty two years, which ever is earlier;

Provided that-

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in Clause (1) or (3) of Article 317.

(3) A person who holds office as a member of a public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

Article 317. (1) Subject to the provisions of Clause (3), the Chairman or any other member of a public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in

accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under Clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in Clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purpose of Clause (1), be deemed to be guilty of misbehaviour.

Article 318. In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulation-

(a) determine the number of members of the Commission and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their condition of service :

Provided that the conditions of service of a member of a public service Commission shall not be varied to his disadvantage after his appointment."

8. The regulation framed under Article 318 provides that the Commission shall consist of a Chairman and 10 other members.

9. So far as the first point is concerned, the admitted position is that the respondent No. 6 has been appointed on 4th March, 1991, and has been functioning since then. He has been treated as a Member since his appointment.

10. Learned counsel for the petitioner, in support of his contention that the initial appointment of respondent No. 6 was bad, as it was a case of appointment of a seventh non-service member, which, according to him, was against the provision of Article 316(1) and the said regulation, relied upon the averments made in paragraphs 5, 6 and 8 of the petition which are set out hereinbelow;

"5. That in terms of the regulation framed by the State Government under Article 318B of the Constitution the number of members of the Bihar Public Service Commission has been fixed to be 11, including its Chairman. The well established convention from the inception of the Commission is that nearly one-half of its members are persons from the service quota as required under Article 316(1) of the Constitution, which runs as follows :--

"The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State :

Provided that as nearly as may be one half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this constitution during which a person has held office under the crown in India or under the Govt. of an Indian State shall be included."

The nature of composition of the Commission in the recent past was as follows :--

1985 Service Members

1. Shri A. K. M. Hassan, I.A.S. Chairman
2. Miss S. Tirkey, Director Health Services Member.
3. Shri S. K. Sen, Chief Engineer Member
4. Shri B. K. Dubey, I.A.S. Member.
5. Shri Madhav Sinha, I.A.S. Member
6. Shri Krit Bhudeo, I.P.S.

Member Non Service Members

1. Dr. Shri J. Kumar, University Professor
 2. Dr. B. Thakur, University Professor
 3. Prof. M. Mohuddin, University Professor
 4. Prof. B. N. Rawat, University Professor
 5. Dr. R. S. Singh, University Professor
- 1990-Service Members

1. Shri K. K. Srivastava, I.A.S. (Retd. Ex-Chief Secretary) Chairman
2. Shri K. K. Tripathi, I.A.S. (Retd.) Member
3. Sri Bindeshwari Singh Ex-Chief Engineer Member
4. Shri S. A. A. Rizvi, Ex-Chief Engineer Member
5. Shri Brahmadeo Ram, Bihar Administrative Service-Member.

Non-Service Members

1. Sri B. N. Rawat, University Professor
2. Dr. R. S. Singh, University Professor
3. Dr. M. P. Jaiswal, University Professor
4. Dr. G. D. Jha, University Professor
5. Dr. Chandrabhanu Devi, University Professor
6. Dr. Karma Oraon, University Professor." (paragraph 5)

"That on 31-12-1990 one of the members of the Commission Dr. G. D. Jha (non-service member) retired. On 7-1-1991 Shri K. K. Srivastava (Chairman) retired. Accordingly there remained four service members and 5 non service members of the Commission. On 21-1-1991 Dr. Ramashray Prasad Yadav (non-service member) was appointed as Chairman of the Commission raising the number of non-service commission from five to six. In terms of the proviso to Article 316(1) of the Constitution it was imperative to appoint a service member of the Commission so as to make the total number of service and non-service members to be five and six respectively." (paragraph 6)

"That as stated two vacancies occurred after the retirement of Dr. Jha and Shri Srivastava respondent No. 5 appears to have been appointed on 23-1-1991 as Chairman in place of Shri K. K. Srivastava. However, the remaining vacancy was required to be filled up in terms of the mandatory requirement of the proviso to Article 316(1) of the Constitution. Accordingly it was necessary to appoint the eleventh member of the Commission from the category of person who has held office at least for ten years either under the Government of India or under the Government of State so as to make the number of the members of Commission as nearly as one half of the total number i.e. five out of eleven. It was not permissible for the State Government to consider the candidature of any non-service person for appointment as remaining member of Commission in the aforesaid circumstances. Hence, the consideration and the appointment of respondent No. 6, even if he fulfills all other pre-conditions is an antrigious infringement of the proviso to Article 316(1) of the Constitution.

Further respondent No. 6 carries with him such infirmity of body from his very childhood that he is not entitled to be appointed and accordingly to continue in

the office of Commission." (para 8).

10A. We are of the opinion that no proper material has been placed before us and no case has been made out from the said paragraphs showing that the initial appointment of respondent No. 6 was illegal. Accordingly, we are not in a position to accept this contention on the basis of the averments pleaded in the petition. There is no averment regarding the details of the appointment of the persons who were members at the time of appointment of respondent No. 6. There is a presumption of regularity which has not been rebutted particularly having regard to the fact that the appointment was made by the State Government in March, 1991, and he has been functioning as such as to now. In this context it may be pointed out that the relevant Articles or proviso to Article 316 merely provides that as nearly as may be on behalf of the members of the Commission shall be persons, who at the date of their respective appointments, have held office for at least ten years either under the Government of India or Government of State. Apart from the question whether the same is mandatory or not, it merely provides that one half, as nearly as may be, shall be those who have held office as laid down therein and nothing more and nothing less. There is no proper material in the petition to show clearly that appointment of respondent No. 6 as a member was against the said proviso. There is nothing in the averments as to under what category the other members belonged at the relevant time. There is no clear averment as to whether the petitioner comes under one category or the other. Even if the interpretation given of the said Articles is correct, the appointment of respondent No. 6 cannot be said to be against the said proviso on the basis of the averments in the petition.

10B. So far as the second submission is concerned, the first limb of the same was that it was a case of "congenital void" appointment. We are not in a position to accept such contention. Apart from what is laid down in the proviso to Article 316 no other qualification or disqualification has been laid down as far as appointment of the member of a Commission is concerned. The blindness of a person, whether congenital or otherwise, has not been made by itself a disqualification.

No Article of the Constitution disqualifies a blind person from being appointed as a member of the Commission. In the absence of any such disqualification laid down by the Constitution, the court is not entitled to create such disqualification. In this connection reference may be made to the case of *Ashok Kumar Yadav v. State of Haryana* (supra). Accordingly, there is no merit in the said contention.

11. The Second limb of contention was that the respondent No. 6 is to be removed from such membership on the ground of physical infirmity. The question before us is whether the court is entitled to pass an order directing removal of respondent No. 6 from functioning as a member of the Commission on the ground that he is physically infirm because he is blind. No argument has been made before us that he is mentally infirm. In our opinion, the petitioner is not entitled to call upon this court to pass any such order on any such ground. This

power of removal has been conferred on the President by the Constitution and not on the State Government or any other authority. This power has been conferred on the President and not the Court. The court has no power or jurisdiction or authority to pass any order of removal of any member of the Commission or direct any authority to pass any such order. Even if any ground exists for removal of any member under Article 316, such power has been conferred only on the President and nobody else. In this context, we may also point out that the ground provided for removal is not "blindness". The ground of removal is physical infirmity or mental infirmity. Blindness by itself is not a physical infirmity. We take judicial notice of the fact that many blind persons have made a name for themselves. Many blind persons have acquired great academic distinctions. We have seen the respondent No. 6 in the court. He has argued his case in person because no assistance has been given to him by the Commission and its Chairman. We found him a highly competent person who has very much impressed us. As a matter of fact, it took us some moments before we realised that he was totally blind. Whether such a member of the Commission is to be removed or not depends on the opinion of the President to the effect that he is unfit to continue in his office because of some infirmity of mind or body. This court cannot substitute its own opinion in the place of the opinion of the authority entrusted with such power under the Constitution. Such power has been conferred on the President and not on the court.

12. There is another aspect of the matter. Such power of removal has been conferred on the President, when he is of the opinion that the member is unfit to continue in his office by reason of infirmity of mind or body. The relevant factor is the satisfaction of the President. Merely because a person has been blind since his childhood, when he has attained a position as the respondent No. 6, has it is for the President to form an opinion whether in spite of the same, merely because he is blind, he is to be considered unfit to continue in office. This court declines to enter into an arena which has been reserved exclusively for the President. No such opinion, to that effect can be formed by any one else for less the court. Accordingly, we reject the second ground in respect of both the limbs.

13. Before we conclude, we may express our strong displeasure that the respondent No. 6 has been left to fend for his own and though money is spent for appearing for the Commission and its Chairman, the lawyer has not been instructed to defend a member of the Commission when his appointment is challenged. We wonder whether the allegation by the respondent No. 6 against the Chairman is true or not and whether the Chairman is really interested in having the respondent No. 6 removed.

14. All the contentions raised in support of the petition stand rejected. In our opinion, respondent No. 6 continues and shall continue to be a member of the Bihar Public Service Commission until and unless he is removed by the appropriate authority in accordance with the provisions of the Constitution of India.

15. So far as the specific allegation made by respondent No. 6, who is appearing in person, that the Commission and its Chairman is not providing all facilities and amenities to him as a Member of the Commission, as stated hereinabove, as there is nothing on oath by him in this regard and that no opportunity has yet been given to the Commission or its Chairman to deal with the same on oath, we are not inclined to give any specific direction to that effect in this proceeding and at this stage. However, we make it clear that as he continues to be a member of the Commission, as long as he is not removed from the post of the member of the Commission in accordance with law, he is entitled to and he shall be given by the Commission, its Chairman and Officers/employees, all facilities and amenities as enjoyed by any other member of the Commission. In respect of those matters where there is no difference between the Chairman and an ordinary member in this regard, he shall also be entitled to enjoy all facilities enjoyed by the Chairman. The Commission or the Chairman or any one on behalf of the Commission shall not treat him differently in any manner what so over as long as he remains as such member and he is not removed in accordance with law.

16. With the aforesaid observations, this application is dismissed with cost to respondent No. 6 assessed at Rs. 500/- (five hundred).

17. Let a copy of the operative portion of the order be furnished to the learned Counsel for the parties and the respondent No. 6 within the course of the day.

18. All the contentions raised in support of the petition stand rejected. In our opinion, respondent No. 6 continues and shall continue to be a member of the Bihar Public Service Commission until and unless he is removed by the appropriate authority in accordance with the provisions of the Constitution of India.

19. So far as the specific allegation made by respondent No. 6, who is appearing in person, that the Commission and its Chairman is not providing all facilities and amenities to him as a Member of the Commission, as stated hereinabove, as there is nothing on oath by him in this regard and that no opportunity has yet been given to the Commission or its Chairman to deal with the same on oath, we are not inclined to give any specific direction to that effect in this proceeding and at this stage. However, we make it clear that as he continues to be a member of the Commission, as long as he is not removed from the post of the member of the Commission in accordance with law, he is entitled to and he shall be given by the Commission, its Chairman and Officers/employees, all facilities and amenities as enjoyed by any other member of the Commission. In respect of those matters where there is no difference between the Chairman and an ordinary member in this regard he shall also be entitled to enjoy all facilities enjoyed by the Chairman. The commission or the Chairman or any one on behalf of the Commission shall not treat him differently in any manner whatsoever as long as he remains as such member and he is not removed in accordance with law.

20. With the aforesaid observations, this application is dismissed with cost to

respondent No. 6 assessed at Rs. 500/- (five hundred).

21. Let a copy of the operative portion of the order be furnished to the learned counsel for the parties and the respondent No. 6 within the course of the day.