

**(2013) 07 SHI CK 0007**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Writ Petition No. 279 of 2013-H**

Joginder Singh Verma

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

**Date of Decision : 02-07-2013**

**Acts Referred:**

**Citation :** (2013) 139 FLR 250 : (2013) 2 ShimLC 898

**Hon'ble Judges :** A.M. Khanwilkar, C.J.; R.B. Misra, J

**Bench :** Division Bench

**Advocate :** R.K. Bawa and Mr. Jeevesh Sharma, for the Appellant; Shrawan Dogra, Advocate General, Mr. A.K. Rattan, Additional Advocate General, Mr. J.K. Verma and Ms. Parul Negi, D.A.G.s for the Respondent No. 1, for the Respondent

## **Judgement**

A.M. Khanwilkar, C.J.—This writ petition under Article 226 of the Constitution of India takes exception to the notification dated 2nd January, 2013 (Annexure P-2) issued by respondent No. 1 and for issuance of appropriate writ to respondent No. 1 to allow the petitioner to continue in the office of Chairman of Himachal Pradesh Building and other Construction Workers Welfare Board, till he completes the tenure of three years from the date of issuance of notification dated 21st March, 2012 (Annexure P-1). Briefly stated, the Additional Chief Secretary (Labour and Employment), Government of Himachal Pradesh vide notification dated 31st March, 2012 constituted the Himachal Pradesh Building and Other Construction Workers Welfare Board in exercise of power vested u/s 18(1) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. By the same notification, the petitioner came to be nominated as Chairman of the said Board, whose term of office was specified as three years from the date of issuance of the said notification. The notification reads thus:

Government of Himachal Pradesh,

Department of Labour & Employment.

No. Shram (A)4-6/2007-BOCW Part-II Dated Shimla--

171002 the 31st March, 2012

## NOTIFICATION

In exercise of the power vested u/s 18(1) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Governor, Himachal Pradesh, is pleased to constitute the Himachal Pradesh Building and Other Construction Workers Welfare Board to exercise the powers conferred in and further the function assign to it under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. The Board shall consist of the following members:--

1. Shri Joginder Singh Verma, Vill. Chhon, P.O. Barara, Teh. Bhoranj, Distt. Hamirpur. H.P.

Chairman

2. Under Secretary,

Ministry of Labour & Employment, GOI,

Jaisalmer House, Man Singh Road,

New Delhi-110011.

Member.

3. State Government Representatives

(Five Members)

1. Secretary(Lab & Emp) to the Government of H.P., Shimla-2.

2. Secretary(Finance) to the Government of H.P., Shimla-2.

3. Secretary (Social Justice & Empowerment) to the Government of H.P., Shimla-2.

4. Secretary (Law) to the Government of H.P., Shimla-2.

5. Labour Commissioner-cum-Chief Inspector of Inspection, H.P., appointed under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

4. Employers Representatives

(Five Members)

1. Engineer-in-Chief (PWD) Nigam Vihar, Shimla-2.

2. Engineer-in-Chief (IPH) Department, U.S. Club, Shimla-1.

3. Member Secretary, Himurja, Shimla-9.

4. Chief Executive Officer, HIMUDA, Shimla-2.

5. Managing Director, Power Corporation, Shimla-5.

5. Employees Representatives

(Five Members)

1. President BMS, Shimla-1.

2. President, INTUC, H.P.

3. President, AITUC, H.P.

4. President, CITU, H.P.

5. Shri Surinder Singh Bains s/o Sh. Ran Singh, Vill. Panjler, PO Sakoh, Teh. Dharamshala, District Kangra.

The Head Quarter of the Board will be at Shimla. The term of office of the Chairman and the Members of the Board other than the Official members shall be three years from the date of issue of this notification.

By order

Additional Chief Secretary (Labour & Employment) to the Government of Himachal Pradesh.

(emphasis supplied)

2. It is the case of the petitioner that with the change of Government after the General Elections, the newly elected majority political party formed the Government. Purely on account of that change, the petitioner was removed from the office of Chairman and in his place, respondent No. 2 has been nominated as Chairman with immediate effect from the date of issuance of notification dated 2nd January, 2013 (Annexure P-2). Respondent No. 2, incidentally, belongs to the ruling party. The said notification reads thus:

Government of Himachal Pradesh,

Department of Labour & Employment.

No. Shram (A)4-6/2007-BOCW Part-Dated Shimla--

171002 the 2nd January, 2013.

#### NOTIFICATION

In partial modification of this department notification of even number dated 31.3.2012, Governor, Himachal Pradesh, is pleased to dispense with appointment/services of Sh. Joginder Singh Verma, Chairman with immediate effect.

Governor, Himachal Pradesh is further pleased to appoint Sh. Hardeep Singh Bawa, Shop No. 8, Sector-I, Parwanoo, District Solan as chairman of Himachal

Pradesh Building and other Construction Workers Welfare Board.

By order

Additional Chief Secretary (Labour & Employment) to the Government of Himachal Pradesh.

3. The petitioner has assailed this notification, inter alia, on the Fh Bnd that the scheme of the Act of 1996 and the Rules framed thereunder do not envisage removal or substitution of Chairman once nominated, for a period of three years from the date of nomination. The tenure of Chairman is guaranteed by the provisions of the Act of 1996, which cannot be curtailed. Further, the provisions of the Act of 1996 and the Rules framed thereunder provide for filling up of only casual vacancy. The provisions of General Clauses Act cannot be invoked in the face of express provision in the Act and the Rules framed thereunder. Rule 251 employs expression "shall", which guarantees three years" tenure for the nominated Chairman. Moreso, the notification dated 31st March, 2012 makes no mention of the fact that the nomination of the petitioner as Chairman of the Board was at the pleasure of the State Government or he could be removed at any time. The said provisions are complete Code in itself. As a result, the only interpretation, is that, the fact that the State Government has power to nominate the Chairman in terms of Section 18 of the Act, it does not follow that it has power also to remove the person so nominated before the expiry of his term. The theory of pleasure of the Government has no place. Further, even if the State Government has power to do so, it has to exercise that power bonafide; and the change of political dispensation can be no justification much less bonafide exercise of power.

4. To buttress these arguments, reliance is placed on the decision of the Apex Court in Jayantbhai Manubhai Patel and Others Vs. Arun Subodhbhai Mehta and Others, The State of Bihar Vs. D.N. Ganguly and Others, and State of Madhya Pradesh Vs. Ajay Singh and others,

5. Per contra, the learned Advocate General appearing for the State submits that the grounds pressed into service are completely devoid of merit and are no more res integra. According to him, the interpretation of Section 18 leaves no manner of doubt that it vests complete power in the State Government to nominate any person as Chairman, which is obviously at the pleasure of the State Government. Such appointment does not create any right in favour of the nominee and he can continue to hold the office subject only at the pleasure of the State Government. Learned Advocate General has placed reliance on the decisions of this Court as well as of the Supreme Court to dispel the argument canvassed on behalf of the petitioner. He has placed reliance on Suresh Bhardwaj Vs. H.P. University and Others, Saroj Sharma Vs. State of Himachal Pradesh and Another, Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, Dr Rash Lal Yadav Vs. State of Bihar and Others, State of U.P. and others Vs. U.P. State Law Officers Association and others, and Dr. D.C. Saxena Vs. State of Haryana and

Others,

6. Before we examine the matter any further, we deem it apposite to reproduce Section 18 of the Act, in Chapter V of the said Act. The same reads thus:

18. Constitution of State Welfare Boards.--(1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the.....(name of the State) Building and Other Construction Workers" Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Act.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

(emphasis supplied)

7. It may be now useful to reproduce Rules 251 and 252 of the Rules framed under the Act of 1996 titled as Himachal Pradesh Building and Other Construction Workers (Regulation of Employment and conditions of Service) Rules, 2008. The same read thus:

251. Constitution of the Board.--(1) The Board shall consist of,--

(i) a Chairperson appointed by the Government.

(ii) a member nominated by the Central Government.

(iii) Not more than five persons representing the building and other construction works appointed by the State Government.

(iv) Not more than five persons from among the employers of construction and building workers appointed by the Government.

(v) Not more than five members representing the State Government of whom one shall be the Chief Inspector of Inspection of Building and Construction of the State, one shall be a representative of Finance Department, one shall be a representative of Law Department, one shall be a representative of Labour Department and one shall be a representative of Welfare Department.

Provided that one of the nominated members of the Board shall be a woman provided that the number of members appointed under clauses (iii), (iv) and (v) of sub-rule (i) shall be equal.

(2) The term of office of the Chairperson and the members of the Board other than the official members shall be three years from the date of their appointment:

Provided that the members may continue in office till their successors are appointed.

252. Filling up of casual vacancies.--A member nominated to fill a casual vacancy shall hold office for the remaining period of the term of office of the members in whose place he is nominated.

(emphasis supplied)

8. Reverting to Section 18, it is a provision authorizing the State Government to constitute a Board to exercise the powers conferred on, and perform the functions assigned to, it under the Act. Sub-Section (3) postulates the Board shall consist of a chairperson. It further provides that the chairperson will be nominated by the Government. This Section does not specify the tenure of the Board or for that matter of the chairperson of the Board so nominated by the Government. Similarly, although it refers to the manner of filling up of casual vacancies of the members of the Board, however, that is left open to be prescribed. In exercise of powers conferred under Sections 62 and 40 of the Act of 1996, the Governor, Himachal Pradesh has framed Rules of 2008. Rules 251 and 252, which are relevant for our purpose have already been reproduced hitherto. These Rules specify the tenure of the Board and the chairperson, to be three years from the date of appointment. Rule 252 prescribes that a member nominated to fill in casual vacancy shall hold office for the remainder term of office of the outgoing member.

9. The plain language of Section 18 leaves no manner of doubt that the method of appointing Chairperson of the Board is, by nomination, by the Government. It is thus at the pleasure of the Government. No doubt, Section 18 leaves the tenure of the Chairperson to be prescribed by the Rules, which has been done by the Rules of 2008. The expression "shall" occurring in sub-rule (2) of Rule 251 cannot be interpreted to mean that it curtails the power of the State Government to exercise its pleasure if the situation so warrants, before expiry of three years from the date of appointment or nomination already made. The tenure of three years referred to in Rule 251 will have to be interpreted to mean that the same is the outer limit of the tenure specified for the Chairperson and the members of the Board from the date of their appointment. That provision cannot be construed to mean that the term of three years is the minimum tenure guaranteed to the incumbent. There is nothing either express or implicit in the provision under consideration to indicate that the State Government, once exercises its power and pleasure to nominate a person, is denuded or robbed of

its power under the common law and by virtue of provisions of General Clauses Act, to alter that nomination by withdrawing the pleasure exercised in favour of a given person and instead appoint some other person.

10. The argument of the petitioner that the provisions of General Clauses Act cannot be invoked in respect of exercise of power u/s 18 of 1996 Act, in our opinion, is untenable. Further, the argument of the petitioner that the State Government cannot recall the nomination once made, until the expiry of three years from the appointment of a person as Chairperson of the Board because the notification dated 31st March, 2012 (Annexure P-1) does not provide for that option, in our opinion, is also devoid of merits. Similarly, the argument of the petitioner that there is express provision in the shape of Rule 252 of the Rules of 2008 regarding filling up of existing vacancies, it should necessarily follow that the State Government cannot withdraw the nomination before expiry of three years and only in case of casual vacancy in the office of Chairperson, it can nominate another person in that office for the remainder period is also untenable. As noted above, a person is nominated as Chairperson, by the Government, in exercise of power flowing from Section 18 of the Act read with Rule 251 of the Rules. Indisputably, the nomination of a person as Chairman of the Board depends on the pleasure of the Government. The person so nominated neither has a fundamental right nor a statutory right to continue beyond the pleasure of the State Government. Once the pleasure of the State Government ceases to exist, nothing prevents the State Government to recall such person from the office of Chairperson and to install another competent and suitable person as Chairman. Since it is a provision regarding pleasure of the State Government, the State Government is not required to follow principles of natural justice, so as to give opportunity to the person, who is to be removed and replaced by another person nor the Government is required to record reasons in that behalf. It is a matter entirely of subjective satisfaction of the Government, of which judicial review is not possible. Nor the person who is to be removed can claim any right to continue in the office inspite of the decision of the Government to remove him. Notably, the scheme of the Act or the Rules do not require giving him opportunity of hearing.

11. Reliance has been rightly placed on the decision of the Division Bench of this Court in case of Suresh Bhardwaj (supra) which dealt with similar provision in the Himachal Pradesh University Act, 1970. Section 21 of the said Act postulates nomination of one person as member of the Executive Council by the State Government. Even that Act provided that tenure of office of two years from the date of election or nomination of the member on the Executive Body of the University. Almost similar arguments were canvassed which did not find favour with the Division Bench of this Court. It may be useful to reproduce para 14 of the said decision, which reads thus:

14. As regards the first argument of the learned Counsel appearing on behalf of the petitioner that the tenure of the petitioner was fixed for two years and the

same could not be curtailed by the nominating authority, is concerned, we are inclined to hold that there is no merit in this contention. It is accepted principle of common law relating to the removal of holder of an office that the authority which has the power to nominate its member has the inherent and implied power to remove the member. If the nominated member holds office at pleasure, then he can be removed at will, but if he holds his office otherwise than at pleasure, he can be removed only for cause after due notice and hearing. In view of the principle of common law stated above, until and unless there is a provision in the Statute barring the removal of the nominated member at pleasure, it is to be held that the authority who had the power to nominate the member has the power to remove the member by rescinding the earlier notification. This principle is also enshrined in the provisions of Section 20 of the Himachal Pradesh General Clauses Act, 1968. In Section 20 of the Act, the authority who has the power to issue notifications or make orders, rules or bye-laws has got power to amend, vary or rescind any notifications, orders, rules, or bye-laws so issued or made. In Section 15, the authority who has conferred power to make any appointment, has also power unless a different intention appears to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. The State Government which have the power to nominate one member to the Executive Council at its pleasure have the power to remove him until and unless there is any bar signified in the Statute itself. We have already reproduced the provisions of Section 21 of the Act in the earlier part of the judgment. As is clear from the provisions of Section 21 of the Act, the State is the nominating authority. The State have the powers to remove the member by rescinding the earlier notification in accordance with the provisions of Section 21 of the Act. The Executive Council under the Act is the Governing Body of the University and has to perform very important functions dealing with overall charge of the general management and administration (including the revenue and property) of the University besides various other powers and functions as prescribed by Statute 11 of the First Statutes. Section 21 does not create any bar to remove the member before expiry of two years. However, a bare reading of this Section shows that the nominated member enjoys privilege at the pleasure of the State Government. It does not create a right much less fundamental right in the nominee to hold the office for two years and curtailment of the term of the nominee is inherent and implied. The only bar created by the Act is that the State Government cannot nominate member of the Executive Council for more than two years at a stretch.

(emphasis supplied)

12. Even in the case of Saroj Sharma (supra), the Court dealt with the similar argument to challenge the notification dismembering the petitioner from the office of Chairperson of the Himachal Pradesh State Commission for Women issued in exercise of power u/s 3 of the Himachal Pradesh State Commission for Women Act 1997. The Court negated the argument of the petitioner therein, including the argument that Section 21 of the Act, which was *pari materia* to

Section 22 of the Central General Clauses Act, that the power referred to therein cannot be invoked to withdraw the nomination or to replace the nominated Chairperson before expiry of the term by another person.

13. In the case of Om Narain Agarwal (*supra*), the Apex Court was dealing with Section 9 of the United Provinces Municipalities Act, 1916, which provided for nomination of a person as member of the Municipal Board by the State Government. The persons so nominated, challenged the cancellation of their nomination before the expiry of their term. The Apex Court in para 11 of this decision observed thus:

11.....The removal u/s 40 applies to elected as well as nominated members. In respect of a nominated member, power of curtailment of term has now been given to the State Government under the fourth proviso to Section 9 added after the third proviso through the amending Act of 1990. In the cases before us, we are concerned with the removal of nominated members under the fourth proviso to Section 9 of the Act and we are not concerned with the removal as contained in Section 40 of the Act. The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the Legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

(emphasis supplied)

14. The Apex Court in this decision has also noted that the nominated members of the Board fall in a different class and cannot claim equality with the elected members. The pleasure is exercised by the State Government and appointments are made by nomination based on political considerations.

15. In the case of Dr. Rash Lal Yadav (*supra*), the Apex Court dealt with the provision of Section 10 of the Ordinance promulgated by the State of Bihar called the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance (Ordinance No. 146 of 1980). Section 10(3) of the Ordinance empowered the State Government to nominate Chairman and four members of the Board. The expression used in this provision is appointed by the State

Government. While dealing with somewhat similar argument, the Apex Court in para 9 of the reported decision opined that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, Courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences. However, after interpreting the provision in question it went on to observe that the said provision unmistakably revealed that the legislature's intendment to exclude the rule of giving an opportunity to be heard before the exercise of power of removal. It further noted that the legislative intent did not expect the State Government to seek the incumbent's explanation before exercising the power of removal under the said provision. In para 10, the Court went on to observe thus:

10. The Act contemplates the setting up of a Board with perpetual succession and a common seal comprising a Chairman and four Members possessing certain qualifications set out in sub-section (4) of Section 10. The remuneration to be paid to them has been indicated in sub-section (5) and sub-section (6) indicates the maximum term or duration of appointment. According to that sub-section the term of office of the Chairman/Member shall be three years from the date of taking charge or during the pleasure of the State Government. On a plain reading of the said sub-section it becomes immediately clear that the initial tenure will not exceed three years but this shall be during the pleasure of the State Government which means that the State Government shall have the right to curtail the tenure to less than three years also. If it does not do so and if the incumbent completes the full tenure of three years, the State government may extend the term for such period as it deems appropriate so, however, that the total period shall not exceed six years. Therefore, neither the Chairman nor the Members have any right to continue for three years. A contrary interpretation would clearly violate the letter and spirit of the law. True it is that the said sub-section could have been better worded but in our view the language does convey the legislative purpose quite clearly. ....It is obvious from the plain language of this sub-section that the underlying idea is that the power may be exercised in public interest, that is, to protect the Statutory Board from harm that may be caused to it by a Chairman/Member who is incapable of working or who refuses to work or conducts himself in a manner injurious to the Board's interest. The matter is left to the subjective satisfaction of the State Government which subjective satisfaction must be reached on relevant material on record and not on the whim and sweet will of the Government.....In the ultimate analysis the power has to be exercised in public interest and for public good because the State government is duty bound to protect the image and credibility of the Board so that people's faith in the Board is not shaken. Of course, if the State Government exercises the power vested in it under the said sub-section and if the exercise of such power is challenged in Court, the State Government will have to satisfy the Court that it exercised the power bona fide and on material relevant to establishing the existence of the factual situation necessary for

exercise of the said power. That can at best be the extent of judicial scrutiny. The High Court did examine the material on which the State Government's decision for removal was founded, vide paragraph 51-A of the judgment, and came to the conclusion that there was justification for the exercise of power and, therefore, the State Government was justified in ordering removal. Similarly, the High Court also examined the allegation of mala fides in paragraphs 52 and 53 of the judgment and spurned the said charge. These decisions of the High Court are based on the assessment of facts and ordinarily this Court is loathe to reevaluate the same unless it is shown that the High Court's appreciation of facts has resulted in miscarriage of justice. No such case is made out. We, therefore, see no reason to interfere with the High Court's assessment on both these points. There being no serious infirmity in the High Court's evaluation of the factual data, we see no reason to dilate on the said points.

(emphasis supplied)

16. The other observations found in para 10 of the reported judgment are in the context of enactment considered by the Apex Court. Relying on the abovesaid observations, Counsel for the petitioner went on to argue that in the present case, no material is placed before the Court as to what necessitated removal of the petitioner from the office of the Chairperson except that it was purely political consideration. The argument though attractive at the first blush will have to be stated to be rejected. Inasmuch as, the observations of the Apex Court will have to be understood in the context of the Scheme postulated in sub-section (7) of Section 10 of the Ordinance, which was under consideration. The same reads thus:

(7) If the State Government is satisfied that the Chairman or any member of the Board is incapable of working, or refuses to work, or works in a manner which, in the opinion of the State Government, is detrimental to the interest of the Board, then the State government by issuance of a notification in the Official Gazette at any time remove such Chairman or member by giving him one month's written notice or one month's pay in lieu of notice with effect from the date mentioned in the notification.

17. However, in the absence of such express provision in the Act of 1996, the only inevitable conclusion is that the nomination of the petitioner was at the pleasure of the State Government and, therefore, he could continue in the office only during such pleasure. The pleasure of the State Government is the subjective satisfaction of the State Government. That may be dependent on political considerations, including because of change of political dispensation after the general elections. That may become essential to ensure efficient administration of the Board and not to work in conflict with the policy of the party in control of governance.

18. In the case of U.P. State Law Officers Association (supra), the Apex Court dealt with similar contention and observed thus:

19. ....The State Government has a discretion. It may or may not ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the same door. This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.

(emphasis supplied)

19. Taking a cue from the above-quoted observations, Counsel for the petitioner would contend that the notification dated 31st March, 2012 did not mention that the nomination of the petitioner was terminable at any time without assigning any reason. The fact remains that the nomination of the petitioner was purely on personal or political considerations because of close proximity and commitment with the then ruling political party when appointed. With the change of that dispensation, after the general elections, there was nothing wrong for the succeeding political party to have candidates of its choice as nominees. Once it is found that neither Section 18 of the Act of 1996 nor Rule 251 of the Rules of 2008 provide for a fixed and guaranteed term of office of the chairperson; coupled with the intrinsic power of the State Government to remove the nominated candidate before expiry of the term of office due to loss of pleasure and to replace him by another candidate for the remainder term and such decision may be necessitated because of changed dispensation, there is nothing wrong if the ruling party in power wants to induct candidate of its choice to ensure stability and efficiency in the administration of the Board, which decision is taken in public interest and being a general policy of the State Government at the relevant time. The petitioner may be justified in pointing out that the Board is an autonomous body, that, however, would make no difference to the manner of exercise of power by the Government to nominate or remove the person nominated to act as Chairperson of the Board by the State Government.

20. We may now turn to another decision of the Apex Court in the case of Dr. D.C. Saxena (*supra*). In that case, the Court found as of fact that the termination of the appellant's tenure was the result of the policy decision taken by the Government to bring in a new class of Chairman in different Boards in the State. The Court rejected the challenge and found that it was not possible to hold that the termination was prompted by mala fides or was punitive in nature.

21. Be that as it may, Counsel for the petitioner has relied on the decision of the Apex Court in the case of Ajay Singh (*supra*). The dictum of this decision, in our view, has no application to the fact situation of the present case. It is an authority on the proposition, which dealt with the express provision and intent behind the enactment of Commission of Inquiry Act, 1952. The question was whether the appropriate Government after constituting the Commission u/s 3 of that Act is empowered to reconstitute the Commission substituting another person as the sole member in place of the initial appointee. The Court analyzed the provisions of the said enactment and noticed that the scheme of that enactment did not permit such a course. For, the Government has had no control over the Commission after its constitution u/s 3 of the Act, except for the purpose of filling any vacancy which may have arisen in the office of a member of the Commission apart from winding up the Commission by issuance of a notification u/s 7 of the Act if the continued existence of the Commission was to be considered unnecessary. It is in that context the Apex Court found that power to rescind any notification conferred generally in Section 21 of the General Clauses Act was clearly inapplicable to the scheme of the Commission of Inquiry Act.

22. The next decision pressed into service by the petitioner is in the case of D.N. Ganguly (*supra*). The question considered by the Apex Court in this judgment was in relation to the act of Government superseding the reference pending adjudication before the Tribunal constituted for that purpose. In that context, the matter was considered, which, therefore, has no application to the provision such as Section 18 read with Rule 251 dealing with the pleasure of the Government to nominate a person as Chairperson of the Board, being exclusive prerogative of the Government. Accordingly, this judgment will have no bearing on the question involved in this case.

23. Reliance was also placed on the decision of the Apex Court in the case of Jayantbhai Manubhai Patel (*supra*). In that case, the question was regarding power of Mayor to convene meeting, who has implied power to postpone or cancel it. The Apex Court considered the issue in the context of law of meetings and the limited power of the Mayor that once the meeting is convened, it can be postponed. We are afraid, the exposition in this decision will be of no avail to the petitioner. In para 15 of this decision, on which some emphasis was placed, the Court has noted that the Mayor had implied power to cancel the meeting or postpone a meeting which was duly convened before the said meeting commenced and to convene the same on a subsequent occasion. Further, that

power must be exercised by the Mayor bona fide and not for a collateral purpose. If the Mayor fails to substantiate exercise of power for a proper purpose, then the postponement of the meeting must be held to be bad. As aforesaid, these observations will have to be understood in the context of the law of meetings and the exercise of power to convene and to conduct the meetings by the Mayor must act with circumspection. On the other hand, the power vested in the Government by virtue of Section 18 of the Act of 1996 is an act of pleasure of the Government, and is the exclusive prerogative and subjective satisfaction of the State Government, a judicial review of which is not permissible. The subjective satisfaction can be replete with political considerations when it comes to the issue of nomination of candidates on statutory bodies and there are no guidelines in that behalf.

24. Taking overall view of the matter, therefore, in our considered opinion, the challenge to the notification dated 2nd January, 2013 (Annexure P-2) is devoid of any merits. Accordingly, the writ petition ought to fail. The same is, therefore, dismissed, so also the pending applications, if any.