
(2008) 08 JH CK 0083

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 3166 of 2008

Md. Najrul Hassan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Constitution of India, 1950 — Article 48A
Criminal Procedure Code, 1973 (CrPC) — Section 197
Hazardous Wastes (Management and Handling) Rules, 1989 — Rule 5
Penal Code, 1860 (IPC) — Section 120B, 323, 34, 341, 379
Water (Prevention and Control of Pollution) Act, 1974 — Section 17, 4, 4(2), 5, 6

Citation : (2008) 57 BLJR 34 : (2008) 4 JCR 406

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Advocate : M.S. Anwar and A.K. Sinha, Manish Kr., A.K. Choudhary, A. Ahmad and A. Hussain, for the Appellant; S.B. Gadodia, G.A., Aparesh Kr. Singh, Mukesh Kumar and S. Prasad, for the Respondent

Judgement

M.Y. Eqbal, J.—In all these writ petitions since common relief has been sought for, they have been heard together and disposed of by this common order.

2. W.P. (PIL) No. 3166/08 is a public interest litigation seeking issuance of a writ in the nature of quo warranto for quashing the Notification No. 1420 dated 16.3.2007 issued under the signature of Respondent No. 4 Deputy Secretary, Department of Forest & Environment, Jharkhand Ranchi whereby respondent No. 5, Shri R.K. Sinha has been appointed as the Secretary of the Jharkhand State Pollution Control Board and for a direction to the respondents to fill up the post of Member Secretary, Jharkhand State Pollution Control Board by a competent and eligible person having clean records.

3. In WPC No. 3203 of 2007, petitioner claiming himself to a social worker has made similar prayer for quashing the Notification dated 13.2.2007 issued by Forest and Environment Department, Government of Jharkhand authorizing respondent No. 5, Mr. R.K. Sinha to work as Member Secretary of the Board till

further order and also for quashing the Notification dated 16.3.2007 whereby respondent No. 5 has been appointed as full-fledged Member Secretary of the Board.

4. In W.P.S. No. 952 of 2007, petitioner Mr. Shiv Kumar Singh has prayed for quashing the same Notification and also sought a declaration that he is legally entitled to be appointed as Member Secretary, Jharkhand State Pollution Control Board, Ranchi.

5. The aforesaid W.P. (PIL) was taken up by a Bench of this Court and it was ordered for hearing of these three writ petitions together. Hence, all these writ petitions have been heard by this Bench with the consent of the learned Counsels appearing for the parties.

6. The facts which are not in dispute are as under:

The petitioner Mr. Shiv Kumar Singh was appointed as Member Secretary, Jharkhand State Pollution Control Board (in short the Board) by Notification No. 2375 dated 19.5.2006 on temporary basis till appointment of regular Member Secretary. In 2007, another Notification was issued on 13.2.2007 whereby respondent No. 5, Mr. R.K. Sinha, working as Divisional Forest Officer, Gumla was given additional charge as Member Secretary of the Board. Subsequently, by another Notification No. 1420 dated 16.3.2007, the earlier Notification dated 13.2.2007 was modified and respondent No. 5 was appointed as full-fledged Member Secretary of the Board.

7. In W.P. (PIL) No. 3166 of 2008, it is stated inter alia by the petitioner that respondent No. 5 who was working as Divisional Forest Officer, Gumla was first given additional charge as Member Secretary of the Board. Petitioner's further case is that several documents were obtained by the petitioner under Right to Information Act which shows that respondent No. 5 only possess M.Sc. Degree and does not possess requisite qualification and knowledge or experience of scientific engineering or management aspect of pollution control so as to be appointed as Member Secretary of the Department. It is further alleged that respondent No. 5 Mr. R.K. Sinha is a named accused in Sonua P.S. Case No. 13 of 1994 for alleging offence under Sections 419, 420, 467, 468, 379, 411 and 120B of the I.P.C. The State of Jharkhand by order dated 13.7.2004 already granted sanction u/s 197 of the Code of Criminal Procedure for prosecuting respondent No. 5 and the said case is still pending. It is further stated that several other criminal cases are pending against respondent No. 5 but in spite of that he has been appointed as full fledged Member Secretary of the Board.

8. I have heard Mr. Anil Kumar Sinha, Mr. M.S. Anwar, learned senior counsels appearing for the two writ petitions and Mr. Indrajeet Sinha, learned Counsel appearing for the petitioner of WP (PIL) No. 3166 of 2008 and Mr. Aparesh Kumar Singh, learned Counsel appearing for respondent No. 5, Mr. Sumeet Gadodia, JC to Advocate General.

9. Before coming to the merit of the contention of the parties, we would first like to discuss some of the relevant provisions with regard to appointment as member Secretary and the manner and procedure for appointment.

10. Water (Prevention and Control of Pollution) Act, 1974 was enacted by Parliament. Section 4 of the Act reads as under:

4. Constitution of State Boards. -- (1) The State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board, under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) A State Board shall consist of the following members, namely:

(a) a chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the State Government:

Provided that the chairman may be either whole-time or part-time as the State Government may think fit;

(b) such number of officials, not exceeding five, to be nominated by the State Government to represent that Government,

(c) such number of persons, not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

(d) such number of non-officials, not exceeding three, to be nominated by the State Government to represent the interests of agriculture, fishery or Industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.

11. From reading of the aforesaid provisions, it transpires that a person who possesses qualification, knowledge and experience of scientific engineering or management aspect of the pollution control shall be appointed as full time Member Secretary.

12. Section 5 of the Act lays down terms and conditions of the service of members and confers power to the Central Government and the State Government to remove any member of the Board before expiry of terms of office after giving him reasonable opportunity of showing cause. Section 6 lays down

the provisions of disqualification.

13. It is worth to mention here that the matter with regard to constitution of the State Pollution Control Board came before the Supreme Court in a Writ Petition (Civil) No. 657/95 and the Supreme Court set up a Monitoring Committee to ensure time bound implementation and various directions given in the order passed by the Supreme Court. The Committee visited several States to monitor the strict implementation of these directions and during its interaction with various Control Board, the Committee reported that State Pollution Control Board were not constituted in accordance with the provisions given in the Act. The Committee submitted report and on the basis of the report, Govt. of India, Ministry of Environment and Forest circulated the same vide letter dated 27.7.2005. The relevant portion of the letter with regard to Chairperson and Member Secretary of the Board is reproduced herein below:

The Chief Secretaries of all States/UTs (As per the list enclosed)

Sub:- Constitution of the State Pollution Control Boards/Pollution Control Committees (APCBs)/PCCs)-regarding.

Sir, The Supreme Court by its order dated 14-10-2003 in Writ petition (Civil) No. 657/1995 set up a Monitoring Committee to ensure time bound implementation of various directions given in the said order. The Committee has been visiting several states to monitor the status of implementation of these directions.

2. During its interactions with various pollution control officials, the Supreme Court Monitoring Committee (SCMC) has noticed that the State Pollution Control Boards (SPCBs)/Pollution Control Committees (PCCs) of UTs were not constituted in accordance with the provisions given in the Water Act, 1974 and Air Act, 1981.

Chairperson of the Board

3. The statutory provisions require the Chairpersons appointed shall be persons having Special Knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institution dealing with the matters aforesaid.

4. The SCMC has found that in several cases, the Chief Secretaries, Environment Secretaries, politicians, MLAs, Literary persons and the other non-technical person have been appointed as Chairperson of SPCBs/PCCs.

5. The MGK Menon Committee had recommended in its report that "If Chairman of the Pollution Control Boards/Committees should be individuals with a sense of vision and a feeling for the future. They must have an understanding of the complexity of the modern science and technology since they will be dealing with higher technical issues. They must have an understanding of Law. The Chairperson would have to be fully involved in the task of environment construction and planning. Appointment of the Chairperson of the Board should be on full time basis.

Member Secretaries of the Board

6. Similarly, in respect of the post of Member Secretary, the statutory provisions (Water/Air, Act) require that he be full time, processing qualifications, knowledge and experience of scientific engineering or management aspects of pollution control.

7. In relation to appointment of Member Secretaries, the Menon Committee had recommended that "The incumbent should possess a post graduate degree in science, engineering or technology and have adequate experience of working in the area of environment protection.

8. The SCMC has found that in several States, persons from IFS or from the PWD especially from the PHE departments are either being appointed or deputed to the post of Member Secretary without the necessary statutory qualifications.

14. It further appears that Central Pollution Control Board, Ministry of Environment and Forest, Government of India have issued letter dated 3.10.1996 prescribing the guidelines for making appointment of Member Secretary of Pollution Control Board. By the said letter, request was made to ensure that appropriate persons are appointed on the post of Chairman and Member Secretary. For better appreciation para 2 of the said letter is reproduced here in below:

Though the literal meaning of the above provision keeps the doors open for persons other than environmental scientists as well to find an entry by nomination and appointment respectively on the post of chairman and member secretary respectively, the wisdom of the Parliament in enacting the provision should not be misconstrued as the scientific field like environment with all its diversities and complexities was never desired to be left in the hands of mere administrators. In fact, the required qualifications and experience mentioned in the Act must be relevant to the functions laid down u/s 17 of the Water (P & CP) Act, 1974, Air (P & CP) Act, 1981 and Rule 5 of Hazardous Waste (Management and Handling) Rules, 1989 notified under Environment (Protection) Act, 1986.

15. From the aforesaid provisions of the Act and the instructions time to time issued by the Govt. of India, Ministry of Environment and Forest, the Central Board issued instructions to the State to ensure appointment of competent persons on the post of Chairman and member Secretary. The Act very clearly provides that only that person who possesses requisite qualification, knowledge and experience of scientific engineering or management aspects of pollution control be appointed by the State Government as a full time Member Secretary of the State Pollution Control Board. It is has been clarified by the Central Government by different letters about the criteria for appointing a person as member secretary of the Board.

16. The Constitution of India mandates the State to endeavour to improve public health. It includes not only to provide minimum medical aid but also providing

appropriate human environment. For the first time the Stockholm Declaration 1972 successfully made an effective appeal to every nation to adopt, measures constitutionally and legislatively to take adequate care of environmental aspect. Pursuant to Stockholm declaration the Parliament introduced 44th Constitution Amendment Bill 1976 whereby the protection and improvement of environment has become constitutional obligation of the State and citizens. Article 48A was inserted in the Constitution which reads as under:

State shall endeavor to protect and improve the environment and to safeguard forest and wild life of the country

17. On March 3, 1974 on receiving the assent from the President of the Indian Republic, the Water (Prevention and Control of Pollution) Act, 1974 came into effect. The Pollution is considered to be such contamination, alteration of property, could be physical, chemical or biological or such discharge of any sewerage or trade effluent any other liquid, gaseous solid substance, which is likely to create nuisance, or render such water harmful or injurious to public health or life and health of animal, plants or aquatic organism, safely or to domestic, commercial, industrial, agricultural or other legitimate uses. To carry out the functions, the Central and State Boards have been constituted to advise the appropriate Government, provide technical assistance, plan and organize training etc.

18. It is, therefore, necessary that Chairman or Member Secretary of the Board must possess requisite qualification, scientific knowledge, experience to provide technical assistance, plan and organize training and to act as competent person on this field. It is, therefore, the statutory duty of the State Government to adopt strict mode of selection of a competent person for the post of Chairman and Member Secretary of the Board.

19. In the light of the aforesaid scheme and the object of the Act we shall now consider as to whether State Government has selected respondent No. 5 by strictly following the Act and the instructions time to time issued by the Central Government.

20. On the one hand, petitioner of WPS No. 952 of 2007 namely, Shiv Kumar Singh claimed himself to be the only competent person having requisite qualification and experience to be appointed to the post of Member Secretary.

From perusal of the bio-data of the petitioner, it appears that he passed Bachelor of Engineering (Civil) Examination in 1972 from South Gujarat University with Public Health Engineering and Elective subject. He passed Master of Engineering (Civil) in Environmental Engineering in 1976 from the same University. He has undergone various courses like Water Quality Management, Water Pollution Monitoring and Management, International Institute of Hydraulic and Environmental Engineering, Netherland and Air Pollution Control Technique at Central Pollution Control Board, Delhi. Petitioner has also mentioned list of papers published/paper presented in Seminars/symposiums/Colloquiums etc.

Petitioner also stated about his posting in different departments. It appears that he had been Regional Officer (Environment Engineer) Bihar State Pollution Control Board from 1981 to 1988. Then again on the same post from 1988 to 1992, he also discharged his duty as Technical Officer, Bihar State Pollution Control Board.

21. Respondent No. 5, Mr. R.K. Sinha, on the other hand has furnished his bio-data as Annexure-A to the counter affidavit. He is M.Sc. and belongs to Indian Forest Service. He has obtained diploma in Forestry from Forest Research Institute, Dehradun with subject Silviculture, Forest Management, Wood harvesting, Biological and Earth Sciences, Wood Technology, Woods Bases Industries, Social Forestry, Wildlife Management. He has undergone various trainings of Higher Forest Management and Wildlife of the Country etc.

22. Comparing the bio-data given by these two officers, prima facie it appears that the qualification and experience possessed by the petitioner Mr. Shiv Kumar Singh is much better than respondent No. 5, R.K. Sinha. Mr. R.K. Sinha, who comes from Indian Forest Service, does not have fair service record and he is involved in several criminal cases such as Sonua P.S. Case No. 13/94 dated 14.5.1994, registered under Sections 419, 420, 467, 468, 379, 411 and 120B of the I.P.C.; Raneshwar P.S. Case No. 23/2004 dated 6.4.2004 registered u/s 323/341 of the I.P.C.; Nagar P.S. Dumka Case No. 95/2005 dated 16.5.2005 registered under Sections 341, 323, 448, 379 and 504 of the I.P.C. and also Nagar P.S. Dumka Case No. 242/2005 dated 5.11.2005 registered under Sections 341, 323, 386, 506, 34 of the I.P.C. It is also evident from the order bearing memo No. 35 dated 13.7.2004 issued by the Government. Secretary-cum-Legal Advisor, Law Department, Govt. of Jharkhand, Ranchi, that sanction has also been granted for prosecution of respondent No. 5 for the offences under Sections 419/420/467/379/411/120B of the I.P.C. in Sonua P.S. case No. 13/95. The Forest and Environment Department, Govt. of Jharkhand vide memo No. 5825 dated 5.10.2005 has also decided to initiate departmental proceeding against respondent No. 5. From the aforesaid facts it is quite evident that respondent No. 54 does not have clean service record and is not entitled to hold such a key post of Member Secretary of the Board.

23. As noticed above, post of member secretary of State Pollution Control Board is an important post for which State Government has to apply its mind and to adopt strict procedure of selection for the said post. The question is as to whether while appointing respondent No. 5 R.K. Sinha, on the post of member Secretary the State Govt. has discharged its statutory duty and obligation. From perusal of the record, it appears that the petitioner Mr. Shiv Kumar Singh was appointed as Member Secretary of the Board in 2006 vide Notification dated 19.5.2006 on temporary basis till appointment of regular member secretary on the post.

24. At this juncture we would like to refer the observation made by the Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc.

etc., . Their Lordships deprecated the practice of ad hoc or temporary employment. Their Lordships further held that an ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee. He must be replaced only by regular selected employee. It is necessary to avoid arbitrary action on the part of the appointing authority.

25. In the instant case, as noticed above, petitioner was temporarily appointed as Member Secretary of the Board vide Notification dated 19.5.2006 till appointment of regular Member Secretary. Violating the mandate of the Supreme Court, the State Government replaced the petitioner by making temporary appointment of respondent No. 5 R.K. Sinha on the said post as Member Secretary vide Notification dated 13.2.2007 without assigning any reason of replacement.

26. Mr. M.S. Anwar, learned senior counsel drawn our attention to Annexure-10 to the supplementary affidavit filed in WPC No. 3203 of 2007 which is a notesheet made in the concerned file relating to appointment of Member Secretary. It appears that Notesheet was placed by the Department to the Dy. Chief Minister and it was brought to the notice of the Dy Chief Minister that post of Member Secretary is a technical post and a person having qualification of M.Tech. can he appointed as Member Secretary. It was also brought to the notice of the Dy. Chief Minister that respondent No. 5 R.K. Sinha did not make available his bio-data and other qualifications. Just below the note-sheet Dy. Chief Minister put a note that as per discussion with the Chief Minister Mr. R.K. Sinha may be posted temporarily as member Secretary. Accordingly notification dated 13.12.2007 was issued appointing Mr. R.K. Sinha, as Member Secretary on temporary basis. Few months thereafter, same person was appointed as regular member secretary with the approval of the Chief Minister. It is, therefore, evident that despite the fact brought to the notice of the Chief Minister that the post of member secretary is a technical post in which suitable person should be appointed on that post, Dy. Chief Minister at the instance of the Minister appointed Mr. R.K. Sinha on the post of Member Secretary of the Board. Admittedly, neither any mode or procedure of selection was adopted nor the bio-data of any competent persons were considered. Even a committee of experienced officers was not constituted.

27. Mr. Anwar, has drawn our attention to para 13, 14 and 15 of the writ petition which reads as under:

13. That it is stated that respondent No. 5 who comes from Indian Forest Service, does not have fair service record and he is involved in several criminal cases such as Sonua P.S. Case No. 13/94 dated 14.5.1994, registered u/s 419, 420, 467, 468, 379, 411 and 120B of the I.P.C., Raneshwar P.S. Case No. 23/2004 date 6.4.2004 registered u/s 323/341 of the I.P.C., Nagar P.S. case No. 95/2005 dated 16.5.2005 registered under Sections 341, 323, 448, 379 and 504 of the I.P.C. and also Nagar P.S. Dumka case No. 242/2005 dated 5.11.2005 registered under Sections 341, 323, 386, 506, 34 of the I.P.C. The petitioner

undertakes to produce copies of the F.I.R. lodged against respondent No. 5 at the time of hearing, if so required by this Hon''ble Court.

14. That it is stated that as evident from order bearing Memo No. 35 dated 13.7.2004 issued by the Government Secretary-cum-Legal Advisor, Law Department, Government of Jharkhand, Ranchi, sanction under Sections 419/420/467/379/411/120B of the I.P.C. in Sonua P.S. case No. 13/ 94.

15. That is stated that the Forest and Environment Department, Govt. of Jharkhand vide memo No. 5825 dated 5.10.2005 has also decided to initiate departmental proceeding against respondent No. 5

28. These submissions with regard to pendency of criminal cases against Mr. R.K. Sinha and sanction of prosecution by the State have not been denied or disputed either by the respondent or by Mr. R.K. Sinha or by the State.

29. As noticed above, Section 4(2)(f) of the Act requires the Member Secretary to possess requisite qualification, knowledge and experience of scientific engineering or management aspect of the pollution control. In the case of Akhil Bharat Gosewa Sangh Vs. State of A.P. and Others, , the Supreme Court while dealing with the case under the Environment Protection and Pollution Control, held that persons who are to be appointed as Chairman and member Secretary of the Pollution Control Board must possess statutorily required qualification.

30. In the case of Center for Public Interest Litigation and Another Vs. Union of India (UOI) and Another, , the appointment of Chief Secretary was challenged in a writ petition on the ground inter alia that it was a prestigious appointment and looking to the tainted reputation and doubtful integrity of the Officer, she should not have been appointed as Chief Secretary particularly when criminal cases were pending and the Commission had been appointed to look into the various aspects. Disposing of the interlocutory application, Their Lordships observed:

17. Learned Counsel for Respondents 2 and 3 have submitted that as back as on 17-4-2004 Respondent 3 was promoted to the Chief Secretary's grade with a particular scale of pay. Since Respondent 3 belonged to the said cadre and grade, one of the posts on which she could be appointed is the post of Chief Secretary. Therefore, there is nothing wrong in her appointment. Though the post of Chief Secretary may belong to a particular grade/cadre, it is certainly a key post. The importance of this post was noted by this Court in E.P. Royappa v. State of T.N.

18. The argument presently advanced is that since Respondent 3 has been continuing in the post for five months, no orders should be passed regarding her appointment till the Commission gives its report. Had this consideration weighed with the State Government when it made the appointment there may not have been any difficulty. It could have, considering the importance of the post, awaited the report of the Commission headed by Mr. Justice K.T. Thomas. It is not the case of Respondent 2, the State of U.P. that no other officer is suitable to hold that post or that the services of Respondent 3 are so indispensable that

none but she should be appointed as the Chief Secretary. This is purely a case of justifying an action. Linked with it is the question of transparency in action. It is true that the allegations against Respondent 3 have to be established. It is often said that justice should not only be done but it should appear to have been done. Lord Denning in *Metropolitan Properties Co. v. Lannon* said: (All ER p. 310 D)

Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: "The Judge was biased.

The logic is equally applicable to governmental action and the Government. The State Government could have avoided the washing of dirty linen which as contended by learned Counsel for Respondents 2 and 3 is the sole object of the writ petition.

20. The time has come when the postings of officers holding sensitive posts should be done in transparent manner giving no scope for any grievance. It is true that grievances can be made or allegations can be levelled for ulterior motive or with the intention of damaging the reputation of an officer who is likely to be appointed in a sensitive post, very often at the behest of persons angling for the post. In the peculiar background facts it was really desirable for the State Government to steer clear of controversy and not to post Respondent 3 as the Chief Secretary. By doing it, it has unnecessarily created further complications and invited criticism. We, therefore, direct the State Government to transfer Respondent 3 to some other post in the cadre/grade to which she belonged. The question of her suitability to be included in the cadre/grade, shall be examined in the writ petition itself. For the present, we do not express any opinion on that issue. The necessary steps for effectuating our order shall be taken within seven days. We make it clear that we have not expressed any opinion on the merits of the allegations as the matter is pending before the High Court and Justice Thomas Commission.

31. Mr. Aparesh Kumar Singh and Mrs. Ritu Kumar, learned Counsels appearing for the respondents, questioned the maintainability of the writ petition as Public Interest Litigation and in this respect, they relied on a decision of the Supreme Court in the case of *Neetu Vs. State of Punjab and Others*, . In our opinion, the decision relied upon by the respondents is not applicable in the present case mainly for the reasons that not only a Public Interest Litigation has been filed, but a separate writ for the issuance of quo warranto and also another writ by the aggrieved persons by such appointment has been filed.

32. From the entire facts of the case and the manner respondent No. 5. R.K. Sinha was appointed by the Government, it does not appear that the challenge of his appointment is really intended to unleash a private vendetta or some mala fide object. Prima facie it appears that the Government has not maintained transparency and followed the Act and the directives strictly while making appointment of respondent No. 5 as member Secretary of the Pollution Control Board. It further appears that the impugned notification appointing respondent

No. 5 has been issued by the State without application of mind and in a most discriminatory manner by not considering the case of the petitioner who claims to have requisite qualification as provided in the Act and have experience in the field of environmental management.

33. From perusal of the record, it appears that it is not for the first time the question with regard to appointment of Member Secretary has been brought in Court. Earlier the matter relating to appointment of Chairman of the Pollution Control Board also came for consideration before this Court. It is interesting to note that one Tileshwar Sahu was first appointed as the Chairman of the State Pollution Control Board. By notification No. 1437 dated 16.3.2007, the said Tileshwar Sahu was removed from the post of Chairman with immediate effect because of criminal cases pending against him. The said notification was challenged in W.P.S. No. 1578 of 2007. The writ petition was admitted for hearing by the learned Single Judge, but prayer for stay of the operation of the notification was refused. Against the said order, Tileshwar Sahu filed Letters Patent Appeal before the Division Bench being L.P.A. No. 165 of 2007. While disposing of the appeal, the Division Bench observed that such an important post of statutory authority should be filled up by most competent person having clean record and beyond shadow of doubtful about his integrity. Para 5 and 6 of the said judgment is quoted herein below:

5. Mr. Ravi Shankar Prasad then brought to our notice the fact that the said impugned notification was issued under the signature of one Mr. Sudhir Prasad, Principal Secretary to the Government, department of Forest & Environment and the same person has been posted as Chairman of the Board. Learned Counsel drew our attention to Annexure 15 to the memo of appeal and submitted that the Government on the one hand has taken a specific stand for removal of the appellant from the post of Chairman as because there are criminal cases pending against him but on the other hand the Government has posted Mr. Sudhir Prasad as Chairman of the Board who is also facing criminal cases being Vigilance Case No. 29/2000 registered under Sections 420, 467, 468 and 471 I.P.C. and he was granted bail in A.B.A. No. 4573/2001 on 4.07.2001. Learned Advocate General, for the present, has not disputed this submission made by the counsel for the appellant.

6. This Court, therefore, is constrained to observe that such an important post of statutory authority should be filled up by most competent person having clean records and beyond any shadow of doubt about his integrity.

34. It is rather surprising that on the one hand, the Government of Jharkhand removed Tileshwar Sahu, chairman, Pollution Control Board, on the ground that criminal case is pending against him and, on the other hand, a person, against whom several criminal cases are pending and in one case Government has sanctioned prosecution, has been appointed as member Secretary and the State is defending its action. Time and again Supreme Court issued directives to the State to maintain fairness in the matter of filling up important and statutory

posts, but those posts are filled up by the Government at the whim and desire of the Ministers. We seriously deprecate such manner of appointment and direct the State Government to strictly follow the provisions of the Act and the instructions issued by the Central Pollution Control Board in the matter of appointment of Chairman and Member Secretary of a Pollution Control Board. The manner respondent No. 5 R.K. Sinha was appointed Member Secretary of the Board only on the sweet will of the Appointing Authorities; the impugned notification cannot be sustained in law.

35. For the reasons aforesaid, the impugned notification appointing respondent No. 5 R.K. Sinha, is quashed. This Court again reiterate that the important statutory post of Member Secretary should be filled up by most competent person having clean record and beyond any shadow of doubt about his integrity.

For the reasons aforesaid, all these writ petitions are disposed of.

Jaya Roy, J.

36. I agree.