

(2019) 05 CHH CK 0009
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 408 Of 2019

Padma Chandrakar And Ors

APPELLANT

Vs

State Of Chhattisgarh Through And Ors

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Chhattisgarh Rajya Mahila Ayog Adhiniyam, 1995 — Section 3, 3(2)(b)(ii), 3(2)(b)(iii), 4, 4(3)(a), 4(3)(b), 4(3)(c), 4(3)(d), 4(3)(e), 4(3)(f)

Citation : (2019) 05 CHH CK 0009

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : U.N.S. Deo, Rahul Jha

Final Decision : Allowed

Judgement

1. Heard.

2. The challenge in this petition is to the order dated 26/12/2018 (Annexure P1) and the order dated 20/12/2018 (Annexure P-2). The case of the petitioners are that the petitioners were removed as members of the Rajya Mahila Ayog. It is contended that the petitioner No.1 and the petitioner No.3 were appointed in the capacity of social worker in the State Commission of Women and the petitioner No.2 being an eminent advocate was appointed as a member of State Commission for Women.

3. It is stated that as per Section 4 of the C. G. Rajya Mahila Ayog Adhiniyam 1995 (for short "The Adhiniyam of 1995") the term of the member would be of three years and the removal of such members from the office of State Commission of Women can only be on the specific ground and ground on which petitioners were removed which do not support the cause. According to the petitioners, before removing them, the Adhiniyam contemplates that opportunity of hearing should have given. Therefore, in this case when the petitioners were not given any hearing before they were removed and on the basis of blanket

order, which do not apply to the petitioners, the membership of the petitioners have been wrongly terminated. He submits that the doctrine of pleasure as has been stated by the State government can not be applied in this case as specific law govern in the same.

4. Learned counsel for the petitioners further submits that the emoluments which have been due to the petitioners have not been paid after the termination have been effected vide Annexure P1 therefore they are already entitled to consequent relief from the date the emoluments have been stopped.

5. Learned State counsel opposes the argument and would submit that the petitioners were never appointed under any selection process as they were nominated as members, therefore, they were holding office on nomination. It is stated the State was within their right to remove them in exercise of doctrine of pleasure. He submits that the petitioners have also admitted the fact that they were nominated by the State on the wish and will of State, therefore, they could not challenge the removal. He further, submits that the period so prescribed under the Adhiniyam of 1995 was 3 years and it can be less then 3 years in a given case. Reliance is placed in case of B. P. Singhal v. Union of India [(2010) 6 SCC 331] and submits that as per the doctrine of pleasure, the petitioners were not required to be heard before removal from their post.

6. I have heard the learned counsel for the parties.

7. Section 3 of Chapter II Of the Adhiniyam of 1995, reads as under:

3. Constitution of State Commission for Women:-

(1) The State Government shall, by notification in the Official Gazette, constitute a body to be known as the "Chhattisgarh State Commission for Women" to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

(2) The Commission shall consist of -

(a) a Chairperson, who shall be an eminent woman social worker or a professional committed to the cause of women, to be nominated by the State Government;

(b) Six members to be nominated by the State Government from amongst person of ability, integrity and standing, of whom-

(i) one shall be an official;

(ii) one shall be an eminent Advocate;

(iii) two shall be social workers of repute; and

(iv) two shall be experts in education and health: Provided that out of the six Members one shall be from Scheduled Castes, Scheduled Tribes and Other Backward Classes respectively.

(3) An officer not below the rank of a Deputy Secretary to the Government of Madhya Pradesh shall be the Member Secretary of the Commission.

8. It is not in dispute that petitioner No.1 Smt. Padma Chandrakar, and petitioner No.2 Mamta Sahu were nominated on 29/10/2016 by Annexure P-3. The petitioner No.2 was appointed in capacity of an advocate which according to Section 3 (2) (b) (ii) whereas the petitioner No.1 Smt. Padma Chandrakar was appointed in exercise of power under Section 3 (2) (b) (iii) along with the petitioner No.3 Smt. Khileshwari Kiran as a social worker of the repute. The date of appointment of petitioner No.3 was on 31/8/2017.

9. Section 4 of the Act of 1995 defines the Term of office and conditions of Service of Chairpersons and Members:-

4. Term of Office and conditions of Service of Chairperson and Members:-

(1) The Chairperson and every member shall hold office for such period, not exceeding three years, as may be specified by the State Government in this behalf.

(2) The Chairperson or a Member (other than the official Member) may, by writing and addressed to the State Government, resign from the office of Chairperson or as the case may be, of the Member at any time.

(3) The State Government shall remove a person from the Office of Chairperson or a Member referred to in sub-section (2) if that person-

(a) becomes an undischarged insolvent;

(b) is convicted and sentenced to imprisonment for an offence involving moral turpitude;

(c) becomes of unsound mind and stands so declared by a competent Court;

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or

(f) in the opinion of the State Government, has so abused the position of Chairperson or Member as to render his continuance in office detrimental to the public interest:

Provided that, no person shall be removed under this clause until he has been given a reasonable opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nominations by the State Government and the person so nominated shall hold office for the remainder of the term of office of the person in whose vacancy such person has been nominated.

(5) The salaries and allowances payable to and the other terms and conditions of

service of, the Chairperson and the Members shall be such as may be prescribed.

10. Reading of Section 4 shows that the Chairperson and other members shall hold the office not exceeding 3 years as may be specified by the State government in this behalf. Therefore, the appointment of petitioner No.1 Smt. Padma Chandrakar and petitioner No.2 Mamta Sahu who were nominated on 29/10/2016 was to last up till 29/10/2019. Likewise, the nomination of the petitioner No.3 Khileshwari Kiran having been made on 31/8/2017 was to last up till 31/8/2020. Sub-Section 3 of Section 4 gives the State government power to remove the person from the office of chairperson or member on specific ground which are mentioned from (a) to (f). The proviso to the Section 3 however purports that no person should be removed from the office under this clause until he has been given reasonable opportunity of being heard in the matter.

11. The State issued a general notification on 20/12/2018 filed in this petition as Annexure P-2 which reads as under :-

छत्तीसगढ़ शासन,

सामान्य प्रशासन विभाग,

मंत्रालय,

महानदी भवन, अटलनगर (छ.ग.)

आदेश

क्रमांक एफ 10-20/2018/एक/1 राज्य शासन एतद् द्वारा छत्तीसगढ़ राज्य के समस्त आयोगों (संवैधानिक आयोगों तथा विधि द्वारा स्थापित जिसमें अध्यक्ष/उपाध्यक्ष /सदस्य की नियुक्ति अधिनियम के परिप्रेक्ष्य में चयन प्रक्रिया के अनुसार की गई है को छोड़कर), निगमों, मण्डलों, प्राधिकरणों, समितियों, परिषदों, एवं अन्य संस्थाओं में अध्यक्ष/उपाध्यक्ष /सदस्यों के किये गये मनोनयन तत्काल प्रभाव से निरस्त किया जाता है।

12. On the basis of such omnibus direction, Annexure P-1 was issued on 26/12/2018 whereby the petitioners were removed as a member from the State Commission for Women of Chhattisgarh.

13. The argument of the State that the petitioners were appointed on nomination and therefore they were holding the office of State under the doctrine of pleasure as such are removed is completely contrary of the Section 4 of the Adhinyam of 1995. Once the petitioners were appointed, the exigency of removal should have been within the category of (a) to (f) of sub-section 3 of Section 4 which gives the ground of removal and apart from that the duty have been cast that before removal they should be given opportunity of being heard. Further submission of the State counsel can not be appreciated that the petitioner themselves admitted that they were on the doctrine of pleasure of the State as there cannot be estoppel against law. When there was a specific law was governing the field then the doctrine of pleasure can not be pressed into motion by the State for removal or taking any action. The doctrine of pleasure was considered in the case of B. P. Singhal v. Union of India [(2010) 6 SCC 331] which was further followed on Saji

D. Anand V. State of Kerala 2016 SCC Online Ker 21468. The Supreme Court in the context of removal of Governor in para 22 as follows:

"22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by the rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good."

14. When the Act governs the appointment and removal under specific legislation then in such case the removal has to be according to the Act itself. The doctrine of pleasure can be given an over riding effect to the statute governing the field. The State is bound to follow its own law and if the Act provides certain things to be done in a particular way, the same is to be done accordingly. Consequently the Annexure P-1 with reference to the petitioners can not be allowed to be sustained. As a result, the same is quashed. The petitioners shall be entitled to hold the office under Section 4 of the Ahiniyam of 1995 and further shall be entitled to all the consequential reliefs from their date of stoppage.

15. Accordingly, the petition is allowed. No order as to cost.