

(2021) 08 JH CK 0016
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2873 Of 2020

Phool Singh

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 04-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 32, 35(e)(iv), 75(2), 76(4), 124, 142, 148, 156(1), 164(1), 165(3), 226, 218, 309, 310, 310(1), 310(2), 311, 311(1), 311(2), 324
National Council For Teachers Education Rules, 1997 — Rule 5, 6, 7, 9(i)
Indian Railway Establishment Code, (Vol-1) — Rule 148(3), 149(3), 149(4)
Jharkhand Academic Council (Amendment) Act, 2006 — Section 4(1), 5, 6, 6(a), 11(1) (3), 11(3), 12(4), 31
Government Of India Act, 1935 — Section 240

Citation : (2021) 08 JH CK 0016

Hon'ble Judges : Dr. S. N. Pathak, J

Bench : Single Bench

Advocate : Ajit Kumar, Sameer Sahay, Kumari Sugandha, Mithilesh Singh, Richa Sanchita

Final Decision : Allowed

Judgement

Dr. S.N.Pathak, J

1. Heard the parties.

2. Despite valid service of notice, respondent No. 6 has chosen not to appear before this court either himself or through a counsel to place his case;

hence, this Court proceeded to pass final order after hearing counsel for the rest of parties on the basis of merits of the case.

3. Petitioner has prayed for quashing the memo dated 03.09.2020 (Annexure-7), whereby the respondent no. 4 has illegally and arbitrarily terminated

the remaining tenure of the petitioner and has removed him from the post of Vice-Chairman, Jharkhand Academic Council. Petitioner has further

prayed that after quashment of the said memo, the respondents may be directed to reinstate him on his post with all consequential benefits.

It has been further prayed for quashing the notification dated 03.09.2020 (Annexure-8), whereby the respondent no. 4 has arbitrarily appointed

respondent No. 6 as the new Vice-Chairman, Jharkhand Academic Council for a period of three years.

4. The facts of the case lie in a narrow compass. The petitioner has been in teaching profession since 1977 and has served as the Principal of

Rajkamal Saraswati Vidya Mandir, Dhanbad, a CBSE affiliated school since 1989. It is the case of the petitioner that Department of School Education

and Literacy, Govt. of Jharkhand, Ranchi vide its notification dated 09.09.2015 has appointed the petitioner as the Vice-Chairman, Jharkhand

Academic Council, Ranchi for a period of three years from the date of assuming the charges. The said appointment has been made under Section

11(3) of Clause-9 of Jharkhand Academic Council (Amendment) Act, 2006. Consequently, vide memorandum dated 15.09.2015, the petitioner took

the charge of Vice-Chairman, Jharkhand Academic Council, Ranchi and completed three years tenure on the said post without any complain from any

side. Thereafter, the Department of School Education and Literacy, Govt. of Jharkhand, Ranchi, finding services of the petitioner satisfactory, vide its

notification dated 15.09.2018 appointed the petitioner for another term of three years and the petitioner took charge of the said post on 15.09.2018

itself.

5. It is the further case of the petitioner that before completion of tenure of three years in his second term, the respondent No. 4 vide notification dated

03.09.2020 cancelled remaining tenure and removed the petitioner from the post of Vice-Chairman. However, to the utter surprise of the petitioner,

respondent No. 4 went ahead and appointed respondent No. 6 as the new Vice-Chairman, Jharkhand Academic Council vide notification dated

03.09.2020 on the same day itself.

Aggrieved by the impugned notifications dated 03.09.2020 by which the petitioner has been illegally and arbitrarily removed from the post of Vice-

Chairman and respondent No. 6 has been appointed in his place on the said post, he has knocked the door of this Court.

6. Mr. Ajit Kumar, learned senior counsel appearing for the petitioner submits

that impugned notifications dated 03.09.2020, by which the petitioner has been removed from the post of Vice-Chairman of Jharkhand Academic Council and in his place respondent No. 6 has been appointed, are illegal, arbitrary and not sustainable in the eyes of law. Learned senior counsel submits that by virtue of Section 4(1) of the Jharkhand Academic Council (Amendment) Act, 2006, the Vice-Chairman is a member of Jharkhand Academic Council and his appointment, removal, terms and conditions of service, are solely governed by the said Act. Learned senior counsel further argues that the petitioner has been removed from his post without giving any prior notice or opportunity of hearing to him. No allegations have been made against the petitioner while he was holding the post of Vice-Chairman and hence, the petitioner cannot be said to be disqualified to hold the post as the petitioner had already completed tenure of three years on the said post and finding his service satisfactory, the respondent-authorities have extended the same for another term of three years. Learned senior counsel further argues that the impugned notification is cryptic, mechanical and is not supported by any reasons and the same has been issued in colourable exercise of power of the government, to remove the petitioner midway, before completion of his tenure. Learned senior counsel further argues that it is a settled law that a person holding a public post cannot be removed arbitrarily, illegally or at the sweet will of the government and any such order removing a person from the public post comes within the purview of judicial review.

7. Learned senior counsel further submits that appointment to the post of Vice-Chairman is at the pleasure of the State Govt., however, the doctrine of pleasure does not provide a license to the government to act arbitrarily, capriciously or whimsically. The application of the said doctrine cannot be at the sweet will, whims and fancy of the authority but can only be for valid reasons. The Honâ??ble Supreme Court in catena of its decisions has held that the absolute, unrestricted application of the doctrine of pleasure does not exist in India and the same is subject to the rule of law and Article 14 of the Constitution. Learned senior counsel further argues that though the statute provides that the appointment of Vice-Chairman is at the pleasure of the government, however, the same also provides that the term of appointment is for a period of three years and that any member can be removed

only upon disqualification of any kind as provided in the Act itself but in the impugned notification, it is nowhere mentioned that petitioner has been

found disqualified for holding the post of Vice-Chairman. Learned senior counsel lastly submits that for the aforesaid reasons, the impugned

notifications are fit to be quashed and set aside.

8. To buttress his arguments, learned senior counsel places heavy reliance on the following judgments:

(I) Union of India & Anr. Vs. Shardindu [(2007) 6 SCC 276];

(II) Chandra Bhushan Kumar & Anr. Vs. State of Jharkhand & Ors. [2013 SCC Online Jhar. 1013]

(III) Mrs. Lakshmi Singh Vs. the State of Jharkhand & Ors. [W.P.(C). No. 1294 of 2007]

9. Per contra, counter-affidavit has been filed.

10. Mr. Mithilesh Singh, learned counsel appearing for the respondent-State vehemently opposes the contention of learned senior counsel appearing

for the petitioner. Justifying the impugned notifications, learned counsel submits that petitioner, who was holding public post has been removed vide

notification bearing memo No. 1712 dated 03.09.2020 without any stigma or disqualification attached to him by invoking the doctrine of pleasure by the

order of Her Excellency, the Governor of Jharkhand and with the recommendation of Honâ??ble the Chief Minister, Jharkhand. Learned counsel

further argues that there is no provision under the Jharkhand Academic Act, which prohibits the State Govt. from removing the Vice-Chairman before

completion of his tenure after extension and as such, the respondents have acted well within the powers conferred under the Jharkhand Academic

Council Act, there was no violation of principle of natural justice or Article 14 of the Constitution. Learned counsel lastly submits that for the aforesaid

facts and circumstances, the instant writ application is devoid of any merit and is liable to be dismissed.

11. To strengthen his arguments, learned counsel appearing for the respondent-State places heavy reliance on the following judgments:

(I) Om Narain Agarwal & Ors. Vs. Nagar Palika, Shahjahanpur & Ors., [(1993) 2 SCC 242];

(II) Deepak Prakash Vs. the State Jharkhand, Secretary of Mines and Geology, Jharkhand [2007 SCC Online Jhar. 500].

12. Be that as it may, having heard the rival submissions of the parties and upon perusal of the documents brought on record, this Court is of the considered view that the case of the petitioner needs consideration.

13. Before dealing with the issues involved in this case, it has to be examined that what were the terms and conditions for appointment of the petitioner. The petitioner was dully appointed as per the Jharkhand Academic Council (Amendment) Act, 2006. Section 11(1)(3) of the said Act which reads as under:

11(1)(3) Appointment, term and service conditions of Vice Chairman:-

(i) The Vice-Chairman shall be appointed by the State Government.

(ii) The Vice-Chairman shall be a whole-time officer and shall hold office at the pleasure of the State Govt. for a term not exceeding three years from the date on which he first assumes charge of the office.

(iii) On the expiration of the first term he may be appointed at the pleasure of the State Government for a term not exceeding three years.

(iv) The State Government shall appoint such person as Vice-Chairman who has sufficient experience of education administration.

(v) The Salary and other service conditions of the Vice-Chairman shall be equivalent to the Pro-Vice-Chancellor of a University in Jharkhand.

(vi) In addition to his own duties he will be in charge of the Regional office of the Council at Dumka.

(vii) He will act under the over all superintendence of the Chairman and perform such other duties as may be assigned to him by the Chairman from time to time.

(viii) Other conditions of the service shall be determined by the State Government.

14. It is an admitted position that as per Section 11(1)(3) of the said Act, the Vice Chairman shall be a whole-time Officer and shall hold office at the pleasure of the State Govt. for a term not exceeding three years from the date on which he first assumes charge of the office.

The present petitioner was earlier appointed by the State Govt. for a fixed tenure of three years and thereafter taking into consideration his suitability

for the post, his term was extended for further period of three years. Admittedly, it is not in dispute that the Vice Chairman shall hold office at the

pleasure of the State Govt. but it has to be seen whether such power can be exercised in consonance with statutory provisions or the same has to be

exercised as per the wishes of the State Govt. This Court is of the view that the pleasure of the State Govt. has to be exercised very sparingly.

15. The said issue fell for consideration before the Honâ??ble Apex Court in case of Union of India & Anr. Vs. Shardindu, reported in (2007) 6 SCC

276, wherein their Lordships have held as under:

â??15. Section 5 deals with disqualification for office of members. Section 6 lays down the vacation of office of member. We are not concerned with

rest of the provisions of the Act as they deal with various functions and other connected matters of education. In purported exercise of the powers

under Section 31 of the Act the Central Government framed the rules known as the National Council for Teachers Education Rules, 1997 (hereinafter

referred to as â??the Rulesâ?). Rule 5 of the Rules lays down the conditions of service of the Chairperson, the Vice-Chairperson and the Member-

Secretary, like their pay, dearness allowance, house rent allowance and city compensatory allowance and other terminal benefits. Rule 6 deals with

travelling and daily allowances to members. Rule 7 deals with the powers and duties of the Chairperson. Therefore, from the scheme of the Act and

the Rules it is apparent that the appointment of the Chairperson of the NCTE is a tenure post for a period of four years or any person attaining the age

of sixty years whichever is earlier. Section 5 deals with disqualification and none of the disqualifications mentioned in that section have been incurred

by the respondent. Neither he has been convicted nor sentenced to imprisonment for an offence which in the opinion of the Central Government,

involves moral turpitude, nor has he been undischarged insolvent, nor was he of unsound mind and has been removed or dismissed from the service of

the Government or a body corporate owned or controlled by the Government, and has in the opinion of the Central Government such financial or other

interest in the Council as is likely to affect prejudicially the discharge by him of his functions as a member nor has committed any financial irregularity

while working as Chairperson. Therefore, the respondent has not incurred any of the disqualifications as mentioned above. Section 6 deals with

vacation of office of member. Section 6 lays down that the Central Government can remove if any person has incurred any of the disqualifications as

mentioned in Section 5. Proviso to Section 6(a) further clarifies that the incumbent shall be removed on the ground that he has become subject to the disqualification mentioned in clause (e) of that section, unless he has been given a reasonable opportunity of being heard in the matter or refuses to act or becomes incapable of acting or is without obtaining leave of absence from the Council, absent from three consecutive meetings of the Council or in the opinion of the Central Government has so abused his position as to render his continuance in office detrimental to the public interest. Therefore, under these contingencies if a member is to be removed, then notice is required to be given to the incumbent. On the basis of the analysis of Sections 5 and 6 it is more than clear that the respondent has not incurred any of these disqualifications.

22. This is an objective statement of law that in changing world it is difficult to foresee future contingencies but if such contingency has not been anticipated then can a court sit in to make it good. In the present case it is true that the contingency which has arisen i.e. the incumbent who has been appointed being a statutory appointment or saddled with investigation for his past conduct, can this be made a good ground for cutting short his tenure?

25. Our attention was also invited to a decision of this Court in *Padma Sundara Rao v. State of T.N.* [(2002) 3 SCC 533]. Their Lordships held that *casus omissus* cannot be supplied by the court. The provisions of the statute have to be read as a whole and in its context. When language of the provision is plain and unambiguous the question of supplying *casus omissus* does not arise. The court can interpret a law but cannot legislate.

Therefore, the submission of learned Additional Solicitor General that since the contingency which has arisen in the present case was not foreseen by the draftsmen or by Parliament, therefore, the *casus omissus* may be supplied by this Court i.e. since the incumbent has been facing the charge, his tenure should be cut short. We regret we cannot cure the lacunae by exercising the power under Article 142 of the Constitution and uphold the order of termination especially when such contingency has not been made a ground for disqualification for holding the post. Therefore, the submission of learned Additional Solicitor General cannot be accepted.

26. Learned Additional Solicitor General next submitted that the appointment of the respondent was purely on deputation basis and since the

deputation period has been terminated the appointing authority has full right to terminate his deputation. Therefore, the respondent can be sent back to his parent Department i.e. the State of Uttar Pradesh. We regret to say that this appointment of the respondent cannot be said to be purely an appointment on deputation basis. Strictly speaking, it is not a deputation post because the incumbent has been selected under the Act and he has not come on deputation as such though loosely it can be said to be on deputation in the sense that since the incumbent holds his lien in the State of Uttar Pradesh and the State of Uttar Pradesh has permitted him to join the post for a fixed period of four years or till he attains the age of superannuation i.e. sixty years. Since the respondent holds a lien in the State of U.P. therefore, to some extent he can be said to be on deputation but it is not in the sense of deputation as in the case of an all-India service person who is sent on deputation to the Central Government or to other organisation. It is an independent selection under the statute and the State of U.P. has permitted the respondent to join his assignment as he holds a lien and after completion of the period of four years he will come back to the State till he attains the age of superannuation. If the incumbent was to retire within the period of four years perhaps it would not have been necessary to have moved the State of U.P. for its permission to join this assignment. Even after expiry of four years the respondent is left with some period of service. Therefore, formal permission was sought from the State of U.P. to permit the incumbent to join the post for a fixed term. Therefore, it is the permission by the State of U.P. to join the post and in case the incumbent comes back he can join the service under the State of U.P. Therefore, it is almost like a permission and not in strict terms of deputation but loosely it can be termed as deputation. This is not the situation when the period of deputation can be cut short and the incumbent can be sent back to his parent Department i.e. the State of U.P. unlike the officers of an all-India service. This appointment is for a fixed tenure after due selection under the Act. Therefore, this kind of deputation stands on an entirely different category. However, learned Additional Solicitor General tried to justify that a person who is sent on deputation has no right to continue in the post and his period of deputation can be cut short and he may be repatriated back to his parent Department.

33. Lastly, learned Additional Solicitor General submitted that Article 142 of the Constitution should be exercised in the present case as there is no such provision for the contingency which has arisen in the matter and the termination of the respondent should be upheld. In this connection, our attention was invited to a decision of this Court in *Supreme Court Bar Assn. v. Union of India* [(1998) 4 SCC 409]. This was a case where their Lordships exercised the inherent power under Article 142 of the Constitution. The Constitution Bench held that this Court in exercise of power under Article 142 of the Constitution cannot ignore any substantive statutory provision dealing with the subject. It is a residuary power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statutes in order to do complete justice between the parties wherever it is just and equitable to do so. It is only intended to prevent any obstruction to the stream of justice. None of such contingencies exist in the present case so as to invoke the power under Article 142 of the Constitution. This case stands reaffirmed in *Textile Labour Assn. v. Official Liquidator* [(2004) 9 SCC 741].

As a logical sequitur it can be clearly said that if procedure for termination of appointment exists in statutory provisions, termination can be done only according to those provisions and none else.

The same view was reiterated by this Court in case of *Lakshmi Singh & Anr. Vs. State of Jharkhand & Ors.*, reported in 2007 SCC Online Jhar. 451.

The relevant paragraphs of the said judgment is reproduced herein below:

7. On perusal of the impugned Notification (Annexure-4), it is evident that by the said Notification, earlier Notification dated 16th September, 2006

(Annexure-2) has been cancelled with immediate effect. By the said Notification dated 16th September, 2006 (Annexure-2), the Commission was

constituted by appointing Petitioner No. 1 as Chairman and Petitioner No. 2 as one of the Members. The Petitioners' were, thus, appointed as public

authority to hold a public office under the provisions of the statute, namely, Jharkhand State Women Commission Act, 2005. It is now well-settled that

a person holding a public office cannot be removed arbitrarily, illegally or at the sweet will of the Government and any such order removing a person

from the public office comes within the purview of judicial review. Once there is an existence of public element attached to the office or post, i.e., it is

suffice to attract Article 14 of the Constitution. Any arbitrariness; irrationality, illegality or unreasonableness affecting the rights of the persons holding public office or their removal in violation of the principle of natural justice brings the impugned Order within the ambit of judicial review. Objection and contention of the learned Advocate General that the impugned Notification (Annexure-4) is a policy decision of the Government and that the same cannot be brought within the scope of judicial review, as hardly any relevance and substance in the facts and circumstances of the instant case. The decision of the Supreme Court in the case of BALCO Employees' Union (Supra) referred to and relied upon by the learned Advocate general was rendered on different factual background. That was a case in which disinvestments of the Government in BALCO was in question. The Government had taken a policy decision to disinvest and transfer 51 per cent share of M/s. Bharat Aluminum Company Ltd. (BALCO), which was an economic policy of the Government, and it was held that wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In this context, it was observed that in a democracy, it is the prerogative of each elected Government to follow its own policy and change in Government may result in the shift of focus in economic policy. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law, is mala fide or decision bringing about change cannot per se be interfered with by the Court. It was further held that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the Courts inclined to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

9. In a democratic setup of Government, the State or public office is accountable to the people, who command sovereignty. The powers vested in the Government or public office has to be exercised only in public interest and for public good. Even in the policy matter, application of Article 14 of the Constitution cannot be entirely excluded. Every action of the State or any instrumentality of the State must be informed by reason. Actions uninformed

by reason come within the scrutiny of the writ jurisdiction under Articles 226 or Article 32 of the Constitution. The basic requirement of Article 14 is

non-arbitrariness and fairness in action by the State, which means fair play in action.â??

Further, in the case of *Dwarkanadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*, reported in (1989) 3 SCC 293, the Honâ??ble

Apex Court observed as follows:

â??11. Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the executive

authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of

Article 14â??.

Further para-13 of the judgment passed by this Honâ??ble Court in case of *Lakshmi Singhâ??s case (supra)*, reads as under:

Â â??13. In the case of *Kumari Shriiekha Vidyarthi (supra)*, a circular, terminating the appointments of all Government Counsel (Civil, Criminal and

Revenue), issued by the Government of Uttar Pradesh was questioned in writ jurisdiction of the Supreme Court under Article 32 of the Constitution of

India. After examining catena of decisions, on the subject for and against, it was held that en bloc removal of Government Counsel was arbitrary and

the action is not reasonable under Article 14 of the Constitution. The Apex Court reviewed the impugned circular and decided the validity and quashed

the same, restoring status quo. Converging to consideration of the validity of the impugned Notification, contained in Annexure-4, in the light of the

aforementioned discussions, it is held that the impugned Notification does not disclose any reason for cancellation of the constitution of the

Commission, which resulted into the termination of the Petitioners from their respective posts. The said Notification is also not supported by any

express statutory provision, nor any provision of the Act has been brought to my notice to justify such removal even without informing any reason and

giving any opportunity of hearing to the Petitioners to whom the said Notification has adversely affected and visited with civil consequences. The said-

Notification does not stand to the test of reasonableness and fair play to exclude arbitrariness and to exclude the scope of judicial review. The

impugned Notification, thus, does not meet the test of Article 14 of the

Constitution of India; being uninformed by reason and unsupported by any statutory provision. The impugned Notification dated 27th February, 2007, contained in Annexure-4, thus, cannot sustain and is, hereby, quashed. This writ Petition is allowed.â??

Further, this Hon'ble Court in case of Chandra Bhushan Kumar & Anr. Vs. The State of Jharkhand & Ors., reported in 2013 SCC Online Jhar.

1013 has held as under:

â??6. Learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Supreme Court in the case of Central Inland

Water Transport Corporation Ltd. v. Brojo Nath Ganguly reported in A.I.R. 1986 SC 1571 (para 19, 99, 106, 11 and 113 thereof). By relying upon the

opinion of the Hon'ble Supreme Court rendered in the said judgment it is submitted that the rules under which the power has been exercised cannot be

allowed to confer absolute, arbitrary and unguided power upon the respondent-State. They cannot be resorted to in violation of one of the great Rules

of natural justice - â??audi alteram partemâ? Rule. In the absence of proper opportunity to show cause and hearing the exercise of such power

becomes arbitrary and violative of Article 14 of the Constitution of India. Learned counsel for the petitioner has further relied upon the judgment

rendered by the Constitution Bench of the Hon'ble Supreme Court in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress reported

in A.I.R. 1991 SC 101 (Para 186, 194, 225, 229, 263 thereof). He has further supported his aforesaid contention by relying upon the majority opinion

rendered in the said case that the impugned action of the respondent trespasses upon the rights guaranteed under Part XIV Chapter I of the

Constitution of India relating to security of tenure of office of person serving under Union or State. Learned counsel has further relied upon a decision

of the Hon'ble Supreme Court in the case of Union of India v. Shardindu reported in (2007) 6 SCC 276 (Para 15, 22, 25, 26, 33 thereof). It is

submitted that the curtailment of tenure of the petitioners by such an arbitrary action on the part of the respondents cannot be saved by invoking Rule

4(vi) of the Rules of 2012. Learned counsel has further relied upon another decision of the Constitution Bench of the Hon'ble Supreme Court rendered

in the case of B.P. Singhal v. Union of India reported in (2010) 6 SCC 331 (Para 23, 24, 25, 32, 33 thereof). It is further contended on behalf of the

petitioners by relying upon the statement of learned author H.W.R. Wade and C.F. Forsyth which has been quoted in the aforesaid judgment that the

whole concept of unfettered discretion is inappropriate to an exercise of power by public authority. The doctrine of Pleasure in its absolute

unrestricted application does not exist in India. The said doctrine is severely curtailed in the case of government employment, as will be evident from

clause (2) of Article 310 and clause (1)(2) of Article 311. It is further submitted that Doctrine of Pleasure in respect of office held under the State are

subject to restriction and cannot be arbitrarily and unreasonably exercised to curtail the constitutional guarantee conferred under the said Article.

Learned counsel for the petitioner has also relied upon the judgment rendered by the learned Single Judge of this Court in W.P.C. No. 1294 of 2007

reported in 2007 (3) JLJR 156 (Annexure-5). In the said case the appointment of the Chairman and Member of the Jharkhand State Women

Commission under Jharkhand State Women Commission Act, 2005 were revoked before expiry of their terms without giving notice or opportunity of

hearing. The said impugned action were held to be bad in law being uninformed by any reasons and giving no opportunity of hearing to the petitioners.

11. The question, therefore, which falls for consideration is whether the respondent-State is entitled to invoke the Doctrine of Pleasure by removing

the petitioners from the post of Chairman/Members by giving them 1 month salary under Rule 4(vi) of the Rules of 2012. As stated herein above, the

Rules have been framed in exercise of power under Proviso to Article 309 of the Constitution of India. The Part XIV Chapter I of the Constitution

relates to the service under the Union and the State. Article 310 provides for recruitment and conditions of service of the person serving under Union

or State. Article 310 provides for tenure of office of person serving under the Union or the State. It provides that any person holding any civil post

under a State or Union holds office during the pleasure of the Governor of the State. Article 310(2) provides that notwithstanding the person holding

civil post under the Union or State and holding office during the pleasure of the President or Governor of the State, as the case may be, if the

President or the Governor, as the case may be deem it necessary in order to secure services of the person having special qualification, provide for the

payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any

misconduct on his part, required to vacate that post. Article 311 provides for manner in which the member of Civil service of the Union or State or

holding the Civil post under the Union or State shall be dismissed or removed or reduced in rank. Article 311(2) provides that no such action can be

taken except after an inquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of

those charges. The second proviso to the Article 311 provides for the conditions in which such an inquiry can be dispensed with. For better

appreciation relevant provisions of Article 309 to 311 are quoted herein below:-

Article 309:-Recruitment and conditions of service of persons serving the Union or a State:-Subject to the provisions of this Constitution, Acts of

the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection

with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of

the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the

State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that

behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of

any such Act.

Article 310. Tenure of office of persons serving the Union or a State.- (1) Except as expressly provided by this Constitution, every person who is a

member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post

under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil

post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may

be, of the Governor of the State, any, contract under which a person, not being a member of a defence service or of an all-India service or of a civil

service of the Union or a State, is appointed under this Constitution to hold such

a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Article 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.- (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or (b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause(2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

12. As stated herein above the aforesaid provisions framed under Part XIV of the Constitution ensure protection of security of tenure to the member

holding civil post under the Union or State. The tenure of such persons holding the civil posts under the Union or State can be curtailed only in the manner provided thereunder. The Rules which are framed governing the recruitment and service conditions under proviso to Article 309 of Constitution have to be essentially in conformity with the constitutional protection guaranteed to the persons holding such civil posts. The very question relating to the interpretation of the provision of Article 309 and Doctrine of Pleasure contained in Article 310 and Article 311 have been interpreted by the Hon'ble Supreme Court right after the inception of the Constitution. The said Doctrine was interpreted by the Constitution Bench of the Hon'ble Supreme Court in the case of *Moti Ram Deka v. North Eastern Frontier Railway* reported in A.I.R. 1964 page 600. In the said case Rule 148(3) and 149(3) of the Indian Railway Establishment Code(Vol-1) were under consideration. Under Rule 148(3) the service of Railway employee could be terminated after giving notice for the period specified. Under Rule 149(3) the termination of service of the employees' concern can be brought about by serving them with notice for the requisite period or paying them salary for the said period in lieu of notice under Rule 149(4). The question which was considered in the said appeal was whether the termination of service of a permanent Railway servant under Rule 148(3) or 149(3) amounts to his removal under Article 311 of the Constitution of India. It was also held that the pleasure of the President was clearly controlled by the provision of Article 311 and it was not absolute but to be exercised in accordance with requirement of Article 311.

13. The aforesaid provisions have been under consideration by the Hon'ble Supreme Court in a number of judgments and also in the case of *B.P.*

Singhal v. Union of India (supra) which related to the removal by Governor by invoking Doctrine of Pleasure by withdrawal of the Presidential

pleasure. The judgment rendered by Hon'ble Mr. Justice R.V. Ravindran on behalf of the Constitution Bench after a thorough review of the scope of

Doctrine of pleasure as interpreted by the judgments earlier rendered by the Hon'ble Supreme Court came to a definite conclusion that the Doctrine of

Pleasure in its absolute unrestricted application does not exist in India. By referring to number of judgments rendered by the Hon'ble Supreme Court in

the case of *Union of India v. Tulsi Ram Patel* reported in (1985) 3 SCC 398, in the case of *Moti Ram Deka v. North Eastern Frontier Railway*

reported in A.I.R. 1964 SC 600, in the case of Parshotam Lal Dhingra v. Union of India reported in A.I.R. 1964 SC 600 the Constitution Bench of

Hon'ble Supreme Court has held as under:-

â??Para 26:- The Constitution refers to offices held during the pleasure of the President (without restrictions), offices held during the pleasure of the

President (with restrictions) and also appointments to which the said doctrine is not applicable. The articles in the Constitution of India which refer to

the holding of office during the pleasure of the President without any restrictions or limitations are Article 75(2) relating to Ministers, Article 76(4)

relating to the Attorney General and Article 156(1) relating to Governors. Similarly Articles 164(1) and 165(3) provides that the Ministers (in the

States) and Advocate General for the State shall hold office during the pleasure of the Governor.

Para 27. Article 310 read with Article 311 provides an example of the application of â??at pleasureâ? doctrine subject to restrictions. Clause (1) of

Article 310 relates to the tenure of office of persons serving the Union or a State, being subject to doctrine of pleasure. However, clause (2) of Article

310 and Article 311 restricts the operation of the â??at pleasureâ? doctrine contained in Article 310(1). For convenience, we extract below clause (1)

of Article 310 referring to pleasure doctrine and clause (2) of Article 311 containing the restriction on the pleasure doctrine:

â??310. Tenure of office of persons serving the Union or a State.â?"(1) Except as expressly provided by this Constitution, every person who is a

member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post

under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil

post under a State holds office during the pleasure of the Governor of the State.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.â?"(1)

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the

charges against him and given a reasonable opportunity of being heard in respect of those charges.â??

Para 28. This Court in Parshotam Lal Dhingra v. Union of India, referred to the

qualifications on the pleasure doctrine under Article 310: (AIR p. 41, para 9)

9. Subject to these exceptions our Constitution, by Article 310(1), has adopted the English common law rule that public servants hold office

during the pleasure of the President or Governor, as the case may be and has, by Article 311, imposed two qualifications on the exercise of such

pleasure. Though the two qualifications are set out in a separate article, they quite clearly restrict the operation of the rule embodied in Article 310(1).

In other words the provisions of Article 311 operate as a proviso to Article 310(1).

Para 29. Again, in *Moti Ram Deka v. North East Frontier Railway*, this Court referred to the qualifications to which pleasure doctrine was subjected

in the case of government servants, as follows: (AIR p. 600)

The rule of English law pithily expressed in the Latin phrase *durante bene placito* (‘‘during pleasure’’) has not been fully adopted either by

Section 240 of the Government of India Act, 1935 or by Article 310(1) of the Constitution. The pleasure of the President is clearly controlled by the

provisions of Article 311, and so, the field that is covered by Article 311 on a fair and reasonable construction of the relevant words used in that

article, would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be

exercised in accordance with the requirements of Article 311.

Para 30. The Constitution of India also refers to other offices whose holders do not hold office during the pleasure of the President or any other

authority. They are: the President under Article 56; Judges of the Supreme Court under Article 124; the Comptroller and Auditor General of India

under Article 148; High Court Judges under Article 218; and Election Commissioners under Article 324 of the Constitution of India. In the case of

these constitutional functionaries, it is specifically provided that they shall not be removed from office except by impeachment, as provided in the

respective provisions.

Para 31. The Constitution of India thus provides for three different types of tenure: (i) those who hold office during the pleasure of the President (or

the Governor); (ii) those who hold office during the pleasure of the President (or the Governor), subject to restrictions; (iii) those who hold office for

specified terms with immunity against removal, except by impeachment, who are not subject to the doctrine of pleasure.

Para 32. The Constituent Assembly Debates clearly show that after elaborate discussions, varying levels of protection against removal were adopted

in relation to different kinds of offices. We may conveniently enumerate them: (i) Offices to which the doctrine of pleasure applied absolutely without

any restrictions (Ministers, Governors, Attorney General and Advocate General); (ii) Offices to which the doctrine of pleasure applied with restrictions

(Members of defence services, Members of civil services of the Union, Member of an All India service, holders of posts connected with defence or

any civil post under the Union, Member of a civil service of a State and holders of civil posts under the State); and

(iii) Offices to which the doctrine of pleasure does not apply at all (President, Judges of the Supreme Court, the Comptroller and Auditor General of

India, Judges of the High Courts, and Election Commissioners). Having regard to the constitutional scheme, it is not possible to mix up or extend the

type of protection against removal, granted to one category of offices, to another category.

Para 33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an

office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where

the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of

scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be

held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the

“fundamentals of constitutionalism”. Therefore in a constitutional set-up, when an office is held during the pleasure of any authority, and if no

limitations or restrictions are placed on the “at pleasure” doctrine, it means that the holder of the office can be removed by the authority at whose

pleasure he holds office, at any time, without notice and without assigning any cause.

Para 34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not

dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons"(under line not part of the original text, has been added to provide emphasis).

14. The existence of such rule was also subject matter for interpretation by the Hon'ble Supreme Court in the case of Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly reported in A.I.R. 1986 SC 1571 (supra). In para 99 of the said report, while interpreting the provisions of Rule 9(i) the Hon'ble Supreme Court held that the said Rule confers absolute, arbitrary and unguided power on the Corporation and it violates one of the 2 great Rules of natural justice "audi alteram partem" Rule. Such rule was also described as "Henry VIII" clause. The said judgment rendered by the Hon'ble Supreme Court has also been approved by the Constitution Bench in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress reported in A.I.R. 1991 SC 101 (supra).

15. In the facts of the present case, as has been noted herein above while invoking the said Rule without giving any opportunity of hearing or notice to the petitioners, the respondents have failed to bring on record any foundational facts or reasons for exercising such power. In other words the impugned action are not informed by any reasons which can be subject matter of judicial review under Article 226 of the Constitution of India. Such an arbitrary exercise of power to terminate the tenure of appointment of these petitioners prematurely without any opportunity of hearing or notice, therefore cannot be sustained in law as well as on facts. The reference of Article 310(2) by the learned counsel for the State is also wholly misplaced as admittedly the conditions prescribed under the said provisions are not applicable to the facts of the case for justifying the impugned action under the provision of Rule 4(vi) of the Rules of 2012 as the petitioners have been removed by only giving 1 month salary and not any compensation. Though the Rules have not been challenged by the petitioners but the exercise of power under the said Rules have to be in conformity with the Principle of Natural

Justice by giving opportunity of hearing or notice to the petitioner and cannot be exercised in an unguided, uncanalized manner without any

foundational basis for exercise of such power. Therefore, the impugned notification in exercise of powers under Rule 4(vi) of the Rules of 2012

cannot be upheld in the eye of law. In the background of the aforesaid facts, reasons and the judgment rendered by the Hon'ble Supreme Court of

India on the specific issue of the scope of Doctrine of Pleasure the impugned actions are wholly unsustainable in law being arbitrary and violative of

Principle of Natural Justice and deserve to interfere with in exercise of powers of judicial review under Article 226 of Constitution of India.â??

16. Reliance of learned counsel for the respondent-State on the judgment of the Hon'ble Apex Court passed in case of Om Narain Agarwal &

Ors. Vs. Nagar Palika, Shahjahanpur & Ors., reported in (1993) 2 SCC 242 and judgment passed by this Court in case of Deepak Prakash Vs. State

of Jharkhand, reported in 2007 SCC Online Jhar. 500 are of no help to him, as in those cases, the Governor had the power under Article 35(e)(iv) of

the Articles of Association of the Corporation which does not talk of providing or giving opportunity to the person concerned before his removal and

as such, there is no need to comply with the principle of natural justice neither any reason was to be assigned.

17. Relevant paragraphs of judgment passed in case of Deepak Prakash Vs. State of Jharkhand, reported in 2007 SCC Online Jhar. 500 are

reproduced herein below:

â??23. From the above decisions of the Supreme Court, the following mandates have emerged.

(a) The provisions that the person concerned shall hold office during the pleasure of the Government would not offend any Article of the Constitution,

nor the same is against any public policy or democratic norms enshrined in the Constitution.

(b) There is no question of any violation of the principles of natural justice in not affording any opportunity to the nominated member before his

removal, nor removal under the pleasure doctrine puts any stigma on the performance or character of the nominated member.

(c) Removal neither casts any stigma, nor leads to any penal consequences. This clearly reveals that the doctrine of pleasure is implicit in this section.

Only when the stigma is cast, then the question of giving opportunity to such an incumbent would arise.

24. In view of the above, the doctrine of pleasure is applied in this case and as such, there is no question of invoking the principles of natural justice, as

there is no stigma cast on the person concerned. In this case, admittedly, the Governor did not cast any stigma on the petitioner; on the other hand, the

Governor passed the order of removal after allowing him to act for 5 years by exercising his discretion, that too on the recommendation of the State

Government. As such, the question of Page 0180 hearing or opportunity and of recording reason in the order impugned would not at all arise especially

when there is no adverse remark passed as against the person removed in the order of removal.

27. In this context, it would be relevant to refer to one observation made by the Supreme Court in the case of Om Narain Agarwal and Ors. v. Nagar

Palika, Shahjahanpur and Ors. reported in (1993) 2 SCC 242, being quite relevant to be considered, which is as follows:

We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to

demoralize the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an

inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even the highest functionaries in the

Government like the Governors, the Ministers, the Attorney-General and the Advocate General discharge their duties efficiently, though removal at the

pleasure of the competent authority under the law, and it cannot be said that they are bound to become demoralized or remain under a constant fear of

removal and as such do not discharge their functions in a proper manner during the period they remain in the office.â??

18. The aforesaid judgments are not applicable in the instant case. Here the appointment and removal was to be done as per the Statute. Jharkhand

Academic Council (Amendment) Act, 2006 provides for appointment and removal of Vice Chairman and as such, no order passed dehors the Rules or

Act is tenable in the eyes of law. Section 12(4) of the said Act deals with the procedure to remove any member from his post, which reads as under:

â??12(4) Removal of the Member;-

(A) The State Government may, on the recommendation of the Council or suo motto remove any member from his post if such a member has been

found guilty of such conduct as would in the opinion of the State Government disqualified him to continue as member.

(C) The name of the member removed under sub-section (A) shall be published in the official Gazette by the State government and the post of the

member removed shall fall vacant with effect from the date of notification in the Gazette.â??

19. Admittedly, in the instant case the Act was never taken into consideration. Merely because it provides that the appointment and removal shall be

at the pleasure of the State Govt., the Doctrine of pleasure cannot be applied at the wishes of State Govt. rather, the same has to be tested in the four

corners of the Constitution as well as the Statutes. Since the same has not been done, the order of removal is not tenable in the eyes of law and the

same is fit to be quashed and set aside.

20. As sequitur to the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, memo dated 03.09.2020 (Annexure-7)

and notification dated 03.09.2020 (Annexure-8) are hereby quashed and set aside.

As a sequel to the quashment of the aforesaid orders, the respondents are directed to reinstate the petitioner to his original post with all consequential

benefits, in accordance with law. Further, the appointment of respondent No. 6 is hereby declared as null and void.

21. Resultantly, the instant writ application stands allowed.