

(2023) 06 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition (ST) No. 1517 Of 2023

Ramhari Dagadu Shinde And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 309

Citation : (2023) 06 BOM CK 0047

Hon'ble Judges : G.S.Patel, J;Neela Gokhale, J

Bench : Division Bench

Advocate : Satish Talekar, Dr Birendra Saraf

Judgement

Neela Gokhale J

1. Rule. The contesting 2nd Respondent has filed an Affidavit in Reply. By consent, rule made returnable forthwith.
2. The Petitioners assail order dated 2nd December 2022 cancelling their appointment as Members/Chairman of the Maharashtra State Commission for Scheduled Castes and Scheduled Tribes respectively (hereinafter referred to as the "Commission").
3. The Petitioners No. 1 and 3 were appointed Members of the Commission and the 2nd Petitioner was appointed the Chairman of the Commission. The 2nd Respondent is the Social Justice and Special Assistance Department of the 1st Respondent, the State of Maharashtra. The 3rd Respondent is the Commission constituted within the 2nd Respondent Department. The Chief Minister of the State is arrayed as 4th Respondent.
4. The relief sought by the Petitioners is singular. Perturbed by changes in administration in the State, reversal/modification of various policies of the government, etc., which invariably follow a change in the government, the Petitioners are aggrieved by the cancellation of various appointments of non-

official Members and other Members of the Statutory Boards, Committees, Commissions etc. Their charge is that such changes were made only with a view to accommodate supporters and workers of the ruling dispensation. The Petition is replete with instances of series of decisions taken by the Chief Minister/Deputy Chief Minister in discontinuing, cancelling, and modifying decisions of the earlier government, which the Petitioners complain to be against public interest. One such decision is cancellation of appointment of the Petitioners as Members/Chairman of the Commission.

5. Briefly, the facts reveal that by Government Order ("GO") dated 1st March 2005, the Maharashtra State Scheduled Castes and Scheduled Tribes Commission was established by the Social Justice, Cultural Affairs and Special Assistance Department. The 2nd Petitioner was appointed as Chairman and the Petitioners No.1 and 3 were appointed as Members of the Commission by a later GO dated 28th October 2021. The earlier tenure of the Commission was until 30th June 2009, which was further extended. The role of the Commission was to study existing situations (social, education, economic, cultural, political, etc.) among the Scheduled Castes and Scheduled Tribes in the State and to suggest various measures to improve them.

6. Annexures "A" and "B" to the GO dated 1st March 2005 provide for appointment, remuneration and allowances, etc., of the Members of the Commission. Annexure A provides the tenure of the Commission to be three years. It further provides that a person belonging to the Scheduled Caste community would be nominated as the Chairman of the Commission for the first one and half year and thereafter he would be replaced by a person belonging to the Scheduled Tribes community.

7. The Government in Maharashtra changed and the 4th Respondent was sworn in as -Chief Minister on 30th June 2022. It is the case of the Petitioners that upon taking over the reins of the government, the Chief Minister and the new administration cancelled appointments of as many as 197 Presidents and non-official members appointed on 29 Project Level (Planning Review) Committees in the Tribal Sub-plan Projects. The Petitioners complain that such an abrupt decision of cancellation of appointments was taken without affording an opportunity of hearing or assigning any reasons and is, therefore, in breach of the principles of natural justice. Similarly, the appointment of the Petitioners to the posts of Chairman/Members of the Commission was cancelled by GO dated 2nd December 2022. It is this GO that is assailed in the present Petition.

8. Mr Talekar, learned counsel appearing for the Petitioners, contends that there was no reason to cancel or stay decisions of the earlier government particularly when the Government of Maharashtra had not received any complaints against allotment of projects, schemes, tenders or appointments of persons as Members of Commissions, Statutory Bodies, Corporations, etc. He says that such action of the Chief Minister is not in conformity with law and is against the public interest. He further says that decisions cannot be changed merely because they were

taken by rival political parties in power before the present government took over. The Petitioners are among those who filed Writ Petition No. 9353 of 2022 challenging the Government Circulars and Government Resolution staying or cancelling several schemes/ projects meant for Scheduled Castes, Scheduled Tribes and Other Backward Classes. That Petition is pending before the another bench of this Court. Mr Talekar candidly submits that he had also brought to the notice of that learned Bench their apprehension regarding cancellation of appointments of these Petitioners. However, no orders were passed in that Petition and the same is yet pending.

9. He challenges the cancellation of appointments of the Petitioners on various grounds. Firstly, that their appointment was for a tenure of three years which has not expired. Secondly, the assailed order cancelling their appointments does not disclose any reason for such cancellation. Thirdly, there was nothing against the Petitioners; their conduct/performance did not warrant such cancellation. Fourthly, the doctrine of pleasure cannot be a license to act with arbitrarily or whimsically or with unfettered discretion.

10. Dr Birendra Saraf, Learned Advocate General, refutes the contentions of the Petitioners. He defends the decision of the government to change the constitution of the Commission. He contends that these are not civil posts. The Members of the Commission serve at the pleasure of the government. He points out that the Commission is not a statutory commission. The whole commission may be disbanded at any time. The appointment (and removal) of members is at the pleasure of the government and there is no illegality in the impugned order. He points out that Writ Petition No. 9353 of 2022 seeking similar and additional relief is already pending before another Bench of this Court wherein the Petitioners have also challenged their removal from the posts of Chairman/ Members of the Commission. He also draws attention to paragraph 35 of the Petition, where the Petitioner have accepted in terms that they serve or served at the pleasure of the government.

11. We have heard both the parties and perused the documents placed on record including the GOs dated 1st March 2005 and 28th October 2021.

12. It is common ground that the Commission is neither statutory nor mandated by any provision of the Constitution. Neither the constitution of the Commission nor the appointment of the Petitioners has any statutory basis. The Petitioners were nominated at the sole discretion of the government without following any selection procedure or inviting applications from the general public. Such an appointment has to be treated as one under the pleasure of the government and not in the nature of any employment or appointment under Part XIV of the Constitution.

13. The contention of the Petitioners that the tenure of three years has not expired cannot be sustained. There is nothing in the GO appointing them on their posts to indicate that the tenure of three years was a 'minimum tenure'. It is

distinct from the meaning of 'tenure' ordinarily prescribed in statutory appointments. Nomination of the Petitioners to their posts without following any competitive process and in pure discretion and subjective satisfaction of the earlier government does not create nor vests any right or entitlement in the Petitioners to continue on their posts. In fact, the existence of the Commission itself is at the pleasure of the Government. The very inception of the Commission is by an executive order and can thus also be dismantled by an executive order. The nomination of the Petitioners to the posts in question was also by an executive order of the Government; it, too, can be cancelled by an executive order of the Government. For this reason, the Petitioners have no fundamental or legal right to the posts. Consequently, there is no requirement of any justification or of giving an opportunity of hearing to the Petitioners for their removal.

14. A change in social policy followed by a change in government is part of the democratic process and a change in implementation of policies and programmes per se cannot be charged as arbitrary or mala fide.

15. Pertinent to note is that Writ Petition No. 9353 of 2022 has already been filed by the Petitioners and others seeking similar and additional reliefs. The Petition is pending before another Bench of this Court. Dr Saraf has brought to our attention that the Petitioners have challenged the cancellation of their appointment in that Petition as well. This statement has not been rebutted by the Petitioners. This is nothing but an abuse of the process of law and deserves to be decried. It is unacceptable for the Petitioners to file multiple Petitions seeking similar reliefs on the same grounds.

16. Both parties have placed compilations of precedents of other High Courts and the Apex court. The Petitioners has relied upon a judgment of this Court in the matter of Belewadi Village Panchayat v. State of Maharashtra & Ors Writ Petition No. 9744 of 2022 decided on 28th November 2022 passed by the learned Division Bench of Justice R. D. Dhanuka (as he then was) and Justice S. G. Dige. The facts in the Writ Petition are totally distinct from the present facts. In that case, the Petitioner had sought quashing of orders of a predecessor State Government by a subsequent Government. The point of distinction is that the relief sought arose from existence of a contract entered into by the previous Government which was cancelled by the latter Government. In any case, the order annexed to the Petition is an interim order and hence not a binding precedent.

17. The Petitioners have also relied upon judgments of various other High Courts. The common thread running through these pertain to changes made by subsequent governments to contracts executed by erstwhile governments wherein the former has avoided the contract or otherwise failed to act in aid of the same. We have gone through the precedents. We find that all these authorities relate either to civil posts or to contractual arrangements. They are, therefore, clearly distinguishable. The authorities cited are:

- (a) State of Haryana v State of Punjab & Anr, (2002) 2 SCC 507
- (b) State of Uttar Pradesh & Anr v Johri Mal, (2004) 4 SCC 714.
- (c) State of Tamil Nadu & Ors v K. Shyam Sunder & Ors, (2011) 8 SCC 737
- (d) Adi Sivachariyargal Nala Sangam v Government of Tamil Nadu & Anr, (2010) 6 SCC 631.
- (e) Shaikh Mahemud s/o Shaikh Maheebub v State of Maharashtra, 2021 (5) Mh.L.J. 391
- (f) Sanjay v State of Maharashtra. 2022 SCC OnLine Bom 448

18. Dr Saraf, on the other hand has relied upon a decision of the High Court of Punjab and Haryana in the matter of Som Dutt and Others v. State of Haryana and Ors. 2016 SCC Online P&H 9456. A similar question was considered by the Punjab and Haryana High Court, which held that appointments to high public offices like the Chairman of a Board/Commissions etc., and which are not made by following any competitive selection process for which no minimum tenure is prescribed, are at the pleasure of the government and can be terminated at any time in exercise of the doctrine of pleasure without any cause shown.

19. Dr Saraf has also relied upon a decision of the Apex Court in the matter of State of Karnataka and Ors v. Ameerbi & Ors.⁹ The question before the Supreme Court was whether Anganwadi workers held a civil post to attract rules framed under the proviso to Article 309 of the Constitution of India. The Apex Court held that since the recruitment rules are ordinarily applicable to employees of the State and are not applicable to persons not holding a post under a statute, the State is not required to comply with the constitutional scheme of equality as adumbrated by Articles 14 and 16 of the Constitution of India.

20. Thus, considering the facts in the present case and in view of the legal position that the Commission has no statutory nor constitutional recognition, we have no hesitation in holding that the order cancelling the appointments of the Petitioners to the posts of Chairman/Members of the Commission respectively cannot be said to be illegal, unlawful or otherwise vulnerable. No fundamental right to continue on the said posts is vested in the Petitioners. The GO dated 2nd December 2022 cancelling their appointment cannot be held arbitrary or discriminatory.

21. Rule is discharged. There will be no order as to costs.