

(2023) 01 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 5376 Of 2022

Ravinder Singh Ravi

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 05-01-2023

Acts Referred:

Building And Other Construction Workers Welfare Board (Regulation Of Employment & Condition Of Service) Rules 2008 — Rule 15, 251(2)

Citation : (2023) 01 SHI CK 0033

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Bhag Chand Sharma, Anup Rattan, Y.P.S. Dhaulta, Dinesh Thakur

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. The petitioner was appointed as a Member of Himachal Pradesh Building and Other Construction Workers Welfare Board, vide notification dated 23.02.2022. However, he was unceremoniously removed by appointing respondent No. 4 in his place vide order dated 10.06.2022. Aggrieved by the order of appointment of respondent No. 4, the petitioner has filed the instant petition for grant of the following substantive relief:-

"That the writ petition may kindly be allowed, impugned notification No.Shram(A)-4-1/2021, dated 10th June, 2022 (annexure P-11), may be quashed and respondent Nos. 1 to 3 may be ordered to refund the Labour Fund amount of Rupees Two Crores to the fund of the H.P. Building & Ors. Construction Workers Welfare Board, which has been illegally transferred to the Chief Minister Relief Funds."

2. The terms and conditions governing the appointment etc., of the members of the Board are provided for under the Building and other Construction Workers Welfare Board (Regulation & Employment of Conditions of Service) Act, 1996 and

the Rules framed therein, known as "The Building and Other Construction Workers Welfare Board (Regulation of Employment & Condition of Service) Rules 2008, as amended from time to time.

3. Sub Rule 2 of Rule 251 of the aforesaid Rules clearly provides that the terms of the office of the Chairperson and the Members of the Board other than the official members shall be three years from the date of their appointment. Relevant portion whereof reads as under:

"provided that the State Government may remove the Chairperson or any person concerned by it at any time."

4. Therefore, now the moot question is whether the petitioner could have been unceremoniously removed? The answer is definitely in negative, as it is clearly provided in Rule 15 that no Member shall be removed from the office without granting a reasonable opportunity to him of making a representation against the proposed action. Rule 15, in its entirety reads as under:-

"15. Removal from membership:- The State Government may remove from office any member of the State Advisory Committee, if in its opinion such member has ceased to represent the interest which he purports to represent on such Committee.

Provided that no such member shall be removed unless a reasonable opportunity is given to him of making a representation against the purposed action under this Rule."

5. It is evidently clear from the aforesaid Rules that no Member can be removed unless a reasonable opportunity is given to him of making a representation against his removal. This provision is in tune with the basic principal of natural justice and in unequivocally incorporates the doctrine of "Audi Alteram Partem." However, a caveat needs to be enter here, as it is not to suggest that once a Member of the Board is appointed by the State Government, it has no authority whatsoever, to remove him prior to the expiry of his tenure of three years. Rule 15 empowers the State Government to remove from office any Member of the State Advisory Committee prior to completion of his tenure, but by affording pre-requisite reasonable opportunity. However, since the respondents have admittedly not afforded a reasonable opportunity to the petitioner qua making a representation against his pre-mature removal, the order of removal vide notification dated 10.06.2022 (Annexure P-11), cannot sustain and is accordingly quashed and set aside. The respondents are directed to re-notify the appointment of the petitioner forthwith, as a Member/as employee/ representative in the H.P. Building and others Construction Welfare Board.

6. As regards, prayer made in this petition to refund of Rupees Two Crores, we find no basis or material on record by the petitioner for granting such relief and the same is expressly declined.

7. Accordingly, the petition is allowed in the aforesaid terms, leaving the parties

to bear their own costs.

The petition, so also pending application(s), if any, stands disposed of.