
(2016) 11 KL CK 0048

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 24099, 24726 and 25104 of 2016

Saji D. Anand

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 ILRKerala 957

Hon'ble Judges : Mr. A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Sri. C. Anil Kumar, Advocate, for the Petitioner; Sri. K.V. Sohan, State Attorney, for the Respondent No. 1; Sri. Jawahar Jose, SC, for the Respondent no. 2

Final Decision : Disposed Off

Judgement

Mr. A. Muhamed Mustaque, J. - In these batch of writ petitions, the petitioners question Government Order dated 15.7.2016 terminating the membership of the nominated non-official members in certain Statutory Boards in the State.

2. W.P.(C).No. 24099 of 2016 is filed by a non-official member of the Kerala Labour Welfare Fund Board. He was nominated as one of the nonofficial members to the above Board on 24.10.2014 for a period of three years by the then Government in power. W.P.(C).No.24726 of 2016 is filed by two non-official members of the Minimum Wages Advisory Board. The petitioners were appointed to the above Board on 14.4.2014 for a term of two years from the date of notification by the then Government. W.P. (C).No.25104 of 2016 is filed by non-official Directors of the Kerala Motor Transport Workers" Welfare Fund Board. Subsequently, the second petitioner was deleted from the party array. The first petitioner was nominated as the Director of the Board representing the employer on 30.1.2016 by the Government. The challenge in these writ petitions is regarding premature termination of the members from the Statutory Boards vide Government Order dated 15.7.2016. No reasons have been assigned for

termination. The Government has filed a statement in W.P.(C).No.24099 of 2016. The learned State Attorney filed adoption memos in the other two writ petitions seeking permission to adopt the said statement in it. Permission granted. In the statement it is stated that nomination was not based on any qualification nor pursuant to any application but it was based on the pleasure of the Government. The petitioners are terminated as the newly elected Government is having its own policy to be implemented to pave way for nomination of new members of its own choice.

3. The question in this writ petition is whether the Government is empowered to remove nominated members from the Statutory Board as above.

4. Heard Sri. Harikumar G. Nair, learned counsel for the petitioners in W.P.(C).No.25104 of 2016, Smt. A.K. Preetha, learned counsel for the petitioners in W.P.(C).Nos.24099 & 24726 of 2016 and Sri.K.V.Sohan, learned State Attorney.

5. Before proceeding further on the merits of each case, it is apposite to refer to the law relating to the nomination by pleasure and removal of such nominated members from the Statutory Boards before completion of the term in office as propounded by various judgments of the Hon''ble Supreme Court and of this Court. There is no dispute to the fact that nomination of the petitioners to various Boards is covered by the doctrine of pleasure. In a democratic State governed by the Constitution, the executive power of the Government is traced out to the "will" of the people endorsing their policies and promises. However, those powers certainly can be exercised not in derogation of Rule of Law as conceived under the Constitution. In a constitutional democracy, it is an axiom that every power has its legal limitations. The power of the Government to nominate a member, if not circumscribed by any statutory provision, in relation to the manner of the nomination of an individual to the Statutory Board or Corporation, such nomination is covered by the doctrine of pleasure. The exercises of such powers certainly must be actuated and permeated by the public interest. In *O.M. Narain Agarwal and Others. v. Nagar Palika, Shahjahanpur and others* [(1993) 2 SCC 242] the Hon''ble Supreme Court considered removal of nominated members of the Municipal Board by the State Government. In the above case, the Hon''ble Supreme Court held in paras.11 and 12 as follows:

"(11) ?If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In the case of an elected member, the legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the

legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

(12) In our view, such provision neither offends any Article of the Constitution nor the same is against any public or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations?"

(emphasis supplied)

6. In *Krishna S/o Bulaji Borate v. State of Maharashtra and others* [(2001) 2SCC 441], it was held as follows:

"11. Once doctrine of pleasure is applicable neither the principle of natural justice would step in nor any question of giving an opportunity before removal would arise. It is significant when stigma is cast then sub-section (3) of Section 10 specifically provides for giving an opportunity to such incumbent before passing an order of removal under Section 10, while there is no such corresponding sub-section under Section 6. Thus intent of legislature is very clear which reinforces the inference which we have drawn that doctrine of pleasure is implicit under Section 6..."

7. A Division Bench of this Court in *Ajith Kumar v. State of Kerala* [2010 (2) KLT 874] considered an issue of removal of a nominated member of a Kerala State Pharmacy Council. It was held in para.6 as follows:

"6. Even though we have held that five years" tenure is guaranteed to the member under Section 25, we are of the view that the Government has authority to remove him and nominate another person provided there is good and valid reason because a nominated member irrespective of his conduct has no vested right to continue for a tenure of 5 years in terms of Section 25 of the Act. Even though Government Pleader canvassed the position that the nominated member holds office during the pleasure of the Government, we do not find any such terminology used in Section 19(b) of the Act. Further, it is pertinent to note that under Section 23, the first constitution of the Council after the commencement of the statute is with the President nominated by the Government and he shall hold office during the pleasure of the Government. Therefore, we are of the view that wherever the Legislature has not incorporated the pleasure doctrine, it cannot be brought into Section 19(b)."

8. A nominated member can be removed before the term, if it is explicitly or implicitly provided under the Statute that they hold the office during the pleasure. There is no requirement in such a situation to follow the principle of natural justice as the pleasure doctrine itself enables the Government to remove a member without assigning any reasons. The question regarding termination or

removal of membership will have to be decided with reference to the source of power under which the Government invoked pleasure doctrine to nominate. The doctrine of pleasure normally operates at two levels in relation to the nomination of a person to the Statutory Board or Statutory Corporation. First, in relation to the initial nomination of a person to the Board and secondly, in relation to the continuation of such person in the Board/Corporation. If nomination invoking the doctrine of pleasure is governed by statutory provision and statutory provision explicitly or implicitly provides that nominated members will hold the office during the pleasure, the nominee cannot question the wisdom of the Government in invoking pleasure doctrine to remove them. However, if the statutory provision contemplates that doctrine of pleasure can be invoked only for the initial nomination of the member and holding of the office is not based on the pleasure doctrine, removal or termination of membership can only be in accordance with the statutory provision. In the instant cases, admittedly, the original nomination was based on the doctrine of pleasure and removal also was based on the doctrine of pleasure. Therefore, the only question is whether Statute explicitly or implicitly provides removal or termination of membership before the expiry of the term.

9. In the background of the above, the first case to be examined is with reference to the Kerala Labour Welfare Fund Board. The Kerala Labour Welfare Fund Board is constituted under the Kerala Labour Welfare Fund Act, 1975. Section 4 of the said Act contemplates the establishment of Board. Section 5 refers to the constitution of Board. The petitioner in W.P.(C).No.24099 of 2016 was nominated as a member of the Board as representative of the employee. Section 7 refers that the term of office of members is three years. Section 8 provides disqualifications and removal which reads as follows:

"8. Disqualifications and Removal.- (1) No person shall be chosen as, or continue to be, a member of the Board if he-

(a) is an officer or servant under the Board; or

(b) is an undischarged insolvent; or

(c) is of unsound mind; or

(d) has been convicted by a criminal court for an offence involving moral turpitude, unless such conviction has been set aside; or

(e) is in arrears of any sum due to the Board.

(2) The Government may remove from office any member who-

(a) is or has become subject to any of the disqualifications mentioned in sub-section (1) or

(b) is absent without leave of the Board for more than three consecutive meetings of the Board."

There is no explicit or implicit provision to invoke the doctrine of pleasure by the Government to remove or terminate the membership of a nonofficial nominee before the term is over. When a statutory provision is explicit as regard to the manner of removal, it must be presumed that the Legislature has taken away powers to invoke pleasure doctrine to remove a member from the Board/ Corporation otherwise than in accordance with the statutory provision. In the absence of any statutory provision to invoke the doctrine of pleasure for removal of the nominee, it can be only in accordance with Section 8.

10. In the W.P.(C). No.24726 of 2016, the petitioner was nominated to Minimum Wages Advisory Board. The Government framed Kerala Minimum Wages Rules, 1958. By virtue of Section 7 of the Minimum Wages Act, 1948 the Government constituted a Minimum Wages Advisory Board. Rule 4 of the Kerala Minimum Wages Rules provides term of office of members of the Board, which reads as follows:

"4. Term of office of members of the Board.- (1) Save as otherwise expressly provided in these rules, the term of office of a non-official member of the Board shall be two years commencing from the date of his nomination:

Provided that such member shall, notwithstanding the expiry of the said period of two years, continue to hold office until his successor is nominated;

(2) A non-official member of the Board nominated to fill in casual vacancy shall hold office for the remaining period of the term of office of the member in whose place he is nominated;

(3) The official members of the Board shall hold office during the pleasure of the Government."

Sub-rule (3) of Rule 4 clearly provides that the official member of the Board shall hold the office during the pleasure of the Government. The exclusion of non-official member in such circumstances to hold the office during the pleasure of the Government indicates that they can be removed only in terms of Rule 10 which reads as follows:

"10. Disqualification.- (1) a person shall be disqualified for being nominated as, and for being a member of the Committee, or the Board, as the case may be;

(i) if he is declared to be of unsound mind by a competent court; or

(ii) if he is an undischarged insolvent; or

(iii) if before or after the commencement of the Act, he has been convicted of an offence involving moral turpitude;

(2) If any question arises whether a disqualification has been incurred under sub-rule (1) the decision of the Government thereon shall be final"

Thus, I am of the considered view that doctrine of pleasure cannot be invoked to remove the membership prior to the expiry of the term.

11. In W.P.(C).No.25104 of 2016, the first petitioner questions his termination as the Director of the Kerala Motor Transport Workers' Welfare Fund Board. The Kerala Motor Transport Workers' Welfare Fund Board has been constituted under Section 6 of the Kerala Motor Transport Workers' Welfare Fund Act, 1985. The first petitioner has been nominated as the representative of the employers of the Kerala Motor Transport Workers' Welfare Fund Board. The Board consists of both official and non-official members. A scheme has also been formulated under the Kerala Motor Transport Workers' Welfare Fund Act. This Scheme is known as Kerala Transport Workers Welfare Fund Scheme, 1985. Para.4 of the Scheme provides term of office which reads as follows:

"4. Term of Office.- The board shall be reconstituted every three years.

Provided that the Government shall have the right to nominate any person in the Board in the place any other person, who has ceased to be a member:

Provided that the Board duly constituted shall continue even after the expiry of three years until a fresh Board is constituted."

Para.5 of the Scheme provides removal of Directors which reads as follows:

"5. Removal of Directors.- Notwithstanding anything contained in the Scheme, the Government may remove from office any director if in its opinion such Director ceased to represent the interests which he purports to represent in the Board or if the Government are satisfied that a Director had acted against the implementation of the Ordinance or of the Scheme or against the due discharge of the function of the Board or of the Chairman or the Office of the Fund;

Provided that no such Director shall be removed, unless a reasonable opportunity is given to him for making representation, if any, against the proposed action."

The para.9 of the Scheme provides for disqualifications, which reads as follows:

"9. Disqualification.- (1) A person shall be disqualified for being appointed as or for being a Director, if,

(a) he is declared to be of unsound mind by a competent court; or

(b) he is an undischarged insolvent; or

(c) he has been sentenced by a criminal court to imprisonment for a period of more than two years for any offence involving moral turpitude (such sentence not having been reserved) while undergoing the sentence and for five years from the date of expiration thereof.

(2) If any question arises whether any person is disqualified under subparagraph (1), it shall be referred to the Government and the decision of Government on any such question shall be final."

Nowhere in the Act or scheme it is explicitly or implicitly stipulated that the nominated members will hold the office during the pleasure of the Government.

12. Admittedly in all these cases the Government invoked the doctrine of pleasure to remove petitioners from different Boards. The reason for invoking doctrine of pleasure as has been stated by the Government in the statement filed in these writ petitions is that the nomination and appointment of the petitioners were without any consideration of qualification, experience, age, etc. It is also stated that the political ideologies of nominated members are different from the elected Government now in power. I am of the considered opinion that once the doctrine of pleasure is invoked for the nomination, it cannot be invoked for removal or termination unless Legislature prescribes so. The source of power to invoke the doctrine of pleasure has been exercised under the statutory provisions. Once that power is exercised, nomination becomes statutory and the statute will hold the field. The Government is free to remove any nominee if the Government is of the opinion that policies and ideologies of the nominee are inconsistent with the Government in power. However, to invoke such power, action must be covered by the statute. The power exercised by the Government has been traced out under a statutory provision. Certainly, to invoke the doctrine of pleasure to remove, the Government must rest its power based on the statute otherwise, the action of the Government would militate against the statutory provisions and would be tainted with arbitrariness.

13. The doctrine of pleasure is always pervaded with dominant consideration of public interest. Therefore, if the Government finds that any nomination is vitiated by public interest, the Government can also recall such nomination. However, such action must be concomitant with fairness as required under Article 14 of the Constitution. In *Kumari Shrilekha Vidyarthi and others v. State of U.P. and others* [(1991) 1 SCC 212], the Hon'ble Supreme Court stated as follows:

"Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterise all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act."

The nature of the order passed by the Government does not inspire this court that the Government is satisfied with reasons to recall such appointments in public interest. The omnibus order cannot be pressed in to justify such action without there being consideration of appointment of each of such nominee in public interest. In *B.P.Singhal v. Union of India and another* [(2010) 6 SCC 331] it was observed by the Hon'ble 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."

In the absence of any power to invoke the doctrine of pleasure and also in the absence of any public interest being put forward to recall each of such nomination, a general order removing nominations by earlier Government merely on the ground of political differences of ideology cannot itself withstand the scrutiny of Article 14 of the Constitution. Therefore, these writ petitions are allowed. Impugned orders so far as it relates to the petitioners are held inoperative. The petitioners shall be permitted to continue till such term as prescribed in the statute in accordance with the statutory provisions.