
(2013) 11 P&H CK 0091
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24126 of 2013

Victor Robinson

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 SCT 575

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Advocate : Vivek Khatri, for the Appellant;

Final Decision : Dismissed

Judgement

M.M.S. Bedi, J.—In the instant petition, the petitioner seeks quashing of notification dated 25.07.2013 (Annexure P-6) appointing the private respondents as members of Haryana Public Service Commission. The grievance of the petitioner is that the said respondents have been appointed violating the mandate of law given by the Apex Court in State of Punjab Vs. Salil Sabhlok and Others, The main contention of learned counsel for the petitioner is that the respondents No. 4, 5 and 6 have been appointed on account of their proximity with the political personalities of Haryana. It has been argued that respondent No. 7 is involved in a criminal case and his petition for quashing of criminal proceedings stand dismissed by this Court in criminal miscellaneous petition and he is facing trial on the basis of charges framed on 23.04.2011 (Annexure P-10). Counsel for the petitioner has submitted that respondent No. 7 is an accused in private complaint u/s 307 IPC. The petitioner claims that respondent No. 7 has also been charged in another case of assault and trespassing as a member of unlawful assembly. Copy of the charge-sheet in a private complaint has been appended as Annexure P-8 dated 14.08.2010, in this regard. Reference has been made to Annexure P-10 another charge-sheet in a private complaint indicating that respondent No. 7 as a member of unlawful assembly had committed offence u/s 307 and 302 IPC. Miscellaneous application filed by respondent No. 7 for

quashing of criminal proceedings stands dismissed by this Court. It is not out of place to observe here that respondent No. 7 was found innocent in the said case registered against him but on the basis of a private complaint he has been summoned and charge-sheeted vide order Annexure P-10.

2. Grievance of the petitioner is that respondent No. 7 though eligible to be appointed as member of State Public Service Commission but he is not a person of integrity.

3. I have considered contentions of learned counsel for the petitioner. Respondent No. 4 to 7 have been appointed as per the provisions of Article 316 of the Constitution of India. The procedure for removal and suspension of member of State Public Service Commission is mentioned in Article 317 of the Constitution. Articles 316 and 317 of the Constitution of India are reproduced hereunder:-

316. Appointment and term of office of members.

(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State:

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

(1-A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty-two years, whichever is earlier:

Provided that

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the

President, and in the case of a State Commission, to the Governor of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of Article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for reappointment to that office.

317. Removal and suspension of a member of a Public Service Commission.

(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor, in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(d) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit of emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehavior.

4. Perusal of Article 316 and 317 of the Constitution of India clearly indicates that the scope of challenging the appointment of Chairperson or a member of State Public Service Commission can be removed only by the authorities

mentioned in the above said constitutional provisions. The Chairperson has security of tenure to the extent that that person cannot be effortlessly removed from office even by the President as long as he or she is not guilty of proven misbehavior, or is insolvent, or does not take up any employment or is not bodily or mentally infirm. There is therefore an inbuilt constitutional check on the arbitrary appointment of a Chairperson and Members of a State Public Service Commission. The Apex Court has held that there is a need for a word of caution to the High Courts. There is likelihood of comparable challenges being made by trigger-happy litigants to appointments made to constitutional positions where no eligibility criterion or procedure has been laid down. It has been directed that the High Courts will do well to be extremely circumspect in even entertaining such petitions. It was observed that it is necessary to keep in mind that sufficient elbow room must be given to the Executive to make constitutional appointments as long as the constitutional, functional and institutional requirements are met and the appointments are in conformity with the indicators given by the Apex Court from time to time.

5. The relevant observations of the Apex Court in Para 110 and 111 of the judgment in *Salil Sabhlok's case* (supra) are reproduced below:-

110. In the view that I have taken, there is a need for a word of caution to the High Courts. There is a likelihood of comparable challenges being made by trigger-happy litigants to appointments made to constitutional positions where no eligibility criterion or procedure has been laid down. The High Courts will do well to be extremely circumspect in even entertaining such petitions. It is necessary to keep in mind that sufficient elbow room must be given to the Executive to make constitutional appointments as long as the constitutional, functional and institutional requirements are met and the appointments are in conformity with the indicators given by this Court from time to time.

111. Given the experience in the making of such appointments, there is no doubt that until the State Legislature enacts an appropriate law, the State of Punjab must step in and take urgent steps to frame a memorandum of procedure and administrative guidelines for the selection and appointment of the Chairperson and members of the Punjab Public Service Commission, so that the possibility of arbitrary appointment is eliminated.

Even otherwise, I have considered the contentions of learned counsel for the petitioner regarding the involvement of respondent No. 7 in criminal cases. The respondent No. 7 has been involved in two private complaints as referred to by the petitioner. The principle of criminal jurisprudence in phrase that a person will be deemed to be innocent till proved guilty, would apply in the circumstances of the present case. Counsel for the petitioner has submitted that respondent No. 7 has not given any undertaking to the Government pursuant to the decision of the Search Committee constituted by the Government for appointment of Chairman and the members of the Commission (Annexure P-4). Merely, because an undertaking has not been given by respondent No. 7 is not sufficient enough to

warrant the exercise of powers of judicial review in appointment of respondents No. 4 to 7 on the constitutional posts.

No ground is made out for the judicial review. The petition is dismissed in limine.