

(2010) 09 AHC CK 0311
In the Allahabad High Court
Case No : Writ Petition No.102 of 2010 (S/B)

Yogendra Prashad S/o late Mr.Indrsan Parsad	APPELLANT
Vs	
State of Uttarakhand and others	RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0311

Hon'ble Judges : Tarun Agarwala, J and Sudhanshu Dhulia, J

Final Decision : Disposed Of

Judgement

Tarun Agarwala, J.—The petitioner retired from the post of ChairmancumManaging Director, National HydroElectric Power Corporation in the year 2005. The petitioner was appointed in an honorary capacity as a Special Advisor (Energy) on 07.01.2006 by the Government of Uttarakhand. In addition to the above, the Government subsequently appointed the petitioner as a part time Director of the Corporation and also appointed the petitioner as Chairman of Uttarakhand Jal Vidyut Nigam Ltd. w.e.f. 24.05.2007. It is alleged that the petitioner was appointed to ensure the commissioning of the Maneri Bhali Project within the stipulated period. The appointment of the petitioner was extended by the Government from time to time.

2. Things were moving smoothly, but from January 2010, the seeds of discontent started germinating. The petitioner contends that he came to know about the irregularities, indiscipline and corrupt practices being adopted by a certain section of the people and, accordingly, he brought such irregularities to the notice of the State Government.

3. The petitioner made a complaint against Mr. B. C. K. Mishra, Director (Operation), UJVNL about his corrupt practices and actions causing loss of image of the Nigam as well as the State Government and intimated the Principal Secretary (Energy) by a letter dated 07.01.2010 recommending that Mr. B. C. K. Mishra should be sent on three months leave pending enquiry against him. It is alleged that an intimation was also submitted to the Chief Minister inspite of

which no action was initiated against him.

4. It is alleged that the petitioner's complaint against Mr. Mishra made the Energy Department turn against him which, in turn, started a chain reaction. It is submitted that a meeting of the Board of Directors was scheduled to be held on 21.05.2010. The Additional Secretary, Department of Energy wrote a letter dated 18.05.2010 to the petitioner to postpone the meeting on account of the nonavailability of the Secretary, Energy. In response to the aforesaid letter, the petitioner intimated respondent no.5, by a letter dated 19.05.2010, that the decision to call a meeting of the Board of Directors vests with the Board of Directors and that the said meeting could not be adjourned at the behest of Secretary, Energy.

5. It is alleged that the Company Secretary of the Nigam, respondent no.4 received a phone call from respondent no.3, namely, the Additional Secretary, Department of Energy threatening respondent no.4 to cancel the meeting of the Board of Directors, failing which his services would be terminated. It is further alleged that respondent no.4 again rang up respondent no.3 directing him to send the intimation about the cancellation of the meeting, by fax, within 15 minutes. Respondent no.4 submitted the details of the conversation to the petitioner in writing, a copy of which has been enclosed as Annexure P7/C . Since the meeting was not adjourned, it is alleged that respondent no.3 carried out the threat and an order dated 19.05.2010 was issued terminating the services of the petitioner with immediate effect. By an order of the same date, respondent no.5 was appointed as the Chairman. The petitioner, being aggrieved by the aforesaid order, has preferred the writ petition.

6. Heard Dr. Anmol Ratan Siddhu, the learned senior counsel duly assisted by Mr. Rakesh Nagpal and Mr. H. M. Bhatia, the learned counsel for the petitioner, Mr. Keshari Nath Tripathi, the learned senior counsel, Mr. S. N. Babulkar, the learned Advocate General assisted by Mr. Kuldeep Pati Tripathi, the learned counsel for the respondent nos.1 & 2, Mr. Vinay Kumar, the learned counsels for the respondent no.3 and Mr. V. K. Kohli, the learned senior counsel assisted by Mr. T. C. Pande, the learned counsel for the respondent no.4.

7. The learned senior counsel for the petitioner submitted that the impugned order was malafide and was passed in a colourable exercise of power. The learned counsel submitted that the petitioner highlighted the irregularities and brought it to the notice of the State Government on account of which respondent nos.1 to 3 became inimical and issued the order of termination with some ulterior motive. The learned counsel submitted that since the petitioner did not toe the line, the impugned order was issued malafidely at the instance of respondent no.3 on irrelevant and extraneous consideration.

8. The learned senior counsel further submitted that the impugned order suffers from the vice of arbitrariness. The learned counsel urged that no notice, nor an opportunity of hearing was provided to the petitioner and that the action taken

by the respondents in terminating the services of the petitioner was bad in law, arbitrary, motivated by malafides and extraneous consideration and, therefore, deserved to be quashed.

9. The learned senior counsel urged that, in any case, the order of termination was passed against the provision of Memorandum and Articles of Association of the Nigam, especially Article 34(d) of the Articles of Association.

10. The learned counsel submitted that the petitioner had an unblemished career from 1968 to 2010 in the field of Hydro Electric Power Development and, during his tenure, had worked on various posts in National HydroElectric Power Corporation Ltd. and that he had received a large number of national and international awards for his service in the field of energy. The learned counsel submitted that the petitioner had a fundamental right to live with dignity and that as a result of the impugned order of the respondents, the petitioner has been subjected to harassment, humiliation, loss of reputation and, above all, loss of employment, which the petitioner deserves to be suitably compensated.

11. In support of his submission, the learned counsel placed reliance on a decision of the Delhi High Court in *Basant Lal Wadhwa Vs. Union of India* 1996 (3) SCT 691, wherein it was held that the said petitioner while working as ChairmancumManaging Director of Coal Fields Ltd. was not holding a civil post within the meaning of Article 310 & 311 of the Constitution of India, but was entitled to the protection of the fundamental rights by virtue of Article 14 & 16 of the Constitution of India.

12. On the other hand, Sri K. N. Tripathi, the learned senior counsel for the State of Uttarakhand submitted that the petitioner had no right to invoke the jurisdiction of the court nor had any right to ventilate such grievances which did not exist. The learned counsel submitted that initially the petitioner was appointed in the capacity of an Advisor and, later on, by an order dated 24.05.2007, an additional work was assigned to him at the pleasure of the Governor and, by the impugned order, the 5 petitioner had been relieved from the additional charge. The learned senior counsel submitted that the order relieving the petitioner from the additional charge does not in any manner cast a stigma on him. The order is neither arbitrary, nor illegal nor based on malafides. According to the learned counsel, there is no nexus between the letter dated 07.01.2010 and the relieving order. The learned counsel read para 3 of the writ petition to support his contention that the allegation against Mr. B. C. K. Mishra had no nexus in so far as the removal of the petitioner was concerned and, consequently, the allegation of ulterior motive was patently vague and without any basis. The learned senior counsel urged that it was very easy to level charges of malafides, but, in the present case, there was no sound evidence to support the plea of malafides and, consequently, such allegations should not be taken into consideration. In so far as the matter relating to postponement of the meeting was concerned, the learned senior counsel submitted that the file relating to the continuation of the appointment of the petitioner had already

started moving in the corridors of the Government as early as on 28.04.2010 when it was noticed that no person could be appointed beyond 62 years and that under Article 34(d) of the Articles of Association of the Nigam, only the Secretary, Energy could be appointed as the Chairman, where the Government appoints a Managing Director and not the ChairmancumManaging Director. In this regard, the learned senior counsel persuaded the court to peruse para 54 onwards of the counter affidavit in support of his submission that the petitioner was relieved after due deliberation and that a conscious decision was taken and not in an arbitrary or hurriedly manner as alleged by the petitioner. The learned counsel however urged that it was a mere coincidence that the petitioner was relieved on the same date on which the alleged conversation took place between 6 respondent no.3 and respondent no.4 and such motive could not be made a foundation in order to find out as to whether the impugned order was based on malafides or not.

13. The learned senior counsel further urged that even though the petitioner had no right to question his relieving order, nonetheless, the provision of Memorandum and Articles of Association were not violated. Under Article 34(b), the appointing authority is the State Government and under Article 38(3), the Government has ample powers to issue directions.

14. The learned senior counsel submitted that the impugned order was neither illegal, nor arbitrary, nor was the petitioner required to be given any notice, since the petitioner was working at the pleasure of the Governor, nor was the impugned order passed with ulterior motive nor was it passed in a malafide manner.

15. Having heard the learned counsel for the parties, we find that admittedly, the petitioner had retired and was no longer a civil servant nor holding a civil post. The petitioner was made a Special Advisor to the Government and, later on, was given the additional charge of Chairman of the Nigam. We find that the petitioner was not holding a civil post, but, was holding an office during the pleasure of the Governor.

16. The question is, what is the doctrine of pleasure? The doctrine of pleasure has its origin in English Law, with reference to the tenure of public servants under the crown, namely, that a public servant under the British Crown had no tenure and that he held his position at the absolute discretion of the Crown.

17. In *Union of India Vs. Tulsi Ram Patel* 1985 (3) SCC 398, a Constitution Bench of the Supreme Court explained the doctrine of pleasure, namely:

?In England, except where otherwise provided by statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown or *durante bene placito* (?during good pleasure? or ?during? the pleasure of the appointor?) as opposed to an office held *dum bene se gesserit* (?during good conduct?), also called *quadiu se bene gesserit* (?as long as he shall behave himself well?). When a person holds office during the pleasure of the Crown, his

appointment can be terminated at any time without assigning cause. The exercise of pleasure by the Crown can, however, be restricted by legislation enacted by Parliament because in the United Kingdom Parliament is sovereign. ???..?

18. In *State of Bihar Vs. Abdul Majid* 1954 SCR 786, another Constitution Bench explained the doctrine of pleasure thus:

‘The rule that a civil servant holds office at the pleasure of the Crown has its origin in the latin phrase *‘durante bene placito* (‘during pleasure’) meaning that the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. The true scope and effect of this expression is that even if a special contract has been made with the civil servant the Crown is not bound thereby. In other words, civil servants are liable to dismissal without notice and there is no right of action for wrongful dismissal, that is, that they cannot claim damages for premature termination of their services.’

19. In *B.P. Singhal Vs. Union of India & another* J.T. 2010 (5) J.T. SC 640, the Supreme Court held that there is a distinction between a doctrine of pleasure as it existed in a feudal setup and the doctrine of pleasure in a democracy governed by the rule of law. The Supreme Court held that in a democratic government, governed by the Rule of law, where arbitrariness in any form is eschewed, no Government or authority had the right to do what it pleases. The Supreme Court further held that the doctrine of pleasure did not mean that the Government to act arbitrarily, capriciously or whimsically. The Supreme Court held:

‘22. 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 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. 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.?

20. The Supreme Court, after considering the scope of the doctrine of pleasure, found that the Governor while holding an office during the pleasure of the President under Article 156 of the Constitution, could be removed from the office at any time without any notice and without assigning any cause.

21. The Supreme Court further held that the power so exercised should not be arbitrary, capricious or unreasonable and in the event the withdrawal of the pleasure is challenged, the court would presume that the same was done for compelling reasons. The Supreme Court held that where the aggrieved person was not able to establish arbitrariness or malafides in his removal, the court would not interfere, but where a prima facie case was made out, the court could require the Government to produce the record to satisfy itself that the withdrawal of pleasure was for good and compelling reasons.

22. In the light of the aforesaid decision of the Supreme Court, we find that the petitioner was appointed at the pleasure of the Governor and that he was removed without notice and without assigning any cause. In the light of the judgment of the Supreme Court in B. P. Singhal's case (supra), no notice is required to be given to a person who has been appointed during the pleasure of the Governor. The petitioner contends that even though, no 10 reason has been assigned, but, if one lifts the veil, it could be seen that the action taken was not only arbitrary, but the discretionary power was exercised malafidely with ulterior motive.

23. The question to be seen now is, whether the power so exercised by the respondents was exercised malafidely with ulterior motive or not.

24. In para 4 of the writ petition, the petitioner has asserted the corrupt practices being done by Mr. B. C. K. Mishra, which the petitioner brought it to the notice of the State Government and that the State Government did nothing in the matter. In our opinion, the allegation made in para 4 of the writ petition is patently vague and does not bring forward any malafides on the part of the respondents. We find that there is no averment to the effect that on account of the allegations raised against Mr. Mishra, who in turn, became inimical to the petitioner and that he was instrumental in forcing the Government to pass the impugned order against the petitioner. In our opinion, we find that there is no direct or even a remote nexus between the allegations raised against Mr. B. C. K. Mishra and the relieving of the petitioner by the impugned order. The malafides raised by the petitioner on this score is not serious in nature and in fact is vague.

25. With regard to the postponement of the meeting and the alleged threat given by respondent no.3 to respondent no.4, the court finds that the allegations have been stated in para 6, 7 and 8 of the writ petition. The alleged threat made by respondent no.3 to respondent no.4 was recorded by respondent no.4 in writing

and the same has been stated in para 8 of the writ petition and the conservation recorded in writing has been annexed as Annexure P7/C. In this regard, respondent nos.1 & 2, namely the Chief Secretary to the Government of Uttarakhand and Secretary, Department of Energy, Uttarakhand Government in their counter affidavit have admitted that the Secretary, Energy had directed the Additional Secretary, Energy, respondent no.3 to place a request for postponement of the meeting on account of his preoccupation and that respondent no.2 was an important component in the proposed meeting of the Board of Directors. The respondents have further contended that the letter sent by respondent no.3 for postponement of the meeting was not sent in his personal capacity, but, was sent as a direction of the Government of Uttarakhand which power is derived by the Government under Act 68 (iii) of the Articles of Association of the Nigam. The said respondent further admit that respondent no.3 was directed by respondent no.2 to enquire about the status of the meeting and that the details of the conversation that transpired between respondent no.3 and respondent no.4 could best be replied by the said respondents.

26. Respondent no.3 in his counter affidavit admitted that he rang up respondent no.4 requesting him to postpone the meeting, but, denies the threat that is allegedly recorded by respondent no.4 which has been annexed as P7/C.

27. Respondent no.4 in his affidavit has admitted the contents of Annexure 7/C and further admitted that the said letter was written in his own handwriting.

28. In the light of the aforesaid, the analysis of the letter annexed at Annexure P7/C is, that respondent no.3 had threatened respondent no.4 to postpone the meeting, failing which his services would be terminated alongwith the Chairman and that he would spend the rest of his life toiling in the High Court or in the Supreme Court.

29. Assuming for the time being, that the charge is correct and that respondent no.3, in fact, had issued such a threat to respondent no.4, could this threat become a motive and thereafter a foundation for the removal of the petitioner?

30. The concept of 'motive' and 'foundation' are often used to find out the effect of the order of termination. The question whether the termination of service is simplicitor or punitive and when a stigma is said to be attached to an employee has been examined in several cases.

31. In *Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & others* 1999 (3) SCC 60, the Supreme Court after referring to various decisions indicated as to when a single order of termination is to be treated as 'founded' on the allegation of misconduct and when complaints could be only as a 'motive' for passing a simple order of termination. The Supreme Court held :

'21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But

if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquiry into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and simple order of termination would be valid.?

32. In the light of the aforesaid, the distinction between the foundation and motive in relation to an order of termination is thin or is overlapping and at times it may be difficult to classify the order of termination in one or the other category, namely whether the order of termination is based on motive or based on foundation. Though, no straitjacket test can be laid down to distinguish ? motive? and ?foundation?, yet the fact remains that the two are certainly two points of one line. Consequently, it is for the courts to decide having recourse to the facts and circumstances of each case.

33. Coming back to the allegation made by the petitioner, we find that the alleged threat has been made by respondent no.3 to respondent no.4. We also find that there is no direct threat given by respondent no.3 to the petitioner, nor any threat has been given by respondent no.2 to the petitioner. The court further finds that the threat has not been carried out by respondent no.3 in as much as respondent no.4 has not been removed from the services. The indirect threat made by respondent no.3 against the petitioner is farfetched and cannot be taken to be the motive or the foundation to remove the petitioner. This view of ours is fortified by the fact that the process of ushering out the petitioner from the post in question had started on 28.04.2010 when a noting was made on the file as to why the petitioner had been appointed as the Chairman in violation of the provisions of Articles of Association, which requires that only the Secretary, Energy could be appointed as the Chairman coupled with the fact that the petitioner had become overage and could not continue in terms of the Articles of Association of the Nigam. The court further finds that the order of termination was approved by the Chief Minister who was incharge of the Ministry of Energy and, consequently, the malafides alleged against respondent no.3 or against respondent no.2 by itself cannot be made the foundation of the removal of the petitioner in the absence of any charge being levelled against the Chief Minister. Consequently, we are of the opinion that the petitioner has failed to prove malafides or the fact that he was removed on account of ulterior motive.

34. In *E. P. Royappa Vs. State of Tamil Nadu & another* AIR 1974 SC 555, the Supreme Court held that the burden of establishing malafides is very heavy on the person who alleges it and that the allegation of malafides are often more easily made than proved and that the very seriousness of such allegations demands proof of a high order of credibility.

35. In the instant case, the petitioner has flung a series of charges against

respondent nos.2 and 3. The anxiety of the court becomes greater to examine it on a higher degree of proof and the court would be slow to draw dubious inferences from alleged facts placed before it by a party, particularly when the imputations are grave and are made against a holder of an office of high responsibility in the administration, especially, when the court finds that the order of termination was approved on the file by the Chief Minister against whom there is no allegation of malafides.

36. In our opinion, vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, which we find are conspicuously absent in the writ petition. We find from a perusal of the counter affidavit that the file relating to the appointment of the petitioner had started moving in April 2010 and that reasons were specified for his removal, which were considered by the authorities and, subsequently, approved by the Chief Minister. We find that sufficient reasons were recorded on the file for the removal of the petitioner, which is sufficient for us to hold that the withdrawal of pleasure was not based at the sweet will, whims and fancies of the authority, especially respondent nos.2 & 3, but, was based on valid reasons. The court is, consequently, of the opinion that the decision for the withdrawal of the pleasure was not based on unfettered discretion nor was it done arbitrarily, whimsically or capriciously. The reasons given are not malafide and are sufficient for the withdrawal of the pleasure. Consequently, the court is not inclined to interfere in the impugned order, which does not suffer from the vice of arbitrariness. The writ petition, consequently, fails and is dismissed. In the circumstances of the case, parties shall bear their own cost.

37. Before parting, we find that the conversation between the respondent no.3 and respondent no.4 is not only disturbing, but distressing. The imputations alleged by respondent no.4 against respondent no.3 are grave and have been made against a holder of an office of high responsibility in the administration. The court is not evaluating the charges levelled by respondent no.4 against respondent no.3, but leaves it to the Chief Secretary to evaluate such charges since the court is of the opinion that when such grave imputations are made against an officer holding a high post, a need exists to enquire into the imputations because the officer is placed highly in the administrative setup. These considerations are irrelevant in the judicial approach, but, if not enquired into, by the competent authority, the effective functioning of the democratic process would be jeopardised.

38. Last, but not the least, when persons are appointed at the pleasure of the Governor without any restriction, such persons so appointed are persons of confidence and are persons upon whom faith and trust is reposed by the State. Such persons are chosen not to enable them to earn their livelihood, but to serve the society. Persons of calibre and experience are chosen for the post. The petitioner was appointed on an important post which was a post of great responsibility and was a lynchpin in the administration and smooth functioning of

the Nigam which required a rapport and an understanding between the Nigam and the State Government. The Government is in the ultimate charge of the administration and if it appoints a person worthy of its confidence, the Government may in larger interest appoint such a person in the larger interest of administration, which does not involve violation of any legal or constitutional rights. Similarly, when the Government thinks of withdrawing its pleasure, it must keep in mind the status and the yeoman service which that person has put into public life and, consequently, while withdrawing the pleasure should preserve the dignity of that person rather than passing an order withdrawing the pleasure at the cost of humiliation, loss of face, harassment etc. to that person. These things should be kept in mind by the Government while withdrawing the pleasure.

39. Registry is, consequently, directed to send a certified copy of this judgment to the Chief Secretary of the State of Uttarakhand within two weeks from today for information and necessary action at his end.