

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3420 of 2013

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1. Jawahar Lall S/O Late Anandi Prasad Yadav R/O Village- Maloudha, P.S.-
Sonebarsha, Distt.- Shaharsha

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Energy, Govt. Of Bihar, Patna
3. Managing Direcator Bihar State Hydro Electric Power Corporation, Sone
Bhawan, Bir Chand Patel Marg, Patna
4. The Chairman-Cum-Managing Director National Hydro Electric Power
Corporation Limited

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 21862 of 2013

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1. Ashok Kumar Pandey S/O Late Sh. P.N. Pandey Village O- Khadrahiyan Via
Daudpur, District- Saran (Chapra), Bihar- 841205

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna.
2. Secretary, Department Of Energy, Government Of Bihar, Daroga Rai Path,
Patna.
3. Additional Secretary, Department Of Energy, Government Of Bihar, Daroga Rai
Path, Patna.
4. Under Secretary, Department Of Energy, Govt. Of Bihar, Daroga Rai Path,
Patna.
5. Bihar State Hydro Electric Power Corporation Ltd., Through The Secretary, 2nd
Floor, Son Bhawan, Bir Chand Patel Marg, Patna.
6. National Hydro Electric Power Corporation Ltd Through General Manager
(Law), Nhpc Office Complex, Sector- 33, Faridabad, 121003

.... Respondent/s

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Appearance:

(In CWJC No. 3420 of 2013)

For the Petitioner/s : Mr. Pranav Kumar
For the Respondent-State : Mr. Madhukar Krishna Sinha
For the Respondent-Corporation: Mr. Awanish Nandan Sinha
Mr. K.K. Upadhyay

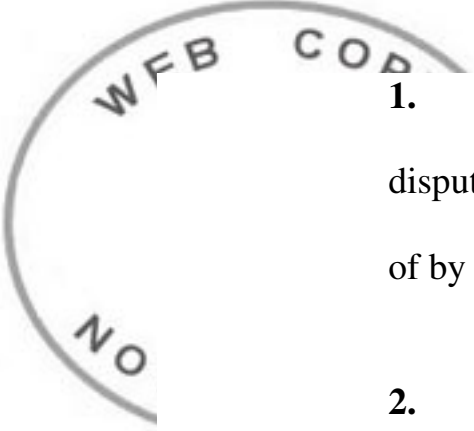
(In CWJC No. 21862 of 2013)

For the Petitioner/s : Mr. Kumar Kaushik
For the Respondent-State : Mr. Dinbandhu Singh, G.P.-IX
For the Respondent-Corporation : Mr. K.K. Upadhyay
For the Intervenor : Mr. Pranav Kumar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
COMMON ORAL JUDGMENT

Date: 29-03-2016



1. Both the cases are arising from, by and large, same dispute, covering the same area of point of law and are being disposed of by this common order.

2. Virtually, the case of the Jawahar Lall vs. State of Bihar & Ors. (C.W.J.C. No.3420 of 2013) is dependent on the outcome of Ashok Kumar Pandey's case (C.W.J.C. No.21862 of 2013) as Jawahar Lall is challenging the appointment of the petitioner-Ashok Kumar Pandey as Managing Director of Bihar State Hydro Electric Power Corporation Limited.

3. The present petitioner-Ashok Kumar Pandey was posted as Chief Engineer in the National Hydro Electric Power Corporation in the State of Jammu & Kashmir. While he was posted at Faridabad, which covers the State of Jammu & Kashmir, was made In-charge to select the Contractors with respect to certain projects relates to electrification in the State of Jammu & Kashmir was found, wrong had been committed by Shri Pandey.

4. The Government of Bihar, Energy Department, has issued an advertisement for the appointment of Managing Director of Bihar



State Hydro Electric Power Corporation (hereinafter mentioned as “Power Corporation”). In the said advertisement necessary qualification has been prescribed for candidates for consideration to the post of Managing Director and at Clause No. 11, it has been mentioned “whether any punishment / stricture awarded to the applicant during the last 10 years and also whether any action or injury is going on against him as per his knowledge goes”. The petitioner has thought himself fit and applied for the said post, but before going to discuss the above issue it will be necessary to state the action taken by Jawahar Lall and the Association of Engineers with regard to the advertisement.

5. After publication of advertisement, a writ petition being C.W.J.C. No.13372 of 2009 was filed by the Jawahar Lall, claiming that the post of Managing Director should be filled up by promotion on the basis of seniority, but that writ application could not survive and the same was dismissed vide order dated 12.10.2009 and the Court has observed that the petitioner did not have right to question the manner in which the post would be filled up and refused to interfere with the advertisement issued by the Government, but liberty was given to apply and the State Government was directed to consider the same in accordance with law.



6. Against the order of the learned Single Judge, Jawahar Lall moved before the Division Bench in L.P.A. No.1370 of 2009, questioning the legality of the order passed by the learned Single Judge and this Court in Division Bench refused to interfere with the order of the learned Single Judge and dismissed the same, but liberty was given to the Jawahar Lall, who was appellant in L.P.A. No.1370 of 2009, to file a representation before the Competent Authority, who would consider the same on its own merit and would pass order. It further appears that again Jawahar Lall filed another writ application vide C.W.J.C. No.4108 of 2010, raising a grievance that his representation dated 22.09.2009 has not been disposed of in terms of the order passed in L.P.A. No.1370 of 2009 till date and the Court vide order dated 22.03.2010, directed to consider the representation dated 22.09.2009 of Jawahar Lall, the petitioner and dispose of the same by reasoned order within a period of two months from the date of receipt of fresh copy of the representation. Accordingly the said writ petition was disposed of.

7. It appears from the record that again one Lallan Prasad Sinha and Jawahar Lall approached this Court in C.W.J.C. No.303 of 2011 and C.W.J.C. No.20241 of 2010 respectively, whereby the issue of appointment of Managing Director in the Bihar State Hydro



Electric Power Corporation came for consideration. The Court has rejected the same. Again, it appears that the Union of Engineers viz. Bihar Rajya Ardh Sarkari Nikay Padadikari Sangh, that basically raises the issues with regard to its members, approached this Court in C.W.J.C. No.878 of 2011, questioning the advertisement published on 7th August, 2009, inviting applications from the eligible candidates for appointment to the post of Managing Director. The said Writ Application was filed by way of Public Interest Litigation and the Court found that the Public Interest Litigation concerning the service matter is not maintainable. Accordingly, that writ application was disposed of with certain directions, that Writ Court did not consider maintainability of Public Interest Litigation with respect to appointment of Managing Director of Corporation.

8. The petitioner-Ashok Kumar Pandey and others have participated in the selection process and ultimately, the petitioner-Ashok Kumar Pandey was appointed as Managing Director of the Bihar State Hydro Electric Power Corporation vide letter dated 28.2.2011, that appointment came under challenge in C.W.J.C. No.10474 of 2011 by the Bihar Rajya Ardh Sarkari Nikay Padadikari Sangh, which was also in the shape of Public Interest Litigation, but the same was also dismissed. The Association did not stop only upto

the High Court stage, but took courage to approach the Hon'ble Supreme Court in S.L.P. (C) No.32249 of 2011 and there also the Hon'ble Supreme Court refused to interfere with the same.

9. Again, Bihar Rajya Ardh Sarkari Nikay Padadikari Sangh, filed a writ application vide C.W.J.C. No.23290 of 2011 and the same was dismissed as withdrawn. It is the history with regard to the case filed by Jawahar Lall and other associated person and Union and in the present proceeding also Jawahar Lall, the petitioner of C.W.J.C. No.3420 of 2013, challenged the continuation of Ashok Kumar Pandey as Managing Director. Ashok Kumar Pandey in C.W.J.C. No.21862 of 2013 has challenged his termination from the service. Let us examine the nature of employment as has been conferred upon the petitioner-Ashok Kumar Pandey.

10. As it appears from the letter dated 10.09.2013, where it has been mentioned that in terms of Clause- 49(i)(a) of the Articles of Association of Bihar State Hydro Electric Power Corporation "Shri Asbhok Kumar Pandey, the present petitioner was appointed as Managing Director in the pay scale of Rs.18,400-22,400/- till further orders". It also appears from the letter dated 08.03.2011 that after the appointment of petitioner-Ashok Kumar Pandey, in reciprocation, the National Hydro Power Corporation Limited, approved relieving him



from the post of Chief Engineer to enable him to join as Managing Director, Bihar State Hydro Electric Power Corporation Limited and as per the request of Ashok Kumar Pandey, granted him lien for a period of three years from the date of joining or till the date of superannuation, whichever is earlier. It appears that this benefit of lien of three years was given to the petitioner on his request and on that basis the petitioner-Ashok Kumar Pandey, joined the service of Bihar State Hydro Electric Power Corporation Limited and discharged his duties.

11. It will be appropriate to mention at this stage that while the petitioner posted as Chief Engineer at Faridabad, it was found that there was an illegality in granting benefit to the contractors for work at Jammu to the tune of Rs.85,32,274/- on account of procurement of S.P. poles that led to institution of the C.B.I. Case vide C.B.I. case No.RC3(A)/10/JMURC0042010A0003 dated 18.8.2010. At the initial stage the name of the petitioner did not surface, later on, the petitioner has been made accused, but before that there was a correspondence between the State of Bihar and the National Hydro Power Corporation. The Power Corporation, in his reply has given answers to some of the queries placed by the State Government. The question was asked before joining in B.H.P.C. and being relieved from the



N.H.P.C. whether it includes the vigilance clearance with respect to Ashok Kumar Pandey, the petitioner. It has been replied that before the disengagement from the N.H.P.C. all the formalities were done. Further, the question was asked whether at the time of filling up the application for the post of Managing Director in B.H.P.C., whether the petitioner was facing any charge. It was clarified that the C.B.I. vide letter No.2049-03003(4)-2010-ACB-CBI, Jammu dated 12.5.2010 informed about the lodging of FIR in connection with electrification works, but at that time the name of the petitioner-Ashok Kumar Pandey, Chief Engineer was not in the column of the accused and the C.B.I. has not communicated his inclusion as an accused till March, 2011.

12. After the correspondence made between the State Government and the N.H.P.C., ultimately, the petitioner has been included in the list of accused in a Criminal Case vide charge dated 03.12.2012, when the State of Bihar could know about the imputation has been alleged against the petitioner- Shri Ashok Kumar Pandey in a criminal case, the State of Bihar passed the order dated 10.09.2013, dispensed with Ashok Kumar Pandey from the service and repatriated him to his parent organization on two grounds; one is pendency of criminal case lodged by the C.B.I. with respect to the N.H.P.C. and

another, with regard to other irregularities committed by him while discharging the duties at Bihar State Hydro Electric Power Corporation that led to the present case.

13. It also appears from the record that before taking the action against the petitioner, the petitioner was served the show cause dated 22.02.2013 (Annexure-C), asking him to file his explanation within seven days and give explanation of the fact attached to the sheet dated 22.02.2013 with respect to the Criminal case lodged against him and so much so that Shri Ashok Kumar Pandey has also given a reply to show cause vide letter dated 26.02.2013. He explained his position with respect to the criminal case pending against him and it is an undisputed fact that at present the petitioner-Ashok Kumar Pandey is facing criminal trial in connection with C.B.I. case.

14. Learned counsel for the petitioner has raised a grievance, the manner he has been unceremoniously treated and the manner he has been terminated from service is not in consonance with the Constitutional provisions as well as Service Law. It is a fact that in the Bihar State Hydro Power Corporation no service condition has been fixed with regard to the appointment of Managing Director but Articles of Association provides that the Board of Director will select

the Managing Director. Clause 49(i)(a) provides as follows :-

“49(1)(a) The Chairman-cum-Managing Director shall be appointed by the Governor. All other members of the Board of Director shall be appointed by the governor in consultation with the Chairman-cum-Managing Director of the Company. No such consultation will be necessary in case of appointment of Directors representing the Government.”

15. At present the Secretary of the Energy Department is the Chairman of the corporation and the Managing Director is a quite different post apart from the Chairman, both the posts were earlier unified, but later on, it was separated to each other.

16. Learned counsel for the petitioner has submitted that the order of termination is in two parts; one part relates to the pendency of criminal case, another part relates to misdeamnoun committed during his service period in the Corporation and though he has been given show cause with regard to the Criminal case, but no explanation has been sought with regard to the alleged misdeameanour while discharging his duty as Managing Director in the Corporation.

16.1. He has further submitted that in the Counter Affidavit of the State they have mentioned number of irregularities, but in the



order of termination, save and except vague statement nothing has been specifically mentioned which is the foundational fact for dispensing with the service of the petitioner and another point that has been raised that as his appointment cannot be treated to be on deputation as for all purposes it was a new appointment. If his appointment is treated on deputation, but before that the State Government or the Corporation has not sought approval for such deputation of the petitioner from parent organization rather he applied against the advertisement, he was selected on his merit and the question of repatriation does not arise.

16.2. He further submits that deputation means prior approval by the parent organization for sending him to another association keeping intact his lien but in the present case though the lien has been kept intact not on the request of the State Government but it on the request of the petitioner.

16.3. He further submits that the petitioner was appointed after due consideration of the fact relates to his credential while working as Chief Engineer in the National Hydro Power Corporation Limited, posted at Faridabad and at the time when the selection was made there was due correspondence between the State of Bihar and the authority

of the N.H.P.C., in which the authority of the N.H.P.C. has specifically stated that when the petitioner was selected no criminal case was pending against him.

16.4. Learned counsel for the petitioner further submits that in the present case it is not a case of deputation but it a case of fresh appointment on the basis of advertisement issued by the State of Bihar and so much so that the order impugned cannot be said that it is a repatriation, rather the effect will be dismissal from the post of Managing Director or it may be a demotion to the post of Chief Engineer.

16.5. In support of his submissions, he has placed reliance on a judgment in *Union of India & Another vs. Shardindu*, reported in *2007(6) SCC, page 276*, paragraph No.26, there the person concerned was appointed and on the date of his appointment no case was pending against him, later on, his service was dispensed with. The Hon'ble Supreme Court has held that when on the date of the appointment no criminal case was pending against him, it requires following proper procedure before dispensing with the service of the employee concerned.

16.6. He further placed reliance on a judgment in *Ashok*



Kumar Ratilal Patel vs. Union of India & Another, reported in **2012(7), S.C.C. 757**, paragraph Nos.13 to 15, where the Hon'ble Supreme Court has dealt with the issue of deputation and the selection and the Hon'ble Supreme Court has held that when a proper person is appointed on the basis of a fresh process of selection, cannot be held to have come on deputation.

16.7. Learned Counsel for the petitioner also placed reliance on the judgment in *Manoj Narula vs. Union of India*, reported in **2014(9) S.C.C., page-1**, paragraph Nos.121 and 122, where the Hon'ble Supreme Court has held that unless the person is convicted he will have to be treated innocent but the Court at the end has stated that the appointment of Ministers is the complete prerogative of the Prime Minister whether he wants tainted person or untainted person, having clean image.

16.8. The learned counsel for the petitioner has further placed reliance on the judgment in *Debesh Chandra Das vs. Union of India*, reported in **1969 (2), S.C.C., 158, 1970, S.C. 77**, paragraph Nos. 6 and 16 on the proposition that if the appointment is made after due process of law against the sanctioned post, 'until further orders' has no relevance, will be treated that he has been appointed on substantive basis and cannot be terminated without following the due

process of law.

16.9. He has also placed reliance on the judgment in *K.C. Joshi vs. Union of India & Others*, reported in *1985 (3) S.C.C. page-153, 1985, S.C. 1046*, paragraph No.7, on the proposition that when the order is stigmatic, in that circumstances, the competent authority is required to follow the due process of law and only thereafter the order can be passed against the person concerned but that principle will not be applicable when the order is innocuous and has been repatriated without making any statement adverse to the petitioner.

16.10. He further placed reliance on the judgment in *K.H. Phadnis vs The State of Maharashtra*, reported in *AIR 1971 S.C. page 998*, paragraph No.17 on the proposition that even in repatriation if the allegation is imputed against the person concerned, in that circumstances, it is required to follow the principle of natural justice and without having followed the same the order is not sustainable.

16.11. By making the above submissions, learned counsel for the petitioner submits that the order impugned is stigmatic, in that circumstances, before passing the order of dispensing with the service of the petitioner, the competent authority was required to follow the procedure at least which is known to law in the interest of justice.



17. Learned counsel for the intervenor has submitted that the petitioner was knowing the pendency of criminal case before his appointment, but he has systematically suppressed this fact about his implication in the case and so much so that a person holding such a high post of Managing Director should be a clean person, having no allegation with regard to the misappropriation of the Government fund and in support of his contentions, he placed reliance on a judgment in *Centre For PIL and Another vs. Union of India and Another*, reported in *2011 (4) SCC page 1*, paragraph Nos.33, 44, 45 and 46.

17.1. He further submits that admittedly, as on today the petitioner is a tainted person and it will be a demoralizing effect to the employees of the Corporation as the person who is heading the Corporation himself involved in a criminal case and every time he would have to attend the court at Jammu & Kashmir in connection with C.B.I. case pending against him.

17.2. He has placed reliance on a judgment in *N. Kannadasan vs. Ajoy Khose and Others*, reported in *2009 (7) SCC page 1* paragraph No.93, where emphasis has been given with regard to the integrity of a person and held that if the integrity of a person is doubtful than the exercise of the power dispensing with his service cannot be said that it is a wrong exercise of power, He further submits



that the appointment of the petitioner is neither a tenure appointment nor it was a permanent appointment but it is only governed by the stipulation mentioned in the letter of appointment shows that till further orders does not confer any right to the petitioner to claim before this Court for the continuation of service to the post of Managing Director when his integrity itself is doubtful.

17.3. Learned counsel for the intervenor further submits that so far the compliance of the natural justice is concerned, the petitioner cannot raise any grievance as he was given the show cause notice, giving details of the facts and asked the explanation from him and after considering his explanation the impugned order has been passed and so much so that as on today, the admitted position is that the petitioner is facing a criminal case in connection with the misappropriation of the Government fund.

17.4. He has further submitted that in paragraph No.15 of the Counter Affidavit, gives details about the irregularities or illegalities committed by the petitioner while discharging the duty as Managing Director of the company. One of the grave nature of the allegation has been made against the petitioner is that he has paid Rs.90 lakhs to a firm in which his son is an employee without any sanction, but Ashok Kumar Pandey, the petitioner, has refuted about the employment of

his son in that firm and submitted that the payment has been made through chalan as per the contract given to the firm, so the question of payment without sanction, is completely misplaced argument.

17.5. Learned counsel for the intervenor submitted that the petitioner all through involved in the illegalities or irregularities and therefore, he may not be allowed to lead the Bihar State Hydro Power Corporation looking to the importance of the work to be discharged by the petitioner when his personal integrity is doubtful, which would be paramount consideration for continuation of an Officer on such a high level of post.

18. Having considered the rival contentions of the parties, this Court has to decide whether the order impugned is against the law and whether the petitioner should be allowed to lead the organization considering the attending facts and circumstances of the case.

19. Before entering into the discussions on other issues, this Court has to decide the nature of appointment as has been claimed by the writ petitioner that it was not a deputation in the legal parlance as the selection was made after proper advertisement, though lien has been attached with the parent organization for three years from the date of joining or till the date of superannuation. On consideration of



facts, as aforesaid, the appointment of the petitioner cannot be said that he was a deputationist to the Bihar State Hydro Electric Power Corporation Limited as the petitioner was selected through a proper advertisement, he cannot be said to have come on deputation to the Bihar State Hydro Electric Power Corporation Limited though loosely it can be said to be on deputation in the sense that since the petitioner holds his lien in the parent organization and the parent organization has permitted him to join the post for a fixed period of three years or till he attains the age of superannuation, whichever is earlier. As the present petitioner hold a lien in the parent organization to some extent he can be said to be on deputation, but it is not in the strict sense of deputation as in the case of the present petitioner, he was selected on the basis of advertisement published for the post of Managing Director by the Bihar State Hydro Electric Power Corporation Limited.

20. In what circumstances the appointment will be treated to be on deputation has been dealt with by the Hon'ble Supreme Court in the case of *Union of India & Another vs. Shardindu (supra)*. It will be relevant to quote paragraph No.26 of the said judgment where it has been held that appointment after due selection cannot be said to be an appointment on deputation in the following term:-



“26. Learned Addl. Solicitor General next submitted that the appointment of the respondent was purely on deputation basis and since the deputation period has been terminated and the appointing authority has full right to terminate his deputation. Therefore, the respondent can be sent back to his parent department i.e. the State of Uttar Pradesh. We regret to say that this appointment of the respondent cannot be said to be purely an appointment on deputation basis. Strictly speaking, it is not a deputation post because the incumbent has been selected under the Act and he has not come on deputation as such though loosely it can be said to be on deputation in the sense that since the incumbent holds his lien in the State of Uttar Pradesh and the State of Uttar Pradesh has permitted him to join the post for a fixed period of four years or till he attains the age of superannuation i.e. sixty years. Since the respondent holds a lien in the State of U.P. therefore, to some extent he can be said to be on deputation but it is not in the sense of deputation as in the case of an all India Service person who is sent on deputation to the Central Government or to other organization. It is an independent selection under the statute and the State of U.P. has permitted the respondent to join his assignment as he holds a lien and after completion of the period of four years he will come back to the State till he attains the age of superannuation. If the incumbent was to retire within the period of four years perhaps it would not have been



necessary to have moved the State of U.P. for its permission to join this assignment. Even after expiry of four years the respondent is left with some period of service. Therefore, formal permission was sought from the State of U.P. to permit the incumbent to join the post for a fixed term. Therefore, it is the permission by the State of U.P. to join the post and in case the incumbent comes back he can join the service under the State of U.P. Therefore, it is almost like permission and not in strict terms of deputation but loosely it can be termed as deputation. This is not the situation when the period of deputation can be cut short and the incumbent can be sent back to his parent department i.e. the State of U.P. unlike the officers of an all India service. This appointment is for a fixed tenure after due selection under the Act. Therefore, this kind of deputation stands on an entirely different category. However, learned Addl. Solicitor General tried to justify that a person who is sent on deputation has no right to continue in the post and his period of deputation can be cut short and he may be repatriated back to his parent department.”

21. In the *Shardindu's case (supra)*, the Hon'ble Supreme Court has also considered the nature of appointment, if the appointment for a fixed tenure or till the age of superannuation, while discharging his duty he does not incur any disqualification as the appellant was strictly appointed in terms of advertisement and



stipulation mentioned in the appointment letter, cannot be terminated, as he cannot be treated to have incurred any disqualifications on account of fact that while working in the earlier organization, Inquiry was conducted for an incident, in case, the Vigilance report was submitted before the earlier organization on that basis, he was placed under suspension and a disciplinary proceeding was initiated against the respondent. The Court has held that if there was any stipulation relating to misconduct connected with previous employment his tenure could be cut short and the Central Government could exercise their power, but in absence of such provision can a statutory appointment be cut short, specially, when the incumbent has not incurred any disqualification with present organization. It may be embarrassing but the statutory provision cannot be ignored, if the provision of disqualification and removal were there, perhaps something could be done but in face of clear provisions bearing on the subject, it will be travesty of justice to cut short the statutory appointment of an incumbent. The Hon'ble Supreme Court further held that pleasure appointments are such where incumbent are appointed at the pleasure of the President, like Governors. As against this, statutory appointment are made under the statute and the service conditions of the incumbents are governed by the statute, they are not pleasure appointments and the Governor appointed under the

constitution is purely a pleasure appointment or appointment of such nature which the incumbent holds the pleasure of the President or the Government as the case may be.

22. It will also be relevant to quote paragraphs Nos. 16 and 17 of the said judgment, which read as under:-

16. Now, the position that emerges is that the respondent was appointed for a fixed tenure of four years or till he attains the age of sixty years whichever is earlier under [Section 4](#) of the Act and while discharging his duties he did not incur any of the disqualifications as mentioned in [Sections 5 & 6](#). Therefore, so far as this statutory appointment is concerned, it cannot be terminated because he had not incurred any of the disqualifications. But while he was working in the State of Uttar Pradesh an inquiry was conducted in 2004 for an incident said to have happened in 2001 and in that a vigilance report was submitted before the State of Uttar Pradesh and on that basis the respondent was placed under suspension and a disciplinary proceeding was also initiated against the respondent and others by the State of U.P. None of these acts comes within the purview of [Sections 4,5 & 6](#). If there was any provision that for his previous misconduct his tenure could be cut short, then it is understandable that the Central Government could have exercised their powers. But in absence of such provision can a statutory appointment be cut short, especially when the incumbent has not incurred any disqualifications under the Act. It may appear to be embarrassing but nonetheless we can not ignore the statutory provisions. If the provisions of disqualification and removal were not there perhaps something could be done but in face of clear provisions bearing on the subject it will be travesty of justice to cut short the statutory appointment of an incumbent.

17. Learned Additional Solicitor General tried to support his submission on pleasure doctrine under [Article 310](#) of



the Constitution and submitted that the respondent has been appointed by the Central Government and therefore, it is the pleasure of the President to cut short his appointment. In this connection, learned ASG invited our attention to a decision of this Court in [Union of India & Anr. v. Tulsiram Patel](#) etc. [(1985) 3 SCC 398] especially to paragraphs 34 and 44. The distinction between statutory appointment and pleasure appointment has to be kept in mind. The pleasure appointments are such where the incumbents are appointed at the pleasure of the President, like Governors etc. As against this, statutory appointments are made under the statute and the service conditions of the incumbents are governed by the statute. They are not pleasure appointments. Governor appointed under the Constitution is purely pleasure appointment or appointment of such nature which the incumbent holds at the pleasure of the President or the Governors as the case may be. Such appointments may be cut short. Their Lordships in the aforesaid case have dealt with the distinction between the pleasure appointment and appointment under the civil services. Their Lordships held that in India the doctrine of pleasure appointment received Constitutional sanction under [Article 310](#) but unlike in United Kingdom in India it is not subject to any law made by the Parliament but is subject to only whatever expressly provided by the Constitution. Therefore, the distinction has to be borne in mind, the doctrine of pleasure appointment as it existed in feudal set up and in the democratic set up. Their Lordships discussed the doctrine of pleasure appointment in U.K. where the incumbent was appointed at the pleasure of the King but in India this concept has been adopted under [Article 310](#) of the Constitution and how it is to be exercised has also been laid down in the Constitution. Therefore, the concept of pleasure doctrine cannot be invoked in the present case. Every appointment made by the Central Government is in the name of the President but by that it does not mean that all the appointments are pleasure appointments de hors the Constitution or statutory rules bearing on the subject. In the present case, the appointment made was of statutory appointment and the service conditions of the Chairperson and Members have been laid down, likewise their removal has also been laid down on incurring certain disqualifications. Therefore, the submissions of learned

Additional Solicitor General have no legs to stand.”

23. To understand the crux of the matter, if the appointment has been made in pursuance of some statutory provisions and the statutory provisions granted some protection, the action can be taken under the statutory provision. If any provision provides a disqualification for the act committed while discharging the duty in the previous organization, can be the basis to cut short the period of tenure. In absence of such provision of disqualification and without following the proper procedure, the service cannot be dispensed with, but in the present case, the petitioner was appointed as Managing Director, the Memorandum and Articles of Association does not provide any service condition so much so that the grounds of disqualification is completely silent. The letter of appointment or provisions in Memorandum of Association and Article of Association is completely silent on condition of service, except, ‘till further orders’, this indicates applicability of pleasure doctrine. So in that circumstances no protection has been granted to the petitioner. The petitioner cannot claim any protection as his appointment is neither statutory appointment nor tenure appointment. To understand the nature of the appointment that has been conferred upon the petitioner, where it has been mentioned that in exercise of power of 49(i)(a) of the Articles of Association the petitioner was appointed as Managing



Director of Bihar State Hydro Electric Power Corporation Limited till further orders so the effect of till further orders has to be considered at the later stage as this Court has held that the appointment of the petitioner cannot be said to be on deputation, but loosely it can be said that he was there on deputation basis as his lien was attached with his parent Organization.

24. In *Ashok Kumar Ratilal Patel's case (supra)*, the Hon'ble Supreme Court has held in paragraph No.13 that ordinary transfer on deputation has been made as against the equivalent post from one cadre to another, one department to another, one organization to another or one Government to another. In such cases, the deputationist has no legal right in the previous post and the deputationist has no right to absorb in the post to which he is deputed and in such case, the deputation does not result into recruitment as no recruitment in its true import and significance takes places as a person is continued to a member of the parent service, but that principle will not be applicable in the matter of appointment and the recruitment to the post. In such cases, for appointment on deputation in service of the State Organization or state within the meaning of Article 12 of the Constitution of India, the provision of Article 14 and 16 are to be followed and no person can be discriminated nor it is open to the appointing authority to act arbitrarily or to pass any order in violation

of Article 14 of the Constitution of the India. A person appointed on deputation has a right to be treated fairly and equally and once the person is selected and offered with the letter of appointment on deputation the same cannot be cancelled except on the ground of no-suitability or non-satisfactory work.

25. It will be relevant to quote paragraphs Nos. 13 and 14 of the said judgment, which read as follows:-

13. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person is continued to be a member of the parent service.

14. However, the aforesaid principle cannot be made applicable in the matter of appointment(recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organization or State within the meaning of [Article 12](#) of the Constitution of India, the provisions of [Article 14](#) and [Article 16](#) are to be followed. No person can be discriminated nor it is open to the appointing authority to act arbitrarily or to pass any order in violation of [Article 14](#) of the Constitution of India. A person, who applies for appointment on deputation has indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non- suitability or unsatisfactory work.”

26. The learned counsel for the petitioner has submitted that



merely the petitioner has been chargesheeted in a criminal case lodged within the State of Jammu & Kashmir, he will be treated to be innocent unless he is convicted and same cannot be the basis for dispensing with his service with regard to any act committed during the employment in the previous employer, as there is nothing in the Memorandum and Articles of Association would incur disqualification so much so in a situation when the petitioner joined the service of Managing Director, he was not arrayed as an accused, but later on, he was made an accused, the same cannot be the basis for termination of his service.

27. In *Manoj Narula vs. Union of India (supra)*, which is not dealing with particularly the service matter, but pleasure of the Prime Minister to induct a person as a Minister, whose previous antecedent was not fair. The Court has said that the law does not hold a person guilty or deem or brand any person as a criminal merely because an allegation has been made against that person of having committed some criminal offence. Be it in the form of an off-the-cuff allegation or an allegation in the form of First Information Report or a complaint or an accusation in the final report under Section 173 of the Criminal Procedure Code or even on charges being framed by a competent Court. The fundamental principle of criminal jurisprudence that a

person is innocent until he is proved guilty and the person cannot be said to be a condemned in the public eye. So merely a person is accused cannot be said to be convicted person as always innocence is attached to the accused person unless charges are proved against him.

28. It will be relevant to quote paragraphs Nos. 121 and 122 of the said judgment, which read as under:-

“121. The expression ‘criminal antecedents’ or ‘criminal background’ is extremely vague and incapable of any precise definition. Does it refer to a person accused (but not charged or convicted) of an offence or a person charged (but not convicted) of an offence or only a person convicted of an offence? No clear answer was made available to this question, particularly in the context of the presumption of innocence that is central to our criminal jurisprudence. Therefore, to say that a person with criminal antecedents or a criminal background ought not to be elected to the Legislature or appointed a Minister in the Central Government is really to convey an imprecise view.

122. The law does not hold a person guilty or deem or brand a person as a criminal only because an allegation is made against that person of having committed a criminal offence – be it in the form of an off-the-cuff allegation or an allegation in the form of a First Information Report or a complaint or an accusation in a final report under Section 173 of the Criminal Procedure Code or even on charges being framed by a competent Court. The reason for this is fundamental to criminal jurisprudence, the rule of law and is quite simple, although it is often forgotten or overlooked – a person is innocent until proven guilty. This would apply to a person accused of one or multiple offences. At law, he or she is not a criminal – that person may stand ‘condemned’ in the public eye, but even that does not entitle anyone to brand him or

her a criminal. Consequently, merely because a first information report is lodged against a person or a criminal complaint is filed against him or her or even if charges are framed against that person, there is no bar to that person being elected as a Member of Parliament or being appointed as a Minister in the Central Government. ”

29. In the case of *Central for PIL and Other (supra)*, the Hon'ble Supreme Court has taken into consideration two aspects of the matter institutional integrity and the individual integrity and the Court is of the view that institutional integrity is always required to be maintained. The matter was related to the appointment of Central Vigilance of Commissioner, which is a very high post inasmuch as the Committee has to examine imputation of allegations or misdeameanour of the person who comes within the zone of consideration for appointment. In that situation, the Court held that Institutional integrity in question, the touchstone should be public interest, which was required to be taken. Therefore, the Court has held that institution is more important than the individual; the Court has taken serious note of the matter for the persons involved in the corruption and held that the same cannot be kept hidden under the carpet of legal technicalities. In that case, while making recommendation for the appointment, the previous conduct of Shri P.J. Thomas was not taken into consideration. Only on the basis of bio-data recommendation was made. The Court was of the view that

the Committee did not apply its mind, the Committee was required to look into the fact that a person who has tainted antecedent cannot hold such a higher post of Chief Central Vigilance Commissioner. The Court has held that personal integrity is relevant along with the integrity of the institution.

30. It will be relevant to quote paragraphs Nos. 43, 44 and 46 of the said judgment, which read as under:-

“43. Appointment to the post of the Central Vigilance Commissioner must satisfy not only the eligibility criteria of the candidate but also the decision making process of the recommendation (see SCC para 88 of N. Kannadasan). The decision to recommend has got to be an informed decision keeping in mind the fact that the CVC as an institution has to perform an important function of vigilance administration. If a statutory body like the HPC, for any reason whatsoever, fails to look into the relevant material having nexus to the object and purpose of the 2003 Act or takes into account irrelevant circumstances then its decision would stand vitiated on the round of official arbitrariness (see State of A.P v. Nalla Raja Reddy). Under the proviso to Section 4(1), the HPC had to take into consideration what is good for the institution and not what is good for the candidate (see para 93 of N. Kannadasan (supra). When institutional integrity is in question, the touchstone should be "public interest" which has got

to be taken into consideration by the HPC and in such cases the HPC may not insist upon proof (see SCC para 103 of N. Kannadasan (supra).

44. *We should not be understood to mean that personal integrity is not relevant. It certainly has a co-relationship with institutional integrity. The point to be noted is that in the present case the entire emphasis has been placed by the CVC, the DoPT and the HPC only on the bio-data of the empanelled candidates. None of these authorities have looked at the matter from the larger perspective of institutional integrity including institutional competence and functioning of the CVC. Moreover, we are surprised to find that between 2000 and 2004 the notings of the DoPT dated 26-6-2000, 18-1-2001, 20-6-2003, 24-2-2004, 18-10-2004 and 2-11-2004 have all observed that penalty proceedings may be initiated against Shri P.J. Thomas. Whether the State should initiate such proceedings or the Centre should initiate such proceedings is not relevant. What is relevant is that such notings were not considered in juxtaposition with the clearance of the CVC granted on 6-10-2008. Even in the Brief submitted to the HPC by the DoPT, there is no reference to the said notings between the years 2000 and 2004. Even in the C.V. of Shri P.J. Thomas, there is no reference to the earlier notings of the DoPT recommending initiation of penalty proceedings against Shri P.J. Thomas. Therefore, even on personal integrity, the HPC has not*

considered the relevant material. The learned Attorney General, in his usual fairness, stated at the Bar that only the Curriculum Vitae of each of the empanelled candidates stood annexed to the agenda for the meeting of the HPC. The fact remains that the HPC, for whatsoever reason, has failed to consider the relevant material keeping in mind the purpose and policy of the 2003 Act.

47. We may reiterate that the institution is more important than an individual. This is the test laid down in SCC para 93 of N. Kannadasan's case. In the present case, the HPC has failed to take this test into consideration. The recommendation dated 3rd September, 2010 of HPC is entirely premised on the blanket clearance given by the CVC on 6-10-2008 and on the fact of respondent 2 being appointed as the Chief Secretary of Kerala on 18-9-2007; his appointment as Secretary of Parliamentary Affairs and his subsequent appointment as Secretary, Telecom. In the process, the HPC, for whatever reasons, has failed to take into consideration the pendency of the Palmolein case before the Special Judge, Thiruvananthapuram being case CC No.6 of 2003; the sanction accorded by the Government of Kerala on 30-11-1999 under Section 197 CrPC for prosecuting inter alia Shri P.J. Thomas for having committed alleged offence under Section 120-B IPC read with Section 13(1)(d) of the Prevention of Corruption Act; the judgment of the Supreme Court

dated 29-3-2000 in K. Karunakaran v. State of Kerala and Another in which this Court observed that: (SCC p. 767, para 8)

"...the registration of the FIR against Shri Karunakaran and others cannot be held to be the result of malafides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities and in such cases probes conducted are required to be determined on facts and in accordance with law".

Further, even the judgment of the Kerala High Court in Criminal Revision Petition No. 430 of 2001 has not been considered."

31. This aforesaid judgment gives an inference the person holding higher post higher integrity is required as the person represents the institution, if his personal integrity itself has been put to question mark, institutional integrity would automatically come under doubt and that person cannot be allowed to lead the organization.

32. In *N. Kannadasan's case (supra)*, emphasis has been given of a person holding the higher post must possess impeccable integrity. It will be relevant to quote paragraph No.93 and 94 of the

said judgment, which read as under:-

“93. The superior courts must take into consideration as to what is good for the judiciary as an institution and not for the judge himself. An act of balancing between public interest and private interest must be made. Thus, institution as also public interest must be uppermost in the mind of the court. When such factors are to be taken into consideration, the court may not insist upon a proof. It would not delve deep into the allegations. The court must bear in mind the limitations in arriving at a finding in regard to lack of integrity against the person concerned.

94. As has been noticed in S.P. Gupta (supra), the test which must be applied for the purpose of assessing the suitability of a person for appointment as a Judge must be whether the Chief Justice of the High Court or for the matter of that, any other constitutional authority concerned in the appointment is satisfied about the integrity of the person under consideration and, thus, if he does not enjoy good reputation, it would not be possible for the Chief Justice of the High Court to say that he is satisfied about the integrity of such person and in such an event he would be justified in not recommending him for appointment and in fact it would be his duty not to recommend his name.”

33. In view of the aforesaid discussions, one thing is very



clear that when a person is leading an organization his integrity should be of higher degree as the integrity of the person reflects the institutional integrity. If the integrity of a person having a tainted past, it is very difficult to conceive an idea that he would lead the organization in a proper manner to achieve the avowed goal set by organization.

34. Learned counsel for the petitioner submits that as the order of dispensing with the service are in two parts one part dealing with criminal case relates to the previous organization and another part is while discharging the duty, the petitioner was found to be involved in other irregularities. It is apparently clear that with respect to the pendency of criminal case the petitioner was given a show cause and that he replied, but another part with respect to the commission and omission relates to the tenure while discharging the duty of Managing Director was not subject matter of show cause.

35. As per the *K.H. Phadnis's case (supra)*, where the Court has held that the Government has a right to revert an Government servant from the higher temporary post to the lower substantive post without an aspersion against his character or integrity or whether the order amounts to reduction in the rank by way of punishment, revision by itself will not be a stigma. On the other hand, if there is



evidence that order of reversion is not a pure accident of service, but order is a nature of punishment. The provision of Article 311 is attracted. In the present case the provisions of Article 311 is not applicable as the Corporation is the State within the meaning of Article 12 of the Constitution of India, but chapter xiv of the Constitution does not apply, but can be said that the person who is holding an office must get a fair and proper treatment in terms of Article 14 of the Constitution of India.

36. It will be relevant to quote paragraph No.17 of the said judgment, which reads as under:-

“17. The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a



genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, [Article 311](#) will be attracted."

37. In *Debesh Chandra's Case (supra)* the Hon'ble Supreme Court held that order of reversion of the petitioner could not be sustained as he has been reduced in rank which is a stigma without taking action in accordance with [Article 311\(2\)](#) of the Constitution. In that case the petitioner was holding a tenure post under the Government of India. His tenure post was ordinarily for five years, there was nothing in the Notification of his appointment to the tenure post to indicate that the appointment was one which could be terminated at any time and there the appointment order used the word till further order. The Court has considered that reversion to a lower original post the manner and nature of steps in reversion shows the action was actuated with stigma, there the Court has held that before taking such action procedure under [Article 311\(2\)](#) of the Constitution

of India is to be followed.

38. It will be relevant to quote paragraph No. 16 of the said judgment, which reads as under:-

“16. We have shown above that he was holding a tenure post. Nothing turns upon the words of the notification 'Until further orders' because all appointments to tenure posts have the same kind of order. By an amendment of F.R. 9(30) in 1967, a form was prescribed and that form was used in his case. These notifications also do not indicate that this was a deputation which could be terminated at any time. The notifications involving deputation always clearly so state the fact. Many notifications were brought to our notice during the argument which bear out this fact and none to the contrary was shown. Das thus held a tenure post which was to, last till July 29, 1969. A few months alone remained and he was not so desperately required in Assam that he could not continue here for the full duration. The fact that it was found necessary to break into his tenure period close to its end must be read in conjunction with the three alternatives and they clearly demonstrate that the intention was to reduce him in rank by sheer pressure of denying him a secretaryship. No Secretary, we were told, has so far been sent back in this manner and this emphasises the element of penalty. His retention in Government of India on a lower post thus

was a reduction in rank.”

39. In *K.S. Joshi's case (supra)*, where on factual matrix after successful completion of probation the employee was appointed on regular establishment as store keeper and the appointment letter mentioned that “he is continued in service on a regular basis until further orders”. The Hon’ble Supreme Court held that the expressions ‘until further orders’ suggest an indefinite period and it is difficult to construe it as clothing him with the status of a temporary employee. Even worse than being a probationer giving apprehension next further orders may follow on the very next day. So ‘until further orders’ has been treated to be irrelevant and has to be ignored even inconsistent with the appointment on regular basis.

40. It will be relevant to quote paragraph 7 of the said judgment, which reads as under:-

“7. The next question is whether the service of the appellant was terminated in accordance with law or regulation or in a thoroughly arbitrary manner ? Factual matrix set out hereinbefore will affirmatively show that on successful completion of his probation period, the appellant was appointed on the regular establishment as Store Keeper. Thus effective from (sic) 13, 1965, the appellant was appointed on regular basis as Store Keeper. There is nothing to show in the order that on completion of



the probation period, he was appointed as a temporary Store Keeper. The words used are : “He is continued in service on a regular basis until further orders.” The expression 'until further orders' suggest an indefinite period. It is difficult to construe it as clothing him with the status of a temporary employee. It is even worst than being a probationer because the apprehended further order may follow the very next day. Therefore, the expression until further order' being thoroughly irrelevant has to be ignored. It is even inconsistent with the appointment on regular basis as stated in that very order.”

41. Until further orders has been defined in Advance Law Lexicon by Ramanath Iyer, Third Edition, “until further orders”- upto the time of any other order till another order is passed”. So, it has to be seen in its factual background, the meaning of the word until further orders as it cannot be attached to the fixed formula and cannot be treated to put in mathematical precision.

42. In the present case, the selection has been made and the appointment letter mentions ‘till further orders’. This Court is of the view that as the Memorandum and Articles of Association does not prescribes any fixed tenure, inasmuch as no statutory provision has conferred upon him either fixed term appointment or permanent appointment stipulates the appointment is till further orders, what this Court feels that he will continue in the service till the Management



feel him suitable and worthy to lead the organization, but this court cannot forget the judgment of *State of Orissa and Others vs. Bidyabhushan Mohapatra*, reported in *L.L.J, 1963, page 779*, where several charges were framed against the employees, but few of the charges could be proved and rest remained unsustained, the Hon'ble Supreme Court has taken a view, even some of the charges are proved, is sufficient to sustain the order of termination.

43. It will be relevant to quote paragraph No.9 of the said judgment, which reads as under:-

"9. The High Court has held that there was evidence to support the findings on heads (c) & (d) of Charge (1) and on Charge (2). In respect of charge 1(b) the respondent was acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of charges 1(a) and 1(e) in the view of the High Court "the rules of natural justice had not been observed". The recommendation of the Tribunal was undoubtedly founded on its findings on charges 1(a), 1(e), 1(c), 1(d) and Charge (2). The High Court was of the opinion that the findings on two of the heads under Charge (1) could not be sustained, because in arriving at the findings the Tribunal had violated rules of natural justice. The High Court therefore directed that the Government of the State of Orissa should decide whether "on the basis of those charges, the punishment of dismissal should be



maintained or else whether a lesser punishment would suffice". It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on charges 1(a) and 1(e) were vitiated for reasons set out by it, because in our judgment the order of the High Court Directing the Government to reconsider the question of punishment cannot, for reasons we will Presently set out,, be sustained. If the order of dismissal was based on the findings on charges 1(a) and 1(e) alone the Court would have jurisdictions declare the order of dismissal illegal but when the findings the Tribunal relating to the two of five a of the first charge and the second charge was found, not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view , the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal. The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under [Art. 309](#) of the Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide



whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, is not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the finding the Tribunal were "unassailable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty, for as we have already observed the order of dismissal passed by a competent authority on a public servant., if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal Prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question."

44. In view of the aforesaid discussions, though the provision of Article 311 of the Constitution of India does not apply, the Management with regard to the pendency of criminal proceeding given a show cause to the petitioner, which the petitioner has replied, the principle of Article 311 does not come to rescue the petitioner as well as the Memorandum and Articles of Association also does not confer any legal right that before dispensing with the service particular procedure has to be followed, but second aspect is that though in the order of dispensing with the service of the petitioner the respondent does not disclose, save and except, the vague statement of other irregularities, but in the counter Affidavit number of imputations has been alleged against the petitioner and one of the allegation has been made that he has directed to make payment huge amount of money to one Company where the son of the petitioner was working, which the petitioner has refuted. So what should be done by this court, it is not in dispute that the petitioner is facing a criminal case of corruption while discharging the duty at National Hydro Electric Power Corporation at Jammu and Kashmir, which is not concluded till date. Of course the management has not given any show cause with regard to other irregularities, the provisions of Article 311 of the Constitution of India does not apply to his protection. The nature of his post requires the highest degree of integrity and the appointment

of the petitioner is not a tenure appointment not emanating from any statutory provision, the nature of the appointment does not attach any certainty. So looking to the above facts and circumstances of the case let the petitioner should be go to his parent organization, as the petitioner would always remaining busy in conducting his case at Jammu and Kashmir, which is very far from this place and the present organization will suffer immense on account of his engagement with his personal criminal case at Jammu and Kashmir.

45. In such view of the matter, it will not be proper for this Court to interfere with the order passed by the respondent authority. Hence, this writ petition filed by Ashok Kumar Pandey is dismissed.

46. In view of aforesaid decision, there is no need to decide the case of Jawahar Lall and the same is dismissed as infructuous.

(Shivaji Pandey, J)

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