

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2949 OF 2015

1. Sampat Paraji Jawalkar,
Age : 57 Years, Occu.: Service,
R/o. 190, "Shreekrupa" Ulkanagari,
Aurangabad, District : Aurangabad.
2. Praveen Gopalrao Shelke,
Age : 48 Years, Occu. : Service,
R/o. Vishnunagar, Basmathnagar,
District : Hingoli.
3. Gulab Rajabhau Bhoyar,
Age : 48 Years, Occu. : Service,
R/o. Kallamnuri, Tq. : Kallamnuri,
Dist. : Hingoli.
4. Mohd. Irfankhan Mohd. Subhankhan,
Age : 45 Years, Occu. : Service,
R/o : Roshangate, Aurangabad,
Dist. : Aurangabad.
5. Anand Daulatrao Kharat,
Age : 32 Years, Occu. : Service,
R/o. Sidharthnagar, N-12, Hudco,
Aurangabad, Dist. : Aurangabad. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya, Mumbai.

2. The Director of Education,
Maharashtra State Pune.
3. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
4. The Maharashtra State Board of
Secondary and Higher Secondary
Education Aurangabad Divisional
Board, Station Road, Aurangabad,
Through its Divisional Secretary. .. Respondents

Shri V. D. Sapkal, Advocate for Petitioners.

Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 to 3.

Shri Anup Nikam, Advocate for the Respondent No. 4.

**WITH
WRIT PETITION NO. 3274 OF 2015**

1. Kiran Narayanrao Patil,
Age : 40 Years, Occu.: Service,
R/o. 1033, Shivneri Road, Sainagar,
Cidco, N-6, Aurangabad,
District : Aurangabad.
2. Gajanan S/o Madhavrao Patil,
Age : 52 Years, Occu. : Service,
R/o. 54, Shakarnagar, Aurangabad,
Tq. and Dist. : Aurangabad.
3. Mohd. Taleb Taher Miya Saudagar,
Age : 34 Years, Occu. : Service,
R/o. Darga Road, Jalna,
Tq. and Dist. : Jalna. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sport's
Department, Mantralaya, Mumbai.
2. The Director of Education,
Maharashtra State Pune.
3. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
4. The Maharashtra State Board of
Secondary and Higher Secondary
Education Aurangabad Divisional
Board, Station Road, Aurangabad,
Through it's Divisional Secretary. .. Respondents

Shri Abhijit G. Choudhari and D. J. Choudhari, Advocates for
Petitioners.

Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 to 3.

Shri Anup Nikam, Advocate for the Respondent No. 4.

**WITH
WRIT PETITION NO. 2988 OF 2015**

1. Uddhav S/o. Ramkisan Mhaske,
Age : 38 Years, Occu.: Service as Assistant
Teacher in Rangnath Maharaj Secondary
and Higher Secondary School,
Waghul, Tq. and Dist. Jalna.
2. Satyandra S/o Devidasrao Patil,
Age : 48 Years, Occu. : Service as Assistant
Teacher in Sow Kai. S. K. College Beed,
Tq. and Dist. : Beed.

3. Prabhakar S/o Dinkar Ambhore,
Age : 34 Years, Occu. : Service as Assistant
in Smt. Shakuntalabai Bordikar Kanya
Vidyalaya, Jintur, Tq. and Dist. : Parbhani.
4. Manoj S/o Shivajirao Birari,
Age : 38 Years, Occu. : Service as Assistant
Teacher in Mohatadevi Vidyalaya Marol Fata,
Tq. : Paithan, Dist. : Aurangabad.
5. Raiskhan Nasirkhan,
Age : 30 Years, Occu. : Service as Assistant
Teacher in National Urdu High School,
Tq. : Sillod, Dist. : Aurangabad .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya, Mumbai.
2. The Maharashtra State Board of
Secondary and Higher Secondary
Education Aurangabad Divisional
Board, Station Road, Aurangabad,
Through its Divisional Secretary. .. Respondents

Shri Amol N. Kakade, Advocate for Petitioners.
Shri S. G. Karlekar, A.G.P. for Respondent No. 1.
Ms Surekha P. Mahajan, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE RESERVED FOR JUDGMENT : 04.02.2016
DATE ON JUDGMENT PRONOUNCED : 06/05/2016

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioners are nominated as members of the Standing Committee by the respondent No. 4/Board in view of Section 6 of the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (for the sake of brevity hereinafter called as "Said Act"). The State Government vide publication of notification in the Government Gazette dated dated 05th March, 2015 cancelled the membership of these petitioners, who are nominated members. The same is assailed in the present writ petitions.

3. Mr. Sapkal, the learned counsel for petitioners submits that, the term of the nominated members as per Section 8 of the said Act is four years. Though Sub-Section 1A of the Section 8 of the said Act gives powers to the Government to terminate the membership of the nominated members even prior to the stipulated period of four years, however, the said powers are not unfettered. The Government while exercising it's powers has to notify the reasons. According to the learned counsel the *doctrine of pleasure* cannot be invoked in an arbitrary manner. There has to be some acceptable material to invoke the *doctrine of pleasure*. The public interest did not demand it and so the *doctrine of*

pleasure could not have been invoked by the respondent. The learned counsel relies on the judgment of Division Bench of this Court in **Writ Petition No. 6277 of 2000 dated 22nd June, 2001**. The learned counsel also relies on the judgment of the Division Bench of this Court in **Writ Petition No. 326 of 2015** with connected writ petitions **dated 08th May, 2015**. According to the learned counsel, in the affidavit in reply filed by the State also no reasons are forthcoming for invoking Sub-section 1A of Section 8 of the said Act. The learned counsel further submits that, the *doctrine of pleasure* is not a license to act with unfettered discretion or to act arbitrarily. The *doctrine of pleasure* does not dispense with the need of the cause for withdrawal of the pleasure. According to the learned counsel the power under Sub-section 1A of Section 8 of the said Act will have to be exercised in a rare and exceptional circumstances and that too for valid and compelling reasons. The learned counsel relies on the judgment of the Apex Court in a case of **B. P. Singhal Vs Union of India and another** reported in **(2010) 6 SCC 331**. The learned counsel submits that, in the present case also as no reasons are forthcoming, nor anything is produced before this Court showing that the authority has applied its mind while exercising its powers of Sub-section 1A of Section 8 of the said Act. The impugned order cannot withstand and deserves to be set aside.

4. Mr. Karlekar, the learned Assistant Government Pleader submits that, the petitioners are nominated members. It is not that by undergoing some selection or competition they have been nominated. They have been nominated at the pleasure of the Government U/Sec. 6 of the said Act. Sub-Section 1A of Section 8 of the said Act empowers the Government to terminate their membership before the lapse of four years. The petitioners being the nominated members do not have the right of post, as such, cannot agitate regarding their termination of membership. The learned A. G. P. relies on the order of the Division Bench of this Court in **Writ Petition No. 1935 of 2014 dated 05th March, 2014**. The learned A. G. P. further submits that, the right created by the statute can be limited and curtailed by the statute. No stigma is attached for the removal under Sub-Section 1A of Section 8 of the said Act, nor it leads to any penal consequences. The *doctrine of pleasure* is implicit in the said provision. Once the *doctrine of pleasure* is applicable, neither the principles of natural justice would step in, nor any question of giving an opportunity before removal would arise. The learned A. G. P. relies on the judgment of the Apex Court in a case of **Krishna Bulaji Borate Vs. State of Maharashtra and others** reported in (2001) 2 SCC 441.

5. We have considered the submissions canvassed by the learned counsel for respective parties. Before we advert to the

propositions put forth by the learned counsel for respective parties, it would be appropriate to refer to the relevant provisions.

**The Maharashtra Secondary and Higher
Secondary Education Boards Act, 1965**

1.
2.

6. (1) A Divisional Board shall consist of a Chairman appointed by the State Government, and of the following members, that is to say :--

Class I---Ex-officio Members.

(i) All Regional Deputy Directors of Education in the Division.

(ii) Two Education Officers designated by the State Government amongst officers serving in the Division as *Parishad Education Officers* of the Zilla Parishads, 2[and the Educational Inspector, Greater Bombay.]

Class 111---Nominated Members.

4[(i) Six members nominated by the State Government from amongst the principals, headmasters and headmistresses in the Division, of whom two shall be principals of junior colleges.]

6[(ii) Eight members nominated by the State Government, from amongst the teachers in the Division, of whom four shall be teachers in junior colleges.]

8[(iv) Two members nominated by the State Government, from amongst the representatives

of the managing bodies of secondary schools and junior colleges recognised by the Divisional Boards in the Division, of whom one shall be the representative of the managing bodies of junior colleges.]

10[Provided that, a person shall cease to hold office as a member of the Divisional Board, if he ceases to be a principal, headmaster, headmistress or teacher or representative of the managing body where he is nominated from such persons and such person shall inform the Chairman in writing under his own hand of his, having so ceased to be the member of the Board, within a week therefrom.]

(2) The names of persons (not being *ex-officio* members) who have been i [* * *] nominated, from time to time, as members of a Divisional Board shall be published by the State Board in the *Official Gazette*.

2(3) Notwithstanding anything contained in this Act, all nominated members of every Divisional Board, holding office, immediately before date of commencement of the Maharashtra Secondary and Higher Secondary Education Boards (Amendment) Act, 1986, shall cease to be such members and vacate their offices on the date on which new members are nominated by the State Government under sub-section (1), as amended by the said Act.]

8. (1) The members of the State Board and of each of the Divisional Boards, not being members *ex-officio*, shall hold office for a term of four years from, the date on which their names are published in the *Official Gazette*.

2[(1A) Notwithstanding anything contained in sub-section (1), the nominated members of the State Board or of the Divisional Boards shall hold office during the pleasure of the

Government and their term of office may, at any time, before the expiry of the period of four years, be terminated by the State Government, by an order published in the *Official Gazette*.]

(2) The members shall be entitled to such compensatory allowance as may be determined by 3[regulations.]

6. Section 3 of the Act of 1965 empowers the State Government to establish a board by notification in the official Gazette for the whole state by the name of the Maharashtra State Board of Secondary and (Higher Secondary) Education. So also U/Sec. 3(2) of the Act of 1965, the State Government by notification in the official Gazette can establish a board for each of the divisions under such name as may be prescribed. Sec. 3A of the Act of 1965 empowers the State Government to constitute a new division under the Act of 1965 by notification in the official Gazette. As per Sec. 6 of the Act of 1965, the Divisional Board consists of a Chairman and Ex-officio members, so also nominated members. All Regional Deputy Directors of Education in the division and two Education Officers designated by the State Government are Ex-officio members. Six members are nominated by the State Government from amongst the Principal, Head Masters and Head Mistress in the division of whom two shall be Principals of Junior Colleges. Eight members are nominated by the State Government from amongst the teachers in the division of whom four shall be teachers in junior colleges and two members are nominated by the State

Government from amongst the representatives of the Managing bodies of secondary schools and junior colleges. The names of the nominated members are required to be published by the said board in the official Gazette. As per Sec. 8(1) of the Act of 1965, the members of the Divisional Board not being ex-officio members hold office for a term of four years from the date of which their names are published in the official Gazette. Sec. 8(1A) empowers the State Government to terminate the membership of the nominated members of the said board or of the Divisional Board before the expiry of period of four years.

7. The petitioners herein are nominated as the members of the Aurangabad Divisional Board as per notification published in official Gazette dated 27.08.2014. As per Sec. 8(1) of the Act of 1965, they are entitled to hold the office for a term of four years from the date of publication of notification in the official Gazette, however, though notification nominating petitioners as members of Divisional Board is published in the official Gazette on 27.08.2014, the State Government has terminated the membership of the petitioners as nominated members of the Aurangabad Divisional Board vide publication in the official Gazette dated 05.03.2015 i. e. within a span of six months. The same is assailed in the present writ petition.

8. Reading the provisions of Sec. 8(1A) of the Act of 1965

there is no manner of doubt, that the nominated members to the Divisional Board like petitioners hold office at the pleasure of the State Government. Though the term is of four years, they can be removed at any time during the pleasure of the Government. The provisions do not require any issuance of notice prior to the termination of the membership of the nominated members to the Divisional Board, nor it contemplates assigning any reasons for the same. The petitioners are nominated by the Government and the provisions also gives right to the Government to terminate the membership of petitioner at its pleasure. The termination of the membership of the petitioners is not stigmatic. The provision does not require the State Government to adhere to the principles of natural justice before terminating their membership, nor it mandates issuance of any show cause notice. The adherence to the principles of natural justice cannot be read into the said provisions also. Once *doctrine of pleasure* is applicable, then neither the principles of natural justice would step in, nor any question of giving an opportunity before removal would arise, as has been held by the Apex Court in a case of **Krishna Bulaji Borate Vs. State of Maharashtra and others** and relied by the learned A. G. P. referred to supra. In the said case, the Apex Court was dealing with *pari-materia* provisions of removal of nominated trustee under the Nagpur Improvement Trust Act 1936. It is held that, where the doctrine of pleasure is applicable and the removal does not cause any

stigma, nor leads to any penal consequences, then in that case, the petitioner cannot claim opportunity before removal, nor principals of natural justice would apply.

9. The question is even if "at pleasure" doctrine is applied, then whether the State Government has unbridled power of removal without any cause or reason. Whenever the law bestows discretion in any authority, the said discretion cannot be an arbitrary or unregulated discretion, but the same has to be exercised fairly. There cannot be a concept of unfettered and unbridled discretion, where the rule of law exists. The Constitutional Bench of the Apex Court in a case of **B. P. Singhal Vs Union of India and another** has in para 22 and 48 observed as under.

"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 license 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 persons 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.

48. The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in *Ex parte Daly* [2001 (3) All ER 433], in law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for other. *Mala fides* may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments. For withdrawal of pleasure in the case of a Minister or an

Attorney General, loss of confidence may be a relevant ground. The ideology of the Minister or Attorney General being out of sync with the policies or ideologies of the Government may also be a ground. On the other hand, for withdrawal of pleasure in the case of a Governor, loss of confidence or the Governor's views being out of sync with that the Union Government will not be grounds for withdrawal of the pleasure. The reasons for withdrawal are wider in the case of Ministers and Attorney-General, when compared to Governors. As a result, the judicial review of withdrawal of pleasure, is limited in the case of a Governor whereas virtually nil in the case of a Minister or an Attorney General."

10. In the present case, absolutely no reason is forthcoming, nor the respondents have come with case as to what was the cause for terminating the membership of the nominated members. The order need not state the cause for removal of the nominated members, but the cause must exist or the cause for exercising the power to terminate their membership.

11. The cause to remove must exist. Though the cause or the reasons for removal may not be disclosed, it is imperative that cause should exist. The Government in exercise of its powers U/Sec. 8(1A) of the Act of 1965 should not act in an arbitrary or unreasonable manner.

12. There is no manner of doubt that the nomination of these petitioners was at the pleasure of the Government and their

removal is also at the pleasure of the Government. The Apex Court in a case of **B. P. Singhal Vs Union of India and another** referred supra has held that, where "at pleasure" doctrine applies, there is no need to assign any reason, nor to state the cause for removal. Even principles of natural justice do not apply. The scope of judicial review of withdrawal of pleasure is virtually nil in such cases. The Court would exercise its power of judicial review in such cases, if the aggrieved person demonstrates *prima facie* that his removal was either arbitrary, malafide or whimsical. In the present case, the respondent/State has filed affidavit through Deputy Director of Education. The relevant portion of the affidavit in reply reads as under :

"7. I say that, the Act provides that, absolute discretion is vested in the Government with regard to the appointment and termination of tenure of the nominated members on the State and Divisional Boards. It is not incumbent upon the State to assign any reason for such exercise of its discretion. It is presumed that, the State has acted in a reasonable manner. The Act does not provide for issuance of notice or hearing to the members whose tenure has been curtailed."

13. As observed above, cause need not be stated while removing the nominated members, nor reasons need be assigned, but cause should exist. The respondents in their affidavit could have stated the cause for removal. The cause for withdrawal of pleasure in case of such nominated councilor is wider. The same

may be loss of confidence, etc. But the cause must exist. As cause need not be stated in the order of removal, nor reasons need be assigned, the respondents in the affidavit could have stated the cause. However, the respondents have only stated that, the petitioners are removed as they hold the office during the pleasure of the Government. "At pleasure" doctrine cannot be exercised arbitrarily. As the affidavit also does not state the cause, we had asked the learned A. G. P. to produce the original record, if it, states the cause for removal. Though the matter was adjourned on many occasions so as to enable the respondents to produce the record, the same was never produced.

14. In normal course, we would certainly not have exercised our power of judicial review, however, as no cause is forthcoming, we had called for the record. The record was also not produced. The petitioners have pleaded that, action of the respondents is arbitrary. *Prima facie* it appears that, the respondents have acted arbitrarily. The Apex Court in a case of **B. P. Singhal Vs Union of India and another** referred to supra that *doctrine of pleasure* is not a license to act arbitrarily. It does not dispense with need for a cause for withdrawal. "At pleasure" doctrine enable removal of person holding the office at the pleasure of the 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. But the cause should exist. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can be for valid cause.

15. We had called for the record to know, whether the cause existed as in the affidavit also it was nowhere stated. The record is also not produced, we have no option but to set aside the notification dated 05.03.2015 removing the petitioners as nominated members to the extent of petitioners only. However, this order would not be an impediment for the respondents to take fresh action, if the cause exists.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[A. M. BADAR, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/May 16