

CWP Nos.16335 & 16788 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1) CWP No.16335 of 2015 (O&M)

Ms.Kamlesh Panchal

....Petitioner

Versus

State of Haryana

....Respondent

2) CWP No.16788 of 2015 (O&M)

Ms.Suman Dahiya

....Petitioner

Versus

State of Haryana and another

....Respondents

Date of Decision : May 17, 2016

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MRS.JUSTICE LISA GILL**

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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Present: Mr.Anmol Rattan Sidhu, Sr.Advocate with
Mr. Rajesh Narang, Advocate and
Mr. Shiv K.Sharma, Advocate
for the petitioner in CWP No.16335 of 2015.

Mr.Girish Agnihotri, Sr.Advocate with
Mr. Arvind Seth, Advocate and
Mr. Chanakya Pandit, Advocate

for the petitioner in CWP No.16788 of 2015.

Mr. Amar Vivek, Addl.Advocate General, Haryana.

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MAHESH GROVER, J.

This order will dispose of two civil writ petitions bearing Nos.16335 and 16788 of 2015.

In both these writ petitions challenge has been made to the notification dated 4.8.2015 and order dated 25.8.2014 vide which the government has reserved to itself the right to curtail or extend the tenure of the Chairperson and Vice-Chairperson of the Haryana State Commission for Women.

The challenge has been mounted to say that such a power is in conflict with the statutory provisions which provide for a tenure of three years and removal of Chairperson or Vice-Chairperson, as the case may be, in contingencies contemplated in Section 4 of the Haryana State Commission for Women Act, 2012 (hereinafter referred to as 'the Act').

It is thus the case of the petitioners that the offensive clause reserving a right in favour of the Government to curtail a tenure provided by the statute being in conflict with the principal Act would be ultra vires and liable to be struck down.

The facts would indicate that on 20.12.1999 the Governor of Haryana accorded his assent to set up a Commission for Women known as 'Haryana State Commission for Women'. It

laid down the constitution, term of office and conditions of service of the Members besides delineating the functions, meeting and disposal of business as also other related issues concerned with the functionality of the Commission. For the purpose of reference, the relevant portion of the notification is extracted herebelow :

“**No.3055-SW(4)/99**,-- The Governor of Haryana is pleased to accord assent to set up Commission for Women known as “Haryana State Commission for Women” in the State of Haryana as under :-

1. CONSTITUTION OF THE COMMISSION:

- (i) The Commission shall comprise of a full time Chairperson committed to the cause of women one Vice Chairperson and (4) four Non-Official Members to be nominated by the State Government. This excludes the Member Secretary for which Joint Secretary, Women and Child Development Department, Haryana will be an ex-officio Member. The Chairperson and other non-official members of the Commission including the Vice Chairperson shall hold office during the pleasure of the Governor of Haryana subject to a maximum tenure of three years.
- (ii) The majority of the members of the Commission shall be women.
- (iii) The Chairperson of the Commission shall be a women with background of distinguished service to the welfare

of women and experience in the field of women development.

- (iv) Other Members of the Commission shall be persons with background and experience in dealing with problems of women and in promoting their interest with expertise in any or more of the fields like law, education, public administration, economic development, social work, women welfare etc.
- (v) Director, Women and Child Development and the Director General of Police in Haryana shall be ex-officio Members of the Commission.

2. TERM OF OFFICE AND CONDITIONS OF SERVICE OF MEMBERS :

- (i) The Members of the Commission shall hold office at the pleasure of the Governor of Haryana subject to a maximum tenure of three years unless resigned or removed whichever is earlier. No Member shall hold office for more than 2 terms. They will be full time members.
- (ii) Members can resign office any time by writing to the Government.
- (iii) The State Government may remove a person from the office of the Chairperson or member if, that person :
 - (a) becomes an undischarged insolvent or of un-sound mind;
 - (b) is convicted and sentenced to imprisonment;
 - (c) refuse to act or becomes incapable of acting in

confirmity with the policy of State Government.

- (d) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission;
- (e) in the opinion of the State Government, has so abused the position of the Chairperson or members as to render that person's continuance in office is detrimental to the public interest or is otherwise unfit or unsuitable to continue as such Chairperson or member;

Provided that, no person shall be removed under this clause until that person has been given reasonable opportunity of being heard in the matter.

- (iv) Pay or honorarium may be allowed at the rate of Rs.10,000 per mensem to the Chairperson/vice Chairperson of the proposed Commission. Member may be allowed pay or honorarium @ Rs.9,000 per mensem. The other allowances/facilities may be as per the standard terms and conditions of the Government. Besides they shall be entitled to allowances while on travel on commission work.
- (v) Members of the Commission shall be entitled to TA/DA as admissible to Class I Officer of the Government.”

In 2012, the Haryana State Commission for Women Act was promulgated and 26.1.2013 was appointed as the date for enforcement of the Act. The relevant portion of Sections 3 and 4

of the Act are extracted herebelow :

“3. (1) The Government by notification in the Official Gazette, shall constitute a body known as the Haryana State Commission for Women to exercise the powers conferred on, and perform the functions assigned to it under the Act.

(2) The Commission shall consist of --

- (a) a Chairperson, who shall be a woman, committed to the cause of women, to be nominated by the Government;
- (b) a Vice-Chairperson and a maximum of five members to be nominated by the Government from amongst persons of ability, integrity and standing who have experience in law, legislation, trade unionism, management of industry or organization committed to increase the employment potential for women, women's voluntary organizations (including women activists) administration, economic development, health, education or social welfare;

Provided that at least one member shall be from amongst persons belonging to the Schedules Castes :

- (c) a Member-Secretary to be nominated by the Government preferably from amongst the women officers of the Indian Administrative Services or the Haryana Civil Service, not below the rank of Joint/Deputy Secretary to the Government;
- (d) the Administrative Secretary of Women and Child

Development, Haryana shall be a special invitee;

- (e) the Director, Women and Child Development, Haryana and the Director General of Police of Haryana shall be ex-officio members of the Commission;
- (f) the majority of the members of the Commission shall be women.

4. (1) The Chairperson, Vice-Chairperson and every nominated member shall hold office for such period, not exceeding three years, as may be specified by the Government in this behalf.

(2) The Chairperson, Vice Chairperson and Non-Official member shall on attaining the age of 65 years cease to hold the office. The status of the Chairperson and Vice-Chairperson shall be the same as that of the status of the Financial Commissioner and Principal Secretary and the status of a nominated member shall be equivalent to the Joint Secretary in the Haryana Government Department respectively. The member may resign from his office by giving a notice in writing under his hand addressed to the Government.

(3) The Government shall remove a member from his, if he,--

- (a) becomes an undercharged insolvent;
- (b) gets convicted and sentenced to

imprisonment for an offence which in the opinion of the Government involves moral turpitude;

(c) gets involved in a criminal case or charges are framed against him;

d) becomes of unsound mind and stands so declared by a competent court;

(e) refuses to act or becomes incapable of acting;

(f) is without obtaining leave of absence from the Commission, absents himself for three consecutive meetings of the Commission;
or

(g) in the opinion of the Government has so abused the position as to render that person's continuance in office detrimental to the public interest or interest of women:

Provided that no such person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination;

(5) The salaries and allowances payable to, and the other terms and conditions of service of the Chairperson, the Vice-Chairperson and Members shall be such as may be prescribed.”

The petitioners in both the writ petitions were appointed vide notification dated 22.5.2014, and while doing so, a clause was inserted “Terms of office and conditions of service of the Chairperson/Vice-Chairperson will be issued separately”. Purportedly, acting pursuant to the aforesaid, Annexure P-6 has been issued on 25.8.2014 providing the tenure of service of the Chairperson/Vice-Chairperson for three years but with a right reserved with the Government to curtail or extend the tenure subject to a maximum tenure of three years which right has been crystalised to curtail the tenure with immediate effect vide notification dated 4.8.2015 (Annexure P-5). This portion of the order Annexure P-6 is extracted herebelow :

“1.TENURE OF OFFICE

The Chairperson shall hold office during the pleasure of Governor of Haryana. The tenure of office, in the first instance would be three years from the date of assuming charge (joining 23.05.2014), the Government may, however, curtail or extend the tenure subject to a maximum tenure of three years.

The Vice Chairperson shall hold office during the pleasure of Governor of Haryana. The tenure of office, in the first instance would be three years from the date of assuming charge (joining 26.05.2014) the Government may, however, curtail or extend the tenure subject to a maximum tenure of three years.”

Contents of notification dated 4.8.2015 (Annexure P-

5) are also extracted as under :

“No.793-SW(3) 2015.-- The Governor of Haryana is pleased to curtail the tenure of nominated Chairperson and nominated Vice Chairperson of Haryana State Commission for Women, with immediate effect.”

It is this action of the Government curtailing the tenure of Chairperson and Vice Chairperson which is questioned by the petitioners to be contrary to the provisions of the Act mandating a tenure of three years.

It is argued that there is no power with the Government to curtail the tenure having once provided for a maximum of three years and contents of Annexure P-6 are by themselves contradictory while Annexure P-5 smacks of utter arbitrariness.

The respondents, on the other hand, justified their action to contend that in fact the Commission was never constituted at all in accordance with law. Learned counsel for the respondents has referred to Section 3(1) to contend that the Government had to by a separate notification in the official gazette constitute a body known as Haryana State Commission for Women to exercise the powers conferred on and perform the functions assigned under the Act after its promulgation.

Mr. Amar Vivek, learned Additional Advocate General,

appearing for the State of Haryana has contended that the notification dated 25.1.2013 merely enforces the statute by assigning an appointed date as 26.1.2013 but the Commission itself was never constituted as envisaged under Section 3(1). Therefore any appointment made to a non-existing Commission would be no appointment in the eyes of law. He further argued that in the absence of a Commission validly constituted and there being no provision defining the job profile, functions and duties as also the provision for infrastructure, the functionality of the Commission by appointing persons without all the attending features being in place was a gross illegality which was rectified by the impugned orders.

He has also argued against the appointment of the petitioners to define Commission as “parking place” of those who have made entrenched 'inroads into the world of sycophantic politics alone' to squander the hard earned money of the tax payers (as we also notice from his opinion in the original file).

We have heard the learned counsel for the parties at some length.

Section 4(1) of the Act provides that Chairperson and Vice-Chairperson shall hold office for such period not exceeding three years, as may be specified by the Government in this behalf.

A bare perusal of this section indicates that the tenure

is not to exceed three years and the Government has the power to

prescribe as such a limited tenure less than the maximum while making the appointment to the post of Chairperson and Vice-Chairperson. The notification of appointment dated 22.5.2014 of the petitioners as Chairperson and Vice-Chairperson did not specifically provide for a tenure of three years, but merely announced their appointment to be qualified with terms of office and conditions of service separately, which indeed were done vide order dated 25.8.2014 (P-6). This order itself is a bundle of contradictions when it prescribes the tenure of office of the Chairperson as also the Vice-Chairperson to be of three years in the first instance from the date of assuming charge (joining 23.05.2014) and then goes on to say that 'it can be curtailed or extended but up to a maximum of three years'. Having granted three years would offer no contingency to grant an extension.

The Government exercised its power to provide a tenure of Chairperson and Vice-Chairperson of three years by granting them the maximum period prescribed in the Act, but in the very same breath the impugned order goes on to state “the Government may, however, curtail or extend the tenure subject to a maximum of three years”. Having exhausted its power by providing the maximum tenure, it had no authority to curtail it unless it resorted to contingencies envisaged in Section 4(3). This condition thus conflicts directly with the provisions of Section 4

(1).

We are thus clearly of the opinion that the impugned order suffers from a grave fallacy as noticed above and consequently this portion of the order Annexure P-6 dated 25.8.2014 deserves to be quashed being without any legitimate authority and being in conflict with the provisions of the statute. As a direct corollary to it Annexure P-5 giving effect to the intention expressed in Annexure P-6, would also have to be quashed.

Besides, recognizing vesting of such an absolute power to remove Chairperson and Vice Chairperson would be fraught with dangers of an arbitrary exercise which seems to be the case as a perusal of the records would reveal . There are no allegations of misdoings or incompetence against the functionaries of the Commission. The whole venom is against the authority who appointed them. A valid check is provided in Section 4(3) which has not been applied. Any other reason to scuttle the tenure can lead to instability of the institution which would be detrimental to the cause espoused in the statute.

The respondents have tried to make out a case that the Commission never stood constituted and therefore, the State was within its right to pass the impugned order.

If the case were to be so then firstly the entire composition of the Commission ought to have been scrapped rather than attempting to curtail the tenure of the petitioners.

Even otherwise this plea of the respondents that the Commission never stood constituted is without any substance and rejected. Through the promulgation of the Act the Commission itself has been constituted and by virtue of a subsequent notification a date of enforcement has been prescribed with the composition of the Commission being created by another notification which also announced the appointments. The opening part of the statute is extracted herebelow :

“THE HARYANA STATE COMMISSION FOR WOMEN ACT, 2012 AN ACT to constitute Haryana State Commission for Women and to provide for matters connected therewith and incidental thereto.”

No other argument was raised.

We, therefore, find substance in the writ petitions and would hold that the impugned order (Annexure P-6) in so far as it provides for the curtailment of the tenure is unsustainable and in direct conflict with the statute as also being beyond competence and likewise Annexure P-5 also deserves to be quashed. Ordered accordingly.

The writ petitions are allowed and the office bearers be restored to their office.

Before parting with the judgment, we may note that we had the occasion to go through the entire record leading to the impugned order and find that the Government was largely

persuaded by the advice rendered by its law officers using extraordinarily strong words virtually condemning the act of making appointments by a language that stems more from a political distaste rather than from a mature legal thought. Though the reason or apprehension that the Commission is likely to become a parking place for women with clout may not be an exaggerated thought but for this the Government should have been cautioned to make adequate amendments in the statute for future rather than being seen as wielding a political axe.

It is for this reason we feel that the act needs to be moderated to provide for eligibility conditions or some guidelines to define the criteria and eligibility for appointment to the posts of Chairperson and Vice-Chairperson as also the nominated Members (in short the composition of the Commission) so that the well intended purpose of the Act may be achieved.

We thus direct the State to look into the feasibility of the afore highlighted concerns.

(MAHESH GROVER)
JUDGE

May 17, 2016
dss

(LISA GILL)
JUDGE