

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

CWP No.18570 of 2016 (O&M)

Date of Decision: 07.09.2016

Som Dutt and others

----Petitioners

Versus

State of Haryana and others

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Kuldeep Sheoran, Advocate
for the petitioners.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing the order dated 5.5.2016 (Annexure P-6) whereby the Haryana Backward Classes Commission (for short “the Commission”) constituted vide notification dated 8th April, 2011, the tenure whereof was extended vide notification dated 3rd March, 2014, has been dissolved. Further prayer is to quash the notification dated 9th May, 2016 (Annexure P-7) whereby the Commission has been constituted in terms of Section 3 of the Haryana Backward Classes Commission Act, 2016 (for short the “2016 Act”) and Chairman and Members thereof nominated.

2. Briefly, the facts are that vide notification dated 8th April, 2011, the State of Haryana re-constituted the Haryana Backward Classes Commission for entertaining, examining and recommending upon receiving requests of Jats, Jat Sikhs, Rors, Tyagis and Bishnois or any other caste(s)

for inclusion in the list of Other Backward Classes of the State, from time to

time, and hear complaints of over-inclusion or under-inclusion of any Backward Classes in such a list. The Commission then consisted of one Chairman and two members. As per the notification, the term of the Chairman and Members of the Commission was to be for a period of three years. The other terms and conditions of service of the Chairman and Members were to be notified separately. The relevant part of said notification is extracted here-in-below:

“No.311SW(2)- The Governor of Haryana hereby reconstitutes the Haryana Backward Classes Commission for entertaining, examining and recommending upon receiving requests of Jats, Jat Sikhs, Rors, Tyagis and Bishnois or any other caste(s) for inclusion in the list of Other Backward Classes of the State, from time to time, and hear complaints of over inclusion or under inclusion of any Backward Classes in such a list. The Governor of Haryana hereby appoints the following as Chairman and Member of the Commission:-

(i) Justice K.C. Gupta (Retd.) Chairman

*(ii) Shri Jai Singh Bishnoi,
187, Krishna Nagar, Hisar Member*

*(iii) Sh. Som Dutt, Advocate
607, Sector-13, Urban Estate,
Kurukshetra Member*

2. An IAS/HCS officer of the rank of Joint Secretary to Government of Haryana will be the Secretary of the Commission.

3. The term of the Chairman and Members of the Commission shall be for a period of three years. Other terms and conditions of service of the Chairman and Members of the Commission would be determined and notified by the Government separately”

The terms and conditions of appointment of the Members of the

Commission were notified on 10th August, 2011. The said notification is reproduced below:

“From

*The Financial Commissioner & Principal Secretary to
Govt. Haryana
Welfare of Scheduled Castes and Backward Classes
Department,
Chandigarh.*

To

*The Secretary
Haryana Backward Classes Commission,
SCO No.42-44, Sector 17/A,
Chandigarh*

Memo No.SW(1)-2DII

Dated, Chandigarh, the 10th August 2011.

*Sub: Terms and conditions of appointment of Members of the
Haryana Backward Classes Commission.*

*The terms and conditions of appointment of Members of
Haryana Backward Classes Commission will be as under:-*

1. Tenure of Office

*The tenure of Office shall be three years from the date he
has assumed the charge of the Office.*

2. Pay and Allowances

*He will draw the salary equivalent to the salary drawn by
the Member of Haryana Public Service Commission i.e. he will
be entitled to Basic Pay of Rs.58,000/- + D.A. admissible from
time to time. He will also be entitled to draw fixed medical
allowance @ 500/- per month.*

3. The Status Position

*He will be admissible the Status/Position equivalent to
the Member of Haryana Public Service Commission.*

4. Travelling Allowance

*He will be entitled to the travelling allowance as
admissible to the Member of Haryana Public Service
Commission.*

5. House Rent Allowance

He will be entitled House Rent Allowance as being paid to Member of Haryana Public Service Commission.

6. **Headquarter**

The Headquarter of all the Members of Haryana Backward Classes Commission will be at Chandigarh.

This issues with the concurrence of the Finance Department conveyed vide their U.O. No.2/5/2011-5FG-II/1555 dated 9.8.2011

*Sd/- Special Secretary
for Financial Commissioner & Principal Secy.
to Govt. Haryana Welfare of Scheduled Castes
& Backward Classes Department, Chandigarh”*

As per this, the tenure of Office of the Members shall be three years from the date of assuming the charge of the Office.

3. Vide notification dated 3rd March, 2014 the tenure of the Commission reconstituted on 8th April, 2011 was extended for three more years i.e., from 08.04.2014 to 07.04.2017 on the earlier terms and conditions. This notification is reproduced below:

“Notification

The 3rd March, 2014

No.166-SW(1) 2014- The Governor of Haryana is pleased to extend the tenure of Haryana Backward Classes Commission reconstituted vide State Government Notification No.311-SW(2) dated 8th April, 2011 for three years more i.e. 08-04-2014 to 07-04-2017 on the same terms & conditions. The Governor of Haryana hereby reappoints the following as Chairman and Members of the Commission:-

- (i) Justice K.C. Gupta (Retd.) Chairman*
- (ii) Shri Jai Singh Bishnoi,
187, Krishna Nagar, Hisar Member*
- (iii) Sh. Som Dutt, Advocate*

607, Sector-13, Urban Estate,

Kurukshetra

Member

(iv) *Shri Telu Ram Jangra*

Member

New Kath Mandi, Kali/Devi Road, Hansi

Appointed vide notification No.997 SW(1)-2011

dated 24-01-2012

(v) *Shri Rao Ran Pal Singh*

Member

Opp. Telephone Exchange, Delhi

Road, Gurgaon

Appointed vide Notification No.997-SW(1)-2011

dated 24-01-2012

vi) *Sh. Rakesh Sardana*

Member

H. No.19, Koyal Enclave Kaithal

Appointed vide Notification No.144-SW(1)-2014

dated 26-02-2014

This issues with the concurrence of the Finance Department conveyed vide their U.O. No.2/5/2011-5FG-/ii/5802 dated 03-03-2014.

Chandigarh

Tarun Bajaj

3rd March, 2014

*Principal Secretary to Government Haryana
Welfare of Scheduled Castes and Backward
Classes Department”*

4. Petitioners No.1 to 4 were appointed as Members of the Commission and joined on 11.4.2011, 27.1.2012, 30.1.2012 and 28.2.2014 respectively. Petitioner No.5 was appointed on 16.7.2014. Thus, as per the aforementioned notifications their tenure also stood extended till 07.04.2017. On 20.4.2016, the Haryana Government notified the “Haryana Backward Classes Commission Act, 2016” (hereinafter referred as the “2016 Act”). As per the recital in its Preamble, it is an Act to constitute the Haryana Backward Classes Commission and to provide for matters connected therewith or incidental thereto.

5. Section 3 of the Act provides that the State Government shall, by notification in the Official Gazette, constitute the Haryana Backward Classes Commission to exercise the powers conferred on and to perform the functions assigned to it under the Act. As per Section 4(1) every member of the Commission, which term includes the Chairman, shall hold office for a term of three years from the date of assuming office.

6. Consequent on the enforcement of this Act the existing Commission whose tenure was extended vide notification dated 3rd March, 2014 was dissolved vide notification dated 5th May, 2016 (Annexure P-6) which is reproduced below:

*“Haryana Government
Welfare of Scheduled Castes and Backward Classes Department
Notification*

No.4865 W(1)-2016

The 5th May, 2016

In view of coming into force of Haryana Backward Classes Commission Act, 2016 w.e.f. 20th April 2016, the existing Haryana Backward Classes Commission, constituted vide notification No.311 SW(20 dated 8th April, 2011, whose tenure was extended vide notification No.166 SW(1)-2014 dated 3rd March, 2014 vide which Chairman and Members were re-appointed and further notification No.528 SW (1)-2014 dated 16th July, 2014 vide which another member was appointed, is hereby dissolved.

*Sd/- T.C. Gupta, IAS
Principal Secy. to Govt. Haryana
Welfare of Scheduled Castes and
Backward Classes Department*

*5th May, 2016
Chandigarh”*

7. Thereafter, the Commission has been constituted in terms of the provision of Section 3 of the 2016 Act vide notification dated 9th May,

2016. Respondents No.2 to 6 have been nominated as Chairman and Members thereof. This notification is reproduced below:

*“Haryana Government
Welfare of Scheduled Castes and Backward Classes Department
Notification*

The 9th May, 2016 No.494 SW(1)-2016

In exercise of the powers conferred by Sub Sections (1) and (2) of Section 3 of the Haryana Backward Classes Commission Act, 2016 (9 of 2016), the Governor of Haryana hereby constitutes the Haryana Backward Classes Commission and nominates the following as Chairman and Members of this Commission, namely:-

1.	<i>Hon'ble Mr. Justice S.N. Aggarwal (Retd.) H.No.1458, Sector 40/B, Chandigarh</i>	<i>Chairman</i>
2.	<i>Sh. Ashok Kumar, M.A., Sociology, VPO Majra, Tehsil Narnaund, District Hisar.</i>	<i>Member</i>
3.	<i>Smt. Ritambhara Sanghi W/o Late Mr. Justice N.K. Sanghi, H.No.249, Sector-17, Panchkula.</i>	<i>Member</i>
4.	<i>Sh. Ramesh Chand, VPO Nahoni, Tehsil Barara, District Ambala.</i>	<i>Member</i>
5.	<i>Secretary/Special Secretary, Welfare of Scheduled Castes and Back Classes Department, Haryana</i>	<i>Ex-Officio Member Secy.</i>

*Sd/- T.C. Gupta, IAS
Principal Secy. to Govt. Haryana
Welfare of Scheduled Castes and Backward
Classes Department, Chandigarh*

Endst. No.494-SW(1)-2016 Dated 9.5.2016”

It is these two notifications dated 5th May, 2016 and 9th May, 2016, that have been impugned in this petition.

8. Mr. Ram Kumar Malik, Ld. Senior Counsel for the petitioners contended that as per notification dated 10th August, 2011, specifying the

terms and conditions of appointment, the tenure of office of the members of the Commission was to be three years from the date of assuming office. As per the notification dated 3rd March, 2014 the tenure of the Commission constituted on 8th April, 2011 was extended for three more years i.e. from 08-04-2014 to 07-04-2017 on the earlier terms & conditions. He argued that there was no provision in the terms and conditions of the members for curtailing the tenure of the members during their tenure. Furthermore, before the issuance of the impugned notification dissolving the Commission, the 2016 Act had been notified which would apply to the petitioners as well. As per Section 4(1) of this Act the term of the members is three years. A member can be removed only on the grounds specified in Section 4(3) which includes 'becoming un-discharged insolvent, conviction for offence involving moral turpitude, becoming of unsound mind etc'. No such ground existed to remove the petitioners. Hence, the impugned notifications are illegal. He placed reliance on two decisions of this Court **CWP No.16335 of 2015 titled Ms. Kamlesh Panchal vs. State of Haryana** decided on May 17, 2016 and **P. C. Dewan vs. State of Haryana and another 2008(1) SCT 532.**

9. Having carefully considered the submissions of the Ld. Senior Counsel, we find ourselves unable to agree with him and are of the view that there is no merit in the petition.

10. Firstly, reliance by the petitioner on the provisions of the 2016 Act, is wholly misplaced. The petitioners were appointed/ nominated to the Commission before the Act came into force. Hence, their appointment is not in exercise of any powers under this Act. There is no provision in the 2016

constituted under the Act or that the provisions of the Act shall apply to the existing Commission and/or its member or for protecting their tenure. The Act is totally silent about any Commission existing at the time of its enforcement. Hence, the petitioners can draw no support for their case from the Act. Thus, the argument of the Ld. Counsel for the petitioner that the dissolution of the earlier constituted Commission is illegal as there was no ground for removal of the members as per Section 4(3) of the Act is without any basis.

11. To the contrary, in the absence of any provision in the 2016 Act for continuation of the earlier constituted Commission, its existence becomes untenable after the coming into force of the Act. After the enforcement of the 2016 Act, the Commission is required to be constituted in the manner and with the composition as specified therein. The composition of the Commission is specified in Section 3(2) as per which the Commission shall consist of the Members to be nominated by the State Government, namely:

- (a) *“A Chairperson who is or has been a Judge of the High Court,*
- (b) *A social scientist;*
- (c) *Two persons who have special knowledge in matters relating to Backward Classes; and*
- (d) *A Member-Secretary, who is or has been an officer of the State Government not below the rank of Secretary to the Government, Haryana.”*

12. It is neither known nor pleaded that the dissolved Commission

had the same composition. It is noteworthy that in this petition there is no

challenge to the 2016 Act.

13. The Commission to which the petitioners were appointed was constituted by notification issued in exercise of executive power of the State. The Commission has been dissolved in the same manner resulting in the petitioners ceasing to be members. Neither the constitution of the Commission nor the appointment of the petitioners had any statutory basis. In the absence thereof, the petitioners had no legal right to continue as members. It is well settled that the power of appointment includes the power of removal. The petitioners had been nominated at the sole discretion of the Government without following any selection procedure or inviting applications from the general public. Such an appointment is not in the nature of an employment or appointment under Part XIV of the Constitution. It has to be treated as one under the pleasure of the Government and conferring no legal or fundamental right on the petitioners. Thus, we find no illegality in the notification Annexure P-6 dissolving the Commission and the consequential cessation of membership of the petitioners.

14. Similar questions have been considered by different High Courts and it has been held that appointments to high public offices like Chairperson/ Members of Boards/ Commissions which are not made by following any competitive selection process, but in the pure discretion and subjective satisfaction of the government and for which no 'minimum tenure' as distinct from a 'tenure' is prescribed, are at the pleasure of the government and can be terminated at any time in exercise of the doctrine of pleasure without any cause shown. In such situation the exercise of the

to Article 14.

15. In Amarjeet Kaur vs Union Of India And Ors. 1991(43) DLT 262, the petitioner was appointed as Chairperson of the Central Social Welfare Board (A Government Company) for a period of three years w.e.f. 20.11.1988 through a Government resolution. Apprehending termination of her appointment before the completion of three years period, she filed writ petition praying that the respondents be restrained from terminating her appointment before the expiry of three years. It was alleged that the petitioner's services were being sought to be terminated merely because the party in power had changed. On behalf of the Union of India, it had been contended that the three year period, referred to in the Government resolution appointing her was the maximum period and that the respondents had the power to terminate the same before the expiry of three years.

16. The Delhi High Court after referring to Article 5 of the Articles of Association of the Company, as per which only a woman who was a prominent social worker and who had administrative and organizational abilities could be appointed as the Chairperson, concluded that the appointment of a person as the Chairperson of the Central Social Welfare Board was neither an appointment nor an employment under the Statute and that the Government had absolute discretion in the appointment and removal of such a person. There was no vested right in the Chairperson for continuing to hold the appointment for the entire period of three years. The amplitude of the discretion was emphasized in the following manner:

“(16) Can any fetters be imposed on the discretion of the Government in the choice of a woman for appointment to the post of Chairperson ? Can it be subjected to judicial scrutiny on the

ground of rationality and fairness ? Can any social worker challenge the appointment of Chairperson on the ground of discrimination on the ground of sex ? Is it legally permissible to get a declaration from the Court that a particular woman social worker is not a social worker at all but is a mere party worker ? Can a Court strike down the appointment on the ground that the Chairperson is not a prominent social worker of All India status ? Can the Court sit in judgment as to whether the Chairperson has administrative and organisational abilities ? The petition merely describes the petitioner a 'prominent social worker'. Her further particulars given in the petition are that she was a former Congress-1 member of Rajya Sabha from 1976 to 1986. The petition does not describe the standing of the petitioner as a social worker or the area or field of social work which she specialises. It is not even asserted that she is a prominent social worker of All India status. The petition is silent about the administrative and organisational abilities of the petitioner. On these facts, can a co-warrantor writ be pressed in the Court on the ground that the petitioner does not fulfill the requirements of Office ? Can a Court grant a declaration that there was non-application of mind by the Government or that the discretion has been improperly exercised ? What is true about the discretion of the Government in the appointment as a Chairperson is equally true about the discretion of the government in the removal of the chair- person. Power to appoint includes the power to remove. Counsel for the petitioner submits that the petitioner has fundamental right to hold the post for a fixed period of three years. The further submission is that she cannot be removed from Office without any reason or arbitrarily or out of considerations of political vandatta. On closer analysis it would be send that these submissions are misconceived. There is no fundamental right in the petitioner to any post. She has no fundamental right to hold the post for a fixed period of three years. The period of three years mentioned in

the Resolution is the maximum period or outer time limit to continue to the post. In other words, the Articles of Association tell the Government that a Chairperson cannot be appointed for a period longer than three years. It does not create any right, much less a fundamental right, in the incumbent of the Office to continue in the office for a period of three years. Beyond the limitation the Govt. not to exceed the period, there is no sanctity to the term of three years mentioned in Article 5. If the duration of three years is so sacrosanct, it would not be possible for the petitioner on her own to relinquish the office before the completion of the period of three years. It would also not be possible for the respondents, in law, to insist that the petitioner must continue for the full term of three years. This being the nature of the duration of appointment, it is neither possible for the petitioner nor for the respondents to enforce the term by legal proceedings, such as the writ petition.”

17. The court held that the government had untrammelled discretion in appointment and removal.

“(17) The discretion of the Government in appointment as well as removal is untrammelled. It is in public interest because it is part of the policy (and its implementation), laid down by the Government. It must be recognised that each political party which forms the government comes into power with promises and assurances in regard to social, political and economic welfare of the people. (For example, a party in power at a given time may have its distinct policy and programme for upliftment of poor or representation and protection to women. The five year plans which are sponsored by the Government would reflect the areas of priority of social welfare.) The programmes and the plans for the implementation of the policy would be administered by the Social Welfare Department of the government themselves and through the agencies like the Social Welfare Board. The change in the social policy and programme with the

democratic change of the rulers are, thus, part of our social life. The policies and programmes and priorities shift with the change in the Government and such a change must be presumed to be in public interest so long as the government is in power. The change in the personnel in special positions such as Chairperson of the Central Social Welfare Board are, therefore, inevitable part of a change in the policy and programmes. If a democratically elected government, therefore, feels that for effective implementation of its policies and programmes a change in the personnel is necessary, it cannot be accused of malafide or pursuing an act of vendetta”.

18. In Dattaji Chirandas v. State of Gujarat, 1999 AIR Gujarat 48 challenge was to the orders of the Government of Gujarat replacing the Chairmen of 12 statutory Boards and Corporations and 13 Government Companies/Societies. The petitioners in most of those petitions had claimed that the term of their office as Chairman was fixed for 2/3 years. Reference was made to relevant statutory provisions under which the concerned Boards/Corporations had been established providing for the term of office and also orders of appointment stipulating the term of 2/3 years. In case of Chairmen of Government Companies, though the respective Memorandum and Articles of Association did not provide any fixed tenure, but reliance was placed on orders appointing the petitioners therein for a fixed period of three years. The Court classified the petitioners into three groups-

“GROUP A— *Petitions where the offices involved were statutory offices and the relevant statute had provided for term of office and such term was also provided for either in the initial appointment order or subsequent order issued by the Government:*

GROUP B— *Petitions challenging removal of the respective petitioners from the office of Chairman of Government Companies*

where no fixed tenure was provided in the Articles of Association of the concerned Companies or the Memorandum of Constitution of the Government Societies registered under the Societies Registration Act, 1860 but in the orders of their appointment the Government has specified a fixed term of three years from the date of initial appointment.

GROUP-C – *This group consisted of petitions where there was no order appointing concerned petitioners for any fixed period.”*

19. As the argument of a fixed tenure was available only to the petitioners in Group A it had been argued on their behalf that they had been appointed as Chairmen /Vice-President of the respective Boards/ Corporations/ Government Companies for a tenure of two or three years, therefore, the respondents had no power or authority to remove them before the expiry of the period stipulated in the order of appointment.

20. It was further argued that at any event in case of statutory Boards/Corporations where in the statute itself a specific period is stipulated and the Government has appointed the concerned petitioners as Chairmen of that body for a period of two/three years it would not be open to the respondents to terminate their appointment before expiry of the period stipulated in the statute as well as in the appointment orders.

21. The Court negated this argument.

22. Firstly, opining about the nature of their appointments it was observed that the petitioners were not the employees of the Government or of the respective Boards or Corporations, but were holders of high public offices and were appointed by nomination. No specific educational qualifications were prescribed nor was there any age of superannuation.

the case of *Om Narain Agarwal v. Nagar Palika, Shahjahanpur*, AIR 1993 SC 1440. In that case the Apex Court was dealing with Section 9 of the United Provinces Municipalities Act, 1916, which provided for nomination of a person as member of the Municipal Board by the State Government. The fourth proviso to Section 9 of the Act provided that a member nominated under Section 9 shall hold office during the pleasure of the State Government, but not beyond the term of the Board. Two nominated members, challenged the cancellation of their nomination before the expiry of their term. The Hon'ble Supreme Court negated the challenge by observing as under:

“11. The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature authorized the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government, it has not been argued from the side of the respondents that the Legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

12. In our view, such provision neither offends any Article of the

Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members, it is done purely on political considerations....

13. ... We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralize the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionaries in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to be demoralized or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office.”

24. Relying on the aforesaid decision, the Gujarat High Court in *Dattaji Chirandas's* case observed that the applicability of the pleasure doctrine in the matter of appointment and removal of persons nominated to high public offices was not arbitrary or unreasonable.

25. The Court held that even where the statute itself does not in express terms provide for the pleasure doctrine, it can be inferred by implication in matters of appointment and removal of Chairman and other high public offices in certain situations viz (i) where appointment is to be made by the Government by nomination on the subjective satisfaction of the

Government (ii) when there is no minimum term of office in the statute.

It was observed as under:

“35. *It is true that in the aforesaid case before the Supreme Court the fourth proviso to Section 9 incorporated the pleasure doctrine in express terms and the learned counsel for the petitioners have, therefore, argued with vehemence that if the statute itself does not provide, in express terms, for pleasure doctrine in the matter of removal of Chairman, the doctrine cannot be invoked at all. This Court does not accept the aforesaid contention and holds that a statute can provide for pleasure doctrine for removal of Chairman and holders of such high offices by necessary implication, through the following indicia:—*

(i) If the appointment to the office of Chairman or such other high offices in a public Corporation/Board is to be made by the State Government by nomination and the appointment is left to the subjective, satisfaction of the Government, the Court would be inclined to read the pleasure doctrine into the provisions of the statute not merely for the pure appointment, but also for the purpose of removal.

The principle underlying Section 16 of the Bombay General Clauses Act, 1904 and Section 16 of the General Clauses Act, 1897 in pari materia would apply, and, therefore, the power to appoint would include the power to remove, unless a different intention appears in the statute.

(ii) If the statute provides for Governmental control by empowering the Government to give directions or instructions to the concerned Board/Corporation, that would be a strong indication that the holders of the office of Chairman and other high offices were intended to be agents of the Government and, therefore, they can be removed at the pleasure of the Government.

(iii) Absence of a minimum term-of office in the statute justifies applicability of the pleasure doctrine in the matter of removal

of Chairman and other high public offices. If the statute provides for a minimum term of office, that would militate against applicability of the pleasure doctrine in the matter of removal.

The Court will, therefore, have to apply the aforesaid tests for ascertaining the intention of the Legislature whether or not the statute incorporates the pleasure doctrine for removal of the holders of high offices like Chairman, Vice-Chairman and Directors. The rationale for referring to the aforesaid decision of the Apex Court at the outset was only to show that there need not be any judicial resistance to reading into a statute pleasure doctrine in the matter of removal from high offices like Chairman. Directors, etc. once the first test indicated above is fulfilled. Thereafter the burden of proving that the doctrine would not apply in the facts of a given case would be on the petitioner.”

The Court held that in those appointments both these tests were satisfied in as much as the appointment was left to the subjective satisfaction of the government and the statutory term of office was the maximum term.

“36. As far as the first test is concerned, now it is beyond controversy that the appointment of Chairman, Vice-Chairman/Directors of statutory Corporations/Boards and Government Company is left to the subjective satisfaction of the Government. The expressions “by reason of experience of, and capability in, industry or trade or finance” or “wide administrative experience in a managerial capacity” are to be applied in the facts of an individual case as per the complete discretion of the Government. No guidelines or norms are laid down in such enactments for the purpose of furnishing necessary particulars to the Government as to who can be appointed as the Chairman of the Boards/Corporations and, therefore, it can safely be said that the appointment of the Chairman of the Boards/Corporations/Government Companies has been left to the

realm of high Governmental discretion as observed by this Court in the case of Harisinh Chavdav. Chimanbhai Patel, 32 (1) Guj LR 667 : (AIR 1991 Gujarat 115). In view of the aforesaid discussion, it has to be held that the appointment of Chairman/Vice-Chairman or Directors of such statutory Boards/Corporations and Government Companies is not justiciable as such appointments are to be made by nomination at the pleasure of the Government.

38. *For reading the pleasure doctrine in the matter of removal of Chairman, the Courts have rightly relied on the provisions of Section 16 of the Bombay General Clauses Act, which is in pari materia with Section 16 of the General Clauses Act, 1889 which is a Central legislation. There is no reason why the principle underlying the General Clauses Act cannot be invoked for applying the pleasure doctrine in the matter of removal of Chairman if such a doctrine is applicable at the stage of appointment by nomination. Of course, the aforesaid provisions of the General Clauses Acts provide that the principle embodied therein is liable to be displaced if a different intention appears. That only shows that the burden of proving the contrary would be on the petitioner.*

44. *As far as third indicia is concerned, the provisions in a statute for a particular term of office for Chairmen and such other high dignitaries e.g. 2 years or 3 years is obviously the maximum term or the outer limit and, therefore, the provision of such term under the statute does not negative or militate against the applicability of the pleasure doctrine. Different considerations would arise if the statute provides for the minimum term of office and a person is appointed to hold such office. For instance, in Special Civil Application No. 6960 of 1995, where interim order dated 26-9-1995 was passed in favour of the petitioners, the relevant bye-law provided that “the term of such Committee (first Managing Committee) shall be at least of five years.....” Hence, reliance placed by the learned counsel for the petitioners on the aforesaid interim order does not help them at all. It is conceded on behalf of the petitioners that in none of the petitions before this Court, there is any statutory provision or any*

provision in the Articles of Association for the Government Companies providing for a minimum term for Chairman or Director.”

The petitions were accordingly dismissed.

26. In **Joginder Singh Verma vs. State of Himachal Pradesh and Another** **2013 (3) Him.L.R. 1666** directions were sought to allow the petitioner therein to continue in the office of Chairman of Himachal Pradesh Building and Other Construction Workers Welfare Board constituted under the *Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996* (for short “1996 Act”) till the completion of tenure of three years from nomination as Chairman of the Board. The petitioner had alleged that he had been removed from the office of the Chairman because of change of Government after the general elections. It was contended that in the scheme of the 1996 Act and the Rules framed there under, there was no provision of removal or substitution of Chairman once nominated for a period of three years from the date of nomination. Only a casual vacancy arising in the Board could be filled. It was also argued that the principles of General Clauses Act regarding power of appointment and removal, could not be invoked in view of the express provisions of the Act and the Rules guaranteeing three year tenure for a nominated Chairman. There was no mention in the notification appointing the petitioner that his nomination was at the pleasure of the State Government or that he could be removed at any time.

27. The relevant Section 18 of the 1996 Act and Rules 251 and 252 framed thereunder titled as Himachal Pradesh Building and Other

Construction Workers (Regulation of Employment and conditions of Service) Rules, 2008 which were under consideration, are as under:-

"18. Constitution of State Welfare Boards.- (1) Every State Government shall, with effect from such date as it may, by notification, appoint , constitute a Board to be known as the(name of the State) Building and Other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Act.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed."

Rules 251 and 252 of the Rules :

"251. Constitution of the Board.- (1) The Board shall consist of,-

(i) a Chairperson appointed by the Government.

(ii) a member nominated by the Central Government.

(iii) Not more than five persons representing the building and other construction works appointed by the State Government.

(iv) Not more than five persons from among the employers of construction and building workers appointed by the

Government.

(v) Not more than five members representing the State Government of whom one shall be the Chief Inspector of Inspection of Building and Construction of the State, one shall be a representative of Finance Department, one shall be a representative of Law Department, one shall be a representative of Labour Department and one shall be a representative of Welfare Department.

Provided that one of the nominated members of the Board shall be a woman provided that the number of members appointed under clauses (iii), (iv) and (v) of sub-rule (i) shall be equal.

(2) The term of office of the Chairperson and the members of the Board other than the official members shall be three years from the date of their appointment :

Provided that the members may continue in office till their successors are appointed .

252. Filling up of casual vacancies.- *A member nominated to fill a casual vacancy shall hold office for the remaining period of the term of office of the members in whose place he is nominated."*

28. The Court held that it was apparent from Section 18 that the method of appointment of the Chairman is by nomination and thus it was at the pleasure of the Government. It was further held that the expression "shall" occurring in sub-rule (2) of Rule 251 could not be interpreted to mean that it curtails the power of the State Government to exercise its pleasure if the situation so warrants, before expiry of three years from the date of appointment or nomination already made. The tenure of three years referred to in Rule 251 was interpreted to mean to be the outer limit of the tenure specified for the Chairperson and the members of the Board from the date of their appointment. The Court observed as under:

the method of appointing Chairperson of the Board is, by nomination, by the Government. It is thus at the pleasure of the Government. No doubt, Section 18 leaves the tenure of the Chairperson to be prescribed by the Rules, which has been done by the Rules of 2008. The expression "shall" occurring in sub-rule (2) of Rule 251 cannot be interpreted to mean that it curtails the power of the State Government to exercise its pleasure if the situation so warrants, before expiry of three years from the date of appointment or nomination already made. The tenure of three years referred to in Rule 251 will have to be interpreted to mean that the same is the outer limit of the tenure specified for the Chairperson and the members of the Board from the date of their appointment . That provision cannot be construed to mean that the term of three years is the minimum tenure guaranteed to the incumbent. There is nothing either express or implicit in the provision under consideration to indicate that the State Government, once exercises its power and pleasure to nominate a person, is denuded or robbed of its power under the common law and by virtue of provisions of General Clauses Act, to alter that nomination by withdrawing the pleasure exercised in favour of a given person and instead appoint some other person.”

The court negatived the argument that in the absence of any provision in the notification of appointment enabling curtailment of tenure, the nomination could not be recalled before the expiry of three years. It held that as the nomination of a person as Chairman of the Board depended on the pleasure of the Government, the person so nominated neither had a fundamental right nor a statutory right to continue beyond the pleasure of the State Government. It was observed :

“11. The argument of the petitioner that the provisions of General Clauses Act cannot be invoked in respect of exercise of power under Section 18 of 1996 Act, in our opinion, is untenable. Further, the argument of the petitioner that the State Government cannot recall the

nomination once made, until the expiry of three years from the appointment of a person as Chairperson of the Board because the notification dated 31st March, 2012 (Annexure P-1) does not provide for that option, in our opinion, is also devoid of merits. Similarly, the argument of the petitioner that there is express provision in the shape of Rule 252 of the Rules of 2008 regarding filling up of existing vacancies, it should necessarily follow that the State Government cannot withdraw the nomination before expiry of three years and only in case of casual vacancy in the office of Chairperson, it can nominate another person in that office for the remainder period is also untenable. As noted above, a person is nominated as Chairperson, by the Government, in exercise of power flowing from Section 18 of the Act read with Rule 251 of the Rules. Indisputably, the nomination of a person as Chairman of the Board depends on the pleasure of the Government. The person so nominated neither has a fundamental right nor a statutory right to continue beyond the pleasure of the State Government. Once the pleasure of the State Government ceases to exist, nothing prevents the State Government to recall such person from the office of Chairperson and to install another competent and suitable person as Chairman. Since it is a provision regarding pleasure of the State Government, the State Government is not required to follow principles of natural justice, so as to give opportunity to the person, who is to be removed and replaced by another person nor the Government is required to record reasons in that behalf. It is a matter entirely of subjective satisfaction of the Government, of which judicial review is not possible. Nor the person who is to be removed can claim any right to continue in the office inspite of the decision of the Government to remove him. Notably, the scheme of the Act or the Rules do not require giving him opportunity of hearing.”

29. The ratio of the above decisions will apply with greater force in the present case, where the appointment/ nomination has no statutory basis whatsoever.

30. Reference may also be made to the decision of the Supreme Court in *State of U.P. v. U.P. State Law Officers Association, 1994(2) SCC 204* which was a case relating to appointment of Chief Standing Counsel and other Government Advocates, the Court held that the appointments of Government Counsel having not been shown to be made by following any procedure and on merit they had no cause to complain on their termination in the same manner.

“19. ... The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure, can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the same door. This is more so when the order of appointment itself stipulated that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.”

31. The two judgments relied on by Ld. Counsel for the petitioner do not in any manner further his case.

32. In *P.C.Dewan's case (supra)*, the petitioner was serving as Engineer-in-Chief in Uttar Haryana Bijli Vitran Nigam Limited.(UHBVNL). The State Government vide order dated 31.8.1999 appointed him as Director (Administration) on the Board of Directors of the UHBVNL with immediate effect. This appointment was made in exercise of the powers under Articles 30 and 31 of the Articles of Association of UHBVNL. While he was functioning and performing his duty as Director (Admn.) with UHBVNL, the State Government issued order dated 27.11.1999 removing him from the post of Director (Admn.) w.e.f. 31.12.1999 on his retirement as Engineer-in-Chief on attaining the age of superannuation i.e. 58 years. The appointment of the petitioner as Director (Administration) having been made under Articles 30 and 31 of the Articles of Association of UHBVNL, the question before the Court was `whether the appointment of the petitioner could be for a fixed tenure or he could have been retired de hors the period prescribed under Article 31(2) of the Articles of Association'. Article 31(2) reads as under:-

“The Government may from time to time appoint a Chairman/ Chairperson-cum-Managing Director, Managing Director and other Whole Time Directors/ Directors on such terms and remuneration (whether by way of salary or otherwise) as it may think fit. The minimum term of these appointments will be for period of two years.....”

33. This Court held that as Article 31(2) prescribes the minimum tenure of two years, any appointment under Article 31(2) could not be for less than the minimum tenure as prescribed there-under, though the Government may have the liberty to prescribe any longer period than the

minimum tenure. It was held that the doctrine of pleasure could not be introduced to reduce the minimum period prescribed under Article 31(2).

34. There being no minimum tenure statutorily prescribed in the present case, reliance on the aforesaid case is misplaced.

35. In the case of *Miss Kamlesh Panchal (supra)*, the petitioners were appointed as Chairperson/ Vice Chairperson of the Haryana State Commission for Women constituted under the 'Haryana State Commission for Women Act, 2012. 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. As per Section 4(3), the Govt. shall remove a member on various grounds namely if he becomes an un-discharged insolvent, is convicted and sentenced for an offence involving moral turpitude, becomes of unsound mind, becomes incapable of acting, etc.

36. In the notification dated 22.5.2014 appointing them, it was mentioned that 'terms of office and conditions of service of the Chairperson and Vice Chairperson will be issued separately'. Later, order dated 25.8.2014 was issued providing that the tenure of service of Chairperson / Vice Chairperson would be three years from the date of joining. The Government may however, curtail or extend the tenure subject to maximum tenure of three years. Vide notification dated 4.8.2015, their tenure was curtailed with immediate effect. Resultantly, they ceased to hold office.

37. In the writ petition, challenge was to both the notifications dated 4.8.2015 and 25.8.2014. A Division Bench of this Court quashed the said notifications holding that as per Section 4(1) of the Act, the tenure was

limited tenure less than the maximum while making the appointments. The notification of appointment dated 22.5.2014 did not specify a fixed tenure of three years, but merely announced their appointments. The terms and conditions were to be issued separately. The Court held that the order dated 25.8.2014 was a bundle of contradictions inasmuch as in the first instance it prescribed the tenure to be three years from the date of assuming office and then went on to say that it can be curtailed or extended up to a maximum of three years. The Court held that the Government had exhausted its powers by providing the maximum tenure and thereafter had no authority to curtail the said period unless the contingencies envisaged in Section 4(3) of the Act were attracted. The latter condition of the impugned order that the 'Government may however, curtail or extend the tenure subject to maximum tenure of three years' was held to be directly in conflict with the provisions of Section 4(1) of the Act. Accordingly, the notifications were quashed.

38. No doubt, the Court while disposing of the petition observed that vesting of an absolute power to remove Chairperson and Vice Chairperson would be fraught with dangers of its arbitrary exercise, which the Court was persuaded to believe to be the situation in that case.

39. This case and the observations made therein cannot help the case of the petitioner as they have been rendered in the context of the provisions of a statute, while the appointment of the petitioner was not under any statute.

40. Thus, there is no merit in the petition and the same is dismissed.

41. In the light of some recent litigation involving appointment/removal of Chairpersons of Commissions (statutory or non-statutory) which

have reached this Court, including the case relied upon by the Ld. Counsel

for the petitioner, we deem it necessary to emphasize that being a Chairperson/ Member of an important Government Commission or Board or Corporation is a position of great honour. It is not to be viewed as a career or a lucrative public office. While it enables the Government to utilize the expertise and experience of those who have achieved a certain eminence in the relevant field, it provides the latter an opportunity to impact policy, serve society and thereby have a sense of fulfillment of repaying a part of their debt to the Nation. These positions are meant to be bestowed only on the most deserving. It would indeed be heartening if this spirit of service permeates both the offer and acceptance of these positions.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

07.09.2016

Atul

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes