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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7534/2016 & CM No.31004/2016

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Date of decision : 1st August, 2017

SATISH KUMAR SINGH Petitioner

Through : Mr. Bankey Bihari and
Mr. Gyanendra Srivastava,
Advs.

versus

DEEPAK GUPTA & ORS. Respondents

Through : Mr. Naresh Kaushik and
Mr. D. Singh, Advs. for R-
1&2.
Ms. Suparna Srivastava and
Mr. Alinda Bhowal, Advs. for
R-3&4.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition has been preferred contending that the appointment of respondent no.1 as the Chairman of the Union Public Service Commission ('UPSC' hereafter) vide notification dated 2nd December, 2014, issued by the Union of India through Secretary of Department of Personnel and Training (DoPT), was illegal and that respondent no.1 was ineligible to be appointed to such office *inter alia* for the reason that he was not a member of the UPSC.

2. The writ petition, filed in public interest, seeks the following prayers :

(i) *to summon the complete original records of the proceedings related to impugned appointment of the respondent no.1 dated 22.11.2014 (vide Annexure P-3).*

(ii) *Issue a writ of quo warranto or a writ in the nature of quo warranto against the respondent no.1, by quashing or setting aside the impugned appointment dated 22.11.2014 by notification No.39019/09/2014-Estt. (B) dated 02.12.2014 (vide Annexure P-2) and, accordingly, directing the Respondent no.1, to vacate the office of the Chairman, Union Public Service Commission with immediate effect.*

(iii) *declare the impugned notification no.39019/09/2014-Estt.(B) dated 02.12.2014 of the appointment of respondent no.1, as ultra vires the Article 316(1) exclusively or ultra vires the Article 316(1) read with Article 319(b)(c) & (d) of the Constitution of India and as such impugned appointment be rendered unconstitutional, void ab initio.*

(iv) *issue a writ of mandamus commanding the Union of India/Respondent nos.3 and 4, to frame the executive guidelines – a memorandum for procedure and administrative methods for the selection and appointment of the Chairman and other members of the Union Public Service Commission until the Parliament enacts an appropriate law to this effect, so that, possibility of arbitrary appointments is eliminated.*

(v) *issue a writ of mandamus commanding the Union of India to appoint the Chairman, UPSC forthwith, either under Article 316(1-A) or under Article 316(1), on falling vacancy in case occasioned to the judgment and order*

passed by this Hon'ble Court in the present case so that, efficient and proper functioning of the Commission and the general public interest might not suffer.

(vi) allow the writ petition with costs throughout, awarding in favour of the petitioner.”

3. The respondents have contested the writ and counter affidavits stand filed on record.

4. The UPSC has informed this court that respondent no.1 has, upon his retirement on 20th September, 2016, demitted the office of Chairman, UPSC and, as such, the prayer challenging his appointment has become infructuous. It is further informed that w.e.f. 21st September, 2016, Smt. Alka Sirohi, Member, UPSC has been appointed as its Chairperson in terms of Article 316(1A) of the Constitution of India to perform the duties of the Chairman till such time a person is appointed to fill the post under Article 316(1) of the Constitution of India.

5. It would therefore, appear from the above that, so far as the prayer made at serial nos.(i) to (iii) are concerned, they are rendered infructuous and are disposed of as such.

6. The prayer made at serial no. (v) also stands addressed in terms of the above submission on behalf of respondent no.4. This leaves only the prayer at serial no.(iv) to be examined by us.

7. The petitioner, by such prayer, has sought issuance of a writ of *mandamus* commanding the Union of India – respondent nos. 3 and 4 to frame executive guidelines, that is to say, a memorandum for procedure and the administrative methods for the selection and

appointment of the Chairman and other members of the UPSC until such time as the Parliament enacts an appropriate law for this purpose, to obviate possibility of arbitrary appointments.

8. In this regard, an objection is taken by Ms. Suparna Srivastava, ld. counsel appearing for respondent nos.3 and 4, to the maintainability of the prayer, submitting that this prayer is within the purview of discharge of legislative functions and that a mandamus neither lies, nor can be issued in terms of the said prayer.

9. It is further submitted that appointment to the office of Chairman and Member of the Commission is in accordance with Articles 315 and 316 of the Constitution of India. In this regard, our attention is drawn to Article 316 of the Constitution of India, which reads as follows:

“316. Appointment and term of office of members

(1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor of the State: Provided that as nearly as may be one half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included

(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some persons appointed under clause

(1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty five years, and in the case of a State Commission or a Joint Commission, the age of sixty two years, whichever is earlier:

Provided that

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of Article 317

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re appointment to that office.

10. The respondent no.4 has asserted, in its counter affidavit, that Article 316 of the Constitution of India does not lay down any qualification, educational or otherwise, for eligibility for appointment as Member or Chairperson of the UPSC. Article 316(2) of the Constitution of India only prescribes the tenure for which a Member of the UPSC would hold office, i.e., for a term of six years or until he or she attains the age of 65 years, whichever is prior.

11. So far as prescribing guidelines is concerned, reference is required to be made to the provisions of Articles 318 and 319 of the Constitution of India, which enable the respondent no.4 to prescribe regulations. This provision of the Constitution of India may also be usefully extracted hereunder and reads as follows:

“318. Power to make regulations as to conditions of service of members and staff of the Commission. In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations -

- (a) determine the, number of members of the Commission and their conditions of service; and*
- (b) make provision with respect to the number of members of the staff of the commission and their conditions of service:*

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment

319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members. On ceasing to hold office

- (a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;*
- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;*
- (c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service commission or as the*

Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State

12. So far as the Union Public Service Commission is concerned, Article 318 thus empowers the President of India to make regulations to determine the number of Members of the Commission and their conditions of service.

13. Ms. Suparna Srivastava, ld. counsel appearing for respondent nos.3 and 4, has drawn our attention to the pronouncement of the Supreme Court reported at **(2010) 13 SCC 586, Mehar Singh Saini, Chairman Haryana Public Service Commission & Ors. in Re.** wherein the court held as follows:

“85. Desirability, if any, of providing specific qualification or experience for appointment as Chairman/members of the Commission is a function of Parliament. The guidelines or parameters, if any, including that of stature, if required to be specified are for the appropriate Government to frame. This requires expertise in the field, data study and adoption of the best methodology by the Government concerned to make appointments to the Commission on merit, ability and integrity. Neither is such expertise available with the Court nor will it be in consonance with the constitutional scheme that this Court should venture into reading such qualifications into Article 316 or provide any specific guidelines controlling the academic qualification, experience and stature of an individual who is proposed to be appointed

to this coveted office. Of course, while declining to enter into such arena, we still feel constrained to observe that this is a matter which needs the attention of the Parliamentarians and quarters concerned in the Governments. One of the factors, which has persuaded us to make this observation, is the number of cases which have been referred to this Court by the President of India in terms of Article 317(1) of the Constitution in recent years. A large number of inquiries are pending before this Court which itself reflects that all is not well with the functioning of the Commissions.”

(Emphasis supplied)

14. The above observations of the Supreme Court manifest the concerns of the court, pointing out the limitations on the expertise of the court to recommend prescription of qualifications, experience and stature of an individual who is proposed to be appointed to the office of Chairman of the Public Service Commission. Nevertheless, the court expressed its concern, stating that the matter deserved attention of the Parliamentarians and the quarters concerned in the Government.

15. This very observation came up for consideration before the Supreme Court of India in a recent pronouncement reported at **(2013) 5 SCC 1 State of Punjab vs. Salil Sabhlok & Ors.** In para 34 of the pronouncement, the Supreme Court had extracted the above para 85 of **Mehar Singh Saini** and observed as follows:

*“... The observations of this Court in the aforesaid case of Mehar Singh Saini, In re[Mehar Singh Saini, In re, (2010) 13 SCC 586 : (2011) 1 SCC (L&S) 423] relate to the **qualification and experience for appointment as Chairman/Members of the Commission and have nothing to do with the questions relating to the procedure for identifying persons of integrity and competence to be appointed as Chairman of the Public Service Commission,***

which were referred by the Division Bench of the High Court to the Full Bench by the order dated 13-7-2011 [Salil Sabhlok v. Union of India, CWP No. 11846 of 2011, order dated 13-7-2011 (P&H) (DB)] . Mr Rao is, therefore, not right in his submission that in view of the law declared by this Court in Mehar Singh Saini, In re [Mehar Singh Saini, In re, (2010) 13 SCC 586 : (2011) 1 SCC (L&S) 423] , there was no necessity for the Division Bench to make a reference to the Full Bench by the order dated 13-7-2011 [Salil Sabhlok v. Union of India, CWP No. 11846 of 2011, order dated 13-7-2011 (P&H) (DB)].”

(Emphasis supplied)

16. After detailed consideration of other pronouncements on the subject, the court reiterated the well settled position that it could neither legislate on the subject nor issue directions to the Parliament or the State legislatures to enact a law on the subject.

17. Having so observed, the court considered the question as to whether it was really helpless in the matter of laying down appropriate guidelines or parameters for the appointment of a Chairman or members of the Public Service Commission. It was held that if **Mehar Singh Saini** was considered in the right perspective, the answer had to be in the negative. The position was finally succinctly set out in para 136 of the pronouncement, which reads as follows :

*“136. In the light of the various decisions of this Court adverted to above, **the administrative and constitutional imperative can be met only if the Government frames guidelines or parameters for the appointment of the Chairperson and Members of the Punjab Public Service Commission. That it has failed to do so does not preclude this Court or any superior court from giving a direction to the State Government to conduct the necessary exercise within a specified period.***

Only because it is left to the State Legislature to consider the desirability or otherwise of specifying the qualifications or experience for the appointment of a person to the position of Chairperson or Member of the Punjab Public Service Commission, does not imply that this Court cannot direct the executive to frame guidelines and set the parameters. This Court can certainly issue appropriate directions in this regard, and in the light of the experience gained over the last several decades coupled with the views expressed by the Law Commission, the Second Administrative Reform Commission and the views expressed by this Court from time to time, it is imperative for good governance and better administration to issue directions to the executive to frame appropriate guidelines and parameters based on the indicators mentioned by this Court. These guidelines can and should be binding on the State of Punjab till the State Legislature exercises its power.”

(Emphasis supplied)

18. A challenge similar to that which has been laid before us by the petitioner, was laid by the respondent in the above decision, regarding the Punjab Public Service Commission. The High Court of Punjab had laid down guidelines, which were challenged before the Supreme Court resulting in the above observation.

19. Though rendered in the context of the State Public Service Commission, the observations of the Supreme Court would guide our consideration in the present matter relating to the post of Chairman of the Union Public Service Commission with which the respondent no.4 claims to be concerned.

20. Given the concern expressed in the petition as well as those noted by the Supreme Court in *Mehar Singh Saini* and *Salil Sabhlok*, it would be appropriate if the respondent no.4 considers the matter in

the right perspective, examines the issues flagged by the petitioner in the light of the above judicial pronouncements and takes an appropriate view in the matter.

21. The writ petition and the pending application are disposed of in the above terms.

Dasti to parties.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 01, 2017

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