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HIGH COURT OF CHHATTISGARH, BILASPUR**(Reserved for judgment on 20.08.2019)****(Judgment delivered on 19.09.2019)****WPC No. 1989 of 2019**

Ramji Bharti S/o Late Shri S.D. Bharti Aged About 48 Years Chairperson
/ President, Rajya Anusuchit Jati Aayog R/o Poonam Colony,
Wardhaman Nagar, Police Station City Kotwali, Rajnandgaon, Tahsil &
District Rajnandgaon, Chhattisgarh

--- Petitioner

Versus

The State of Chhattisgarh through the Joint Secretary, Department of
Aadim Jaati Tatha Anusuchit Jaati Vikas Vibhag, Mahanadi Bhawan, Atal
Nagar, Raipur Chhattisgarh

--- Respondent

For the petitioner : Mr. U.N.S. Deo, Advocate
For the Respondent : Mr. Amrito Das, Additional Advocate
General

Hon'ble Shri Justice Goutam Bhaduri**CAV JUDGMENT**

1. Challenge made in this writ petition is to the order dated 28.05.2019 (Annexure P-1) passed by the Joint Secretary of the State of Chhattisgarh whereby the appointment of the petitioner to the Post of President, Chhattisgarh Rajya Anusuchit Jati Ayog was terminated.

2. The facts of this case are that the petitioner was initially appointed as the President/Chairperson of Chhattisgarh State Anusuchit Jati Ayog vide order dated 01.07.2015 (Annexure P-4) under Section 3 of Chapter II of the *Chhattisgarh (Rajya) Anusuchit Jati Ayog Adhiniyam, 1995 (for short "Adhiniyam, 1995")* for a period of 3 years. After completion of tenure on 16.07.2018, he was again appointed from 10th August, 2018 until further order as the President of the Ayog vide Annexure P-5. Pursuant thereto, the petitioner joined the post of President on 13.08.2018 which would be evident from the Communication dated 21.08.2018 (Annexure-P-6). The State Government on 28.05.2019 has terminated such appointment on the ground that subsequent appointment on 10.08.2018 was uptill further orders and therefore, the appointment stands cancelled by the impugned order (Annexure P-1). The said cancellation is subject of challenge in this petition.
3. Learned counsel for the petitioner would submit that the appointment having been made as per Section 4 of the Adhiniyam, 1995 the petitioner would continue to the post for a period of 3 years and in sub-section (3) of section 4 certain grounds are enumerated for removal of a person from the office of member that too under the proviso to clause, therefore, a person cannot be removed unless he has been given opportunity of hearing. It is stated that the termination order (*Annexure P-1*), would show that no reasons have been assigned. He placed reliance in *(1992) 3 SCC 526 (Dr. L.P. Agarwal v. Union of India and others)*; *AIR 1965 SC 1518 Ram Dial v. State of Punjab* & *AIR 1981 SC 818 (Swadeshi*

Cotton Mills Vs. Union of India) and would submit that the order of removal would be bad in law and therefore requires to be set aside.

4. Per contra, it is contended on behalf of the State that the petitioner was wrongly appointed directly to the post of President. It is stated after appointment as an initial Member of Ayog on 01.07.2015 the petitioner ceased to be a member of the Commission after a period of 3 years. Referring to Annexure P-5 it is stated that the petitioner was directly appointed as a Chairperson and as per the provision of Section 3 Sub-section (2) Clause (a) of the Adhiniyam, the Chairperson has to be appointed amongst non-official members. It is further stated that since the initial appointment was defective, such defect was cured by subsequent removal. It is stated that out of the 3 members, only one would be qualified to be appointed as Chairperson and if a person is not appointed as a member, then in such a case he cannot be appointed as Chairperson. It is further stated that the appointment order itself would show that the appointment was made until further orders. Therefore, if such order has come to an end by termination, no illegality can be attributed.
5. I have heard learned counsel for the parties. Perused the record. The appointment was made under the *Chhattisgarh (Rajya) Anusuchit Jati Ayog Adhiniyam 1995*. Section 2 of the Adhiniyam is about "definitions". The relevant clause reads as under:

2. Definitions,- In this Act, unless the context otherwise requires :-

(a) "Commission" means the Madhya Pradesh Rajya Anusuchit Jati Ayog constituted under section 3;

(b) “Member” means a member of the Commission and includes the chairperson;

(c) “Scheduled Castes” means such castes, races or tribes or parts of, or groups within such castes, races or tribes specified as Scheduled Castes with respect to the State of Madhya Pradesh under Article 341 of the Constitution of India

6. Likewise Chapter II of the Adhiniyam, 1995 provides for “Constitution of the State Commission for Anusuchit Jati”. Section 3 speaks about “Constitution of State Commission for Anusuchit Jati” which reads as under :

“3. Constitution of State Commission for Anusuchit Jati.- (1) The State Government shall constitute a body to be known as the M.P. Rajya Anusuchit Jati Ayog to exercise the powers conferred on, and to perform the functions assigned to it under this Act :

(2) The Commission shall consist of the following members :-

(a) Three non official members who have special knowledge in the matters relating to Scheduled Castes of whom one shall be the Chairperson to be appointed by the State Government ;

Provided that at least two members shall be from amongst the Scheduled Castes.

(b) Director, Scheduled Castes Welfare, Madhya Pradesh”

7. Further section 4 prescribes the Term of the office and conditions of service of Chairperson and members, which reads thus :

“4. Term of office and conditions of service of Chairperson and Members.- (1) Every non official member of Commission shall hold the office for a term of three years from the date he assumes charge of his office.

(2) A member may, by writing under his hand addressed to the state Government, resign from the office of Chairperson or as the case may be, of members at any time.

(3) The State Government shall remove a person from the office of member if that person -

(a) becomes an undischarged insolvent;

(b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude ;

(c) becomes of unsound mind and stands so declared by a competent Court;

(d) refuses to act or become incapable of acting;

(e) is without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or

(f) has, in the opinion of the State Government, so abused the position of Chairperson or Member as to render his continuance in office detrimental to the interest of Scheduled Castes or the public interest :

Provided that no person shall be removed under this Clause unless he has been given an opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination and the person so nominated shall hold the office for the remainder term of his predecessor;

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

8. In the Act certain Amendment though was carried out in the year 2018, the amendment has not much consequence to the issue involved. In the definition clause of the Act, "Member" has been defined in sub-section (b) of section 2 and describes that a member includes the chairperson. Sub-section (2) of section 3 prescribes the Constitution of Commission. Clause (a) of sub-section 2 of section 3 purports that three non-official members who have special knowledge in matters of Scheduled Castes will be there and of whom, one person shall be the chairperson to be appointed by the State Govt. When the said language is read with definition of "Member" defined in sub-section (b) of section 2, the definition specifically prescribes that the member of the Commission includes chairperson. Therefore, from the harmonious construction of both the clauses, it cannot be said that a person has to be first appointed as member then only he can be appointed as chairperson. The member and the chairperson are amalgamated by the definition clause. Consequently separate entity of member and chairperson cannot be an agenda for effective review and reconsideration.

9. Section 4 of the Adhiniyam 1995 says that every non-official member of the commission shall hold the office for a term of 3 years from the date he assumes the charge of his office and sub-section (3) of section 4 enumerates the grounds under which the State Government can remove a person from the office of a member under certain conditions. The mandate as provided that a person has to be given an opportunity of hearing before being removed. The second appointment order dated 10th August, 2018 (*Annexure P-5*) purports that the petitioner is appointed until further orders. Pursuant to such appointment the petitioner joined the office on 13.08.2018 there by assumed the charge of his office. Therefore, by virtue of sub-section (1) of section 4 of the Adhiniyam, 1995 when the petitioner after his appointment assumed the charge of the office, on 21.08.2018 (*Annexure P-6*) the interpretation would be that the tenure of petitioner would be of 3 years from the date petitioner assumed charges unless removed as per mandate of Section 4. It is settled law that when the action of the State or its instrumentalities is not as per the rules or regulations and supported by a statute, the court must exercise its jurisdiction to declare such act to be illegal and invalid. The rules in the statute and the regulation would be binding on the authorities. The statutory authority which empowers a member to continue to hold the office for 3 years cannot be defeated as it is a legal sanction by the statute and the executive acts to invalidate the term of petitioner in violation of sub-section (1) of section 4 cannot be enforced.
10. The ratio laid down in **(1992) 3 SCC 526** wherein the petitioner has placed reliance would be applicable to the facts of the present case. In

the said case, it was held once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on completion of the tenure unless curtailed on justifiable grounds. In the instant case, the State has power to curtail the period of petitioner under sub-section (3) of section 4 which purports that a member can be removed on certain grounds as enumerated here-in-before. However, opportunity of hearing would be necessary before the removal. Admittedly, it is not the case of the State that the petitioner has been removed on any ground or reason mentioned in sub-section (3) of section 4 of the Adhiniyam, therefore, the issue is only confined to whether the tenure post can be curtailed by the Executive Order which the Court has held cannot be done.

11. It is a settled proposition as has been held in case of ***Ram Chand and others v. Union of India and others (1994) 1 SCC Page 44*** that the exercise of power should not be made against the spirit of provisions of the statute, otherwise it would tend towards arbitrariness. The arguments of the State is that the “member” and the “Chairperson” are distinct and in order to be a chairperson, a person first has to be a member but definition clause is otherwise instead the harmonious construction would be a member includes a chairperson as per the statute. The Supreme Court in case of ***Purushottam v. Chairman, Maharashtra State Electricity Board (1996) 6 SCC 49*** has held that the appointment should be strictly in accordance with statutory provisions and a candidate who is entitled for appointment should not be denied the same on any pretext

whatsoever as usurpation of the post by somebody-else in any circumstances is not possible.

12. Further, the Constitution Bench considering the scope of issuing the executive orders in ***B.N. Nagarajan v. State of Mysore AIR 1966 SC 1942***, held that if there is a statutory Rule or Act on the matter, the executive must abide by that Act or the Rules and it cannot, in exercise of executive Powers under Article 162 of the Constitution ignore or act contrary to the Rules or the Act. Like wise, in the instant case once the petitioner had assumed the charge of his office on 13.08.2018 by virtue of sub-section (1) of Section 4, he would continue and any executive order though was made uptill the next order cannot over ride the statute.
13. The constitution Bench of Supreme Court in ***Sant Ram Sharma v. State of Rajasthan and others AIR 1967 S.C. 1910*** held that it is true that the Government cannot amend or supersede the statutory rules by administrative instruction, but if the rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the rules already framed. Here in the facts of the case in hand it would show that the tenure appointment has been given by virtue of section 4 and the removal has also been slated in the manner to be made under sub-section (3) of Section 4. Therefore, the removal order of the petitioner by Annexure P-1 which speaks that since the appointment was made until further orders he is being removed, will be against the spirit of Section 4.

14. The Supreme Court has observed in ***Nagpur Improvement Trust v. Yadaorao Jagannath Kumbhera, (1999) 8 SCC Pg. 99*** that in absence of statutory rules, appointments can be made on the basis of Executive Instructions but there is no scope of deviation of rules, if the same exists. Thus, it has been settled that the Executive Instruction cannot amend or supersede the statutory Act or rules or add something therein. The orders, therefore, cannot be issued in contravention of the Act for the reason that the Administrative instruction is not a statutory rule or Act nor does it have a force of law while the Act has a force of law.
15. In ***Union of India v. Sri Somesundaram Vishwanath AIR 1988 S.C. 2255*** the Supreme Court has observed that if there is a conflict between the executive instructions and the rules framed under the proviso to Article 309 of the Constitution, the rules will prevail meaning thereby supremacy of statute. Similarly, if there is a conflict in the rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail. Likewise, in ***Ram Ganesh Tripathi v. State of U.P., 1997 1 SCC 621*** the Supreme Court considered a similar controversy and held that an executive Instruction/Order which runs counter or is inconsistent with statutory rules cannot be enforced, rather deserves to be quashed being *dehors* to the rules. In the instant case, since the Executive Order Annexure P-1 is *de-horse* to Section 4, the same is liable to be quashed.
16. Another infirmity exists in the case. The order of terminating the period of petitioner purports that it was made for the reason that the

appointment was untill further order. However, before this Court, the State contrary to the reasons assigned for termination completely came up with a new case that petitioner was not qualified to be appointed as chair person as he was not a member. So inconsistent reasons have been assigned by State to make a fumbling effort but instead it has created a steep challenge for itself to come out.

17. In view of the above when the statutory provisions involved in this case are examined on critical analysis, it shows that the State Government has exceeded its jurisdiction in issuing the order dated 28.05.2019 (Annexur P-1).
18. In view of the foregoing discussion, Annexure P-1 is quashed. The petition is allowed.

Sd/-

Goutam Bhaduri
Judge

Rao