

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3472 of 2024

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1. Rajendra Kumar, son of Shivnandan Ram, resident of Mathurapur, Pipra Kothi, P.S.-Turkauliya, District- East Champaran.
 2. Ashok Paswan, son of Shiviji Paswan, resident of Ward No.- 5, Near Kali Mandir, Sultanpur, Pachkatia, P.S.-Bidupur, District- Vaishali.
 3. Jagdish Chaudhary, son of Ramavtar Chaudhary, resident of SBI Officer's Colony, P.S.-Kankarbagh, Sampatchak, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Secretary, General Administration Department, Government of Bihar, Patna.
4. The Deputy Secretary, General Administration Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv. Mr. Pranav Kumar, Adv. Ms. Shrishti Singh, Adv.
For the Respondent/s	:	Mr. Anant Prasad Singh, SC-15 Mrs. Deepika Sharma, AC to SC-15

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 25-04-2025

The present writ petition has been filed by the petitioners for quashing the notification dated 02.02.2024, issued under the signature of the Secretary, General Administration Department, Government of Bihar, Patna, i.e. the Respondent No. 3 by which, in terms of Clause 4 (Ga) of the resolution contained in



memo No. 5614 dt. 18.11.2009, due to administrative exigency as also in public interest, the petitioners have been removed from the post of Chairman and Members of the State Scheduled Caste Commission. The petitioners have further prayed to direct the Respondents to restore them to their respective posts with effect from 2.2.2024 and accordingly, pay the outstanding salary and emoluments from the date of removal i.e. 2.2.2024.

2. The brief facts of the case, according to the petitioners, are that the petitioner No. 1 was appointed as the Chairman of the State Scheduled Caste Commission (hereinafter referred to as “the Commission”) for a period of three years, vide notification contained in memo No. 14144 dated 25.7.2023, issued by the Additional Secretary, General Administration Department, while the petitioners No. 2 and 3 were appointed as Members of the Commission, vide notification dated 25.7.2023. It has been stated that the petitioner No. 1 is a highly reputed person of the society and was elected as a member of the legislative assembly from Harsidhi for the term 2015-2020 and was awarded with Dalit Sahitya Academy Award in the year 2011. As far as the petitioners No. 2 and 3 are concerned, it has been stated that they are social workers and work for the upliftment of the people of the weaker sections of the society. It



has been contended that the General Administration Department, vide resolution contained in memo dated 18.11.2009, took a decision for constitution of the aforesaid Commission for promoting the interest of the people belonging to the scheduled caste and for their upliftment, growth and equal representation in the society as also for providing equality of status and opportunity and to secure justice, social, economic and political. Clause 2 of the said resolution dated 18.11.2009 prescribes that the Commission would consist of one Chairman, one Vice-Chairman and three members. Clause 3 of the said resolution dated 18.11.2009 prescribes the duties and responsibilities of the Commission. In note 3 of Clause 3 of the aforesaid resolution dated 18.11.2009, the Commission is prohibited from doing any work, which is against the objective of the Central Scheduled Caste Commission and in Clause 4 (A), the term of Chairman, Vice-Chairman and Member has been fixed for three years from the date of assuming the office. Cause 4(Ga) of the aforesaid resolution dated 18.11.2009 prescribes that the Chairman, Vice-Chairman and Members can be removed by the State Government for such reasons, as may be specified later.

3. It has been submitted on behalf of the petitioners that after formation of the new Government on 28.1.2024, all of a sudden



after four days by a notification dated 02.02.2024, the State Government through the General Administration Department removed the petitioners from the post of Chairman and Members of the said Commission without assigning any valid reason. In fact, by three notifications dated 02.02.2024, the Chairman and Members of the State Commission for Extremely Backward Class, Mahadalit Commission and the State Commission for Scheduled Tribe were also removed in complete violation of the principles of natural justice. It is submitted that the petitioners were appointed for a period of 3 years, however, they have been removed before expiry of the said period in an arbitrary and illegal manner without specifying any reason. In fact, no opportunity has been granted to the petitioners to furnish their explanation before their removal, which amounts to violation of the principles of natural justice.

4. It has also been submitted on behalf of the petitioners that as per Clause 4(Ga) of the aforesaid resolution dated 18.11.2009, the Chairman and Members can be removed prior to expiry of their term for the reason prescribed in the aforesaid resolution i.e. if the work being done by them is against the objectives of the National Scheduled Caste Commission, however, the said ground is absent in the present case, hence the



decision to remove the petitioners is illegal, thus the same is fit to be set aside. It is also submitted that the decision to remove the petitioners from their respective posts attracts a civil consequence, hence the decision should contain a reason for removing the petitioners from the post of Chairman and Members of the said Commission.

5. The learned Senior Counsel for the petitioners, Sri Y.V. Giri, has submitted that services of an incumbent can be cut short only in terms of the statute under which appointment has been made. Reference in this connection has been made to a judgment, rendered by the Hon'ble Apex Court in the case of ***Union of India & Anr. vs. Shardinu***, reported in ***(2007) 6 SCC 276***. It is contended that termination of an appointment without existence of a cogent reason is arbitrary and such an order has to be supported by an informed decision, which should be reasonable. Reference in this connection has been made to a judgment, rendered by the Hon'ble Apex Court in the case of ***Kumari Shrilekha Vidyarthi & Others vs. State of U.P. & Others***, reported in ***(1991) 1 SCC 212***. It is next submitted that when a statute is silent on the observance of the principles of natural justice, the observance of the principles of natural justice becomes presumptive. Reference in this connection has been made



to a judgment, rendered by the Hon'ble Apex Court in the case of *Mangilal vs. State of M.P.*, reported in **(2004) 2 SCC 447**.

6. The learned Senior Counsel for the petitioners has next submitted that in case statute is silent with regard to giving a pre-decisional hearing to the person affected and there is no provision for review or appeal on merits qua the decision, Courts are required to be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing. Reference in this connection has been made to a judgment, rendered by the Hon'ble Apex Court in the case of *Swadeshi Cotton Mills vs. Union of India*, reported in **(1981) 1 SCC 664**. The learned Senior Counsel for the petitioners has also referred to the well-settled law that reasons in support of a decision must be cogent, clear and succinct and absence of reasons in the order cannot be compensated by disclosure of reasons later on. Reference in this connection has been made to a judgment, rendered by the Hon'ble Apex Court in the case of *Oryx Fisheries Pvt. Ltd. vs. Union of India & Others*, reported in **(2010) 13 SCC 427**. In any view of the matter, it is submitted by the learned Senior Counsel for the petitioners that it is imperative to comply with the principles of natural justice and in this regard, reference has also been made to a judgment,



rendered by this Court in the case of *Nari Gunjan vs. The Union of India & Ors.*, reported in **2023 (5) BLJ 577**.

7. The learned Senior Counsel for the petitioners has next argued that in absence of any legislative enactment or statutory rule, the executive instructions partake the nature of statutory rules and they are binding upon the State Government as also the persons concerned. Reference in this connection has been made to a judgment, rendered by the learned Division Bench of this Court in the case of *Subodh Kumar vs. The State of Bihar & Ors.*, reported in **2012(2) PLJR 647**. It has also been stated that it is equally a well-settled law that in absence of rules under Article 309 of the Constitution of India in respect of a particular aspect of the matter, it is permissible for the State to make provisions in exercise of its executive powers in terms of Article 162 of the Constitution of India. Reference in this connection has been made to a judgment, rendered by the Hon'ble Apex Court in the case of *P. Tulsi Das & Others vs. Government of A.P. & Others*, reported in **(1978) 1 SCC 465**.

8. The learned Senior Counsel for the petitioners has next referred to the doctrine of pleasure to submit that the same does not give a license to act arbitrarily, capriciously or whimsically and where the rule of law prevails, the need for reason exists as



also the doctrine does not dispense with the need for a cause for withdrawal of the pleasure, hence withdrawal of pleasure can only be for valid reasons. In this connection, reference has been made to a judgment, rendered by the Hon'ble Apex Court in the case of ***B. P. Singhal vs. Union of India & Anr.***, reported in ***(2010) 6 SCC 331***. Reference in this connection has also been made to a judgment rendered by the learned Division Bench of the Hon'ble High Court of Bombay, reported in ***(2015) SCC Online Bom 6597 (Dnyaneshwar Digamber Kamble vs. State of Maharashtra & Others)***, wherein it has been held that termination/removal of an incumbent by invoking doctrine of pleasure cannot be at the sweet will, whim and fancy of State Government and withdrawal of pleasure can only be for valid reasons as also the same should be used reasonably and only for public good.

9. *Per contra*, the learned counsel appearing for the Respondents has submitted that the Commission for Scheduled Caste was constituted by the State Government, vide resolution dated 18.11.2009, for the better welfare of the most weaker sections of the society, who are in all respect lagging behind the main stream of the society in the State of Bihar. The petitioners were appointed as the Chairman and Members of the said



Commission, vide notifications dated 25.7.2023, whereafter they had joined their respective posts on 27.7.2023. It came to the knowledge of the concerned authorities that the petitioners were not functioning in accordance with the aims and objectives of the Commission. In fact, the tour program of the petitioners from 27.7.2023 to 2.2.2024 would show that after joining the concerned posts, they had made tour to their native district or nearby places, which has caused heavy loss to the Government exchequer without serving any fruitful purpose. It is also submitted that if a comparative study is made with regard to the work done during the six months period of the erstwhile Chairman, just before joining of the petitioner No. 1, with the work done by the petitioner No. 1 during the first six months of his tenure, it would be seen that the petitioner No. 1 had disposed of only one third of the total number of applications / complaints received. Reference has also been made to the number of letters issued confidentially by the earlier Chairmans vis-a-vis the petitioner No. 1 to submit that the petitioner No. 1 took no interest whatsoever for disposal of the complaint petitions. Thus, it has been submitted that in the opinion of the Government, the aforesaid Commission was not functioning in public interest and for achieving the desired administrative



objectives, hence continuance of the Chairman and the Members was found not to be in larger public interest as also in administrative interest, thus they have been removed under the policy decision of the State Government by invoking Clause 4(Ga) of the aforesaid resolution dt. 18.11.2009. Therefore, it is submitted that the removal of the petitioners vide notification dated 02.02.2024, is just, proper and legal.

10. The learned counsel for the Respondent-State has further submitted that the aforesaid Commission is a non-statutory body created by a resolution / executive order of the Government of Bihar vide memo no. 5614 dated 18.11.2009 and its Chairman and Members are appointed by nomination by the State Government for a maximum period of three years as also they hold their nomination at the pleasure of the State Government unless they resign from their position or the State Government withdraws their nominations. Thus, the petitioners having accepted the aforesaid resolution dated 18.11.2009 with their open eyes, cannot now turn around and say that they have a fixed term of office for three years, especially in view of the fact that the term of office has been mentioned in the aforesaid resolution dated 18.11.2009 as “three years” and not “minimum three years”, hence the nomination can be cancelled or



withdrawn at any time before expiry of three years by a simple order without assigning any reasons.

11. It is also submitted by the learned counsel for the Respondent-State that the post of Chairman and Members of such non-statutory Commission are not civil posts, hence are not covered by Articles 14, 16, 309, 310 and 311 of the Constitution of India. It is submitted that the State Government nominates their chosen persons as per their own political requirements/ reasons/policy and such nominated incumbents hold their office at the pleasure of the State Government. These appointees do not have to go through the constitutionally mandated selection process, i.e. publication of advertisement inviting all eligible candidates, participating in the exams/ interviews, etc; before their appointment is made after being declared successful. Thus, the nominated incumbents do not have any vested right to continue on the said tenure political posts, hence their tenure may be terminated any time before its completion as per the socio-political requirements/ policy of the State Government. Reference in this connection has been made to a Constitution Bench judgment, rendered by the Hon'ble Apex Court in the case of *Parshotam Lal Dhingra vs. Union of India*, reported in *AIR 1958 SC 36* and it has been submitted that the Hon'ble



Apex Court has laid down two tests to determine whether the termination of a civil servant from his office is a punishment under Article 311 of the Constitution of India, first is whether the civil servant had the right to hold the office or the rank to which he was appointed and the second one is whether such a civil servant has been visited with evil consequences. In the present case, both the conditions are absent.

12. The learned counsel for the Respondent-State has further submitted that the petitioners have not challenged Clause 4 (Ga) of the aforesaid resolution dated 18.11.2009, hence having accepted the same, they do not have any vested right to continue on their respective posts for three years. It is stated that before nomination of the petitioners as Chairman/Members of the aforesaid commission, no application was called for from them and they were handpicked and nominated by the previous Government. Thus, the petitioners cannot be considered as holders of civil posts and since nominated posts cannot be treated as a public employment, the petitioners can neither complain of violation of Article 16 of the Constitution of India nor claim protection under Article 311 of the Constitution of India. The learned counsel for the Respondent-State has referred to a judgment, rendered by the Hon'ble Apex Court in the case



of *State of U.P. & Others vs. U.P. State Law Officers Association & Others*, reported in *1994 (2) SCC 204* to submit that the Hon'ble Apex Court has held that those who are appointed arbitrarily cannot claim that termination of their appointment is arbitrary, hence compliance of the principles of natural justice in such cases would not be required. The learned counsel for the Respondent-State has next referred to a judgment, rendered by the Hon'ble Apex Court in the case of *Om Narain Agarwal & Ors. vs. Nagar Palika, Shahjahanpur & Others*, reported in *AIR 1993 SC 1440*, wherein it has been held that right of equality enshrined in Article 14 of the Constitution of India applies to equals and not to unequal's, as such since the nominated members fall in a different class, they cannot claim equality with the elected members.

13. The learned counsel for the Respondent-State has next referred to a judgment, rendered by the Hon'ble Apex Court in the case of *Krishna vs. State of Maharashtra & Others*, reported in *(2001) 2 SCC 441*, wherein the Hon'ble Apex Court, while rejecting the prayer challenging the order of removal of the appellant from the office of Trustee, held that the pleasure appointments can always be cancelled without notice to the nominees and there is no question of observing the principles of



natural justice while cancelling such appointments. Reference has been next made to a judgment, rendered by the Hon'ble Apex Court in the case of ***State of Karnataka & Ors. vs. Ameerbi & Others***, reported in ***(2007) 11 SCC 681***, wherein the Hon'ble Apex Court has held that since Anganwari workers do not carry on any function of the State, they do not hold a post under the statute and their posts are not created, thus the State is not required to comply with the constitutional scheme of equality as provided for under Article 14 and 16 of the Constitution of India.

14. The learned counsel for the Respondent-State has also referred to a judgment, rendered by the Hon'ble Apex Court in the case of ***D.C. Saxena vs. State of Haryana & Others***, reported in ***(1987) 3 SCC 251*** to submit that the Hon'ble Apex Court has held in the said case that the State Government can remove such members whose continuance in office is not in the interest of the Board and any decision taken for termination of such incumbents by the Government by way of policy decision and not promoted by malafides or punitive in nature would not call for any interference. Reference has also been made to a judgment, rendered by the learned Single Judge of the Hon'ble High Court of Karnataka, reported in ***MANU/KA/1551/2013***, paragraphs no. 45 and 52 whereof are reproduced herein below:-



*“45. The Apex Court's judgment in the case of **B.P. Singhal** (supra) does not come to the rescue of the petitioners in any way. The said judgment was rendered in the context of the removal of the Governor of a State. The Apex Court has held that the reasons have to exist for the removal of the Governor, because he acts as the connecting link between the Union Government and a State Government. There may be occasions when he may have to be impartial or a neutral umpire where the views of the Union Government and the State Government are in conflict. His peculiar position arises from the fact that the Indian Constitution is quasi-federal in character.*

*52. The Petitioners have no legally vested right to demand that they be continued as the Members of the Syndicate for fixed period of three years. The Petitioners are neither elected nor appointed. They are nominated and they would hold the office so long as the Government does not withdraw its pleasure. The Apex Court in the case of **Om Narain Agarwal** (supra) has held that the nominated Members of a Municipal Board fall in a different class and that therefore, they cannot claim equality with the elected Members. The Apex Court has negatived the submission that there would be a constant fear of removal at the will of the State Government and that it would demoralize the nominated Members in the discharge of their duties.”*

15. The learned counsel for the Respondent-State has also referred to a judgment, rendered by the learned Division Bench



of the Hon'ble High Court of Judicature at Bombay dated 20.6.2023, passed in Writ Petition (ST) No. 1517 of 2023 (***Ramhari Dagadu Shinde & Others vs. The State of Maharashtra & Others***) to submit that it has been held therein that Maharashtra State Commission for Scheduled Caste and Scheduled Tribe has neither statutory nor constitutional recognition, thus the order cancelling the appointment of the petitioners to the posts of Chairman/ Members of the said Commission respectively cannot be said to be illegal, unlawful or otherwise vulnerable. In this connection, reference has been made to paragraphs no. 12 to 14 and 20, which are reproduced herein below:-

“12. It is common ground that the Commission is neither statutory nor mandated by any provision of the Constitution. Neither the constitution of the Commission nor the appointment of the petitioners has any statutory basis. The petitioners were nominated at the sole discretion of the Government without following any selection procedure or inviting applications from the general public. Such an appointment has to be treated as one under the pleasure of the Government and not in the nature of any employment or appointment under Part XIV of the Constitution.

13. The contention of the petitioners that the tenure of three years has not expired cannot be sustained. There is



nothing in the GO appointing them on their posts to indicate that the tenure of three years was a 'minimum tenure'. It is distinct from the meaning of 'tenure' ordinarily prescribed in statutory appointments. Nomination of the petitioners to their posts without following any competitive process and in pure discretion and subjective satisfaction of the earlier government does not create nor vests any right or entitlement in the petitioners to continue on their posts. In fact, the existence of the Commission itself is at the pleasure of the Government. The very inception of the Commission is by an executive order and can thus also be dismantled by an executive order. The nomination of the petitioners to the posts in question was also by an executive order of the Government; it, too, can be cancelled by an executive order of the Government. For this reason, the petitioners have no fundamental or legal right to the posts. Consequently, there is no requirement of any justification or of giving an opportunity of hearing to the petitioners for their removal.

14. A change in social policy followed by a change in government is part of the democratic process and a change in implementation of policies and programme per se cannot be charged as arbitrary or mala fide.

20. Thus, considering the facts in the present case and in view of the legal position that the Commission has no statutory nor constitutional recognition, we have no hesitation in holding that the order cancelling the appointments of the petitioners to the posts of



Chairman/Members of the Commission respectively cannot be said to be illegal, unlawful or otherwise vulnerable. No fundamental right to continue on the said posts is vested in the petitioners. The GO dated 2nd December 2022 cancelling their appointment cannot be held arbitrary or discriminatory.”

16. Reference has also been made by the learned counsel for the Respondent-State to a judgment, rendered by the Ld. Single Judge of the Hon'ble High Court of Karnataka at Bangalore dated 17.7.2014, passed in Writ petition No. 53893 and 53954-53956/2013 (***Sri N. Shankarappa & Others vs. The State of Karnataka & Others***) to submit that it has been held therein that Chairman and Members of Karnataka Backward Class Commission hold their nomination on the pleasure of the State Government and can be removed without notice.

17. Thus, it is submitted by the learned counsel appearing for the Respondent-State that the judgments referred to on behalf of the petitioners are distinguishable in the present case. As far as the judgments rendered in the case of ***Shardindu*** (supra) and ***Kumari Shrilekha Vidyarthi & Ors.*** (supra) are concerned, the petitioners/appellants of the said cases were holding either statutory civil posts or public posts and they had been selected/elected and not nominated by the Govt. as also they had based



their rights on statutes, therefore they were legally entitled to the protection under Articles 14 and 311 of the Constitution of India and consequently to an opportunity of being heard. As regards the judgment rendered in the case of ***Kumari Shrilekha Vidyarthi's*** (supra), it is submitted that the same also does not have any application in the facts of the present case, in as much as in the said case, the District Government Counsels were appointed following the issuance of a Notification, prescription of qualifications and experience, preparation of panel, etc. and the procedure prescribed by the Legal Remembrancer's Manual was scrupulously followed while making appointments to the office of the District Government Counsel, whereas in the instant case, it is not even the case of the Petitioners that either applications were called for from the desirous candidates for being nominated to the posts of Chairperson/members of Bihar Scheduled Caste Commission or any Search Committee, consisting of experts was constituted for proposing names for making nomination to the said posts. The Judgment rendered in the case of ***Mangilal*** (supra) is also not relevant as far as the present case is concerned, in as much as the question involved in the said case was as to whether hearing before grant of compensation to a victim in a criminal case is required or not. It



is next submitted that as far as the judgment rendered in the case of *Oryx Fisheries Pvt Ltd.* (supra) is concerned, the facts of the said case are also quite different, in as much as in the said case order of cancellation of registration of a company without assigning any reason was under challenge. In *Swadeshi Cotton Mills* (supra) issue pertaining to pre-decisional hearing under Section 18AA of the Industries Development and Regulation Act, 1951 was under consideration by the Apex Court, hence the same is also not relevant in the present context.

18. Lastly, it has been submitted by the Ld. counsel for the Respondent-State that reliance placed by the petitioners on the Constitution Bench judgment, rendered by the Hon'ble Apex Court in the case of *B.P. Singhal* (supra) is of no help to them, rather it works against them. In the said case, removal of Governors by the President under Article 156(1) of the Constitution of India was under consideration by the Hon'ble Apex Court. It is stated that a Governor, who is Constitutional head of state having myriad functions, holds a High Constitutional post and is appointed after following the constitutional procedure of appointment and removal, whereas the Chairman and members of a non-statutory state scheduled caste commission are handpicked by the state govt and do not



have to face any kind of screening/procedure before being appointed. Thus, it is submitted that the question which arises for consideration is whether the same principles of removal, as is applicable in the case of Governor can be applied to cases pertaining to removal of nominated Chairpersons/ Members of a non-statutory Commission. It is submitted that the principles laid down in the case of **B.P. Singhal** (supra) pertaining to the Doctrine of Pleasure cases does not come to the rescue of the petitioners for the reason that in the said case it has been held that President can remove Governors without any show cause notice and without assigning any reason with the only rider that reasons should exist and removal should not be whimsical, malafide and capricious. In the case in hand the petitioners have not been able to demonstrate any malafides and moreover, there cannot be any malafide, since no enunciations have been made in the notification of removal/withdrawal of nomination of the petitioners. It is also submitted that in the case of **B.P. Singhal** (supra), it was also held that reasons for removal need not be communicated but they must exist and in the present case also valid reasons for removal of the petitioners exist, which have been stated in the counter affidavit. Lastly, it is stated that it has been observed in the case of **B.P. Singhal** (supra) that there are



different shades of Doctrine of Pleasure and the considerations in a case of removal of Governor is quite different from that of removal of ministers and Attorney General. Therefore, it is submitted that the principles laid down by the Hon'ble Apex Court in the Judgment rendered in the case of ***B.P. Singhal*** (supra) cannot be applied to all Doctrine of Pleasure cases and certainly not in the present case.

19. At this juncture, the Ld. Senior Counsel for the petitioners has submitted that as far as reference made by the Ld. counsel for the Respondent-State to the judgment rendered by the Hon'ble High Court of Bombay in the case of ***Ramdhari Dagadu Shinde & Anr.*** (supra) is concerned, the same is per incuriam, inasmuch as the judgment rendered by the Hon'ble Apex Court in the case of ***B.P. Singhal*** (supra) as also by the Hon'ble Bombay High Court in the case of ***Dnyaneshwar Digamber Kamble*** (supra) have not been considered.

20. I have heard the learned Senior Counsel for the petitioners as also the learned counsel for the Respondent-State and perused the materials on record. The Department of Personnel and Administrative Reforms, Government of Bihar, came up with a resolution dated 18.11.2009 for the purposes of Constitution of Scheduled Caste Commission, comprising of one Chairman, one



Vice-Chairman and three members to be nominated by the State Government. Clause 3 and 4 of the said resolution dated 18.11.2009 reads as follows:-

“3. आयोग के कार्य एवं दायित्व:-

(क) अनुसूचित जातियों के लिए उपबंधित रक्षोपायों से संबंधित सभी मामलों का अन्वेषण और अनुश्रवण करना और ऐसे रक्षोपायों की कार्यप्रणाली का मूल्यांकन करना।

(ख) अनुसूचित जातियों के अधिकारों और रक्षोपायों से वंचित किए जाने के संबंध में विशिष्ट शिकायतों की जांच करना।

(ग) राज्य सरकार को उन रक्षोपायों की कार्यप्रणाली पर आर्थिक और ऐसे अन्य विषयों पर जैसा उचित समझे, प्रतिवेदन प्रस्तुत करना।

(घ) अनुसूचित जातियों के संरक्षण, कल्याण, विकास और अभिवृद्धि के संबंध में ऐसे अन्य कृत्यों का, जो राज्य सरकार द्वारा उसको निर्दिष्ट किए जाएं, निर्वहन करना।

(ङ) अन्य कोई विषय, जो सरकार आयोग को सौंपे।

नोट:- (प) आयोग सरकार के अनुमोदन से आर्थिक एवं सामाजिक अध्ययन के लिए सरकारी विभागों या अन्य किसी संस्था की सहायता ले सकेगा।

(पप) आयोग अपने कार्यों के सम्पादन हेतु राज्य सरकार के किसी विभाग या अधिकारी से आवश्यक सूचना मांगने तथा अधिकारियों की बैठक बुलाने हेतु सक्षम होगा।

(पपप) आयोग ऐसा कोई कार्य नहीं करेगा, जो राष्ट्रीय अनुसूचित जाति आयोग के उद्देश्यों के प्रतिकूल हो।

4. (क) अध्यक्ष/उपाध्यक्ष एवं सदस्यों का कार्यकाल पदभार ग्रहण की तिथि से तीन वर्षों की अवधि तक रहेगा।

(ख) कोई भी सदस्य अथवा अध्यक्ष राज्य सरकार को सम्बोधित स्वलिखित पत्र प्रेषित कर किसी भी समय अपने पद से इस्तीफा दे सकते हैं।

(ग) राज्य सरकार किसी अध्यक्ष/उपाध्यक्ष एवं सदस्य को उपर्युक्त कारण



से ;जो बाद में विहित किया जा सकेगा उन्के पद से विमुक्त कर सकती है।”

21. The petitioner No. 1 was appointed as Chairman and the petitioners no. 2 and 3 were appointed as Members of the aforesaid Commission vide notifications dated 25.7.2023, for a period of maximum three years from the date of assuming charge of the post in question. However, the petitioners were removed from their posts with immediate effect in public interest and from administrative view point as per Clause 4 (Ga) of the notification dated 18.11.2009, vide notification dated 02.02.2024, issued by the Secretary, General Administration Department, Government of Bihar, Patna, i.e. the Respondent No. 3. This Court finds that it has been vehemently argued on behalf of the petitioners that even if the doctrine of pleasure is made applicable to the present case, it does not result in dispensation with the need for a cause for withdrawal of the pleasure and also does not give license to the Government to act arbitrarily, capriciously or whimsically (Re.: B.P. Singhal's case) and the observance of the principles of natural justice is imperative as also termination of an appointment without existence of a cogent reason is arbitrary.

22. Now advertng to the foremost and the primary argument



advanced by the Ld. Senior Counsel for the petitioners regarding the doctrine of pleasure, this Court finds that the petitioners were appointed by way of nomination by the State Government without any application having been called from them much less they having undergone any selection process and now they have been removed from their posts by the impugned order dated 02.02.2024, which specifically says that they are being removed from their posts with immediate effect in public interest and from administrative view point, thus it cannot be said that the present case is a case where the removal of the petitioners is totally attributable to the pleasure of the Government. In fact, Rule 4 (Ga) of the aforesaid resolution dated 18.11.2009 also stipulates that the Chairman / Vice-Chairman and Members can be removed from their posts for such reasons as may be prescribed later on. In the present case, the Respondents have elaborately mentioned the reasons, i.e. poor performance of the petitioners, they having made tours to their native district or nearby places, which has caused heavy loss to the Government's exchequer without serving any fruitful purpose and the petitioners not functioning in larger public interest as also for achieving the desired administrative objectives, as has already been discussed hereinabove in the preceding paragraphs, leading



to the State Government forming an opinion that the Commission was not functioning in public interest and for desired administrative objectives, hence continuance of the petitioners and others was not in the larger public interest, resulting in issuance of the aforesaid resolution dated 02.02.2024, removing the petitioners from their posts. Admittedly, the aforesaid Commission is not a statutory body nor the petitioners are governed by any rules made under proviso to Article 309 of the Constitution of India, hence they do not hold civil posts, thus protection under Article 311 of the Constitution of India is consequently not available to them, especially since they have not been visited with evil consequences. Thus, this Court finds that the aforesaid decision dated 02.02.2024 is neither arbitrary nor capricious nor whimsical. Nonetheless, this Court would like to refer to a Constitution Bench judgment, rendered by the Hon'ble Apex Court in the case of ***PU Myllai Hlychho & Others vs. State of Mizoram & Others***, reported in ***(2005) 2 SCC 92***, paragraphs no. 22 to 26 whereby are reproduced herein below:-

“22. The termination of the membership of four members from the Council was also challenged on the ground that these members were not given any notice and they were not heard and that there was a violation of the



principles of natural justice. It is pertinent to note that these members held their office at the pleasure of the Governor.

23. Ordinarily, the "pleasure" doctrine comes into play when the appointment of a Crown servant is terminated. Lord Diplock in **Chelliah Kodeeswaran v. Attorney General of Ceylon**, AC at p. 1118, stated the English law as follows:

"It is now well-established in British constitutional theory, at any rate as it has developed since the eighteenth century, that any appointment as a Crown servant, however subordinate, is terminable at will unless it is expressly otherwise provided by legislation."

24. The constitutional protection and privileges available under Article 311 to a person who holds a civil post under the Union or States are not applicable to a member of a Council who is nominated by the Governor.

25. This Court in **Rash Lal Yadav (Dr.) v. State of Bihar** held that the principles of natural justice are not applicable in the absence of express words. That was a case where the removal from the Chairmanship of the Bihar Schools Board was challenged. Relying on an earlier decision in **A.K. Kraipak v. Union of India**, it was held that if the statute, expressly or by necessary implication, omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness.



26. Therefore, the contention of the appellants that these members of the Council were not heard before their nomination/appointment was terminated and hence illegal, cannot be accepted, as they held their office at the pleasure of the Governor.”

23. Thus, it is evident from the aforesaid judgment, rendered by the Constitution Bench of the Hon’ble Apex Court in the case of ***PU Myllai Hlychho & Others*** (supra) that in case the office of the concerned incumbent is at the pleasure of the concerned authorities, opportunity of hearing before termination is not required apart from the constitutional protection and privileges available under Article 311 being not available to a nominated incumbent. In the present case, the petitioners have also been nominated by the State Government, hence when the said nomination has been withdrawn by way of removal of the petitioners from their posts vide order dated 02.02.2024, it is not imperative to insist for compliance of the principles of natural justice. This aspect of the matter also stands covered and answered by the judgments rendered by the Hon’ble Apex Court in the case of ***Om Narain Agarwal & Others*** (supra), ***Krishna*** (supra) and ***D.C. Saxena*** (supra).

24. This Court further finds that it is equally a well-settled law that if doctrine of pleasure is invoked for nomination, it can



also be invoked for removal or termination unless the legislature so prescribes. Reference in this connection be had to the judgment rendered in the case of *Saji D. Anand vs. State of Kerala & Others*, reported in (2016) SCC Online Ker 21468, the judgment dated 08.07.2013 rendered by the Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No. 10076 of 2013 (*Bhanubhai Labhubhail Mehta & Others vs. State of Gujarat & Others*), the judgment dated 07.08.2024 rendered by the Hon'ble High Court of Andhra Pradesh at Amravati in Writ Petition No. 14849 of 2024 (*Singareddy Nagamani vs. State of Andhra Pradesh & Others*) and the judgments rendered in the case of *A.M .Bhashkar & Ors.* (supra), *Ramdhari Dagadu Sinde & Ors.* (supra) and *Sri N Shankarappa* (supra). In fact the principles laid down in the case of *B.P. Singhal* (supra) pertaining to the Doctrine of Pleasure is also not applicable in the present case inasmuch as in the said case it has been held that the President can remove Governors without any show cause notice and without assigning any reason with the only rider that reasons should exist and removal should not be whimsical, malafide and capricious. In the case in hand the petitioners have not been able to demonstrate any malafides and moreover, there cannot be any malafide, since



no enunciations have been made in the notification of removal/withdrawal of nomination of the petitioners.

25. Now coming to the judgments relied upon by the learned Senior Counsel for the petitioners, this court finds that fervent reliance has been placed on a judgment rendered in the case of ***B.P. Singhal*** (supra), however this Court finds that the same is not applicable in the facts and circumstances of the present case, inasmuch as in the said case removal of Governors by the President under Article 156(1) of the Constitution of India was under consideration whereas in the present case the issue pertains to non-statutory Scheduled Caste Commission, apart from the fact that that no such circumstances are prevalent in the present case as has been envisaged by the Hon'ble Apex Court in paragraphs no. 71 and 80 of the said Judgment, which are reproduced herein below:-

“71. When a Governor holds office during the pleasure of the Government and the power to remove at the pleasure of the President is not circumscribed by any conditions or restrictions, it follows that the power is exercisable at any time, without assigning any cause. However, there is a distinction between the need for a cause for the removal, and the need to disclose the cause for removal. While the President need not disclose or inform the cause for his removal to the Governor, it is



imperative that a cause must exist. If we do not proceed on that premise, it would mean that the President on the advice of the Council of Ministers, may make any order which may be manifestly arbitrary or whimsical or mala fide. Therefore, while no cause or reason be disclosed or assigned for removal by exercise of such prerogative power, some valid cause should exist for the removal. Therefore, while we do not accept the contention that an order under Article 156 is not justiciable, we accept the contention that no reason need be assigned and no cause need be shown and no notice need be issued to the Governor.

80. *The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in Daly, in law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for the other. Mala fides may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments. For withdrawal of pleasure in the case of a Minister or an Attorney General, loss of confidence may be a relevant ground. The ideology of the Minister or Attorney General being out of sync with the policies or ideologies of the Government may also be a ground. On the other hand, for*



withdrawal of pleasure in the case of a Governor, loss of confidence or the Governor's views being out of sync with that the Union Government will not be grounds for withdrawal of the pleasure. The reasons for withdrawal are wider in the case of Ministers and Attorney General, when compared to Governors. As a result, the judicial review of withdrawal of pleasure, is limited in the case of a Governor whereas virtually nil in the case of a Minister or an Attorney General.”

Thus, it would be seen that firstly in case when a Governor holds office during the pleasure of the Government and the power to remove at the pleasure of President is not circumscribed by any conditions or restrictions, then the power can be exercised any time without assigning any reason, however, some valid cause should exist for such removal. As far as the present case is concerned, the petitioners have failed to demonstrate any malafides on the part of the Respondents and moreover, valid cause exists for their removal i.e. in public interest and from administrative view point, on account of them not functioning in larger public interest and for desired administrative objectives.

26. As far as reliance placed by the petitioners on the judgments, rendered in the case of ***Shardindu*** (supra) and ***Kumari Srilekha Vidyarthi & Ors.*** (supra) are concerned, the



same pertain to statutory appointments, not based on appointments made by the State Government by nomination, hence the said judgments would not have any applicability in the present case. As regards, the judgment rendered by the Hon'ble Apex Court in the case of *Mangilal* (supra) is concerned, the same is also distinguishable, inasmuch as the question therein was as to whether hearing before grant of compensation to victim in a criminal case is required or not. As regards, reliance placed on the judgment, rendered in the case of *Swadeshi Cotton Mills* (supra) is concerned, the issue therein was regarding pre-decisional hearing under Section 18AA of Industries Development and Regulation Act, 1951, hence the said decision is also not relevant in the facts and circumstances of the present case.

27. Now coming to the judgment rendered in the case of *Oryx Fisheries Pvt. Ltd.* (supra), this Court finds that the facts of the said case are also quite different, in as much as in the said case order of cancellation of registration of a company without assigning any reason was under challenge. As regards the judgment rendered in the case of *Nari Gunjan* (supra) is concerned, this Court finds that the same is also distinguishable in the facts and circumstances of the present case inasmuch as



the issue in the present case is regarding removal of petitioners from the posts on which they were nominated by the State Government. This aspect of the matter, in context of the present case, stands squarely covered by the judgment, rendered by the Constitution Bench of the Hon’ble Apex Court in the case of *PU Myllai Hlychho & Others* (supra).

28. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	11.11.2024
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