

Before Hon'ble M. R. Agnihotri & R. S. Mongia, JJ.

G. S. SHERGILL,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 11291 of 1992.

November 3, 1993.

Constitution of India, 1950—Art. 226 & 227—Punjab School Education Board Act, 1969—S. 4—Petitioner appointed Chairman of School Board for three years—Period shortened—Validity—If State Government bonafidely in the larger public interest decides that incumbent is not acting according to policies of State Government the tenure may be cut short and compensation be paid for the unexpired period.

Held, that in our considered view, if a decision of the State Government is in the larger public interest and it is arrived at with bona fides that a particular incumbent is not following or acting according to the policies of the State Government, the tenure may be cut short by compensating the incumbent by payment of dues for the unexpired period.

(Para 10)

J. K. Sibal, Sr. Advocate with Swarnjit Kohli and Lakhbir Singh Wasu, Advocate, for the Petitioner.

S. K. Sharma, Deputy Advocate General, Punjab, for the Respondents.

JUDGMENT

M. R. Agnihotri, J.

(1) The Punjab School Education Board (hereinafter referred to as the 'Board') was established under the provisions of the Punjab School Education Board Act, 1969 (In short the 'Act'). The constitution of the Board is provided under Section 4 of the Act, which is in the following terms :—

"4. *Constitution of the Board*:—The Board shall consist of a Chairman, Vice-Chairman and the following members:—

(a) *Ex officio* members, namely :—

(i) Vice-Chancellors of all the Universities established or that may be established by law in the State;

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- (ii) Secretary to Government in the Department of education or an officer of the Department but below the rank of a Deputy Secretary nominated by him;
 - (iii) Director of Public Instructions (Colleges), Punjab;
 - (iv) Director of Public Instructions (Schools), Punjab;
 - (v) Director, State Council of Educational Research and Training, Punjab.
- (b) Seven members to be nominated by the State Government out of the following categories of persons, namely :—
- (i) One member from amongst the District Education Officers and Circle Education Officers;
 - (ii) two members from amongst the Principals of Colleges affiliated to the Universities established by law in the State;
 - (iii) One member from amongst the lecturers of Colleges affiliated to the Universities established by law in the State;
 - (iv) One member from amongst the Heads of Senior Secondary School affiliated to the Board;
 - (v) One member from amongst the Heads of High Schools affiliated to the Board;
 - (vi) One member from amongst the School lecturers, the teachers who are State or National awardees;
- (c) One eminent scholar or writer or scientist, as may be nominated by the State Government; and
- (d) The Legal Remembrancer, Punjab or the Advocate General, Punjab, as may be nominated by the State Government;
- Provided that the Legal Remembrancer, Punjab if nominated as *ex officio* member by the State Government, may depute his nominee not below the rank of a Deputy Legal Remembrancer and Deputy Secretary to Government of Punjab to represent him on the Board; and
- (e) three members of the Punjab Legislative Assembly to be nominated by the Speaker of the Punjab Legislative Assembly.

- (2) The Chairman and the Vice-Chairman shall be appointed by the State Government upon such terms and conditions as it may think fit.
- (3) xx xx xx xx
- (4) The appointment of the Chairman and Vice-Chairman and the nomination of every member shall be notified by the State Government in the Official Gazette."

According to Section 5 of the Act, the term of office of the Chairman has been provided as three years. Section 5 of the Act is reproduced below :—

"5. *Term of office of Chairman, Vice-Chairman and members:*— (1) The term of office of the Chairman or Vice-Chairman shall be three years from date of publication of the notifications in terms of the provisions of sub-section (4) of section 4, which in special circumstances may be extended for such further period not exceeding three years at a time :—

Provided that no person appointed as Chairman or Vice-Chairman shall continue as such beyond the age of sixty-five years."

(2) According to the averments made in the petition, the petitioner professes himself to be an educationist of long standing of nearly 40 years. During the period, he has worked as Principal of Sikh National College at Banga for two years from April 1965 to July 1967; as Principal of Guru Gobind Singh College, Chandigarh, from July 1967 to December 1975 and thereafter as Principal of Khalse College Amritsar from December 1975 to December 1989. He has also worked as Dean of the College Development Council of Guru Nanak Dev University, Amritsar, from 25th October, to 31st March, 1990. *Vide* notification issued by the State of Punjab, dated 15th January, 1991, the petitioner was appointed as Chairman of the Board for a period of three years under Section 4(2) of the Act. Translated copy of the notification has been appended as Annexure P-1/T with the writ petition and the same may be reproduced as under :—

"In exercise of the powers under sub-section (2) of Section 4 of the Punjab School Education Board Act, 1969, the President of India is pleased to appoint Shri Gurbaksh

Singh Shergill as Chairman of the Punjab School Education Board. This appointment shall be for three years from the date of issuance of this notification.

2. The notification regarding terms and conditions of this appointment would be separately issued."

(3) It may be noticed here that the appointment of the petitioner was made during the President's Rule. The elected Government came into office after the elections were held in February, 1992.

(4) *Vide* notification dated 12th August, 1992 of the State Government (Copy Annexure P-4), the petitioner's services as Chairman of the Board were dispensed with immediate effect and Shri Rajesh Chhabra, Secretary to Government, Punjab, Education Department, was appointed as a Chairman in addition to his own duties. However, with effect from 14th August, 1992, Shri Harnarinder Singh, Respondent No. 4, was appointed as the new Chairman of the Board. The notification, Annexure P-4 dispensing with the services of the petitioner has been impugned by him in the present writ petition.

The notification, dated 12th August, 1992, (Annexure P-4) may be reproduced hereinunder :—

- "No. 24/6/92-3 Education 4. The Governor of Punjab is pleased to dispense with the services of Shri G. S. Shergill as Chairman of Punjab School Education Board with immediate effect.
2. The Governor of Punjab is further pleased to appoint Shri Rajesh Chhabra, Secretary to Government, Punjab, Education Department as Chairman of Punjab School Education Board with immediate effect in addition to his present duties.
 3. Shri G. S. Shergill will be paid the salary and allowances in lumpsum for his unexpired term of appointment."

The petitioner's counsel raised the following points to assail the impugned notification :—

- (i) The post of Chairman of the Board is a tenure post under the Act and the tenure cannot be cut short except for justifiable reasons and that too after complying with the

principles of natural justice and affording opportunity to the incumbent to explain as to why the tenure should not be cut short.

- (ii) The impugned notification has been issued arbitrarily and due to *mala fides* of Respondent No. 2, Shri Harnam Dass Johar, the then Education Minister, Punjab.
- (iii) The impugned order/notification does not disclose any grounds or reasons for dispensing with the services of the petitioner.

(5) In support of point (i), the learned counsel for the petitioner submitted that it is evident from Section 5 of the Act (already reproduced above), that the tenure of the office of the Chairman has been fixed by the Statute itself to be three years and this term of office cannot be negotiated between the Government and the person to be appointed. The minimum term has to be three years, according to Section 5 of the Act. and, consequently, it is apparent that the post of the Chairman of the Board is a tenure post. The term can be cut short only if during the tenure of three years, the incumbent attains the age of 65 years (See proviso to Section 5). Further, according to Section 7 of the Act, the term of office of the Chairman can be less than three years if a vacancy occurs in the office due to resignation, removal, disqualification or otherwise, then the subsequent incumbent of the office would hold the same for the unexpired portion of the term of his predecessor. The learned counsel for the petitioner further submitted that qualifications for appointment as Chairman are mentioned in Section 6 of the Act and Section 9 of the Act further provides as to under what circumstances the members (which includes the Chairman) shall vacate the office. Sections 6 and 9 are reproduced as under:—

“6. Qualification for appointment of Chairman and Vice-Chairman:—No person shall be appointed as Chairman or Vice-Chairman unless :—

- (a) he was served the Central Government or State Government or both on a gazetted post for a period of not less than fifteen years; or
- (b) he has an experience of teaching in any school, college or University established by law in India, or partly in one and partly in any other of the aforesaid institutions for a period of not less than twenty years, out of which he should have served as Principal of a

College, or Registrar or Head of the Department of such a University for a period of not less than five years :

Provided that nothing in this shall apply to an officer who is serving under the State Government and is sent on deputation as Chairman or Vice-Chairman."

"9. Circumstances under which a member shall vacate office:—If a member :—

- (a) ceases to have the qualifications or ceases to hold the office by virtue of which he became member;
- (b) becomes subject to any disqualification referred to in section 8; or
- (c) absents himself, without permission of the Chairman from three consecutive meetings of the Board the State Government shall declare his office to be vacant."

Section 8 of the Act lays down some disqualifications for a member to be appointed or for continuing as a member. The said Section is as under :—

"Disqualifications :—(1) A person shall be disqualified for being appointed or nominated or for continuing as member, if he directly or indirectly, whether by himself or by his partner or by any person or body of persons in trust for him or for his benefit or on his account has or had any share or interest in :—

- (a) any book published for use in an institution ;
- (b) a firm engaged in printing, publishing or preparation of any book meant for use in an institution ;
- (c) a contract with the Board :

Provided that the disqualification referred to in clause (a) shall cease after the expiry of a period of ten years of the date on which the book in question was published.

(2) If any question, dispute or doubt arises as to whether or not any person is eligible for membership of the Board or has incurred any disqualification whether before or after becoming a member, it shall be determined by the State Government, whose decision shall be final."

(6) On the basis of the provisions of Sections 8 and 9 of the Act, the learned counsel submitted that it is only under the circumstances mentioned in Sections 8 or 9 that the terms of the office of the member of the Board, including the Chairman, could be cut short. However, the learned counsel added that before invoking the provisions of Section 8 or Section 9 of the Act, for cutting short the tenure, the incumbent must be given a show cause notice to explain his position. According to him, no reasons have been given in the impugned notification and in the written statement filed on behalf of the State Government it has been stated that the services of the petitioner were dispensed with in accordance with law and the Act, keeping in view the larger public interest as viewed by the Government. According to the learned counsel, it becomes quite obvious from the written statement that the tenure of the office of the petitioner had not been cut short for any of the contingencies envisaged by Section 8 or by Section 9 of the Act, *ibid.* Further, it was argued by the learned counsel for the petitioner that no justifiable reasons have been stated even in the written statement for dispensing with the services of the petitioner. In support of his contention, that the post in question is a tenure post and the tenure could only be cut short for justifiable reasons, the learned counsel relied upon a judgment of the Apex Court, in *Dr. L. P. Aggarwal v. Union of India and others* (1). Further, the petitioner relied upon another judgment of the Apex Court in *Dr. Bool Chand, Vice-Chancellor, Kurukshetra University v. The Chancellor, Kurukshetra University* (2), in support of his contention that if the tenure of an incumbent on a tenure post was to be cut short on some alleged misconduct and Act or statute lays down no procedure, the tenure of office could not be interrupted without giving an opportunity of defence and explanation.

(7) As no reasons have been mentioned in the written statement filed on behalf of Respondent No. 1 as to why the petitioner's services were dispensed with, we directed the State counsel to produce the relevant record leading to the issuance of the impugned notification. From the record, we found that the matter had been discussed by the Education Minister upto the level of the Chief Minister before issuing the impugned notification. In the noting file, it was mentioned by the then Education Secretary that the file in which the case was processed had been retained by the then Education Minister Shri Harnam Dass Johar. We sent for that file also, but an affidavit has been filed

(1) J.T. 1992 (4) S.C. 220.

(2) 1968 S.L.R. 119.

on behalf of the State Government by Shri S. K. Tuteja, Secretary to Government, Punjab, Department of Education, dated 22nd October, 1993 that the said file was not available in the department and he had checked up with the then Education Minister, Shri Harnam Dass Johar, but the said file was also not available with him. However, a supplementary affidavit had been filed on 22nd September, 1993 by Shri Rajesh Chhabra, I.A.S. who was the Education Secretary at the relevant time, in which he had mentioned that the relevant file wherein the note was recorded mentioning the circumstances leading to the dispensing with the services of the petitioner, had been retained by the then Education Minister. In the absence of the file, he was unable to recollect/recall all the reasons which led to the issuance of the order, dated 12th August, 1992. However, on the basis of his recollection, he was making the averments in the supplementary affidavit. It is averred in the affidavit that after coming into office of the new elected Government, the Education policy was re-determined by it. However, the petitioner could not adjust with the new education policy of the State, and therefore, the services of the petitioner were dispensed with in the larger public interest as viewed by the Government. Paras 3, 4 and 5 of the said affidavit are reproduced below :—

- “3. That the State Government was committed to provide cheaper books to the students, whereas the text books being supplied by the Punjab School Education Board were priced on higher side, N.C.E.R.T. is the Central Government Organisation for supply of cheaper books to the students. The prices of the books are fixed by the N.C.E.R.T. which generally act as guiding principles for fixation of price of books by School Boards in all the States. The petitioners was requested by the State Government to reduce the prices of the text books and the Board should not charge prices in excess of those fixed by N.C.E.R.T. The State Government was committed to a policy whereby students are supplied text books at a cheaper rate and the text books are supplied free of cost to the students belonging to the category of Scheduled Castes and Backward Classes. The petitioner disregarded the advice/policy of the State Government. This was the major plank where difference of opinion on the main policy issue arose between education policy of the newly elected Government and the petitioner.

4. That on the failure of implementation of policy as outlined in para 3, above, the State Government observed that printing and publishing of the texts books by the Punjab School Education Board was very costly. It was suggested to the petitioner to find out possibility of getting the books published from the private publishers in order to make the books available to the students at a cheaper cost. The petitioner insisted that the Board must keep on the monopoly of providing books even if it costs the students more. The petitioner was adamant not to fall in line with the policy of the Government and resisted all efforts which were aimed at providing cheaper books to the students.
5. That the State Government was also committed to see that the certificates issued by the Punjab School Education Board are not disregarded and they are not devalued for any reason whatsoever. It was for the first time in the history of the Board that the Vice-Chancellor, Guru Nanak Dev University did not accept the authenticity of the certificates issued by the Board on the ground that the Chairman after declaration of the result of the students of 10+2 classes increased 5 marks to enable them to appear in the P.M.T. test. It was done after the declaration of the result. The Vice-Chancellor further pointed out that the award of such marks is not in tune with the education policy and could not be accepted. It was for the first time that the certificates issued by the Board were not accepted by the University situated in the State of Punjab."

(8) The learned counsel for the respondents submitted that the Government had an inherent right to cut short the tenure in the larger public interest of the State and since the action was not punitive in nature nor it was on account of any misconduct on the part of the petitioner, the question of giving any show cause notice did not arise. It was further submitted that the petitioner was not deprived of any emoluments as the entire dues for the unexpired period were paid to the petitioner in lump sum. The State Government could not be compelled to take daily duties or to assign work to a person, who, according to the State Government, was not adjusting to its new education policy. It was submitted that *Dr. L. P. Aggarwal's case* (supra) has not application to the facts of the present case, in as much as that was a case where to a tenure post, Rules of premature retirement were sought to be applied. As far as

Dr. Bool Chand's case (supra) of the Supreme Court is concerned, the learned counsel submitted that since the tenure was sought to be cut short on the basis of some alleged misconduct on the part of Dr. Bool Chand, it was observed that show cause notice had to be issued to afford an opportunity to the incumbent to give explanation.

(9) In reply, it was submitted by the learned counsel for the petitioner that the payment of the entire dues for the unexpired period is no answer to cut short the tenure, as the incumbent in the present case is fighting for the status and the honour and self respect, which the office of the Chairman carry and it is not for the sake of money alone that a person holds such a high office. He further submitted that policies of the State Government, if at all, were to be carried out by the entire Board and not by the Chairman alone. Further, the reasons mentioned by Mr. Chhabra in his supplementary affidavit for dispensing with the services of the petitioner amount to misconduct and opportunity to explain his position should have been granted to the petitioner.

(10) After hearing the learned counsel for the parties, we are of the view that it cannot be denied that the tenure of the office of Chairman is fixed under Statute and it is, therefore, a tenure post. Where a Statute fixes the term of the office, then the post is said to be a tenure post. This was also so held by the Supreme Court in *Dr. L. P. Aggarwal's Case* (Supra). However, the question that arises is that if a *bona-fide* decision is taken by the Government to cut short the tenure as the incumbent is not following the education policy and is not working in the interest of the State Government, then would it be possible for the State Government to cut short the tenure by paying the dues for the unexpired period. Ancillary question that arises is whether the reasons or the grounds for the dispensation of the services of the petitioner amount to misconduct, for which opportunity had to be granted to him to explain his position before taking the impugned action. In our considered view, if a decision of the State Government is in the larger public interest and it is arrived at with *bona-fides* that a particular incumbent is not following or acting according to the policies of the State Government, the tenure may be cut short by compensating the incumbent by payment of dues for the unexpired period. In the present case, the reasons mentioned in the supplementary affidavit of Shri Rajesh Chhabra, which, we have to rely upon in the absence of the original file having been made available, do not, in our view, constitute allegations of misconduct against the petitioner for which an opportunity was required to be given to the petitioner to explain his position.

Dr. Bool Chand's case (supra) will have no application to the facts of the present case, as that was a case where the Vice-Chancellor's term of office was sought to be cut short on the ground of some misconduct. No doubt, the case in hand does not fall in any of the contingencies mentioned in Section 8 or Section 9 of the Act, but as observed above, the State Government can under the circumstances as existed in the present case, cut short the tenure by paying the entire dues for the unexpired period. The impugned order, to our mind, was not punitive in nature.

(11) As far as the question of *mala-fides* is concerned, the same have been categorically denied by the then Education Minister, Shri Harnam Dass Johar. After going through the allegations, we also find that such allegations are not sufficient to hold, especially in view of the denial of the respondent, that the impugned notification had been issued arbitrarily or *mala-fide* at the instance of Respondent No. 2, Shri Harnam Dass Johar.

(12) So far as the third point is concerned, suffice it to observe that it is not necessary that the reasons for dispensing with the services of the petitioner should be mentioned in the notification itself. These can be supplied to the Court, if necessary, by showing the original record, and/or by filing affidavit of the concerned Officer. In the present case we find that there were justifiable reasons for dispensing with the services of the petitioner.

(13) For the reasons recorded above, we find no merit in this petition and the same is hereby dismissed. However, there will be no order as to costs.

J.S.T.

Before Hon'ble Mr. Justice J. L. Gupta, J.

LAKHWINDER SINGH BAJWA,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 16161 of 1990

January 23, 1992.

Punjab Town Improvement Act (IV of 1992)—S. 36(3)—Supply of copies of document—Failure to supply documents—Not only violative of principles of natural justice but also of the mandatory provisions of S. 36(3)—Acquisition liable to be quashed.