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DR. D.C. SAXENA

*v.*

STATE OF HARYANA & ORS.

MAY 8, 1987

B

[R.S. PATHAK, C.J. AND V. KHALID J.]

*Haryana Board of School Education Act, 1969, ss. 4A and 9—Distinction between—Whether removal of Chairman of the Board pursuant to a general policy is violative of s. 9.*

C

*Words and Phrases—"Terms of service"—Whether includes tenure of service.*

**The Haryana Board of School Education Act, 1969 by s. 4(A) stipulates that the Chairman, Vice-Chairman and Members of the Board shall hold office during the pleasure of the State Government.**

D

**Section 9 of the Act provides that the State Government may remove a member whose continuance in office is not in the interest of the Board provided that before making such order, the reasons for removal shall be communicated and he shall be given an opportunity of tendering an explanation in writing which shall be considered by the State Government.**

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**In exercise of powers conferred by the sub-section (4) of s. 3 of the Act, the appellant was appointed as Chairman of the Haryana Board of School Education for a period of two years. On his appointment as Chairman, he resigned his post as Professor-Director of the Punjabi University Regional Centre, Bhatinda and took over as Chairman on**

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**11th December, 1985. The appointment letter stated that the terms and conditions of the appointment will be notified later on.**

**The appellant received a communication dated 24.3.86 from the Education Department that the Government may curtail his tenure of office at any time. Subsequently he was served with an order stating**

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**that his terms of office had been curtailed with immediate effect and that he would cease to function as Chairman from 8.6.86. Similarly, with the termination of the appellant's services, the services of Chairmen of several other Boards and organisations were terminated. The appellant challenged the aforesaid order before the High Court in a writ petition which was dismissed in limine.**

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In appeal to this Court, he contended; (i) that the curtailment of the original period fixed, altered his position to his detriment and that this was done mala fide; (ii) that the word 'term' did not indicate the period of service and therefore, the government did not have the requisite authority to curtail his tenure; and (iii) that the procedure laid down under s. 9 of the Act was not followed and consequently his removal was void. On the other hand, it was argued by counsel for the respondents: (i) that appellant's tenure of service could be curtailed at any time by the government; (ii) that appellant's tenure of service was curtailed alongwith the Chairmen of 11 other Boards and corporations pursuant to a general decision taken by the State Government dispensing with the service of non-officials; (iii) that in the absence of any challenge to Rule 4A of the Act, the order of curtailment was valid in law since the appellant can be in service only during the pleasure of the government.

Dismissing the appeal, this Court,

HELD: 1. Section 4A is an insurmountable hurdle in the way of the appellant. If s. 4A is valid, the order of removal of the appellant has to be upheld. The validity of the section has not been challenged by the appellant either before the High Court or before this Court. Therefore the judgment of the High Court is upheld. [353D]

2. The expression 'terms of service'' clearly includes tenure of service. [353F]

3. It is apparent on a comparison of the terms of s. 4A and s. 9 that while the former deals with the general power of the State Government to terminate the tenure of the Chairman, Vice-Chairman and Members, the latter carves out a special field dealing with a category of cases where the State Government may remove a member whose continuance in office is not in the interest of the Board. A case falling within s. 9 is a case where removal must be for reasons personal to the member and flow from his conduct or such other factor which requires that, in the interest of justice and fair play, he should be given an opportunity to tender an explanation. In the view that s. 9 carves out a special field, s. 4A is left with an abridged scope. So abridged, it deals with cases other than those where the continuance of a member calls for termination in the interest of the Board and requires that such member be given an opportunity of tendering an explanation before such removal. Section 4A can be said to include cases where the tenure of a Chairman, Vice-Chairman or a member is liable to termination on grounds of general policy. [352E-H; 353A]

**In the instant case, the termination of the appellant's tenure was neither prompted by mala fides nor was punitive in nature. The appellant's services were dispensed with because of a general decision taken by the government dispensing with the services of non-officials and non-MLAs as Chairman of the Boards and Corporations excluding the Kurukshetra Development Board and the Tourism .Corporation, Haryana. [353B-C]**

**[The Court expressed the hope that the Punjabi University will be generous enough to accommodate the appellant properly.]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3178 of 1986.

From the Judgment and Order dated 19.6.1986 of the Punjab and Haryana High Court in C.W.P. No. 3096 of 1986.

Appellant-in-person.

Dr. Y.S. Chitale, Harbanslal and Ravinder Bana for the Respondents.

The Judgment of the Court was delivered by

**KHALID, J.** 1. The appellant appeared in person and argued his case with clarity and competence. At times he was emotionally surcharged. He perhaps, feels that he had a raw deal at the hands of the authorities. In the Special Leave Petition he has given in great detail his high qualifications and meritorious achievements in the various offices he held. Shorn of these details the necessary facts, in brief, for the disposal of this appeal are as follows:

2. The appellant was appointed as Chairman of the Haryana Board of School Education as per order dated 10-12-1985. At that time he was holding the post of Professor-Director of the Punjabi University Regional Centre, Bhatinda. On his appointment as the Chairman of the said Board he resigned his post as Professor-Director and took over as the Chairman of the Board on 11th December, 1985. His original appointment was for a period of 2 years. The order of appointment reads as follows:

> "In exercise of the powers conferred by sub-section (4) of section 3 of the Haryana Board of School Education Act,

1969 (as amended from time to time), the Governor of Haryana is pleased to appoint Dr. D.C. Sexena, Professor-Director, Punjabi University Regional Centre, Bhatinda, as Chairman of the Haryana Board of School Education, in place of Shri Anil Razdan, I.A.S., with immediate effect for the period of two years. A

2. The terms and conditions of his appointment will be notified later on." B

While he was holding the office as Chairman of the Board thus, he received a communication dated 24-3-1986, from the Education Department of the Haryana Government informing him that the Government may curtail his tenure of office at any time. The relevant portion of the order reads as follows:- C

"No. 19/40/83-Edu. III(5). In continuation of Haryana Government order No. 19/40/83 Edu. III(5) dated 10th December, 1985, and in exercise of the powers conferred by sub section (4) of Section 3 of the Haryana Board of School Education Act, 1969 (as amended from time to time), the Governor of Haryana is pleased to prescribe the following terms and conditions of appointment of Dr. D.C. Saxena as Chairman of the Board of School Education, Haryana, from the date he took over charge as such: D E

*Tenure of Office*

His tenure of office shall be for a period of two years from the date of assuming charge. The Govt. may, however, curtail the tenure at any time. F

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The appellant objected to this by his letter dated 3-4-1986, to the Commissioner-cum-Secretary, Education Department, Haryana, Chandigarh, marking a copy of the then Chief Minister of Haryana. On 7th June, 1986, he was served with an order that his term of office had been curtailed with immediate effect and that he would cease to H

A function as Chairman from 8-6-1986. This order is extracted below:

> "In exercise of the powers conferred by Section 4-A of the Haryana Board of School Education Act, 1969, and in accordance with the terms of appointment under the heading "Tenure of Office," issued vide order No. 19/40-83
B Edu. III(5) dated the 24th March, 1986, the Governor of Haryana is pleased to curtail the tenure of office of Dr. D.C. Saxena as Chairman, Haryana Board of School Education with immediate effect and orders that he shall cease to function as such with immediate effect from 8-6-1986.
>
C Shri Vivek Mehrotra, I.A.S., Director, School Education, Haryana, will hold the charge of office of the Chairman, Haryana Board of School Education in addition to his own duties till further orders."

The appellant challenged this order by filing a writ petition in Punjab
D and Haryana High Court on 10th June, 1986. A Division Bench of the High Court issued notice and directed status quo, as on that day, to continue. On 19th June, 1986, the matter was listed before another Division Bench and the writ petition was dismissed in limine. This appeal by special leave arises from the said order.

E 3. The appellant's case is that his original appointment was for two years at a time when he was holding a prestigious post, that he relinquished that post and took charge of the new post, that the curtailment of the original period fixed altered his position to his detriment and that all this was done *mala fide*. The appellant took us through the facts in detail to highlight the case of *mala fides* to
F persuade us to accept his case that the curtailment and removal was punitive and that it was done in violation of the law as laid down by this Court in various decisions.

4. The case of the State, as disclosed in the affidavit filed by them, is that the affairs of the Board of School Education, Haryana are
G governed by the Haryana Board of School Education Act, 1969 (hereinafter referred to as the Act). Sub-section (4) of Section 3 of the Act stipulates that the Chairman and Vice-Chairman of the Board shall be appointed by the State Government, upon such terms and conditions as it may think fit and they shall hold office at the pleasure of the State Government. It was in exercise of the powers conferred
H under Sub-Section (4) of Section 3 of the Act that the appellant was

appointed Chairman. In the appointment letter, it had been specifically provided that the terms and conditions of the appointment would be notified later. Subsequently, by communication dated 24th March, 1986, he was told that his tenure of service could be curtailed at any time by the Government. The State Government had taken a general decision on 6th June, 1986, dispensing with the services of non-official/non-MLAs as Chairman of the Boards and Corporations excluding Kurukshetra Development Board and Tourism Corporation, Haryana. It is stated in the Counter Affidavit that this general order was examined by the Secretary, Education Department, to see whether the consequent termination of the appellant would be legal and in public interest or whether an exception could be made in his case in the interest of the Board. After the examination of the relevant files in the Education Department, it was decided that the appellant's services could also be dispensed with by curtailing his tenure. Along with him, Chairmen of eleven other Boards and Corporations were also dropped. It was pursuant to this decision that his tenure of service was curtailed with immediate effect by the communication dated 7th June, 1986. It is stated that Section 4-A of the Act enabled the Government to do this. In the absence of any challenge to this rule, the order of curtailment was valid in law since the appellant could be in service only during the pleasure of the Government.

5. The first respondent in this appeal is the State of Haryana and the second respondent a member of the Legislative Assembly and the son of the present Chief Minister of Haryana. The appellant was appointed Chairman of the Board, when Shri Bhajan Lal was the Chief Minister. The order informing him that his tenure would be for two years and that the Government could "curtail this tenure at any time" was also issued when Shri Bhajan Lal was the Chief Minister. In the original order of appointment, it was indicated that the tenure of his office would be for two years. Only four months later he was alerted by another order that the Government could curtail his tenure at any time. He must have been aware of Section 4-A which reads as follows:-

> "4-A. Chairman, Vice-Chairman and members to hold office during pleasure of State Government. Notwithstanding anything contained in Section 3 or Section 4 or any other provision of this Act, the Chairman, Vice-Chairman and members of the Board shall hold office during the pleasure of the State Government."

A An argument was attempted to be advanced before us that the procedure laid down in Section 9 was not followed in his case and that this omission rendered his removal bad. For a better appreciation of this contention, we quote section 9:

> "9. Power to remove members: If, in the opinion of the
B State Government, the continuance in office of any person as a member is not in the interest of the Board, the State Government may, in consultation with the Board, make an order removing such person from such membership;
>
> Provided that before making such order, the reasons for his
C proposed removal shall be communicated to him and he shall be given an opportunity of tendering an explanation in writing which shall be duly considered by the State Government."

It is clear that the proviso to the Section makes it obligatory on the
D State Government to communicate the reasons for the proposed removal of a member and to give him an opportunity of tendering his explanation in writing and also a duty on the State Government to consider it. It was argued that the Chairman of the Board is also a member and his removal without complying with the procedure laid down in Section 9 is against law and has to be set aside.

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6. The contention that Section 9 has been violated is wholly without force because, in our opinion, Section 9 does not come into play at all in this case. It is apparent, on a comparison of the terms of Section 4-A and Section 9, that while the former deals with the general power of the State Government to terminate the tenure of the
F Chairman, Vice-Chairman and members, the latter carves out a special field dealing with a category of cases where the State Government may remove a member whose continuance in office is not in the interest of the Board. A case falling within Section 9 is a case where removal must be for reasons personal to the Member and flow from his conduct or such other factor which requires that, in the interest of justice and fair
G play, he should be given an opportunity to tender an explanation. In the view that Section 9 carves out a special field, Section 4-A is left with an abridged scope. So abridged, it deals with cases other than those where the continuance of a member calls for termination in the interest of the Board and requires that such member be given an opportunity of tendering an explanation before such removal. Section
H 4-A can be said to include cases where the tenure of a Chairman,

Vice-Chairman or a member is liable to termination on grounds of general policy. On the facts and circumstances, it is clear that the termination of the appellant's tenure was the result of the policy decision taken by the Government to bring in a new class of Chairmen in different Boards in the State. From the material on record we are not satisfied that the termination of the Appellant's tenure was prompted by *mala fides* or was punitive in nature. The Appellant's services were dispensed with because of a general decision taken by the Government dispensing with the services of non-officials and non-MLAS as Chairmen of the Boards and Corporations excluding the Kurukshetra Development Board and the Tourism Corporation, Haryana. Similarly with the termination of the Appellant's services the services of Chairmen of several other Boards and Organisations were terminated.

It is clear, therefore, that if Section 4-A is valid the order of removal of the Appellant has to be upheld. The validity of Section has not been challenged by the Appellant either before the High Court or before us except in a casual manner in the Written Submissions filed before this Court. The High Court has rightly held that Section 4 is an insurmountable hurdle in the way of the Appellant. We have, therefore, although with extreme reluctance having regard to the personal merit of the Appellant, to uphold the Judgment of the High Court.

7. The appellant, in desperation, put forward another plea, that the expression "terms and conditions of service" would not take within its ambit "tenure of service". In other words, his case was that the word "term" did not indicate the period of service and that therefore, the Government did not have the requisite authority to curtail his tenure. This plea was met by the respondents' counsel saying that the word 'term' included the tenure of service also. Both sides invited us to Dictionaries in support of their respective cases. We do not think it necessary to seek support from the Dictionary for this purpose. The expression "terms of service" clearly includes tenure of service. We regret, we cannot help the appellant on this plea either.

8. In view of the peculiar facts of this case, we do not think it necessary to consider the various authorities cited before us regarding the violation of Article 311(2) and violation of natural justice. We are extremely uphappy that such a situation has come to pass. Perhaps, the appellant's grievances are well founded. He left his prestigious post and joined the Board expecting to be there for two years when he had a raw deal at the hands of the authorities. However, on an application of the provisions of the Haryana Board of School Education (Amend-

A ment) Act, 1980 we find it difficult to rescue the appellant from his predicament. We trust and hope that the Punjab University will be generous enough to accommodate him properly.

The appeal has to fail and is dismissed without any orders as to costs.

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M.L.A. Appeal dismissed.