

*Before S.S. Saron And Kanwaljit Singh
Ahluwalia, JJ*

RANJIT SINGH BAJWA,—Petitioner

versus

STATE OF PUNJAB AND ANOTHER,—Respondents

CWP No. 12864 of 2007.

28th March, 2008

Constitution of India, 1950—Art. 226—Punjab School Education Board Act, 1969—S. 10(A)—Appointment of petitioner as Vice-Chairman of PSEB on same date when Election Code of Conduct come into force—Removal of petitioner—Respondents failing to show that petitioner had motivated his appointment—The fact that appointment of petitioner was made on same day that Election Code of Conduct had come into effect cannot be said to be such an act on part of petitioner whereby he motivated his appointment/joining—Removal of petitioner in violation of conditions provided in S.10(A)—Appointment of another person as Vice Chairman during pendency of petition—No ground to dismiss petition—Petition allowed, notification removing petitioner from service of Board and order relieving petitioner quashed.

Held, that the petitioner admittedly was appointed as Vice-Chairman of the Board on 29th December, 2006. On the same date, the Election Code of Conduct had come into force. Nothing has, however, been shown or placed on record to show that the petitioner had motivated his appointment. It may appropriately be noticed that in the show cause notice dated 31st May, 2007 it has not been alleged that the petitioner had motivated his appointment as Vice-Chairman of the Board, which is now the stand taken by the State Government in its written statement. Besides, it has been alleged by the State that the petitioner had presented his joining report on 2nd January, 2007 which was in violation of the Code of Conduct of Elections. However, Clause (xi) of the Election Code of Conduct only provides for preventing of appointments or promotions in Government/Public Undertakings being made during the period of the

operation of the Election Code of Conduct without prior clearance of the Election Commission. Therefore, the fact that the petitioner joined his duties during the operation of the Election Code of Conduct for conducting elections is not shown to be in violation of Clause (ix) or any other rules or instructions. The appointment having been made on the same date, it cannot ex facie be said that the appointment of the petitioner as Vice-Chairman of the Board was in violation of the Election Code of Conduct and thereby he had rendered himself liable for misconduct. The statutory rules clearly provide the grounds for removal of the Chairman or Vice-Chairman of the Board. It is nowhere stated in the show cause notice or even in the impugned order/notification of removal of the petitioner that his continuation in office is detrimental to 'Public interest' as is now contended. The fact of any public interest being involved is not mentioned. The provisions of Section 10(A) of the Act provide specific grounds for removal. Therefore, the incumbent on the post of Chairman or Vice-Chairman could be removed only in accordance with the said provisions, Besides, where statutory duties are imposed on the respondents and there is a failure on their part to discharge the statutory obligation, a writ of mandamus is liable to be issued. The petitioner has been removed from the service of the Board in violation of the conditions provided in Section 10(A) of the Act. The violation of the Election Code of Conduct of the Election Commission is not shown to be covered by Clauses (a) to (e) of Section 10(A) of the Act. The appointment of the petitioner as Vice-Chairman of the Board was made by the State Government. The fact that it was made on the same day that the Election Code of Conduct had come into effect cannot be said to be such an act on the part of the petitioner whereby motivated his appointment/joining as is the stand now taken in the written statement.

(Para 11)

Akshay Bhan, Advocate *for the petitioner.*

Chetan Mittal, Sr. Advocate, Addl. A.G. Punjab with

Jitender Kumar, Advocate.

Sukhwinder Kaur Saroya, Advocate *for respondent No. 2.*

S.S. SARON, J.

(1) The petitioner by way of the present petition under Articles 226 and 227 of the Constitution of India seeks quashing of the impugned notification, dated 3rd August, 2007 (Annexure P-6) whereby he has been removed from the post of Vice-Chairman, Punjab School Education Board (“Board”—for short) (respondent No. 2) and for quashing the order, dated 3rd August, 2007 (Annexure P-7) whereby he has been relieved from the services of the Board. A further prayer has been made for directing the respondents to re-instate the petitioner as Vice-Chairman of the Board.

(2) The petitioner states that he was working as Senior Professor and Dean Languages at Guru Nanak Dev University, Amritsar. He is an eminent scholar and has earned niche for himself being a hardworking educationist. Besides, his career is blotless throughout. The State Government appointed him Vice-Chairman of the Board till 30th May, 2009,—*vide* notification, dated 29th December, 2006 (Annexure P-1). In continuation of the appointment notification, the terms and conditions of service of the petitioner were circulated,—*vide* Annexure P-2. The petitioner joined as Vice-Chairman of the Board,—*vide* joining report, dated 2nd January, 2007 (Annexure P-3). All of a sudden, a show cause notice was issued to him,—*vide* memo dated, 31st May, 2007 (Annexure P-4). It was *inter alia* alleged therein that the Election Code of Conduct for conducting elections had been implemented or in other words had come into effect on 29th December, 2006, that is, the same date when the petitioner was appointed as Vice-Chairman of the Board. However, the petitioner it is alleged submitted his joining report on 2nd January, 2007 as Vice-Chairman of the Board. This was in clear violation of the Election Code of Conduct. It was alleged that in terms of the Election Code of Conduct, if an order of appointment or transfer had not been implemented then the same can be implemented only after taking fresh approval from the newly formed Government and after completion of the election process. Therefore, the petitioner it is alleged had violated the Election Code of Conduct. Accordingly, he was asked to file his reply within 15 days so as to clarify his position to the Government. The petitioner submitted his reply (Annexure P-5) to the show cause notice.

It is submitted that the petitioner was serving as Professor and Dean, School of Punjabi Studies, Guru Nanak Dev University, Amritsar. He informed the Vice-Chairman, Guru Nanak Dev University, Amritsar that he has been appointed as Vice-Chairman of the Board. A request was made on 29th December, 2006 on telephone for relieving him from the post occupied by him. However, on advice, the petitioner contacted the Registrar of Guru Nanak Dev University, Amritsar. The petitioner accordingly asked the Registrar to relieve him on 30th December, 2006, however, the same was a Saturday and a holiday. The next day i.e. 31st December, 2006 was a Sunday and 1st January, 2007 being New Year's day was again a holiday. The Guru Nanak Dev University, Amritsar relieved the petitioner on 2nd January, 2007 (Forenoon) and he joined the Board as Vice-Chairman on 2nd January, 2007 (Afternoon). The State Government has vide impugned notification, dated 3rd August, 2007 (Annexure P-6) removed the petitioner from the post of Vice-Chairman of the Board and on the same day i.e. 3rd August, 2007 relieved him from the services of the Board. The said orders removing the petitioner from the services of the Board and relieving him, as already noticed, are assailed in this petition.

(3) Notice of motion was issued to the respondents who have filed their separate replies. It is stated by respondent No. 1 that the terms and conditions of services (Annexure P-2) were never circulated by the State Government (respondent No. 1). The issuing of show cause notice and passing of the impugned orders are admitted. It is submitted that the petitioner had motivated his appointment/joining during the period when the Election Code of Conduct was in force. As such, no appointment could be made. His joining on the post of Vice-Chairman of the Board was in violation of the Election Code of Conduct. It is submitted that the action of the petitioner is a grave mis-conduct on his part which attracts the provisions of Section 10(A) of the Punjab School Education Board Act, 1969 ("Act" for short). Besides, in order to comply with the principles of natural justice, a show cause notice was issued.

(4) In the reply filed by the Secretary, Punjab School Education Board (respondent No. 2), It is submitted that Dr. Suresh Kumar Tandon has been appointed as Vice-Chairman of the Board,—*vide* Notification,

dated 3rd December, 2007 (Annexure R1). Besides, he has submitted his joining report on 18th December, 2007 and is working as Chairman of the Board. The petitioner has not impleaded Dr. Suresh Kumar Tandon and therefore, the writ petition is liable to be dismissed. It is also stated that the petitioner had motivated his appointment and joined during the period the Election Code of Conduct was in force.

(5) Mr. Akshay Bhan, Advocate appearing for the petitioner has submitted that the appointment of the petitioner as Vice-Chairman of the Board was in accordance with law and the procedure. The coming into effect of the Election Code of Conduct, it is submitted is of no consequence and is for the purposes of conducting the elections. The Code does not make the appointment of the petitioner to be illegal. It is submitted that the petitioner could only be removed from service of the Board in accordance with the provisions of Section 10(A) of the Act. None of the conditions as envisaged by Section 10(A) are applicable in the case of the petitioner and, therefore, his removal from the service of the Board is vitiated.

(6) Mr. Chetan Mittal, Sr. Advocate, Addl. A.G. Punjab appearing with Mr. Jitender Kumar, Advocate has made a reference to the Election Code of Conduct dated 7th January, 2007 and submitted that in terms thereof, no appointment or promotions in Government/Public Undertakings were liable to be made during the period of the elections without prior clearance from the Election Commission. It is submitted that the appointment of the petitioner having been made during the operation of the Model Code of Conduct for conducting the elections was/is clearly illegal. Reliance is placed on the case of **Harbans Singh Jalal versus Union of India**, (1) and also in the matter of Special Reference No. 1 of 2002 (**Gujrat Assembly Election Matter**), (2).

(7) Ms. Sukhwinder Kaur Saroya, Advocate appearing for respondent No. 2 has submitted that the new incumbment namely Dr. Suresh Kumar Tandon having been appointed on 3rd December, 2007 and having joined the Board on 18th December, 2007, the present petition without impleadment of Dr. Suresh Kumar Tandon is not maintainable.

(1) 1997(2) PLR 778 (DB) (P&H)

(2) (2002)8 S.C.C. 237

(8) We have given our thoughtful consideration to the contentions of the learned counsel for the parties and also perused the record. The petitioner who was appointed as Vice-Chairman of the Board on 29th December, 2006 till 30th May, 2009 has assailed his removal from the Board,—*vide* impugned notification, dated 3rd August, 2007 (Annexure P-6). It is recorded in the said notification that the petitioner has exhibited serious misconduct by joining as Vice-Chairman of the Board on 2nd January, 2007 in contravention of the Code of Conduct of the Election Commission which had come into effect on 29th December, 2006. Accordingly, the Government in exercise of power conferred under Section 10(A) of the Act as amended was pleased to remove him from the post of Vice-Chairman of the Board with immediate effect.

(9) In order to appreciate the contentions of the parties, the provisions of Section 10 (A) of the Act may be adverted to, which read as under :—

“Removal of a member including Chairman and Vice-Chairman

***10(A) The State Government may, by notification in the Official Gazette, remove any member including Chairman and Vice-Chairman, but other than an official member if,—

- (a) he has become subject to any of the disqualification specified in sub-section (i) of section 8 ;
- (b) he willfully refuses to carry out the provisions of this Act ;
- (c) he abuses the powers vested in him or is guilty of misconduct ;

- (d) he remains absent without leave of the Board for more than three consecutive meetings of the Board Vice-Chairman Board without sufficient cause; or
- (e) it appears to the State Government that his continuation in the office is detrimental to the public interest.

(10) The removal of the petitioner from the office of Vice-Chairman of the Board is on account of his having violated the provisions of the Election Code of Conduct for conducting the elections. In the Election Code of Conduct dated 7th January, 2007 which is being relied upon by the learned counsel for the State, it has been provided as follows :—

“On Transfer and posting of officials :

The Commission directs that there shall be a total ban on the transfer of all officers/officials connected with the conduct of the election. These include but are not restricted to :—

(i) to (viii)

XXXXXXXXXXXXXXXXXXXX

(ix) No appointments or promotions in Government/Public Undertaking shall be made during this period, without prior clearance of the Commission.”

(11) A perusal of the above Clause (ix), which is relied upon by the learned Senior Counsel for the State shows that no appointment or promotion in Government/Public Undertakings are to be made during the period of the election without prior clearance of the Election Commission. It may be noticed that during the course of hearing, it has been submitted

by learned Senior counsel for the respondent-State that the action of the petitioner by motivating his appointment and joining, is in contravention of clause 10(A) (e) of the Act. Clause (e) provides for removal of Chairman or Vice-Chairman if it appears to the State Government that the continuation in the office is detrimental to 'public interest'. The petitioner admittedly was appointed as Vice-Chairman of the Board on 29th December, 2006. On the same date, the Election Code of Conduct had come into force. Nothing has, however, been shown or placed on record to show that the petitioner had motivated his appointment. It may appropriately be noticed that in the show cause notice, dated 31st May, 2007 it has not been alleged that the petitioner had motivated his appointment as Vice-Chairman of the Board, which is now the stand taken by the State Government in its written statement. Besides, it has been alleged by the State that the petitioner had presented his joining report on 2nd January, 2007 which was in violation of the Code of Conduct of Elections. However, Clause (ix) of the Election Code of Conduct, as referred to above, only provides for preventing of appointments or promotions in Government/Public Undertakings being made during the period of the operation of the Election Code of Conduct without prior clearance of the Election Commission. Therefore, the fact that the petitioner joined his duties during the operation of the Election Code of Conduct for conducting elections is not shown to be in violation of Clause (ix) or any other rules or instructions. The appointments having been made on the same date, it cannot *ex facie* be said that the appointment of the petitioner as Vice-Chairman of the Board was in violation of the Election Code of Conduct and thereby he had rendered himself liable for misconduct. The statutory rules clearly provide the grounds for removal of the Chairman or Vice-Chairman of the Board. It is nowhere stated in the show cause notice or even in the impugned order/notification of removal of the petitioner that his continuation in office is detrimental to 'public interest' as is now contended. The fact of any public interest being involved is not mentioned. The provisions of Section 10 (A) of the Act provides specific grounds for removal. Therefore, the incumbent on the post of Chairman or Vice-Chairman could be removed only in accordance with the said provisions. Besides, where statutory duties are imposed on the respondents and there is a failure on their part to discharge the statutory obligation, a writ of mandamus is liable to be issued. The petitioner has been removed from

the service of the Board in violation of the conditions provided in Section 10(A) of the Act. The violation of the Election Code of Conduct of the Election Commission is not shown to be covered by Clauses (a) to (e) of Section 10(A) of the Act. The appointment of the petitioner as Vice-Chairman of the Board was made by the State Government. The fact that it was made on the same day that the Election Code of Conduct had come into effect cannot be said to be such an act on the part of the petitioner whereby he motivated his appointment/joining as is the stand now taken in the written statement.

(12) Learned counsel for the State has placed reliance on the case of Harbans Singh Jalal (*supra*). It has *inter alia* been observed therein that Election Commission can issue directions to the Government and political parties and enforce the Model Code of Conduct from the date of notification itself till the termination of election process. It was observed that even if there is no provision of Code of Conduct in the Representation of People's Act, 1951 or the Constitution of India, it does not violate any statutory provision. In fact it is an accepted convention by all the political parties for the conduct of fair and pure elections. The restrictions imposed on the Government from announcing any welfare policies which may influence the voters, it was observed, are in the interest of fairness and purity of election. There is no dispute to the proposition enunciated therein. However, the said observations are inapplicable to the facts of the present case where the removal of the petitioner is in violation of Section 10(A) of the Act. As regards the Gujarat Assembly Election Matter (*supra*) the learned Senior Counsel has referred to the observations made in Para 126. The said observations consider the constitutional scheme with regard to the holding of elections to the Parliament and the State Legislature. It is observed that the superintendence, direction and control of the conduct of elections referred to in Article 324 (1) of the Constitution are entrusted to the Election Commission. It is not in dispute that the Election Commission has been entrusted with the power of superintendence, direction and control for the conduct of elections. However, in the absence of any material, it cannot be said that the order appointing the petitioner on the same date that the Election Code of Conduct came into force, was with the knowledge of the coming into force of the Code of Conduct for conducting elections.

(13) The contention of Ms. Sukhwinder Kaur Saroya, Advocate appearing for respondent No. 2 that the writ petition is not maintainable without impleading Dr. Suresh Kumar Tandon who was subsequently appointed and had submitted his joining report may be considered. In the present case, the writ petition was filed by the petitioner in this Court on 18th August, 2007. It was taken up on 20th August, 2007 on which date notice of motion was issued to respondent No. 1 for 27th August, 2007. The Additional Advocate General, Punjab accepted notice and sought time to seek instructions. Thereafter, on the request of the State Counsel it was adjourned on 27th August, 2007 to 7th September, 2007. It was again adjourned on the request of the counsel for the petitioner and then on a joint request, it was adjourned to 3rd October, 2007. On 3rd October, 2007, on the request of the State counsel, the case was adjourned to 6th November, 2007. It was ordered that in the meanwhile, the petitioner would not be evicted from his accommodation. Thereafter, while the petition was pending, the State Government,—*vide* notification, dated 3rd December, 2007 (Annexure R1) appointed Dr. Suresh Kumar Tandon as Vice-Chairman of the Board and he submitted his joining report on 18th December, 2007. The appointment of Dr. Suresh Kumar Tandon as Vice-Chairman of the Board has admittedly been made during the pendency of the lis. Therefore, whatever action has been taken during the pendency of the proceedings is subject to the final outcome of the decision and the writ petition cannot be said to have been rendered infructuous on account of the fresh appointment of another incumbent. In **Nagesh Datta Shetti and others versus State of Karnataka and others**, (2) the challenge in the writ appeal was against the directions given by the Single Judge of the High Court to grant occupancy rights to the respondents in the said case. The issue in appeal against directions of the Single Judge was whether the direction given by the Single Bench could be maintained when the matter was being remitted by the Single Bench to the Tribunal for fresh adjudication. The writ appeal had been admitted to examine the legality of the direction. However, no stay was granted. The Tribunal did not keep the proceedings pending, though it was brought to its notice that the writ appeal had been admitted. The Tribunal acted on the basis of the directions given by the learned Single Judge of the High Court and granted occupancy rights. The High Court held that the writ appeal had been rendered infructuous because of the subsequent decision of the Tribunal. It was observed by the Supreme Court that

correctness of the order passed by the Single Judge was being challenged in the writ appeal and any decision taken by the Tribunal has per force be subject to the decision in the writ appeal. The Division Bench, it was observed, was liable to consider the matter on merits without concluding that the writ appeal had become infructuous. In **Parvinder Singh Bajaj versus State of Punjab, (3)** a Division Bench of this Court considered the case of removal of the President, of the Municipal Committee from its membership and presidentship on the allegations of misuse of powers and squandering of money. An inquiry was held. However, the complaint and the inquiry report were not conveyed to the petitioner. The same was held to be in violation of the principles of natural justice and the order removing the petitioner therein from membership and presidentship was quashed. It was observed that persons occupying elected offices cannot be removed unceremoniously. During the pendency of the writ petition in the said case, fresh elections were held. The same had in fact resulted due to the impugned order being passed. It was held that the principles of *lis pendens* would apply and with the quashing of the impugned order, the elections that were held cannot survive. As a necessary consequence, the status quo as it obtained prior to the termination of the President of the Municipal Committee was restored.

(14) In the circumstances, this Court is not to dismiss the writ petition merely on the ground that another person has been appointed as Vice-Chairman of the Board during the pendency of the writ petition and neither is it liable to be dismissed on the ground of non-joinder of necessary parties. The appointment of Dr. Suresh Kumar Tandon as Vice-Chairman of the Board was during the pendency of the writ petition and the action taken during its pendency, is subject to the ultimate decision of this Court.

(15) The appointment of the petitioner having been held to be in violation of Section 10(A) of the Act. The writ petition is allowed and the impugned notification, dated 3rd August, 2007 (Annexure P-6) removing the petitioner from service of the Board and the order, dated 3rd August, 2007 (Annexure P-7) relieving the petitioner are quashed.

(16) No. costs.

R.N.R.