

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P. (S) No. 5720 of 2016**

Aloke Kumar Sengupta son of Late Keshav Chandra Sengupta at present resident of Keshav Villa, North Office Para, P.O. & P.S Doranda, District Ranchi-834002. .... Petitioner

Versus

1. The State of Jharkhand.
2. The Principal Secretary, Personnel, Administrative Reform & Rajbhasha Department, Government of Jharkhand, Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi.
3. Secretary, Department of Home, Prison & Disaster Management, Government of Jharkhand, Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi.

... Respondents

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**CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK**

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For the Petitioner :M/s Indrajit Sinha, Vipul Poddar &  
 Arpan Mishra, Advocates

For the Respondent-State :Mr. Atanu Banerjee, G.A  
 Mr. Suman Kr. Ghosh, J.C to G.A

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**CAV on 20/11/2017**

**Pronounced on 27/02/2018**

**Per Pramath Patnaik, J.**

In the accompanied writ application, the petitioner calls in question the impugned order of cancellation of nomination of petitioner from the post of Member, State Police Complaints Authority (State Level) and prays for quashing the order as contained in letter No.5111 dated 26.09.2016 vide Annexure-6 pertaining to such cancellation and further prayer has been made for direction to respondents for payment of entire salary and perks as admissible for the said post.

2. Shorn of unnecessary details the facts as has been delineated in the writ application is that the petitioner was in the State Judicial Service and retired on 31.01.2009 from the post of District & Session Judge, Godda. Thereafter, the petitioner was appointed as Member of the Jharkhand State Public Service Commission, vide notification No.1324 dated 25.02.2009 pursuant thereto, the petitioner gave his joining on the said post on 26.02.2009. Subsequently, the State Government by Notification No.2163 dated 13.04.2010 was pleased to appoint him as Acting Chairman of the Jharkhand Public Service Commission (JPSC) and accordingly, the petitioner gave his joining to the post of Acting Chairman on 15.04.2010. The petitioner demitted the office of the Jharkhand Public Service Commission (JPSC) on 05.01.2011, after attaining the age of 62 years. It has been stated in the writ application that vide letter dated 02.02.2011, the petitioner was informed that he was nominated as First Registrar of the newly established National University of Study & Research in Law, Ranchi (NUSRL) by the Hon'ble Chancellor. In pursuance to such nomination, the petitioner discharged his duties as Registrar of the Law University. Thereafter, petitioner was nominated as one of the Members of State Police Complaints Authority vide notification dated 28.03.2016 as per Annexure-3 to the writ application. In view of the said notification, the petitioner tendered his resignation on 29.03.2016 itself from the post of Registrar of NUSRL, Ranchi. His resignation being accepted by the competent authority, was duly communicated on 29.03.2016 issued by the Registrar General of the Hon'ble Jharkhand High Court. The State Police Complaints Authority has been constituted by the State Government by a resolution dated 10.03.2016 in view of the direction issued by the Hon'ble Supreme Court in the case of

***Prakash Singh & Ors. Vs. Union of India & Ors.*** with regard to police reforms in India and the resolution of the State Government has been annexed as Annexure-5 to the writ application. To the utter surprise and consternation, the nomination of the petitioner for the post of one of the Members of the Police Complaints Authority (State Level) was cancelled on the ground that his nomination is contravention of Article 319 of the Constitution of India vide Notification No.5111 dated 26.09.2016 Annexure-6 which is impugned in this writ application.

3. Learned counsel for the petitioner has strenuously urged that the impugned notification dated 26.09.2016 vide Annexure-6 has been issued without compliance of principles of natural justice since no notice prior to the cancellation of the nomination of the petitioner was issued. Learned counsel for the petitioner submits that the impugned order is bad in the eyes of law, illegal, malafide, arbitrary and in violation of the principles of natural justice. Learned counsel for the petitioner further submits that the petitioner was never appointed rather he was nominated and his service is not under the employment of the State and there is no jurial relationship between the State Government and the petitioner, nor there is control by the State over the duties, power and functions as enshrined in the resolution whereby the Police Complaints Authority has been constituted. Learned counsel for the petitioner submits with vehemence that respondents have misconstrued the purports and meaning of Article 319 of the Constitution of India. Learned counsel for the petitioner further submits that clause 3 & 4 of the Resolution dated 10.03.2016 envisages that tenure of the independent member is for two years and the State Government has limited power to annul such nomination only if the members acquires any deficiency as enumerated under clause 4 of the

said resolution. Since, the petitioner does not come under clause 4 of the ineligibility clause therefore, the impugned order is bereft of the sanction of law and has been issued without any authority of law. Learned counsel for the petitioner further contends that the recommendation or suggestion by the Police Complaints Authority are binding upon the State Government therefore, it cannot be construed that the said authorities are under the control of the State and, therefore, Article 319 of the Constitution of India could not have been invoked even remotely in the instant case. In support of the contentions, learned counsel for the petitioner has referred to **(1979) 3 SCC 458** paragraph nos.7, 8 and 9 and also **(2006) 8 SCC 1**.

4. Controverting the averments made in the writ application, a counter-affidavit has been filed by the respondent no.3 wherein it has been submitted that as per para 1(I) of the State Government's Resolution dated 10.03.2016 in the State Committee i.e. State Police Complaints Authority all the five members will be nominated by the State Government and Secretarial Assistance will also be made available to the State Committee by the State Government. It has been submitted that Para-II (b) and (c) of the said resolution regarding function of the Authority which reads as follows:-

*“(b) To carry out such other functions as the State Government may, from time to time specify.  
(c) To make recommendations to the State Government on any case enquired into by it, wherever required.”*

It has further been submitted that under para 3(b) of the said resolution the State Government is fully competent to remove any independent member which reads as follows:-

*“(b) The State Government may remove an independent member of the State Committee, if he incurs any disqualification specified in Para-4, or if he fails to perform duties enjoined upon him as an independent member.”*

It has further been submitted that as such under the provisions of the said resolution the State Government is fully competent to nominate Member of the State Police Complaints Authority (State Committee), to refer functions from time to time to the State Committee and to remove any independent member of the State Committee and thus the State Police Complaints Authority (State Committee) is under control of the State Government. It has further been submitted that in view of the facts stated above, holding of office by the petitioner as a Member of State Police Complaints Authority is violative of Article 319 of the Constitution and the State Government vide its notification dated 26.09.2016 issued by Home, Prison and Disaster Management Department have rightly cancelled the nomination of the petitioner as a Member of the State Police Complaints Authority.

5. Another counter-affidavit has been filed by the respondent no.2 more-or-less reiterating the stand as has been taken in the counter-affidavit filed by the respondent no.3.

6. Learned counsel for the State has placed his reliance on the counter-affidavit filed by the respondents. Apart from statement made in the counter-affidavit, learned counsel for the State has submitted that the duties of the Complaints Committee has been assigned in 1(Kha) of Annexure-5 and in paragraph-3 it has been mentioned that before completion of 2 years, the services can be dispensed with. Since, the petitioner's services were under the control of State Government therefore, the respondents have rightly cancelled the nomination of the petitioner invoking of Article 319 of the Constitution of India. Learned counsel for the State further submits that *(1979) 3 SCC 458* is

not applicable in the case of petitioner since the facts stated in the aforesaid application is totally different.

7. From the pleadings of the respective parties, the questions that remains to be determined as to whether the petitioner's nomination as member of the Police Complaints Authority could have been cancelled under Article 319 of the Constitution of India in view of the previous appointment of Member and Acting Chairman of the Jharkhand Public Service Commission (JPSC). The corollary to the said point for determination as to whether the Member of the State Police Complaints Authority is under the Government of State.

8. While adverting to the points formulated hereinabove it would be apposite to refer to the functions of the duties of the Members of the Complaint Committee as well as tenure of the Members of the said Committee which reads as follows:-

*(II) The functions of the State Committee-The functions of the State committee shall be as follows:-*

*(a) to enquire into allegations of "serious misconduct" against police officers in the ranks of Deputy Superintendent of Police and above either suo moto or on a complaint received from a victim or any person on his behalf or from the District Committee;*

*(b) to carry out such other functions as the Government may, from time to time specify;*

*(3)(b) The State Government may remove an independent member of the State Committee or the District Committee, if he incurs any disqualification specified in Para-4, or if he fails to perform duties enjoined upon him as an independent member.*

9. The services of the petitioner as Members of the State Police Complaints Authority has been cancelled by invoking under Article 319 of the Constitution of India. It would be apposite to refer Article 319 (d) of the Constitution of India which is quoted hereinunder:-

*"319 (d) A member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that of any other State Public Service Commission, but not for any other employment either*

*under the Government of India or under the Government of a State”*

The bar of Article 319 (d) of the Constitution of India pertains to member (Chairman of the Public Service Commission) to hold any post under the State level after demitting the office. On perusal of the resolution relating to the State Police Complaint Authority it is quite apparent that the State Government is competent to nominate the member of State Police Complaint Authority (State Committee) to refer functions from time to time to the State Committee and to remove any independent member of the State Committee and thus the State Police Complaints Authority (State Committee) is under control of the State Government. Therefore, holding of the office by the petitioner as a member of State Police Complaints Authority is violative of Article 319 of the Constitution. Accordingly, his nominations by the Member of the State Police Complaint Authority has been cancelled under the provisions of Article 319 of the Constitution.

So far as the decision cited by the learned counsel for the petitioner i.e. **1979 3 SCC 458** and **2009 (2) Kerala Series 597** the facts in those cases are different and the said decision are not applicable to the case in hand. The Hon'ble Apex Court in the case of **Hargovind Pant Vs. Dr. Raghukul Tilak and Ors.** has been pleased to observe thus:-

*“The word 'employment' in Article 319(3) if understood to mean the relationship of employer and employee does not include the office of Governor because the Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties. Even if the term employment is widely construed, the element of control by the Government must be shown.”*

and also in the case of **Sreenivasan Venu Gopalan Vs. Hon'ble Sri M.M. Pareed Pillai and another** as reported in **2009 (2) Kerala Series 597** the question that was post for consideration as to whether in view of Section

24 (3) of the Human Rights Act, 1993 would apply to the post of Lok Ayukta. The Hon'ble Court has been pleased to hold that the post of Lok Ayukta is an independent statutory post and is not an employment under the Government. The Hon'ble Court negated the contentions that Lok Ayukta being the post under the Government, as per Section 24(3) of the Protection of Human Rights Act, 1993. Since, the aforesaid cases pertain to bar of appointment to the post of Governor and Lok Ayukta, the same decision is not applicable.

10. In view of the conclusion, reasons stated in the foregoing paragraphs, this Court is of the considered view that the office of the Members of the Police Complaint Authority is under the State Government and State exercises pervasive control over it therefore, comes within ambit and scope of Article 319(d) of the Constitution of India and in that view of the matter the nomination of the petitioner as Members of the Police Complaint Authority cannot be held to be valid and, therefore, there is absolutely no infirmity or illegality by the respondents in passing the impugned order dated 26.09.2016 vide Annexure-6 to the writ application and, therefore, this Court is not inclined to interfere with the aforesaid impugned order.

11. Viewed thus, the writ petition sans merit is dismissed.

**(Pramath Patnaik, J.)**

RKM  
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