HIGH COURT OF KARNATAKA

Bench: Justice M. Nagaprasanna

Date of Decision: 28th May 2024

WRIT PETITION NO. 17396 OF 2023 (GM-RES)

ABDUL AZEEM …PETITIONER

VERSUS

STATE OF KARNATAKA AND OTHERS …RESPONDENTS

Legislation:

Sections 3, 4, and 5 of the Karnataka State Minorities Commission Act, 1994

Sections 16 and 21 of the General Clauses Act, 1897

Subject: Writ Petition challenging the removal of the petitioner from the post of Chairman, Karnataka State Minorities Commission, based on the doctrine of pleasure.

Headnotes:

Administrative Law - Doctrine of Pleasure - Validity of Removal – Writ Petition challenging removal from the post of Chairman of the Karnataka State Minorities Commission – Petitioner contended removal was arbitrary, capricious, and without following principles of natural justice – Respondent argued removal was per the doctrine of pleasure as stated in Section 4 of the Karnataka State Minorities Commission Act, 1994 – Court

held that doctrine of pleasure allows removal without assigning reasons and without adhering to principles of natural justice – Petitioner's removal held valid as the statute provides for such action under the doctrine of pleasure. [Paras 10-13]

Judicial Review - Scope and Limitations – The scope of judicial review in cases of removal under the doctrine of pleasure – Court held that the power to remove is inherent under Section 4 of the Act, and judicial review is limited unless the removal is proven to be arbitrary, capricious, or unreasonable – In this case, the petitioner's removal did not warrant interference as it was per statutory provisions. [Para 13-14]

Statutory Interpretation - Sections 3, 4, and 5 of the Karnataka State Minorities Commission Act, 1994 – Interpretation of terms "subject to the pleasure of the Government" – Court observed that Section 4 explicitly states the tenure is subject to the pleasure of the Government, distinguishing it from Section 5 which deals with disqualification for misconduct – No violation of statutory or constitutional rights found in the removal process. [Paras 8-11]

Decision – Dismissal of Writ Petition – The Court dismissed the writ petition, upholding the removal of the petitioner from the position of Chairman of the Karnataka State Minorities Commission – Confirmed that the removal was within the legal framework of the doctrine of pleasure and did not require adherence to the principles of natural justice. [Para 20]

Referred Cases:

- B.P. Singhal v. Union of India (2010) 6 SCC 331
- State Of U.P. vs. U.P. State Law Officers Association (1994) 2 SCC 204
- K.C. Shankare Gowda vs. State of Karnataka ILR 2017 KAR 2439
- Pallavi Vastrad vs. State of Karnataka W.P.No.11958 of 2023

Representing Advocates:

Smt. Lakshmy Iyengar for the petitioner

Sri K. Shashikiran Shetty, Advocate General for the respondents

ORDER

M. Nagaprasanna, J. - The petitioner is before this Court initially seeking a direction to consider his representation dated 23-05-2023 and grant all consequential benefits. During the pendency of the petition, he raises a challenge to the Notification dated 15-12-2023 which removes the petitioner from the post of Chairman, Karnataka State Minorities Commission, Bengaluru ('the Commission for short).

2. Heard Smt. Lakshmy Iyengar, learned senior counsel appearing for the petitioner and Sri K.Shashikiran Shetty, learned Advocate General appearing for the respondents.

3. Facts, in brief, germane are as follows:

The petitioner claims to be a highly qualified citizen having M.A., LL.B. degree and retired as Assistant Police Commissioner and is known for his scientific investigation of high profile criminal cases. The petitioner was also a Member of the Legislative Council and later in the year 2019 was appointed as the Chairman of the Commission for a period of three years (hereafter referred as the 'first tenure'). The appointment was in terms of

Sections 3 and 4 of the Karnataka State Minorities Commission Act, 1994 (hereinafter referred to as 'the Act' for short). The petitioner completes his first tenure on 15-10-2022. On completion of first tenure, an order comes to be passed continuing the petitioner as Chairman of the Commission for another term of three years, for it come to an end on 15-10-2025. When the petitioner was functioning as Chairman of the Commission, the men who man the Government changed. On 22-05-2023 a tippani emerges from the office of the Chief Minister which is communicated by the Chief Secretary to all the Departments. The communication was that the nominations made by the earlier Government will have to be annulled. In furtherance of the aforesaid communication/tippani a Notification comes to be issued on 22-05-2023 by which the continued nomination of the petitioner/2nd tenure is cancelled. The petitioner represents to the respondent/State on 24-05-2023 seeking to withdraw the said Notification. Owing to the representation, a Notification comes to be issued on 24-05-2023 withdrawing the Notification dated 22-052023 whereby the notification which cancelled the nomination of the petitioner for the second tenure comes to be withdrawn.

4. The petitioner continues as Chairman of the Commission.

The petitioner between the dates 22-05-2023 and 24-05-2023 had submitted a representation 23-05-2023 seeking consideration of the said representation to complete the term as a Chairman for another 2 years and 5 months. When there was delay in consideration of the said representation, he had knocked at the doors of this Court in the subject petition by filing it on 05-08-2023. This Court initially issued notice to the respondents. During the pendency of the petition, it appears, the Government issues a Notification on 15-12-2023 cancelling the nomination of the petitioner as Chairman of the Commission. An application comes to be filed after issuing of the said Notification and this

Court on 19-12-2023, on the application passes an order, which reads as follows:

"Heard Smt. Lakshmi Iyengar, learned senior counsel for the petitioner.

Learned Additional Government Advocate waives notice for the respondents - State.

ORDER ON I.A.NO.1/2023

Heard Smt. Lakshmi Iyengar, learned senior counsel for the petitioner and the learned Additional Government Advocate for the respondents - State.

The petitioner is appointed as the Chair Person of the Karnataka State Minorities Commission by an order dated 15.10.2019 for a period of three years and subsequently, the tenure is extended on the same terms and conditions on 15.10.2022, again for a period of 3 years.

Learned senior counsel would submit that the tenure of the petitioner is subsisting in terms of the extension upto 14.10.2025 and the present order which modifies the order of appointment, terminates the appointment of the petitioner.

Therefore, there shall be an interim order of stay of the notification dated 15.12.2023, till the State would file its statement of objections.

List the matter on 17.01.2024.

Objections if any, by then. "

Therefore, the petitioner continues to function as Chairman of the Commission. The State files an application seeking vacation of the interim order and the petitioner files rejoinder to the statement of objections and objections to the application seeking vacation of the interim order. The matter was heard. When it was pointed out that there is no challenge to

the order dated 15.12.2023, an amendment comes to be filed by the petitioner which is directed to be taken along with the main matter. With the consent of parties, the matter was heard.

5. The learned senior counsel appearing for the petitioner submits that the appointment of the petitioner was for a fixed tenure of three years on certain terms and conditions. It was continued for another period of three years on the same terms and conditions. Therefore, it becomes an appointment with fixed tenure and the order which withdraws or cancels the nomination or appointment as the case would be, is arbitrary and misuse of power of pleasure that is available to the State to remove any person who is nominated. The learned senior would seek to place reliance upon several judgments of the Apex Court and that of this Court, all of which would bear consideration qua their relevance.

6. Per-contra, the learned Advocate General would take this Court through the Act with particular reference to Section 4. The nomination of the petitioner even if it is for a term, the nomination is in terms of Section 4 of the Act. Section 4 of the Act itself indicates that the Chair person of the Commission will be functioning subject to the pleasure of the Government. Pleasure of the Government shall be that it would only be until further orders. He has been nominated and de-nominated now and no fault can be found with the order impugned cancelling the second tenure of the petitioner. He would also seek to place reliance upon several judgments, which would all bear consideration in the course of the order qua their relevance.

7. In the rejoinder to the submission of the learned Advocate General, the learned senior counsel would submit that the State in its application seeking vacation of the interim order has indicated that there were several misconducts or illegalities on the part of the petitioner while discharging

his duties as Chairman. Therefore, the removal of the petitioner would come within Section 5 of the Act and if it is under Section 5, it could not have been passed without following the principles of natural justice. It is her submission that no notice even issued and the petitioner is removed casting a stigma. She would seek quashment of the order.

8. I have given my anxious consideration to the submissions made by the learned senior counsel and the learned Advocate General and have perused the material on record.

9. The afore-narrated facts are not in dispute. The Karnataka State Minorities Commission is constituted under the Karnataka State Minorities Commission Act, 1994. Section 3 of the Act deals with Constitution of the Commission. Section 4 deals with term of office and conditions of service of the Chairman and Members. Section 5 deals with disqualification for office of membership. All the three sections read as follows:

"3. **Constitution of the Commission.-** (1) As soon as may be after the commencement of this Act, the Government shall constitute a body to be called as the Karnataka State Minorities Commission to exercise the powers conferred on and to perform the function assigned to it under this Act with its headquarters at Bangalore.

(2) The Commission shall consist of,-

(a) the Chairman who shall be a person of a minority community and eight other members from the minority community holding a degree from a recognized university out of which not less than one each member shall be from Christian, Jain, Buddhist, Sikh and Zoroastrian (Parsis) community.

Provided that at least one such member shall be a woman.

(b) the Secretary of the Commission, appointed by the Government being an officer not below the rank of Deputy Secretary to Government.

4. Term of office and conditions of service of the Chairman and members.- (1) Subject to the pleasure of the Government, the Chairman and members of the Commission shall hold office for a term of three years from the date they assume their offices.

(2) The Chairman or a member of the Commission may resign from his office in writing under his signature addressed to the Government, but shall continue in office until his resignation is accepted.

(3) The Chairman shall receive such salary and allowances and the other members shall receive such allowances as may be prescribed.

(4) The salary and allowances payable to the Chairman and allowances payable to other members shall be defrayed out of the grants referred to in sub-section (2) of section 12.

(5) A casual vacancy in the office of a member shall be filled up as soon as may be, by the authority concerned and a member so nominated shall hold office for the unexpired portion of the term of the office of his predecessor.

5. Disqualification for office of membership.- (1) A person shall be disqualified for being appointed as and for being continued as the Chairman or a member as the case may be, if he ,-

(a) has been convicted and sentenced for imprisonment for an offence which in the opinion of the Government involves moral turpitude; or

(b) is of unsound mind and stands so declared by a competent court;

(c) is an undischarged insolvent; or

(d) has been removed or dismissed from service of the Central Government or a State Government or a body or corporation owned or controlled by the Central Government or a State Government; or

(e) refuses to act or becomes incapable of acting; or

(f) without obtaining leave of absence from the Commission, absents from three consecutive meetings of the Commission; or

(g) has in the opinion of the Government, so abused the position of chairperson or member as to render that person's continuance in office is detrimental to the interests of the minorities or the public interest:

Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

(2) Any person who is disqualified under sub-section (1) shall be removed by the Government." (Emphasis supplied)

In terms of Sections 3 and 4 the petitioner's first nomination comes about on 15-10-2019. The said notification of nomination of the petitioner reads as follows:

"ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ: MWD 02 LML 2019

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ
ವಿಕಾಸ ಸೌಧ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:15–10–2019

ಅಧಿಸೂಚನೆ

ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: MWD 39 LMR 2018 ದಿನಾಂಕ:28-05-2019 ಆದೇಶವನ್ನು ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ರದ್ದುಪಡಿಸಿಲಾಗಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ ಅಧಿನಿಯಮ 1994 ಕಲಂ'(3) ರ ಉ ಕಲಂ(2) ರ ಖಂಡ (ಎ) ಹಾಗೂ ಕಲಂ(4) ಮತ್ತು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗ (ತಿದ್ದುಪಡಿ) ಅಧಿನಿಯಮ 2011 ರ ಕಲಂ.(2) ಉಪ ಕಲಂ(2)(ಎ) ರಲ್ಲಿ ಪದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸರ್ಕಾರವು **ಶ್ರೀ ಅಬ್ದುಲ್ ಅಜೀಮ್ #3. ಜೀಷಾನ್ ಮ್ಯಾನಷನ್ 2ನೆ ಎಫ್ ಮೇನ್. 60 ಫೀಟ್ ರಸ್ತೆ ಭೂಪಸಂದ್ರ, ಹೊಸ ಎಕ್ಸಟೆನ್ಷನ್, ಸಂಜಯ್ ನಗರ ಬೆಂಗಳೂರು-560094** ಇವರನ್ನು ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ ಅಧ್ಯಕ್ಷರನ್ನಾಗಿ ನಾಮನಿರ್ದೇಶಿಸಿ ಅಧಿಸೂಚಿಸಲಾಗಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ ನಿಯಮಗಳು, 2000ರ ನಿಯಮ-3 ರಂತೆ ಇವರು ವೇತನ ಹಾಗೂ ಇತರೆ ಭತ್ಯೆಗಳನ್ನು ಪಡೆಯಲು ಅರ್ಹರಾಗಿರುತ್ತಾರೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ

ಸಹಿ/–
(ಅಕ್ರಂಭಾಷ)
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಅಲ್ಪಸಂಖ್ಯಾತರ ಕಲ್ಯಾಣ ಹಜ್ ಮತ್ತು
ವಕ್ಫ್ ಇಲಾಖೆ."

The petitioner is nominated for a period of three years to commence from 15-10-2019 which would be up to 15-10-2022. The nomination of the petitioner was continued for a further period of three years in terms of

another notification dated 15-10-2022. The said Notification reads as follows:

"ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ: MWD 88 MDC 2022

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ
ವಿಕಾಸಸೌಧ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:15–10–2022

ಅಧಿಸೂಚನೆ

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ ಅಧಿನಿಯಮ 1994 ಕಲಂ (3)ರ ಉಪ ಕಲಂ (2)ರ ಖಂಡ (ಎ) ಹಾಗೂ ಕಲಂ (4) ಮತ್ತು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ (ತಿದ್ದುಪಡಿ) ಅಧಿನಿಯಮ 2011ರ ಕಲಂ (2) ಉಪ ಕಲಂ (2)(ಎ) ರಲ್ಲಿ ಪದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ, ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: MWD 02 LML 2019, ದಿ:15.10.2019 ರಲ್ಲಿ

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸರ್ಕಾರವು ಶ್ರೀ ಅಬ್ದುಲ್ ಅಜೀಮ್ #3, ಜೀಷಾನ್ ಮ್ಯಾನಷನ್ 2ನೆ ಎಫ್ ಮೇನ್, 60 ಫೀಟ್ ರಸ್ತೆ, ಭೂಪಸಂದ್ರ, ಹೊಸ ಎಕ್ಷಟೆನ್ಷನ್, ಸಂಜಯ್ ನಗರ, ಬೆಂಗಳೂರು-560 094 ಇವರನ್ನು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ ಅಧ್ಯಕ್ಷರನ್ನಾಗಿ ನಾಮನಿರ್ದೇಶಿಸಿದ್ದು ಇವರ ಕಾರ್ಯಾವಧಿ ದಿ:14.10.2022 ರಂದು ಮುಕ್ತಾಯವಾಗಿದೆ.

ಶ್ರೀ ಅಬ್ದುಲ್ ಅಜೀಮ್ ರವರನ್ನು ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ ಅಧ್ಯಕ್ಷರನ್ನಾಗಿ ಮರುನಾಮನಿರ್ದೇಶಿಸಿ ಅಧಿಸೂಚಿಸಲಾಗಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ ನಿಯಮಗಳು 2000ರ ನಿಯಮ (3) ರಂತೆ ಇವರು ವೇತನ ಹಾಗೂ ಇತರೆ ಭತ್ಯೆಗಳನ್ನು ಪಡೆಯಲು ಅರ್ಹರಾಗಿರುತ್ತಾರೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ

ಸಹಿ/–
15/10/2022
(ಮುಕ್ತಾರ್ ಪಾಷ ಹೆಚ್.ಪಿ)
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಅಲ್ಪ ಸಂಖ್ಯಾತರ ಕಲ್ಯಾಣ, ಹಜ್ ಮತ್ತು ವಕ್ಫ್ ಇಲಾಖೆ."

The notification depicts continuation of the petitioner as renomination. In the meanwhile, there was a change of guard in the State of Karnataka. Then comes a communication from the office of the Chief Secretary by way of a tippani. The tippani was to cancel nominations that were made by the earlier Government. The axe falls on the petitioner. A notification is issued on 22-05-2023 cancelling second term nomination of the petitioner i.e., the Notification dated 15-10-2022. The petitioner then

represents to the State Government that there were several works that he had taken up and cancellation would not be in the interest of minorities. Considering the representation, comes another Notification dated 24-05-2023 which withdraws the earlier Notification supra. The notification dated 24-05-2023 reads as follows:

"ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ: MWD 10 LMR 2023

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ
ವಿಕಾಸ ಸೌಧ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:24–05–2023

ಅಧಿಸೂಚನೆ

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಅಲ್ಪಸಂಖ್ಯಾತರ ಆಯೋಗದ ಅಧ್ಯಕ್ಷರ ನಾಮನಿರ್ದೇಶನವನ್ನು ರದ್ದುಪಡಿಸಲಾದ ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: **MWD 10 LMR 2023** ದಿನಾಂಕ: 22–05–2023ನ್ನು ತಕ್ಷಣದಿಂದ ಜಾರಿಗೆ ಬರುವಂತೆ ಹಾಗೂ ಮುಂದಿನ ಆದೇಶದವರೆಗೆ ಹಿಂಪಡೆಯಲಾಗಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ

ಸಹಿ/–
24/05/2023
(ಮುಕ್ತಾರ್ ಪಾಷ ಹೆಚ್.ಜಿ)
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಅಲ್ಪಸಂಖ್ಯಾತರ ಕಲ್ಯಾಣ, ಹಜ್ ಮತ್ತು ವಕ್ಫ್ ಇಲಾಖೆ."

(Emphasis added)

The petitioner continues as Chairman of the Commission after the aforesaid notification. The petitioner apprehending that he would be changed, knocks at the doors of this court on 05-08-2023 in the subject petition seeking an innocuous prayer of consideration of his representation dated 22-05-2023. No action that was prejudicial to the interest of the petitioner was taken and only notice was issued on 10-08-2023. During the pendency of the petition comes a Notification on 15-12-2023 cancelling the nomination of the petitioner for the second tenure which was to end on 15-10-2025. . An application is filed by the petitioner in I.A.No.1 of 2023 seeking stay of the said Notification. This Court on 19-12-2023 protected the interest of the petitioner by the afore-quoted order.

10. The issue is, 'whether the petitioner would have any right to continue in the nominated post, which was at all times subject to the pleasure of the State?'

11. It is not in dispute that the petitioner was appointed in terms of Section 4 of the Act supra. Sub-section (1) of Section 4 clearly indicates that the Chairman or other members shall hold office for a term of three years subject to pleasure of the Government. Therefore, the statute itself recognizes the right of the Government to tinker with the nomination prior to its expiry as it is subject to pleasure of the Government. There need not be any inference drawn whether it is a pleasure term or otherwise as the statute itself indicates that it is at the pleasure of the Government. The issue is, whether pleasure could be exercised at any time by the State in terms of Section 4(1) of the Act. Before embarking upon its consideration, I deem it appropriate to notice the line of law, both upholding the annulment of appointment / nominations and annulling such annulment of appointment / nominations by the Apex Court and this Court.

12. Though the Apex Court has close to five decades ago considered the effect of doctrine of pleasure and has rendered judgments from time to time, it would suffice if reference is made to the Constitution Bench judgment rendered in 2010, in the case of **B.P. Singhal vs Union Of India, (2010) 6 SCC 331**. The questions that fell for consideration before the Apex Court are found at paragraph 11 and they read as follows:

"Questions for consideration

11. The contentions raised give rise to the following questions:

(i) Whether the petition is maintainable?

(ii) What is the scope of "doctrine of pleasure"?

(iii) What is the position of a Governor under the Constitution ?

(iv) Whether there are any express or implied limitations/restrictions upon the power under Article 156(1) of the Constitution of India?

(v) Whether the removal of the Governors in exercise of the doctrine of pleasure is open to judicial review?

We will consider each of these issues separately. " (Emphasis supplied)

The Apex Court formulates the scope of doctrine of pleasure to be a question to be answered qua the appointment of a Governor of a State. Answering the said issue, the Apex Court has held as follows:

"(ii) Scope of doctrine of pleasure

16. The pleasure doctrine has its origin in English law, with reference to the tenure of public servants under the Crown. In **Dunn v. R. [(1896) 1 QB 116 : (1895-99) All ER Rep 907 (CA)]** , the Court of Appeal referred to the old common law rule that a public servant under the British Crown had no tenure but held his position at the absolute discretion of the Crown. It was observed: (QB pp. 119-20)

"... I take it that persons employed as the petitioner was in the service of the Crown, except in cases where there is some statutory provision for a higher tenure of office, are ordinarily engaged on the understanding that they hold their employment at the pleasure of the Crown. So I think that there must be imported into the contract for the employment of the petitioner, the term which is applicable to civil servants in general, namely, that the Crown may put an end to the employment at its pleasure. ... It seems to me that it is the public interest which has led to the term which I have mentioned being imported into contracts for employment in the service of the Crown. The cases cited shew that, such employment being

for the good of the public, it is essential for the public good that it should be capable of being determined at the pleasure of the Crown, except in certain exceptional cases where it has been deemed to be more for the public good that some restriction should be imposed on the power of the Crown to dismiss its servants. " (emphasis supplied)

17. In **Shenton v. Smith [1895 AC 229 (PC)],** the Privy Council explained that the pleasure doctrine was a necessity because, the difficulty of dismissing those servants whose continuance in office was detrimental to the State would, if it were necessary to prove some offence to the satisfaction of a jury (or court) be such, as to seriously impede the working of the public service.

18. A Constitution Bench of this Court in **Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672]** explained the origin of the doctrine thus: (SCC p. 425, para 8)

"8. ... In England, except where otherwise provided by statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown or durante bene placito ('during good pleasure' or 'during the pleasure of the appointor') as opposed to an office held dum bene se gesserit ('during good conduct'), also called quadiu se bene gesserit ('as long as he shall behave himself well'). When a person holds office during the pleasure of the Crown, his appointment can be terminated at any time without assigning cause. The exercise of pleasure by the Crown can, however, be restricted by legislation enacted by Parliament because in the United Kingdom Parliament is sovereign.." (emphasis supplied)

19. In **State of Bihar v. Abdul Majid [AIR 1954 SC 245 : 1954 SCR 786]** , another Constitution Bench explained the doctrine of pleasure thus: (AIR p. 250, para 13)

"13. The rule that a civil servant holds office at the pleasure of the Crown has its origin in the Latin phrase durante bene placito (during pleasure) meaning that the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. The true scope and effect of this expression is that even if a special contract has been made with the civil servant the Crown is not bound thereby. In other words, civil servants are liable to dismissal without notice and there is no right of action for wrongful dismissal, that is, that they cannot claim damages for premature termination of their services. "

20. H.M. Seervai, in his treatise Constitutional Law of India (4th Edn., Vol. 3, pp. 2989-90) explains this English Crown's power to dismiss at pleasure in the following terms:

"27.4. ... In a contract for service under the Crown, civil as well as military, there is, except in certain cases where it is otherwise provided by law, imported into the contract a condition that the Crown has the power to dismiss at pleasure. ... Where the general rule prevails, the Crown is not bound to show good cause for dismissal, and if a servant has a grievance that he has been dismissed unjustly, his remedy is not by a law suit but by an appeal of an official or political kind. ... If any authority representing the Crown were to exclude the power of the Crown to dismiss at pleasure by express stipulation, that would be a violation of public policy and the stipulation cannot derogate from the power of the Crown to dismiss at pleasure, and this would apply to a stipulation that the service was to be terminated by a notice of a specified period of time. Where, however, the law authorises the making of a fixed term contract, or subjects the pleasure of the Crown to certain restrictions, the pleasure is pro tanto curtailed and effect must be given to such law. "

21. Black's Law Dictionary defines "pleasure appointment" as the assignment of someone to employment that can be taken away at any time, with no requirement for notice or hearing.

22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by the rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good.

23. The following classic statement from Administrative Law (H.W.R. Wade & C.F. Forsyth, 9th Edn., pp. 354-55) is relevant in this context:

"The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely- that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to bedrawn. For this purpose everything depends upon the true intent and meaning of the empowering Act.

The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. ... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. " (emphasis supplied)

24. It is of some relevance to note that the "doctrine of pleasure" in its absolute unrestricted application does not exist in India. The said doctrine is severely curtailed in the case of government employment, as will be evident from clause (2) of Article 310 and clauses (1) and (2) of Article 311. Even in regard to cases falling within the proviso to clause (2) of Article 311, the application of the doctrine is not unrestricted, but moderately restricted in the sense that the circumstances mentioned therein should exist for its operation. The Canadian Supreme Court in **Wells v. Newfoundland [(1999) 3 SCR 199 : (1999) 177 DL 4th 73 (Can SC)]** has concluded that "at pleasure" doctrine is no longer justifiable in the context of modern employment relationship.

25. In **Abdul Majid [AIR 1954 SC 245 : 1954 SCR 786]** , this Court considered the scope of the doctrine of pleasure, when examining whether the rule of English law that a civil servant cannot maintain a suit against

the State or against the Crown for the recovery of arrears of salary as he held office during the pleasure of the Crown, applied in India. This Court held that the English principle did not apply in India. This Court observed: (AIR pp. 249-50, paras 11-12)

"11. It was suggested that the true view to take is that when the statute says that the office is to be held at pleasure, it means 'at pleasure', and no rules or regulations can alter or modify that; nor can Section 60 of the Code of Civil Procedure, enacted by a subordinate legislature be used to construe an Act of a superior legislature. It was further suggested that some meaning must be given to the words 'holds office during His Majesty's pleasure' as these words cannot be ignored and that they bear the meaning given to them by the Privy Council in I.M. Lall case [**High Commr. for India v. I.M. Lall, (1947-48) 75 IA 225**] .

12. In our judgment, these suggestions are based on a misconception of the scope of this expression. The expression concerns itself with the tenure of office of the civil servant and it is not implicit in it that a civil servant serves the Crown 'ex gratia' or that his salary is in the nature of a bounty. It has again no relation or connection with the question whether an action can be filed to recover arrears of salary against the Crown. The origin of the two rules is different and they operate on two different fields. " (emphasis supplied)

This shows the "absoluteness" attached to the words "at pleasure" is in regard to tenure of the office and does not affect any constitutional or statutory restrictions/limitations which may apply.

26. The Constitution refers to offices held during the pleasure of the President (without restrictions), offices held during the pleasure of the President (with restrictions) and also appointments to which the said doctrine is not applicable. The articles in the Constitution of India which

refer to the holding of office during the pleasure of the President without any restrictions or limitations are Article 75(2) relating to Ministers, Article 76(4) relating to the Attorney General and Article 156(1) relating to Governors. Similarly Articles 164(1) and 165(3) provides that the Ministers (in the States) and Advocate General for the State shall hold office during the pleasure of the Governor.

27. Article 310 read with Article 311 provides an example of the application of "at pleasure" doctrine subject to restrictions. Clause (1) of Article 310 relates to the tenure of office of persons serving the Union or a State, being subject to doctrine of pleasure. However, clause (2) of Article 310 and Article 311 restricts the operation of the "at pleasure" doctrine contained in Article 310(1). For convenience, we extract below clause (1) of Article 310 referring to pleasure doctrine and clause (2) of Article 311 containing the restriction on the pleasure doctrine:

"310. Tenure of office of persons serving the Union or a State.-(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.
*

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) *

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. "

28. This Court in **Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36]**, referred to the qualifications on the pleasure doctrine under Article 310: (AIR p. 41, para 9)

"9. ... Subject to these exceptions our Constitution, by Article 310(1), has adopted the English common law rule that public servants hold office during the pleasure of the President or Governor, as the case may be and has, by Article 311, imposed two qualifications on the exercise of such pleasure. Though the two qualifications are set out in a separate article, they quite clearly restrict the operation of the rule embodied in Article 310(1). In other words the provisions of Article 311 operate as a proviso to Article 310(1)."

29. Again, in **Moti Ram Deka v. North East Frontier Railway [AIR 1964 SC 600]** , this Court referred to the qualifications to which pleasure doctrine was subjected in the case of government servants, as follows: (AIR p. 600)

"The rule of English law pithily expressed in the Latin phrase durante bene placito ('during pleasure') has not been fully adopted either by Section 240 of the Government of India Act, 1935 or by Article 310(1) of the Constitution. The pleasure of the President is clearly controlled by the provisions of Article 311, and so, the field that is covered by Article 311 on a fair and reasonable construction of the relevant words used in that article, would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there, but it has to be exercised in accordance with the requirements of Article 311."

30. The Constitution of India also refers to other offices whose holders do not hold office during the pleasure of the President or any other authority. They are: the President under Article 56; Judges of the Supreme Court under Article 124; the Comptroller and Auditor General of India under

Article 148; High Court Judges under Article 218; and Election Commissioners under Article 324 of the Constitution of India. In the case of these constitutional functionaries, it is specifically provided that they shall not be removed from office except by impeachment, as provided in the respective provisions.

31. The Constitution of India thus provides for three different types of tenure: (i) those who hold office during the pleasure of the President (or the Governor); (ii) those who hold office during the pleasure of the President (or the Governor), subject to restrictions; (iii) those who hold office for specified terms with immunity against removal, except by impeachment, who are not subject to the doctrine of pleasure.

32. The Constituent Assembly Debates clearly show that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices. We may conveniently enumerate them: (i) Offices to which the doctrine of pleasure applied absolutely without any restrictions (Ministers, Governors, Attorney General and Advocate General); (ii) Offices to which the doctrine of pleasure applied with restrictions (Members of defence services, Members of civil services of the Union, Member of an All India service, holders of posts connected with defence or any civil post under the Union, Member of a civil service of a State and holders of civil posts under the State); and (iii) Offices to which the doctrine of pleasure does not apply at all (President, Judges of the Supreme Court, the Comptroller and Auditor General of India, Judges of the High Courts, and Election Commissioners). Having regard to the constitutional scheme, it is not possible to mix up or extend the type of protection against removal, granted to one category of offices, to another category.

33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional setup, when an office is held during the pleasure of any authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.

34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons. " (Emphasis supplied)

The Apex Court holds that doctrine of pleasure however is not a licence to act with unfettered discretion to act arbitrarily, whimsically or capriciously. The said judgment has been followed by a Division Bench of this Court

in **B.K. Uday Kumar vs. State of Karnataka, 2020 SCC OnLine Kar 43**. The Division Bench considering nomination of Director in KPTCL holds as follows:

".... ....

8. Firstly, we must advert to the second ground on which the writ petition was allowed. For that purpose it is necessary to refer to the Articles of Association of BESCOM. What is material is clause (b) of Article-74 which reads thus:

"(b) So long the entire paid up share capital in the Company is held by the Government of Karnataka or by the Central Government or by the Government of Karnataka and the Central Government, or by a subsidiary of a wholly owned Government company, the Government of Karnataka shall have the right to nominate and appoint one or more of the Directors to the Office of the Chairman of the Board of directors or Managing Director or Whole Time Directors of the Company for such term and on such remuneration and/or allowance as it may think fit and may at any time remove him/them from office and appoint another/others in his/their place(s)":

9. Thus, it provides that the Government of Karnataka shall have the right to nominate and appoint one or more Directors to the office of the Chairman of the Board of Directors or the Managing Director or fulltime Director of the company and may, at any time, remove them from the office and appoint other persons in their places. It is this power which was exercised by the State Government to remove the 3rd respondent-petitioner from the post of the Director (Technical) BESCOM and to appoint the appellant to the said post. Therefore, we will have to consider the law laid down by the Apex Court on the doctrine of pleasure to decide this question arising in this appeal.

10. A proposal was prepared by the BESCOM. Paragraph 26 of the proposal was for appointment of the 3rd respondent as the Managing Director of KAVIKA and paragraph-27 of the proposal was for appointment of the appellant as the Director (Technical) BESCOM. The English translation of the remarks/order of the Hon'ble Chief Minister reads thus:

"Para No. 26 and 27 are approved".

11. There is no serious dispute that while according approval, in exercise of doctrine of pleasure by invoking clause (b) of Article 74, no reasons were recorded by the Hon'ble Chief Minister. Even the proposals did not contain any reasons. The main contention is that the appointment of the 3rd respondent as the Director (Technical) BESCOM was at the pleasure of the Government which could be cancelled anytime. It is, therefore, necessary to refer to the decision of the Apex Court in the case of B.P. Singhal (supra). The issue before the Apex Court was concerning appointment of the Hon'ble Governor. In paragraph 16 onwards, the Apex Court referred to the law relating to the doctrine of pleasure. Thereafter, the Apex Court distinguished the doctrine of pleasure, as prevailing in England and as prevailing in India. In paragraph 22, the Apex Court held thus:

"22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will

necessarily and obviously be exercised reasonably and for the public good". (emphasis supplied)

12. In paragraph 23, the Apex Court relied upon the well known classic treatise on Administrative Law by Mr. H.W.R. Wade and C.F. Forsyth. Then, in paragraph 24, the Apex Court held thus:

"24. It is of some relevance to note that the "doctrine of pleasure" in its absolute unrestricted application does not exist in India. The said doctrine is severely curtailed in the case of government employment, as will be evident from clause (2) of Article 310 and clauses (1) and (2) of Article 311. Even in regard to cases falling within the proviso to clause (2) of Article 311, the application of the doctrine is not unrestricted, but moderately restricted in the sense that the circumstances mentioned therein should exist for its operation. The Canadian Supreme Court in Wells v. Newfoundland [1999 (177) DL (4th) 73(CanSC)] has concluded that "at pleasure" doctrine is no longer justifiable in the context of modern employment relationship". (emphasis supplied)

13. The sum and substance of what Is held by the Apex Court is that the decision of the Government by invoking the doctrine of pleasure must be tor good and compelling reasons and it cannot be at the sweet will, whim and fancy of the State Government, but it can only be for valid reasons and the power referable to doctrine of pleasure can be used reasonably and only for public good.

14. Now coming back to the facts of the present case, one situation can be that the proposal contains valid reasons and the Hon'ble Chief Minister approves the reasons. To make the exercise lawful, the file must show application of mind by the Hon'ble the Chief Minister. The other contingency can be that even the proposal contains no reasons, but the order of the Hon 'ble Chief Minister reflects the reasons. In this case, both

the things are absent. Hence, it is a case of arbitrary exercise of the so-called doctrine of pleasure, which is not permissible in law. In fact it amounts to use of doctrine of pleasure at the whims and fancies of the State. Therefore, on this ground, we are inclined to hold that the view taken by the learned Single Judge is absolutely correct.

15. As far as the first ground regarding violation of the provisions of the said Act of 2013 is concerned, we have carefully perused the memorandum of writ petition filed by the 3rd respondent. There is absolutely no factual foundation for the said contention in writ petition. There is not even a contention raised that before the 7th August, 2019, the appellant could not have assumed the charge of the post of the Director (Technical) BESCOM. The fact that the charge that was taken over by the appellant on 23rd July, 2019 is suppressed. There are grounds pleaded in support of the challenge in the petition only in paragraphs 9 to 12 and none of the said paragraphs even refers to violation of provisions of the said Act of 2013. The findings recorded by the learned Single Judge regarding violation of the said Act of 2013 are based on the documents produced before the learned Single Judge. Violation of provisions of the said Act of 2013 is not merely a legal issue but it is based on the facts. If the learned Single Judge wanted to go into the said issue, he could have permitted the 3rd respondent to amend the writ petition so that, the appellant and the BESCOM could have dealt with the factual details. Only on this ground, the said finding of the learned Single Judge, insofar as it relates to violation of the said Act of 2013 is concerned, cannot be sustained.

16. According to us, one modification is necessary to the impugned order. After setting aside the order of the Hon'ble Chief Minister on the ground that there are no valid reasons recorded for exercise of doctrine of pleasure, the learned Single Judge ought to have directed the authorities to place the proposals submitted by the BESCOM before the Hon'ble Chief

Minister for his decision, so that one way or the other, a decision could have been taken by the Hon'ble Chief Minister in accordance with law. " (Emphasis supplied)

The Division Bench was following the earlier Division Bench judgment of the High Court of Bombay in **Dnyaneshwar Digamber Kamble vs State of Maharashtra, (2016) 1 Mah LJ 602**. The Division Bench in the said judgment has held as follows:

".... ....

8. Now, we come to the decision of the Apex Court in the case of B.P. Singhal. In Writ Petition No. 326 of 2015 and other connected matters decided by this Court on 8th May, 2015 to which one of us (A.S. Oka, J.) was a party, this Court has considered a case where the Chairman and Members of the Maharashtra State Road Transport Corporation were removed by the State Government by invoking the doctrine of pleasure. It may be that on facts, the Apex Court in the case of B. P. Singhal was considering the case of a Constitutional post. However, what is material is the ratio of the decision. This Court in Writ Petition No. 326 of 2015 and other connected petitions has considered the law laid down by the Apex Court in paragraphs 22, 23 and 34 of the decision in the case of B.P. Singhal. Paragraphs 19 to 21 of the decision of this Court in Writ Petition No. 326 of 2015 read thus: -

"19. As far as the doctrine of pleasure is concerned, it will be necessary to make a reference to the decision of the Constitution Bench of the Apex Court in the case of the **B.P. Singhal** (supra). In the said decision, the Apex Court has considered the scope of the doctrine of pleasure in the light of the provisions of the Constitution of India. In paragraph 22, the Apex Court has made a distinction between the doctrine of pleasure in a

feudal set up and the doctrine of pleasure in a democracy governed by the Rule of law. Paragraph 22 of the decision of the Apex Court reads thus:

"22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by the rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good. " (emphasis added)

20. Thereafter in paragraph 23, the Apex Court relied upon a classic statement from the well known commentary on the Administrative Law by H.W.R. Wade. The said paragraph reads thus: "23. The following classic statement from Administrative Law (H.W.R. Wade and C.F. Forsyth, 9th Edn., pp. 354-55) is relevant in this context: "The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely-that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and meaning of the empowering Act. The powers of public

authorities are therefore essentially different from those of private persons. A man making his Will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest.... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good. There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. "

21. In paragraph 24 Apex Court held that the doctrine of pleasure in its absolute unrestricted application does not exists in India. Ultimately in paragraph 34 Apex Court held thus:

"34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons. (emphasis added)

9. After considering the law laid down by the Apex Court in paragraph 22, this Court has held thus:-

"Therefore, the law laid down by the Apex Court is that the withdrawal of pleasure cannot be at the fancy of the State Government. It can be only for valid reasons. In paragraph 22 of the decision, the Apex Court clearly held that the said power can be used reasonably and only for public good. "

10. Thus, the law laid down by the Apex Court is that the withdrawal of pleasure cannot be at the sweet will, whim and fancy of the State Government and it can only be for valid reasons. Moreover, the power of withdrawal of pleasure can be used reasonably and only for public good. We must note here that though the decision of this Court in Writ Petition No. 326 of 2015 has been challenged by the State Government before the Apex Court, admittedly there is no ad-interim relief granted by the Apex Court.

11. Going back to the facts of the case, it is the specific stand of the State Government that for passing the impugned order, the doctrine of pleasure has been invoked. As held earlier, in the noting dated 18th November, 2014 as well as in the affidavit, no reason has been set out by the State Government for removing the petitioner. It is true that the order of appointment records that the tenure of the post will be for three years or till further orders, whichever is earlier. When the admitted position is that the removal of the petitioner is on account of withdrawal of pleasure, the law laid down by the Apex Court will clearly apply to the facts of the case. We may note that in paragraph 34 of the judgment in the case of B.P. Singhal, the Apex Court held that the doctrine of pleasure in its absolute unrestricted application does not exist in India. Therefore, the petition must succeed and we pass the following order:-

(i) The impugned order dated 12th December, 2014 is hereby quashed and set aside;

(ii) We make it clear that the judgment and order will not preclude the State Government or the Hon'ble Governor from taking appropriate action of removal of the petitioner in accordance with law;

(iii) We are informed that regular appointment of the Chairman of the third respondent has not been made and only a charge has been given to the Secretary of the Social Justice Department;

(iv) We grant time of two months to the State Government to restore the charge of the post of the Chairman to the petitioner;

(v) The petition is allowed in the above terms. There will be no order as to costs. "

Long before the judgment in the case of **B.K. Uday Kumar** (supra), a co-ordinate Bench of this Court in **K.C. Shankare Gowda vs. The State of Karnataka, ILR 2017 KAR 2439** has held as follows:

"... ....

12. From the amendment as made, it is seen that the category of the nominees in (i) to (iv) of 'Other members' remains to be the same but only the nominating authority is substituted with 'Government' instead of 'Chancellor' as it existed earlier which is clear from the words for which emphasis is supplied. Sub-Section (3) which existed in the original Section 27 and continues to exist after the amendment also, which provides that the term of office of the members of the Board other than Ex-officio members shall be three years. This would mean that the 'Other Members' who were nominated by the Chancellor were assured the term of three years and the curtailment at pleasure is not indicated. As such the right has vested with such of those members who were nominated, to hold office as nominated members for a period of three years from the date of nomination unless the contingencies for removal as provided under sub-

Section (7) to Section 27 had arisen and the procedure contemplated was followed.

13. The Notification dated 26.06.2014 under which the subject nomination was initially made is also for a period of three years by specifying the starting date for computation of the period of three years as 05.07.2014. Hence, in the background of the legal position analysed above if the instant facts are taken note, a right has vested in the persons nominated under the Notification dated 26.06.2014 under the substantive provision contained in the Act to remain on the Board for a period of three years. The amendment as has been made is only to substitute the name of the nominating authority from 'Chancellor' to that of the 'Government', which right is to be exercised prospectively when the nominations are to be made to the vacant positions in the Board of Management from the 'Other Members' category. Neither the status nor the qualification of the members to be nominated has been changed by the amendment so as to effect the existing right.

14. Sri. V. Lakshminarayana, Learned Senior Counsel, despite the said position, in order to contend that a nominated member will hold office only during the pleasure of the nominating authority and cannot claim to continue in office when the pleasure is withdrawn, has relied on the decision of this Court in the case of **T. Krishnappa v. State of Karnataka [(2000) 7 Kant LJ 132]** . In that light, it is contended that by the Notification dated 13.01.2016 the nomination of different persons has been made in substitution of the earlier nominees, by which the pleasure exercised earlier is withdrawn. In that view, it is contended that the subsequent Notification/Order dated 21.01.2016 withholding the Notification dated 13.01.2016 is not sustainable. Though in that regard the Rules of Business and decisions are cited to contend that the nomination made by the Government cannot be kept in abeyance by a Secretary to the

Government, the detailed consideration in that regard will be necessary only if the Notification dated 13.01.2016 is held sustainable to supersede the Notification dated 26.06.2014.

15. In this backdrop, I have carefully examined the contentions in the light of the decision in the case of **T. Krishnappa** (supra). In that case, the right as claimed by the nominated member under Section 10 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 for the benefit of the extended period of one year arose for consideration therein. This Court in that context took note of the contents of Section 10(4)(a) of the Act which provides for nomination of the members of the first Committee for a period of two years from the date of notification under subSection (1) subject to 'pleasure' of the State Government and in that context held that the extended period of one year also under the proviso should be considered to be at the pleasure of the Government. The entire consideration therein was in the context of 'pleasure nominees'. The provision considered in that case reads thus,

"10. Constitution of the first market committee:-(4)(a) Save as otherwise provided in this Act [but subject to the pleasure of the State Government] the members of the first market committee shall hold office for a period of two years from the date of notification under sub-section(1):

Provided that the State Government may by notification extend the term of office of the members by such period or periods not exceeding [Two years] in the aggregates. " (emphasis supplied)

16. On the other hand, in the instant case, though the nomination to be made prior to amendment was by the Chancellor and presently it is by the Government, the period for which the nomination is made is for three years and not at the pleasure of either of the nominating authority. The removal of a nominated member, as noticed is only in the manner s provided under

sub-Section (7) to Section 27 of the KVAFSU Act on the ground of misbehavior, misconduct or otherwise after holding an enquiry. Despite no such contingency having arisen and the period of three years under the Notification dated 26.06.2014 not having come to an end, another Notification dated 13.01.2016 nominating persons to the same category will not be in terms of the provisions and scheme of the Act. Through the amendment in question the change made is only about the authority to nominate and the scheme as such has remained the same. In such circumstance, when the Notification dated 13.01.2016 is found to be not in accordance with law, the decision to keep it in abeyance through the Notification/Order dated 21.01.2016 cannot be found fault with nor is there need to interfere with the same as it would be open for the official respondents themselves to recall the same at the appropriate stage after the period of three years as required under the Notification dated 26.06.2014 is spent and thereafter to bring the nomination under the Notification dated 13.01.2016 into effect at that stage as a fresh nomination after the earlier period has elapsed. While computing the period of three years, the period, if any denied to the nominees under the Notification dated 26.06.2014 due to the interruption caused in view of the present action shall also be noted and benefit of the lost period be provided to them to remain on the Board for the entire three years term. Keeping in view the interim orders that were passed during the pendency of these petitions, in order to save the actions taken it is clarified that if the nominees under the Notification dated 13.01.2016 have participated in any meetings of the Board, such decisions taken shall however remain valid for administration purposes." (Emphasis supplied)

On a coalesce of the judgments rendered by the Apex Court or the Division Bench of Bombay High Court or the Division Bench of this Court what would unmistakably emerge is that the doctrine of pleasure cannot be

arbitrarily invoked to denominate any person who is nominated for a fixed term.

13. The other line of judgments rendered by the Apex Court and that of the co-ordinate Bench of this Court are, in the case of **State Of U.P. vs. U.P. State Law Officers Association, (1994) 2 SCC 204** the Apex Court holds as follows:

".... ....

17. The Government or the public body represents public interests, and whoever is in charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interests. This obligation imposes on them the duty to engage the most competent servants, agents, advisers, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty-bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

19. It would be evident from Chapter V of the said Manual that to appoint the Chief Standing Counsel, the Standing Counsel and the Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, the State Government is under no obligation to consult even its Advocate-General much less the Chief Justice or any of the judges of the High Court or to take into consideration, the views of any committee that "may" be constituted for the purpose. The State Government has a discretion. It may or may not

ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door. This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them. "

The Apex Court holds that nomination by itself from its nature is that the nominees do not have any vested right to continue as it is not akin to a fixed tenure as found in statutory appointments. A Division Bench of this Court in the case of **THE STATE OF KARNATAKA v. DR. DEEPTHIBHAVA (**W.A.No.617 of 2021 decided on 25-09-2021) has held as follows:

".... ....

12. The nomination to the Senate or Syndicate is made from certain category of persons namely persons having special interest in health sciences, from amongst the graduate of health sciences, experts in the field of health sciences for the purposes of representation of aforesaid category of persons. It is not an appointment as the word in common parlance connotes. A person nominated either to the Senate or to the Syndicate does not have any vested right to the post. The nomination is a honorary nomination and is without any financial benefit. It is pertinent to note that plea of vested right to hold a nominated post has been rejected by Supreme Court in **Cheviti Venkanna Yadav vs. State of Telangana and others (2007) 1 SCC 283**.

13. It is well settled legal proposition that rights created by a statute can also be limited or curtailed by such statute and in the absence of some other competing right under the statute or under the Constitution of India, a right to the post cannot be claimed. It is equally well settled legal proposition that doctrine of pleasure can be impliedly read in a provision and once the doctrine of pleasure is applicable, neither the principles of natural justice nor question of giving an opportunity before removal would arise. [See: **Krishna s/o Bulaji Borate vs. State of Maharashtra and Others (2001) 2 SCC 441**].

14. It is pertinent to note that taking into account the fact that appellants have been nominated to the post in question and they do not have any substantive right to hold the post, and in the absence of any minimum tenure being prescribed in Section 31, the doctrine of pleasure can be impliedly read into Sections 21 and 24 of the Act. In the absence of any specific provision in the Act for removal of the nominated members prior to reconstitution of Senate or Syndicate, the provisions of Sections 21 and 24 of the Act have to be read along with Sections 16 and 21 of the General Clauses Act, 1897. Therefore, the State Government has power to recall

the nominations of persons, nominated to the Senate and Syndicate even before reconstitution of Senate or Syndicate in its entirety.

15. Even otherwise, taking into account the nature of constitution of the Senate and Syndicate, as it comprises the ex-officio as well as nominated members, even partial reconstitution of Senate or Syndicate is permissible. At this stage, it is relevant to take note of the notification dated 23-10-2020 by which nomination of the appellants was recalled. The aforesaid notification reads as under:

NOTIFICATION

In exercise of the powers conferred under Section 21(1)(x) of Rajiv Gandhi University of Health Sciences Act, 1994, in the public interest and in the interest of academic activities of RGUHS, the earlier notification dated 16-10-2018 is cancelled, the following members amongst the graduates of health sciences are nominated as a member of Senate of RGUHS with immediate effect and until further orders.

Sl. No	**Name and Address**
1	Dr. Aravinda Shenoy, MBBS, MD (Paediatrics) DM (Neonatology) H.No.115, Old Airport Road, Kodihalli, Bengaluru-560 071
2	Dr. G.A. Deepashree, MBBS,MD (Paediatrics) DM (Nephrology), H.No.166, 3rd Block, 17th Main Road, 49th Cross, Rajajinagar, Bengaluru- 560 010.

3	Dr. Venkataswamy Reddy, MBBS, MS (Ophthalmology) H.No.836, 6th Main Road, Modi Hospital Road, West of Chord Road, Rajajinagar, Bengaluru- 560 086.
4	Dr. S.Murali, MBBS, MD (Internal Medicine) DM (Neurology) (CMC) FRCP (Edin), PGPX (ULCA), H.No. 520, 6th 'E' Road, 6th Block, Koramangala, Bengaluru 560 094.
5	Dr. M.K. Mahendra (At present Senate Member) Continued as Senate Member

By the order and in the name of the Honourable Governor of Karnataka, (M.J yothipra kash) Under Secretary-2, Medical Education Department.

xxxxx"

Thus, it is evident that the aforesaid notification is neither stigmatic nor leads to any penal consequences. The principles of natural justice also do not apply to the facts of the case. Therefore, the nomination which was made under the provisions of the Act is sought to be annulled as per provisions of the Act. The respondents have made vague allegations with regard to mala fides and have not been able to substantiate the same. In the instant case, there is nothing on record to suggest that power to recall the nomination has been exercised in an arbitrary manner. Even otherwise, the respondents, in the absence of any interim order in this appeal, have substantially completed their tenure in Senate and Syndicate of the University and the tenure of the respondents even otherwise would have expired on 15-10-2021. For this reason also, no interference is called for in the impugned notifications dated 23-10-2020. The action of the appellants is in conformity with the provisions of the Act and does not result in infraction of any of the rights of the respondents. "

The Division Bench upturns the order of the learned single Judge holding that the nominees would hold office with the pleasure of the State and cannot be seen to project any right that is taken away when those nominations are cancelled. The Division Bench holds that principles of natural justice also do not apply to cancellation of nominations, unless it is shown that it is exercised in an arbitrary manner.

14. A co-ordinate bench of this Court in the case of **Pallavi Vastrad vs. State of Karnataka, W.P.No.11958 of 2023 disposed on 08-11-2023** while answering an identical issue considers the entire spectrum of the law and holds as follows:

"....

9. The issue that requires consideration is as to whether the action of taking away the petitioners from the Executive Council is to be considered as arbitrary, capricious or unreasonable?.

10. The petitioners have contributed in the field of education. They were nominated as members of Executive Council of VTU vide notification dated 25.03.2023 as per Section 19(3)(d) of the Act of 1994 for a period of 3 years and the same expires with the term of 9th Executive Council of VTU. That in the month of May 2023, elections were held for the Members of Assembly. A new Government came into power in the State of Karnataka and started undoing what was done by the previous Government under the pressure of various political parties. On 24.05.2023, respondent No.2 issued a notification whereby the appointments and nominations made by the preceding Government to various committees in various universities were revoked. Pursuant to the said notification dated 24.05.2023, the membership of the petitioners on 9th Executive Council of VTU was revoked vide notification dated 02.06.2023. The respondent No.6 vide notification dated 26.08.2023 vide Annexure-E, nominated respondents

No.4 and 5 as Members of Executive Council of VTU under Section 19(3)(d) of Act of 1994, in place of petitioners. In order to consider the case in hand, it is necessary to examine Section 19 of the Act, which reads as under:

'Section 19(3)(d) enumerate that there can be only three representatives of Government of Karnataka nominated by the State Government one of whom shall be the Director of Technical Education.'

Sub section 4 provides, the term of office of the Members of the Executive Council shall be 3 years. From the perusal of the Act of 1994, there is no specific procedure contemplated to nominate a person. The person thus nominated by the nominating authority will therefore remain on the executive council until he/she enjoys the pleasure of nominating authority.

11. Section 47 deals with the vacating of office, which reads as under:

'Section 47 enumerate the post of membership falls vacant if any member resigns or convicted by Court of law for an offence which involves moral turpitude'.

12. Though there is no provision prescribed under the Act of 1994, for removal of membership of the Executive Council, Section 16 of the General Clauses Act, 1897, which deals with power to appoint to include power to suspend or dismiss, which reads as under:

"16. Power to appoint to include power to suspend or dismiss. - Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power."

Section 16 provides that if a person is appointed under any Act or Regulation, the authority may have power to suspend or dismiss.

13. Section 21 deals with the power to issue, to include power to add to, amend, vary or rescind the notifications, orders, rules or byelaws, which reads as under:

"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. - Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Section 21 empowers an authority which has power to issue notification, has undoubted power to rescind or modify the notification in the like manner.

14. The Hon'ble Apex Court in the case of **RASID Javed Vs. State of Uttar Pradesh and another reported in AIR 2010 SC 2275** held that, the authority which has a power to issue a notification has the power to rescind or modify the notification in the like manner. Though the nominating authority i.e., State issued the notifications nominating the petitioners as members of Executive Council. Subsequently, in view of change in the Government the nominating authority withdrawn the membership of the petitioners as Executive Members of Council and nominated respondent Nos.4 and 5. In view of the same, the petitioners are required to accept the position gracefully as there is no requirement to terminate either with or without the compliance of principles of natural justice like in the case of appointment of post.

15. The Hon'ble Apex Court in the case of **Cheviti Venkanna Yadav Vs. State of Telangana and others reported in (2017) 1 SCC 283** in para Nos. 33 and 34 held as under:

"33. The aforesaid argument suffers from a fallacy. The members were not elected. They were not appointed by any kind of selection. They were chosen by the State Government from certain categories. The status of the members has been changed by amending the word 'appointed' by substituting it with the word 'nominated'. Thus, the legislature has retrospectively changed the meaning. In our considered opinion, by virtue of the amendment, the term which has been reduced for a nominted member stands on a different footing. In **Om Narain Agarwal Vs. Nagar Palika, Shahjahanpur** (SCC p.254, para 11) it has been held that if an appointment has been made initially by nomination, there can be no violation of any provision of the Constitution in case the legislature authorized the State Government to terminate such appointment at its pleasure and to nominate new members in their place. It is because the nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. The Court further observed that such provision neither offends any article of the Constitution nor is the same against any public policy or democratic norms enshrined in the Constitution.

34. The word 'appointment' has been substituted by 'nomination'. It is an appointment by nomination. It is from certain categories for the purpose of representation. It is not appointment as the word ordinarily connotes. The legislature, in its wisdom, has substituted the word 'appointment' and made it 'nomination with retrospective effect'. To enable it to curtail or reduce the term, the procedure for removal remains intact. A nominee can go from office by efflux of time when the period is over. That is different than when he is removed. A nominated member, in praesenti, can also be removed

by adopting the procedure during the period. Otherwise, he shall continue till his term is over; and the term is one year. The plea of vested right is like building a castle in Spain. It has no legs to stand upon and, therefore, we unhesitatingly repel the said submission."

16. It is well settled legal proposition that rights created by statute can also be curtailed by such a statute and in the absence of some other competing right under the statute or under the Constitution of India, right to the post cannot be claimed. It is equally well settled legal proposition that doctrine of pleasure can be impliedly read in a provision and once the doctrine of pleasure is applicable neither the principles of natural justice nor question of giving an opportunity before removal would arise and does not provide any provision for removal of members of Executive Council. In the absence of any specific provision which provides for removal of Executive Council, clause 16 and 21 of the General clauses Act, 1897 would apply.

17. The Hon'ble Division bench of this Court in writ Appeal No.617/2021 in the case of **THE STATE OF KARNATAKA Vs. DR. DEEPTI BHAVA AND OTHERS** , held that in the absence of any specific provision in the Act for removal of the nominated members prior to reconstitution of senate or Syndicate, the provisions of Sections 21 and 24 of the Act have to be read along with Sections 16 and 21 of the General Clauses Act, 1897. Therefore, the State Government has power to recall the nominations of the persons, nominated to the senate or Syndicate even before reconstitution of senate or Syndicate in its entirety. As observed above, the VTU Act does not contain a clause to removal of the Member of the Executive Council. Sections 16 and 21 of the General Clauses Act, 1987, have to be read into and the power to nominate carries with it the power to remove. Applying the provisions of the Sections 16 and 21 of the General Clauses Act, the Government is well within its power to remove or to withdraw the petitioners' membership of the Executive Council.

18. The learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Apex Court in the case of **B.P. SINGHAL** (SUPRA). The said judgment does not come to the rescue of the petitioners in any way. The said judgment was rendered in the context of removal of the Governor of a State. Governor is appointed by the President under Article 55 of the Constitution of India and the Governor will act as a link between the Union Government and State Government.

19. In the case of **KUMARI SHRILEKHA VIDYARTHI AND OTHERS Vs. STATE OF UTTAR PRADESH AND OTHERS, reported in (1991) 1 SCC 212**, the District Government Counsel were appointed following the issuance of notifications, prescription of qualifications and experience and preparations of the panels etc. The procedure prescribed by legal remembrancer's manual was scrupulously followed while making appointment to the offices of the Government Counsel.

20. In the instant case, it is not the case of the petitioners that applications were called for from the desirous educationist for being nominated to the member of the Executive Council. The judgments placed and relied upon by the learned counsel for the petitioners are not applicable to the present case in hand.

21. The Co-ordinate bench of this Court in the case of **A.M BHASKAR AND OTHERS vs. STATE OF KARNATAKA, Department of Education (University) reported in ILR 2013 KAR 4182** had considered the judgments of the Hon'ble Apex Court as referred above and held that the said judgments have been rendered in the case of appointment and not nomination and further held that the petitioners have no legally vested right to demand that they be continued as the members of the Syndicate for the fixed period of 3 years. The petitioners are neither elected nor appointed, they are nominated and they will hold the office so long as Government

does not withdraw its pleasure. The said decision is aptly applicable to the case in hand.

22. The learned Senior counsel for the petitioners submits that no reasons have been assigned for withdrawal of membership of the petitioners and he places a reliance on the judgment of the Hon'ble Division bench of Bombay High Court in the case of **DNYANESHWARI DIGAMBER KAMBLE Vs. State of Maharashtra and others reported in 2015 SCC Online Bombay 6597** wherein it is held that withdrawal of pleasure cannot be at the sweet will, whim and fancy of the State Government and it can only be for valid reasons. Moreover, the power of withdrawal of pleasure can be used reasonably and only for public good and further he has placed reliance on the judgment of this Court in the case of **D.K.Udaykumar VS. State of Karnataka reported in (2020) 3 KLJ 100**, wherein the Hon'ble Division bench has reiterated the proposition of law laid down in the case of **Dnyaneshwari Digamber Kamble** referred (supra). The judgments relied upon by the learned senior counsel for the petitioners are not applicable to the present case in hand.

23. Learned Advocate General has placed a reliance on the judgment of the Hon'ble Apex Court in the case of **State of UP Vs. UP State Law officers Association, reported in (1994) 2 SCC 204** wherein it is held that, when the nominations are made exercising the pleasure, they do not have vested right to that position and the nominating authority has the inherent right to terminate their appointment at any time.

24. The Hon'ble Apex Court in the case of **OM Narain Agarwal Vs. Nagarpalika Shahajahanpur reported in (1993) 2 SCC 242** held that unequal cannot be treated equally, which is to say that nominated members cannot claim equity and the security of the elected members. He has placed reliance on the judgment of this Court in the case

of **H.RAJAIAH AND ORS. Vs. STATE OF KARNATAKA AND Ors., reported in ILR 2000 KAR 4989** wherein it is held that the scope of judicial review in the matters of nominations must be limited and cancellation of nomination cannot be invalidated, merely because of allegations of political consideration.

25. Further, the learned Advocate General placed reliance on the judgment of the Hon'ble Division Bench of this Court in the case of **State of Karnataka Vs. Dr. Deepthi Bhava and others in W.A.No.718/2021** connected with other writ appeals, wherein it is held that there was no vested right to the nominated to the post when there is no procedure for removal of nominated members, the doctrine of pleasure can be impliedly read into the provision. Considering the judgments placed on record by the learned Advocate General, the issuance of nominating respondent Nos.3 and 4 and withdrawal of the petitioners as membership as a member of executive is legally valid under Section 19(3) of VTU Act, read with Sections 16 and 21 of the General Clauses Act. The removal of petitioners is a non-stigmatic and non-punitive. The petitioners have not made out any grounds to entertain the writ petition. Accordingly, the writ petition is dismissed. " (Emphasis supplied)

15. Another co-ordinate bench in the case of **PROF. Y.S. SIDDEGOWDA V. STATE OF KARNATAKA, W.P.No.22090 of 2023 disposed on 05-12-2023** while answering somewhat similar circumstance has held as follows:

".....

37. The matter can also be viewed from a different angle. If the nomination under Section 3(1)(ii) and 7(3) are the same, the term "Vice-Chairman" would not have found a place in Section 7(3). In other words, when a person is already occupying the office of the Vice-Chairman by virtue of a

nomination made under Section 3(1)(ii), there was no question of the Vice Chairman once again being appointed under Section 7(3). The fact that Section 7(3) contemplates the appointment of Vice-Chairman for a term of five years indicates that merely because a person is nominated under Section 3(1)(ii), that does not automatically translate into an appointment as contemplated under Section 7(3). Unless a specific order of appointment in terms of Section 7(3) has been made, the Vice Chairman would only be a person nominated by the Government under Section 3.

38. However, even assuming that the petitioner was appointed under Section 7(3), the next question that would arise is whether the petitioner would still have the statutory right to hold Office till 31.10.2027.

39. Section 11 of the Act details the terms and conditions of the Vice-Chairman, the Executive Director and the members. It is to be noticed that apart from these three posts [including that of the Vice-Chairman nominated under Section 3(1)(ii)] and 10 Academicians of repute who are nominated by the Government, all the other members of the Council are entitled to become members by virtue of the Office that they hold. In other words, apart from the Vice-Chairman and 10 Academicians, all the other members are official members. The Executive Director is to be appointed by the Government and such appointee could either be a serving or retired Senior Administrative Officer not below the rank of a Principal Secretary. It is, thus, clear that it is only the Vice Chairman and the 10 Academicians mentioned above who can be construed as non-official members.

40. Section 11(4) would be relevant for the purpose of this case and the same reads as follows -

"11(4) Subject to the pleasure of the Government, a nonofficial member shall hold the office for a term of five years or till the expiry of the term of the body represented by him whichever is earlier."

41. Sub-section (4) starts with the phrase "subject to the pleasure of the Government" and this clearly indicates that a non-official member of the Council would be entitled to hold the Office for a term of five years or till the expiry of the term of the body represented by him, whichever is earlier.

42. It is to be borne in mind that official members will continue to be the members of the Council by virtue of the office that they hold and there is therefore no question of them being members at the pleasure of the Government.

43. What can be gathered from this is that a specific provision is made only in respect of the non-official members of the Council regarding their tenure and their right to be a part of the Council. Since Sub-section (4) categorically states that non-official members can hold their office for a term of five years, subject to the pleasure of the Government, it is clear that even if a person is appointed to be a member of the Council and he happens to be a non-official member, his right to hold the office would be subject to the pleasure of the Government.

44. Thus, even if it is assumed that the petitioner was appointed by the Government under Section 7 (3), by virtue of sub-section (4) of Section 11, the petitioner (being a non official member) can hold the Office subject to the pleasure of the Government even if the statutory provision prescribes the period of tenure as 5 years.

45. Since, as per the discussion made above and as could also be seen from the Notification that the petitioner was nominated under Section 3(1)(ii) and was not appointed as provided under Section 7(3), the petitioner would not have a right to hold the Office for a period of 5 years or until 31.10.2027, if he does not have the confidence of the Government.

46. Even if it is assumed that the petitioner was appointed under Section 7(3), as Section 11(4) expressly provides for a non-official member's appointment to hold office would be subject to the pleasure of the Government, it is manifestly clear the petitioner would not have a right to hold the office of the Vice Chairman if he has lost the confidence of the Government.

47. Learned counsel for the petitioner, however, sought to place reliance on the judgment rendered in **B.P. Singhal** (supra), **B.K. Uday Kumar** (supra) and **T. Suneel Kumar** (supra) to contend that even if it is assumed that the theory of doctrine of pleasure is attracted in the case of the petitioner's appointment, nevertheless, the State is required to show compelling reasons for renewing the petitioner and since no such reason is put forth, the order passed by the State Government cannot be sustainable. It is highlighted that removal of a nominated person, even at the pleasure of the Government, would be subject to judicial review and the same cannot be done in an arbitrary or capricious manner. A Division Bench of this Court in W.A. No.669/2022 has held as follows-

"6. It is not in dispute that the appellants have been nominated by respondent no.1 as the syndicate members of respondent no.2-University. Section 39(1) of the Act of 2000 provides that any member nominated under the Act of 2000, shall hold the office during the pleasure of the nominating authority concerned. Section 39(1) of the Act of 2000 reads as under:

"39. Restriction of holding the membership of the authorities.- (1) Any member nominated to any of the authorities under this Act shall hold office during the pleasure of the nominating authority concerned."

7. An identical issue was considered by the Division Bench of this Court in W.A.No.617/2021 and at paragraphs 13 & 14, it has been observed as under:

"13. It is well settled legal proposition that rights created by a statute can also be limited or curtailed by such statute and in the absence of some other competing right under the statute or under the Constitution of India, a right to the post cannot be claimed. It is equally well settled legal proposition that doctrine of pleasure can be impliedly read in a provision and once the doctrine of pleasure is applicable, neither the principles of natural justice nor question of giving an opportunity before removal would arise. (See: **'KRISHNA S/o BULAJI BORATE Vs. STATE OF MAHARASHTRA AND OTHERS' (2001) 2 SCC 441**).

14. It is pertinent to note that taking into account the fact that appellants have been nominated to the post in question and they do not have any substantive right to hold the post, and in the absence of any minimum tenure being prescribed in Section 31, the doctrine of pleasure can be impliedly read into Sections 21 and 24 of the Act. In the absence of any specific provision in the Act for removal of the nominated members prior to reconstitution of Senate or Syndicate, the provisions of Sections 21 and 24 of the Act have to be read along with Sections 16 and 21 of the General Clauses Act, 1897. Therefore, the State Government has power to recall the nominations of persons, nominated to the Senate and Syndicate even before reconstitution of Senate or Syndicate in its entirety."

8. In the case of **A.M.BHASKAR & OTHERS VS THE STATE OF KARNATAKA, DEPARTMENT OF EDUCATION (UNIVERSITIES), REP. BY THE CHIEF SECRETARY & OTHERS**, this Court in paragraph 53 has observed as under:

"53. 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."

The judgments in **B.P.Singhal's case** and **B.K.Uday Kumar's** case supra have been rendered in cases of appointment and not nomination, and therefore, as rightly contended by the learned Additional Advocate General, the same cannot be made applicable to the instant case. In the case of nomination, there is no such prescribed process and the nomination would be done at the pleasure of the nominated authority, and therefore, the nominating authority would also have the power to remove the nominee at its pleasure. Under the circumstances, we are of the considered view that the learned Single Judge was fully justified in dismissing the writ petition and we find no reason to interfere with the said order. Accordingly, the writ appeal is dismissed."

48. In light of the fact that the Notification which is relied upon by petitioner only stated that he had been appointed under Section 3(1)(ii), thereby meaning that he was not appointed under Section 7(3) and since he has also not been subsequently appointed under Section 7(3), it is clear that the judgments upon which reliance is placed i.e., **B.P.Singhal** (supra) and **B.K.Uday Kumar** (supra), as distinguished by the Division Bench, would squarely apply. The Division Bench has, in fact, gone on to state

that in the case of nomination, the nominating authority would have the power to remove the nominee at its pleasure and having regard to this ratio laid down by the Division Bench, the State Government was justified in removing the petitioner." (Emphasis supplied)

16. It would be apposite to refer to the judgment of a Division Bench of this Court interpreting the very Act and the nomination under the Act. The Division Bench in **KHUSRO QURAISHI v. STATE OF KARNATAKA, 2012 SCC OnLine Kar 5084** has held as follows:

".... ....

8. We have heard learned counsel for the parties at length and with their assistance gone through the entire material placed before us for consideration. The grounds of challenge, as submitted by Mr. Jayaram, learned senior counsel appearing for the petitioner are two fold. Firstly, he submitted that the State Government did not follow the procedure contemplated by section 5 of the Act for removal of the petitioner from the post of Chairman of the Commission. In other words, he submitted that no reasonable opportunity of being heard was given to the petitioner before issuing the impugned notification/order dated 25.11.2010. Secondly, he submitted the impugned action of removal was malafide exercise of power and that the action taken by the State Government invoking doctrine of pleasure was arbitrary, capricious and unreasonable. He submitted, merely because the provisions contained in section 4 of the Act use the expression "subject to the pleasure of the Government", the Government cannot invoke the doctrine of pleasure in arbitrary, capricious and unreasonable manner and it has to be exercised only in rear and exceptional circumstances, for valid and compelling reasons. While dealing with the questions/issues raised and involved in the petition, we will make further reference to the submissions advanced by Mr. Jayaram,

learned senior counsel and so also to the submissions made by the learned counsel for the respondents.

9. At the outset, we would like to consider the submission that the impugned notification/order is illegal since it was issued without giving an opportunity of being heard as provided for under section 5 of the Act. In support of this submission learned senior counsel for the petitioner invited our attention to the provisions contained in sections 3, 4 and clause (d)(g) of sub-section (1) of section 5 and the proviso thereto of the Act.

10. We have gone through the relevant provisions of the Act. The Act was brought on the statute book to constitute a state commission for minorities and to provide for matter connected therewith or incidental thereto. Section 3 of the Act provides for constitution of the Commission consisting of Chairman and six other members to be nominated by the State Government, from amongst persons of eminence, ability and integrity. Out of seven persons five persons including the Chairman need to be from amongst the minorities communities. Section 4 specifies about the term of office and conditions of service, of the Chairman and the members appointed under sub-section (2) of section 3. The Chairman and members of the Commission, under this provision, subject to the pleasure of the Government, shall hold office for a term of three years from the date they assume their office. Section 5 provides that a person shall be disqualified for being appointed as and for being continued as the Chairman or a member, as the case may be, if he acquires disqualification as provided for in clauses (a) to (g) of sub-section (1) thereof. Clause (g) of sub-section (1) of section 5 provides that a person shall be disqualified for being appointed as and for being continued as the Chairman or a member, as the case may be, if he has in the opinion of the Government, so abused the position of chairperson or member as to render that person's continuance in office is detrimental to the interests of the minorities or the

public interest. No person, as provided for in the proviso to subsection (1) of section 5, shall be removed under clauses (a) to (g) until that person has been given a reasonable opportunity of being heard in the matter. It would be relevant to re-produce the relevant provisions with which we are concerned in these matters, which read thus:

"**3. Constitution of the Commission** -(1) As soon as may be after the commencement of this Act, the Government shall constitute a body to be called as the Karnataka State Minorities Commission to exercise the powers conferred on and to perform the function assigned to it under this Act with its headquarters at Bangalore.

(2) The Commission shall consist of-,

(a) a Chairman and six other members to be nominated by the Government, from amongst persons of eminence, ability and integrity:

Provided that five members including the Chairman shall be from amongst the minorities communities; and

(b)....

4. Term of office and conditions of service of the Chairman and members.- (1) Subject to the pleasure of the Government, the Chairman and members of the Commission shall hold office for a term of three years from the date they assume their offices.

(2).....

(3).....

(4).....

(5).....

5. Disqualification for office of membership.-

(1) A person shall be disqualified for being appointed as and for being continued as the Chairman or a member as the case may be, if he-,

(a).....

(b) is of unsound mind and stands so declared by a competent court; or

(c).....

(d).....

(e).....

(f).....

(g) has in the opinion of the Government, so abused the position of chairperson or member as to render that person's continuance in office is detrimental to the interests of the minorities or the public interest:

Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

(2) Any person who is disqualified under sub-section (1) shall be removed by the Government. "

From bare perusal of the aforementioned provisions, it is clear, in the present case, the petitioner was appointed under subsection (21)(a) of section 3 and the order/notification of his appointment dated 25.2.2009 was cancelled by the notification/order dated 25.11.2010 issued under sub-section (1) of section 4 of the Act. The cancellation of the petitioner's appointment as Chairman of the Commission which resulted in his removal was indubitably issued under section 4 and not under section 5 of the Act.

It would be relevant to re-produce the notification dated 25.11.2010 which reads thus:

"As per Government Notification No. SaKaE 34 Bamama 2007, dated 25.02.2009, Shri. Khusro Qureshi, No. 571, 8th Block, 1s Main Road, Koramangala, Bangalore 560 095, was nominated as Chairman of Karnataka State Minorities Commission.

The Government of Karnataka by virtue of the powers conferred under Sec (3) Sub Sec (2) Clause(1) and Sec (4) of Karnataka State Minorities Commission Act-1994 (Karnataka Act 31 (1994), hereby cancels the nomination of Shri Khusro Qureshi as Chairman Karnataka State Minorities Commission and in his place nominates Shri. Anwar Manippady S/o Late Sri. M.S. Manippady, High-point Apartment, Nantoor, as Chairman -Karnataka State Minorities Commission, with immediate effect and until further orders. " (emphasis supplied)

From perusal of the notification, it is clear, that it was not a removal as contemplated by the provisions of section 5 of the Act. It is not the case of the Government that in their opinion the petitioner abused the position of chairperson so as to render his continuance in the office detrimental to the interest of the minorities or the public interest. A plain reading of the notification dated 25.11.2010 shows, as claimed by the State Government in their reply, it was issued by invoking the doctrine of pleasure as provided for under section 4 of the Act.

11. From perusal of sections 4 & 5 of the Act, it is clear that the field of these two provisions are separate. Section 5 provides for disqualification resulting in removal of the Chairman or a member as the case may be, whereas cancellation of order of nomination resulting in removal made under section 4 of the Act is by invoking doctrine of pleasure without any stigma. In short, removal of the Chairman or a member by the Government

is based on the principle of doctrine of pleasure and it does not attach stigma. As against this, removal of the Chairman or a member under section 5 is with penal consequences attaching stigma and therefore, the procedure contemplated by the proviso to sub-section (1) of section 5 must be followed. If the contention urged by Mr. Jayaram, learned senior counsel for the appellant is accepted, viz. Section 4 empowers and section 5 lays down the conditions and procedure to remove, then removal of the Chairman or a member could only be for penal consequences and not otherwise. We are unable to concede to this submission. If that was so, there was no reason to enact section 4 providing for the doctrine of pleasure and that section 5 would have taken care of all such cases. Rights of the Chairman and members nominated under section 3(1)(a) r/w section 4, either for a period of 3 years or until further orders, subject to the pleasure of the Government are the rights created under a statute and hence that very creator can always limit or curtail such rights. In such case, if the Chairman or a member is removed, he cannot project any grievance that no opportunity was given to him. In other words, if any right which is a creature of statute, is limited or curtailed by that very statute, in the absence of any other right under the Constitution of India, the person whose right is curtailed, cannot claim any right based on the principle of natural justice. (See **KRISHNA v. STATE OF MAHARASHTRA (2001) 2 SCC 441**) Moreover, removal in the present case, in our opinion, neither casts any stigma nor leads to any penal consequences. This clearly reveals the doctrine of pleasure, which is implicit in section 4 of the Act.

12. In the present case, the petitioner was appointed as Chairman of the Commission "until further orders" and not for a fixed term of 3 years as provided for under section 4. The petitioner does not dispute right of the State Government to nominate either the Chairman or a member of the Commission, until further orders. The petitioner accepted his appointment

with open eyes. In other words, the petitioner accepted his appointment though it was not made for fixed terms of 3 years. It clearly shows that the Government reserved its right to, either continue the petitioner or to appoint any other person in his place. The petitioner, therefore, cannot contend that in view of section 4 of the Act, he cannot be discontinued/removed by the Government till he completes the period of 3 years. If the petitioner claims that his appointment ought to have been made for a period of 3 years, he should have, when nominated, insisted the Government to fix his tenure before assuming charge. He did not do so. The notification/order by which he was nominated clearly speaks that he could hold the post until further orders of the Government and therefore, it was open to the Government to appoint any other person in place of the petitioner by exercising the power of pleasure doctrine. In such eventuality, the Government is not required to furnish the reasons nor the petitioner had right to know the reasons for his removal under section 4 of the Act. Once the doctrine of pleasure is invoked, neither the principles of natural justice would step in nor any question of giving an opportunity before removal would arise. It is pertinent to note when stigma is cast, then sub-section (1) of section 5 specifically provides for giving an opportunity before passing an order of removal under that provision. There is no such corresponding sub-section under section 4 providing an opportunity of being heard before removal under this provision. (See **B.P. SINGHAL v. UNION OF INDIA (2010) 6 SCC 331; UNION OF INDIA v. SHARDINDU (2007) 6 SCC 276; UNION OF INDIA v. TULSIRAM PATEL (1985) 3 SCC 398, and OM NARAIN AGARWAL v. NAGAR PALIKA, SHAHJAHANPUR (1993) 2 SCC 242)."** (Emphasis supplied)

The afore-quoted judgment in the case of **KHUSRO QURAISHI** was also concerning the nomination of Chairman of the Commission under the Act. The Division Bench holds that Section 4 itself uses the expression subject

to pleasure of the Government. Therefore, it cannot be said that it is arbitrary on the part of the State to invoke the mandate of the statute.

17. All the judgments that the learned senior counsel for the petitioner has placed reliance upon are considered by the Division Bench in the case of **KHUSRO QURAISHI**. If the case of the petitioner is considered on the touch stone of the law laid down by the Apex Court and on the coalesce of the reasoning rendered therein what would unmistakably emerge is, that no right of the petitioner is taken away. The petitioner is a nominee who is nominated under Section 4 of the Act. Section 4 itself indicates that it is at the pleasure of the State. It is exercised and he is denominated. Such de-nomination of a nominee cannot be questioned on the ground that it is arbitrary. Much reliance is placed by the learned senior counsel for the petitioner in the case of **B.P.SINGHAL**. The same would not merit any acceptance, as the said judgment is considered by three Division Benches of this Court subsequent to the judgment of the Apex Court and have all held that if the statute indicates that it is subject to the pleasure, a person who is nominated subject to such pleasure cannot make a hue and cry about cancellation of such nomination.

18. The learned senior counsel places heavy reliance upon the averments made in the application for vacation of the interim order with particular reference to paragraph-3. Paragraph-3 of the application seeking vacation of the interim order reads as follows:

"I state that it is relevant to state that there are several misconducts and illegalities on the part of the petitioner while discharging his duties as Chairman, Karnataka State Minorities Commission. "

The averment is that there are several misconducts and illegalities on the part of the petitioner. A statement in the application seeking vacation of interim order cannot generate a right in the petitioner, which the petitioner

in law does not have. Even then, any such averment can never supersede the rigour or mandate of the statute. Taking cue from the aforesaid paragraph the learned senior counsel elaborates her submission by strenuously trying to bring in the case of the petitioner under Section 5 of the Act, to contend that if it is removal under Section 5, notice ought to have been issued.

19. Section 5 deals with disqualification for office of membership. The reason for such disqualification is found in clauses (a) to (g) of sub-section (1) of Section 5 and if those clauses are to be invoked and the incumbent is to be removed, it is then a reasonable opportunity of being heard should be granted. The petitioner is not disqualified on any ground whatsoever. He has been de-nominated, and it is a de-nomination simpliciter exercising State's right under Section 4 of the Act. This submission of the learned senior counsel for the petitioner, on this score also does not merit any acceptance. In the light of non of the submissions of the learned senior counsel for the petitioner being acceptable, the petition deserves to be rejected.

20. For the aforesaid reasons, the following:

ORDER

a. The writ petition is dismissed.

b. Interim order if any subsisting, shall stand dissolved.

Consequently, pending applications, if any, also stand disposed.