

(2017) 07 AHC CK 0060
ALLAHABAD HIGH COURT
Case No: 14274 of 2017

Dr. Ranjeet Singh &
Ors.

APPELLANT

Vs

State of U.P. Thru.
Secy. Deptt. of Ayush
& Ors.

RESPONDENT

Date of Decision: July 28, 2017

Acts Referred:

- Constitution of India, Article 14 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions
- Uttar Pradesh General Clauses Act, 1904, Section 21, Section 21 -
- United Provinces Indian Medicine Act, 1939, Section 14, Section 8, Section 11, Section 7, Section 10(2), Section 5(1)(i), Section 5(1)(ii)

Hon'ble Judges: Narayan Shukla, Virendra Kumar

Bench: Division Bench

Advocate: Jai Bahadur Singh

Final Decision: Dismissed

Judgement

1. Heard Mr. Asit Kumar Chaturvedi, learned Senior Counsel assisted by Mr. J. B. Singh, learned counsel for the petitioners as well as Mr. Ramesh Pandey, learned Chief Standing Counsel.

2. This writ petition has been instituted on behalf of petitioners assailing the order dated 21.06.2017 by which notification dated 07.06.2016 has been cancelled.

3. The petitioners were nominated as Members of Ayurvedic & Unani Tibbi Systems of Medicine Board, U.P., Lucknow in exercise of powers under Section 21 of the U.P.

General Clauses Act, 1904 and Section 5(1)(i) & (ii) read with Section 8 of United Provinces Indian Medicine Act, 1939.

4. The petitioner No.1 is holding the degree of B.A.M.S., M.D. and Ph.D. (Ayurved), bearing Registration No. 39802 and is presently working as Lecturer, Department of Rognidan, State Ayurvedic College and Hospital, Lucknow with effect from 07.10.2008.

5. The petitioner No.2 is holding the degree of B.A.M.S., M.D. and Ph.D. (Ayurved), bearing Registration No. 47821 and is presently working as Lecturer, Department of Kriya Shasir, Government Ayurvedic College, Varanasi with effect from 27.01.2009.

6. The petitioner No. 3 is holding the degree of B.U.M.S., bearing Registration No. 09048 and is presently working as Medical Officer, Dr. Ram Manohar Lohia Joint Hospital, Lucknow with effect from 17.08.2010.

7. The petitioner No.4 is holding the degree of B.A.M.S., bearing Registration No. 49915 and is presently working as Medical Officer, Community Health Centre, Jata Barauli, Banki, Barabanki with effect from 11.12.2012.

8. It is further pleaded that Ayurvedic & Unani Tibbi Systems of Medicine Board, U.P., Lucknow (hereinafter referred to as, "the Board") is constituted under Section 5 of United Provinces Indian Medicine Act, 1939 (hereinafter referred as, "the Medicine Act, 1939"), which reads as under:

"Section 5

(1) The Board shall consist of the following members including:

(i) A President to be nominated by the State Government;

(ii) five members to be nominated by the State Government;

(iii) one member each from a University established by law in Uttar Pradesh and having a Faculty concerned with the Ayurvedic or Unani Tibbi Systems of medicine to be elected in the prescribed manner by such Faculty.

(iv) two members representing Ayurvedic Education Institutions of Uttar Pradesh to be elected, in the prescribed manner by the teachers of such Institutions as are affiliated to a University established by law in Uttar Pradesh.

(v) one member representing Unani Educational Institutions of Uttar Pradesh to be elected in the prescribed manner by the teachers of such institutions as are affiliated to a University established by law in Uttar Pradesh.

(vi) nine members (six Vaid and three Hakims) to be elected in the prescribed manner by the registered Vaid and Hakims respectively of Uttar Pradesh;

Provided that the President and every member to be elected or nominated as the case may be, under clauses (ii), (iv) and (v) shall be amongst the registered practitioners.

(2) The Board shall elect one of its members to be the Vice President."

9. His Excellency, the Governor of U.P. nominated Dr. Anwer Sayed as Chairman, of the Board and petitioners along with Dr. Suman Yadav as Member of the Board vide notification dated 07.06.2016 which was published in the Government Gazette of U.P. dated 07.06.2016. The term of the office of a member including Board is prescribed under Section 14 of the Medicine Act, 1939, which provides the term of office of the President or a member of the Board to be three years, which can be extended in aggregate not to exceed two years.

10. It is mentioned that Dr. Anwer Sayed, nominated Chairman of the Board has resigned on 21.03.2017 but no member of the Board has been elected as Vice Chairman. On account of declaration of result of General U.P. Assembly Election, there was change in ruling political party in the Government of U.P. from Samajwadi Party to Bhartiya Janta Party, new Government took oath on 19.03.2017. The Chief Secretary, Government of U.P. issued office order dated 20.03.2017 to the effect that in all Departments/Public Corporations/Board/Committees, etc., of the Government of Uttar Pradesh, in which the earlier Government under the administrative arrangement had made appointment in non Government Advisors/Chairmen/ Vice Chairmen and Members, their appointments be cancelled with immediate effect as well as they may be relieved of which compliance should be ensured immediately. The respondent Nos.1 and 2 has issued notification dated 21.06.2017 in compliance of office order dated 20.03.2017.

11. It is further contended that petitioners have not been disqualified according provisions of Section 7 of the Medicine Act, 1939, resulting which the petitioners appointment through notification dated 07.06.2016, cannot be set aside. The petitioners are entitled to continue as Member of the Board until and unless the petitioners possess any disqualification.

12. The petitioners have also relied upon the provisions of Section 10(1) of Medicine Act, 1939 and contended that the members nominated or elected can be removed by Board according to the procedure prescribed under this section. The provisions of Section 10(1) are mentioned in para-21 of the petition. From the perusal of notification dated 21.06.2017 it reveal that provisions of Section 10(1) has not been invoked by the Board and petitioners have not been removed on account of the same. It is further contended that according to provisions of Section 10(2) of the Medicine Act, 1939, a President or a Member nominated under sub Section (1) of Section 5 shall after such notice as may be prescribed, be removable by the State

Government alone. These powers have also not been invoked while issuing notification dated 21.06.2017. The provisions of Section 10(2) is mentioned in para-23 of the petition.

13. Likewise, provisions of Section 21 of U.P. General Clauses Act, 1904 has also been mentioned in para-25 of the petition and it has been contended that these provisions are not applicable/relevant keeping in view of Section 10(2) of the Medicine Act, 1939.

14. It is further pleaded that no opportunity whatsoever has been given to the petitioners prior to issuance of the notification dated 21.06.2017, which is issued in violation of provisions of Section 10(2) of the Medicine Act, 1939 as well as principles of natural justice. It is also contended that petitioners were nominated not on political consideration and as such the change in ruling political party cannot have any bearing or relevance for continuing them for the tenure prescribed under Section 14 of the Medicine Act, 1939. They were not nominated under administrative arrangement. The petitioners are not entitled for payment of monthly salary pay or allowances under the Medicine Act, 1939 and as such they cannot be removed in pursuance of the office order dated 20.03.2017.

15. The petitioners have also relied upon a judgment and order dated 23.06.2017 delivered in Writ Petition No. 13911 (M/S) of 2017, Alima Zaidi & others v. State of U.P. & others. The members of the Waqf Board appointed under the Waqf Act, 1995 were also removed like petitioners without giving any opportunity in terms of the office order dated 20.03.2017. After issuing notification dated 21.06.2017, the respondent Nos. 1 and 2 have initiated process of fresh nomination in terms of the Medicine Act, 1939, resulting, which, the respondents can nominate new members on any day.

16. On the basis of above mentioned facts and circumstances, following reliefs have been sought:

"(i) To issue a writ, order or direction in the nature of certiorari quashing the notification No.2242/96-Ayush-1- 2017-383/97 dated 21.06.2017 contained in Annexure No.1 to this writ petition after summoning the original from the record of the respondents.

(ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to give effect the notification No. 2242/96-Ayush-1-2017-383/97 dated 21.06.2017 (Annexure No.1 to this writ

petition) and to allow the petitioners to continue in terms of notification No.1941/71-Ayush-1-2016-383/97 dated 07.06.2016 (Annexure No.2 to this writ petition) keeping in view the provision of United Provinces Indian Medicine Act, 1939."

17. We have perused the provisions of Section 5, Section 7, Section 10 and Section 14 of the Medicine Act, 1939. These provide as follows :

Section 5:

(1) The Board shall consist of the following members including:

(i) A President to be nominated by the State Government;

(ii) five members to be nominated by the State Government;

(iii) one member each from a University established by law in Uttar Pradesh and having a Faculty concerned with the Ayurvedic or Unani Tibbi Systems of medicine to be elected in the prescribed manner by such Faculty.

(iv) two members representing Ayurvedic Education Institutions of Uttar Pradesh to be elected, in the prescribed manner by the teachers of such Institutions as are affiliated to a University established by law in Uttar Pradesh.

(v) one member representing Unani Educational Institutions of Uttar Pradesh to be elected in the prescribed manner by the teachers of such institutions as are affiliated to a University established by law in Uttar Pradesh.

(vi) nine members (six Vaid and three Hakims) to be elected in the prescribed manner by the registered Vaid and Hakims respectively of Uttar Pradesh;

Provided that the President and every member to be elected or nominated as the case may be, under clauses (ii), (iv) and (v) shall be amongst the registered practitioners.

(2) The Board shall elect one of its members to be the Vice President.

Section 7- No person shall be qualified to be elected or nominated as a member of membership the Board - (a) who is a undischarged insolvent ; (b) who has

been adjudicated by a competent court to be insane or of unsound mind ; (c) Who has been convicted of an offence declared by government to involve moral turpitude ; (d) whose name has been removed from the register; or (e) who is an employee of the Board or has directly or indirectly or by himself or a partner any share of the Board, unless in the latter case Government remove the disqualification.

Section 10

(1) If any member, during the period for which he has been nominated or elected

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(a) absents himself without sufficient cause from three consecutive ordinary meetings of the Board ; or

(b) becomes subject to any of the disqualifications mentioned in section 7 ; or

(c) being a legal practitioner, appears in any suit or proceedings civil or criminal against the Board, or

(d) obtains any employment under the Board or has without the previous sanction of Government acquired directly or indirectly by himself or by a partner any share or interest in any contract, with, by or on behalf of the Board;

the Board may remove him from membership :

Provided that before removing a member under this sub-section, the Board shall call for his explanation and record its finding thereon.

(2) Notwithstanding anything contained in sub-section (I) the President or any member nominated under sub-section (I) of section of section 5 shall after such notice as may be prescribed, be removable by the State Government alone.

Section 14- Save as otherwise provided in this part, the term of office of the President or a member of the Board shall be three years;

Provided that the State Government may, be notification in the official Gazette extend, from time to time, the term of the President, and all members of the Board so, however, that the total extension does not in the aggregate exceed two years.

18. The learned counsel for the petitioners has relied upon the order dated 17.01.2014 passed by Division Bench of this Court in Special Appeal No. 19 of 2014, Bhikshu Chandima (Pradeep Kumar) and others v. State of U.P. through its Secretary, Awas Evam Shahri Niyojan and others, and argued that Hon"ble Division Bench has observed vide order dated 17.01.2014 that prima facie, we do not agree with the order passed by learned Single Judge; and that the tenor of the impugned order and the attitude shown by the government not interfering in the peaceful research work of the society. The impugned judgment and order of the learned Single Judge dated 10.01.2014 and the Government Order impugned in the writ petition are hereby stayed till the next date of hearing. The learned Single Judge dismissed the writ petition instituted by the appellant. Vide Government Order dated 19.03.2012 the nominated members were removed by the State Government without giving them any opportunity of hearing whatsoever, are illegal, arbitrary and in gross violation of principles of natural justice and therefore, are violative of Article 14 of the Constitution of India. Likewise, petitioners have been removed from the Board in the present case.

19. The learned counsel for the petitioners has also relied upon the case law of Hon"ble Supreme Court narrated in the grounds of the special appeal, which are as follows:

In Chairman, Railway Board and others v. C.R. Rangadhamaiah, (1997) 6 SCC 623 by the Constitutional Bench of the Hon"ble Supreme Court it was held therein as under:

"20. It can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

"24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 and 16 of the Constitution."

In *P. Venugopal v. Union of India*, (2008) 5 SCC 1, the Hon"ble Supreme Court considered the case wherein the Director of All India Institute of Medical Sciences, New Delhi, having been duly appointed for a period of five years had been removed prior to completion of the said period. Therein it was held as under:

"32. Service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise at all. The appointment is for a tenure to which the principle of superannuation does not apply. "Tenure" means a term during which the office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said post begins when he joins and when it comes to an end on the completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate. He only comes out of the office on completion of his tenure."

In the case of *Ravi Yashwant Bhoir v. The Collector District, Raigad and Ors.*, in Civil Appeal No. 2085 of 2012, decided on 02.03.2012, the Hon"ble Supreme Court while considering the issue of removal of municipal councillorship before

completion of his tenure observed that while taking the decision, the authority should not be guided by any other extraneous consideration or should not come under any political pressure. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind. The Hon"ble Court held as under:

"28. In view of the above, the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office bearer but his constituency/electoral college is also deprived of representation by the person of his choice. A duly elected person is entitled to hold office for the term for which he has been elected and he can be removed only on a proved misconduct or any other procedure established under law like "No Confidence Motion" etc. The elected official is accountable to its electorate as he has been elected by a large number of voters and it would have serious repercussions when he is removed from the office and further declared disqualified to contest the election for a further stipulated period."

In *State of Karnataka v. All India Manufacturers Organisation*, (2006) 4 SCC 683, it was held by Hon"ble Supreme Court that the successor government is bound by the decision taken by the earlier government unless suffers from substantial illegality or abuse of power. Further in the case of *State of Haryana v. State of Punjab* (2002) 2 SCC 507, the Hon"ble Supreme Court has held as under:

"But at the same time when the political authority becomes dogmatic, unreasonable and indicates an attitude of irresponsible nature and when the court finds that nothing is moving even though there has been a large-scale drainage of public exchequer and that the decision to have the canal had been reached on an agreement of all concerned, representing the will of the people, the Court must pass appropriate orders and directions. What really bothers us most is the functioning of the political parties, who assume power to do whatever that suits and whatever would catch the vote-bank. They forget for a moment that the constitution conceives of a Government to be manned by the representatives of the people, who get themselves elected in an election. The

decisions taken at the government level should not be so easily nullified by a change of government and by some other political party assuming power, particularly when such a decision affects some other State and the interest of the nation as a whole. It cannot be disputed that so far as policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party, since that must be held to be the will of the people. But in the matter of governance of a State or in the matter of execution of a decision taken by a previous government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding government must be held duty bound to continue and carry on the unfinished job rather than putting a stop to the same."

20. The learned counsel for petitioners has also argued that notification dated 07.06.2016 could not be annulled by issuing order dated 21.06.2017 as provisions of Clause-21 of General Clauses Act are not applicable in this case because the State Government has removed the petitioners by implication, who were nominated members of the Board.

21. The learned Standing Counsel has filed short counter affidavit and submitted that the petitioners were nominated as members of the Board under provisions of Section 5(1)(i) and (iii) of the Medicine Act, 1939. The learned Standing Counsel while relying upon the provisions of Section 10(2) of the Medicine Act, 1939 has further submitted that it is eminently clear that nominated member can be removed by the Government from the Board after giving such notice as may be prescribed. The entire action has been taken under the provisions as has been mentioned in Section 10(2) of the Medicine Act, 1939. It is contended that Section 37 read with Section 43 gives power to the State Government to frame regulations and rules on the subject as enumerated in sections of these provisions. The State Government till date has not framed these rules. No notice has been prescribed which has to be given to a nominated member before his removal from the Board. The provisions of Section 10(2) of the Medicine Act, 1939 are not mandatory in nature. Since no notice has been prescribed under the Medicine Act, 1939, hence, there is no necessity of giving the notice to the petitioners prior to their removal as they are nominated members. The position of nominated members as well as elected members is entirely different. The nominated members hold the position at the pleasure of the State Government.

22. The learned Standing Counsel has further relied upon the following case laws :

Hon"ble Supreme Court in the case of Om Narain Agarwal v. Nagar Palika, Shahjahanpur, (1993) 2 SCC 242 in para 2 and 3 (fact of the case) and para 4, 8, 11 to 14 has observed as follows -

2. As common questions of fact and law are involved in all the above cases, as such they are disposed of by one single order. First proviso to Section 9 of the United Provinces Municipalities Act, 1916 (hereinafter referred to as "the Act") provided for nomination of only one woman as a member of the Municipal Board by the State Government. Further, there was no provision permitting the State Government to cancel the nomination of such member at its pleasure. One Smt Sarla Devi was nominated by the State Government as the sole woman member for the Shahjahanpur Municipal Board (hereinafter referred to as "the Board") in January 1989. By U.P. Ordinance 2 of 1990 later on succeeded by Ordinance 8 of 1990 and eventually replaced by U.P. Act 19 of 1990, the aforesaid first proviso to Section 9 of the Act was substituted by another proviso which made provision for the nomination of two women members by the State Government. Further, a fourth proviso was also added to Section 9 of the Act which provided that the nomination of the aforesaid two members was at the pleasure of the State Government. The aforesaid Ordinance 2 of 1990 was promulgated on February 15, 1990.

3. Soon thereafter on February 19, 1990, a general notification was issued by the State Government cancelling nominations of women members in several Municipal Boards in Uttar Pradesh. The nomination of Smt Sarla Devi also stood cancelled. On April 19, 1990, the State Government nominated Smt Abida and Smt Hazra Khatoon as members of the Board under the newly introduced fourth proviso to Section 9 of the Act.

4. A Division Bench of the Lucknow Bench of the Allahabad High Court in Prem Kumar Balmiki v. State of U.P. [Writ Petition No. 1067 of 1991, Order dated November 13, 1991] held that the fourth proviso to Section 9 of the Act was

constitutional and valid and any notification issued by the State Government under the said provision was also valid. Another Division Bench of the Allahabad High Court sitting at Allahabad in Dr Rama Mishra (Smt) v. State of U.P. [Writ Petition No. 11114 of 1990, Order dated December 9, 1991] held that the fourth proviso to Section 9 of the Act was arbitrary, unreasonable, unconstitutional and invalid and any notification issued thereunder cancelling the nomination of any woman member of the Board and nominating a new member was invalid....."

8. It was contended on behalf of the appellants that the view taken in Dr Rama Mishra case [Writ Petition No. 11114 of 1990, Order dated December 9, 1991] was not correct and the view taken by the Lucknow Bench of the Allahabad High Court in Prem Kumar Balmiki case [Writ Petition No. 1067 of 1991, Order dated November 13, 1991] was correct. It was submitted that the State Legislature was fully competent to insert fourth proviso and to lay down that the nominated members shall hold office during the pleasure of the State Government. It was submitted that the pleasure doctrine also finds place in several other enactments including the Constitution of India..."

11. Section 39 deals with resignation by a member of the Board. Section 40 provides the grounds for removal of a member of the Board. Sub-section (5) of Section 40 deals with suspension of a member. From a perusal of the above provisions it is clear that the term of an elected or nominated member is coterminous with the term of the Board. The normal term of the Board is five years, but it may be curtailed as well as extended. If the term of the Board is curtailed by dissolution or supersession, the term of the member also gets curtailed. Similarly, if the term of the Board is extended, the term of the member is also extended. Apart from the curtailment of the term of a member of the Board by dissolution or supersession of the Board itself, the term of a member also gets curtailed by his resignation or by his removal from office. Section 40 specifically provides the grounds under which the State Government in the case of a city, or the prescribed authority in any other case, may remove a member of the Board. The removal under Section 40 applies to elected as well as nominated members. In respect of a nominated member, power of curtailment of term has now been given to the State Government under the fourth proviso to Section 9 added after the third proviso through the amending Act of 1990. In the cases

before us, we are concerned with the removal of nominated members under the fourth proviso to Section 9 of the Act and we are not concerned with the removal as contained in Section 40 of the Act. The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. 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. In case of an elected member, the legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations. In Dr Rama Mishra case [Writ Petition No. 11114 of 1990, Order dated December 9, 1991] the High Court wrongly held that the pleasure doctrine incorporated under the fourth proviso to Section 9 of the Act was violative of the fundamental right of equality as enshrined in Article 14 and Article 15(3) of the Constitution(This case law Dr. Rama Mishra has been overruled in this case.). We are unable to agree with the aforesaid reasoning of the High Court. Clause (3) of Article 15 is itself an exception to Article 14 and clauses (1) and (2) of Article 15 of the Constitution. Under Article 14, a duty is enjoined on the State not to deny any person equality before the law or the equal protection of the laws within the territory of India. Article 15(1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(2) provides that "no citizen shall, on grounds only of

religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainments; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public".

13. Thereafter Article 15(3) provides that "nothing in this Article shall prevent the State from making any special provision for women and children". This means that in case any special provision is made for women, the same would not be violative on the ground of sex which is prohibited under clauses (1) and (2) of Article 15 of the Constitution. Thus, the special provision contained for nominating one or two women members as the case may be provided in Section 9 of the Act would be protected from challenge under clause (3) of Article 15 of the Constitution. It may also be worthwhile to note that the provision of pleasure doctrine incorporated by adding the fourth proviso does not, in any manner, take away the right of representation of women members in the Board, but it only permits the State Government to keep the nominated women members of its own choice. The High Court in Dr Rama Mishra case [Writ Petition No. 11114 of 1990, Order dated December 9, 1991] took a wrong view in holding that the fourth proviso to Section 9 of the Act was violative of Article 15(3) of the Constitution under an erroneous impression that this provision in any manner curtailed the representation of women members in the Board. We are not impressed with the reasoning given by the High Court that the fourth proviso to Section 9 of the Act in any manner deprived the fundamental right of equality as enshrined in Article 14 of the Constitution. It is well established that the right of equality enshrined under Article 14 of the Constitution applies to equals and not to unequals. The nominated members of the Board fall in a different class and cannot claim equality with the elected members. We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralise the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even the highest functionaries in the Government like the Governors, the Ministers, the Attorney-General and the Advocate-General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to become demoralised or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office.

14. Thus, in the circumstances mentioned above, we are clearly of the view that the decision in Dr Rama Mishra case [Writ Petition No. 11114 of 1990, Order dated December 9, 1991] does not lay down the correct law and is overruled and the view taken by the High Court in Prem Kumar Balmiki case [Writ Petition No. 1067 of 1991, Order dated November 13, 1991] is held to be correct...."

Hon"ble Supreme Court in the case of Krishna v. State of Maharashtra, (2001) 2 SCC 441 in para 2,3,4,8 and 9 has observed as follows-

2. This appeal raises the following question :

"Whether Section 6 of the Nagpur Improvement Trust Act, 1936 (hereinafter referred to as "the Act") confers power on the State Government independent of the power of the State Government under Section 10, to remove the trustees appointed under Section 4(1)(e) at the pleasure of the Government even before the trustee concerned completes a period of five years."

3. This appeal is directed against the judgment and order of the High Court which dismissed the appellant's writ petition challenging the order dated 9-2-2000 passed by the State Government (Respondent 1), removing the appellant from the trust (Respondent 2) created under the aforesaid Act...."

4. On 4-10-1996 the appellant was appointed as a trustee of the second respondent by the first respondent under subsection (2) of Section 4 of the Act and his term was to expire on 3-10-2001. The submission for the appellant, incorporated in this appeal is, that after election of the State Legislature Assembly, new national democratic Government came into power in the State of Maharashtra and started undoing what was done by the previous Government under pressure of various political parties. On 9-2-2000 Respondent 1 passed an order removing the appellant from the office of trustee. The order reads hereunder :

"In exercise of powers conferred on the Government by Section 6 of the Nagpur Improvement Trust Act, 1936 (C.P. and Berar Act 36 of 1936) the Government of Maharashtra from the date of this notification cancel the appointments of S/Shri Pravin Barde and Krishna Bulaji Borate, Nagpur as the trustee of the Nagpur Improvement Trust.

By the order and in the name of the Governor of the Maharashtra State."

8. In the present case, the appellant was appointed under sub-section (2) of Section 4 read with clause (e) of sub-section (1) of Section 4 and was removed by order dated 9-2-2000 under Section 6 of the Act. Having considered the submissions for the parties and after perusing the language of the sections, we have no hesitation to hold, that the field of Section 6 and Section 10 are separate. The removal spoken under Section 6 is removal without any stigma while the removal under Section 10 is removal with penal consequences attaching stigma. If submission for the appellant is accepted, viz., Section 6 empowers and Section 10 lays down the conditions and procedure to remove, then removal of trustee could only be for penal consequences and not otherwise. If that be so, there could be no reason to enact Section 6 as Section 10 covers such cases. It is significant, the removal under Section 6 is confined only to such trustees who are covered under clause (e) of sub-section (1) of Section 4 and who are also

nominated by the State Government. Rights of trustees falling under the aforesaid clause (e) are rights created under a statute and hence that very creator can always limit or curtail such right. In such cases, if a trustee is removed, he cannot project any grievance that no opportunity was given to him. If any right which is creature of statute, is limited or curtailed by that very statute, in the absence of any other right under that very statute or the Constitution of India, such trustee cannot claim any right based on the principle of natural justice.

9. The removal spoken of here neither casts any stigma nor leads to any penal consequences. This clearly reveals the doctrine of pleasure which is implicit in this section. In any statute expression of the will of the legislature may be explicit or it may be implicit. It is open for the courts, while interpreting any provision to spell or read with other provisions of the statute if so intended to read implicitly, in the absence of any explicit words that subserve the intent of the legislature.

Hon'ble Apex court in para 11 has also relied upon and quoted exposition of law propounded in *Om Narain Agarwal v. Nagar Palika, Shahjahanpur*, (1993) 2 SCC 242.

In para 13, Hon'ble court has observed thatIn our opinion this does not make any difference. It may be in this case doctrine of pleasure is explicit, but if on another statute it is implicit, which we have held in this case, the same principle would be equally applicable. Accordingly we do not find any merit in this submission.

A Division Bench of the Lucknow Bench of the Allahabad High Court in *Prem Kumar Balmiki v. State of U.P.* [Writ Petition No. 1067 of 1991 has considered provisions of sec 9 proviso 1, 3 and 4 as amended by U.P Urban Local Self - Government Laws (Amendment)Act 1990, section 10A , 38 and 40 of U.P Municipalities act ,1916 and section 21 of General clauses act , 1897 . The Division Bench has also considered the Article 14 of the Constitution of India and observed in para 6,7,8,11,9,14, 16 and 17 as follows -

6.Under the First Proviso to Section 9 as amended by the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1990 the State Government is authorised to give representation to women by making nomination. The maximum number of women who can be nominated is two. This power of nomination is exerisable only if no women has been elected to the elected. If no woman has been elected the State Government's right of nomination is confined to one. Under the third proviso the State Government is competent to give representation of Safai Mazdoor Class. This right of representation also arises only when no member of the Safai Mazdoor Class has been elected to the Board. The nomination is to be made by notification. Through the amending act of 1990, referred to herein above, a new proviso has been added after proviso third as follows :

"Provided also that a member nominated under this section whether before or after 15.2.1990, shall hold office during the pleasure of the State Government, but not beyond the term of the Board."

7. Section 10-A prescribes the term of the Board which is five years. Under the Proviso it is competent for the State Government to extend from time to time the term of the Board by notification in official Gazette. Section 38 prescribes the term of office of members elected or nominated to fill casual vacancies. This section has been amended by amendment made in 1990.

8. ... From a survey of the different provisions of the act, it is apparent that the term of an elected or nominated member is co-terminus with the term of the Board. The normal term of the Board is five years but it may be curtailed as well as extended. If the term of the Board is curtailed by dissolution or supersession the term of the member is also curtailed. Similarly if the term of the Board is extended the term of the member is also extended. Apart from curtailment of the term by dissolutions or supersession of the Board the term of the member may also be curtailed by his submitting resignation and by his removal from

office. Section 40 specifically confers power upon the State Government for removal of a member from office. Section 40 applies to elected as well nominated members. In respect of a nominated member power of curtailment of term is reserved under the Fourth Proviso to Section 9.

This proviso has been reproduced herein above and it says that a nominated member shall hold office "during the pleasure of the State Government". From this clause it is apparent that a nominated member can hold office only so long as the State Government would desire him to hold that office. The pleasure doctrine contained in the proviso is contained in several other enactments also including the Constitution of India. Under Article 75(2) of the Constitution, Ministers of the Central Government hold office during the pleasure of the President. Similarly under Article 164(1) the Ministers of the State of Indian Union hold office during the pleasure of the Governor. Under Article 76(1) the President appoints Attorney General for India and in view of clause (4) of said article this office is held "during the pleasure of the President". Corresponding provision in respect of Advocate General for the states is contained in article 165. The Governor of the State appoints him under Clause (1) and in view of the provision contained in Clause (3) the office is held "during the pleasure of Governor". Governors for the state are appointed by the President under Article 155. Under Article 156(1) the Governor holds office "during the pleasure of the President."

11. ... Apart from the right to end nomination available under the pleasure doctrine contained in the forth proviso to section 9 the power to terminate the nomination was available to the Government under Section 21 of the General Clauses Act, 1897 also. This provision, apart from the Fourth proviso, has also been invoked in passing the impugned order. Section 21 reserves power to add, amend, vary or rescind any notification, order, rule or bye-law. The principal contained in section 21 is contained in section 16 also wherein it is provided that a power to make any appointment includes the power to suspend or dismiss any person who has appointed unless a different intention appears.

9. ... The order impugned in the present writ petition does not cast any stigma against the petitioners. It simply puts an end to their membership.

14. ... The office of member of Municipal Board is a political office. Appointment to a political office carries with it political hazards. Such appointments are invariably made on political considerations and their termination is also actuated by political considerations. If appointment itself is made on political considerations there appears no reason why political considerations should not be allowed to operate in termination of nomination. The nomination as well as termination of the nomination fall within the field of subjective satisfaction of the nominating authority. In such a situation there is no question of invoking the principles of natural justice or of arbitrariness contained in Article 14 of constitution.

16. Section 40 is indeed a provision for removal of a member of the Board but the removal under this provision is confined to the condition prescribed in the section. The power to remove conferred under section 40 is in addition to the power available under the forth proviso to section 9. While section 40 applies to nominated as well as elected members the fourth proviso applies only to nominated member.

17. ...It is no doubt true that section 21 of the General Clauses Act is subject to the provisions of special enactments. Accordingly when there is conflict between Section 21 and a special enactment, it is the special enactment that will prevail and not Section 21. In the present case there is no conflict, what is provided in section 21 is reinforced by the provisions contained in the Forth proviso to Section 9.

Hon"ble Allahabad High court in the case of Writ Petition No.1689 (M/S) of 2012 Bhikshu Chandima (Pradeep Kumar) and others v. State of U.P. and others and Writ Petition No.2814 (M/S) of 2012 Ram Preet Jakhmi v. State of U.P. and others has observed as follows-

.....Under the amended bye-laws, Members of the Committee of Management and the constitution of the Committee of Management has been provided as under :-

1. Boudh Bhikshu nomination by the State Government - President

2. A follower of Boudh Dharm nominated by the State Government

- Vice President

3. 11 non-government members nominated by the State Government out of which 8 will be Boudh Bhikshu and 3 will be follower of Boudh Dharm - Members member 4 to 8 is Ex Officio member

.....Under 4 (1) of the bye-law of the Society, the period of Member of the Society or the Member of the Executive Council, who are other than Ex Officio Member shall be five years from the date of holding of the office. In Regulation 4 (2), it has

further been provided that if the functioning of the President and Vice President and other non-government members are found satisfactory during these five years, their names shall be considered for their nomination on priority basis for the next five years. In bye-law 5, a provision has been made for termination of membership of a nominated member if he has resigned in writing, if he died, if he is working against the interest/aims of the Society, if he has been declared insolvent, if he has been convicted in a criminal case relating to moral turpitude and if he has been charged with grievous allegations; in the aforesaid situation, the Government will take a decision after holding enquiry legally as permissible under law..

....the State Government under the powers vested with it by the bye-laws nominated petitioner no.1 as President vide office memo dated 25.9.2011.

It is stated that there was no complaint against the petitioners. It is stated that immediately after change of the Government though no complaint was received whatsoever against the nominated Members, the State Government without any rhyme and reason on the basis of a letter dated 15.3.2012 written by the Secretary to the Chief Minister cancelled the nomination of all the petitioners and overlooked tenure of five years as contemplated under the bye-laws. The principle of violation of natural justice has also been stated and it has also been stated that the action of the State Government is malafide. The present writ petitions have been filed challenging the aforesaid order.

Hon"ble Single Judge of this Court has considered earlier decisions of Hon"ble Supreme Court in case Om Narain Agarwal and others v. Nagar Palika, Shahjahanpur and others, (1993) 2 SCC 242, Krishna s/o Bulaji Borate v. State of Maharashtra and others, (2001) 2 SCC 441 and also B.P. Singhal v. Union of India and another, (2010) 6 SCC 331 Constitution Bench to appreciate controversy of the parties.

In B.P Singhal case Hon"ble Apex court in para 67 has observed as follows -

"67.The provision for removal at the pleasure of an authority without any restriction, as noticed above, applies to Ministers as also the Attorney General apart from Governors. Persons of calibre, experience, and distinction are chosen to fill these posts. Such persons are chosen not to enable them to earn their livelihood but to serve society. It is wrong to assume that such persons having been chosen on account of their stature, maturity and experience will be demoralized or be in constant fear of removal, unless there is security of tenure. They know when they accept these offices that they will be holding the office during the pleasure of the President."

Hon"ble Single Judge on page 9 and 10 has observed that on the basis of the aforesaid proposition of law laid down by the Apex Court and held that these decisions squarely covers the case of the petitioners as they were appointed in the like manner and they were chosen to fill their post on the basis of their distinction and experience and they were required to serve the society. They cannot be equated with the appointment of the Governor and hence case of the petitioners falls in the exception clause and they have rightly been removed by exercising the doctrine of pleasure as they were appointed by the earlier Government by virtue of pleasure.

Hon"ble Single Judge considering argument of petitioner as follows on page 6 and 8 has observed as follows-

".....The argument has been advanced that none of the conditions is existing, therefore, without holding an enquiry, the petitioners cannot be removed as none of the conditions enumerated in bye-law 5 is existing in the case in hand.

.....They(opposite party) have only stated that the petitioners are being removed as they were appointed by the State Government, therefore, power to remove is also vested with the State Government.

.....Power of nomination has been given to the State Government and once power of nomination has been given, then power of removal is exercisable by the State Government on the basis of doctrine of pleasure and nominated Members enjoy their office during the pleasure of the Government.

In paragraph-13, an attempt was made to distinguish the case by submitting that doctrine of pleasure was incorporated in the section itself but the Apex Court held that does not make any difference and it may be that doctrine of pleasure was explicit but in other statute it may be implicit and if the doctrine of pleasure is implicit, then the case of the petitioners is covered under the aforesaid doctrine.

.....in a case where a person has been nominated by the State Government. Nomination is something different than appointment for a fixed tenure.

On page 11.....Even in the General Clauses Act, right to appoint includes right to terminate. Once the State Government has nominated the Members, the State Government has right to cancel their nomination.

.....It is also observed that I have given my anxious consideration to the argument of the learned counsel for the respective parties and I find that there is no illegality in the action of the State Government. The State Government was having power to cancel the nomination of the petitioners and opportunity of

hearing was not required at all in such situation.

Both the writ petitions, therefore, fail and are hereby dismissed with costs."

23. As far as the learned counsel for the petitioners has relied upon the order dated 17.01.2014 passed in Special Appeal No. 19 of 2014 by Division Bench of this Court which was filed against the judgment and order dated 10.01.2014 passed by learned Single Judge in Writ Petition No. 1689 (M/S) of 2012, Bhikkhu Chandima (Pradeep Kumar) and others v. State of U.P. and others, connected with Writ Petition No. 2814 (M/S) of 2012, Ram Preet Jakhmi v. State of U.P. and others, has finally been dismissed vide judgement and order dated 10.01.2014. Therefore, this interim order relied upon by the learned counsel for the petitioners is of no help for the petitioners. On the other hand, result of Special Appeal No. 19 of 2014 has not been provided by the petitioners.

24. It is not disputed that the petitioners are nominated members of the Board. They were appointed vide Government Notification No. 1941/71-Ayush-1-2016-383/97 dated 07.06.2016.

25. The Secretary of Government of U.P. vide Government Notification No.2242/96-Ayush-1-2017-383/97 dated 21.06.2017 has cancelled the earlier notification dated 07.06.2016. The petitioners have not been removed as contended by the petitioners on the basis of their conduct as enumerated in Section 10(1) of the Medicine Act, 1939. According to the provisions of Section 10(2) of the Medicine Act, 1939, it is provided that, "notwithstanding anything contained in sub-section (I) the President or any member nominated under subsection (I) of section 5 shall after such notice as may be prescribed, be removable by the State Government alone".

26. The learned Standing Counsel has specifically stated in counter affidavit that according to the provisions of Section 37 read with Section 43 no rules have been framed by the State Government till date with respect to prescribed notice as mentioned in sub Section (2) of Section 10 of the Medicine Act, 1939, therefore, no notice has been prescribed which has to be given to the nominated member before his removal from the Board. Therefore, there was no necessity of giving the

petitioners notice prior to their removal as they were nominated members.

27. Likewise, it is submitted that the provisions of Section 10(2) of the Medicine Act, 1939 are not mandatory in nature.

28. Moreover, Section 11 of the Medicine Act, 1939 provides as follows:

"Any member removed by the Board under the provisions of section 10, may within ninety days from the date of his removal, appeal to the State government and the order of the State Government on any such appeal shall be final."

29. It is not the case of the petitioners that they were removed by any order passed by the Board on the grounds mentioned in Section 10 of the Medicine Act, 1939. The State has invoked its authority under Section 10(2) of the Medicine Act, 1939.

30. According to the exposition of law held by Hon"ble Supreme Court in Om Narain Agarwal (supra), Krishna (supra) and B. P. Singhal (supra), the doctrine of pleasure has been applied in case of nominated members as applied in the above mentioned cases and it is held by the Constitution Bench of Hon"ble Supreme Court in B. P. Singhal (supra) in para-67 as follows:

"67.The provision for removal at the pleasure of an authority without any restriction, as noticed above, applies to Ministers as also the Attorney General apart from Governors. Persons of calibre, experience, and distinction are chosen to fill these posts. Such persons are chosen not to enable them to earn their livelihood but to serve society. It is wrong to assume that such persons having been chosen on account of their stature, maturity and experience will be demoralized or be in constant fear of removal, unless there is security of tenure. They know when they accept these offices that they will be holding the office during the pleasure of the President."

31. Hon"ble Supreme Court in Krishna(supra), has held that, "the removal spoken of here neither casts any stigma nor leads to any penal consequences. This clearly reveals the doctrine of pleasure which is implicit in this section. In any statute expression of the will of the legislature may be explicit or it may be implicit. It is open for the courts, while interpreting any provision to spell or read with other provisions of the statute if so intended to read implicitly, in the absence of any explicit words that subserve the intent of the legislature".

32. Since power of nomination has been given to the State Government and once power of nomination has been given, then power of removal is exercisable by the State Government on the basis of doctrine of pleasure and nominated Members enjoy their office during the pleasure of the Government.

33. The case of Chairman, Railway Board and others (supra), relied upon by the learned counsel for the petitioners, does not apply to the facts and circumstances of this case because no vested rights or accrued rights exist in favour of the nominated members of the Board. The petitioners were appointed by nomination vide notification dated 07.06.2016 and now this notification has been cancelled by the State Government according the provisions of Section 21 of the General Clauses Act, 1904. Therefore, no such order for removal of petitioners has been passed by the State Government. The notification issued for their appointment by nomination is a power of the State Government which has been cancelled.

34. The learned counsel for the petitioners has also relied upon the case of P. Venugopal v. Union of India (supra). This case law is also not applicable to the petitioners who are nominated members of the Board and their term of office was at the pleasure of the State Government. The learned Single Judge vide order dated 10.01.2014 passed in Writ Petition No. 1689 (M/S) of 2012 connected with Writ Petition No. 2814 (M/S) of 2012 has also considered and observed on page-9 as follows:

"The case of P. Venugopal (supra) relied upon by the learned counsel for the petitioners was in respect of appointment of the Director of the AIIMS, which case is altogether different and cannot be applied in a case, where a person has been nominated by the State Government. Nomination is something different than appointment for a fixed tenure."

35. In the light of exposition of law held by Hon"ble Supreme Court in Om Narain Agarwal (supra), Krishna (supra) and B. P. Singhal (Constitutional Bench) (supra), the case law relied upon by the learned counsel for the petitioners in Ravi Yashwant Bhoir(supra), State of Karnataka v. All India Manufacturers Organization (supra) and State of Haryana v. State of Punjab(supra), are not applicable to the facts and circumstances of this case since petitioners have themselves pleaded that they are government employees, therefore, there is no occasion of consideration of vote bank of the political party Bhartiya Janta Party by removing the petitioners. They are nominated members and were not elected members. Section 21 of the General Clauses Act reads as under:

"Power to make to include power to add to, amend, vary or rescind [statutory instruments] - Where, by any [Uttar Pradesh] Act, a power to issue [statutory instruments] 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 [statutory instruments] so issued."

36. In the above mentioned circumstances, since the petitioners were nominated members, therefore, vide notification dated 21.06.2017 the earlier notification dated 07.06.2016 by which petitioners were appointed as nominated members of the Board could be cancelled by the State Government by invoking the authority according to Section 21 of the General Clauses Act and the provisions of Section 10(2) of the Medicine Act, 1939 because their tenure of office was at the pleasure of the State Government and no legal enforceable right accrued for them and entailing the opportunity of hearing on the basis of principles of natural justice.

37. In view of the above, the writ petition devoid merit, accordingly dismissed.