J.S.Yadav vs State Of U.P & Anr on 18 April, 2011

Equivalent citations: 2011 AIR SCW 3078, 2011 (6) SCC 570, 2011 (4) ALJ 180, 2011 (4) AIR JHAR R 238, AIR 2011 SC (SUPP) 659, (2011) 4 SERVLR 465, (2011) 3 SCT 10, (2011) 2 SERVLJ 229, (2011) 4 ALL WC 4023, (2011) 86 ALL LR 765, (2011) 8 ADJ 77 (SC), (2011) 6 MAD LJ 998, (2011) 4 SCALE 733, (2011) 2 ESC 380, (2011) 2 KER LT 87, (2011) 102 ALLINDCAS 192 (SC)

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3299 OF 2011

(Arising out of SLP (C) NO. 16427 OF 2009)

J.S. Yadav ...Appellant

Versus

State of U.P. & Anr. ...Respondents

J U D G M E N T

Dr. B. S. CHAUHAN, J.

1. Leave granted.

2. This appeal is focused animadverting upon the judgment and order dated 21.4.2009 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 27315 of 2008, by which the High Court dismissed the writ petition filed by the appellant, challenging the Notification dated 28.5.2008, by which on the date of reconstitution of the U.P. State Human Rights Commission (hereinafter referred to as `Commission'), the appellant was declared to have ceased to hold the office as a Member of the said Commission.

3. Compendiously and concisely, the relevant facts necessary and germane to the disposal of this appeal run as under:

> (A) Appellant entered the U.P. Judicial Services as Munsiff in the year 1972 and was promoted to the post of Additional District Judge in the year 1985 and further promoted to the post of District Judge w.e.f. 14.1.2003.
>
> (B) The appellant while working as a Principal Secretary and Legal Remembrancer, Government of U.P., was appointed as a Member of the Commission on 29.6.2006 for a period of five years i.e. till 30.6.2011. The appellant joined on the said post on 1.7.2006.
>
> (C) Sections 21, 23, 25 and 26 of The Protection of Human Rights Act, 1993 (hereinafter called `the Act 1993'), stood amended vide The Protection of Human Rights (Amendment) Act, 2006 (hereinafter referred to `Amendment Act 2006'). The said amendment came into force on 23.11.2006.
>
> (D) After completion of the tenure by the then Chairperson of the Commission and other Members in October 2007, the appellant remained the lone working Member of the Commission.

The State of U.P. issued Notification dated 28.5.2008 to the effect that appellant ceased to hold the office as a Member of the Commission.

(E) The appellant challenged the said Notification dated 28.5.2008 by filing Writ Petition No. 27315 of 2008, mainly on the grounds that he had been appointed for a tenure of five years and that period could not be curtailed. The amendment Act 2006 could not take away the accrued rights of the appellant as he had been appointed prior to the said amendment.

(F) The appellant did not implead anyone except the State of U.P. and its Principal Home Secretary as respondents in the said writ petition. However, the vacancies on the post of the Chairperson as well as of the Members of the Commission were filled up on 6.6.2008 and, in view thereof, no interim order could be passed by the High Court.

(G) The High Court dismissed the writ petition vide impugned judgment and order dated 21.4.2009. Hence, this appeal.

4. Shri V. Shekhar, learned senior counsel with Ms. Shilpa Singh, appearing for the appellant, has submitted that as the appellant was holding the tenure post for a period of five years, he was entitled to continue till 30.6.2011; the Amendment Act 2006 could not be applied retrospectively and it could not curtail the tenure of the persons who had been appointed and continuing as a Chairperson/Member of the Commission prior to the commencement of the amended provisions in force. Appointments subsequent to 22.11.2006, could be made as per the provisions of the Amendment Act 2006. Even otherwise, the appellant fulfilled the eligibility of having seven years experience as a District Judge required under the Amendment Act 2006, in view of the fact that the U.P. Higher Judicial Service Rules, 1975 (hereinafter referred to as `the Rules 1975'), clearly provided that there would be a single cadre comprising the posts of District and Sessions Judges and Additional District and Sessions Judges. More so, Article 236(a) of the Constitution of India clearly stipulates that District Judge includes the Additional District Judge and Assistant District Judge. Thus, the appellant was fully eligible/qualified to be appointed afresh as a member of the Commission even as per the Amendment Act 2006. The appellant did not incur any disability during the period of holding the post as a Member of the Commission, thus, could not be removed from the service, except in the manner set out under Section 23 of the Act 1993. More so, it was not a case where the Commission itself stood dissolved/disbanded as a whole and new Commission has been constituted under the amended provisions of law. Thus, the impugned judgment and order is liable to be set aside. The appeal deserves to be allowed.

5. Per contra, Shri Pramod Swarup, learned senior counsel appearing on behalf of the respondents, has opposed the appeal vehemently contending that High Court could not have entertained the writ petition on merit as no relief could be granted to the appellant for the reason that fresh appointments on the posts of Member of the Commission had been made on 6.6.2008 itself. During the pendency of the writ petition, the appellant did not amend his petition impleading the newly appointed member(s), thus, petition was liable to be dismissed only on the ground of non-joinder of necessary parties. Even this Court cannot grant pecuniary benefits to the appellant for the reason that the public exchequer of the State of U.P. cannot be fastened with liability of the payment of salary to two persons on one post. The appellant suffered the disability by virtue of operation of the amended law and ceased to be competent to hold the post in view of the Amendment Act 2006. Thus, he has rightly been declared to have ceased to hold the post as a Member of the Commission. The Legislature is competent to alter the service conditions of an employee unilaterally, and that too, with a retrospective effect. The appellant has submitted before the High Court that he did not want any relief so as to dislodge the newly appointed Member(s) of the Commission and was seeking only a declaration that he had unlawfully been discontinued, so as to avoid to further exercise the power so vested in the State Government. Thus, the matter remained purely academic before the High Court. Peculiar facts of the case do not warrant deciding the appeal on merit. Even otherwise, the appeal lacks merit and is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the records.

7. Relevant provisions of the Act 1993 and provisions inserted by Amendment Act 2006 read as under:

UNDER ACT NO. 1 OF 1994 Under the Amendment Act 2006 (AS IT STOOD ON THE DATE (w.e.f. 23.11.2006) OF APPOINTMENT OF THE APPELLANT) SECTION 21:

(2) The State Commission shall (2) The State Commission shall, consist of with effect from such date as the State Government may by Notification specify, consist of:-

(a) ..... (a) .....

(b) one member who is, or has (b) one member who is, or has been, a Judge of a High Court. been a Judge of a High Court or

(c) one member who is, or has District Judge in the State with a been, a district Judge in that minimum of seven years State. experience as District Judge;

SECTION 23:

23. Removal of a Member of 23. [Resignation and Removal of the State Commission - (1) Chairperson or a Member of the Subject to the provisions of Sub- State Commission] section (2), the Chairperson or, [(1) The Chairperson or a Member any other member of the State of a State Commission may, by Commission shall only be notice in writing under his hand removed from his office by order addressed to the Governor, resign of the President on the ground of his office.

proved mis-behaviour or (1A) Subject to the provisions of incapacity after the Supreme Sub-section (2), the Chairperson Court, on a reference being or, any other member of the State made to it by the President, has, Commission shall only be on inquiry held in accordance removed from his office by order with the procedure prescribed in of the President on the ground of that behalf by the Supreme proved mis-behaviour or Court, reported that the incapacity after the Supreme Chairperson or such other Court, on a reference being made Member, as the case may be to it by the President, has, on ought on any such ground to be inquiry held in accordance with removed. the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the case may be ought on any such ground to be removed.

.... SECTION 26:

26. Terms and conditions of 26. [Terms and conditions of service of Members of the State service of Chairperson and Commission - The salaries and Members of the State allowances payable to, and other Commission-

terms and conditions of service The salaries and allowances of, the Members shall be such as payable to, and other terms and may be prescribed by the State conditions of service of, the Government. Chairperson and Members shall be such as may be prescribed by the State Government.

Provided that neither the salary Provided that neither the salary and allowances nor the other and allowances nor the other terms and conditions of service terms and conditions of service of a Member shall be varied to of the Chairperson or a his disadvantage after his Members shall be varied to his appointment. disadvantage after his appointment.

(Emphasis added)

8. The other legal provisions which may be relevant for consideration of the Court are as under:

> (i) Article 236(a) of the Constitution of India reads as under:
>
> "(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge".

(ii) Section 3(17) of the General Clauses Act, 1897 (hereinafter referred to as `the Act 1897'), provides that "District Judge" means:

> "(17) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction."

Section 6: Effect of repeal- Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(a) .....

(b) affect the previous operation of any enactment

so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) .....

(e) .....

(iii) Rule 4 of the Rules, 1975 reads:

Strength of the Service: (1) The service shall consist of a single cadre comprising the posts of -

(a) District and Sessions Judges, and

(b) Additional District and Sessions Judges. (Emphasis added)

9. Against the aforesaid backdrops and in view of the aforesaid statutory provisions, it has been canvassed on behalf of the appellant that as the experience of Additional District Judge can also be taken into consideration as that of a District Judge, the appellant possessed the eligibility even under the amended provisions and thus, was not liable to be dislodged The High Court dealt with the issue elaborately and came to the conclusion that ordinary and natural meaning is not to be controlled by supposed intention of the Legislature. A court cannot stretch the language of a statutory provision to bring it in accord with the supposed legislative intent underlying it, unless the words are susceptible of carrying out that intention. Thus, considering the object and purpose of the amendment, it cannot be held that experience of the appellant as Additional District Judge could also be taken into consideration as that of a District Judge. Much reliance has been placed by Shri Shekhar, learned senior counsel for the appellant on the language of Rule 4 of the Rules 1975 that there is a single cadre comprising the posts of District and Sessions Judges and Additional District and Sessions Judges. Thus, there is no basic difference between the said two posts.

10. The aforesaid submission seems to be very attractive but has no substance for the reason that a cadre generally denotes a strength of a service or a part of service sanctioned as a separate unit. It also includes sanctioned strength with reference to grades in a particular service. Cadre may also include temporary, supernumerary and shadow posts created in different grades. The expression "cadre", "posts" and "service" cannot be equated with each other. (See: Union of India v. Pushpa Rani & Ors., (2008) 9 SCC 242; and State of Karnataka & Ors. v. K. Govindappa & Anr., AIR 2009 SC 618). There is no prohibition in law to have two or more separate grades in the same cadre based on an intelligent differential. Admittedly, the post of District Judge and Additional District Judge in the State of U.P. is neither inter-changeable nor inter-transferable. The aforesaid Rules merely provide for an integrated cadre for the aforesaid posts. Thus, the submission is liable to be rejected being preposterous.

11. Same remains the position so far as the provisions of Article 236(a) of the Constitution of India are concerned. The said Article relates to the procedure of appointment on the post of the District Judge and other Civil Judicial posts inferior to the post of District Judge. The definition in Article 236 covers the higher section of the State Judicial Service both in the civil and criminal sides. (See: All India Judges' Association v. Union of India & Ors., AIR 1992 SC

165).

12. In such a fact-situation, we do not see any cogent reason to take a view contrary to the same for the reason that in case the Legislature in its wisdom has prescribed a minimum experience of seven years as District Judge knowing it fully well the existing statutory and constitutional provisions, it does not require to be interpreted ignoring the legislative intent. We cannot proceed with an assumption that Legislature had committed any mistake enacting the said provision. Clear statutory provision in such a case is required to be literally construed by considering the legislative policy. Thus, no fault can be found with the impugned judgment and order of the High Court on this count.

13. The question does arise as to whether the State could issue the Notification making a declaration that the appellant ceased to be the member of the Commission and whether the said Notification could take away the accrued rights of the appellant?

14. The appellant had joined as a member of the Commission vide order dated 29.6.2006 under the Act 1993. Section 26 of the Act 1993 specifically provided that neither the salary and allowances nor other terms and conditions of service of a member shall be varied to his dis-advantage after his appointment. The submission so made on behalf of the appellant in this regard has not been considered by the High Court taking into consideration the provisions of Section 26 at all. As the appellant was fully eligible and competent to be appointed under the Act 1993 and he had duly been appointed and worked for about 2 years including the period after the commencement of the Amendment Act 2006, the declaration that he ceased to hold the post as a Member of the Commission, is in flagrant violation of the statutory provisions contained in Section 26 of the Act 1993 itself.

15. Needless to say that "the expression `terms of service' clearly includes tenure of service". (Vide: Dr. D.C. Saxena v. State of Haryana & Ors., AIR 1987 SC 1463).

16. The view taken by the High Court in this respect is not in consonance with the statutory provisions. The amendment would apply prospectively, particularly in view of the fact that the Amendment Act 2006 does not expressly or by necessary implication suggest that such a drastic step is permissible giving retrospective effect to the Amendment Act 2006.

17. An employee appointed for a fixed period under the Statute is entitled to continue till the expiry of the tenure and in such a case there can be no occasion to pass the order of superannuation for the reason that the tenure comes to an end automatically by afflux of time. (Vide: Dr. L.P. Agarwal v. Union of India & Ors., AIR 1992 SC 1872; and State of U.P. & Anr. v. Dr. S.K. Sinha & Ors., AIR 1995 SC 768).

18. In P. Venugopal v. Union of India, (2008) 5 SCC 1, this 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. The court observed as under:

> "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."

(Emphasis added)

19. Justifiable grounds, as referred to hereinabove by this Court in P. Venugopal (supra), means the grounds of incurring any disqualification while holding the post i.e. the grounds incorporated in Section 23 of the Act 1993. If we give the dictionary meanings to the said expression, it means: "done on adequate reasons sufficiently supported by credible evidence, when weighed by unprejudiced mind, guided by common sense and by correct rules of law. The showing in court that one had sufficient reason for doing that which he is called to answer; the ground for such a plea. Lexically, the sense is clear. An act is "justified by law" if it is warranted, validated and made blameless by law". (Vide: Raj Kapoor v. Laxman, AIR 1980 SC 605).

20. "The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.' Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as (law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest." (See: Mosammat Bibi Sayeeda & Ors. etc. v. State of Bihar & Ors. etc., AIR 1996 SC 1936).

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the Legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide: Howrah Municipal Corpn. & Ors. v. Ganges Rope Co. Ltd. & Ors., (2004) 1 SCC 663).

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course.

23. The appellant had been appointed under the provisions of the Act 1993 which did not require seven years' experience as a District Judge. In the instant case, the Amendment Act 2006 came into force on 23.11.2006. The State of U.P. did not take any step for discontinuation of the appellant upto May 2008 on the ground that he did not possess the eligibility as per the Amendment Act 2006.

24. The Legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the Legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the Legislature is qualified further that such a unilateral alteration of service conditions should be in conformity with legal and constitutional provisions. (Vide: Roshan Lal Tandon v. Union of India & Ors., AIR 1967 SC 1889; State of Mysore v. Krishna Murthy & Ors., AIR 1973 SC 1146; Raj Kumar v. Union of India & Ors., AIR 1975 SC 1116; Ex-Capt. K.C. Arora & Anr. v. State of Haryana & Ors., (1984) 3 SCC 281; and State of Gujarat & Anr. v. Raman Lal Keshav Lal Soni & Ors., AIR 1984 SC 161).

25. In Union of India & Ors. V. Tushar Ranjan Mohanty & Ors., (1994) 5 SCC 450, this Court declared the amendment with retrospective operation as ultra vires as it takes away the vested rights of the petitioners therein and thus, was unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution. While deciding the said case, this Court placed very heavy reliance on the judgment in P.D. Aggarwal & Ors. v. State of U.P. & Ors., AIR 1987 SC 1676, wherein this Court has held as under:

> "...the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution."

26. In the instant case, the Amendment Act 2006 is not under challenge. However, the issue agitated by the appellant has been that the Legislature never intended to apply the amended provisions with retrospective effect and therefore, the appellant could not be discontinued from the post. His rights stood protected by the provisions of Section 6 of the Act 1897.

The issue of applicability of the said provision has been considered by this Court in State of Punjab v. Mohar Singh Pratap Singh, AIR 1955 SC 84; M.S. Shivananda v. The Karnataka State Road Transport Corpn. & Ors., AIR 1980 SC 77; Commissioner of Income Tax U.P. v. M/s. Shah Sadiq & Sons, AIR 1987 SC 1217; and Vishwant Kumar v. Madan Lal Sharma & Anr., AIR 2004 SC 1887, wherein it has been held that the rights accrued under the Act/Ordinance which stood repealed would continue to exist unless it has specifically or by necessary implication been taken away by the repealing Act.

27. This Court in State of Punjab & Ors. v. Bhajan Kaur & Ors., AIR 2008 SC 2276, while dealing with the provisions of Section 6 of the Act 1897 held as under:

> "A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law.....Where a right is created by an enactment, in the absence of a clear provision in the statute, it is not to be applied retrospectively."

28. In Sangam Spinners v. Regional Provident Fund Commissioner I, AIR 2008 SC 739, this court held as under:

> "It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither material nor decisive of the question. In terms of Section 6(c) of the General Clauses Act 1897 unless a different intention appears the repeal shall not affect any right, privilege or liability acquired, accrued or incurred under the enactment repealed."

29. A Constitution Bench of this Court in Chairman, Railway Board & Ors. v. C.R.Rangadhamaiah & Ors., AIR 1997 SC 3828, dealt with the case where the pension admissible under the Rules in force at the time of retirement was reduced with retrospective effect. This Court held such an action to be unreasonable and arbitrary being violative of Articles 14 and 16 of the Constitution of India. The Court observed as under:

> "It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity 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 of, 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.....
>
> 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 Articles 14 and 16 of the Constitution."

Thus, from the above, it is evident that accrued rights cannot be taken away by repealing the statutory provisions arbitrarily. More so, the repealing law must provide for taking away such rights,

expressly or by necessary implication.

30. There is no specific word in the Amendment Act 2006 to suggest its retrospective applicability. Rather the positive provisions of Section 1 suggests to the contrary as it reads:-

> Short Title and Commencement-
>
> (1).....
>
> "(2)It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint".

Undoubtedly, the amended provisions came into force on 23.11.2006 vide S.O. 2002 (E), dated 23.11.2006, published in the Gazette of India, Extra Pt.II, Section 3(ii) dated 23.11.2006. In fact, date 23.11.2006 is the pointer and put the matter beyond doubt.

31. Thus, in view of the above, we do not have any hesitation to declare that the Notification dated 28.5.2008 is patently illegal.

32. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order I Rule 9, of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the plaintiff/petitioner may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In Service Jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person is terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the plaintiff/petitioner succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by plaintiff/petitioner. (Vide: Prabodh Verma & Ors. etc. etc. v. State of U.P. & Ors. etc., AIR 1985 SC 167; Ishwar Singh & Ors. v. Kuldip Singh & Ors., 1995 (supp) 1 SCC 179; Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768; State of Assam v Union of India & Ors., (2010) 10 SCC 408; and Public Service Commission, Uttaranchal v. Mamta Bisht & Ors., AIR 2010 SC 2613).

More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post.

33. The appellant did not implead any person who had been appointed in his place as a Member of the Commission. More so, he made it clear before the High Court that his cause would be vindicated if the Court made a declaration that he had illegally been dislodged/restrained to continue as a Member of the Commission. In view of the above, he cannot be entitled for any other relief except

the declaration in his favour which had been made hereinabove that the impugned Notification dated 28.5.2008 is illegal.

34. In view of above, the appeal is allowed to the extent as explained hereinabove. However, in the peculiar facts and circumstances of the case, the appellant is entitled for cost to the tune of Rs. 1 lakh which the respondents must pay within a period of two months from today.

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(P. SATHASIVAM)

New Delhi, ...

April 18, 2011 (Dr. B.S. CHAUHAN)