IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 6th day of March, 2017

PRESENT:

THE HON'BLE MR SUBHRO KAMAL MUKHERJEE,
CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE BUDIHAL R B

Writ Appeal No 3169 of 2014 (S-RES)

BETWEEN

DR (SMT) MANGALA SRIDHAR
AGED ABOUT 40 YEARS
W/O MR SRIDHAR NARAYANI H
NO 1914, 'SHRI LAKSHMI
VENKATESHWARA NILAYA'
18TH 'A' MAIN ROAD
5TH CROSS, 2ND STAGE
J P NAGAR, BANGALORE-560 078 ... APPELLANT

(By Sri Sajan Poovayya, Senior Advocate a/w
Sri Prakash M H, Advocate)

AND

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
CHIEF SECRETARY
VIDHANA SOUDHA
BANGALORE-560 001

2. THE CIRCLE INSPECTOR OF POLICE
VIDHANA SOUDHA POLICE STATION
VIDHANA SOUDHA
BANGALORE-560 001 ... RESPONDENTS

(By Sri A S Ponnanna, Additional Advocate General
a/w Sri V Sreenidhi, AGA)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN WRIT PETITION NO. 22801 OF 2014 DATED 23-9-2014.

THIS WRIT APPEAL, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, ***CHIEF JUSTICE*** PRONOUNCED THE FOLLOWING:

JUDGMENT

This is an appeal against the judgment and order dated September 23, 2014, passed by the Hon'ble Single Judge in W.P.No.22801 of 2014 dismissing the writ petition.

2. The short point that arises for consideration in this writ appeal pertains to the power of the Hon'ble Governor to suspend a member of a State Public Service Commission under Article 317(2) of the Constitution of India.

3. The appellant, Dr.Mangala Sridhar, was appointed as a Member of the Karnataka Public Service Commission (hereinafter referred to as 'KPSC' in short) under Article 316(1) of the Constitution of India by an

order issued by the Governor of Karnataka on November 24, 2012. There were various allegations and counter allegations pertaining to corruption, which led to an investigation by Criminal Investigation Department ('CID' in short) and, also, the annulment of evaluations of the written examinations pertaining to certain Group-A and Group-B posts intended to be filled upon in accordance with the Karnataka Gazetted Probationers Appointment (Competitive Examination) Rules, 1977. On August 14, 2014, the State Government ordered closure of the recruitment process, which was challenged before the Karnataka State Administrative Tribunal, ultimately leading to the order dated October 19, 2016 of the Karnataka State Administrative Tribunal discarding the investigation report of CID and quashing the Government Order of August 14, 2014.

4. In the meantime, on May 14, 2014, the Governor of Karnataka issued an order under Article 317(2) of the Constitution of India suspending the appellant from the membership of KPSC with immediate

effect. It is this order of suspension that was challenged in the writ petition.

5. While various contentions were raised in the writ petition by either side, including contentions regarding maintainability, the crucial question pertained to whether the Governor can suspend a member of the State Public Service Commission under Article 317(2) even prior to a reference being made to the Supreme Court of India under Article 317(1) by the Hon'ble President.

6. It is the case of the appellant that under Article 317(1), a member of the State Public Service Commission can only be removed from his/her office by order of the President of India, on the ground of misbehaviour, only after Supreme Court of India, on a reference being made to it by the President, on enquiry, holds that such a member ought to be removed. It is the, further, case of the appellant that under Article 317(2), the Governor, in the case of the State Public Service Commission, may suspend a member from the Commission only after a reference has

been made to the Supreme Court of India by the President under Article 317(1).

7. The appellant contends that factually, in the instant case, the Governor of Karnataka had made a request to the President on May 14, 2014 and on the very day, the Appellant's membership of KPSC was suspended by the Governor. It is not in dispute that the President had not made a reference to the Supreme Court of India under Article 317(1) on May 14, 2014. In fact, no reference has been made by the President of India to the Supreme Court of India, in the case pertaining to the appellant till date. The appellant, therefore, contends that in the absence of a reference by the President to the Supreme Court of India under Article 317(1), the Governor did not had the power to suspend the appellant from the membership of KPSC under Article 317(2) and, *inter alia,* on that ground, she challenged the order of suspension dated May 14, 2014, which was upheld by the Hon'ble Single Judge, by the order impugned.

8. We have heard Mr.Sajan Poovayya, learned senior advocate for the appellant; and Mr.A.S.Ponnanna, Additional Advocate General for the respondent State.

9. The points for our consideration are:

(a) Whether the Governor while exercising powers under Article 317(2) can act at his discretion or is he bound by the aid and advice of the Council of Ministers under Article 163 of the Constitution;

(b) Whether the Governor has the power to suspend a member of a State Public Service Commission under Article 317(2), even prior to a reference being made by the President to the Supreme Court under Article 317(1) of the Constitution.

10. Member of a Public Service Commission is held under the Constitution of India as a constitutional functionary and it is not a post that is held at the pleasure of the Governor. Therefore, the power of suspension exercised by the Governor under Article 317(2) cannot be a power that is exercised at his absolute discretion or pleasure. The Supreme Court of India in ***B.R.Kapur - versus- State of Tamil Nadu and another*** *reported in* ***2001(7) SCC 231*** has held that the Governor while

exercising his discretion or otherwise, cannot do anything that is contrary to the Constitution of India. In ***Maruram –versus- Union of India*** *reported in* ***AIR 1980 SC 2147,*** the Supreme Court of India held that the expression 'Governor' is a short hand expression for the State Government.

11. The question that arises for our consideration in the context of Article 317 is squarely covered by a decision of the Supreme Court of India in ***Samsher Singh –versus- State of Punjab and another*** *reported in* ***1974 (2) SCC 831.*** The Supreme Court of India held that: -

> *"30. In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 the satisfaction required by the Constitution is not the*

personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government. The reasons are these. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions."

[Emphasis supplied]

12. Therefore, pursuant to the decision in the case of *Samsher Singh (supra),* there can be no doubt that the Governor, whilst exercising powers under Article 317(2) will have to do so, not in his absolute discretion, but in accordance with the aid and advice of the Council of Ministers. This decision has, further, been referred to ***Meher Singh Sain, In Re.*** *reported in* ***2010(13) SCC 586*** and ***Nabam Rabia and Bamang Felix –versus- Deputy Speaker, Arunachal Pradesh Legislative Assembly and others*** *reported in* ***(2016) 8 SCC 1.***

13. The Constitution contemplates various scenarios in which a Governor can exercise his discretion dehors the aid and advice of the Council of Ministers, as for example, the powers under Article 174(2): dissolution of

legislative assembly; Article 356: advising the President for proclamation of emergency; Article 167: calling for information from the Chief Minister etc. Article 317 is not one such case. In the light of the decision of the Supreme Court of India in *Samsher Singh (supra)*, it is clear that the power under Article 317(2) is not one such power, which the Governor can exercise at his absolute discretion. In the instant case, admittedly the Governor had not received the aid and advice of the Council of Ministers prior to issuing an order of suspension on May 14, 2014.

14. We proceed to the second point that has been raised for our consideration pertaining to whether a suspension under Article 317(2) can be issued even prior to a reference being made by the President to the Supreme Court of India under Article 317(1). The law regarding the subject has been crystallized by the Supreme Court of India and no element of doubt can exist regarding this proposition.

15. The learned Additional Advocate General has relied upon the decision in ***Sayalee Sanjeev Joshi (Smt.), Member, Maharashtra Public Service Commission, In Re.*** *reported in* ***(2007) 11 SCC 547*** to support the proposition that once the Governor has made a request to the President under Article 317, the Governor can proceed to suspend a member of the Public Service Commission under Article 317(2), without there actually being a reference by the President to the Hon'ble Supreme Court of India. The impugned order, also, proceeds on that ground.

16. In ***Ram Kumar Kashyap and another – versus- Union of India and others*** *reported in* ***2009(9) SCC 378,*** the Supreme Court of India held as follows:

> *"11. In Sayalee Sanjeev Joshi, Member Maharashtra Public Service Commission, In re, which concerned the removal of a member of the Maharashtra Public Service Commission under Article 317 on grounds of misbehaviour, this Court had observed: (SCC p.552, para2)*
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> > *"2. ... Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution, the placing of the respondent under suspension under Article 317(2) of the Constitution was proper."*

> *12. It is clear from the perusal of the above cases that the petitioners were not entitled to an opportunity to show cause or to be heard before the point of time that the orders of suspension were passed by the Hon'ble Governor of Haryana under Article 317(2) after the President had referred the matter to the Supreme Court. The rationale behind empowering the Governor of a State to issue such an order of suspension even before the reference is actually decided by the Supreme Court is to maintain the public trust and confidence in the impartial and honest working of the said Public Service Commission.* [Emphasis supplied]

17. The observations of the Supreme Court of India in the case of *Ram Kumar Kashyap (Supra)* is clear and unambiguous that the power of suspension under Article 317(2) can be exercised by the Governor only after the President has referred the matter to the Supreme Court of India. Further, Article 317(2) leaves us with no element of doubt that the Governor can exercise such power only after a reference is made by the President to the Supreme Court of India under Article 317(1). We can profitably refer to the decision of the Supreme Court of India ***In the matter of Reference under Article 317(1) of the Constitution of India vs. Unknown***, reported in **(1983) 4 SCC 258.**

18. Where the language of Article 317 is clear and unambiguous, reading anything further into it would not be justified. In the instant case, it is an admitted fact that as on May 14, 2014 when the Governor of Karnataka issued the order of suspension under Article 317(2), no reference to the Supreme Court of India had been made by the President under Article 317(1). We are informed that even till date, no such reference has been made by the President to the Supreme Court of India.

19. We have considered the decision of the Hon'ble Single Judge regarding the credibility of an institution such as the Public Service Commission and as to how such credibility ought to be preserved and as to how public accountability and transparency are *sine quo non* for the effective governance of that institution. We are in respectable agreement with those observations. However, it is equally, if not more important, that the powers being exercised by the Governor should be exercised in complete consonance with the Constitution of India and in

consonance with the law declared by the Supreme Court of India.

20. In the instant case, when the order of suspension was issued under Article 317(2), on May 14, 2014, the Governor admittedly did not have the benefit of the aid and advice of the Council of Ministers under Article 163. Further, as on that date, no reference had been made by the President to the Supreme Court of India under Article 317(1). On these counts, we have no option but to hold that the order of suspension dated May 14, 2014 is unconstitutional.

21. We, therefore, allow the appeal. The order impugned in this appeal dated September 23, 2014, in Writ Petition No 22801 of 2014, is set aside. The Writ Petition is allowed. The order of suspension contained in Notification bearing No. GS 19 EST 2014 dated May 14, 2014 is quashed. The appellant shall be entitled to officiate as the member of the Karnataka Public Service

Commission and shall be entitled to all emoluments and consequential benefits.

We make no order as to costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Dkb/-

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