

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 06TH DAY OF OCTOBER 2020 / 14TH ASWINA, 1942

WP(C).No.17401 OF 2020(S)

PETITIONER:

S.SUBRAMANIAM
AGED 54 YEARS
S/O.SADASIVAN PILLAI,
KALIYIKKAL HOUSE, VITHURA P.O.,
NEDUMANGAD,
THIRUVANANTHAPURAM - 695 551.

BY ADVS. SRI. C.HARIKUMAR
SRI.RENJITH RAJAPPAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL
SECRETARY TO GOVERNMENT,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

- 2 HONBLE G.SASIDHARAN (RETIRED JUDGE)
T.C.68/1426, SHIVAPOOJA, ARYANKUZHI,
MANACAUD P.O.,
THIRUVANANTHAPURAM - 695 009.

OTHER PRESENT:

R1 BY SRI. TEK CHAND, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-09-2020, THE COURT ON 06-10-2020 DELIVERED THE FOLLOWING:

“C.R.”**JUDGMENT**Dated this the 6th day of October, 2020**Manikumar, CJ**

Challenging the appointment of 2nd respondent, a retired Hon'ble Judge of this Court, as the Chairperson of the Kerala State Commission for Backward Classes, after serving as Upa Lok Ayukta, instant public interest writ petition is filed seeking to issue a writ of *quo warranto*, to declare that the 2nd respondent is disqualified to hold the post of Chairman, Kerala State Commission for Backward Classes.

2. Facts leading to the filing of the instant writ petition are that the petitioner claims to be an activist involved in the fight against corruption, nepotism, as well as favouritism. After completion of his education, he continued his social commitment and worked in various NGOs. In recognition of his work for the benefit of the society, petitioner has served as a resource person for the State Saksharatha Mission. Petitioner has further claimed that he is also an active participant in the civil society movement like movement against corruption and protest against liquor and narcotic mafia in the State. He is currently coordinating blood donation campaigns at Thiruvananthapuram.

3. Petitioner has further stated that the appointment of 2nd respondent as the Chairperson of Kerala State Commission for Backward Classes has given rise to a situation where a disqualified person has been appointed and is holding the office, without any law removing disqualification. Petitioner has also stated that his interest even though not special or personal, being one affecting the finance of the State Exchequer, arms him with sufficient interest to maintain this Public Interest Litigation. The purpose is to prevent the 2nd respondent from exercising the powers by continuing in a post, which he does not have any authority to occupy, because the appointment of the 2nd respondent is clearly in violation of the provisions of the Kerala Lok Ayukta Act, 1999.

4. Petitioner has further stated that the 2nd respondent, a former Judge of this Court, was appointed to the post of Upa LokAyukta, in exercise of the powers conferred under Section 3 of the Kerala Lok Ayukta Act, 1999, as evident from Exhibit-P1 notification dated 23.01.2009.

5. Government of Kerala, in exercise of the powers conferred by clause (a) of sub-section (2) of Section 3 of the Kerala State Commission for Backward Classes Act, 1993, appointed the 2nd respondent, who suffers from disqualification as the Chairperson of the Kerala State Commission for Backward Classes constituted as per G.O.(P) No.51/2003/SCSTDD dated

09.07.2003 in the existing vacancy, which arose consequent to the completion of the term of the former Chairperson, as evident from Exhibit-P2 notification dated 08.03.2020.

6. Petitioner has further stated that Chapter II of the Kerala State Commission for Backward Classes Act, 1993 provides for the constitution of the State Commission for Backward Classes. As per the Act, the Commission consists of a Chairman, who is or has been a Judge of the Hon'ble Supreme Court or High Court, appointed by the Government, and three members. The term of office and conditions of service of the Chairperson and members are also laid down in the Act.

7. Referring to Section 3 of the Act, 1993, petitioner has further stated that the Commission is endowed with persons to examine the request for inclusion of any class of citizens as backward class, in the lists, and to hear complaints of over inclusion or under inclusion of any backward class in such list, and to tender such advice to the Government, which is ordinarily deemed to be binding. The Commission is also endowed with powers of a Civil Court trying a suit. The powers include summoning and enforcing attendance of any person and examining him, requiring the discovery and production of any document receiving evidence on affidavits, requisitioning any public record from any court or office and issuing

commissions for examining the witnesses. The Government is also mandated under the Act, to consult the Commission while periodically revising the lists of backward classes. Thus, according to the petitioner, the functions and powers are that of a quasi-judicial body and the Chairman and member of the Commission are holding a public office.

8. Referring to Section 3(3) of the Act, 1993, petitioner has further stated that Government retains the power to remove a person from the office, upon the conditions stated therein, and as per Section 3(5), the salaries and allowances payable to and the other terms and conditions of the Chairperson shall be as may be prescribed.

9. Referring to Section 16 of the Act, the petitioner has further stated that the Chairperson and the members of the Commission are public servants and they are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

10. As per Section 17(2) of the Act, salaries and allowance payable to and other terms and conditions of service of the Chairperson and members are in accordance with the rules made by the Government by notification in the Gazette. According to the petitioner, the office of the Chairman of the Kerala State Commission for Backward Classes is a public office and the expenditure for functioning the Commission is chargeable,

either from the Consolidated Fund of India or from the Consolidated Fund of Kerala and hence, would amount to an office of profit.

11. Petitioner has further contended that the 2nd respondent was appointed to a post with duties, and powers of achievement of objective of social justice, and bestowed with the power to make recommendations for extending the benefits to socially and economically backward classes. Thus, the office to which the 2nd respondent has been appointed is of a public character and the post of the Chairman of Backward Classes Commission is an office of profit, as it denotes that a position held is an 'office'. Therefore, the Chairman of the Backward Classes Commission is holding an office of profit under the Government of Kerala, as the Act empowers the Government to remove the Chairman on the grounds specified in the Act. That apart, the degree of control by the Government which extends to even the power of removal of the Chairman, and the degree of dependence on the Government, for getting salary and allowances, together with the functional aspect of the Commission, performing the public duty of achieving social justice, makes the post an office of profit.

12. Petitioner has further stated that as per the Kerala State Commission for Backward Classes Act, 1993, there is no exception

provided for the holder of the post of Lok Ayukta from disqualification, to the post of Chairman or a member of the Commission. In order to remove the disqualification, the Act does not provide for the specific category of persons or holders of offices, who shall not be disqualified, by virtue of them holding such offices of profit. The Parliament (Prevention of Disqualification) Act, 1959 is one such legislation providing for the removal of qualification to appointment of persons holding various offices of profit. As per the said Act, certain offices of profit under the Government shall not disqualify the holders thereof from being chosen as Members of Parliament.

13. Referring to Section 3 of The Parliament (Prevention of Disqualification) Act, 1959, petitioner has stated that the offices which are specified in the section even though it is an office of profit under the Government of India or of any States shall act as a disqualification for the holder thereof from being chosen as a Member of Parliament.

14. Petitioner has further stated that there is a similar law governing the removal of disqualification to the various public offices in the State of Kerala also. The Legislative Assembly (Removal of Disqualification Amendment) Act, 1979, an Act to amend the Legislative Assembly (Removal of Disqualification) Act, 1951 also contains a similar provision

that no person shall be disqualified for being chosen as a Member of the Legislative Assembly of the State of Kerala by reason only that he holds or has held the office of Chairman of the Government company.

15. In the absence of a declaration in the State Commission for Backwards Classes Act that a person, after his term as Upa LokAyukta, shall hold the office of Chairman of the State Commission for Backwards Classes, being an office of profit, by receiving salary and allowances from the State Government, is disqualified from being chosen as the Chairman or member, to perform the functions assigned to that post.

16. The provisions of the Kerala State Commission for Backward Classes Act, 1993 insofar as it does not contain a provision akin to Section 3 of The Parliament (Prevention of Disqualification) Act, 1959 removing the disqualification, makes the appointment of the 2nd respondent one against the statutory provision of the Kerala Lok Ayukta Act, 1999.

17. Petitioner has further stated that the principles evolved from the various decisions relating to the issue of a writ of *quo warranto* make it clear that the appointment of the 2nd respondent is made against express disqualification in the Lok Ayukta Act, 1999 and hence, is entitled to question the appointment of the 2nd respondent on the ground that there is a disqualification of a person, to hold the office which can be examined in

the proceeding by this Court. The appointment of 2nd respondent, a disqualified person, is liable to be inquired into.

18. Petitioner has further stated that being a writ of *quo warranto*, it is not necessary to establish that he has been prejudicially affected by any wrongful act of public nature, his fundamental right is infringed, and that he is denied any legal right. The petitioner, in this petition, only seeks for determining as to whether, the appointment of 2nd respondent is in accordance with provisions of Kerala Commission for Backward Classes Act, 1993. The appointment of the 2nd respondent being clearly barred as a person, who has been once appointed as Upa LokAyukta, is disqualified from being appointed as a Chairman of the Backward Classes Commission, an appointment to a substantive post under the Government in the absence of the removal of his disqualification.

19. Petitioner has further stated that writ of *quo warranto* is a writ of technical nature and relying on the decision in **Ashok Kumar Thakur v. Union of India and Ors.** [(2007) 4 SCC 361], stated that the appointment to the post of Chairman of the Backward Classes Commission of the State is a very important public office and an office of profit, entitled to the payment from the consolidated fund of the State of Kerala. Hence, he has prayed that the appointment of the 2nd respondent has to be

declared ineligible, by issuance of writ of *quo warranto*, as a usurper and not eligible to hold the post of Chairman of Kerala State Backward Classes Commission.

20. On the aspect of *locus standi* to file a writ of *quo warranto* and issuance of a writ of *quo warranto*, the petitioner has relied on the decisions in **University of Mysore and ors. v. C.D. Govinda Rao** [1965 AIR 491], **K.C. Chandi v. R. Balakrishnan Pillai** [AIR 1986 Ker. 116], English decision **Darley v. The Queen, Kallara Sukumaran v. Union of India** (AIR 1987 Ker 212), **Neelakantan C.R. v. Union of India and Ors.** [2016 (2) KHC 588], **Centre for PIL v. Union of India** [(2011) 4 SCC 1], **Rajesh Awasthi v. Nandlal Jaiswal** [(2013) 1 SCC 501], **Renu and Ors. v. District & Sessions Judge** [(2014) 14 SCC 50], **In B. Sreenivas Reddy v. Karnataka Urban Water Supply and Drainage Board Employees' Association and ors.** [(2006) 11 SCC 7311], **B.R. Kapoor v. State of Tamil Nadu and ors.** [(2001) 7 SCC 231], **N. Kannadasan and Ors. v. Ajoy Khose** [(2009) 7 SCC 1], **Premkumar T.R. v. Mahatma Gandhi University and Ors.** [ILR 2018 (1) Kerala 993], **Mahesh Chandra Gupta v. Union of India** [(2009) 8 SCC 273], and **Central Electricity Supply Utility v. Dheobai Saho and Ors.** [(2014) 1 SCC 161].

21. Heard Mr. C. Harikumar, learned counsel for the petitioner, and perused the materials available on record.

22. Gazette Notification No.GSS-275 2009 dated 23.01.2009 appointing the 2nd respondent to the post of Upa LokAyukta, in exercise of the powers conferred under Section 3 of the Kerala Lok Ayukta Act, 1999 is extracted hereunder:

“GOVERNOR'S SECRETARIAT
KERALA RAJ BHAVAN

NOTIFICATION

No.GSS-275 2009

Dated, Thiruvananthapuram, 23rd January, 2009

In exercise of the powers conferred by Section 3 of the Kerala Lok Ayukta Act, 1999 (8 of 1999), the Governor of Kerala is pleased to appoint Mr. Justice M. M. Pareed Pillay, former Chief Justice of the High Court of Kerala as Lok Ayukta and Mr. Justice G. Sasidharan, former Judge of the High Court of Kerala as Upa Lok Ayukta.

By order of the Governor

A. AJITH KUMAR
Secretary to Governor

Thiruvananthapuram
34/2008/DTP”

23. G.O.(P) No.1/2019/BCDD dated 08.03.2019, issued by the Government of Kerala, in exercise of the powers conferred by clause (a) of sub-section (2) of Section 3 of the Kerala State Commission for Backward Classes Act, 1993, appointing the 2nd respondent as the Chairperson of the Kerala State Commission for Backward Classes, constituted under G.O.(P) No.51/2003/SCSTDD dated 09.07.2003, is extracted hereunder:

“GOVERNMENT OF KERALA
Backward Classes Development (A) Department

NOTIFICATION

G.O.(P) No.01/2019/BCDD.

8th March, 2019

Dated, Thiruvananthapuram, 24th Kumbham, 1194

17th Phalguna, 1940

S. R. O No. 189/2019. - In exercise of the powers conferred by clause (a) of sub-section (2) of section 3 of the Kerala State Commission for Backward Classes Act, 1993 (11 of 1993), the Government of Kerala hereby appoint Justice G. Sasidharan, Retired Judge of the High Court of Kerala, T.C. 68/1426. Shivapooja, Aryankuzhi, Manacaud P.O., Thiruvananthapuram, as the Chairperson of the Kerala State Commission for Backward Classes constituted under G.O.(P) No.51/2003/SCSTDD dated 9th July, 2003 and published as S R. O. No.628/2003 in the Kerala Gazette Extraordinary No.1221 dated 9th July, 2003 in the existing vacancy and make the following further consequential amendment to the said notification, namely:

AMENDMENT

In the said notification, for serial number 1 and the entries against it, the following serial number and entries shall be substituted, namely:-

“1. Justice G. Sasidharan, Chairperson.”
Retired Judge of the High Court of Kerala
T.C. 68/1426. Shivapooja,
Aryankuzhi, Manacaud P.O.,
Thiruvananthapuram.

By order of the Governor

BISHWANATH SINHA
Principal Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport)

As per the notification issued under G. O. (P) No.51/2003/SCSTDD dated 9th July, 2003 and published as S.R.O. No.628/2003 dated 9th July, 2003, the Kerala State Commission for Backward Classes was constituted with Chairperson and Member Secretary and the same was amended as per notifications issued under G.O.(P) No.61/2006/SCSTDD dated 28th October, 2006 published as S.R.O. No.760/2006 in the Kerala Gazette Extraordinary No.1700 dated 28th October, 2006 and subsequent notifications. The post of Chairperson is lying vacant from 3rd March, 2019 consequent on completion of the term of the Chairperson. Hence, the Government have decided to appoint a new Chairperson as per clause (a) of sub-section (2) of section 3 of the Kerala State Commission for Backward Classes Act, 1993 and to amend the notification suitably.

The notification is intended to achieve the above object.”

24. Before advertng to the rival submissions, let us consider the statutory provisions.

25. Kerala Lok Ayukta Act, 1999 is an Act to make provision for the appointment and functions of certain authorities for making enquiries into any action (including any omission and commission in connection with or arising out of such action) relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution of India taken by or on behalf on the Government of Kerala or certain public authorities in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto.

26. Section 2(o) of the Act defines "public servant" to mean a person who is or was at any time,-

- "(i) the Chief Minister;
- (ii) a Minister;
- (iii) a member of the legislative Assembly of the State Kerala;
- (iv) a Government servant;
- (v) the Chairman and the Vice-Chairman (by whatever name called) or a member of a local authority in the State or a statutory body or corporation established by or under any law of the State Legislature, including a co-operative society, or a Government Company within the meaning of section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and such other Corporations or Boards, as the Government may, having regard to its financial interest, in such Corporations or Boards, by notification, from time to time, specify;
- (vi) a member of a Committee or Board or Authority or Corporation, statutory or non-statutory, constituted by the Government of Kerala;
- (vii) a person in the service or pay of,-
 - (A) a local authority in the State;
 - (B) a statutory body or a corporation (not being a local authority) established by or under State of a Central Act, owned or controlled by the Government of Kerala and any other board or corporation as the Government may, having regard to its financial interest therein, specify, by notification in the Gazette from time to time;
 - (C) a company registered under the Companies Act, 1956 (Central Act 1 of 1956), in which not less than fifty-one percent of the paid up share capital is held by the Government of Kerala or any company which is a subsidiary of such company;
 - (D) a society registered or deemed to have been registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (XII or 1955) or the Societies Registration Act, 1860 (Central Act 21 of 1860), which is subject to the

control of the Government of Kerala and which is notified, in this behalf, in the Gazette;

(E) a cooperative society,

(F) a University,

Explanation.- In this clause, "cooperative society" means a cooperative society registered or deemed to have been registered under the Kerala Cooperative Societies Act, 1969 (21 of 1969) and "University" means a University established by or under any law of the State of Kerala;

(viii) the President, Secretary or Treasurer or any other office bearer of a trade union registered under the Indian Trade Unions Act, 1926 (Central Act 16 of 1926),

(ix) the Chairman or Vice-Chairman or President or Vice-President or Secretary or Treasurer or any other office bearer of a political party, at the District or State level,

(x) the Chairman or Manager or Secretary or Correspondent having control over the administration of a private school, whether under individual or corporate management, which receives or has received and or grant from the Government under the Kerala Education Act, 1958 (6 of 1959), and the rules made thereunder;

(xi) the Chairman or Manager or Secretary or Correspondent having control over the administration of a private college, whether under unitary or corporate management, which is affiliated to a University in the State and is governed by the Private Affiliated Colleges (Arts and Science Colleges) Staff Direct Payment of Salary Rules 1972,

(xii) the Chairman or Manager or Secretary or Correspondent having control over the administration of a private college, whether under unitary or corporate management, affiliated to a University in the State and which receives aid or grant from the Government of Kerala; or

(xiii) the Chairman or Manager or Secretary or Correspondent having control over the administration of a Private Engineering College or Private Polytechnic, whether under unitary or corporate management, affiliated to a University in the State or the State Board of Technical Examination, Kerala, as the case may be and is governed by the Rules for Payment of Salaries to the Staff of the Private Engineering Colleges and Polytechnics, 1972."

27. Section 5 of the Act speaks about the term of office and other conditions of service of Lok Ayukta and Upa Lok Ayukta and the same reads thus:

"5. Term of office and other conditions of service of Lok Ayukta and Upa-Lok Ayukta.- (1) A person appointed as Lok Ayukta or Upa-Lok Ayukta shall hold office for a term of five years from the date on which he enters upon his office.

Provided that-

- (a) the Lok Ayukta or an Upa-Lok Ayukta may, by writing under his hand and seal addressed to the Governor, resign his office,
- (b) the Lok Ayukta or an Upa-Lok Ayukta may be removed from his office in the manner provided in Section 6.

(2) A person who holds office as the Lok Ayukta or an Upa-Lok Ayukta shall, on the expiration of his term of office, be ineligible for reappointment to that office.

(3) On ceasing to hold office, the Lok Ayukta or an Upa-Lok Ayukta shall not be eligible for further employment to any office of profit under the Government or in any authority, corporation, company, society or university referred to in item (vii) of clause (o) of Section 2.

(4) The salary and allowances payable to, and other conditions of service of, the Lok Ayukta or an Upa-Lok Ayukta shall be such, as may be prescribed.

Provided that-

- (a) In prescribing the salary and allowances and other conditions of service of the Lok Ayukta, regard shall be had to the salary and allowances and other conditions of service of a Supreme Court Judge or of the Chief Justice of a High Court, as the case may be:
- (b) In prescribing the salary and allowances payable to, and other conditions of service of, the Upa-Lok Ayukta, regard shall be had to the salary and allowances payable to, and other conditions of service of a Judge of a High Court:

Provided further that the salary and allowances payable to, and other conditions of service of, the Lok Ayukta or an Upa-Lok Ayukta shall not be varied to his disadvantage after his appointment.”

(5) The expenditure in respect of the salaries and allowances of the Lok Ayukta and the Upa-Lok Ayuktas and the administrative expenses of the offices of the Lok Ayukta and the Upa-Lok Ayukta including all salaries, allowances and pensions payable to, or in respect of the persons serving in that office, shall be charged on the Consolidated Fund of the State.”

28. Kerala State Commission for Backward Classes Act, 1993 is an Act to constitute a State Commission for Backward classes other than the Scheduled Castes and Scheduled Tribes and to provide for matters connected therewith or incidental thereto.

29. Chapter II of the Act, 1999 deals with the State Commission for Backward Classes. Section 3 of the Act deals with constitution of the Kerala State Commission for Backward Classes and the same reads thus:

“(1) The Government shall constitute a body to be known as the Kerala state Commission for Backward Classes to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The commission shall consists of a Chairman who is or has been a judge of the Supreme Court or of a High court appointed by the Government and the following members, that is to say,-

- the Secretary to Government in charge of the Backward classes Welfare Department of the Government, ex-officio, who shall be the Member-Secretary of the Commission;
- two persons having special knowledge in matters relating to Backward Classes to be nominated by the Government.

30. Section 4 of the Act, 1993 speaks about the term of office and conditions of service of Chairperson and members, and it reads thus:

“(1) Every Member, shall hold office for a term of three years from the date he assumes office.

(2) A Member may, by writing under his hand addressed to the Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

(3) The Government shall remove a person from the office of Members if that person.-

- becomes an undischarged insolvent ;
- is convicted and sentenced to imprisonment for an offences, which in the opinion of the Government, involves moral turpitude;
- becomes of unsound mind and stands so declared by a competent court;
- refuses to act or becomes incapable of acting;
- is, without obtaining leave of absence from the Commission absent from three consecutive meetings of the Commission; or
- has, in the opinion of the Government, so abused the position of chairperson or Member as to render that person's continuance in office detrimental to the interests of backward classes or the public interest:

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

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination within a period of three months.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.”

31. Section 5 of the Act, 1993 speaks about the officers and other employees of the Commission and it reads thus:

“(1) The Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.”

32. Chapter III of the Act deals with functions and powers of the Commission. Section 9 of Chapter III speaks about the functions of the Commission and the same reads thus:

“(1) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the Government.”

33. Section 10 speaks about the powers of the Commission and the same reads thus:

“The Commission shall, while performing its functions under sub-section (1) of section 9, have all the powers of a civil court trying a suit and in particular, in respect of the following matters namely:-

- summoning and enforcing the attendance of any person from any part of the State and examining him on oath ;
- requiring the discovery and production of any document;
- receiving evidence on affidavits;
- requisitioning any public record or copy thereof from any court or office;

- issuing commissions for the examination of witnesses and documents; and
- any other matter which may be prescribed.”

34. Section 16 under Chapter V speaks about Chairperson, Members and employees of the Commission to be Public Servants and it reads thus:

“The chairperson, Members and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).”

35. Section 17 of the Act, 1993 speaks about the power to make rules and the same reads thus:

“(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act either prospectively or retrospectively.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters namely:-

- salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and Members under sub-section (5) of Section 4 and of officers and other employees under sub-section (2) of Section 5 ;
- the form, in which the annual statement of accounts shall be maintained under sub-section (1) of Section 13;
- the form in, and the time at which the annual report shall prepared under Section 14; and
- any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the

rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

36. On the aspect as to whether, office of the Chairman of Kerala State Commission for Backward Classes is, either under the employment of Government of India or under the Government of a State, let us consider a few decisions as under:

(i) In **Chintaman Rao v. State of M.P.**, [AIR 1958 SC 388], at paragraph No.9, the Hon'ble Supreme Court, observed as follows:

"....The concept of employment involves 'three ingredients: (1) employer (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee hereunder the employee agrees to serve the employer subject to his control and supervision."

(ii) In **Hargovind Pant v. Dr. Raghukul Tilak** reported in (1979) 3 SCC 458, a member of the Rajasthan Public Service Commission, ceasing to be so, was appointed as Governor of Rajasthan. While considering the challenge, in the light of Article 319(d) of the Constitution of India, the Hon'ble Supreme Court, at paragraphs 3 to 5, held as follows:

"3. We are concerned in this special leave petition only with clause (d) of Article 319 since the 1st respondent was a member of the Rajasthan Public Service Commission and it is on account of that fact that it is claimed that he was ineligible to be appointed Governor of Rajasthan. Clause (d) of Article 319 provides:

"..on ceasing to hold office-a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State".

It is, therefore, obvious that the 1st respondent could be appointed Chairman or any other member of the Union Public Service Commission or Chairman of the Rajasthan or any other State Public Service Commission, but he was ineligible for any other employment either under the Government of India or under the Government of a State. Now, it was not the case of the petitioner that the office of Governor was an employment under the Government of a State and the only question which, therefore, requires to be considered is whether the office of Governor can be said to be an employment under the Government of India. If it is, then undoubtedly the 1st respondent could not be appointed Governor of Rajasthan and his appointment would be invalid. But we are of the view that howsoever wide and expansive a meaning we may give to the words "employment . . . under the Government of India", the office of Governor cannot come within it.

4. The first question that arises on the applicability of the words "employment...under the Government of India" is whether the office of Governor is an 'employment' within the meaning of that expression in clause (d) of Article 319. What is the sense in which that word has been used in this Article? Semantically, the word 'employment' is not a word with a single fixed meaning but it has many connotations. On the one side it may bear the narrow meaning of relationship of employer and employee and on the other, it may mean in its widest connotation any engagement or any work in which one is engaged. If the former be the sense in which the word 'employment' is used in clause (d) of Article 319, the office of Governor would certainly not be an employment, because the Governor of a State is not an employee or servant of any one. He occupies a high constitutional office with important constitutional functions

and duties. The executive power of the State is vested in him and every executive action of the Government is required to be expressed to be taken in his name. He constitutes an integral part of the legislature of the State though not in the fullest sense, and is also vested with the legislative power to promulgate ordinances while the Houses of the Legislature are not in session. He also exercises the sovereign power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. He is vested with the power to summon each House of the Legislature or to prorogue either House or to dissolve the legislative assembly and this power may be exercised by him from time to time. He is also entitled to address either House of the Legislature or both Houses assembled together and he may send messages to the House or Houses of the Legislature with respect to a bill then pending in the legislature or otherwise. No bill passed by the Houses of the Legislature can become law unless it is assented to by him and before assenting to the bill he may return the bill, provided it is not a money bill to the Houses of the Legislature for reconsideration. He has also the power to reserve for consideration of the President any bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by the Constitution designed to fill. There is also one highly significant role which he has to play under the Constitution and that is of making a report where he finds that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. It is the Governor's report which generally forms the basis for the President taking action under Article 356 of the Constitution. It will be seen from this enumeration of the constitutional powers and functions of the Governor that he is not an employee or servant in any sense of the term. It is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an

employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President: it is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot, therefore, even by stretching the language to a breaking point, be regarded as an employee or servant of the Government of India. If, therefore, the word 'employment' were construed to mean relationship of employer and employee, the office of Governor would certainly not be an 'employment' within the meaning of clause (d) of Article 319.

5. But if we accept the wider meaning of the word 'employment' as connoting any engagement or any work in which one is engaged as in the expression self-employment' the office of Governor would clearly be an 'employment' within the meaning of clause (d) of Art. 319. That, however, would not be enough to attract the applicability of this provision. There is a further requirement which is necessary and that is that the employment must be under the Government of India. Now, what is the meaning of this expression "under the Government of India"? Fortunately, there are two decisions of this Court which throw some light on this question. The first is the decision in Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court where the question was as to whether the officers and members of the staff of the High Court could be said to be persons "serving under the Government of India or the Government of a State, in a civil capacity" so as to be within the scope of Article 320(3) (c) which requires consultation with the appropriate Public Service Commission in disciplinary matters. This Court speaking through Jagannadhadas, J., pointed out:

"the phrase 'a person' serving under the Government of India or the Government of 'a State'

it seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or of the Governor or of a Rajpramukh. The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice."

The question which arose in the other decision in *Baldev Raj Guliani & ors. v. The Punjab & Haryana High Court & ors.* was a similar one and it related to the applicability of Article 320(3) (c) to Judicial officers in the State. Here, in this case also the Court took the same view and, after referring to the earlier decision in Pradyat Kumar Bose's case with approval, held that "just as the High Court staff are not serving under the Government of the State, the Judicial officers are also not serving under the State Government", because they are "entirely under the jurisdiction of the High Court for the purpose of control and discipline". It will, therefore, be seen that the employment can be said to be under the Government of India if the holder or incumbent of the employment is under the control of the Government of India vis-a-vis such employment. Now, if one applies this test to the office of Governor, it is impossible to hold that the Governor is under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom he vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. There can, therefore, be no doubt that the office of Governor is not an employment under the Government of India and it does not come within the prohibition of clause (d) of Article 319."

(iii) In **Dr. Chandra Bhan Singh v. State of Rajasthan**, reported in AIR 1983 Rajasthan 149, at paragraphs 9 and 11, the Hon'ble Jaipur Bench held as follows:

"9. I have given my earnest consideration to the above contention and perused the authorities cited above. At the outset, I may observe that Shri Nathu Lal Jain, non-petitioner No. 3, admitted in his reply that he had held the office of a member of the Rajasthan Public Service Commission and after the termination of his office in the said Commission, he was appointed the Advocate General for the State of Rajasthan. Hence, the pertinent question that arises for determination is whether the express bar contained in Clause (d) of Article 319 of the Constitution can be made applicable to his new appointment as Advocate General for Rajasthan. Before dealing with this question, I may say that in order to apply for this bar, the new appointment, after Shri Nathu Lal Jain ceased to be a member of the Rajasthan Public Service Commission, must be an employment under the Government of Rajasthan. According to the submission of the learned counsel for the petitioner, Shri Nathu Lal Jain holds his office of Advocate General during the pleasure of the Governor and the relationship between him and the Government is of master and servant, because the employer, i. e. Rajasthan Government has full control over him in the discharge of the functions and duties of his office. The contention on behalf of Mr. Nathu Lal Jain, on the other hand, is that even though he is appointed by the Governor as Advocate General, he holds his office under the Constitution without being subordinate to the Government of Rajasthan and the relationship between him and the Government is of client and the counsel. In my opinion, there exists no relationship of master and servant between the Advocate General and the Government, because, in the discharge of the functions and duties attached to his office, he is not subject to the control of the Government in a sufficient degree so as to make the Government his master. The legal concept of subordination or control includes the power of the master to direct the duties or functions to be done or performed by the subordinate or the servant, the manner in which they shall be done and performed, and,

the means to be employed in doing or performing them, the time when and the place where they shall be done or performed. Having considered all these aspects of control, it can be said without difficulty that the position of Shri Nathu Lal Jain, Advocate General, in relation to the Government of Rajasthan is not that of servant and master but rather that of a counsel and client, because the Government cannot direct him to discharge his functions and duties In the manner in which it likes and, to say in other words, has no right to control the method of his doing work.

.....

11. Although under Clause (3) the office is held by the Advocate-General during the pleasure of the Governor and such remuneration is received by him, as may be determined by the Governor, yet, in my opinion, he cannot be treated as a Government servant on this score, because he holds the office to discharge the functions under the Constitution, as is evident from Clause (2) of Article 165 thereof without being subordinate to the Government of the State. For the discharge of functions and duties of his office he is not controlled by the Governor or the State Government, because while giving advice to the State Government upon any legal matter referred to him or while performing duties of a legal character assigned by the Governor or while discharging the functions conferred on him by or under the Constitution or any other law for the time being in force, he is free to exercise his discretion, though according to law, and according to his best ability, in the manner which he considers best. The Governor or the State Government is not empowered to ask him to discharge his functions or to perform his duties in the manner in which they like.

Similarly, he is free to give such legal advice or assistance to private parties in all such cases in which he is not likely to be called upon to give advice to the Government or to conduct or argue them in the court on behalf of the State. In support of the view I have taken above, I may refer to an authority of the Supreme Court **T. C. Hingorani v. G. P. Misra** (Civil Appeal No. 564 of 1964 decided on 24th Sept., 1965) (1967 All WR (SC) 662), wherein the

following observations were made by their Lordships:--

"Then as to his status as an Advocate simpliciter, he was entitled at the relevant time to practise as a matter of right as prescribed by S. 14 of the Indian Bar Councils Act, 1926 (38 of 1926). It is not disputed that the Advocate General is not a Government servant though he receives remuneration on his appointment as Advocate General under Article 165(3) and so there can be no doubt that subject to the other terms and conditions of his appointment as Advocate-General, he would be entitled "to exercise his right as an Advocate and appear for private parties. Thus, whether the status of Mr. Misra is considered as an Advocate General or as an Advocate. Prima facie, it is difficult to understand how he can be prohibited from appearing in any legal proceeding like the one with which the Allahabad High Court was dealing in the present case."

Consequently, I have no hesitation in holding that Mr. Nathu Lal Jain, who has held the office as a member of the Rajasthan Public Service Commission, was not debarred from holding the office of the Advocate-General after termination of his office in the Rajasthan Public Service Commission."

(iv) In **Adv. Sreenivasan Venugopalan v. Hon'ble M.M.Pareed Pillai, Retired, C.J., of Kerala High Court and Anr.,** (AIR 2009 Kerala 148 : 2009 (2) KLT 823), a Hon'ble Division Bench of this Court, at paragraphs 4 to 7, held as follows:

"4. The ineligibility under Section 24(3) of the Protection of Human Rights Act, 1993 reads thus:

"24(3). On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India."

On a bare reading of the said provision, it is to be noted that the emphasis is on the words, "employment under the

Government" whether State or Union. That is to say, the Chairperson or a Member of Human Rights Commission is ineligible to hold any post under the Government after demitting the office of Chairperson or Member. The words "under the Government" denotes that only when the Government can control the functions of an authority, it can be said that the authority is under the control of the Government. Such control is possible in the case of purely executive or administrative authority; but not so with judicial authority, for in the very nature of things, where rule of law prevails, it is not open to the Government to interfere with a particular matter before the judicial authority for decision in a particular manner. The words, 'under the Government' clearly indicates that such posts must be under the employment of the Government. Considering the word 'employment' in Article 319(d) of the Constitution of India, the Hon'ble Apex Court in the case of ***Hargovind Pant v. Dr. Raghukul Tilak***, (1979) 3 SCC 458, observed thus:

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

As such, it is necessary to consider whether the office of Lok Ayukta is under the Government, that is to say, whether there exists a relationship of master and servant between the Lok Ayukta and the State. It cannot be disputed that as per the scheme of the Lok Ayukta Act, to discharge the functions and duties of the office, the Lok Ayukta is not controlled by the State Government in any manner. The State Government is not at all empowered to ask the Lok Ayukta to discharge its functions or to perform its duties in the manner which it likes.

5. The Hon'ble Apex Court and several other High Courts have considered the appointments of Advocate General and Members of Public Service Commission in this regard. No doubt, it was contended that those decisions are in respect of constitutional authorities. But, according to the learned counsel, the post of Lok Ayukta is a not a constitutional post. We are aware that the post of Lok Ayukta is not a constitutional one, but it is a statutory appointment. In our view, that is not the relevant factor to be looked into. **What is required to be considered, in order to make the first respondent as ineligible is, to find out whether his employment is 'under the Government'.**

6. Lok Ayukta is the Indian version of Ombudsman. The concept of Ombudsman is of Scandinavian origin conceived to redress the grievances of the common man in society without any high connections or influence. Ombudsman in India was conceived with the twin functions of dealing with the grievances of the people arising out of maladministration, and, fighting corruption at administrative and political levels. The provisions of the Kerala Lok Ayukta Act, 1999 would show that the office is a high level impartial, standing judicial tribunal to investigate and report on complaints of maladministration and corruption at administrative and political levels. The Act is intended to make provision for the appointment and functions of certain authorities for making enquiries into any action (including any omission and commission in connection with or arising out of such action) relatable to matters specified in List II or List III of the Seventh Schedule to the Constitution of India taken by or on behalf of the Government of Kerala or certain public authorities in the State of Kerala in certain cases and for matters connected therewith or ancillary thereto. Since high ranking categories of public servants starting with Chief Minister followed by Minister, Member of State Legislature, Government Secretary, office bearer of a political party at State level and an officer of the All India Services, employed in connection with the affairs of the State are brought under the purview of 'public servant'. **The Lok Ayukta has power to punish offenders for contempt**

of court under the provisions of the Contempt of Courts Act, 1971. Except on the ground of jurisdiction, no proceedings or decision of the Lok Ayukta or Upa Lok Ayukta is liable to be challenged, reviewed, quashed or called in question in any court. The Lok Ayukta or Upa Lok Ayukta cannot be removed from the office except by an order of the Governor passed after and addressed by the Legislative Assembly of the State and supported by a majority of the total number of the House and by a majority of not less than two third of the members of the House present on voting, on the ground of proved misbehaviour or incapacity. Detailed procedure also has been prescribed in that regard. All these would indicate that once appointed, the Lok Ayukta or Upa Lok Ayukta, there is absolutely no employer-employee relationship between the Government and the appointees. They are not subordinate to the Government of the State. There is no executive control over them. Needless also to say that there is no master-servant relationship. Thus the office of Lok Ayukta or Upa Lok Ayukta is an independent statutory office, which is not under the Government of the State or the Union of India.

7. No doubt, the Lok Ayukta receives his salary from the State Government. But that is not again the sole criteria to hold that he is under the employment of the State. The post of Lok Ayukta is an independent statutory post and by no stretch of imagination, can it come under the purview of 'employment under the Government'. As such, we find that, the post of Lok Ayukta is a public authority, which has public or statutory duties to perform and it is in no way under the control of the State Government. We find that the contention of the petitioner that Lok Ayukta being the post under the Government, as per Section 24(3) of the Protection of Human Rights Act, 1993, the first respondent is disqualified or ineligible, is devoid of merits.

Hence, we find no merit in the writ petition and the same is dismissed." (emphasis supplied)

(v) In **Mithilesh Kumar Singh v. The State of Bihar** [2016 (2) PLJR 572], citing Article 319(d) of the Constitution of India, appointment of a former Chairman of the Bihar Public Service Commission, as member of Lokayukta was challenged, stating that he is ineligible. Rejecting the challenge, at paragraphs 46, 73 to 78, a Hon'ble Division Bench of Patna High Court, held as follows:

"46.

(i) xx xxx xxxx

(ii) xx xx xxxx

(iii) Questioning the recommendation of respondent No. 6 for his appointment as a Non-Judicial Member of the "Institution of Lokayukta", Mr. Dinu Kumar, learned Counsel, has argued that respondent No. 6 had earlier held the office of the Chairman of Bihar Public Service Commission and, therefore, he is, in view of the bar put under Article 319(b) of the Constitution of India, ineligible for further employment under the Government of India or under the Government of any State. He has additionally submitted that the name of respondent No. 6 was earlier under consideration by the Search Committee pursuant to the process initiated through the advertisement/notice, dated 5.1.2014. Though his name was nominated pursuant to the said advertisement too, the Search Committee, at that point of time, had not found him fit to be recommended. He has, accordingly, submitted that by the earlier Search Committee, respondent No. 6 having been found unfit to hold the post of Non Judicial Member of the "Institution of Lokayukta", his name ought not to have figured amongst the persons fit for recommendation/appointment for the said post in the panel prepared by the Search Committee.

73. Coming to the third aspect, i.e., eligibility of respondent No. 6 for his appointment as Non-Judicial Member, because of the bar put by Article 319(b) of the Constitution of India, we are required to take note of Section 7 of the Act of 2011, which reads thus:-

"7. Removal of Chairperson and other Members of Lokayukta.- (1) The Chairperson or Members may be removed from his office by the Governor on the ground of misbehaviour or incapacity and on no other ground.

Provided that inquiry required to be held before such removal shall be held by a sitting High Court Judge to be nominated by the Chief Justice of Patna High Court.

(2) A person appointed under the proviso to sub-section (1) shall submit the report within three months to the Governor who shall, as soon as may be, cause it to be laid before each House of the State Legislature.

(3) Notwithstanding anything contained in sub-section (1) the Governor shall not remove the Chairperson or Members except by an order passed after an address by each house of the State Legislature supported by a majority of the total membership of that House and majority of not less than two thirds of the Members of that House present and voting has been presented to the Governor in the same session for such removal.

(4) The State Legislature may regulate the procedure for presentation of an address and conclusion of the proceeding as mentioned in sub-section (3) above.

(5) Notwithstanding any other definition of misbehaviour in any other law in force for the time being, "Misbehaviour" amongst others means, if the Chairperson or any other Member is or becomes in any way associated or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a Member and in common with the other Members of an Corporate Company or has abused his position in any way so as to obtain any gain or favour to himself or to any other person to cause undue harm or hardship to any other person or was actuated in the

discharge of the functions by any personal interest or for improper gain, corrupt practices.

(6) Notwithstanding any other definition of incapacity in any other law in force for time being, "Incapacity" amongst others means if the Chairperson or any other members is declared or adjudged an insolvent by a court of competent jurisdiction or is unfit to continue in office by reason of infirmity of mind or body."

74. Section 7 of the Act of 2011 lays down the procedure for removal of Chairperson or Members of Lokayukta from his office by the Governor of the State on the ground of misbehaviour or incapacity and no other ground. Proviso to sub-section (1) of Section 7 of the Act of 2011 prescribes that an enquiry will be required to be held by a sitting High Court Judge, in this regard, to be nominated by the Chief Justice of Patna High Court, who, in turn, will be required to submit a report to the Governor. Thereafter, the Act provides that the Governor shall cause the said report to be laid before each House of the State Legislature. Even the Governor, who is the appointing authority of the Chairperson and Members of the Institution of Lokayukta, does not have the jurisdiction to remove the Chairperson or a Member of Lokayukta except by an order passed after an address by each House of the State Legislature supported by a majority of the total membership of that House and majority of not less than two-third of the Members of that House present and such voting has been presented to the Governor in the same session for such removal.

75. Mr. Pushkar Narain Shahi, learned Addl. Advocate General, appearing for the State of Bihar, is, in our considered view, right in his submission that considering rigorous procedure prescribed for removal of the Chairperson and Members of Lokayukta, as noticed above, their appointments cannot be said to be falling within the meaning of "employment under the Government of a State", the Government having no control over the appointees.

76. Mr. Shahi has rightly placed, in this regard, reliance on the decision of the Supreme Court, in the case of ***Hargovind Pant v. Raghukul Tilak (Dr.) & Ors.***, reported in (1979) 3 SCC 458, wherein the Supreme Court introduced the test of "administrative control of the State Government or Central Government" for deciding as to whether an employment can be said to be under the Government of India or under the Government of a State. We find from the process of removal, as prescribed by Section 7 of the Act of 2011, that the State Government does not have at all any disciplinary or administrative control over the Chairperson or Members of Lokayukta.

77. Further, considering the jurisdiction in respect of inquiry vested in the "Institution of Lokayukta" under Chapter-VI of the Act of 2011, the appointment of Members and Chairperson cannot be termed as employment under the State Government. Section 16 of the Act of 2011 being relevant, for the present purpose, is being extracted herein below:

"16. Jurisdiction of Lokayukta.- (1) Subject to other provisions of this Act, Lokayukta shall inquire into any matter involved in, or arising from, or connected with any allegation or grievance against any public servant made in the complaint in respect of the following, namely:

- (a) any person who is or has been a Chief Minister of the State,
- (b) any person who is or has been a Minister of the State,
- (c) any person who is or has been a Member of either house of the State Legislature,
- (d) every officer referred to in clause (m) of Section 2,
- (e) every officer referred to in clause (m) of Section 2 who on deputation or on transfer to foreign service is in the service or pay of-
 - (i) any Local Authority, Local Self Government including the Panchayati Raj Institutions and the Urban Local Bodies;
 - (ii) any Corporation (not being the local authority) established by or under the State Act

and owned or controlled by the State Government;

(iii) any Government Company within the meaning of Section 617 of the Companies Act, 1956 (Act 1 of 1956) in which not less than fifty-one percent of the paid up share capital is held by the State Government of any Company which is a subsidiary of a company capital is held by the State Government;

(iv) any Society registered under the Societies Registration Act, 1860 (Act 21 of 1860) which is subject to the control of the State Government and which is notified by the State Government in this behalf in the Official gazette;

(f) every Head or his Deputy by whatever designation he may be known and other employees of Local Authority, the Local Self Government including the Panchayati Raj Institutions and the Urban Local Bodies, the Corporation, the Government Company or a Society or Association of Persons or Trust or Non-Governmental Organizations (whether registered under any law for the time being in force or not) having received a donation of more than Rs. five lakhs from any other source including foreign sources, or any other institution or organization or authority, subsidized or being given grant by the State Government or receiving payment of more than the prescribed amount from the Government.

(g) any Chairperson or Member or Officer [referred to in clause (e) of sub-section (1)] or equivalent/above in any body/ Board/ Corporation/ Authority/ Company/ Society/ Autonomous Body (by whatever name called) established or constituted under an Act of State Legislature or wholly and partly financed by the State Government or controlled by it,

Provided that no investigation or prosecution shall be initiated without obtaining permission from a full bench of Lokayukta against, persons named in clause (a), (b) and (C) of sub-section (1) of Section 16 of the Act.

(2) The Lokayukta may inquire into any or conduct of any person other than those referred to in sub-section (1) of Section 16, if such person is associated with the allegation of corruption under the Prevention of Corruption Act, 1988."

78. Evidently, in view of Section 16 of the Act of 2011, Lokayukta has jurisdiction to enquire into the matter with respect to any allegation or grievance against the public servants enumerated therein including the Chief Minister of the State, Ministers of the State and Members of either house of the State Legislature. These facts, as discussed above, take us to a definite conclusion that the appointments of Chairperson or Member of Lokayukta, under the Act of 2011, cannot be termed as employment under the Government of India or the State Government as contemplated under Article 319(b) of the Constitution of India. We are, therefore, of the view that the recommendation, made in favour of respondent No. 6 by the Selection Committee, does not require interference on the ground of the bar put by Article 319(b) of the Constitution of India."

(emphasis supplied)

37. Contention of the petitioner that the Lok Ayukta is receiving salary and allowances from the State Government and, therefore, under the employment of the Government, is wholly misplaced and the said condition has been already answered in **Adv. Sreenivasan Venugopalan's** case (cited supra). Merely because, sub-section (3) of Section 3 in the Kerala State Commission for Backward Classes Act, 1993, provides for removal of persons from the Office of Members, for the reasons stated thereunder, that by itself cannot be said that the

Government have a control over the Backward Class Commission. On the contrary, as per Section 9 of the Kerala State Commission for Backward Classes Act, 1993, the Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Government as it deems appropriate. Section 9 also states that the advice of the Commission shall ordinarily be binding upon the Government.

38. Thus, when the advice of the Commission is binding on the Government, the Commission cannot be said to be under the control of the Government. Besides, under Section 10 of the Kerala State Commission for Backward Classes Act, 1993, the Commission, while performing its functions under Section 9, have all the powers of a Civil Court trying a suit, and in particular, to the matters enumerated in Section 10 of the Act.

39. There is no quarrel over the judicial pronouncements cited by the petitioner on the aspect of *locus standi* and issuance of a writ of *quo warranto*. But, the same are not applicable to the facts and circumstances of this case. Reference to the Parliament (Prevention of Disqualification) Act, 1959, is inapposite to the case on hand. Other contentions with

reference to the office of profit and, therefore, Kerala State Commission for Backward Classes is under the employment of the Government is rejected, in view of the reasons stated in the foregoing paragraphs.

In the light of the above discussion and decisions, instant writ petition filed for issuance of a writ of *quo warranto* is dismissed.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly
Judge

krj

APPENDIX

PETITIONER'S/S EXHIBITS:

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|------------|--|
| EXHIBIT P1 | COPY OF THE GAZETTE NOTIFICATION NO.GSS-275 2009 DATED 23/01/2009. |
| EXHIBIT P2 | COPY OF THE GAZZETTE NOTIFICATION NO.1/2019/BCDD DATED 08/03/2019. |
| EXHIBIT P3 | COPY OF THE KERALA STATE COMMISSION FOR BACKWARD CLASSES ACT. |
| EXHIBIT P4 | COPY OF THE PARLIAMENT (PREVENTION OF DISQUALIFICATION) ACT, 1959. |

RESPONDENTS' EXHIBITS:- 'NIL'

//TRUE COPY//

P.A. TO C.J.