

CASE NO.:
Special Reference Case 1 of 2004

PETITIONER:
RE : Smt. Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission

RESPONDENT:
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DATE OF JUDGMENT: 05/10/2005

BENCH:
B.P. Singh, Tarun Chatterjee & P.K. Balasubramanyan

JUDGMENT:
JUDGMENT

O R D E R
(Under Article 317(1) of the Constitution of India)

B.P. SINGH, J.

The President of India in exercise of powers conferred by clause (1) of Article 317 of the Constitution of India referred to this Court for inquiry and report as to whether Smt. Sayalee Sanjeev Joshi, Member, Maharashtra Public Service Commission, ought, on the grounds of misbehaviour, to be removed from the office of the Member of the Commission.

It appears that the Maharashtra Public Service Commission conducted an examination in the year 1999 for selection of Police Sub Inspectors, Sales Tax Inspectors and Mantralaya Assistants. In view of complaint lodged by the Commission in relation to mal practices in the said examination, Smt. Sayalee Sanjeev Joshi was arrested by the Anti Corruption Bureau on June 8, 2003. A Public Interest Litigation was also filed in the High Court of Bombay alleging conspiracy of agents with high officials in manipulating the results of the examination and Smt. Sayalee Sanjeev Joshi has been named and there is evidence with Anti Corruption Bureau against her.

The President of India received a communication from the Governor of Maharashtra dated August 5, 2003 enclosing therewith letter dated June 16, 2003 alongwith enclosures received from the Chairman of Maharashtra Public Service Commission to the effect that Smt. Sayalee Sanjeev Joshi, Member of the Commission was involved in a scam pertaining to the results of the Commission which warranted appropriate action under Article 317 of the Constitution of India. In this background, the President of India made the aforesaid reference to this Court under Article 317(1) of the Constitution of India. This Court by its order dated December 13, 2004 directed the Attorney General for India to file statement setting out the grounds of misbehaviour along with the statement of facts forming basis thereof which is proposed to be inquired into within the meaning of Article 317(1) of the Constitution of India. A list of documents sought to be relied on and the list of witnesses, who are proposed to be examined, was also required to be filed. Pursuant to the order of this Court, the learned Attorney General for India filed a statement containing charges accompanied by statement of facts, list of witnesses and list of documents on March 2, 2005. Learned counsel for the

respondent was granted time to file a concise response to the charges now framed so as to define the scope of inquiry. Later by order dated April 1, 2005 the Maharashtra Public Service Commission and the Maharashtra State Government were directed to assist the learned Attorney General for India for making available all the relevant documents accompanied by translations so that the learned Attorney General for India could form opinion on the question of re-framing or supplementing the charges. Pursuant thereto the learned Attorney General for India has submitted a note before us. Out of six charges originally suggested, the learned Attorney General for India, has suggested that charge Nos. 3 and 6 may be dropped.

We have heard learned counsel for the parties. Mr. Amarendra Sharan, learned Additional Solicitor General of India, appearing on behalf of the Union of India submitted that the charges as suggested by the Attorney General for India may be framed against Smt. Sayalee Sanjeev Joshi. However, Mr. V.A. Mohta, learned Senior Advocate, appearing on behalf of the Maharashtra Public Service Commission submitted that even the two charges which, in the opinion of the learned Attorney General, may not be framed in these proceedings, should be framed and Smt. Sayalee Sanjeev Joshi should be called upon to meet all the six charges levelled against her.

Mr. Ajit Kumar Sinha, learned counsel appearing on behalf of Smt. Sayalee Sanjeev Joshi, on the other hand submitted that there is really no justification for framing charges against Smt. Sayalee Sanjeev Joshi. Even the charges suggested by the learned Attorney General for India are not supported by evidence on record and it would be futile to frame those charges against Smt. Sayalee Sanjeev Joshi which are bound to fail for lack of supporting evidence. He strenuously urged before us that the material on record does not even suggest remotely the involvement of Smt. Sayalee Sanjeev Joshi in the aforesaid scam. There were others who may have conspired to commit illegality and irregularities and indeed by the time Smt. Sayalee Sanjeev Joshi came into the picture after her appointment as Member of the Maharashtra Public Service Commission, the conspiracy had worked itself out and there was no scope for participation of Smt. Sayalee Sanjeev Joshi. On the contrary he sought to draw our attention to the evidence on record which, in his submission, disclosed that her conduct was consistent only with her innocence and not with her guilt. In fact initially when a criminal case was registered, she was named as one of the witnesses but later after procuring the confession of one Sudhakar Sarode, the then Controller of Examination, she was arrayed as an accused in the proceeding.

It appears from the note submitted by the learned Attorney General for India that he perused voluminous documents received from the Secretary, Maharashtra Public Service Commission and held discussions with Counsel appearing for the State of Maharashtra and the Maharashtra Public Service Commission. A proposed draft statement of charges was handed over to counsel for the Maharashtra Public Service Commission, the State of Maharashtra as well as counsel for Smt. Sayalee Sanjeev Joshi. He thereafter considered the stand of the parties including Smt. Sayalee Sanjeev Joshi qua each of the charges. A written reply to the draft statement of charges was also submitted to him. After considering the material placed before him and after considering response of the parties including Smt. Sayalee Sanjeev Joshi the learned Attorney General for India has suggested that Charge Nos. 1, 2, 4 & 5 appear to be charges

which are supported by material on record and those charges may be framed against Smt. Sayalee Sanjeev Joshi. As regards charge Nos. 3 & 6, in the opinion of the learned Attorney General for India, they need not be framed against Smt. Sayalee Sanjeev Joshi.

We have advisedly not referred to the detailed submissions made before us on the merit of the proposed charges. While Mr. Ajit Kumar Sinha, learned counsel appearing on behalf of Smt. Sayalee Sanjeev Joshi submitted that none of the charges suggested by the learned Attorney General for India can be proved by evidence on record, Mr. V.A. Moha, learned Senior Advocate appearing on behalf of the Maharashtra Public Service Commission submitted that all the six charges ought to be framed including the two charges which, in the view of the learned Attorney General for India, deserved to be dropped.

At this stage it is not necessary for this Court to consider in detail the evidence on record with a view to arrive at a conclusion as to whether the charges stand proved. At this stage the material on record has to be scrutinized with a view to arrive at a tentative conclusion that, if not rebutted, the charges of mis-behaviour are made out. The learned Attorney General for India, has taken pains to go through the evidence on record and the suggestion made by him that charge Nos. 3 and 6 be deleted deserves acceptance.

Mr. Ajit Kumar Sinha, learned counsel for Smt. Sayalee Sanjeev Joshi submitted that for the same reasons charge No.4 should also be dropped. According to him, charge No.4 relates to the examination held in the year 2002 whereas the Presidential Reference is in connection with the examination held in the year 1999. He submitted that the aforesaid charge No.4 is not the subject matter of the Presidential Reference.

We do not wish to express our opinion at this stage on the question raised by Mr. Ajit Kumar Sinha, learned counsel appearing for Smt. Sayalee Sanjeev Joshi. However, we clarify that it will be open to Smt. Sayalee Sanjeev Joshi to contend in the inquiry that the said charge No. 4 is not the subject matter of reference made by the President of India and therefore beyond the scope of the Presidential reference, and consequently cannot be gone into in these proceedings. We, however, hasten to add that we are not expressing any opinion on this aspect of the matter, and it is open to the parties to advance their respective contentions in the course of inquiry.

Having perused the note the learned Attorney General for India and the material placed before us, we direct that charge Nos. 1, 2, 4 and 5 contained in the note of the learned Attorney General for India be framed against Smt. Sayalee Sanjeev Joshi.

The matter to now come up on October 25, 2005 when we shall hear the parties on the question of the procedure to be adopted in the inquiry.