

(1969) 01 CAL CK 0013

Calcutta High Court

Case No: Appeal No. 31 of 1967

Bidyut Kr. Biswas and others

APPELLANT

Vs

West Bengal Board of Secondary
Education and others

RESPONDENT

Date of Decision: Jan. 10, 1969

Acts Referred:

- West Bengal Board Of Secondary Education Act, 1963 - Section 27, 28, 28(2), 29, 29(6)

Citation: 73 CWN 417

Hon'ble Judges: S.K. Mukherjea, J; A.N. Ray, J

Bench: Division Bench

Advocate: Arun Prokash Chatterjee, for the Appellant; Ranadeb Chaudhuri and S.K. Rai chowdhury for respondent No. 1, Somendra Chandra Bose, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Ray, J.

This appeal is from the judgment and order of Mitra, J. dated 26 July 1966, discharging the Rule obtained by the appellants. The appellants obtained this Rule requiring the respondents to show cause why a writ in the nature of Mandamus should not issue directing the respondents to forbear from giving effect to the order releasing the appellants from their services of the Board and for some other reliefs.

2. The appellants allege that they were in the service of the Board of Secondary Education under the West Bengal Secondary Education Act, 1950. When the West Bengal Secondary Education Act, 1963 came into existence, the appellants were, under the provisions contained in section 46 (2) (c) thereof to continue in the service of the Board. The West Bengal Board of Secondary Education Act, 1963 came into existence on 1 January 1964. On 1 January 1964 there was an order issued by the West Bengal Board of Secondary Education that the officers and the staff of the Board would continue to work in the existing posts until further orders. On 19

March 1965 there was an order issued by the Secretary by the order of the President of the said Board that the State Government had consented to provide the appellants by giving appointments in the Food and Supplies Department, Directorate of Rationing and the appellants were released from the services in order to enable them to join their respective posts within the expiry of seven days from the date of the issue of the said order. The order further said that in case the appellants did not join their respective posts offered by the Government, there would be no further liability to make any provision for the appellants u/s 46 (2) (c) of the West Bengal Board of Secondary Education Act, 1963.

3. The appellants alleged first in the petition that the release of the appellants from the service could be done only by the Board of Secondary Education and that the Board never met to consider and there was no decision of the respondent Board of Secondary Education releasing the appellants from the services. The second contention of the appellants was that that President could not exercise any of the powers of the Board according to section 28(2) of the said Act of 1963 excepting in an emergency and there was no emergency which called for release of the appellants from the service of the Board without any decision being taken at a meeting of the Board. Thirdly it was contended that the President acted contrary to the rules of the Board inasmuch as the Board appointed a Sub-Committee to go into the question whether any of the employees became surplus to the requirements in respect of the Board and the sub-committee reported that the question had to be assessed. Fourthly it was contended that "the other provision" directed in the Act of 1963 to be made for the staff was to be a provision for employment with no less advantageous conditions of service but the offer of employment of the appellants was an offer of a purely temporary post which was liable to be terminated at the option of the appointing authority. Therefore, it was alleged that the appellants were suffering loss of emoluments.

4. The learned Judge came to the conclusion that the employment of the appellants was to continue until other provision was made and, therefore, it could not be held that the appellants were contractual employees of the new Board so as to entitle to claim the protection, privilege or benefit of the various their provisions in the Act relating to the Board. The second conclusion of the learned Judge was that the President could act in an emergency and the order of release could not be assailed on the ground that it was passed by the President in violation of the provisions of the Statute. The third conclusion of the learned Judge was that it could not be accepted that their services were released because of the alleged pen-down strike.

5. At the hearing of the appeal only two contentions were advanced on behalf of the appellants. First that the President could not make any order releasing the appellants and that it was a matter within the province of the Board. The second contention was that the President could not act in emergency, under the provisions of section 28 of the Act of 1963 because the President gave seven days" time to the

appellants to report and, therefore, the President should have called a meeting u/s 29(6) of the Act. In amplification of the contention it was urged that the subsequent meeting of the Board where the President had reported the matter and there was alleged ratification by the Board, the ratification was of no avail because the President had no power to order the release of the appellants and there could not be ratification of any such act of the President.

6. The relevant provisions for the purposes of the present appeal are to be found in section 46 (2) and section 28 (2) and section 29 (6) of the 1963 Act on which Counsel for the appellants relied. The provisions are :

Section 46 (2) (c) : Upon such repeal, all officers and other persons in the employment of the Board of Secondary Education immediately before the commencement of this Act shall, until other provision is made, continue in the service of the Board.

Section 28 (2) : The President may, in any emergency, exercise any of the powers of the Board provided however that he shall not act contrary to any decision of the Board, and shall, as soon thereafter as may be, report to the Board the action taken by him together with reason therefore.

Section 29 (6) : In case of an emergency, the President may call a meeting, after giving not less than clear two days" notice thereof.

7. As to the provisions contained in section 46 (2) (c) Counsel for the appellants contended that the words, "other provision is made" occurring in the said section would mean that other provision was duly made under the Act and that provision was to be made by the Board because the appellants were under the services of the Board. Another contention was advanced on section 46 (2) (c) that if any such provision had been made there had to be resolution of the Board that provision had been made to the effect that the persons mentioned in the resolution had been given employment and if they reported at those places they would be given that employment. I am unable to accept either of the contentions. The provisions contained in section 46(2) make it abundantly clear that the persons who were in the service of the Board under the West Bengal Board of Secondary Education Act of 1950 were to continue in the services of the Board constituted under the Act of 1963 until other provision was made. Immediately other provision is made these persons are no longer in the services of the Board. It cannot be said that other provision is to be made by the Board because that would be reading words to the statute. Further it cannot be said that provision was to made for these persons by the Board because it would not be within the power of the Board to appoint these persons at other places. Again it would not be within the power of the Board to appoint them as servants of the Board because that would be nullifying the provisions of the statute.

8. The intention of the legislature is apparent from the words used in the statute that the persons shall, until other provision is made, continue in the services of the

Board. In the present case it is apparent and an undisputed feature of the case that provision has been made by the State Government. The appellants contend that though other provision has been made by the State Government it is not to be effective unless and until resolution by the Board has been made. The effectiveness of the appointment is made by the State Government. The Board was not to make provision for the appellants and therefore it was not for the Board to resolve anything in the nature of provision which the Board could not enforce or make effective. The Government was to make provision and it was within the power of the Government to provide employment to these persons. It was not impeached by Counsel for the appellants that provision had been made for the appellants. The affidavit evidence is that the majority of the appellants reported for their respective assignments in the services of the Government of West Bengal in the Directorate of Rationing. Therefore, it follows that when provision was made by the State of West Bengal for the appellants, they ceased to be in the service of the Board and the Board was not required to do anything for them.

9. The other contention on behalf of the appellants that after provision is made, a resolution was to be made by the Board, does not appear to be a provision contained in the statute. All that the statute enacted was that other provision was to be made. The most important words in the statute are the words "other provision". The words "other provision" are used in distinction to the words following thereafter namely, services of the Board. The word provision is used as synonymous with service. The word "other" which is used as a prefix to the word "provision" means that service or provision other than continuing service in the Board is to be made. Immediately that is done, the statute operates, with the result that the appellants are no longer in the services of the Board.

10. It cannot be said, as I have already indicated, that provision was to be made for the appellants by the Board. Nor can it be said that provision was to be made for the appellants by the President. The legislature enacted that other provision was to be made for those who were to continue in the service. This task of making other provision for the appellants was of the authority which was responsible for creating the new Board and allowing the persons who were in the services of the old Board to remain in the service of the new Board, that is, the State Government. It was only the State Government which could make other provision for the appellants. The State Government made such other provision.

11. The contention on behalf of the appellants that the President could not act under sec. 28 of the Act of 1963 is also unacceptable. The letter dated 19 March, 1965 appearing at page 13 of the paper book recites that the appellants ceased to be in service of the Board under the 1950 Act with effect from 31 December 1963 with the abolition of the Board and that the present Board approached the Government of West Bengal for making necessary provision for the staff and the State Government consented to provide the new staff by giving appointment in its

Food and Supplies Department - Directorate of Rationing and, therefore, the persons mentioned in the order were being released from the services of the Board in order to enable them to join the respective posts. The time given was seven days. It is true that emergency is not defined in the statute and perhaps emergency is incapable of definition because it would depend on the facts and circumstances of each case. In the present case it is manifest that it was an emergency and, therefore, the President could act in an emergency. The contention advanced on behalf of the appellants is that because seven days were given to the appellants to join the new posts therefore meeting should have been called, would be to nullify the provision contained in section 28 of the Act and to rob the President of the Board of the power of action in an emergency. It would amount to hold that if the President could give two days" notice, he could not act in an emergency. The emergency contemplated in section 28 is entirely different to calling a meeting u/s 29 in a case of emergency. Normally u/s 29 of the Act of 1963 in a meeting of the Board is to be called as regulated therein. Seven days" notice of each meeting is to be given including the annual special meeting. In case of an emergency the President could call a meeting by giving two days" notice. That is only when a meeting is required to be called. This does not mean that because a meeting can be called in a case of emergency, the President cannot act in any emergency contemplated in section 28 of exercising power of the Board. Section 29 contemplates an emergency meeting of the Board. The two contingencies are different. The provisions of section 28 are that the President may, in an emergency exercise any of the powers of the Board. In the present case the President acted in an emergency contemplated u/s 28 of the Act. Therefore, the action of the President was justified.

12. Counsel for the appellants relied on the decision in (1) Lildbati"s case reported in 71 CWN 216, and on the observations appearing in paragraphs 32 and 33 in the judgment that the President could call a meeting of the Board in an emergency. That case is of no aid to the appellants for the reasons I have given earlier.

13. The contention on behalf of the appellants that there was to be a resolution of the Board to the effect that other provision had been made, and that the employees of the Board were to report at the places mentioned for their employment is also unacceptable. If the President had the power to act in an emergency, as I have already indicated he has, it is obvious that a meeting of the Board need not be called. Further if provisions had been made by the Government, it was not for the Board to pass a resolution. That provision had been made because it was not an act of the Board. The functions of the Board are enumerated in section 27. When the State Government has made other provision for the appellants as contemplated in section 46 (2) (c) of the Act, that was not a function or power of the Board and the Board would not be called upon to register the fact in a resolution that provision had been by the Government. That would not be within the strict statutory powers and duties of the Board. All the contentions advanced fail. For the reasons given above the judgment is affirmed. The appeal is dismissed. Each party will pay and

bear its own costs.

S.K. Mukherjee, J.

I agree.