

(1969) 01 CAL CK 0014

Calcutta High Court

Case No: C. R. No. 706 (W) of 1965

Birendra Kumar Das

APPELLANT

Vs

West Bengal State Electricity
Board and Others

RESPONDENT

Date of Decision: Jan. 24, 1969

Acts Referred:

- Electricity Act, 1910 - Section 15, 16, 5(1)

Citation: 73 CWN 632

Hon'ble Judges: A.K. Sinha, J

Bench: Single Bench

Advocate: A.P. Chatterjee and A.P. Sarkar, for the Appellant; S.K. Roy Chowdhury, for the Respondent

Judgement

A.K. Sinha, J.

In this Rule the petitioner prays for quashing an order dated 25th February 1963 terminating the petitioner's services under the West Bengal State Electricity Board (hereinafter referred to as the Board). Briefly the petitioner's case is as follows. He was employed as a part time typist formerly by Malda Electricity Supply owned by "Behani and Company" licensee under the State Government and was eventually confirmed in that post with effect from 1st March 1948. The license of Behani and Company was revoked by the Government of West Bengal from 1st August 1961 u/s 5(1) of the Indian Electricity Act, 1910, with direction to sell the undertaking of the Malda Electric Supply to the Board the respondent No. 1. The Board took over the Malda Electric Supply on and from 1st August 1961 with the existing staff employed there including the petitioner. Accordingly, the petitioner became the servant of the Board and along with other employees of the Malda Electric Supply continued in service under the Board on the same terms and conditions as they were under the Licensee Company. While so working the petitioner was given option by the respondent No. 3 the Assistant Engineer by a memorandum dated 31st July 1962 to

be absorbed as a whole time typist under certain terms and conditions to which the petitioner gave his assent in writing. In spite of this the petitioner was served with an order under memorandum dated 25th February, 1963 issued by the respondent No. 2, the Administrator-cum-Secretary of the Board terminating his services with effect from the forenoon of 1st April 1963 without any reason for such termination. Thereafter, in spite of representation by the petitioner through his Advocate for cancellation of the notice terminating the petitioner's services, no response was given. That is how the petitioner felt aggrieved and obtained the present Rule.

2. Upon these facts several grounds were taken but the only point pressed before me by the learned Advocate on behalf of the petitioner was that the order terminating the petitioner's services was signed and issued by the respondent No. 2, who was not the appointing authority of the petitioner and, therefore such order was bad. After the taking over of the undertaking of the Malda Electric Supply, it was contended, the Board became the appointing authority of the petitioner. So, the respondent No. 2 who is the Administrator-cum-Secretary of the Board was not competent to terminate the services of the petitioner by his office order dated 25th February, 1963 (Annexure F to the petition). In the affidavit-in-opposition on behalf of the respondents it is stated under clause (a) of paragraph 7 that "the order complained of was issued on 25th February 1963 on which date the respondent no. 2 the Administrator-cum-Secretary of the Board was competent to pass such order by virtue of the power delegated to him by the Board." A true copy of the extract of the Board's resolution dated January 22, 1953 delegating the power to such Administrator for appointment, posting, transfer, leave, deputation etc. is also annexed to the affidavit. It also appears that by further resolution of the Board the post of Administrator was re-designated as Administrator-cum-Secretary with effect from the forenoon of 2nd January 1963, a copy of which is also annexed. It appears that these facts in the affidavit in reply are not denied. What is stated by way of submission that the Board had no authority to delegate the power to the respondent No. 2 and such delegation did not grant him the power to terminate the petitioner's service. So, the whole question is whether there was any valid delegation of power of appointment etc. of the staff in favour of respondent No. 2 and if so, whether such power of appointment could be applied to the petitioner for his dismissal.

3. It appears that the Board is authorised to appoint Secretary or Officers or servants under sec. 15 of the Act which provides :

15. The Board may appoint a Secretary and such other officers and servants as may be required to enable the Board to carry out its functions under this Act.

4. u/s 79, the Board has power to make regulation not inconsistent with the Act and the rules to provide inter alia for matters namely, clause (c); "the duties of the officers under service of the Board and their salaries, allowances and other conditions of service." This regulation, it is undisputed, has not yet been made by

the Board. Nevertheless, the fact remains that the Board is empowered to appoint officers and servants by virtue of the power conferred u/s 15 of the Act. It does not appear that there is any express provision under the Act prohibiting delegation in favour of its Administrative Officer by the Board to exercise power to appoint or dismiss the employees under the Board. In absence of such express prohibition under the Act, I do not think, the delegation of such power in favour of its Administrative Officer by the Board to appoint officers and employees of the Board is invalid. The principle that there cannot be any delegation upon any subordinate authorior officer of the power conferred upon the statutory authority in absence of express provision in the Act applies only where such authority is required in exercise of such power to act judicially or quasi-judicially but the exercise of the power to appoint or dismiss an officer or employee is administrative. That being so, in my view, the delegation of power by the Board to appoint its officers and servants upon the Administrative Officer cannot be held to be invalid.

5. This brings me to the second part of question, namely, whether such delegation of the power of appointment upon the Administrator could be applied by him at all to the case of the petitioner. It is stated that the petitioner was never appointed by the Administrator. He was working as an employee under the previous licensee and after the transfer of the undertaking of the Board, the Board accepted and allowed him to continue as an employee under the Board. So, it was contended that the Administrator by virtue of this delegation could not pass an order terminating the services of the petitioner. I cannot agree. Even assuming that appointment of the petitioner was not given by the Administrator, then also, in my view, by virtue of delegation of this power to appoint officers and employees he carried with him the power to dismiss any of the officers or servants of the Board even though such officer might not have been appointed or allowed to continue not by him but by the Board.

6. Lastly, a point was raised that even in the delegation of power to appoint employees and servants of the Board by the Administrator no power of dismissal had been given. It is true that no such specific power of dismissal had been given to the Administrator under the said delegation but there is no restriction either. That being so, the provisions of section 16 of the General Clauses Act will apply which provides inter alia that unless a different intention appears, the Authority having for the time being the power to make appointment shall have the power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. See the case reported in (1) [Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others](#), . The only consequence, therefore, is that the notice containing the office order terminating the petitioner's services by the Administrator-cum-Secretary, the respondent No. 2, remains valid.

7. There is yet another aspect of the matter. Even assuming that the impugned notice terminating the service by respondent No. 2 is bad there is no dispute that

petitioner's service may be terminated by the Board by a similar notice given by the respondent No. 2. If that be so, the writ that may be issued by this Court quashing the impugned notice would be rendered ineffective or nugatory on the very next moment or at any time in near future. It is well settled, this Court will normally decline to issue such precarious writ which may be rendered nugatory or cease to have any binding effect on a statutory body from the very moment it is issued. See Halsbury's Laws of England, 3rd Ed., Vol. II, where at page 107, it is stated :

A mandamus will not be granted if the party complained of has powers which would enable him to make the writ inoperative.

8. So, considering this aspect also I think, the petitioner is not entitled to get any relief in the instant writ petition.

9. It is true that the Board offered to absorb the petitioner as a whole time servant and the petitioner agreed. In spite of this a notice was served terminating the service of the petitioner. This, of course, smells of positive injustice to the petitioner. But it is explained in the affidavit-in-opposition that the petitioner had no requisite qualification. Be that as it may, I cannot enter into these questions. It may be that there was illegal retrenchment of the petitioner but that is quite a different matter. In case of wrongful termination of services or illegal retrenchment the petitioner may raise an Industrial dispute and agitate his grievance before a proper forum for his remedies under the Industrial Disputes Act or proceed against the Board in damages by suit. This Court is powerless. The result is, the petition fails. The Rule is discharged. There will be no order as to costs.