
(1999) 06 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 128 of 1998

Abdul Rahim Bhat

APPELLANT

Vs

State of Jammu and Kashmir and Others

RESPONDENT

Date of Decision : 04-06-1999

Acts Referred:

General Clauses Act, 1897 — Section 16

Jammu and Kashmir Khadi and Village Industries Board Act, 1965 — Section 35

Citation : (2000) 2 LLJ 1070

Hon'ble Judges : N.A. Kakru, J

Bench : Single Bench

Advocate : A.K. Malik, for the Appellant;

Final Decision : Allowed

Judgement

N.A. Kakru, J.—The petitioner holds the post of a Field Publicity Officer in the Jammu and Kashmir Khadi and Village Industries Board.

He was placed under suspension vide order No. KVIB/291 of 1997 dated March 14, 1997 by the Secretary of the Board. Suspension order was

followed by a charge-sheet vide No: KVIE/PF-112/94-96 dated April 7, 1997 and its contents depict that the petitioner's failure to arrange and

supply the publicity material to the MLAs and others resulted in the suspension. The petitioner refutes the allegation and it is averred that material

was arranged and supplied by him without waiting for the funds required at the relevant point of time. These contentions are pleaded to show that

he was asked to arrange the material without providing funds to him and virtually seeks a finding in respect of correctness or otherwise of the

factual assertions, but I refrain to and confine myself to the legal aspects only.

2. The order of suspension is impugned inter alia on the ground that the

Secretary has no jurisdiction and the contention calls for adjudication in the light of provisions of the Act and the Regulations. The Jammu and Kashmir Khadi and Village Industries Board Act, 1965 (for short Act 1965) confers a power on the Jammu and Kashmir Khadi and Village Industries Board (Refer Section 35) for making the Rules and Regulations with the previous sanction of the Government and the Board is empowered to determine the terms and conditions of appointment, service, scales of pay of the officers and servants of the Board has so on and so forth. Consequently, the Regulations were made by the Board with the previous sanction of the Government called the Jammu and Kashmir Khadi and Village Industries Board Regulations, 1967 (for short Board Regulations, 1967) which came to be repealed by the Jammu and Kashmir Khadi and Village Industries Board Staff Regulations, 1981 (for short Staff Regulations of 1981). Ultimately the Jammu and Kashmir Khadi and Village Industries Board Staff Regulations (amended) 1998 were brought into being which are in force and govern the field. A perusal of the provisions of the Act and the Regulations reveal that there is no provision in the Regulations to empower the authorities to place an employee of the Jammu and Kashmir Khadi and Village Industries Board under suspension. To avoid any confusion, it is relevant to mention here that vide SRO 237, the Rules called the Jammu and Kashmir Khadi & Village Industries Board Rules, 1968 made by the Government provide for removal or suspension of any member of the Board including Chairman and the Vice-Chairman besides, other terms and conditions of service of the members of the Board, but it does not deal with the employees of the Board and the provisions of the Act and Board Regulations of 1968, Staff Regulations of 1981 and Staff Regulations of 1998 and in isolation of the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, depicts absence of the power to place an employee of the Board under suspension, yet the power has been exercised by the Secretary of the Board placing the petitioner under suspension and a question arises as to whether such power is available and if the answer is in affirmative, which is the authority, which can exercise the power of suspension?

3. Before dwelling upon the issue involved, it is apt to notice that at times continuance of an employee of the Board in the office may be against the

wider public interest, particularly when there are allegations of serious negligence and dereliction of duty or may engage himself in activities

prejudicial to the interest of the security of the State or a complaint in any criminal offence may call for investigation or trial or any inquiry into his

conduct may be contemplated or is pending. Does it mean that power of suspension cannot be exercised because rules do not provide for it. If it

would be so, the Board is bound to be confronted with an anomalous situation which is not conceivable, yet the source of power is required to be

traced out which in my opinion flows from the Section 16 of the General Clauses Act, 1977 (for short Act of 1977) which reads as:

16/ where, by any Act or Regulation a power to make any appointment is conferred, then, unless a different intention appears, the authority

having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.....

4. The mandate of the section makes it manifestly clear that the authority, which has the power to make the appointment has also the power to

suspend an employee, pending inquiry and no immunity is available to him because of absence of a separate rule and what emerges is that the

authority having power of appointment, has also the power of suspension in respect of an employee of the Board.

5. Now to determine the competence of the authority for exercise of power of suspension, it becomes imperative to find out as to who is the

appointing authority of the petitioner. In this behalf, it is relevant to note that the Board has delegated the administrative and financial powers to its

officers vide order No. KVIB/190 of 1992 dated October 8, 1992 which reads as under:

SUB: Delegation of administration and financial powers to the officer of Khadi and Village Industries Board.

As approved in the Board in its 73rd and 74th meetings, following administrative and financial powers are hereby delegated to the officers of the

Khadi and Village Industries Board at State/Divisional and District Level. This is in supersession to all the previous orders issued in this behalf:

Clause Nature of Powers Officer Power delegated

32 Appointment of non- Secy. / CEO Upto the post of A1 on the

Gazetted Staff recommendation of sub-committee

constituted for the purpose with the approval of Chairman.

6. The delegation of power so made reflects words 'with the approval of Chairman', in the fourth column under the heading power delegated. The expression 'with approval' calls for an interpretation and to arrive at the correct meaning, intention of its maker has to be borne in mind which assumes tremendous importance in view of the controversy involved. It is relevant to observe that with a view to achieve the object and purpose of the delegation of power, a purposeful interpretation has always to be opted for by the Court. The words used in the order of delegation of powers under reference are plain and unambiguous and plainly convey the intention of the maker. That apart, Section (11) of the J. and K. Khadi and Village Industries Board Act, 1985 and Rule 11 of the J. and K. Khadi and Village Industries Board Rules, 1968 envisage the powers of the Secretary but power of appointment does not flow to him from these provisions and a conjoint reading of the provisions of the Act and Rules leads to a conclusion that the words 'with approval' convey that the power to appoint vests with the Chairman and these words are not capable of being differently understood, otherwise also, these words speak for themselves and it can be safely presumed that the Secretary of the Board had no power to make the appointment but it is the Chairman, to whom the power is delegated by the Board. No doubt, the Secretary is empowered to issue the order, which is an act to be performed towards the implementation of the order passed by the Chairman and short of approval, the Secretary has no competence to issue the order, therefore, I am of the opinion that the appointing authority of the petitioner is the Chairman of the Board. Obviously, he has the power to suspend as well.

7. It is appropriate to notice here that it is not the case of the respondents that approval to the suspension was accorded by the Chairman and as a matter of fact, at no point of time, approval has been accorded which is evident from the pleadings of the parties. The conclusion being that the order has been passed by the Secretary who is not the appointing authority of the petitioner, the order impugned is without jurisdiction, for, it has been issued by an incompetent authority.

8. Having come to the conclusion that the power of suspension is available to the

appointing authority, further issues which have arisen are:

- (a) What procedure the Board is to follow in the inquiry contemplated or pending.
- (b) How such employee is to be treated in respect of emoluments during the period of suspension.

9. No answer is available from the Act or Regulations. I would, therefore, like to deal with the scope of applicability of provisions of the J. and K.

Civil Services (Classification Control and Appeal) Rules, 1956 to the employees of the Board and it is advantageous to refer to case T. R. Parihar

v. State of Jammu and Kashmir, reported in (1986) Lab IC 1250 in which the Division Bench observed:

6.....Rule 34 of Service Rules is of general application to all civil servants and it applies to the judicial officers because of the absence of service

rules enacted for them.....

10. It is abundantly clear from the judgment (supra) that the CCA Rules of 1956 are of general application and do apply in the absence of separate

rules.

11. How do the respondents deal with this issue, needs consideration and relevant it is to refer to para (v) of the reply which reads as:

..... the consistent judicial pronouncement suggested that the power to suspend an employee even vests with an officer immediately superior in

command.....

What does this averment convey is that the power to suspend is also available to the Appointing Authority or any authority to which it is

subordinate and the averment can be said to have reference to Rule 31 of the J. and K. (Classification, Control and Appeal) Rules of 1956. I say

so because this expression is available in Rule 31 of J. and K. (Classification, Control and Appeal) Rules of 1956, otherwise no such expression is

contained in the Regulations framed by the Board or for that matter in the Act. Thus it can be safely gathered that the respondents have not

disputed the absence of the provision of suspension in the Regulations framed by the Board and have impliedly conceded to the applicability of the

J. and K. (Classification, Control and Appeal) Rules of 1956.

12. There is also no dispute that the Board, a creation of the Government is controlled by the Government as is evident from the provisions of the

Act and Regulations and relevant it is to refer to Section 4 which deals with the Constitution of the Board and the members appointed by the Government. Section 5 provides for appointment of Financial Advisor to be appointed by the Government. Section 11 provides for the delegation of powers by the Government to the Secretary. Section 15 contains the functions of the Board to be prescribed by the Government. Section 16 describes powers of the Board to be entrusted by the Government. Section 20 makes it obligatory upon the Board to obtain the sanction of the programmes by the Government. Likewise in respect of finance, accounts, audit and reports, it is under the control of the Government. Same is the position as per Regulations. Thus it is manifest that the Government has the exclusive and absolute control over the Board, its officers and employees. Not only this but some of the provisions of the J. and K. Civil Service (Classification Control and Appeal) Rules of 1956 are also applicable to the employees and there is nothing to indicate, 'express non-application' of the said rules to the employees of the Board, coupled with the mandate of judgment (supra) besides implied admission of the respondents in respect of application of the Rule 31, I hold that the provisions of the Jammu and Kashmir Service (Classification, Control and Appeal) Rules of 1956 do apply to the employees of the Jammu and Kashmir Khadi and Village Industries Board in respect of the area where separate service rules have not been framed, obviously Rule 31 of the said rules is applicable to the petitioner with all safeguards envisaged therein.

13. Now a word about the prolonged suspension. In this behalf it is relevant to notice that the charge-sheet dated April 7, 1997 required the petitioner to file the reply within a week's time, reckoned as such one week was over by April 14, 1997 and the petitioner responded to the charge-sheet by submitting the reply within one week stipulated which fact is not disputed by the respondents. What steps the respondents have taken, towards the completion, of the inquiry is a matter to be deliberated upon in the light of the reply filed and it is evident from their reply that appointment of an Inquiry Officer is still under consideration and despite lapse of more than two years they have not been in a position to appoint an Inquiry Officer and no effective proceedings have been in this direction. What a preposterous stand. Be that as it may, the fact remains that the

respondents have failed to conduct and conclude the Inquiry within a reasonable period which amounts to an arbitrary exercise of power which has

the effect of debarring the petitioner from performing his duties, thus have placed him under disability and distrust. In view of the facts and attending

circumstances of this case the period of suspension, which has been prolonged for no fault of the petitioner amounts to punishment 1987 KLJ 36

14. Examining the matter on the touch-stone of settled principles of law, this writ petition is bound to succeed but any observation or direction

made in the preceding paras shall not divest the competent authority of the power to hold an Inquiry into the conduct of the petitioner, if it so

chooses, but inquiry, if any, shall have to be conducted in accordance with the procedure established by law indicated hereinabove.

15. The writ petition is allowed for the aforesaid reasons and observations and the impugned order of suspension is quashed.

16. No order as to costs.