

(1969) 11 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 340 of 1969

B.D. Gupta

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 19-11-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Reorganisation Act, 1966 — Section 80, 80(1), 80(2), 80(3), 82(6)

Citation : (1971) 2 ILR (P&H) 166

Hon'ble Judges : D.K. Mahajan, J; A.D. Koshal, J

Bench : Division Bench

Advocate : S.P. Goyal, for the Appellant; D.S. Tewatia, General and G.C. Garg, for the Respondent

Final Decision : Allowed

Judgement

A.D. Koshal, J.—The Petitioner under Articles 226 and 227 of the Constitution of India challenging the order of the Government of Haryana directing the retirement from service of the Petitioner before the attainment by him of the age of 58 years involves the interpretation of Section 80 of the Punjab Reorganisation Act, 1966 (hereinafter to be referred to as the Act), the relevant portions of which are set out below:

80. (1) Notwithstanding anything contained in this Act or in any other law, the construction (including the completion of any work already commenced) of the Beas Project shall, on and from the appointed day, be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan:

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(2) For the discharging of its functions under Sub-section (1), the Central Government may--

(a) by notification in the Official Gazette and in consultation with the Governments of the successor States and the State of Rajasthan, constitute a Board to be called the Beas Construction Board with such members as it may deem fit and assign to the Board such functions as it may consider necessary; and

(b) issue such directions to the State Governments of Haryana, Punjab and Rajasthan and the Administrator of the Union territory of Himachal Pradesh or any other authority, and the State Governments, Administrator or other authority shall comply with such directions.

(3) The notification constituting a Board under Clause (a) of Sub-section (2) may empower the Board to appoint such staff as may be necessary for the efficient discharge of its functions:

Provided that every person who immediately before the constitution of the Board was engaged in the construction or any work relating to the Beas Project shall continue to be so employed by the Board in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central Government by order directs otherwise:

Provided further that the Board may at any time in consultation with the State Government or the Electricity Board concerned and with the previous approval of the Central Government return any such person for service under that Government or Board.

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2. The admitted facts are that the Petitioner, who was in the service of the erstwhile Punjab Government in the Irrigation Department, was appointed Executive Engineer, Administration, in Bhakra Beas Designs Organisation (a part of the Beas Project) in Kaka Nagar, New Delhi, on the 13th of July, 1966, and it was in this capacity that he was working immediately before the 1st of November, 1966, when the Act came into force. He continued to work in the same capacity till the 1st of October, 1967, when the Central Government constituted the Beas Construction Board (hereinafter to be called "the Board") as envisaged by the provisions of Clause (a) of Sub-section (2) of Section 80 of the Act, with the result that the entire administration of the Beas Project along with the personnel working in connection therewith were placed under the administrative control of the Project. On the 11th of July, 1968, the Petitioner, who had been allotted to the Haryana State under the provisions of Sub-section (6) of Section 82 of the Act, was served by the Haryana Government with a notice (Annexure "A") that it had been decided to retire him from service on the expiry of a period of three months from the date of the receipt of that notice by him. Later on, by virtue of a letter dated the 23rd of September, 1968,

(Annexure "B") issued by the Chief Engineer, (P), I. Ws., Haryana, to the address of the Petitioner, the latter's services were actually terminated with effect from the 10th of October, 1968.

3. The case of the Petitioner is that from the date of the constitution of the Board he became an employee of the Board, which alone had the authority to deal with him till he was returned to the Haryana State under the proviso to Sub-section (3) of Section 80 of the Act. Reliance on his behalf is placed on a Single Bench authority reported as *Amrit Rai Sood v. The State of Punjab and Ors.* C.W. 2441 of 1963 decided on 11th October, 1968, decided by Tuli, J. The facts of that case are on all fours with those of the one before us. Amrit Rai Sood was an employee of the erstwhile Punjab Government immediately before the 1st of November, 1966, and was serving in the Beas Project at Pandoh. He continued to serve in that capacity till the 1st of October, 1967, when the Board was constituted. On the 25th of March, 1968, the Chief Engineer, Drainage, Irrigation Works, Punjab, issued a letter terminating the services of Amrit Rai Sood as from the 14th of October, 1968, the date on which he was to attain the age of 55 years. In arriving at the conclusion that the termination of the services of Amrit Rai Sood was without jurisdiction, Tuli, J. interpreted the provisions of Sub-section (3) of Section 80 of the Act as follows:

According to the provisos to Sub-section (3) of Section 80, every person who was working in the construction of any work relating to the Beas Project was to continue as such in the service of the Board on the same terms and conditions as were applicable to him before the constitution of the Board and the Board had the power to send back any employee to the State Government or the Electricity Board in whose service he was prior to coming into the service of the Board in consultation with that Government or the Electricity Board and with the prior approval of the Central Government. It is thus clear that the State Government cannot ask for an employee to be returned to it without the consent of the Board and without obtaining the prior approval of the Central Government. The appointing authority in respect of the employees of the Beas Project is the Beas Construction Board and no more the State Government. For these reasons, the Chief Engineer, Drainage, Irrigation Works, had no jurisdiction to issue the order dated 25th of March, 1968.

4. We find ourselves in full agreement with the above observations of Tuli, J. Another case in point (which was referred to by Tuli, J., also) is *Sewa Singh and Ors. v. State of Punjab and Ors.* 1968 C.L.J. 63. The Petitioners in that case were working as Assistants and Clerks in the office of the Chief Engineer (Canals), Irrigation Works, Punjab, before the 1st of November, 1966. They were allotted for service to the reorganised State of Punjab under the provisions of Sub-section (2) of Section 82 of the Act. On the 23rd of September, 1967, the said Chief Engineer passed an order that the Petitioners be transferred to the Beas Project Administration and it was this order which was challenged in a petition under Articles 226 and 227 of the Constitution. Accepting the petition Tek Chand,

J., held:

Section 80(1) of the Act provides, that notwithstanding anything contained in the Act or in any other law, the construction of the Beas Project shall, and from the appointed day, be undertaken by the Central Government on behalf of the successor States and the State of Rajasthan. Thus with effect from 1st of November, 1966, the construction of the Project has become the undertaking of the Central Government. For the discharge of its functions, the Central Government is empowered to constitute the Beas Construction Board after consulting the States concerned. The notification constituting a Board may empower the Board to appoint such staff as may be necessary for the efficient discharge of its functions. The first proviso to Section 80(3) ensures that every person who immediately before the constitution of the Board was engaged in the construction shall continue to be employed by the Board on the same terms and conditions of service as were applicable to him formerly. The second proviso enables the Board in consultation with the State Government or the Electricity Board concerned, and with the previous approval of the Central Government to return any such person for service under that Government or Board. The contention of the Petitioners is, that they are not in the service of Beas Project Administration on and after 1st of November, 1966. At all material times, the Petitioners were working in the office of the Chief Engineer, Irrigation Works, Punjab. Their further contention is that although Beas Project Administration was in existence even prior to 1st of November, 1966, but they never worked under that Administration. Alternatively, on the assumption that they were working in Beas Project Administration, they were liable to be transferred from one place to another under that Administration, provided, order of transfer was given by an authority having jurisdiction. On 1st of November, 1966, jurisdiction of Punjab Government came to an end and was replaced by that of the Central Government which never was the Petitioners' employer. They have been and they still are in the service of the Punjab Government. Now that Punjab Government has ceased to have jurisdiction in respect of the Project which has gone under the administrative control of Central Government, the order of transfer to a Service under that Government is ultra vires.

5. These observations contain in the same interpretation of Section 80 of the Act which was arrived at by Tuli, J. in *Arrvrit Rat Sood v. The State of Punjab and Ors.* C.W. 2441 of 1968 decided on 11th October, 1968, (supra) and with which we have already expressed our full agreement.

6. Learned Advocate-General of Haryana has contended on behalf of Respondent No. 1 that the above interpretation of Section 80 was erroneous, that every one of the employees allotted to the successor States under Sub-section (2) of Section 82 of the Acts must be considered amenable to the administrative control of the State concerned, that Section 80 of the Act did not in any way remove or curtail that control and that the second proviso to Sub-section (3) of that section merely placed a limitation on the power of the Board to return an employee to

the concerned successor State. This contention is wholly without substance and is negated by the express provisions of Section 80 itself which makes the construction of the Beas Project a function of the Central Government and in the event of the constitution of the Beas Construction Board, a function of that Board to the extent that such function is assigned to it by the Central Government. The first proviso to Sub-section (2) of Section 80 of the Act makes it further clear that persons engaged in the construction or any work concerning the Beas Project immediately before the constitution of the Board shall be continued to be controlled by the Board. Furthermore, the second proviso, far from placing any limitation on the power of the Board, enables it to send back any of its employees to the Government concerned but no discretion is given by that proviso or by any other provisions of the Act to the State Government concerned to recall any such employee. A limitation is no doubt placed on the power of the Board to return an employee to the State Government but that limitation is only to the effect that before such a return is ordered, the State Government concerned should be consulted and the previous approval of the Central Government obtained. That limitation can certainly not be construed to mean that any right vests in the State Government concerned to recall its employees or to deal with them otherwise before their return in compliance with the terms of the second proviso to Sub-section (3) of Section 80 of the Act for service under that Government.

7. In view of the interpretation put by us on the provisions of Section 80 of the Act we hold that the Petitioner is an employee of the Board over whom Respondent No. 1 has no control till he is returned for service under the Haryana Government in accordance with the second proviso to Sub-section (2) of Section 80 of the Act. Accordingly, the petition is accepted and the impugned order, which is held to have been passed without jurisdiction, is quashed. Respondent No. 1 is burdened with the costs of the Petitioner.

D.K. Mahajan, J.

8. I agree.