
(1970) 08 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 3 of 1969

Mohd. Yaqub

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 05-08-1970

Acts Referred:

Citation : AIR 1971 Delhi 45

Hon'ble Judges : H.R. Khanna, C.J;T.V.R. Tatachari, J;Hardayal Hardy, J

Bench : Full Bench

**Advocate : Sushil Malhotra, H.K. Bhardwaj and K.D. Sud, for the Appellant;
Bakshi Sita Ram and Chhabil Das, for the Respondent**

Judgement

Khanna, C.J.—The following two questions have been referred to the Full bench in pursuance of an order made by Om Parkash and Anmsari, JJ.:-

"(1) Whether the employees of the Punjab State Electricity Board are persons serving in connection with the affair of the Punjab State who could be allocated to the successor States u/s 82 of the Punjab Reorganisation Act.

(2) Whether the employees of the said Board constituted its assets or liabilities which were liable to apportioned between the successor States under sub-sections (3) and (4) of S. 67 of the Punjab Reorganisation Act."

2. The questions have arisen in a petition under Arts. 226 and 227 of the Constitution of India filed by Mohd. Yaqub petitioner on January 3, 1969. The six respondents in the petition are (1) Union of India, (2) Himachal Pradesh Administration, (3) Secretary, Department of Multipurpose Projects and Power, Government of Himachal Pradesh (4) D. C. Tandon, (5) Ramjilal Kaistha and (6) Duni Chand Bhandari. The petitioner has challenged the validity of-

(a) the allocation of respondents 4 to 6 to the Department of Multipurpose Projects and Power, Himachal Pradesh;

(b) the order of the Central Government equating the post of the Assistant of the

Composite Punjab State Electricity Board with the post of the Assistant in the office of the Chief Engineer, Department of Multipurpose Projects and Power, Himachal Pradesh; and

(c) the promotion of respondents 4 to 6 as Circle Superintendents in the Department of Multipurpose Projects and Power, Himachal Pradesh.

3. The petitioner joined service as a clerk in the Public Works Department of erstwhile Chamba State on June 29, 1946. The said State acceded to the Union of India in 1948 and later when the Himachal Pradesh came into being the petitioner worked as a clerk in Himachal Pradesh Public Works department. the petitioner was promoted as a Head Clerk on December 4, 1958 in the grade of Rs. 150 - 10 - 300. In April, 1964 the Electricity Branch of the Himachal Pradesh public Works Department was put under the control of the Department was put under the control of the Department of Multipurpose Projects and Power. The petitioner worked thereafter in various capacities in that Department. He was promoted as Assistant in that Department with effect from May 31, 1966 in the grade of Rs. 210 - 425. The conditions of service of the petitioner were governed by the rules known as the Himachal Pradesh Public Works Department Sub-ordinate Class Iii (Clerica and Stenographers) Service recruitment and Promotion Rules, 1960 made by the President under Art. 309 of the Constitution. By virtue of those rules the petitioner was eligible for promotion to the post of Circle Scale Superintendent in the scale of Rs. 300 - 20 - 400 plus dearness allowance.

4. The generation, supply and maintenance of electricity in the erstwhile State of Punjab prior to 1959 was under the control of the Electricity Branch of the Punjab Public Works Department. Respondents 4 to 6 were working as Assistants in that Department from October 19, 1957, June 14, 1958 and June 14, 1958 respectively. On February 1, 1959 the Punjab Government constituted the Punjab State Electricity Board (hereinafter referred to as the Electricity Board) under the provisions of the Electricity (Supply) Act, 1948 (Act No. 54 of 1948). The generation, supply and maintenance of electricity was thereupon entrusted to the said Board. Consequent upon the constitution of the Electricity Board the services of the employees of the Punjab Public Works Department were initially transferred to the Electricity on the terms and conditions set forth in memorandum dated march 15, 1958. later on this arrangement was terminated an the posts held by the various employees were abolished and notices were served upon them to the effect that their services under the state Government were being dispensed with. The employees were asked to apply to the Electricity Board for employment under the said Board. The employees were as told that in pursuance of the request of the Punjab Government the Electricity Board had agreed to take the said employees into service of the Board and to safeguard their rights regarding pension, gratuity, leave and other benefits of service, which had accrued to those employees under the Punjab Government provided the employees gave up their rights to claim pension, gratuity and other benefits from the Punjab Government. In pursuance of those notices the employees of the

Electricity Branch of the Punjab Public Works Department including respondents 4 to 6 applied to the Electricity Board and Board took them into service on the terms indicated in the notices issued to them by the Punjab Government.

5. On November 1, 1966 the Punjab State was divided into the State of Punjab, the State of Haryana and the Union Territory of Chandigarh. A part of the Punjab State was transferred to the Himachal Pradesh. The Punjab Reorganisation Act, 1966 (31 of 1966) was enacted in this connection. the Punjab State Electricity Board continued to function despite the reorganisation of the state of Punjab till the Board was dissolved on may 2, 1967. On such dissolution the assets and liabilities of the Electricity Board were apportioned between the new States of Punjab and Haryana and the Union territories of Chandigarh and Himachal Pradesh. State Electricity Boards were constituted in the new States of Punjab and Haryana but no Electricity Boards were constituted in the Union Territories of Chandigarh and Himachal Pradesh. The Government of India constituted a committee for the apportionment of the staff and posts of the Electricity Board among the new States of Punjab and Haryana and the Union Territories of Chandigarh and Himachal Pradesh. In pursuance of the recommendations of that committee the Government of India allocated the employees of the Electricity Board among the new States and the Union Territories. Respondents 4 to 6 were allocated to Himachal Pradesh and they were appointed as Assistants in the Department of Multipurpose Projects and Power of the Himachal Pradesh Government with effect from may 2, 1967. in fixing the seniority of respondents 4 to 6 the service rendered by them in the Electricity Board was also taken into account in accordance with the orders of the Government of India. respondents 4 to 6 thus became senior to the petitioner.

6. In August, 1968 certain vacancies of Circle Scale Superintendents in the scale of Rs. 300 - 20 - 400 occurred in the Department of Multipurpose Projects and Power, Himachal Pradesh, and respondents 4 to 6 were promoted to those posts by an order dated December 9, 1968. Later on the petitioner was promoted as Circle Scale Superintendent with effect from December 24, 1968 when another vacancy occurred. the petitioner feels aggrieved by the fact that respondents 4 to 6 have been treated as senior to him and that they were promoted to the posts of Circles Scale Superintends in preference to him.

7. It may also be stated that when the petitioner was promoted to the post of the Circle Scale Superintendent with effect from December 24, 1968 he was not given the same emoluments as were given to respondents 4 to 6. He made a grievance of this fact also in the writ petition but it appears that subsequent to the filing of the writ petition the Government revised the emoluments of the petitioner and put them at par with those of respondents 4 to 6.

8. The case of the petitioner is that respondents 4 to 6 ceased to be government servants when their services were terminated by the Punjab Government consequent upon the constitution of the Electricity Board on February 1, 1959. it is contended that respondents 4 to 6 cannot be held to be persons "serving in

connection with the affairs of the existing State of Punjab" before they were allotted to Himachal Pradesh. As such the case of respondents 4 to 6 is stated to be not governed by the provisions of Section 82 of the Punjab Reorganisation Act.

9. The above stand has been controverted by the respondents and it has been averred on their behalf that respondents 4 to 6 were serving in connection with the affairs of the existing State of Punjab. The provisions of Section 82 of the above Act are stated to be applicable to their case. Plea has further been taken that the employment of the employees of the Electricity Board constituted the liability of the Electricity Board and the same was liable to be apportioned between the successor States under sub-sections (3) and (4) of Section 67 of the Punjab Reorganisation Act. The allocation of respondents 4 to 6 to Himachal Pradesh was thus stated to be authorized under the provisions of sub-sections (3) and (4) of Section 67 of the Act.

10. The learned judges constituted the Division Bench referred to a number of authorities which were cited on behalf of the parties and came to the conclusion that the matter was of importance and required to be examined by a larger bench. They accordingly referred the question reproduced above to the larger Bench.

11. Before dealing with the matter it would be pertinent to reproduce Section 82 of the Punjab Reorganisation Act. The section reads as under:-

"82. (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Punjab shall on and from that day, provisionally continue to serve in connection with the affairs of any other successor State.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect to be deemed to have taken effect.

(3) Every person who is finally allotted under the provision of sub-sections (2) to a successor State shall, if he is not already serving therein, be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

(4) The central Government may, by order, establish one or more advisory committees for the purpose of assisting it in regard to-

(a) the division and integration of the services among the successor States; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

(5) The foregoing provisions of this section shall not apply in relation to a person to whom the provisions of S. 81 apply.

(6) Nothing in this section shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part Xiv of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any state:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."

Section 67 of the Punjab Reorganisation Act, referred to in question No. 2, contains provisions regarding State Electricity Board and the State Warehousing Corporation. Sub-sections (3) and (4) of the Act read as under:-

"(3) The Board or the Corporation referred to in sub-section (1) shall cease to function as from, and shall be deemed to be dissolved on, the 1st day of November, 1967, or such earlier date as the Central Government may, by order appoint; and upon such dissolution, its assets, rights and liabilities shall be apportioned between the successor States in such manner as may be agreed upon among within one year of the dissolution of the Board or the Corporation, as the case may be, or if no agreement is reached, in such manner as the Central Government may, by order determine.

(4) Nothing in the preceding provisions of this Section shall be construed as preventing the Government of any of the successor States from Constituting at any time on or after the appointed day, a State Electricity Board or a State Warehousing Corporation for that State under the provisions of the Act relating to such Board or Corporation and if such a Board or a Corporation is so constituted in any of the successor States before the dissolution of the Board or the Corporation referred to in sub-section (1)-

(a) provision may be made by order of the Central Government enabling the new Board or the new Corporation to take over from the existing Board or Corporation all or any of its undertakings, assets, rights and liabilities in that State, and

(b) upon the dissolution of the existing Board or Corporation, any assets, rights and liabilities which would otherwise have passed to that State by or under the provisions of sub-section (3) shall pass to the new Board or the new Corporation instead of to that State."

Successor State, to which there is a reference in Sections 82 and 67, has been defined in section 2(m) of the Punjab Reorganisation Act as meaning the State of Punjab or Haryana and includes the Union territory of Chandigarh and the transferred territory. Transferred territory has been defined in Section 2(n) as meaning the territory which on the appointed day was transferred from the existing State of Punjab to the Union Territory of Himachal Pradesh.

12. We have heard Mr. Malhotra on behalf of the petitioner, and Bakshi Sita Ram and Mr. Chhabil Das on behalf of the respondents, and are of the view that the employment of the employees of the Electricity Board like respondents 4 to 6 constituted the liability of the Electricity Board and the same was liable to be apportioned between the successor Section 67 of the Punjab Reorganisation Act. In view of the above answer to question No. 2 referred to the Full Bench, it is, in our opinion, not necessary to go into the first question.

13. So far as the second question is concerned, we have reproduced above the provisions of sub-sections (3) and (4) of Section 67 of the Punjab Reorganisation Act. Bare perusal of the above provisions makes it manifest that upon the dissolution of the Electricity Board, its assets, rights and liabilities had to be apportioned between the successor States. The question, with which we are concerned, is whether the employment of the employees of the Electricity Board constituted the liability of that Board. In this respect we find that the word "liability" has a wide connotation. It is a broad term of large and comprehensive significance and means legal responsibility or obligation to do a thing. According to Bouvier's Law Dictionary, "liability" is "the state of being bound or obliged in law or justice". According to Anderson's Law Dictionary "liability" means "the state of being bound or obliged in law or justice to do, pay or make good something; legal responsibility." Black's Law Dictionary defines the word "liability" as meaning the "the state of being bound or obliged in law or justice to do, pay or make good something; legal responsibility". The above definitions and some American cases were referred to by Tek Chand, J. in First National Bank Ltd. (in Liqn.) Vs. Seth Sant Lal, , and it was observed that the term "liability" was of large and comprehensive significance and when construed in its usual and ordinary sense, in which it is commonly employed, it expresses the state of being under obligation in law or in justice.

14. Keeping the above connotation of the word "liability" in view, we have no doubt in our mind that the employment of the employees of the Electricity Board did constitute the liability of the Electricity Board. The services of the employees of the Electricity Board like respondents 4 to 6 having not been terminated by the Board they had a right to be retained in the employment of the Board and this fact created a corresponding liability of the Board to keep them in employment. This liability, in terms of sub-section (3) of S. 67 of the Punjab Reorganisation Act, had to be apportioned between the successor States as has been done in the present case.

15. Mr. Malhotra, on behalf of the petitioner, has referred to Part Vi of the Punjab Reorganisation Act which contains Sections 47 to 66 and deals with the apportionment of assets and liabilities of the existing State of Punjab. The liabilities referred to in that Part are of public debts, refund of taxes collected in excess, deposits, provident fund, pensions and those arising out of contracts and actionable wrongs. There is also reference to liability as a guarantor. It is urged that the word "liability" as used in Section 67 has reference to only those

liabilities which are mentioned in Part Vi of the Act. We are unable to accept this contention because there is nothing in sub-section (3) of S. 67 to indicate that the word "liabilities" pertains only to those liabilities which are referred to in Part VI. Had to been the intention of the legislature to place such a limited meaning upon the word "liabilities", some clear indication to that effect would have been given by qualifying the word "liabilities". In the face of the clear language of sub-section (3) of Section 67 it is, in our opinion, not permissible to place a restricted meaning on the word "liabilities".

16. In the case of W.W. Joshi and Others Vs. State of Bombay and Others, , decided by a Division Bench of Bombay High Court (Tambe and Tarkunde, JJ.), the word "liability" as used in Ss 87 and 88 of the States Reorganisation Act. 1956 came to be considered. it was observed:

"Part VII of the Act, relates to apportionment of assets and liabilities; Sections 87 and 88 fall under this part. The word "liability" in its widest import means an obligation or duty to do something or to refrain from doing something. We see no reason why any restricted meaning should be given to the word "liability" used in this Act. In our opinion, Parliament intended to include in the word "liability" not only a finical obligation but also obligations of every other kind, including one of reinstating a government servant wrongly dismissed."

Our answer to question No. 2, Therefore, is that the employment of the employees of the Electricity Board constituted the liability of the Electricity Board and the same was liable to be apportioned between the successor States under sub-ss. (3) and (4) of S. 67 of the Punjab Reorganisation Act. As stated earlier, in view of our answer to question No. 2 it is not necessary to answer question No. 1. The case shall now be put up before the Division Bench for final disposal. The costs of the reference shall abide the event.

17. Answer accordingly.