

(1999) 04 PAT CK 0025

In the Patna High Court

Case No : C.W.J.C. No's. 3959, 5773 and 7663 of 1997

Nand Kishore Thakur and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Electricity (Supply) Act, 1948 — Section 15, 78A

Citation : (1999) 2 BLJR 1087

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Jha, J.—These three writ petitions, which have been heard together as common points are involved, are disposed of by this common judgment.

2. The petitioners are the employee of the Bihar State Khadi and Village Industrial Board (In short, "the Board"). In C.W.J.C. No. 3959 of 1997, the petitioner seeks direction for payment of salary for the post of Typist in the scale of Rs. 1,320-2,040 from June, 1994 till date. He was initially appointed on the post of Peon on 6.4.1971. Pursuant to the decision of the Establishment Committee of the Board held on 17.4.1990, he was promoted against Class-III post of Typist on 14.5.1990. He received his salary of the post of Typist till May 1994. The Employees' Union of the Board filed a writ petition, C.W.J.C. No. 12124 of 1993, in this Court seeking direction for regular payment of salary to the employees which was allowed on 18.1.1996. The petitioner, thereafter, made representation on 3.3.1997 for payment of salary for the post of Typist but to no avail. According to the respondent-Board, the promotion of the petitioner to the post of Typist was illegal as the Board is not competent to grant any promotion without the approval of the State Government. In fact, a general direction was issued by the Administrative Department, namely, Industries Department of the State Government, vide letter No. 5373 dated 19.4.91, not to pay salary to such employees who have been appointed or promoted or adjusted against different

posts without approval of the State Government.

In C.W.J.C. No. 5773 of 1997, the petitioner seeks quashing of the office order No. 115 dated 8.6.92 of the Board staying his alleged irregular appointment on the post of Typist. The said order has been issued in the light of the aforesaid direction of the State Government contained in letter No. 5373 dated 19.4.91. He further seeks quashing of the Board's office order No. 662 dated 31.7.97 cancelling his appointment/adjustment against the post of Typist in the general establishment of the Board and reverting him to the Central Godown, Patna on the same post. Copies of the said two orders have been marked Annexures 4 and 6 respectively to the writ petition and the amendment petition. The facts of the case are similar. This petitioner was initially appointed as Typist in the Central Godown of the Board at Patna on 21.7.73. On 1.3.76, his services were transferred to the Head Office where he has been working ever since. On 21.4.90 the Establishment Committee of the Board decided to adjust the petitioner in the scale of Rs. 1,320-2,040 with effect from 1.4.90. An office order giving effect to the said decision was issued on 27.4.90. According to him, on 8.6.92, his adjustment in the scale of Rs. 1,320-2,040 was stayed but he continued to receive his salary in the aforesaid scale up to May 1994. After the judgment in C.W.J.C. No. 12124 of 1993 (Supra), he filed representation and also several notice through lawyer but without any result.

In this case, the State of Bihar has filed a counter-affidavit. Stand has been taken that the absorption of the petitioner as Typist in the general establishment of the Board by the Establishment Committee was without the approval of the Bureau of Public Enterprises and the Government. The petitioner's adjustment in the scale of Rs. 1,320-2,040 was a working arrangement and not a regular appointment against sanctioned post and the same has rightly been cancelled. The Board has also filed counter-affidavit, taking similar stand as in C.W.J.C. No. 3959/97. Additionally, it has been stated that the Secretary (of the Board) was not competent to make initial appointment on 21.7.73 and that the writ petition has been filed after delay of 5 years (reckoned from the date of the order dated 8.6.92) by which the adjustment of the petitioner in the aforesaid scale was stayed.

In C.W.J.C. No. 7663 of 1997, the petitioner seeks quashing of the order of the State Government contained in letter of Industries Department bearing No. 3405 dated 28.5.97 refusing to approve the absorption of the petitioner on the post of Ledger Keeper, and the consequential order of the Board contained in its office order No. 501 dated 19.6.97 cancelling the absorption of the petitioner on the post in the scale of Rs. 1,200-1,800. The petitioner further seeks a direction to pay him his due salary of the post of Ledger Keeper. The facts of this case are these. On 31.3.1981, the petitioner was appointed as salesman in the scale of Rs. 205-284. On 26.5.84, he was asked to perform duties in the Accounts Section in the general establishment of the Board. According to the petitioner he started working as Ledger Keeper/Bill Clerk in the Accounts Section of the Board

pursuant to the said order but in the same pay scale. On 17.4.90 the Establishment Committee decided to absorb him against the vacant post of Ledger Keeper, it is stated that as many as six posts of Ledger Keeper were vacant at that time. On 21.4.90 office order was issued appointing him on the said post in the scale of Rs. 1,200-1,800/-. The order was cancelled on 29.4.91 in the light of the aforesaid letter No. 5373 dated 19.4.91 of the Industries Department. However, while issuing the said order of cancellation on 29.4.91, the Chief Executive Officer represented the case of the petitioner. According to him, despite the above orders the Board continued to take the work of the post of Ledger Keeper until the impugned order as contained in letter of the Industries Department dated 28.5.97 (Supra) was issued. Copies of the aforesaid letter/order dated 28.5.97 and 19.6.97 are Annexures 1 and 2 to the writ petition.

In this case also, the stand of the Respondents is that the absorption/appointment of the petitioner on the post of Ledger Keeper in the scale of Rs. 1,200-1,800/- was irregular as the same was made without the approval of the State Government.

3. It would thus appear that in all the three cases, the impugned action has been taken in the light of the direction of the State Government contained in letter No. 5373 dated 19.4.91. From the perusal of the said letter, it appears that the direction has been issued purportedly in terms of the provisions of Section 30 of the Bihar Khadi and Village Industries Act, 1956, as amended by Bihar Khadi and Village Industries (Amendment) Act, 1981. Counsel for the petitioners have challenged the competence of the State Government to issue a direction of that kind u/s 30 of the Act.

4. It would be proper at this stage to quote Section 30 of the Act as hereunder:

30. Direction by the State Government.-In the discharge of its functions, the Board shall be guided by such directions and instructions as may be given to it, from time to time by the State Government.

The point for consideration is whether the State Government can issue any direction in the matter of appointment, etc. of the staff of the Board within the ambit of Section 30. The point is not. reintegrate, A somewhat similar provision contained in Section 78A of the Electricity (Supply) Act, 1948 has come up for consideration by Courts. Before noticing the case law on the point it would be proper to notice the provisions of Section 78-A of the said Act, so far as relevant, as hereunder:

Directions by the State Government,--(1) in the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2)...

5. In A.M. Mani v. Kerala State Electricity Board AIR 1968 Ker 76 a Full Bench of the Kerala High Court has held:

The expression "functions" in Section 78A of the Act can only have relation to the primary and essential function of the Board.... The primary functions of the Board are concerned with the generation, distribution and utilisation of electricity, the development of water power etc.... The "functions" which the Board is supposed to discharge means the functions which the authority was constituted to perform, which means essential and primary functions and not incidental functions necessary to carry out the essential functions.... We are of the view that the amplitude of the power to issue the directions u/s 78A must be a limited one.

It may be stated here that the afore-quoted observations have been made in the context of the power of the Electricity Board to make appointment of its employees and officers u/s 15 of the Electricity (Supply) Act. The Court held that the Electricity Board is an autonomous Body and except in the matter of appointment of its Secretary, its power to appoint its staff cannot be destroyed by issuing direction u/s 78A.

In *Andhra Pradesh State Electricity Board v. N. Ram Chandra Rao* AIR 1969 A&P 328, the Andhra Pradesh High Court has held that the State Government u/s 78A of the Electricity (Supply) Act can only issue directions on question of policy for guidance of the Board in the discharge of its functions. The power to give directions on matters of policy by the State Government would not take away the statutory power u/s 15 to the Board for appointing its employees to carry out its functions under the Act. The Court held that the impugned Government orders have no statutory force and they cannot override unfettered statutory power of the Board conferred on it in the matter of appointment of its Officers and servants except the Secretary.

In *Rakesh Ranjan Verma and others Vs. State of Bihar and others*, , the Apex Court has also held that the State Government has no power to issue direction to the Board in the matter of appointment of its employees. "Any such direction would be an encroachment on the Board's power u/s 15."

6. It is true that, the words "on questions of policy" occurring in Section 78A of the Electricity (Supply) Act are missing in Section 30 of the Bihar Khadi and Village Industries Act. The key words of Section 30, however, in my opinion are "in the discharge of its functions". In other words, it is only in the matter of discharge of functions of the Board that the State Government can issue direction to it. Just as under the Electricity (Supply) Act, the essential and primary functions of the Electricity Board are generation, distribution and utilisation of electricity and it is with respect to these functions alone that the State Government can issue direction u/s 78A, under the Bihar Khadi and Village Industries Act, the primary or essential function of the Board is development of the Khadi and Village Industries in the State of Bihar and, therefore, u/s 30 of the Act, it is with respect to this function alone that the State Government can issue direction. As would appear from the preamble of the Act, the Khadi and Village Industries Board has been established to develop, organise and regulate

the Khadi and Village Industries. Employees are appointed merely to achieve these objects, appointment cannot be treated as the object itself. In other words, the appointment of the employees cannot but be an ancillary function which the Board is required to perform in order to achieve its avowed object of development of the Khadi and the Village Industries, and not the essential and primary function.

7. On behalf of the respondents, reliance has been placed on the provisions of Section 10 of the Act. According to them, in view of the provisions the approval of the State Government, in the matter of appointment of the employees and the officers is a sine qua non. Since Section 10 is the basis of the respondents' case, it would be proper to notice the same as hereunder:

Appointment of members of staff of Board and conditions of their services.--(1) The Board may, subject to the approval of the State Government, appoint such number of officers and servants as it may consider necessary,

(2) The remuneration, allowance and other conditions of service of the officers and servants of the Board shall be such as may be determined by regulations made by the Board.

Section 10, it would appear, is in two parts. In fact, it consists of two sub-sections dealing with two distinct matters. While the first part or Sub-section (1) deals with appointment of the staff, the second part or Sub-section (2) deals with their service conditions. The State Government's power of approval however, is limited to the number of posts. In other words, the Government has power to determine the number of posts against which the Board can make appointment. On its part, the Board is supposed to appoint only such officers and employees "as it may consider necessary" but subject, to the approval of the State Government. From bare perusal of the provisions, it would, thus, appear that the Government has no power to approve or disapprove the individual appointments made against the post(s) sanctioned by the Government. True, the State Government has to bear the financial burden of such appointments to a considerable extent but it is obvious that once posts along with pay are sanctioned, appointment or adjustment or grant of sanctioned scale against sanctioned posts are not likely to cause additional burden on the State.

8. On the other hand, Rule 5 of the Bihar State Khadi and Village Industries Rules, 1978 framed by the Governor of Bihar u/s 33 of the Bihar Khadi and Village Industries Act, lays down in express terms that it is the Establishment Committee of the Board which shall be competent to appoint, promote (as well as discharge and dismiss) Class III and Class IV employees. The Establishment Committee in fact, is competent to make transfer and posting and take disciplinary action in respect of Class I and II officers as well. In view of the aforesaid rules, which have been framed "for carrying out the purposes of this Act" (to use the words of Section 33), conferring power upon the Establishment Committee to make appointments and give promotions in respect of Class III

and Class IV employees, the Establishment Committee was fully competent to appoint the petitioners or to adjust them in the particular scale.

9. The power of the State Government u/s 30 of the Act being limited to giving directions to the Board in discharge of its "primary or essential functions" and not ancillary functions such as appointment, etc. of the staff, I have no doubt in my mind that the State Government was not competent to issue the impugned direction, contained in letter No. 5373 dated 19.4.91, in purported exercise of powers u/s 30 of the Act. The said letter, it may be pointed out, was accompanied by a list of employees and contained a clause that any other employee falling in the same categories should be similarly dealt with. The names of two out of the three petitioners herein were mentioned in the said list. The impugned actions of the Board having admittedly been taken in the light of the said direction, are therefore, fit to be struck down.

10. In view of my conclusion that it is the Establishment Committee of the Board which is competent to decide the question of appointment of staff and fix their service conditions, I have considered the desirability of asking the Board to consider the cases of the petitioners at its level. Having regard to the fact that the petitioners have been serving the Board for a long time, I have decided not to do so, for that may amount to unsettling their appointments. As noted above, while their present appointments date back to April 1990, all of them have been working in the Board from 1971, 1973 and 1981 respectively itself. It is significant to mention here that it is not the case of the respondents that the petitioners either lack in qualifications for appointment to the posts in question or their work has been found to be unsatisfactory. In this view of the matter, in my opinion, it would be in the ends of justice to allow the matter to rest.

11. In the result, these three writ petitions are allowed. The orders impugned in each of them, as referred to above, are quashed. The respondents are directed to pay hem their due salary for the post of Typist/Ledger Keeper, as the case may be, in accordance with rules. There will be no order as to costs.