(1990) 01 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 268 of 1989

Nikka Ram Sharma APPELLANT

Vs

Central Social Welfare Board and Others RESPONDENT

Date of Decision : 09-01-1990

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(1), 23, 7
Companies Act, 1956 — Section 25, 65A
Constitution of India, 1950 — Article 154(1)

Citation : (1990) 1 ILR HP 35

Hon'ble Judges : P.C.B. Menon, C.J;Bhawani Singh, J

Bench : Division Bench

Advocate : Kamlesh Sharma, for the Appellant; P.A. Sharma, for Respondent No. 1, H.M. Sharma and Inder Singh, General, for the Respondent

Judgement

Buawani Singh, J.—The Petitioner seeks number of reliefs by this writ petition. However, the counsel for the parties confined their submissions to the suspension part of the case of the Petitioner during the course of arguments and we permitted the Petitioner to seek the relief relating to various scales of pay, as mentioned in (Hi) of the reliefs claimed by wry of a separate writ petition, if it is found necessary.

2. The Petitioner, who was a permanent employee of the Forest Department of the State Government as Head Clerk, came over to Himachal Pradesh State Social. Welfare Advisory Board (shortly ''the State Board"), where he was permanently absorbed with effect from 1-3-1972. During this period, he was promoted as "Office Secretary" on 21 -1 -1964 and this post was redesignated as "Secretary" with effect from 1 -9-1970 through letter of 1 -9-1970 (Annexure P-5). The Petitioner was given scales of pay from time to time with which we are not, at the present, concerned for decision of this case.

3. The Central Social Welfare Board (shortly "the Central Board") and the State

Board were initially constituted in the year 1953-54 by the resolution of the Government of India, as appears from the letter dated 23-4-1954 (Annexure P-1). These Boards were constituted at the instance of the then Prime Minister of India and their programmes, staffing pattern and administrative hierarchical matters were determined on the basis of various communications issued from time to time in this behalf.

4. The Central Board was thereafter incorporated u/s 25 of the Companies Act, 1956, with its registered office at New Delhi, on 31-3-1969 and one of the key objects, under Clause 3(A) (d) of the Memorandum of Association of the Central Board, is to "Co-ordinate assistance extended to the Social Welfare activities by various Ministries in Central and State Governments in the pogrammes entrusted to the Central Social Welfare Board". Other incidental or ancillary objects under Clause 3(B) of the Memorandum of Association have been stated to be as under.

3(B):

(vii) To enter into any arrangements with the Government of India or with any State Governments or with authorities, local municipal or otherwise in pursuance of the objects of this Company and to obtain from any such Government or authority all rights and concessions and privileges that may seem conducive to the objects or any of them ; (Viii) To receive grants, loans, advances or other moneys or deposits or otherwise from State or Central Government subject to the conditions imposed by such Government besides Companies, Trusts or institutions or individuals with or without allowances or interests thereon ;

(xix) To have power to establish, regulate or discontinue branches, offices, or agencies within India or appointing representatives or agents or Advisory Committee consisting among other representatives of the State Government/ Union Territories therein order to carry out objects of the Company.

5. In order to achieve these objects, there is a provision for establishment of an Advisory Board in the States and Union Territories under Clause 9 of the Articles of Association and in the State of Himachal Pradesh, the State Board has been established.

6. The financial requirements of the Board appear to be met on 50: 50 basis by the Central and the State Governments. The composition and functions of the State Board are governed by the rules which are stated to be framed in 1955 by the Central Board for the first time and they were modified on 14-5-1971 with the intention to make them consistent with the Articles of Association of the Central Board. The Rules of 1971 have been itemed as the "Rules of Himachal Pradesh State Welfare Advisory Board". Clause 7 there of relates to the functions of the Board whereas Clause 10 deals with the powers of the Board. At this stage, it is pertinent to quote Clause 10 thereof:

10. POWERS OF THE BOARD:

(i) The Board shall have power to make appointment to posts sanctioned by the

Central Board on terms to be prescribed with the prior approval of the Central Board, except the Secretary of the Board who shall be appointed by the Board in consultation with the Central Board.

(ii) The authority competent to promote, degrade or dismiss an officer or servant of the Board shall be the authority empowered to appoint such officer or servant. In all these matters, the State Board shall, as far as possible, apply rules of the State Government.

(iv) The Board shall have the power, to make, if necessary, such bye-laws as are not repugnant to, or inconsistent with these rules, for the conduct of the Board''s business and for the working of its office.

7. The Petitioner further submits that in accordance with the existing position under the Memorandum of Association, Articles of Association of the Central Board, the rules of the State Board as well as employees rules of State Board, the Central Board has been created by the Government of India, Ministry of Social and Women Welfare. It has been registered under the Companies Act, 1956. The State Board is, in fact, a Branch/Agency of the Central Board. Both these Boards-the Central Board and the State Board--are being run Under the direct control and supervision of the Government of India and the State Board functions primarily under the guidance and supervision of the Central Board.

8. There is no dispute that the Petitioner is an employee of the State Board and was its Secretary till the date of his suspension. The appointment of the Secretary to the State Board is made by the State Board in consultation with the Central Board. Obviously, the State Board is primarily concerned with the functioning of the Petitioner as the Secretary of the State Board.

9. The Petitioner submits that his record of service has been very good. He was suspended by a letter dated 19-9-1984 C Anne- xureP-12) by the Chairman of the State Board in exercise of the powers conferred by Sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and this order came into force with immediate effect and it mentions that disciplinary proceedings against the Petitioner are contemplated.

10. The Petitioner requested for the reasons of his suspension (Annexure P-12/A) since he wanted to file an appeal against the same under Rule 23(i) of CCS. (CCA.) Rules, 1965. The Chairman of the State Board by a communication No. SWB/ 2345 dated 14-8-1985 (Annexure P-12/B) stated that:

Reference your letter dated 22-7-1985 regarding conveying of reasons leading to your suspension. In this behalf it is intimated that you have been placed under suspension on the instituted by the Govt, to enquire into the whole matter. The findings of the enquiry officer have not been conveyed to this Board yet. As and when it is received the reasons leading to your suspension will be conveyed to you.

11. Prior to the suspension of the Petitioner (Annexure P-12), the Secretary

(Welfare) to the Government of Himachal Pradesh had sent communication No. WLF-8(17)-7/84 dated September 6, 1984 (Annexure P-13) referring therein to cormmunication dated 6-9-1984 (Annexure P-14) and stated that:

...I am to say that the Government has decided to get a thorough probe conducted in to the whole affair. Shri B. R. Lakhanpal, Director of Welfare has been appointed as Inquiry Officer. It has further been decided that Shri N.R. Sharma, Secretary, State Social Welfare Advisory Board, Mandi, should be placed under suspension forthwith to facilitate impartial enquiry into the matter. A copy of the suspension order should be sent to the undersigned in confirmation of the action taken.

12. It appears from communication No. WLF-B (17)7/84 dated 6-9-1984 (Annexure P-14) that the Govt, of Himachal Pradesh gave a direct ion to the State Board for running a lottery in accordance with the terms and conditions contained in a draft agreement that was sent to the State Board. This draft agreement was originally prepared by the Director of Lotteries himself. In Rule 7 of the aforesaid draft rules, it was provided that:

The maximum amount of the First Prize shall not be more than Rs. 1 lakh(Rupees one lakh only). There may, however, be a separate first prize for each series. The total value of prizes to be paid for each draw shall not be less than 50 % of the gross value of the tickets printed excluding the incentive payable to the agents, sellers and stockiest etc

13. The allegation, appears to be that the word "excluding" occurring in the draft rules had been surreptitiously and fraudulently altered into "including" thereby not representing the intention of the State Government but also with intent to cause wrongful gain to the Organiser of the lottery and wrong full loss to the State Government and the prize winners to the tune of rupees one crore or even more. According to the State Welfare Department, this fraud was practiced on the State Board and the State Government thereby vitiating all agreements and contracts. The State Government, therefore, decided to withdraw the permission accorded to the State Board by the letter of August 1, 1984 and the State Board was directed to rescind the agreements executed by it with the Organiser of the lottery immediately under intimation to the State Government.

14. The Chairman of the State Board, through communication dated September 12, 1984 (Annexure P-15), explained exhaustively and comprehensively the whole situation and position. It also explained the circumstances leading to the change of word "excluding" to "including'''' meaning thereby that the changes had been effected by the Board and none else, thereby denying that the change had taken place surreptitiously, fraudulently and with intention to commit fraud on the Board or the State Government. The Board has also accepted that the draft agreement was approved with certain changes and wanted that since the matter had reached at an advanced stage, the agreement may not be terminated. In the last paragraph, it has been stated that:

In case the agreement is not consistent with the guidelines of the Government , the best course would be to ask the Organisers to execute afresh agreement in conformity with the guidelines failing which agreement may be cancelled for the remaining draws".

15. It appears quite clear that the Government paid scant attention to this communication fAnnexure P-15). It was not taken in to consideration at all since Annexure P-13 dated 6-9-1984 clearly demonstrates that the Government had already decided on or before September 6, 1984 to place the Petitioner under suspension forthwith.

16. Despite the fact that the State Board had explained its position plainly and unambiguously in Annexure P-13, dated 6-9-1984, it acted spinelessly when it acted on the direction of the State Government and passed the order of suspension of the Petitioner (Annexure P-12). The fundamental question for decision in this case is whether the order of suspension is sustainable and whether the suspension can continue for such a long period in the absence of any inquiry against the petitoner? Miss Kamlesh Sharma, learned Counsel appearing for the Petitioner, has assailed the order of suspension of the Petitioner. She contends that the order has been passed at the instance and on the direction of the State Government and, therefore, the State Board, which was competent to do so in consultation with the Central Board, has not applied its mind before passing the impugned order. It is also contended that the Petitioner was suspended on 19-4-1984 (Annexure P-12) and since then, except, a preliminary inquiry of general nature, no specific inquiry against the Petitioner, as required under the law, has been initiated which clearly means that no inquiry is contemplated nor the same can" be initiated in view of the explanation of the Board relating to the whole affair (Annexure P-l 5). 1n these circumstances, it is urged, that the order of suspension deserves to be set-aside on both the grounds and the Respondents are required to be restrained from initiating any inquiry against the Petitioner after such a long lapse of time since there is neither any ground nor any justification to put the Petitioner to such a great hardship of remaining under suspension since 19-9-1984.

17. There is little doubt that the Petitioner is an employee of the Board. Secretary of the Board is appointed by the State Board in consultation with the Central Board. Obviously, it is the State Board which can appoint or suspend or initiate any disciplinary proceedings against the Petitioner, may be that it seeks the concurrence ''of the Central Board. Although in this case the Petitioner has been placed under suspension by the Chairman of the State Board, but the question to be seen is where this kind of order could be passed at the direction of the State Government. In our opinion, the Chairman has passed this order routinely and mechanically at the direction of the State Government which had no power to give such a direction. It is clear from Annexure P-12/B as well as Annexure P-13 that the Petitioner had been suspended on the direction of the State Government. So it leaves no manner of doubt that the Chairman of the

State Board has acted on the instructions from the State Government there by not only for getting its explanation in Anne-xure-P-15 but also the various provisions defining the powers of the State Board in this regard.

18. Shri H.M. Sharma, who appears for the State Board, contends that the explanation contained in Annexure P-15 was prepared by the Petitioner and, therefore, much reliance cannot be placed on this document. This argument is liable to be rejected for the simple reasons that the State Board should not have taken such a plea condemning its own action and thereby exhibiting that the Chairman of the Board had signed it without reading the contents thereof. Such a conduct cannot be com-prehended nor accepted. Further, as already observed, it was not taken into consideration by the State Government while directing the State Board to place the Petitioner under suspension nor looked at by the Chairman before passing the impugned order.

19. We have been taken through the powers of the Board by the learned Counsel for the Petitioner in order to emphasise the point that the Chairman of the Board had abdicated the powers of the Board in favour of the State Government, otherwise the impugned order could not have been passed since the State Government has no powers to issue such like instructions to the State Board.

20. It is well established that in case an authority passes an order to the detriment of an employee at the instance or dictation ''or instructions of any other authority which has no power in the matter, the order so passed is without jurisdiction and non-set. In Chandrika Jha Vs. State of Bihar and Others, the facts were that the Registrar, Co-operative Societies, who was empowered by the bye-laws of the District Central Cooperative Bank to nominate the first Board of Directors for a period not exceeding one year at a time and not exceeding 3 cooperative years in aggregate and also entitled to modify the nomination as and when required, had nominated the first Board of Directors for the period of six months with the direction to get the elections of the Board of Directors completed within six months of the date of their nomination. However, this period was extended from time to time on the basis of the orders of the Chief Minister of the State which were passed at the instance of one of the Directors who had a direct approach to the Chief Minister and conveyed through the Minister for Industries. The Minister for Industries also, at a stage, gave a list of certain names to be included in the Committee of management for the Society in question. The question that fell for consideration was whether the Chief Minister was entitled to usurp the functions of the Registrar, Co-operative Societies, under bye-law 29 thereof and whether the Minister was entitled to issue a direction to the Registrar, Co-operative Societies, to reconstitute the nominated Board of Directors under bye-law 29 and, if so, whether he could go further and assume the functions of the Registrar and forward to him a list of names to be nominated on the reconstituted Board although under bye law 29 it was the function of the Registrar to constitute the first Board of Directors which necessarily carries with it the incidental or ancillary power to reconstitute such Board when he is satisfied

that the circumstances attendant so required. Examining the question in detail, Justice A.P. Sen, speaking for the Court, observed in para 11 of the judgment as under:

(1). We fail to appreciate the propriety of the Chief Minister passing orders for extending the term of the first Board of Directors. Under the Cabinet system of Government, the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information which is available to the Minister-in-charge of any department and may issue necessary directions for carrying on the general administration of the State Government . Presumably, the Chief Minister dealt with the question as if it were an executive function of the State Government and thereby clearly exceeded his powers in usurping the statutory functions of the Registrar under bye-law 29 in extending the term of the first Board of Directors from time to time. The executive power of the State vested in the Governor Under article connotes the residual or governmental, functions that remain after the legislative and judicial functions are taken away. The executive power includes acts necessary for the carrying on or supervision of the general administration of the State including both decision as to action and the carrying out of the decision. Some of the functions exercised under "executive powers''" may include powers such as the supervisory jurisdiction of the State Government u/s 65A of the Act. The Executive cannot, however, go against the provisions of the Constitution or of any law.

21. Further, in paras 13and 14,theCourt said as under;

13. Neither the Chief Minister nor the Minister for Cooperation or Industries had the power to arrogate to himself the statutory functions of the Registrar under bye-law 29, The act of the then Chief Minister in extending the term of the Committee of Management from time to time was not within his power. Such action was violative of the provisions of the Rules and the bye-laws framed there under. The Act as amended from time to time was enacted for the purpose of making the co-operative societies broad-based and democratizing "the institution rather than to allow them to be monopolized by a few persons. The action of the Chief Minister meant the very negation of the beneficial measure contemplated by the Act.''

14. For the same reasons, it must be held that the Minister for Industries also exceeded his own authority in directing the manner in which the new Board of Directors was to be constituted by the Registrar under bye-law 29 by forwarding a list of 7 names to be nominated by him in the reconstituted Board and a further list of 8 names indicating that if the Committee of Management was superseded under another provision, it should consist of those 15 persons.

22. Again, in para-15, the learned Judge observed as under:

In the instant case, however, the impugned order issued by the Registrar to reconstitute the first Board of Directors was not made by him at his own discretion in the exercise of his powers under bye-law 29 but was made at the behest of the Minister for Industries and it must accordingly be held to be invalid.

23. In Orient Paper Mills Ltd. Vs. Union of India (UOI), the facts were that the power to assess cream wove paper of a certain weight was left to be exercised by the Deputy Superintendent or the Assistant Collector according to their own independent Judgment. Appeal against the assessment by them was within the jurisdiction of the Collector. The Deputy Superintendent made the assessment in accordance with the instructions contained in a communication of the Collector to the Deputy Superintendent. The admitted case of the parties was that the assessment was so made. The question therefore, before the Court was whether an assessment made by a subordinate officer in accordance with the instructions issued by the Collector, to whom an. appeal lay against the order of that subordinate officer, can be called a valid assessment in the eye of law. The Court, after placing reliance on its earlier decision between the same parties AIR 1969 SC 48, Orient Paper Mills Ltd. v. Union of India observed:

...No authority, however high, can control the decision of a judicial or a quasi-judicial authority that being the essence of our judicial system. In the present case, when the assessment is to be made by the Deputy Superintendent or the Assistant Collector, the Collector, to whom an appeal lies, against his order of assessment, cannot control or fetter his judgment in the matter of assessment. If the Collector issues directions by which the Deputy Sample intendent or the Assistant Collector is bound no room is left for the exercise of his own independent judgment.

24. Farther, in para 5 of the judgment, the Court said:

It is apparent from the judgment referred to above and numerous other decisions of this court delivered in respect of various taxation laws that the assessing authorities exercise quasi-judicial functions and they have duty cast on them to act in a judicial and independent manner. If their judgment is controlled by the directions given by the Collector it cannot be said to be their independent judgment in any sense of the word. An appeal then to the Collector becomes an empty formality....

25. The same principle has been enunciated by the Supreme Court in B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others, Mahadayal Premchandra Vs. Commercial Tax Officer, Calcutta and Another,

26. An order of suspension is not to be lightly passed) against, an. employee for it cannot be ignored that the suspension brings to bear on an employee consequences far more serious1'' in nature then several of the penalties prescribed under the rules.) It has disastrous impact on the fair name and good reputation that may have been earned and built up by him in the course of many years of service. It is, therefore, imperative that utmost, caution and circumspection must be exercised in passing orders; of suspension. But, as already observed, the order of suspension in this cr.se has been passed without

caring to visualise all such consequences. Further, when once it was passed, no serious care was taken to pursue the inquiry, general or particular to find out the truth in the matter. This clearly evidences that the authorities concerned did not care to the woes of an employee groaning continuously under the fear of any possible inquiry against him while under suspension. This case clearly speaks of gross victimization of the Petitioner, who has been kept under suspension right from 19-9-1984 till date.

27. The result of the aforesaid examination of the matter is that the order (Ex. P. 12) is illegal and is hereby quashed. We have looked into the nature of the allegation on the basis of which the Petitioner has been proceeded against. The same has been explained thoroughly by the State Board in the communication to the State Government (Annexure P-15). It clearly exonerates the Petitioner of any liability and responsibility. His role in the issue is eliminated. The Board cannot take a stand different from the one already displayed in the said document. Therefore, initiation and continuing of the inquiry against the Petitioner, in these circumstances, would be against all canons of justice and fair play Disciplinary authorities cannot sit silent after placing an employee under suspension. With the passage of time, it is almost impossible for the employee to defend himself effectively adducing evidence in regard to the matter alleged to have occurred many years ago, in respect of which he may not have been informed for a long time. His own witnesses and the documents he may have relating to the allegation in question may have either disappeared and the memory of the witnesses faded. No fair and effective inquiry can be conducted unless it commences within a reasonable time after the event. To call the delinquent to defend himself at this long distance of time is obviously to put him at immense disadvantage and thus denying him the benefits of natural justice. In the present case, there is, therefore, neither any cause nor justification to proceed against the Petitioner in view of the circumstances already examined byus.

28. Since we have quashed Annexure P-12, the suspension of the Petitioner is set-aside forthwith. The Petitioner will be deemed to have continued uninterruptedly in service and is, thus, entitled to all the benefits of his service. The Respondents are restrained from initiating or continuing any inquiry against the Petitioner relating to this issue. We permit the Petitioner to seek other reliefs, including entitlement to different pay-scales given from time to time which are stated to have been withdrawn by the authorities. The Petitioner is allowed costs quantified at Rs. 1,000/- to be paid equally by Respondents No. 2 and 3.

