
(1998) 06 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21612 of 1997

R. Surya Kumari

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 29-06-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (1998) 4 ALD 559 : (1998) 4 ALT 526

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. Praveen Vyapari, for the Appellant; Government Pleader for Social Welfare, Mr. I. Venkataranayana and Mr. M.R.K. Chowdary, for the Respondent

Judgement

1. Initially the petitioner joined the services of the third respondent-Board, namely, the Andhra Pradesh State Social Welfare Board, as Personal Assistant to the Chairperson in the year 1964. Subsequently, the petitioner was promoted as Secretary of the third respondent Board in the year 1966 and thereafterwards she was functioning as Secretary of the Board. Under the Regulations governing the services of the petitioner, she had to retire from the services on attaining the age of 58 years. In other words, in the normal course, she would have been retired with effect from 31-12-1997.

2. On 29-3-1996, the petitioner submitted a letter to the Chairperson of the third respondent-Board expressing her desire to retire voluntarily with effect from 31-10-1996 due to certain domestic constraints and requesting the Chairperson to permit her to do so. It appears that the proposal of the petitioner to retire voluntarily was forwarded to the second respondent, namely, the Central Social Welfare Board, and the second respondent-Board by its proceedings dated 25-6-1996 permitted the petitioner to retire with effect from 31-10-1996 A.N. as could be seen from the letter of the Chairman dated 12-9-1996 issued to the petitioner and produced at page 2 of the material papers. On 24-10-1996, the

petitioner submitted a letter to the Chairman of the third respondent Board expressing her willingness to continue in the service for some more time as desired by the Chairman. On 24-10-1996 itself, the Chairman addressed a letter to the Executive Director of the second respondent-Board. In the said letter, there is a reference to the telephonic discussion the Chairman of the third respondent had with the Executive Director of the second respondent Board and seeking necessary action in the matter by FAX. On 31-10-1996, the Joint Director (SBA) of the second respondent-Board issued office order to the effect that the competent authority of the second respondent-Board has agreed for the retention of the services of the petitioner as the Secretary of the third respondent-Board. The order also declares that the earlier office order thereby meaning the Office Order dated 25-6-1996, permitting the petitioner to retire voluntarily w.e.f. 31-10-1996 A.N. is withdrawn with immediate effect. On 31-10-1996, the Chairperson of the second respondent-Board also issued office order informing the petitioner that the competent authority has agreed for the retention of her services as Secretary of the third respondent Board. This office order also declares that the earlier order passed by the second respondent-Board according permission for voluntary retirement to the petitioner is withdrawn with immediate effect. In the same office order the petitioner is directed to continue as Secretary of the State Board until further orders. In the meanwhile, it appears that on the ground that the petitioner would retire voluntarily with effect from 31-10-1996, her pensionary benefits were processed and certified. After the subsequent developments noted above, the Director of Local Audits wrote a letter on 25-2-1997 to the Chairperson of the third respondent-Board informing the latter that the pensionary benefits already certified in the earlier communications dated 25-11-1996 and 12-2-1997 in respect of the petitioner were cancelled. When the matter stood thus, the Chairperson of the third respondent-Board issued the impugned proceeding dated 30-8-1997. The proceedings read:

"" ANDHRA PRADESH STATE SOCIAL WELFARE ADVISORY BOARD

Ref: No.AP/SB/Admn-13/97-98/3048

date: 30-8-97.

Dr. Tripurana Venkataratnam Chairperson. PROCEEDINGS.

Sub :-A.P. State Social Welfare Advisory Board-Smt. R. Suryakumari, Secretary, Secretary-Voluntary retirement-Accceptance-Relief Orders.

Ref:-(1) F.14-2/I/94/SB/Admn/CSWB dated 25-6-96.

(2) This office order SB/AP/Admn-13/ 96-97/2513 dated 12-9-96.

(3) This office order F.SB/AP/Admn-13/96-97 dated 31-10-96.

...

In the reference 1st and 2nd cited, the request of Smt. H Suryakumari,

Secretary, A.P. State Social Welfare Advisory Board dated 29-3-1996 for voluntary retirement has been accepted and she was permitted to retire on afternoon of 31-10-96.

In the reference 3rd cited, she was retained beyond 31-10-96 only until further orders without relief. Accordingly the orders in the reference 1st and 2nd cited are given effect forthwith and she is relieved of her duties on the afternoon of 31-8-97.

She is therefore directed to hand over complete charge to Sri G. Lavanya Murthy, Project Officer and report compliance.

Sd. Chairperson."

3. The validity of this proceeding is called in question in this writ petition.

4. The learned Counsel for the petitioner firstly contended that the impugned action of the Chairperson of the third respondent-Board relieving the petitioner from service on the afternoon of 31-8-1997 is totally arbitrary, unreasonable and in violation of service Regulations and that the petitioner was entitled to continue in service till she attained the age of superannuation i.e., 58 years or in other words till 31-12-1997. The learned Counsel for the petitioner would also maintain that the impugned order reflects total lack of application of mind on the part of the Chairperson of the third respondent Board to the earlier orders passed by the second respondent-Board permitting the petitioner to withdraw her proposal for voluntary retirement contained in her letter dated 29-3-1996 and also to the office order issued by the Joint Director (SBA) dated 31-10-1996 permitting the petitioner to continue in service. On the other hand, the learned Counsel appearing for the Respondents 2 and 3., at the threshold, would maintain that the third respondent cannot be treated as a "State" or an instrumentality of the State or a local body within the meaning of Article 12 of the Constitution of India, and therefore the writ petition is not maintainable. The learned Counsel appearing for the respondents have no defence to resist the claim of the petitioner on merits.

5. Since the learned Counsel for the respondents 2 and 3 have raised the question relating to the maintainability of the writ petition and since it goes to the root of the matter, it has become necessary for the Court to decide the question whether the third respondent could be treated as a "State" within the meaning of Article 12 for issuance of writ in the first instance. In order to satisfy the Court that the third respondent should be treated as a "State" within the meaning of Article 12 of the Constitution, the petitioner has produced voluminous materials before the Court.

6. Several judgments of High Courts and the Supreme Court have considered the meaning and scope of the term "State" as defined in Article 12 of the Constitution, More particularly, it has been attempted to lay down decisive criteria generally to determine whether an entity is a "State" or not in the

leading case of *Ajaya Hasia v. Khalid Mujib* AIR 1981 SC 481 and *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, . Therefore, the question which falls for consideration is whether the documents and materials placed before the Court satisfy the criteria laid down by the Supreme Court in *Ajaya Hasia*'s case and the cases to follow it. Central Social Welfare Board was initially created by the Government of India vide Resolution No.F-2-6/53-D-II, dated 12-8-1953 having its office at New Delhi. The main objects of the said Board are those stipulated in the Memorandum of Articles of Association. The present Central Social Welfare Board subsequently became a Company by virtue of its incorporation under the Companies Act, 1956. After its incorporation as a Company, it took over the activities of the erstwhile Central Social Welfare Board created by the Government of India. Even before its incorporation as a Company, the Board sanctioned a total sum of Rs.55,01,585/- upto 24th February, 1955 by way of grants-in-aid to voluntary institutions in the country. The different fields of social welfare in which the Board is interested are summarised in Volume of Circulars for the period August, 1953 to March, 1958. They are : (a) Child Welfare, (b) Women's Welfare, (c) Correctional and After Care services for Juvenile delinquents, (d) Homes for the aged and infirm, (e) Welfare Services for the physically and mentally handicapped persons, (f) After care services for discharged prisoners, for rescued women, patients of diseases like cancer, T.B., Leprosy etc., (g) Training of Social Workers (h) Sponsoring and aiding new welfare services to meet the hitherto unmet social needs. Welfare extension projects in rural areas and family welfare projects in urban areas have been sponsored and aided by the Central and State Social Welfare Boards. They also took over the job of conducting surveys on social problems on which adequate information is not available. The Central Social Welfare Board has undertaken as many as 300 welfare extensions to be executed by the voluntary organisations all over the country. The functions assigned to Central Social Welfare Board under the resolution of Government of India have been detailed in the introductory portion of the Progress Report under the heading "Coordination". The Progress Report issued by the Board points out that the Ministry of Education is in administrative charge of all the programmes of the Board and responsible for Parliament for its work. The Ministries of Finance, Health and Labour, Education, Community Development, and Planning Commission are represented on the Board.

7. Part II of the Progress Report deals with the State Boards under the heading "State Reports". It is pointed out that the Central Social Welfare Board decided to decentralise its works by sharing them with the State Social Welfare Boards to be set up by the State Governments. The Annual Report 1990-91 of the Central Social Welfare Board demonstrates that the entire maintenance grants were received from the Department of Women and Child Welfare which is a wing of the Ministry of Human Resource Development. The amounts of grant and the details of programmes are detailed on pages 83 and 84 of the Annual Report of

1990-91. So also the pages 87 and 88 of the same report detail the amounts released to the State Boards. The activities of the Central Board and the State Boards are fully financed by the State and the Central Governments. The Annexure-II at pages 22 to 27 of the Annual Report show the amounts distributed to the various State Boards. The programmes of assistance booklet issued by Central Social Welfare Board in August, 1978 details various categories of schemes for which assistance is available. This booklet also demonstrates that the activities being carried on by the State and Central Social Welfare Boards are that of the State and Central Governments.

8. The State Board is headed by a Chairperson who is nominated by the State Government and he receives honorarium from the State Government, and the entire administrative staff of the State Board is paid its salaries on par with the employees of the State Government. The area of work for which the State Board is constituted is the field of social work and social welfare, and the Board involves number of non-Governmental organisations through which the Government schemes in the field of social welfare are required to be implemented. The Central Government and the State Government finding it difficult to identify, recommend, supervise and implement at the ground-level such schemes with its available machinery, have specially constituted these Boards at the Central and State levels to identify various non-Governmental organisations and to recommend for their funding, channelise the funding, monitor their work and report to the concerned Government. The Government of Andhra Pradesh, on consideration of the nature of work being done by the State Board and upon making representation in that regard by the Central Board, has applied all the Rules to the employees of the State Board relating to the matters of service which include recruitment, conduct rules, leave rules, retirement rules and pensionary rules by issuing specific Government Orders from time to time. The Government of Andhra Pradesh has also issued specific Government Orders extending the revised pay scales which were made applicable to the State Government employees from time to time. It has also extended pensionary benefits to the staff of the State Board vide G.O.Ms.No.322, dated 30-11-1984 and also the liberalised Pension Rules vide G.O.Ms.No.121, dated 14-12-1988. The revision of pay scale was made applicable to the employees of the State Board vide G.O.Ms.No.12, dated 24-2-1995, and the State Government has also extended the application of recruitment rules and service conditions to the employees of the State Board vide G.O.Ms.No.10, dated 12-3-1996. Several departments of the State Government are represented in the constitution of the State Board. Both the Central Government and the State Government have retained pervasive, deep control and supervision in the administrative of the State Board. The entire funding is done by the State Government and the Central Social Welfare Board. In terms of Memorandum of Association, no alteration of Memorandum of Association of the third respondent State Board is permissible without the prior approval of the Government.

9. From the facts stated supra, it can be seen that the third respondent State

Social Welfare Board is fully financed by the Central Social Welfare Board and the State Government; the entire maintenance and recurring expenditure of the Board is met by the State authorities the State Board discharges functions and duties which are otherwise normally discharged by the State Government; the Central Government and the State Governments have deep and pervasive powers of control and supervision in the administration of the State Social Welfare Board. Therefore, in the light of the tests laid down in *Ajaya Hasia* "s case (*supra*) and the cases to follow that case, it can convincingly be said that the third respondent Social Welfare Board satisfies those tests, and therefore it is a "State" as defined under Article 12 of the Constitution. Therefore, I hold that the third respondent Board is "State" within the meaning of Article 12 of the Constitution of India, and consequently writ lies against it.

10. Adverting to the merits of the case, I should state that the respondents have no defence at all. Though the petitioner's representation dated 29-3-1996 was initially accepted by the respondents 2 and 3 and she was permitted to retire with effect from 31-10-1996, well before that date was reached, on the subsequent representation of the petitioner dated 24-10-1996, the earlier letter submitted by the petitioner dated 29-3-1996 was permitted to be withdrawn, and even the office order passed by the second respondent dated 25-6-1996 was also withdrawn. After 31-10-1996, the petitioner did not make any fresh representation to the Respondents 2 and 3 seeking permission to retire voluntarily. The resultant position was that the petitioner continued to serve as Secretary of the third respondent-Board without any break in service. When the matter stood thus, the Chairperson of the third respondent-Board, without reason or rhyme, issued the impugned proceeding dated 30-8-1997 directing that the petitioner should be relieved of her duties on the afternoon of 31-8-1997. This direction directly offends the right of the petitioner as an employee of the Board to continue in service till 31-12-1997 the date on which she would have retired in normal course, on attaining the age of superannuation as per the relevant Service Regulation. By the impugned action, the Chairperson of the third respondent Board prevented the petitioner from serving as Secretary of the Board for four months i.e., between 1-9-1997 and 31-12-1997 illegally and without any justification. It is relevant to note that the petitioner withdrew her earlier letter dated 29-3-1998 seeking voluntary retirement by her subsequent letter dated 24-10-1996 at the behest of, and as desired by the Chairperson. The Chairperson seems to have practised the rule of "hire and fire", and his action smacks of arbitrariness and is obnoxious to Article 14 of the Constitution.

11. In the result, the writ petition is allowed and the impugned order issued by the Chairperson of the third respondent Board dated 30-8-1997 is quashed- The discharge of the petitioner on the afternoon of 30-8-1997 from the service is declared as illegal and invalid and the petitioner should be deemed to have been in service till 31-12-1997. A direction shall issue to the third respondent to work out the pensionary and fringe benefits payable to the petitioner under service

regulations treating that the petitioner continued in service as Secretary of the third respondent Board till 31-12-1997, and on that basis to workout all dues payable to the petitioner and pay the same to her within a period of three months from today. The petitioner is also entitled to the basic pay and other admissible allowances for the period from 1-9-1997 to 31-12-1997. No costs.