
(2003) 09 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4406 of 2003

Ramautar Choudhary and Another

APPELLANT

Vs

Tenughat Vidyut Nigam Ltd. and Others

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72, 74, 76
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 585

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Sahani, Ajit Kumar, I. Sen Choudhary and A.K. Jha, for the Appellant; A.K. Sinha and C. Prabha, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioners have challenged the Notification Nos. 7/03 and 8/03 both dated 27.8.2003 whereby the services of the petitioners sought to have been returned back to the Bihar State Electricity Board, Patna and also for quashing the consequential release orders dated 27.8.2003 issued under the signature of Joint Secretary, Tenughat Vidyut Nigam Ltd. releasing the petitioners from their services. The petitioner No. 1 who was initially joined in the post of Assistant Executive Engineer in 1984 in Bihar State Electricity Board (BSEB). By notification dated 13.6.1990 BSEB deputed petitioner No. 1 to Tenughat Vidyut Nigam Ltd. (TVNL). In 1992 petitioner No. 1 was promoted to the post of Executive Engineer and continued in TVNL. In 1995 his deputation was withdrawn and his services were returned to BSEB and posted as Electrical Executive Engineer at Muzaffarpur Thermal Power Station. In 1998 he was promoted as Superintending Engineer and again deputed to TVNL and posted as Electrical Executive Engineer. In 2001 petitioner No. 1 was permitted to work as Chief Engineer TVNL Headquarter, Ranchi. However in 2002 he was relieved from his Additional responsibility of Chief Engineer and continued his service as Superintending Engineer in TVNL.

2. Similarly petitioner No. 2 was initially appointed on the post of Assistant Superintending and joined PTPS. He was promoted to the post of Electrical Executive Engineer in 1988 and was posted in transmission circle Namkom in the BSEB. In 1996 the services of petitioner No. 2 was sent to TVNL as Electrical Executive Engineer. He was also allowed to perform the duties of Electrical Superintending Engineer w.e.f. 1.2.2001 and still continuing on the said post.

3. All of a sudden by the impugned notifications issued under the signature of Joint Secretary (Administration and Establishment) TVNL the services of the petitioners sought to be returned back to BSEB. Consequentially the impugned relieving orders dated 27.8.2003 was issued.

4. Mr. A.K. Sahani assailed the impugned notifications as being illegal malafide and wholly without jurisdiction. Learned counsel submitted that still the cadre division has not been finalized between the BSEB and Jharkhand State Electricity Board (JSEB) and in absence of order of Central Government or the successor State no employee could have been disturbed or transferred from their respective places of posting. Learned counsel submitted that the Chairman TVNL has no jurisdiction at all to disturb the position of the petitioners in the garb of returning back to their services to BSEB. Learned counsel drawn my attention to Annexure 13 whereby as per the direction of the Central Government decision was taken that the employees of TVNL shall be deemed to be the employees of JSEB.

5. Mr. A.K. Sinha, learned senior counsel appearing for TVNL on the other hand submitted that admittedly the petitioners services in TVNL was on deputation and, therefore, the petitioners have no right to continue their services in TVNL. Learned counsel submitted that it is for the BSEB and the JSEB to decide as to whether petitioners will continue their services i.e. in BSEB or JSEB after the cadre division is finalized. Learned counsel relied upon the decision of the Supreme Court in the case of Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, and Kunal Nanda Vs. Union of India and Another,

6. Mr. Ajit Kumar, learned counsel appearing for the BSEB submitted that the Government of Jharkhand illegally constituted a Board of TVNL when as a matter of the Board of TVNL is still functioning and running its office at Patna., Learned counsel submitted that the Board constituted by the Jharkhand Government is wholly illegal and without jurisdiction.

7. The TVNL came into existence in 1990 which became an undertaking of the Government of Bihar. When TVNL was constituted number of employees including officers in the service of BSEB were sent to TVNL. The petitioners were also sent on deputation and they along with other officers of BSEB were continuing in the service of TVNL. In the meantime Jharkhand State came into existence on 14th November, 2000 by virtue of the organization of Bihar Reorganization Act, 2000. Section 72 of the said Act categorically provides that every person who immediately before appointed date is serving in connection with the affairs of the

existing State of Bihar shall continue to serve unless he is required by general or special order of the Central Government. Similarly 74 of the said Act provides that every person who immediately before the appointed date is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Bihar in any area which on that date falls within the successor State shall continue to hold the same post or office in that successor State and shall be deemed to have been duly appointed to the post or office by the government in that successor State.

8. Admittedly the cadre division has not yet been finalized and allocation of cadre has not yet been made by the Central Government in terms of Section 76 of the said Act. The matter of final allocation of cadre in relation to the electrical engineers of the then BSEB including the person of BSEB and JSEB are still pending before the advisory committee. It appears from Annexure 13 of the writ petition that on 28.5.2001 the Energy Minister, Government of Jharkhand in the capacity of Chairman held a meeting of the newly constituted Board of Directors consisting of Energy Secretary and the Chairman, JSEB and it was decided that all the officers and the employees serving in the TVNL shall be deemed to be the employees of JSEB till the final decision in the matter of allocation of cadre division is finalized. The relevant portion of the decision reproduced hereinbelow :

"Tenughat Thermal Power Station, Lalpania mein Bihar State Electricity Board se purv se pratiniyuki sabhi adhikariyon evam karmachariyon ki sevaye cadre ke antim roop se bantwara hone ko pratyasa mein Kentra Sarkar ke dinank 22.3.2001 ke nirdeshanushar 1.4.2001 se Jharkhand State Electricity Board mein ho gaye hain. Tadanusar unhe TVNL main Jharkhand State Electricity Board, Ranchi ke pratinityukt adhikari evam karmachari samjhe jayenge."

9. Surprisingly the impugned notification was issued in gross violation of the provisions of the Reorganization Act and the decision of the Board of Directors of TVNL presided by the Energy Minister returning back the services of the petitioner to BSEB. It is more surprising that although there are other officers of the same rank posted on deputation in TVNL are still continuing as the employees of JSEB. The impugned notifications therefore is absolutely illegal and full of malice and is also without jurisdiction.

10. There is no dispute with regard to settled law that persons serving on deputation has no legal right to continue on deputation or to claim permanent absorption in the borrowing department unless his permanent absorption is covered by a statutory provision. But that principles will not apply in the facts of the present case particularly when in the circumstances when the State came into existence by virtue of the Reorganization Act. The decision relied upon by Mr. Sahani will be of no help to the respondent.

11. Taking into consideration the entire facts of the case I am of the opinion the impugned notifications and the consequential orders issued by the TVNL is illegal and wholly without jurisdiction.

12. With the aforesaid reason, this writ application is allowed and the Impugned notifications and the consequential orders are quashed.