

(1984) 02 CAL CK 0006
In the Calcutta High Court
Case No : F.M.A.T. 3758 of 1983

West Bengal Industrial Development Corporation Limited and Others APPELLANT

Vs

West Bengal Industrial Development Corporation Employees Union and Another RESPONDENT

Date of Decision : 28-02-1984

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226

Citation : 88 CWN 682

Hon'ble Judges : M.M. Dutt, J;A.K. Sengupta, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Anjan Kumar Mukherjee and A.P. Lahiri, for the Appellant;A.P. Chatterjee and D.K. Roy for the Respondent Nos. 1 and 2 and B.K. Mukherji for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sengupta, J.—In this application, the appellants, the West Bengal Industrial Development Corporation, its Board of Directors and Chairman-cum-Managing Director have asked for stay of operation of the ex-parte interim order dated 2nd December, 1983 passed by B.C. Ray, J. upon the writ application filed by the West Bengal Industrial Development Corporation Employees Union and its General Secretary. By the said interim order, the appellants have been restrained from appointing and/or absorbing the respondent No. 4 in the writ application (the respondent No. 3 herein) in the post of Manager (Personnel & Administration) in the West Bengal Industrial Development Corporation Limited without complying with the Regulations 7(1) and 7(2) of the West Bengal Industrial Development Corporation Limited Staff Regulations, 1975. Since elaborate arguments have been made by the learned Advocates appearing on behalf of the parties on both sides, we have thought it fit to deliver a judgment dealing with the rival contentions although in disposing a stay application during the pendency of the appeal, no judgment is usually pronounced. To appreciate

the rival contentions", it is necessary to state briefly the facts of this case.

2. The principal appellant before us, the West Bengal Industrial Development Corporation Limited (hereinafter referred to as the Corporation) is a Government company within the meaning of the Companies Act, 1956. It is an undertaking of the Government of West Bengal under the administrative control of the Commerce and Industries Department. The Respondent No. 1, West Bengal Industrial Development Corporation Employees Union, a trade union registered under the Trade Unions Act, 1926 and the Respondent No. 2, its General Secretary, are the writ petitioners.

3. The grievance of the writ petitioners centres round the appointment and/or absorption of the Respondent No. 3 herein Anil Chandra Chattopadhyay (for the sake of brevity hereinafter referred to as Chattopadhyay) in the Corporation. Chattopadhyay was a member of the West Bengal Civil Service (Executive) holding a substantive post of Deputy Magistrate and Deputy Collector. He was formally the Deputy Controller, Iron and Steel, in the Department of Steel, Ministry of Steel and Mining, Government of India. In pursuance of Home (P & A.R.) "Department Notification No. 6274-P & A.R. (WBCS) dated 18th September, 1978, the Governor was pleased to place the services of Chattopadhyay at the disposal of the Corporation for appointment to the post of Special Officer, Petro-Chemicals Project with effect from 21st September, 1978 until further orders on deputation from Home (P & A.R.) Department, Government of West Bengal. The said project, commonly known as Haldia Petro-Chemicals Project which, it appears, is not a Departmental Project, but a Project of the Corporation. A formal order enumerating the terms and conditions of the aforesaid appointment of Chattopadhyay as Special Officer (Petro-Chemicals Project) was issued by the Chairman-cum-Managing Director of the Corporation on 13th December, 1978. In or about 17th November, 1981 the Chairman-cum-Managing Director of the Corporation issued an order directing that Chattopadhyay would also, until further orders, look after the duties of Chief Administrative Officer of the Head Office of the Corporation in addition to his duties as a Special Officer (Petro-Chemicals). Thereafter, the Board of Directors of the Corporation in its meeting held on 29th December, 1981 approved drafting of the services of Chattopadhyay on part-time basis to assist the Chairman and Managing Director for various administrative and personnel matters. It was also approved that Chattopadhyay be designated as the Chief Administrative Officer of the Corporation. Two years later, in or about September, 1983 the writ petitioners herein moved this Court under Article 226 of the Constitution alleging that the appointment of Chattopadhyay in the post of Chief Administrative Officer of the Corporation had been made without the prior sanction of the Board of Directors and also without due advertisement in the Newspaper. In the said writ application, it was prayed that the appointment of Chattopadhyay to the post of Chief Administrative Officer should not be confirmed and he should not be permanently appointed to that post. Upon the said writ application, B.C. Ray, J. passed an interim order on 2nd September 1983 restraining the Corporation

from appointing permanently Chattopadhyay to the post of Chief Administrative Officer of the Corporation. Against the said interim order, the appellants herein preferred an appeal and also filed an application for stay of the operation of the said interim order dated 2nd September, 1983.

4. M.M. Dutt and C.K. Banerji, JJ. were pleased to dispose of the said appeal and the application filed, inter alia by the Corporation by the order dated 8th November, 1983 in the following terms :

It appears that the writ petition has been filed on a misconception of facts. As has been stated earlier, the respondent No. 3 has not yet been appointed to the post of Chief Administrative Officer of the Corporation. He has only been asked to look after the duties of the Chief Administrative Officer in addition to his present duties. It now transpires from the application of the appellants that the Corporation wants to absorb the respondent No. 3 in the post of Manager (Personnel & Administration) of the Corporation and the Corporation has also obtained the approval of the Chief Minister of the State. It is stated by Mr. Chatterjee, learned Senior Standing Counsel appearing on behalf of the writ petitioners that there is no injunction restraining the Corporation from absorbing the respondent No. 3 in the said post of Manager (Personnel and Administration) of the said Corporation. As there is no proposal for the permanent" appointment of the respondent No. 3 to the post of Chief Administrative Officer of the Corporation, the interim order that has been passed by the learned Judge is misconceived and infructuous.

In the circumstances, we set aside the interim order of injunction.

This order virtually disposes of the appeal. The appeal is treated as on day's list and both the appeal and the application are disposed of as above. There will be no order as to costs.

5. It is not in dispute that Chattopadhyay has been serving the Corporation with effect from 21st September, 1978 without any break. The Corporation required his service for a particular job for which he was considered to be specially competent. It was felt by the Corporation that he should be absorbed in the Corporation in the public interest and such absorption would be in a post falling in the direct recruitment quota of posts in the grade of Manager and in the vacant post of Manager (Personnel and Administration). It appears that Chattopadhyay gave consent to the said proposal of his absorption, so also his parent department, Home (P & A.R.). By a D.O. letter No. IDC/IV/S497 dated 13th May, 1983, the Corporation submitted a proposal to the Commerce and Industries Department for absorption of Chattopadhyay in the post of Manager (Personnel & Administration). It was also suggested in the said letter that for the time being Chattopadhyay would continue to be attached to Haldia Petro-Chemicals Project and attend the Corporation office on part-time basis as was being done then. Certain other proposals with regard to the fixation of his pay and allowances had also been made in the said letter. The matter of his

absorption as aforesaid was examined both in the Commerce and Industries and Home (P & A.R.) Departments and was thereafter referred to the Chief Minister. A representation was also made by the writ petitioners before the Chief Minister. It appears that the Chief Minister called for necessary papers.

6. By a letter dated 30th June, 1983, the Secretary of the Commerce and Industries Department, Government of West Bengal intimated the Chairman and Managing Director of the Corporation referring to the said letter dated 13th May, 1983 of the Corporation that the Chief Minister had approved the absorption of Chattopadhyay in the Corporation after his retirement from WBCS (Executive). It was also intimated in the said letter that the Home (P & A.R.) Department was advised to issue necessary orders in this regard.

7. On or about 11th November, 1983, an item of the agenda was placed in the meeting of the Board of Directors of the Corporation for approval of absorption, in the public interest, of Chattopadhyay, in the service of Corporation. The Board duly approved absorption of Chattopadhyay as proposed and adopted a resolution in the said meeting to that effect. Since it was contended by the writ petitioners that no such resolution was ever passed by the Corporation, we directed Mr. Saktinath Mukherjee, the learned Advocate for the Corporation, to hand over a copy of the said resolution dated 11th November, 1983 approving the absorption of Chattopadhyay, which he did. The said resolution is to the following effect :

The Board noted the contents of the above memo and approved of the absorption of Sri A.C. Chattopadhyay, WBCS (Exe.) in the services of WBIDC, in a post falling in the direct recruitment quota, in the vacant post of Manager (Personnel & Administration) in the scale of Rs. 1500-60-1800-100-2000-125-/2-2500/-. It was also decided that Sri Chattopadhyay's terms and conditions of absorption be finalised in consultation with the State Government in accordance with Finance (Audit) Department Memo No. 2567-F. dated the 30th March, 1976. Being so absorbed, Sri Chattopadhyay would be on deputation to Haldia Petro-Chemicals Division of the WBIDC which would pay his salary etc. as it was doing before absorption of Sri Chattopadhyay to the vacant post of Manager (Personnel & Administration) of the WBIDC. Sri Chattopadhyay will however continue to hold the post against which he has been absorbed during the period of his deputation to Haldia Petro Chemical Division.

8. By a letter dated 22nd/23rd November, 1983, Chattopadhyay was informed by the Corporation that the Board of Directors at its meeting held on 11th November, 1983 resolved that he stood absorbed in the public interest in the Corporation as Manager (Personnel & Administration) Immediately thereafter on 2nd December, 1983 the present writ application was moved asking for appropriate writs for bearing the appellants from appointing Chattopadhyay in the post of Manager (Personnel & Administration) of the Corporation without complying with the provisions of Regulations 7(1) and 7(2) of the West Bengal Industrial Development Corporation Limited Staff Regulations, 1975. On the said

application, the impugned interim order was passed by B.C. Ray, J. on 2nd December, 1983 which is the subject matter of the challenge in the present application before us.

9. In the course of hearing, Mr. Saktinath Mukherjee has handed over to us a Notification of the Governor bearing No. 353-PAR(WBCS)/3D-71/82 dated 20th January, 1984. The said Notification is to the following effect :--

The Governor is pleased to accord permission to the permanent absorption of Sri Anil Chandra Chattopadhyay, a permanent WBCS (Executive) Officer now on deputation with the West Bengal Industrial Development Corporation Limited in the post of Manager (Personnel & Administration) under the said West Bengal Industrial Development Corporation Limited with effect from 24.6.83.

10. Mr. Saktinath Mukherjee, learned Advocate appearing for the appellants, has submitted that in terms of the Resolution of the Board dated 11th November, 1983 Sri Chattopadhyay has already been absorbed in the post of Manager (Personnel & Administration) and he has joined in the said post before the impugned order was passed on 2nd December, 1983. It is also his contention that the approval for absorption of Chattopadhyay was accorded by the Chief Minister and by the Notification dated 20th January, 1984 Sri Chattopadhyay has been absorbed in the said post with effect from 24th June, 1983. He has further submitted that there has been no violation of the West Bengal Industrial Development Corporation Limited Staff Regulations, 1975 inasmuch as the absorption of Sri Chattopadhyay has been made after taking a post out of the direct recruitment quota. He has further submitted that the writ petitioners did not question the propriety or legality of the absorption or the proposal for absorption of Sri Chattopadhyay in the Appeal Court which would be evident from the Order dated 8th November, 1983. It is also his contention that the writ petitioners have no locus standi to move this application. He, therefore, submits that the interim order dated 2nd December, 1983 should be set aside.

11. Mr. Arun Prakash Chatterjee, learned Senior Standing Counsel, appearing for the writ petitioners, strenuously contended that the absorption or appointment of Sri Chattopadhyay has been made in violation of the Regulations of the Corporation governing such appointment and as such the writ petitioners have locus standi to move this writ application challenging such absorption or appointment which, on the face of it, is illegal. Relying on a decision of this Court in the case of Biman Chandra Bose Vs. Dr. H.C. Mukherjee, Governor and Others, , the learned Senior Standing Counsel has contended that an application for a writ of quo warranto challenging the validity of an appointment is maintainable at the instance of the writ petitioners even though they may not be seeking enforcement of any fundamental right under the Constitution.

12. It is, no doubt, true that an application asking for a writ of quo warranto is maintainable at the instance of any person, whether any fundamental or other legal right of such person has been infringed or not provided the validity of an

appointment to a public office is challenged. The post of Manager of a Corporation incorporated under the Companies Act cannot be held to be a public office. The post in which absorption of Chattopadhyay has been made by the Corporation is not created by the statute or by Constitution. It is a post created by the Corporation in the usual course of conduct of its affairs. The writ of quo warranto will lie in respect of an office which must be public. The post held by a person in a Government Company, which may be an "authority", therefore "State" within the meaning of Article 12, is not even a civil post nor it is a post or office held under the State. We are, therefore, unable to accept the contention of Mr. Chatterjee that writ of quo warranto can be issued in this case. That apart, there is no prayer made in the writ petition asking for such a writ.

13. There is yet another aspect with regard to question of locus standi of the writ petitioners to make the writ application. The writ petitioner No. 1 is a registered trade union looking after the interest of its members. The members of the said union might have legitimate grievances, if any appointment was made by the Corporation out of the promotional quota adversely affecting their rights. No such ground has been made out in the writ petition. The impugned absorption in a post taken out of direct recruitment quota cannot in any way effect any of the members of the union directly or indirectly. In our opinion, therefore, the writ petitioners have no locus standi to make the application which is thoroughly misconceived.

14. There is a further point which pertains to the maintainability of the writ application. It was with the knowledge of the writ petitioners that by the letter dated 13th May, 1983 (Annexure I to the writ petition) the Corporation proposed the absorption of Chattopadhyay in the vacant post of Manager (Personnel & Administration). The said proposal was duly recommended by the concerned departments of the Government and ultimately approved by the Chief Minister. The fact of Corporation obtaining the approval of the Chief Minister is recorded in the Order dated 11th November, 1983 of the Appeal Court in the appeal arising out of the earlier writ proceedings initiated by the writ petitioners. Strangely enough, the writ petitioners have not challenged the propriety and/or legality of such approval nor the writ petitioners have made the State Government a party to the present writ petition. As indicated earlier, the Corporation has acted only after its proposal for absorption has been approved by the Chief Minister on the basis of the recommendation of the Departments of Home (P & A.R.) and Commerce and Industries. The Corporation is Under the administrative control of Commerce and Industries Department. The parent Department of Chattopadhyay is Home (P. & A.R.). Inasmuch as the writ petitioners have not challenged the legality or propriety of the approval accorded for absorption of Chattopadhyay, and the State Government - a necessary and proper party has not been made a party, the writ petition is not maintainable and is liable to be dismissed. In our opinion the omission to challenge the approval and make the State Government a party in the writ petition is deliberate.

15. On the basis of the Resolution dated 11th November, 1983 and the Governor's Notification dated 20th January, 1984 Mr. Chatterjee has raised several other contentions. The first contention is that the Resolution dated 11th November, 1983 shows that the appointment has been made against the direct recruitment quota. This is in essence an appointment by direct recruitment. He has also drawn to our attention to the Resolution of Board of Director's dated 17th September, 1981 (Annexure "A" to the affidavit filed by the writ petitioners in opposition to the stay petition) laying down that 50% of the Posts of Managers should be filled up by Promotion and remaining 50% by direct recruitment. Since it is a case of direct recruitment, the procedure enjoined by the Staff Regulations, 1975 ought to have been complied with. He has also relied on a decision of the Supreme Court in the case of B.S. Minhas Vs. Indian Statistical Institute and Others, for the proposition that it is obligatory on the part of the Corporation to follow the Regulations framed for the conduct of its affairs to avoid arbitrariness. In this case, no advertisement as required by Regulation 7(2) has been issued. Hence, it is contended that the appointment is illegal.

16. Regulations 7(1) and 7(2) of the West Bengal Industrial Development Corporation Limited Staff Regulation, 1975 on which strong reliance has been placed by Mr. Chatterjee are to the following effect :

7(1). All appointments shall be made by the Managing Director provided that no person shall be appointed as an officer unless his appointment is first approved by the Board,

7(2). No appointments (except in class IV service) shall be made without prior advertisement in at least one leading newspaper and also without complying with the provisions of the Articles of Association provided however that the Managing Director may employ staff in excess of the number fixed by the Board in Class II, III & IV on a temporary basis for a period not exceeding six months in which case no advertisement will be necessary.

17. It is not in dispute, nor can it be disputed that by the said Resolution dated 11th November, 1983 the Board approved the absorption of Chattopadhyay in vacant post of Manager (Personal & Administration) after the Government has accepted the proposal of the Board for such absorption. Regulation 7(2) cannot have any application in the instant case. It is neither a case of direct recruitment nor a case of promotion. In this case the services of Chattopadhyay had been placed at the disposal of the Corporation for appointment as Special Officer, Petro-Chemicals in 1978. Since then, he was associated with the said Petro Chemicals Project of the Corporation. The services rendered by the Chattopadhyay had been "found satisfactory. The Corporation required his services for a job for which he was considered to be specially competent. It was felt that he should be absorbed in the public interest in a suitable post in the Corporation. Accordingly he was absorbed in a post falling under the direct recruitment quota of posts in the grade of Manager. It is not a case of direct recruitment to a post. It is a case of absorption of a person to a post which has

been taken out of the direct recruitment quota. Regulation 7(2) will come into play if a post is filled up either by direct recruitment or by promotion. In our view, the said Regulation has no application where a person holding substantive post in the Government is permanently absorbed in a post in the establishment where he was sent on deputation.

18. In B.S. Minhas's case (Supra) relied on by Mr. Chatterjee it has been laid down that it is obligatory on the part of an authority within the meaning of Article 12 of the Constitution to follow the bye-laws framed for the conduct of its affairs to avoid arbitrariness. In that case the dispute was with regard to the appointment of one B.P. Adhikary as the Director of India Statistical Institute in preference to B.S. Minhas without complying with the bye-laws which provided that before appointment, the vacancy in the post of Director should be suitably publicised. In that context the Supreme Court held that bye-laws ought to have been complied with to avoid arbitrariness and also to ensure fair play. That case has no application to the facts of the case in hand. So long as a person is on deputation he may not get the benefits of his service in the parent department. Nor is he entitled to reap the benefit of his service in the establishment where he has been deputed unless he is permanently absorbed there. Where a person is sent on deputation being selected for a special project and having regard to his experience and competence and his association of long years with the special project, he is absorbed permanently in a post where he is on deputation in the public interest, as is the case here, there cannot be any question of publicising such a vacancy. The field of consideration for the post was not and could not have been intended to be enlarged which would have, been unfair to the person rendering continuous service on deputation. On the facts of this case it does not appear to us that the absorption of Chattopadhyay is either arbitrary or unreasonable. No ground has been taken in the writ petition that the action of the Corporation is arbitrary and violative of the Article 14 or Article 16 of the Constitution. We, therefore hold that there has been no violation of the Staff Regulations, 1975 in the matter of absorption of Chattopadhyay.

19. Mr. Chatterjee then submits that a person cannot be absorbed permanently unless he ceases to be an employee of the Government. He has relied on a decision of the Supreme Court in the case of State of Mysore v. P.N. Nanjundiah, (1969) 3 SCC 633 . The aforesaid case does not seem to have laid down the proposition which Mr. Chatterjee has canvassed before us. In construing Rule 53(b) (i) of the Mysore Service Rules, the Supreme Court at page 636 observed as follows :--

It is clear from this rule that services of an officer on deputation to another department is treated as equivalent to the service in the parent department and it is this equation between the service in the two departments that forms the basis of Rule 53(b) (1) of the Mysore Jail Service Rules. So long as the service of the employees in the new Department is satisfactory and he is obtaining the increments and promotions in that Department, it stands to reason that the

satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent Department. Also so as to entitle him to promotion which are seniority-cum-merit "basis."

20. The said decision has no application at all to the facts of the present case. As soon as the Government Notification has been issued according permission to the permanent absorption of Chattopadhyay with effect from 24th June, 1983 he must be deemed to have ceased to be an employee of the State Government either by retirement or otherwise from that date. If any order is required to be passed formally recording the retirement or release of the Chattopadhyay from the Government service, it may be issued subsequently which will not in any way affect the validity of absorption of Chattopadhyay in the Corporation. The contention of Mr. Chatterjee thus fails.

21. The next contention of Mr. Chatterjee is that a person cannot be an employee under two masters at one and the same time. He contends that so long as Chattopadhyay is a Government servant he cannot be permanently absorbed in the Corporation. For this proposition he has" relied on a decision of the Supreme Court in the case of Roshan Lal Tandon Vs. Union of India (UOI), . There the Supreme has observed at page 1894 as follows :--

But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.

22. We are unable to appreciate how this case helps the contention of Mr. Chatterjee. As we have already indicated that by virtue of the Notification Chattopadhyay is deemed to have ceased to be an employee of the Government and thus the question of his serving under two masters at one and the same time did not arise. With the permanent absorption in the Corporation, the status of Chattopadhyay as a Government servant has come to an end. The contention of Mr. Chatterjee, therefore, has no substance.

23. The next contention of Mr. Chatterjee is prefaced by the contents of a Resolution of the Board of Directors of the Corporation dated 23rd December, 1983 annexed to the supplementary affidavit affirmed by the writ petitioners on 23rd February, 1984. The said resolution purports to amend the recruitment rules and fixes the upper age limit for appointment to the post of Manager at 45 years. Mr. Chatterjee contends that the age of Chattopadhyay admittedly is 54-55 years and thus the Corporation has purported to appoint Chattopadhyay in violation of the Recruitment Rules framed by the Corporation itself. This

contention has no substance at all. The absorption of Chattopadhyay was approved in the meeting of the Board of Directors held on 11th November, 1983. The amendment to the Recruitment Rules was made on 23rd December, 1983 which cannot have any retrospective effect. Thus there cannot be any violation of a Rule which was not in existence at the material time when the Resolution approving the absorption of Chattopadhyay was adopted.

24. The last contention of Mr. Chatterjee is that the matter is now pending before the trial court and the appellant without moving the trial court for vacating the interim order should not have rushed to this Appeal Court. The Appeal Court should not at this stage interfere with the order of the learned trial Judge. In support of his contention he has relied on a decision of the Supreme Court in the case of State of U.P. and Others Vs. Sushil Chandra and Another, . In that case an interim injunction was granted by the High Court in the petition challenging the validity of the order of State Government regarding sale of liquor. High Court gave liberty to the State to move High Court for vacating the said order. A petition was submitted by the State for vacating the ad interim order. High Court directed that all remaining applications in the proceedings to be listed for hearing and confirmed its previous order and granted stay. Against that State went on appeal to the Supreme Court and the Supreme Court at page 2192 observed as follows :--

The High Court had, with a view to investigate the question as to whether the respondents had right to the relief claimed, given ad interim relief staying the operation of an order challenged by the respondents. The order was purely temporary. The matter was going to be dealt with by the High Court., We fail to see any reason why the State should have rushed to this Court and asked this Court to entertain the proceedings and to grant a stay of the proceedings.

25. In our opinion a party aggrieved by an ex "parte interim order can either move to the trial court for vacating or variation of the interim order or he can prefer an appeal therefrom. Because it open to the aggrieved party to move the trial court, it does not take away his right to prefer an appeal against an order which has affected him prejudicially. It is not a case where after filing an application for vacating the interim order in the Appeal Court, the aggrieved party has chosen to come to the Appeal Court." There are very many reasons which may delay the hearing of an application even though it is listed. It is not known when the matter will be heard. Each case has to be decided on its own fact. On the facts of this case we do not find any thing reprehensible in the conduct of the appellants in rushing to the Appeal Court against the ex parte interim order dated 2nd December, 1983. The contention of Mr. Chatterjee, therefore, fails.

26. In the result, the application succeeds. The interim order dated 2nd December, 1983 passed by B.C. Ray, J. is set aside.

27. This order virtually disposes of the appeal. The appeal is treated as on day's

list and both the appeal and the application are disposed of as above.

28. There Will be no order as to costs.

The prayer for stay of operation of this judgment is disallowed.

M.M. Dutt, J.

I agree.