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Mohan Lal Vs. State and ors.

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Court : Rajasthan

Decided On : May-14-1965

Reported in : AIR1966Raj1; (1968)ILLJ248Raj

Judge : I.N. Modi and; B.P. Beri, JJ.

Acts : Constitution of India - Articles 12 and 16; Electricity (Supply) Act, 1948 - Sections 5 and 60

Appeal No. : Civil Misc. Writ Petn. No. 469 of 1963

Appellant : Mohan Lal

Respondent : State and ors.

Advocate for Def. : M.C. Bhandari, Adv. for Respondent No. 2,; A.R. Mehta, Adv. for Respondent No. 1;;

Advocate for Pet/Ap. : R.K. Rastogi, Adv.

Disposition : Petition allowed

Judgement :
ORDER

On reversion from the Public Works Department Shri Mohan Lal, Foreman I, is hereby posted as Foreman I, Chambal Grid Sub Station, Udaipur (De-bari), against newly sanctioned post vide Rajasthan State Electricity Board's order No.

RSEB/Cell. 3/F. 1 (60) D. 2969, dated llth June, 1963 from the date he reports duty.

Shri Mohan Lal, will report duty to Executive Engineer (Local Distribution), Rajasthan State Electricity Public Works Department.

Sd/- K.C. Satsangi.

Chief Engineer-Technical Member.'

This is how the petitioner came back to the State Electricity Board. The petitioner's grievance, however, is that during the period he was on deputation to the Public Works Department there were a number of persons who were junior to him in the pre-existing Electrical and Mechanical Department and like him who were serving in the Electricity Board, and these persons who are respondents Nos. 4 to 14 before us had been promoted as officiating Assistant Engineers or as temporary Assistant Engineers on trial for one year in the first instance, and all these persons were subsequently confirmed as Assistant Engineers, in support whereof a specimen order (Ex. 11) has been produced with respect to respondent Abdul Hamid.

The petition has been somewhat inartistically drafted but the petitioner's case as represented before us can be put in nut-shell like this. His main grievance is that while all these persons who were junior to him were the first promoted as officiating or temporary Assistant Engineers and later confirmed, as such his case had been entirely ignored and over-looked and in doing so Articles 14 and 16 of the Constitution had been flagrantly violated, that he was senior to all of them and that there was nothing to disqualify him from promotion and consequently the order of Rajasthan Electricity Board dated the 29th April, 1961 (Ex. 7) by which the aforesaid 11 respondents were promoted as officiating or temporary Assistant Engineers be quashed, and although this prayer has not been specifically included in the writ petition it was further prayed before us that the subsequent orders of the authorities concerned confirming them in the said post be also quashed. It was further prayed that a direction be issued to the Board to consider the petitioner's case for promotion and assign his due seniority to him. This application has been

opposed before us by the Rajasthan State Electricity Board, who is respondent No. 2. Two of the respondents Dev Dutta Joshi and Abdul Hamid have put in their appearance before us through their respective counsel but no written reply has been filed on behalf of them. We regret to have to state that the State of Rajasthan, who is respondent No. 1 in this petition, has also not chosen to file any reply.

2. The principal contentions raised on behalf of the Electricity Board may be summarised as follows :

(a) That the petitioner ceased to be an employee of the Board as soon as he was sent on deputation as Assistant Engineer to the Public Works Department and, therefore, he had no right whatever to be considered for promotion to any of the vacant posts under the control of the Board.

(b) That even if the first contention is answered against the respondent Board the petitioner's case cannot attract the operation of Article 14 or Article 16 of the Constitution inasmuch as that authority does not fall within the ambit of the expression 'State' as used in those articles and, therefore, the petitioner would not be entitled to any relief from this Court in the exercise of its writ jurisdiction.

We propose to consider each of these contentions in the order in which we have set them out as above.

3. While dealing with the first question it may be pointed out at the very outset that the petitioner himself seems to have adopted in the initial part of his writ application the position that his parent department was the Public Works Department (Buildings and Roads) and that he was on deputation with the Electricity Board and that the Government was under a mis-understanding when it took him as if he were in the service of Electricity Board and reverted him to after his appointment as Assistant Engineer in the Public Works Department was put an end to. This position was, however, eventually given up before us, and, in our opinion, rightly; and his learned counsel confined himself to the case that when the Rajasthan State Electrical and Mechanical Department was abolished and the work which was being transacted by that Department was entrusted to the

Rajasthan Electricity Board on its formation in 1957, the services of the personnel serving in the former Department with the exception of the Inspectorate, to which rank the petitioner does not belong, were placed at the disposal of the Board as per Government Notification dated the 12th February, 1958 referred to above (Ex. 8). We have already, quoted the relevant portion of the Notification above and its effect, in our opinion, undoubtedly was to provisionally place at the disposal of the Board the services of all the Government employees of the Electrical and Mechanical Department of the State excluding the Electrical Inspectorate both permanent and temporary.

This Notification further required that the Board shall permit each such Government servant to exercise option either to (a) accept the new grades and service conditions, or (b) continue in the present grade and service conditions, or (c) to retire from Government service on such pension or gratuity as may be admissible in the event of abolition of posts under the Rajasthan Service Rules. It is accepted before us that the Board was not able to frame its own grades and service conditions for quite a long time after 1957, and that these came to be framed some time in 1964. Our attention has in this connection been drawn, however, to the letter dated the 10th August, 1960 (Ex. 2) from the Deputy Secretary to the Government in the Irrigation and Power department to the Secretary Rajasthan Electricity Board, Jaipur, wherein an ad hoc decision was reached that pending final decision regarding the transfer of Government servants concerned to the service of the Board they will be treated as on deputation to it, though no deputation allowance was to be granted to them. The Board was required to pay leave salary directly to the staff and as regards the liability for pension the question was left open to be decided later on, but it was added that in the case of those who were retired before a final decision was taken the Board may discharge its liability by payment of pension contribution at the prescribed rates, so that the settlement of the pension claims of the retired servants concerned may not be held up.

The position therefore, seems to us to have been that the personnel who were placed at the disposal of the Board continued to retain old grades and serve under old service conditions. It is indeed accepted before us that the petitioner was never

given any option under paragraph 2 of the Notification of the 12th February, 1958. But it is contended that the services of the petitioner had in the meantime been placed at the disposal of the Public Works Department (Buildings and Roads) of the State (vide Ex. 1 dated the 27th January, 1960), and therefore, his connection with the Electricity Board had come to an end once for all- On giving our most careful and anxious consideration to all the factors pro and con on this aspect of the case we have not felt persuaded to accept this position as correct. There is no doubt that the petitioner's assignment in the Public Works Department (Buildings and Roads) was in the nature of a temporary deputation. That was the reason why his services came to be extended in that department from time to time until he was eventually reverted to the Board in July, 1963. We should also like to invite particular attention to the initial order of his aforesaid deputation in the Public Works Department (Ex. 1) in which it was clearly stated that he shall retain his lien in the Power Department. On our questioning learned counsel for the Board and the Oifice Incharge, who accompanied him, all that we have been able to discover is that there is no Power Department existing as such and that this is just another name for the State Electricity Board. That the services of the petitioner were still at the disposal of the Board is further apparent from the order of the Chief Engineer of the Board (Ex. 5) dated the 11th July, 1963, which speaks of 'the reversion of the petitioner' from the Public Works Department.

From all these facts and circumstances we have no hesitation in coming to the conclusion that the petitioner's services which had originally been placed at the disposal of the Board and had temporarily been lent to the Public Works Department still continued to remain with it on his reversion from that Department and, therefore, it would be hardly correct to say that his connection with the Board ceased as soon as he was sent on deputation to the Public Works Department. This conclusion, to our mind, is almost irresistible in view of the fact that the services of the petitioner having been placed at the disposal of the Board as an employee of the State Electrical and Mechanical Department the Board never gave him any option within the meaning of paragraph 2 of the Notification dated the 12th February, 1958 (Ex. 8) which it was its duty to give before his service under it could cease. In these circumstances, it seems to us, that to all intent and purpose the petitioner was entitled to be considered tor promotion to any of the

higher posts than that held by him under the Board just in the same manner as his colleagues in the erstwhile Electrical and Mechanical Department whose services had like been placed at the disposal of the Board were considered in 1961 and onwards.

The fact of the matter, however, is that he was not so considered, and this was in all probability due to the fact that he had in the meantime been deputed to the Public Works Department of the State and there held the post of an Assistant Engineer in an officiating capacity. That circumstances, however, should not, in our opinion, make any difference to the correct situation which as already stated was and must be that he was entitled to be considered for promotion to any of the higher posts under the Electricity Board when the question of selection thereto arose, and on which occasion or occasions like personnel were considered for such promotion. The failure to do so would ordinarily be violative of Article 16 of the Constitution which enshrines the principles of equality of opportunity in matter of public employment. There can be no doubt that the: phrase 'matters relating to employment or appointment to any office' must include matters relating to promotion also. (See General Manager Southern Railway v. Rangachari, AIR 1982 S C 36.)

4. It is, however, contended by learned counsel for the Board that the expression 'State' as used in Article 16 cannot be held to be properly applicable to the State Electricity Board the latter being a corporate and autonomous body by itself. Reliance was placed in support of this submission on Surendra Kumar Jain v. Central Board of Secondary Education, Ajmer, ILR (1957) 7 Raj 665 : (AIR 1957 Raj 206) and University of Madras v. Shantha Bai, AIR 1954 Mad 67. In the first case, which is a case of our own Court, the facts were that the Central Board of Secondary Education Ajmer prescribed by a certain regulation the minimum age of 14 years for appearance at the High School Examination while no similar age limit 'was prescribed by the Rajputana University. When the constitutional validity of the age limit prescribed by the Central Board of Secondary Education, Ajmer came to be challenged on the ground of inequality under Article 14 of the Constitution, the State of Aimer had become part of Rajasthan under the State Reorganisation Act, 1956. This argument was, however, repelled on the ground that the two

examinations, that is, the one held by the Board of Secondary Education, Ajmer and the other held by the Rajputana University were prescribed by different authorities and, therefore, could not be put in one and the same class and consequently Article 14 could have no application. On this conclusion no other question really arose though one of the learned Judges who decided that case (Bapna J.) went on to hold that Article 14 could not be attracted into application as the Central Board of Secondary Education, Ajmer would not fall within the ambit of the expression 'State' as used in that Article, or Article 12 of the Constitution. It was further held in this connection that the regulations framed by the Board were not laws within the meaning of Article 13 of the Constitution. The other learned Judge (Sharma J.), who was a party to this case, refrained from expressing his opinion on this second aspect of the case, referred to above, as he thought that it was not necessary to decide for the purposes of that case whether the Central Board of Secondary Education Ajmer fell within the definition of the 'State', and whether the impugned regulation of the Board was covered by the definition of 'law' under Article 13 of the Constitution. We should also like to point out with all respect that the view expressed by Bapna J. on this aspect of the case was in the nature of obiter dicta.

5. Turning next to the University of Madras case AIR 1954 Mad 67 the question that arose there was whether the University of Madras fell within the meaning of the expression 'State' as defined in Article 12 of the Constitution. It was held that the words 'local or other authority' as defined in Article 12 must be construed ejusdem generis with Government or Legislature and thus construed could only mean authorities exercising governmental functions, and consequently these would not include natural or juristic persons which could not be regarded as instrumentalities of the Government. It was further held that the University of Madras was a body corporate created by Madras Act VII of 1923, and that it was not charged with the execution of any governmental functions (as to the correctness of which proposition with utmost deference we have our own doubts) and it was a State-aided institution, but it was not maintained by the State and was authorised to raise its own funds of income from fees, endowments and the like. A distinction seems to have been drawn between State-maintained and State-aided Universities, and reliance having been placed on certain American authorities in

that regard, it was held that educational institutions would fall within the purview of the expression 'State' provided they are State-maintained and not otherwise, and, therefore, the Regulations of the University of Madras, which was State-aided and not State-maintained, would not fall within the prohibition enacted under Article 14. This case, apart from any other criticism to which it may be open having regard to the language of Article 12 of our Constitution, is clearly distinguishable from the case before us and does not afford any proper guidance in the decision of this controversy with which we are faced. The State Electricity Board with which we are concerned here has been constituted under the Indian Electricity (Supply) Act, 1948. This Act provides for the rationalisation of the production and supply of electricity and for taking measures conducive to electrical development and for all matters incidental thereto.

6. By Section 12, the Board has been made a corporate body having perpetual succession and a common seal with powers to acquire and hold property both movable and immovable and is empowered to sue and be sued by such name as it may have been given under Sub-section (1) of Section 5. Chapter IV deals with the power and duties of a State Electricity Board. Broadly speaking, the duty of the Board is to promote and control the co-ordinated development of the generation supply and distribution of electricity in the most efficient and economical manner possible throughout the length and breadth of the State. And after the Board has declared its intention to supply electricity for any purpose in any area, for which purpose and in which area it is competent to supply electricity, no licensee notwithstanding the provisions of the license of which he may already be in possession, shall at any time be entitled to supply electricity for that purpose in that area without the consent of the Board.

To achieve the objectives assigned to it under the Act the Board has been armed with extensive statutory powers vide Sections 18 to 27 of Chapter IV and Sections 28 to 58 of Chapter V. Among these, special attention may be invited to Section 36, which enables a Board to call upon a licensee Owning a generating station to close it down under certain circumstances and make other suitable arrangements as may be necessary under Section 47, and to Section 37 whereunder it can purchase any existing generating station. By Section 55, it is providea that every

licensee must comply with such reasonable directions as the Board may from time to time give him for the purpose of achieving the maximum economy and efficiency iu the operation of his undertaking. Section 7A provides for the establishment of Rating Committees by the Board (or, where no Board is constituted, by the State Government) where tht licensee has failed to comply with any of the provisions of the 6th and 7th Schedules of the Act whereupon the charges levied by the licensee for the supply of the electricity can be investigated and suitable recommendations in that behalf made to the Government.

Section 60 is then important and lays down, broadly speaking, that the Board shall assume all obligations of the State Government which existed at the time of the first constitution of the Board in respect of matters to which the Act of 1948 applies, and all such obligations and contracts incurred, entered into or engaged to be done by, with or for the State Government for any of the purposes of this Act shall be deemed to have been incurred, entered into engaged to be done by, with or for the Board, and further that all suits or other legal proceedings instituted or which could have otherwise been instituted by or against the State Government may be continued or instituted by or against the Board. This section also lays down that schemes sanctioned by the State Government and transferred to the Board shall, for the purposes of this Act, be deemed to have been sanctioned by the Board.

Section 74 then lays down that any officer or servant of the Board generally or specially authorised by the Board in this behalf may at any reasonable time after giving the owner or occupier reasonable notice enter upon any land or premises and there do such things as may be reasonably necessary for the purposes of lawfully using any transmission lines or main transmission lines, or of making any survey, examination or investigation preliminary or incidental to the exercise of powers or the performance of duties by the Board under this Act. Section 77 then lays down inter alia that if any licensee or other person fails without reasonable excuse to comply with or give effect to any direction, order or requirement issued by the Board under certain sections of the Act specified therein shall be punishable with fine which may extend to five hundred rupees and in the case of a continuing offence with a further fine which may extend to fifty rupees for each day

after the first during which the offence continues. Section 79 enacts that the Board may make regulations not inconsistent with the Act and the rules made by the Government thereunder to provide for the various matters specified therein and Clause (c) thereof pertains to the duties of officers and servants of the Board and their salaries, allowances and other conditions of service.

7. Having regard to the broad survey that we have made of the provisions of the Act relating to the constitution and the powers and duties of the Board, we are disposed to hold the opinion that it properly falls within the definition of the word 'State' contained in Article 12 of Chap. III of the Constitution (which deals with fundamental rights) and which definition reads as follows :

'In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of trie Government of India.'

This is indeed a very comprehensive definition. What requires to be specially noticed is that this definition not only embraces within its scope the Central and the State Governments and their respective Legislatures, and local authorities such as the municipalities or district boards or the like but also 'other authorities' within the territory of India which may not be so situate but are still under the control of the Government of India. We have no hesitation in saying that the expression 'or other authorities' has to be given some meaning on all well established principles of statutory interpretation, and surely the makers of the Constitution did not use it as being merely synonymous with the phrase 'local authorities.' It seems to us that this expression will include all public authorities, that is, authorities which are created by a statute and are armed with powers and functions in a given Held of activity and tor the control thereof, and which authorities have the power to make their own rules and regulations, having the force of law. We should also like to add that the mere fact that the Board is a body corporate and is autonomous within certain limits or the iurther argument that it has to work out its own financts can hardly be accepted as a valid argument for holding that it does not fall within the ambit of the expression 'state' as defined in Article 12 of the Constitution with

which definition we are directly concerned in the present case, for all these attributes are to be found more or less in a municipal or a district Board, and yet by an express provision made in Article 12. these bodies undoubtedly fall within the expression 'State' for the purpose of Chap. III of the Constitution which deals with fundamental rights. In fact the juxtaposition in which the expression 'all local or other authorities' occurs in Article 12 clearly seems to us to point in a contrary direction, namely, that 'other authorities' which may be created by a statute and are invested with duties of a public character (like municipalities or district boards) and have the powers to make their own rules and regulations which have the force of law are as such included in the definition of the word 'State' as this other class of authorities namely the local authorities which have been specifically mentioned in the Article and are doubtless covered by the definition. In support of the view which we have felt persuaded to accept, reference may be made to Bramadathan Nambooripad v. Cochin Devaswom Board, AIR 1956 Trav-Co 19 (FB); Sarangpani v. Port Trust of Madras, AIR 1961 Mad 234 and S.K. Mukherjee v. Chemicals and Allied 'Products, Export Promotion Council, AIR 1962 Cal '10. From the discussion that we have made above, it must follow as a corollary that if the Board in ordering certain promotions of the personnel working under it has failed to afford an equal opportunity to any of them, then there can be no doubt that the failure to do so would attract the application of Article 16 of the Constitution. We hold accordingly.

8. It remains for us to deal with a subsidiary argument which was raised by learned counsel for the Board to exclude the applicability of Article 16 and that is that as the petitioner happened to be serving on deputation in the Public Works Department at the time the impugned selection to certain higher posts was made by the Board and respondents Nos. 4 to 14 were directly serving under it at the relevant time, it could not be said that the petitioner and these other respondents were similarly circumstanced and so these other persons stood in a class by themselves as contra-distinguished from the petitioner and consequently there was no violation of Article 16. Reliance was placed before us in support of this submission on the Union of India v. Pandurang Kashi Nath, AIR 1962 S C 630. We have carefully considered this contention and are of opinion that it is devoid of all substance. The mere fact that the petitioner whose services had been placed at the disposal of the Board as a result of the formation of the Electricity Board had

since gone on deputation of a temporary character to another department cannot be accepted in our considered judgment as any sound reason for not considering him for promotion to certain higher openings under the Board in the same manner as other personnel whose services were equally provisionally placed at its disposal and who were, to start with, promoted by it, temporarily and later confirmed. The case of the Supreme Court, AIR 1962 S C 630 (Supra) on which learned counsel relies is based on entirely different facts and affords no parallel whatever to the case before us.

9. The result, therefore, is this: We hold that the respondent Board had fallen into a grave error of procedure when it failed to consider the case of the petitioner at the time of selection to certain posts under it which were higher in the rank held by him and when his services stood temporarily placed at the disposal of the Public Works Department, and that thereby he was subjected to a denial of equal opportunity of promotion, and thereby Article 16 of the Constitution was violated.

10. We accordingly allow this petition and hold that the orders passed by the Board on the 29th April, 1961, and subsequent orders confirming respondents Nos. 4 to 14 shall be inoperative against him, and we further direct that he shall be considered for promotion to the post of an Assistant Engineer for the selection made in 1961 and/or any other selection which might have been held subsequently thereto, and if he is found fit for such posts, he shall be assigned his due seniority according to rules. As for costs we think that as the petitioner's writ petition was framed in a rather inexact and inartistic manner, he should bear his own costs. We order accordingly.

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