

In Re: Shibnath Chatterjee

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Court : Kolkata

Decided On : Aug-21-1990

Reported in : (1990)2CALLT396(HC)

Judge : Shyamal Kumar Sen, J.

Acts : [Constitution of India](#) - Articles 14 and 226

Appellant : In Re: Shibnath Chatterjee

Advocate for Def. : Udayan Sen, Adv.

Advocate for Pet/Ap. : Sudipta Moitra and ;Tarun Das Sharma, Advs.

Judgement :

Shyamal Kumar Sen, J.

1. It is the case of the Writ Petitioner that he was originally an employee at the Kolaghat Thermal Power Project under the West Bengal State Electricity Board. A Notification was issued by the Government of West Bengal Department of Power on November 4, 1986 whereby a Generating Company namely, The West Bengal Power Development Corporation Limited (hereinafter referred to as the Generating Company) was established by the State Government. Under Clause 6 of the said Notification the employees posted at the Generating Stations would continue to hold such posts under the Board on the same scales of pay and allowances and

with all benefits available to them under the Board's service regulations till such time, not exceeding one year from the date of the Notification. The employees were given the right to exercise option as to whether they would continue under the Power Development Corporation. The said Clause 6 with its different sub-clauses are set out herebelow :-

'6 (a) The employees presently posted at the generating station shall continue to be borne on the cadres of the Board and shall also continue to hold such posts on the same scales of pay and allowances and with all benefits available to them under the Board's service regulations till such time, not exceeding one year from the date of this notification.

(b) That the employees holding posts in the generating station shall continue to draw their pay and allowances etc. from the Board and the Generating Company shall reimburse the Board all such expenditure incurred on account of emoluments, benefits, etc. in such manner as may be mutually agreed upon between the Board and the Generating Company.

(c) That within a period not exceeding three months from the date of this notification, the employees of the Board holding posts in the generating station shall exercise options indicating their willingness to be absorbed or otherwise in the Generating Company as per the service regulations of the latter.

(d) In case the number of such optees is found to be inadequate, fresh options shall be obtained within a period of six months from the date of this notification from the employees of the Board posted in establishments, other than the generating station, for absorption in the Generating Company as per its service regulations.

(e) The Employees of the Board posted in the generating station shall act and discharge their duties under the guidance, supervision and control of the Generating Company till their repatriation to the Board due to non-absorption in the Generating Company.

(f) On receipt of the options from the employees of the Board, the Generating Company shall take steps for absorption in its own cadre as per the service regulations within a period of one year and in such manner that the interests of the employees of the Generating Company and the Board are safeguarded.

(g) The employees of the Board thus absorbed in the Generating Company shall, however, enjoy the lien for the period of one year at the initial stage.'

2. As provided in the said clause the petitioner exercise his right of option. The West Bengal Power Development Corporation Limited the respondent No. 1 by a letter dated November 3, 1987 confirmed the acceptance of the option exercised by the petitioner on March 28, 1987. By the said letter the respondent also recorded that in terms of Clause 6(g) of the Notification the petitioner will enjoy the lien on the West Bengal State Electricity Board Service for a period of one year from November 4, 1987. It has also been provided in the said letter dated November 3, 1987 that a formal letter of absorption on the terms and conditions will be issued in due course. A xerox copy of the said letter has, however been annexed to the Writ Petition.

3. Unfortunately, the West Bengal Power Development Corporation Limited did not issue any formal letter of absorption. However, a release order was issued by the West Bengal Power Development Corporation Limited on June 4, 1990 whereby the petitioner was released with direction to report to the Secretary, West Bengal State Electricity Board. Subsequently, this order of release was kept in abeyance with regard to the petitioner till August 7, 1990. The petitioner has challenged the said impugned release order. There is no doubt that the petitioner has become an employee of the West Bengal Power Development Corporation Limited and in fact the Power Development Corporation by its letter dated November 3, 1987 has recorded that formal letter of absorption will be issued. It is not proper on the part of a governmental authority to resile from the stand it has taken. The Power Development Corporation should have issued a formal letter of absorption which it has promised to do on its letter dated November 3, 1987.

4. In my opinion, in terms of Clause 6 of the said Notification since the petitioner has exercised option and the option has been duly accepted by the Power

Development Corporation and he has become an employee of the Power Development Corporation and it has no power or jurisdiction to issue release order and direct him to report to the West Bengal State Electricity Board. Under such circumstances the release order dated June 4, 1990, so far as the petitioner is concerned, stands quashed. The Writ Petitioner succeeds in this Writ Petition.

5. The Writ Petition is thus disposed of. There will be no order as to costs.

6. Let Xerox copies of this order duly authenticated be supplied to the learned Advocates for the parties by the department upon payment of usual charges and upon an undertaking to apply for and obtain certified copy of this order.

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