

A **BISWANATH BANARJEE**

v.

STATE OF WEST BENGAL & ORS.

March 2, 1971

B [K. S. HEGDE AND P. JAGANMOHAN REDDY, JJ.]

C *West Bengal Board of Secondary Education Act (5 of 1963), ss. 16 and 46(2)—Existing employees to continue in office till arrangements are made under the Act—Appointment of Secretary under the Act—Whether services of previous Secretary dispensed with—Whether existing employees are 'deemed' to be the employees of the Board under the Act.*

D In 1962, the appellant was appointed Secretary of the Board of Secondary Education constituted under the West Bengal Secondary Education Act, 1950, as amended in 1954. In 1963, the West Bengal Board of Secondary Education Act was enacted repealing the earlier Acts and the rules made thereunder. The 1963-Act constituted an entirely new Board of Secondary Education. Under s. 46(2), the services of the persons in the employment of the Board under the old Act are continued until other provision is made. Under s. 16, the power of appointment of the Secretary for the Board is vested in the State Government and not in the Board. Rule 8 of the Rules made under the 1963-Act provided that the State Government may dispense with the services of the Secretary on three months' notice or payment of three months' salary in lieu of notice. The State Government dispensed with the services of the appellant paying him three months' salary in lieu of notice, and appointed a new secretary in his place.

E On the questions : (1) Whether the State Government could act under r. 8 in respect of a person who is continued in service under s. 46 of the 1963-Act; and (2) Whether the services of an employee of the Board could be terminated by the State Government,

F HELD : (1) All that the 1963-Act provides for is the continuance of the employees of the previous Board till other arrangements are made. That is, in the present case, the appellant was continued in service only until another secretary was appointed by the State Government under the 1963-Act; and the State Government has the power to appoint a Secretary under s. 16 of the Act, irrespective of its powers under the Rules. [901 A-C]

G (2) Under s. 46(2) of the 1963-Act the appellant merely continues in service but he is not *deemed to be an employee of the Board*. Therefore, there is no basis for the argument that the services of an employee of the Board could only be terminated only by the Board and not by the State Government. [901 C, F]

H *State of Assam v. Kripanath Sarma*, [1967] 1 S.C.R. 499, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1674 and 1675 of 1969.

Appeals from the judgment and decree dated July 23, 1968 of the Calcutta High Court in Appeal from Original Order Nos. 185 and 186 of 1967.

B. Sen, D. N. Mukherjee and Somendra Chandra Bose, for the appellant.

K. R. Chaudhuri and K. Rajendra Chowdhary, for respondents Nos. 2, 3 and 6.

Santosh Chatterjee, G. S. Chatterjee for Sukumar Basu, for respondent No. 1.

The Judgment of the Court was delivered by

P. Jaganmohan Reddy, J.—These appeals are by a certificate under Art. 132(C) of the Constitution of India against the judgment of the Calcutta High Court, which have by an order of this Court dated 25-8-1969 been consolidated for the purpose of hearing. The short question for determination in these appeals is whether under the provisions of the West Bengal Board of Secondary Education Act 5 of 1963 read with Rule 8 of the West Bengal Board of Secondary Education (Appointment of Secretary) Rules, the appellant could be discharged from the service of the Board of Education. The appellant was an office Superintendent of the Board constituted under the West Bengal Secondary Education Act 37 of 1950 (hereinafter called 'the 1950 Act'). He was promoted as Assistant Secretary on 12-7-1952, as Deputy Secretary on 18-6-56 and on the 1st/8th August 1962 he was appointed as Secretary on probation and confirmed on 1-8-63 by an order dated the 24th August '63. The appellant continued in this office till 25th November '66 when his services were dispensed with, with immediate effect on payment of 3 months salary in lieu of notice. In his place the Government by its order of the same date appointed temporarily respondent 6-D. Mazumdar, Director of Consumer Goods, West Bengal as Secretary for a period not exceeding 6 months from the date on which he takes charge of the office. As we have earlier mentioned the initial Act under which his appointment was made was the Act of 1950. Subsequently another Act known as the West Bengal Secondary Education (Temporary Provision) Act 24 of 1954 was passed by the Legislature, by which the Board created by the Act of 1950 was superseded and its powers were vested in an administrator appointed by the State Government. It was the administrator who had appointed the petitioner on probation. On the 20th February '63 the West Bengal Board of Secondary Education Act 5 of 1963 (hereinafter called 'the 1963 Act') was passed which came into force on 1-1-1964. Before this Act came into force

- A certain regulations were made on 12-12-63 under the Act of 1950, rule 4 of which dealt with the conditions of service which were similar to those in Rule 4 of 1951 regulations made on 19-9-51. Under regulation 4 of 1951 the Board had power to dispense with the services of the Secretary or any officer by giving 3 months notice or on payment to him of 3 months salary in lieu of notice.
- B Act 22 of 1954 it may be mentioned did not abolish the Board but only authorised the Administrator to carry on the duties and functions vested in the Board so that the appellant when he was appointed on probation by the Administrator was an employee of the Board. The 1963 Act by clause 1 of Sec. 46 repealed both the 1950 Act as well as the temporary provisions Act 22 of 1954
- C and by sub-clause (2) it provided that "all Officers and other persons in the employment of the Board of Secondary Education immediately before the commencement of this Act shall until provision is made continue in the service of the Board". It may here be mentioned that prior to the enforcement of the Act on 1-1-64 the Government had made and published rules under that Act known as the West Bengal Secondary Education (appointment of
- D Secretary) Rules 1963, rule 8 whereof is in the following terms :

"The State Government shall have the power to dispense with the services of the Secretary on three months' notice or in lieu of such notice on payment of three months' salary and also to discharge or dismiss the Secretary from service without notice or compensation in the event of misconduct or of a breach of any of the duties attached to the post of Secretary".

It is in exercise of powers vested under this Rule that the Governor dispensed with the services of the appellant which is now challenged. The learned Advocate for the appellant contends

F *inter-alia* that :—

(i) the rule under which the appellant's services have been dispensed with have no application to the case of a person who continues in service under Sec. 46(2)(c) of the 1963 Act,

(ii) being an employee of the Board, his services could only be terminated by the Board and not by the State Government,

(iii) Sec. 46(2)(c) envisages that till some other employment is found for all those persons who were in employment of the Board of Secondary Education before the commencement of the 1963 Act, they cannot be discharged.

H For an appreciation of these contentions it is necessary to examine the relevant provisions of the 1963 Act.

Under Sec. 2(a) the Board means the West Bengal Board of Secondary Education established under the 1963 Act. Section 3

empowers the State Government as soon as may be after the Act comes into force to establish the Board named the West Bengal Secondary Education Board. The Board shall be a body corporate with perpetual succession and a common seal. Section 4 deals with the composition of the Board which it may be stated is totally different to that which comprised the Board, under the 1950 Act. The appointment of persons in the service of the Board and their condition of service etc. are the subject matter of Section 16, the relevant provisions of which are as follows :—

- (1) The Board shall have a Secretary who shall be appointed by the State Govt.
- (2) The Board may appoint such other officers and servants as it considers necessary for carrying out the purposes of this Act.
- (3) The terms and conditions of appointment and the scales of pay and allowances, if any, shall—
 - (a) as respect the Secretary be such as may be prescribed, and
 - (b) as respect the other officers and servants be such as may be determined by regulations.

(4)

Sub-sec. (1) of Sec. 45 empowers the State Govt. after previous publication, to make rules for carrying out the purposes of this Act and sub-sec. (2)(f) provides that :

“In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (f) the terms and conditions of appointment, the scale of pay and the rules of discipline relating to the Secretary of the Board.

It is under the last mentioned provision 45(2)(f) that the rules were made, rule 8 of which we have already extracted. It will thus be seen that the 1963 Act constituted an entirely new Board of Secondary Education and after repealing the old Acts it continued the services of the Officers and other persons in the employment of the Board of Education under the old Act until other provision is made. It may be stated that the power of appointment of a Secretary for the Board under Sec. 16 is not vested in the Board but in the Govt. as such there can be no validity in the contention of the learned Advocate for the appellant that the Govt. has no power to appoint a Secretary in place

- A of the appellant who according to him still continues as Secretary under the Board. As we read the provisions, we are clear in our minds and it admits of no doubt that the Board has no power to appoint a Secretary, nor has the appellant a right to the post as such. All that the Act provides for is the continuance of the employees of the previous Board till other arrangements
- B are made, namely till a Secretary is appointed by the Govt. In our view the appointment of the new Secretary can be traceable to the powers vested in the Govt. under Sec. 16 irrespective of the power vested under the rules. The argument that the appellant being an employee of the Board his services could only be terminated by the Board and not by the State Govt. has no validity
- C in that the old rules have been repealed and the new Board has no power to appoint a Secretary. It has been urged before us that a decision of this Court in *State of Assam v. Kripanath Sarma & Ors. etc.*⁽¹⁾, lends support to the contention of the learned Advocate. That case was under the Assam Elementary Education Act 1962 the relevant provisions of which are not in
- D *pari-materia* with the provisions of the Act which we are called upon to consider. The respondents in that case were Elementary Education School Teachers appointed under the Assam Basic Education Act 1954. That Act was repealed by the Assam Elementary Education Act 1962 under which the Board was to be constituted and in the place of the School Boards functioning under the 1954 Act, the Deputy Inspectors of Schools were made
- E Assistant Secretary of the said Board within their respective jurisdiction. Sec. 34(2) provided that all the Elementary School Teachers appointed under the 1954 Act would be taken over by the State Board and who under Section 38 were further deemed to have been employed by the said Board. The statute therefore provided that they were the employees of the Board. Sec. 46(2)
- F (c) however merely continues them and does not deem them to be employees of the Board. What happened in that case was that the Board merely passed a resolution "that all teachers who are not Matriculates or who have not passed the Teachers test but who are working as Teachers in School shall be discharged with effect from 31-3-63". The Assistant Secretary without
- G obtaining specific sanction from the Board issued orders for their discharge which he had no power to do. In those circumstances the power to terminate the services being in the Board, it was held that the order of termination by the Assistant Secretary was invalid. This case does not help the appellant. Lastly the learned Advocate sought to press in aid a Judgment of a Bench of the Calcutta High Court in *Bidyut Kr. Biswas & Ors. v. West Bengal Board of Secondary Education & Ors.*⁽²⁾, in which the
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(1) [1967] 1 S.C.R. 499.

(2) C.W.N. Vol. 73 (1968-69) 417.

provision of Sec. 46(2)(c) of the 1963 Act were dealt with in support of his contention that the persons in the employment of Board of Secondary Education under the 1950 Act could only be discharged if an alternative employment is found for them inasmuch as the words 'until other provision is made' justifies that conclusion. This point has not been raised in the Writ Petition nor has it been urged either before the Single Bench or before the Division Bench of the High Court and is sought to be raised for the first time before this Court. We cannot permit him to do so, and therefore express no views on this aspect of the case. In the result the appeals are dismissed but in the circumstances without costs.

V.P.S.

Appeals dismissed.