

CASE NO.:
Appeal (civil) 4992 of 2001

PETITIONER:
THE MEGHALAYA STATE ELECTRICITY BOARD & ANOTHER

Vs.

RESPONDENT:
SHRI JAGADINDRA ARJUN

DATE OF JUDGMENT: 02/08/2001

BENCH:
M.B. Shah & Doraiswamy Raju

JUDGMENT:

Shah, J.

Leave granted.

This appeal has been filed by the Meghalaya State Electricity Board (MSEB for short), a board duly constituted under Section 5 of the Electricity (Supply) Act, 1948, (hereinafter referred to as the Electricity Act) challenging the judgment and order dated 22.7.1999 passed by the Division Bench of High Court of Gauhati, Bench at Shillong in Writ Appeal No.19 (SH) of 1998. By the impugned judgment, the High Court set aside the judgment of learned Single Judge dismissing the writ petition filed by the respondent employee challenging an order dated 24.7.1997 of compulsory retirement from service. The learned Single Judge dismissed the writ petition filed by the respondents by order dated 10.8.1998 by holding that the MSEB had not framed any regulations regulating the service conditions of its employees and had instead adopted the Assam State Electricity Board (General Conditions of Service) Regulations, 1960 by passing a resolution on 17.5.1975. Similarly, it was also open to the Board to adopt the provisions of FR 57(b) of the Meghalaya Fundamental Rules for compulsory retirement by passing resolution. He further held that it was clear in the Office Memorandum dated 6.10.1989 of the MSEB that the said Board has adopted the orders contained in the Office Memorandum dated 21.7.88 of the Government of Meghalaya, Personnel & AR (A) Department, for compulsory retirement of its employees in accordance with FR 57(b) of the FR & SR, 1984. The learned Judge also held that the respondent had not made out any case of mala fide and there was no evidence of arbitrariness. For this he himself perused the service records of the respondent herein and found that he had been given the lowest grading of D, his performance had not been satisfactory and that he had become a dead-wood for the organisation.

In appeal, the Division Bench of the High Court reversed the judgment by holding that MSEB had no authority or power to compulsorily retire its employees prior to the coming into force of the MSEB (Discipline and Appeal) Regulations 1996 which were published in the Gazette on 1.9.1997. The Court held that prior to this date, there was no provision for compulsory retirement except by way of major punishment. The Court further held that office memo of the

MSEB dated 10.5.1989 only adopts the procedure prescribed by the Government of Meghalaya by office memo dated 21.7.1988. The said memo does not vest any power in the Government to compulsory retire its employees.

Mr. Bhattacharjee, learned counsel appearing on behalf of the respondent supported the impugned order passed by the High Court by submitting that the MSEB has not adopted FR 57(b) which empowers the Government to compulsorily retire its employees at the age of 50 years or after completion of 25 years of service. He also submitted that without framing any regulations, only by passing resolution, the MSEB cannot lay down the service conditions of its employees.

For appreciating this contention, we would first refer to the resolution No.6 dated 10.5.1989 passed by the MSEB which reads thus:-

Resolution No.6 (10.5.1989)The Board went through the Govt/s O.M. No.PER.218/75/106dated 21.7.1988 concerning the premature retirement of Govt. servants under F.R.57(b). All the members of the Board agreed that the Govt.s order are based on sound policy and felt that the same should be implemented in the MSEB. Accordingly, the members decided to adopt the above O.M. with changes in the names of the members of the Review Committee. The Board should have its own Committee to be constituted by the Chairman of the Board.

The review should be carried out immediately. The Review Committee is constituted.

Thereafter, Office Memo dated 6.10.89 was issued by the MSEB adopting the Office Memo dated 21.7.88 of the Govt. of Meghalaya which reads as under:-

The question of retiring a Boards employee by giving him/her notice not less than 3 months in writing or 3 months pay and allowances in lieu of such notices after he/she has attained 50 years of age or has completed 25 years of service, whichever is earlier, if it serves the interest of the Board has been under consideration for some times. The Board in its meeting held on the 10th May, 1989 after a very careful consideration decided to adopt the orders contained in the Govt. of Meghalaya, Personnel & A.R. (A) Departments Office memorandum No. PER.218/75/106 dated 21.7.88, a copy of which is enclosed and to come into force with immediate effect.

In line with the orders above, a Review Committee is constituted to consist of the following members:

1. Chairman, M.S.E.B. - Chairman of the Committee
2. Chief Accounts Officer)
3. Chief Engineer (E)) Members. The Chief
4. Chief Engineer (C)) Personnel Officers shall
5. Chief Personnel Officer) also act as Member-Secy.

In order to ensure that the review is carried out regularly, all the Heads of offices are required to maintain a register of the Boards employees who are due to attain the age of 50 years or are due to complete 25 years service, as the case may be. The register should be scrutinised at the beginning of every quarter and the review undertaken

according to the following schedule:

Quarter in which Cases of Govt. servants who have review is to be attained fifty years of age or completed made twenty five years of service, as the case may be, in the quarter indicated below to be reviewed.

1. Jan. to March October to December of the previous year.
2. April to June January to March of the same year.
3. July to Sept. April to June of the same year
4. Oct. to Dec. July to September of the same year.

All the Heads of Offices are also required to ensure a regular submission of a quarterly report of cases requiring decision in the matter of premature retirement to the Member Secretary of the Review Committee with a copy to his superior Officer and the Head of the Department concerned. Even if there is no case for consideration of such employees, a Nil report should be submitted.

The above instructions should be strictly adhered to.

Sd/-
(Smt. L. Phookan)
Secretary, 6.10.89.

It is thus clear that what has been adopted in connection with compulsory retirement is the Office Memo dated 21.7.88 of the Govt. of Meghalaya. 1984. A close reading of the Office Memo dated 21.7.88 indicates that in the light of the power vested in the Government under F.R. 57(b) of the Meghalaya FSR, 1984, the Government constituted a Review Committee to consider the cases of premature retirement of Govt. servants under F.R. 57(b). Relevant part of the Office Memo dated 21.7.88 reads as under:-

Sub: Premature retirement of Government servants under F.R. 57(b).

The undersigned is directed to say that under F.R. 57(b) of the Meghalaya Fundamental & Subsidiary Rules, 1984, the appropriate authority may, if he is of the opinion that it is in the public interest to do so, retire a Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice after he has attained fifty years of age or has completed twenty-five years of service, whichever is earlier. The term appropriate authority referred to above means the authority which has the power to make substantive appointment to the post or service from which the Government servant is required to retire.

The above rule, commonly referred to as the rule of premature retirement, is based on sound policy and is meant to subserve public interest. The object of the above rule is to weed out (1) Govt. servants of doubtful integrity; (2) Govt. servants who have outlived their utility and have become inefficient or ineffective; and (3) Govt. servants whose physical and mental condition is

such as to make them incapable of further satisfactory service.

In order to achieve the objective mentioned above, the State Govt. is pleased to constitute a Review Committee for each and every department of the Govt. to consider the cases of premature retirement of Govt. servants under FR 57(b) as recommended by the Appointing Authority on the basis of C.R. dossiers and other reports/documents made available to it, and consisting of the following officers:

1. Shri J.M. Phira, I.A.S. Chairman
2. Shri H.N. Mookherjee, I.A.S ... Member
3. Shri W.M.S. Pariat, IAS Member.
4. Special Secretary/Secretary/
Addl. Secretary of the
Deptt. Concerned.

Where the appointing authority is satisfied that a Govt. servant who has attained fifty years of age or has completed twenty-five years service has ceased to take any interest in his work or has become ineffective or inefficient or whose physical or mental condition is such as to make him incapable of further service or whose integrity is in doubt, such persons should be considered for premature retirement under F.R. 57(b). A list of such persons with their service records and character Rolls together with the recommendation of the Appointing Authority that they may be prematurely retired under F.R. 57(b) should be sent to the Member Secretary of the Review Committee of the Department for the purpose of placing of such cases for consideration of the Review Committee. The Special Secretary/ Secretary/Addl. Secretary of the respective Deptt. (in his capacity as Member Secretary) should ensure that such cases are placed before the Review Committee for consideration as early as possible. Since premature retirement is sought to be made purely in public interest, the Review Committee should not have any hesitation in deciding such cases on merits.

In order...quarter.

Sd/- V. Ramakrishnan
Chief Secretary to the Govt. of
Meghalaya

The aforesaid Government Memorandum begins with the subject Premature retirement of Government servants under FR 57(b). By passing a resolution, MSEB has adopted the said Memo. This would mean that MSEB has adopted power and procedure for compulsory retirement. Further, the Government Memo itself provides that where appointing authority is satisfied that a Government servant who has attained 50 years of age or has completed 25 years service and has ceased to take any interest in his work or has become ineffective or inefficient or whose physical or mental condition is such as to make him incapable of further service or whose integrity is in doubt, such person should be considered for premature retirement under FR 57(b). Once that part of the Government Memo is adopted by the MSEB, it would be totally unjustifiable to hold that the MSEB has not adopted the power of

compulsory retirement as provided in FR 57(b). It appears that the High Court has not completely referred to the aforesaid Government Memo. Further, the resolution no.6 quoted above specifically mentions that all the members of the Board agreed that the Government's order concerning the pre-mature retirement of Government servants under F.R.57 (b) is based on sound principles and felt that the same should be implemented in the MSEB and it was decided to issue office memo accordingly and to constitute a review committee. Hence, in our view, the reason given by the High Court that the MSEB has not adopted the power of compulsory retirement by passing the aforesaid resolution is without referring the resolution passed by the Board and the office memo issued by the government.

Further, it is to be stated that MSEB in its meeting held on 21.3.1975 decided to adopt A.S.E.B. (General Conditions of Service) Regulations, 1960 of the old Assam State Electricity Board. That would mean that MSEB has not framed its regulations but by passing a resolution it had adopted the regulations framed by the ASEB. The said Regulations admittedly did not contain provision for compulsory retirement of its employees at the age of 50 years or after completion of 25 years of service. Hence, the Board by passing a resolution no.6 has adopted the powers of pre-mature retirement of its employees. Adoption of the regulations framed by the ASEB containing other service conditions was by passing a resolution by the Board. Same procedure was adopted by the Board in adopting the provisions for compulsory retirement. Therefore, it cannot be said that the Board has framed any regulation which is contrary to regulations framed under Section 79 of the Act.

Learned counsel Mr. Bhattacharjee next contended that in absence of any regulation framed by the MSEB under Section 79(c) of the Electricity Supply Act governing the service conditions of its employees or for compulsory retirement before superannuation, it was not open to the MSEB to issue the impugned order and that service conditions could not be prescribed by the Board by passing resolution. For appreciating this contention, we would refer to Sections 15 of the Electricity Act which reads as under: -

15. Appointment of staffThe Board may appoint a Secretary and such other officers and employees as may be required to enable the Board to carry out its functions under this Act:

Provided that the appointment of the Secretary shall be subject to the approval of the State Government.

Further, Section 78 (A) provides that in discharge of its function, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government. Section 79 empowers the Board to make regulations. Relevant part of Section 79 reads thus:

79. Power to make regulationsThe Board may by notification in the Official Gazette make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely:-

(a) (b)

(c) the duties of officers and other employees of the Board, and their salaries, allowances and other conditions of service;

(d) (k)

Provided that regulations under clauses (a) (d) and (jj) shall be made only with the previous approval of the State Government and regulations under clauses (h) and (i) shall be made with the concurrence of the Authority.

As per section 79(c), MSEB may frame regulations not inconsistent with the provisions of the Act and the Rules providing for the duties of officers and other employees of the Board and their salary, allowances and other conditions of service. It is to be stated that this is an enabling provision. The MSEB may frame regulations as provided in section 79 (c) of the Act, but in the absence of any regulations, the MSEB can lay down service conditions by administrative order/instructions. Section 15 of the Act empowers the Board to appoint its employees as may be required to enable the MSEB to carry out its functions under the Act except the Secretary who is to be appointed with previous approval of the State Government. The power to lay down service conditions by regulations is expressly conferred upon the MSEB, so it has power to prescribe service conditions. Section 78A also provides that except on question of policy for which the State Government has issued directions, the Board is entitled to discharge its functions prescribed under the Act which would include appointment of staff to enable it to carry out its functions and also lay down service conditions. Hence, if there are no rules or regulations pertaining to service conditions of its employees, same could be prescribed by administrative order and such power of the employer which is a statutory corporation would be implied.

Dealing with the similar provisions, this Court in Mysore State Road Transport Corporation vs. Gopinath Gundachar Char [(1968) 1 SCR 767], U.P. State Electricity Board, Lucknow etc. vs. City Board, Mussoorie and Others [(1985) 2 SCC 16] and V. Balasubramaniam and others vs. Tamil Nadu Housing Board and others [(1987) 4 SCC 738] rejected the contention that the Board/Corporation has no such power to lay down conditions of service by passing a resolution. In the case of U.P. State Electricity Board (supra), the Court dealt with a contention that in the absence of any regulation framed by the Electricity Board under Section 79(h) of the Act regarding the principles governing the fixing of Grid Tariffs, it would not be open to the board to issue the notification fixing the grid tariffs. Section 46 of the Act provides that a tariff to be known as the Grid Tariff shall in accordance with any regulations made in this behalf be fixed from time to time by the Board in respect of each area for which a scheme is in force. The Court observed that Section 46 does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf and if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. Framing of regulations under Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff. The Court also referred to the decision in Gopinath Gundachar Char (supra) which was a case arising under the Road Transport Corporation Act, 1950. Under Section 14 of that Act a Road Transport Corporation was entitled to appoint officers and servants as it considered necessary for the efficient performance of its functions. Under Section 34(1) of the Road Transport Corporation Act, 1950 the State Government had been empowered inter alia to issue directions to the Road Transport Corporation regarding recruitment, conditions of service and training of its employees. Under Section 45(2)(c) of that Act, the Road Transport Corporation was empowered to make regulations regarding the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer, General Manager and the Chief Accounts Officer. No regulations were framed under Section 45(2)(c) of that

Act. It was contended that the Corporation could not appoint officers and servants referred to therein or make any provision regarding their conditions of service until such regulations were made. This Court rejected the said plea by holding that:

until such regulations are framed or directions are given, the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit.

In case of V. Balasubramaniam (supra) the Court considered similar provisions of T.N. State Housing Board Act, 1961. Section 16 of the said Act empowered the Board to appoint a Secretary, a Housing Board Engineer and such other officers and servants as it considers necessary for the efficient performance of its functions. Section 17 of the Act provided that the remuneration and other conditions of service of the said officers and servants of the Board shall be such as may be prescribed by regulations and Section 161 provided that the Board may by notification make regulations not inconsistent with the Act and the rules made thereunder, for the purpose of giving effect to the provisions of the Act. After referring to the decision in Mysore State Road Transport Corporation (Supra), the Court held that until appropriate regulations were published by the Board in accordance with Section 161 of the Act, power could be exercised by the Board in accordance with its own resolution. The Court further held that in the absence of clear words, it is difficult to impute to the legislature the intention that the Corporation would have no power to appoint officers and servants and fix the conditions of service unless the regulations under Section 45(2)(c) are framed.

In view of this settled legal position, MSEB which is empowered to make appointment of its officers and employees and frame statutory regulations laying down its service conditions, has power until the regulations are framed, to lay down service conditions in exercise of its administrative power by passing resolution.

In the result, the appeal is allowed and the impugned order passed by the High Court in Writ Appeal No.19(SH) of 1998 is quashed and set aside. There shall be no order as to costs.

.....J.
(M.B. SHAH)

.J.
(DORAISWAMY RAJU)

August 2, 2001.

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