

PETITIONER:
ELECTRICITY EMPLOYMENT UNION

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT: 29/08/2000

BENCH:
V.N.KHARE, S.N.PHUKAN

JUDGMENT:

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JUDGMENT

PHUKAN. J.

These three appeals are directed against the judgment dated 17th July 1995 of the Central Administrative Tribunal, Chandigarh. Three applications filed before the Tribunal by the Electricity Employment Union, Shri Bal Krishan and Shri Harjinder Singh Brar were disposed of by the common judgment as the question of fact and law were same. The Tribunal dismissed all the three applications and hence these appeals.

By the Punjab Recoganzation Act, 1966 (for short 'the Act') the erstwhile State of Punjab was reorganised and the successor States were States of Punjab and Haryana, Union Territories of Chandigarh and Himachal Pradesh, which subsequently became a State. The Punjab State Electricity Board continued to function in the areas in which it was functioning before the reorganisation of the State of Punjab. Subsequently a new State Electricity Board (for shortt 'Board') was constituted by the successor State of Punjab and it is not disputed that the members of the appellant Electricity Employment Union and other two appellants were employees of the erstwhile Board. The claim of the present appellants is that as on the date the successor State of Punjab was formed they were working within the geographical limits of the Union Territory of Chandigarh, their services were deemed to have been allotted to the said Union Territory by operation of the provisions of the Act. It may be stated that Union Territory of Chandigarh did not constitute a separate Board under the Electricity Supply Act of 1948 and functions of the Board were being carried on by the department of the administration. The Tribunal did not accept the said contentions and held that by virtue of the provisions of the Act their services were allotted to the Board and were working on deputation under the Union Territory of Chandigarh.

We have heard Mr. P.P.Rao, learned senior counsel for the appellants and Ms. Kamini Jaiswal, learned counsel for the respondents.

For appreciating the contention of the parties, we may refer to the relevant provisions of the Act. For the

present purpose, parts VI, VII & IX of the Act are relevant.

Part VI of the Act deals with apportionment of assets and liabilities of the erstwhile State of Punjab.

Part VII deals with certain Corporations. Sec. 67 which is relevant for our purpose and is quoted below:-

"67 Provisions as to certain Corporations - (1) The following bodies corporate constituted for the existing State of Punjab, namely:-

(a) the State Electricity Board constituted under the Electricity Supply Act 1948; and

(b) the State Warehousing Corporation established under the Warehousing Corporations Act, 1962.

shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day subject to the provisions of this section and to such directions as may from time to time be issued by the Central Govt.

(2) Any directions issued by the Central Govt. under sub-section (1) in respect of the Board or the Corporation may include a direction that the Act under which the Board or the Corporation was constituted shall in its application to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Govt. thinks fit.

(3) The Board or the Corporation referred to in sub-section (1) shall cease to function as from and shall be deemed to be dissolved on the 1st day of November, 1967, or such earlier date as the Central Govt. may by order appoint, and upon such dissolution its assets, rights and liabilities shall be apportioned between the successor States in such manner as may be agreed upon among them within one year of the dissolution of the Board or the Corporation as the case may be or if no agreement is reached in such manner as the Central Govt. may by order determine. (emphasis supplied)

Corporation : and if such a Board or a Corporation is so constituted in any of the successor State before the dissolution of the Board or the Corporation referred to in sub-section (1).

(a) provision may be made by order of the Central Govt. enabling the new Board or the new Corporation to take over from the existing Board or Corporation all or any of its undertakings assets, rights and liabilities in that State and

(b) upon the dissolution of the existing Board or Corporation any assets rights and liabilities which would otherwise have passed to that State by or under the provisions of sub-section (3) shall pass to the new Board or new Corporation instead of to that State."

In Part IX legislature has made provisions for allocation of members of All India Services and other services who were serving in connection with the affairs of the erstwhile State of Punjab. It will be pertinent to

reproduce relevant provisions, namely section 82, 83 and 84.

"82 Provisions relating to other Services (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Punjab shall on and from that day provisionally continue to serve in connection with the affairs of the State of Punjab unless he is required by general or special order of the Central Govt. to serve provisionally in connection with the affairs of any other successor State.

(2) As soon as may be after the appointed day, the Central Govt. shall by general or special order determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect."

"83. Provisions as to continuance of officers in the same posts - Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Punjab in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State and shall be deemed, on and from that to have been duly appointed to the post or office by the Govt. of or other appropriate authority in that successor State:

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office."

"84. Power of Central Govt. to give directions- The Central Govt. may give such directions to the State Govt. of Punjab and Haryana and to the Administrators of the Union Territory of Himachal Pradesh and Chandigarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Govt. and the Administrators shall comply with such directions."

The Administrative Tribunal held that the allocation of the employees of the erstwhile State of Punjab among the successor States would be governed by sub-section (3) of Sec. 67 of the Act. Relying on the documents produced before the Tribunal by the respondents, it was held that there was an agreement among the successor States regarding such allocation including the present appellants and by virtue of the said agreement the present appellants were allocated to the Board and they were allowed to continue to work on deputation under the administration of Union Territory of Chandigarh. It is not disputed that erstwhile Punjab state Electricity Board was dissolved on 2nd May, 1967 as required under sub-section (3) of Sec. 67 of the Act and, therefore, rejected the contentions of the appellants that the Central Govt. would issue directions for allotment of the employees under sub-section (3) of Sec. 67.

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there was an agreement among the successor States regarding such allocation including the present appellants and by virtue of the said agreement the present appellants were allocated to the Board and they were allowed to continue to work on deputation under the administration of Union Territory of Chandigarh. It is not disputed that erstwhile Punjab State Electricity Board was dissolved on 2nd May, 1967 and the present Board was constituted on the same day. According to the Tribunal, the above agreement of allotment of the employees were arrived at within one year from the above date i.e. 2nd May, 1967 as required under sub-section (3) of Sec. 67 of the Act and therefore rejected the contentions of the appellants that the Central Govt. could issue directions for allotment of the employees under sub-section (3) of Sec. 67.

First point to be decided is whether allocation of the services of the employees of the erstwhile Punjab State Electricity Board was to be done under Sec. 67 as held by the Tribunal or under Sec. 82 of the Act or deemed to have been allocated to Union Territory of Chandigarh under other provisions of the Act, as urged by Mr. Rao, learned senior counsel for the appellants.

The Union Territory of Chandigarh is a successor State as defined in Sec. 2(m) read with Sec. 2(n) of the Act.

Part VI of the Act as stated above deals with apportionment of assets and liabilities of the erstwhile State of Punjab. This part is not applicable for apportionment of assets and liabilities of the existing Punjab State Electricity Board, as there is specific provision for this purpose viz. Sec 67 and moreover the Board has a separate legal entity.

According to sub-section (3) of Sec 67 of the Act assers, rights and liabilities of the erstwhile Punjab State Electricity Board shall be apportioned between successor States in such manner as may be agreed upon within one year of the date of dissolution of the erstwhile Board, failing which Central Govt. was empowered to determine apportionment of such assets, rights and liabilities. As there is no other specific provision in the Act for allocation of the services of the employees of the erstwhile Punjab State Electricity Board, whether under this sub-section such allocation could be done?

This question was considered by Delhi High Court in Mohd, Yakub versus The Union of India and Others AIR 1971 Delhi 45. A Division Bench of Delhi High Court referred the following two questions to the Full Bench, namely:-

"(1) Whether the employees of the Punjab State Electricity Board are persons serving in connection with the affair of the Punjab State who could be allocated to the successor States under Sec. 82 of the Punjab Reorganisation Act.

(2) Whether the employees of the said Board constituted its assets or liabilities which were liable to be apportioned between the successor States under sub-sections (3) and (4) of Sec. 67 of the Punjab Reorganisation Act."

The Full Bench replied the question No. 2 in the

affirmative. The Full Bench speaking through the Chief Justice Khanna (as he was then) considered the word 'liability' occurring in sub-section (3) of Sec. 67 with reference to the dictionary meaning and held as follows:

"Keeping the above connotation of the word "liability" in view, we have no doubt in our mind that the employment of the employees of the Electricity Board did constitute the liability of the Electricity Board. The services of the employees of the Electricity Board like respondents 4 to 6 having not been terminated by the Board they had right to be retained in the employment of the Board and this fact created a corresponding liability of the Board to keep them in employment. This liability in terms of sub-section (3) of Section 67 of the Punjab Reorganisation Act, had to be apportioned between the successor States as has been done in the present case."

The contention raised that the word liability as used in sec 67 has reference to only those liabilities which are mentioned in part VI of the Act, was rejected. The word liable referred to in that part are of public debts, refund of taxes collected in deposits provident fund pension and those arising out of contracts and abotnable wrongs.

In view of the above answer to question No. 2, the Full Bench was of the opinion that it was not necessary to answer question No. 1 and in other words Sec. 82 of the Act would not apply for allocation of the services of the employees of the erstwhile Punjab State Electricity Board.

We are the opinion that the views expressed by the Full Bench that allocation of services of the employees of the erstwhile Punjab State Electricity Board among the successor state could be done under sub-section (3) of Sec 67 and not under Sec. 82 of the Act are correct.

Mr. Rao. learned senior counsel has urged that State Electricity Board being an instrumentality of the State the employees of the Board should be treated as persons serving in connection with the affairs of the erstwhile State of Punjab and, therefore, their services could be allocated among the successor State under Sec. 82 of the Act. This contention needs no consideration in view of our above decision.

A committee was constituted for apportionment of the staff and posts of the erstwhile Punjab State Electricity Board among the successor State. The decisions of the Committee which are relevant for the present appeals are extracted below:

"1. For the Union Territory of Chandigarh, staff may be found by deputation from Punjab & Haryana. For the present the existing staff posted there should be allowed to continue on available posts.

@. For assessing requirements of staff for each territory it was decided that reliance may be placed on the following principles:-

(1) All existing posts which are solely concerned with the affairs of the particular State/Territory shall be allocated to the concerned State/Territory.

(2) The Committee has accordingly allocated to the following categories of staff to the Boards of Punjab & Haryana State and to Himachal Pradesh:-

(a) All Gazetted Officers. (b) All Non-Gazetted Head Office Staff. (c) Non-Gazetted Circle Cadre Staff engaged in common works.

Separate lists of staff allocated to Punjab & Haryana Boards and Himachal Pradesh, categorywise are added."

The representatives of the Govt. of India and the successor State who were members of the Committee signed the above minutes.

The decision of the Committee regarding allocation of staff to the Union Territory of Chandigarh was that the persons who were posted within the geographical area of the Union Territory of Chandigarh were allowed to continue of deputation and in future other members of the staff would be found by deputation from the Electricity Board of the States of Punjab and Haryana.

The above correspondence have established that the decisions taken by the Committee were duly acted upon and as urged on behalf of the respondents, appellants were allocated to the Punjab State Electricity Board and they were allowed to work on deputation under the Administration of Union Territory of Chandigarh.

Our attention was drawn by Mr. Rao to the letter dated 11th Feb. 1982 from the Ministry of Home Affairs to the Home Secretary, Union Territory Chandigarh. By this letter, the Govt. of India conveyed the views of the Ministry of Law, Govt. of India that employees of the erstwhile State of Punjab allocated to the successor States including the Union Territory of Chandigarh were wrongly treated as on deputation as they were to be absorbed by the administration as employees of the Union Territory of Chandigarh. By this letter only the views of the Union territory administration were sought for. Our attention was also drawn to the letter dated 14th Oct. 1983 from the Home Secretary, Union Territory Administration, Chandigarh to Chief Engineer by which attention of the Chief Engineer was drawn to the above letter of the Govt. of India dated 11th Feb. 1982 and he was requested to inform the Home Department regarding steps taken. Drawing our attention to the provision of sub-section (3) of Sec. 67 Mr. Rao learned senior counsel has urged that these directions given by the Govt. of India under the above provisions of the Act were binding on all authorities.

By the above letter the Govt. of India only conveyed the opinion of the Law Ministry and asked for the views of the Union Territory of Chandigarh. In view of language of the letter it cannot be treated as the direction issued under sub-section (3) of Sec 67 of the Act. In fact this letter would show that the appellants were on deputation to the Union Territory of Chandigarh and it demolishes the submission of Mr. Rao that the appellants have been absorbed by the Union Territory of Chandigarh. Moreover as within one year there was an agreement regarding allocation of employees of the erstwhile Punjab State Electricity Board between the successor State the Govt. of India could not have exercised the power of issuing direction as envisaged

under sub-section (3) of Sec. 67.

According to Mr. Rao learned senior counsel, in view of Sec. 83 of the Act the appellants were deemed to have been absorbed under the administration of the Union Territory of Chandigarh as they were working within the geographical area of the said Union Territory on the date of re-organisation of the erstwhile State of Punjab. This section provides that every person who immediately before the appointed day was holding or discharging duties of any post or office in connection with the affairs of the erstwhile State of Punjab in any area which on the appointed day became the area of any successor States would continue to hold the same post or office in that successor State and would be deemed to have been duly appointed to the post or office. The object of this Sec. was to allow the holder of any post or office in the erstwhile state of Punjab to continue to discharge the function of the said post or office on the date the successor States were formed otherwise for every such post or office it would have been necessary for the successor State to pass order re-appointing the holder of the post or office to continue to discharge his function.

Keeping in view the purpose for which Sec. 83 was enacted, we hold that members of the erstwhile Punjab State Electricity Board could not claim deemed absorption under this section merely because on the date the successor states were formed they were working within the geographical limits of the Union Territory of Chandigarh.

For the reasons stated above we do not find any merit in these appeals.

In the result appeals are dismissed and parties are directed to bear their own cost.