State of Assam Etc.

Vs

Kripanath Sarma & Ors. Etc.

Civil Appeals Nos. 950-957, 1141-1143 and 1703-1712/1966

(K. N. Wanchoo, J. M. Shelat, G. K. Mitter JJ)

23.09.1966

JUDGMENT

WANCHOO, J.

These twenty-one appeals (eleven by special leave and ten on certificates granted by the High Court) arise from the judgment of the Assam High Court and will be dealt with together, as they raise common questions. We shall therefore set out the facts of one case relating to Kripanath Sarma in C.A. 950.

In the year 1947 the Assam Legislature passed an Act known as the Assam Primary Education Act, No. XIII of 1947, in order to provide for development of primary education in the State. That Act was repealed by the Assam Basic Education Act, No. XXVI of 1954 (hereinafter referred to as the 1954-Act) which was passed to provide for development, expansion, management and control of basic education and with a view to introduce gradually universal, free and compulsory basic education in the State. The 1954-Act provided for a State Advisory Board for Basic Education (hereinafter referred to as the State Advisory Board). It further made provision for the constitution of Regional Boards for Basic Education known as School Boards for each region in a district. These School Boards were to control basic education in their regions and among the powers conferred on School Boards was the power to appoint and punish basic school teachers and attendance officers. The scheme of the 1954-Act was therefore to entrust the conduct of basic education to School Boards. The State Advisory Board was a central body whose function was to advise the State Government on matters relating to the control and direction of the activities of School Boards, the making of grants to School Boards, the method of recruitment and the conditions of service of basic school teachers and attendance officers, the training of teachers and the making of provision for such training, the curriculum, duration, standard and syllabus of basic education, the preparation, publication and selection of text books, the medical inspection and treatment of children and any other matter which the State Advisory Board considered necessary for carrying out the purposes of that Act fully and effectively or on which the State Government might consult the State Advisory Board.

The 1954-Act was repealed by the Assam Elementary Education Act, No. XXX of 1962, (hereinafter referred to as the Act). In the present appeals we are mainly concerned with the Act. Section 3 of the Act provides for the constitution of a State Board for Elementary Education (hereinafter referred to as the State Board) and the State Board was made a corporate body with perpetual succession and a common seal. The functions of the State Board were defined in s. 10 which inter alia provides that the State Board shall lay down principles for allocation of grants for carrying out the purposes of the Act to local authorities, lay down procedure and conditions and

hold such tests as may be necessary for recruitment of teachers of elementary schools on such terms and conditions of service as may be prescribed, lay down conditions for recognition, expansion and amalgamation of schools and openings of schools, and do any other act which it considers necessary for carrying out the purposes of the Act fully and effectively. Under s. 15 the State Board has to perform its duties and carry out its functions in accordance with such rules of business as may be prescribed.

The main change in the Act was that the School Boards functioning under the 1954-Act were abolished and in their place the Deputy Inspectors of Schools, by virtue of their office, were made Assistant Secretaries of the State Board with the same headquarter and jurisdiction as they had as Deputy Inspectors of Schools. They were inter alia authorised to operate the fund placed at their disposal by the State Board, to appoint their office staff, and in particular by cl. (iii) of s. 14(3) -

> "to appoint teachers in recognised schools on the advice of a Committee constituted by the State Board under section 16 and transfer them as necessary and also grant such leave, other than casual leave, to them as may be admissible."

Section 16 authorised the State Board to constitute Advisory Committees for the purpose of s. 14(3)(iii). The Act was to come into force at once and it actually came into force from October 5, 1962. Section 34(2) of the Act provides that as soon as it came into force all teachers and other employees of schools maintained by School Boards would be taken over by the State Board subject to the condition that the total emoluments of the employees at the time they were taken over would be protected and their seniority would be maintained. Section 38 provides that -

> "all teachers existing or to be appointed in any Elementary School recognised under the Act, except in the case of the Autonomous Districts, shall be deemed to have been employed by the State Board."

Section 54 is the rule making provision and gives power to the State Government to make rules for carrying out the purposes of the Act. Section 55 provides for the repeal of the 1954-Act and sub-s. (2) thereof provides for savings in the following terms :-

> "Notwithstanding the repeal all authorities constituted, appointment, rules, orders or notifications made under the said Act shall be deemed to be constituted or made under this Act, and continue to function or to be in force until actions under the provisions of this Act are taken."

It will be noticed that the saving clause provides that all authorities constituted under the 1954-Act shall be deemed to be constituted under the Act and shall continue to function until action under the provisions of the Act is taken. It appears that by virtue of this provision the State Advisory Board continued even after October 5, 1962, as apparently in took sometime to constitute the State Board under the Act.

On November 20, 1962, the State Advisory Board passed a resolution, the relevant part of which is in these terms -

> "Subject to the exceptions enumerated below, all teachers who are not matriculates or who have not passed the Teachers' Test but who are working as teachers in schools shall be discharged with effect from 31-3-1963."

It is unnecessary to refer to the exceptions, for we are not concerned with them.

In pursuance of this resolution, the Secretary to the State Advisory Board wrote a letter to all the Secretaries, School Boards, who were no other than the Deputy Inspectors of Schools and who became Assistant Secretaries of the State Board under s. 14 of the Act. This letter began with the following paragraph :-

> "In inviting a reference to the subject indicated above (the subject indicated being removal of non-T.T. and under-matric I.P. (Jr. Basic) Teachers and appointment of L.P. (Jr. Basic) Teachers"),
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> "I have the honour to state that henceforward the following principle adopted by the State Advisory Board for Basic Education in its meeting held on 20th November, 1962 should be strictly followed. In case of any doubt, this office may be approached for clarification."

Then followed a copy of the resolution passed on November 20, 1962. The letter also contained directions as to the policy with regard to appointments in future vacancies with which we are not concerned. It concluded with the following paragraph :-

> "Further, you are requested to submit a statement showing the names of non-T.T. or under-matric teachers, if any, after 31st March 1963 stating the reasons for their retention. In case there will be none after the said date, please submit a nil report. This report should invariably reach this office by the 20th April 1963 at the latest."

It appears that after March 31, 1963, action began to be taken on these instructions and a letter was issued to Kripanath Sarma on April 9, 1963, the relevant part of which is in these terms :-

> "Under Departmental Instructions regarding removal of under-matric and non-T.T. Teachers, service of Shri Kripanath Sarma, H.P. Janigog No. 1, L.P. School is hereby terminated with immediate effect."

We may add that similar letters were addressed to other teachers who are respondents in the present appeal, though they were addressed in some cases in May 1963 and in one case as late as August 1963. In a few cases letters of removal were addressed to some of the respondents in the present appeals as late as September 1963. But it is remarkable that no letter was addressed to anyone before March 31, 1963 intimating that his service would be terminated from March 31, 1963.

On termination of the services of teachers who are now respondents in these appeals before us, a number of writ petitions were filed in the High Court challenging the orders of termination. The main point raised in the petitions was that the Secretary, School Board or the Assistant Secretary, State Board under whose signature the letters of termination of service were issued had no authority under the Act to terminate the services of the respondents. It was also contended in the alternative that the respondent-teachers were holding civil posts under the State and termination of their services was in violation of the provision of Art. 311(2) of the Constitution.

These petitions were opposed on behalf of the State and in some cases by the State Board. Their case was that under s. 14 (3)(iii) of the Act, the Deputy Inspectors of Schools who are the Assistant Secretaries of the State Board had the power to terminate the services of teachers. In the alternative, it was contended that even if that was not so, the teachers were employees of the State Board and

therefore under the general law it was open to the State Board to terminate their services and that was what was done in effect. Lastly, it was contended that the respondent-teachers were not holding civil posts under the State and therefore Art. 311(2) of the Constitution did not apply in their case.

The High Court did not decide whether the respondent-teachers were holding civil posts, whether Art. 311(2) of the Constitution applied to them, and whether there had been a breach of the provisions thereof. It was, however, of opinion that s. 14(3)(iii) did not give power to the Assistant Secretary (assuming that the letters terminating services of the respondents were issued under that provision) to terminate services of teachers who had been taken over under s. 34(2) of the Act and who had not been appointed under s. 14(3)(iii) by the Assistant Secretaries. It held therefore that the letters to the respondent-teachers terminating their services whether issued in the name of Secretary, School Board or Assistant Secretary, State Board, were beyond his power as he could not terminate the services of these teachers. As to the alternative argument namely, that these teachers were the employees of the State Board and it was the State Board which had terminated their services the High Court held that orders of termination could not be held valid as the State Board which is a statutory body had not acted under the provisions of the Act or the Rules under which a statutory body had to act. In consequence the petitions were allowed and the orders terminating the services of the respondents were set aside. Thereupon the appellants came to this Court in some cases on certificates obtained from the High Court and in others on special leave obtained from this Court.

The main contention before us on behalf of the appellants is two-fold. In the first place it is urged that under s. 14(3)(iii) of the Act read with s. 18 of the Assam General Clauses Act, No. II of 1915, (hereinafter referred to as the 1915-Act), the orders of termination passed by the Secretary, School Board or the Assistant Secretary, State Board were within his power. In the alternative, it is urged that the respondents were in any case employees of the State Board under the Act and their services could be terminated by the State Board and that was in effect what was done and therefore the termination of their services was perfectly valid.

We shall first consider whether the Deputy Inspector of Schools, in his capacity as the Assistant Secretary of the State Board, could terminate the services of the respondents in view of s. 14(3)(iii) of the Act read with s. 18 of the 1915-Act. We have already set out s. 14(3)(iii). It gives powers to appoint teachers to the Deputy Inspector of Schools as the Assistant Secretary of the State Board. The argument, based on s. 18 of the 1915-Act, is that the power to appoint includes the power to suspend or dismiss and therefore the Assistant Secretary had the power to terminate the services of the respondents. Section 18 of the 1915-Act is in these terms :-

> "Where, by any Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

The High Court referred to s. 16 of the General Clauses Act, No. X of 1897, though strictly speaking it is s. 18 of the 1915-Act which has to be applied. The High Court was of the view that as appointments under s. 14 by the Assistant Secretary had to be made on the advice of the Advisory Committee, the relevant provision in the General Clauses Act was of no avail to confer a power of dismissal on the Assistant Secretary under s. 14(3)(iii), for that only applies unless a different intention appears. The High Court thought that, as the Assistant Secretary did not have complete power to appoint teachers and could only do so on the advice of the Advisory Committee, there was a different intention in s. 14(3)(iii), and that was that no dismissal could be made by the Assistant

Secretary because he had in reality no complete power to appoint. It is urged that this view of the High Court is incorrect.

Now as we read s. 14(3)(iii) of the Act, it is obvious that the power of appointment is only in the Assistant Secretary, though that power has to be exercised on the advice of the Committee constituted under s. 16 of the Act. Even assuming that the recommendation of the Committee is necessary before appointment is made by the Assistant Secretary, the fact still remains that it is not the Committee which appoints, and the appointment is made only by the Assistant Secretary. Even if the word "advice" in this provision is equated to the word "recommendation", it is still clear that the Committee only recommends and it is the Assistant Secretary who is the appointing authority on the recommendation of the Committee. It may be that the Assistant Secretary cannot make the appointment without the advice or recommendation of the Committee. Even so, in law, the appointing authority is only the Assistant Secretary, though this power is to be exercised on the advice or recommendation of the Committee. In these circumstances, it cannot be said that there is any different intention appearing from the fact that the appointment has to be made on the recommendation or advice of the Committee. The appointing authority would still be the Assistant Secretary and no one else, and there is no reason why, if he is the appointing authority, he cannot dismiss those appointed by him with the aid of s. 18 of the 1915-Act. We cannot therefore agree with this view of the High Court.

But there is another difficulty in the present case which stands in the way of the Assistant Secretary having the power to dismiss teachers who had been taken over under s. 34(2) of the Act and thus had been appointed before the Act came into force. Section 18 of the 1915-Act says that the authority having power to make an appointment shall have the power to suspend or dismiss any person appointed by it in exercise of that power. Therefore the authority which appoints can only dismiss such persons as have been appointed by it. It cannot dismiss persons appointed by any other authority, for such persons have not been appointed by it in the exercise of its power as appointing authority. In the present case, as we have already pointed out, the office of the Assistant Secretary of the State Board was created for the first time by the Act. Therefore, all those persons who had been appointed before the Act came into force could not possibly be appointed by the Assistant Secretary, for there was no such authority in the earlier enactment repealed by the Act. In the earlier Act the appointing authority was the School Board, for there was no Assistant Secretary of the State Advisory Board thereunder. Therefore a person appointed before the Act came into force by the School Board cannot be said to have been appointed by the Assistant Secretary of the State Board or its predecessor the State Advisory Board, for there was no such authority in the earlier enactment. In the circumstances we are of opinion that the Assistant Secretary could not dismiss teachers appointed before the Act came into force, for there was no such authority existing before that.

It is however urged that s. 55 provides that all appointments under the 1954-Act shall be deemed to have been made under the Act and therefore the appointments under the 1954-Act by the School Boards must be deemed to have been made by the Assistant Secretary under s. 14(3)(iii) of the Act. We are of opinion that this contention cannot be accepted in view of the specific provision contained in the Act under s. 34(2) and s. 38. Section 34(2) lays down that all teachers and other employees of schools maintained by the School Board would be taken over by the State Board. This being a specific provision relating to teachers, we cannot take recourse to the general deeming provision contained in s. 55(2) with respect to appointment of teachers and other employees of schools maintained by School Board. Further s. 38 specifically says that all teachers then existing would be deemed to have been employed by the State Board. Reading therefore s. 34(2) and s. 38 together, the conclusion is inevitable that there is no occasion for the application of the deeming provision in

s. 55 in the case of these teachers. In the face of these two specific provisions the general deeming provision contained in s. 55(2) cannot be used to come to the conclusion that those teachers who were existing from before are to be deemed to have been appointed by the Assistant Secretary under s. 14(3)(iii). We are therefore in agreement with the High Court, though for slightly different reasons, that the services of the respondent-teachers could not be terminated by the Assistant Secretary of the State Board under s. 14(3)(iii) of the Act read with s. 18 of the 1915-Act.

This brings us to the alternative argument, namely, whether the respondents have been dismissed by the State Board. There is no doubt that reading s. 34(2) and s. 38 together, the existing teachers were taken over by the State Board and became its employees. Therefore, as their employer, the State Board would have power under the general law of master and servant to terminate their services unless that power was in any way circumscribed by statute. The case of the respondents is not that that power of the State Board is so circumscribed (subject of course to the argument that these employees are protected under Art. 311 of the Constitution); their case is that the State Board never terminated their services, and that the orders of termination were passed only by the Assistant Secretary who had no authority to do so. On the other hand, it is contended on behalf of the appellants that the services of the respondents were terminated by the State Board, and in this connection reliance is placed on the resolution of November 20, 1962 to which reference has already been made.

The question that arises therefore is whether the said resolution can be said to have terminated the service of anyone at all. It certainly begins by saying that "all teachers who are not matriculates or who have not passed the Teachers' Test but who are working as teachers in schools shall be discharged with effect from 31-3-1963". It is not in dispute that at the time when this resolution was passed there was no list of teachers who were not matriculates or who had not passed the Teachers' Test before the State Advisory Board. So the resolution in our opinion cannot be read as amounting to terminating anyone's service and must only be read as laying down principles which would have to be applied for dispensing with the services of certain teachers from March 31, 1963 if conditions mentioned in the resolution are satisfied. Legally, a resolution like this cannot be read as an order dismissing persons whose names were not even known to the authority passing it. If this resolution really amounted to an order of discharge of particular persons, it should have been communicated to them, for without such communication it would be of no use for the purpose of terminating the services of anybody : (see Bachittar Singh v. The State of Punjab) ([1962] 3 Supp. S.C.R. 713.). It is not in dispute that this resolution was not communicated to any teacher as such and obviously it could not be communicated to any teacher who might even be governed by its terms for the State Advisory Board did not know to which particular teachers it might or might not apply. It must therefore be read not as an order terminating the services of anybody but as an indication of policy to be pursued for discharge of teachers as from March 31, 1963.

That this is so is clear from the letter of December 15, 1962, to which reference has already been made. This letter was addressed by the Secretary of the State Advisory Board to all the Secretaries of School Boards. It incorporated the resolution of November 20, 1962, and treated it in the opening part of the letter as enunciating for the future the principles to be strictly followed in the matter of removal of non-T.T. and under-matric L.P. (Jr. Basic) teachers and appointment of L.P. (Jr. Basic) teachers. The very fact that this letter was addressed to the Secretaries of all School Boards and not to any teacher shows that the resolution of November 20, 1962 did not terminate anyone's services but merely laid down principles to be followed for termination of services of certain teachers as from March 31, 1963, if the terms of the resolution applied. We cannot therefore read either the resolution of November 20, 1962 or the letter of December 15, 1962 as an order termination the

services of any teacher who may be non-T.T. or under-matric.

Further we may refer to the last paragraph of this letter which has a significance of its own. It asks the Secretary, School, Board to submit a statement showing the names of non-T.T. teachers or under-matric teachers, if any, after March 31, 1963, stating the reasons for their retention. Clearly neither the resolution nor the letter was therefore terminating the services of anyone, for the last paragraph permitted the Secretaries of School Boards to retain, if necessary, non-T.T. teachers or under-matric teachers and required them to state the reasons why such retention took place after March 31, 1963. If the resolution of November 20, 1962 or the letter of December 15, 1962 terminated the services of any teacher in terms, such a paragraph as the last paragraph in the letter of December 15, 1962 could not be there. It is also remarkable that services of not a single teacher came to an end on March 31, 1963. The letters intimating to the teachers that their services were terminated began from April 9, 1963 and continued upto some date in September 1963. If the resolution of November 1962 or the letter of December 15, 1962 had terminated the services of all teachers governed by it from March 31, 1963 we fail to understand how letters terminating their services were issued to various respondent-teachers on various dates from April to September 1963. It is perfectly clear therefore that the resolution did not terminate the services of any teacher; it merely laid down principles to be applied for terminating services of teachers from March 31, 1963. We should have expected that if the State Advisory Board intended to terminate services of such teachers itself, the names of Non-T.T. or under-matric teachers should have been called for by it before March 31, 1963 and thereafter it should have passed a specific resolution terminating the services of those particular teachers and this resolution should have been communicated to the teachers concerned. If that had been done, it could have been said that the State Board had terminated the services of the teachers concerned. But we cannot possibly read the resolution or the letter as terminating the services of any teacher at all. They merely laid down principles which had to be applied later on by somebody else who was expected to terminate the services of the teachers concerned.

Then it is urged that the resolution may be taken to amount to a delegation by the State Board of its authority to terminate services of teachers after laying down principles for such termination. We consider that there is no force in this contention either. The resolution has not a word to show that it was delegating the authority of the State Board for terminating services of teachers to any other authority, (assuming that such a delegation is possible). There is nothing in the resolution to show even if it were to be treated as a delegation by the State Board to terminate services of these teachers, to which authority such delegation was being made. The fact that a copy of the resolution was addressed to the Secretaries, School Boards by the Secretary, State Board cannot mean that authority was being delegated to the Secretaries of School Boards, even assuming that School Boards could be functioning after October 5, 1962, when the Act makes no provision for any School Board. If delegation was possible, that delegation had to be made by the State Board itself by a resolution and not by the Secretary of the State Board.

Nor can we accept the argument that the Assistant Secretaries were carrying out the instructions of the State Board contained in the letter of December 15, 1962, for we can only see in a case of this kind where services of teachers were terminated one of two possibilities, i.e. either the services had to be terminated by the State Board itself, which we have shown did not take place, or the services had to be terminated by somebody else to whom the authority of the State Board was delegated (if such a delegation was possible at all) and that also we have shown is not done. We can see of on third way in which the resolution of November 20, 1962 could be implemented by a subordinate authority, unless that subordinate authority had power itself to terminate the services of teachers. We

have already held that the Assistant Secretary had no such authority under s. 14(3)(iii) of the Act read with s. 18 of the 1915-Act. Therefore, the orders issued in the present case terminating the services of the respondent-teachers were invalid, for they were not orders of the State Board terminating the services of the respondents; they must be held to be orders of the Assistant Secretary who had no power to terminate the services of the respondents.

The appeals therefore fail and are hereby dismissed with costs, one hearing fee.

V.P.S.

Appeal dismissed.

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