
agreement that was arrived at it ceased to be agreed rent. As mentioned above, unless fresh agreement is arrived at, the agreed rent would continue to be so.

(18) Learned Appellate Authority had clearly recorded as of fact that in the year 1976 the rent was agreed to Rs. 200 per month. Therefore, it rightly took the price index of 1970-71 and in the year 1976 the price index recorded was 172.4. The petition was filed in the year 1989. The price index in the year 1988 was 428.8. Keeping in view the ratio of the decision in *Gela Ram's case* (supra) as well as in the case of *Yoginder Mohan vs. Krishan Lal and another*, Civil Revision No. 1836 of 1997 decided on 13th August, 1999, it must follow that the learned Appellate Authority rightly fixed the fair rent at Rs. 328 per month. There is no ground, thus, to interfere.

(19) For these reasons, the revision petition being without merit must fail and is accordingly dismissed.

J.S.T.

Before Jawahar Lal Gupta & V. M Jain, JJ.

DALBIR SINGH BAGGA,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No.1656 of 1999

27th August, 1999

Constitution of India, 1950—Arts. 226/227—Electricity (Supply) Act, 1948—S. 79—The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995—Ss. 32 & 33—Appointment—85 posts advertised for the posts of Assistant Engineers—No reservation for physically handicapped—Govt. must specifically call for 3% reservation to be made for physically handicapped—Petitioner physically handicapped—Applied for post as General candidate—Qualified written test and called for interview—Not appointed—Non-reservation of posts for handicapped persons challenged—Petitioner not to be denied benefit of the instructions—Respondent—Board erred in not making 3% reservation.

Held that, the Govt. instructions contain a clear provision for reservation of 3% vacancies in direct recruitment for the physically handicapped persons in various services "in the State". The definition of the handicapped persons is as per provision contained in the 1995

Act. The vacancies falling at points 11, 40 and 71 in the 100 point roster have been reserved. There is a clear decision to reserve the vacancies. All posts falling in Class I and II services are covered.

(Para 21)

Further held, that on a perusal of Sections 32 and 33 of the 1995 Act, it is clear that the power to identify the posts, to provide for reservation or to grant exemption to any establishment vests exclusively in the "Appropriate Government". Not in the establishment. Nor in any other authority. In view of the provisions of the Act, the Board had no jurisdiction to say that it adopts the instructions issued by the State Government under the provisions of the 1995 Act only "in the cadre of ministerial staff, accounts staff and Peons....." A consequence of this is that while issuing the advertisement for recruitment to the posts of Assistant Engineers which is a Class II post, the Board had to make reservation of 3%. It erred in failing to do so. Nor it cannot be permitted to take advantage of its own wrong or to deny the benefit to the petitioner.

(Para 24)

Constitution of India, 1950—Arts. 226/227—Electricity (Supply) Act, 1948—S. 5—The persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995—Ss. 22 & 33—Reservation—Parliament has imposed duty of carrying out provisions of Act on State Govt.—Local authorities though autonomous cannot violate directions of the Govt.—Board cannot claim right to ignore the directions of the State Govt.

Held that the Parliament has imposed the duty of carrying out the provisions of the Act on the State Govt. Local authorities even if autonomous cannot violate the directions of the Government. Of course, it may be permissible for them to point out the relevant facts for the consideration of the competent authority so as to enable them to claim exemption etc. The Government is entitled to consider these facts and decide about the matter. However, the Board cannot claim the power or the right to ignore the directions of the State Govt.

(Para 37)

J.K. Sibal, Sr. Advocate with Kumar Sethi, Advocate, *for the petitioner*

H.S. Mattewal, AG, Punjab with M.C. Berry, DAG, Punjab with P.S. Thiara, Advocate, *for the respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioner, a polio victim, has not allowed the disability to disable him. Despite a physical deficit of 60%, he has graduated in Electrical Engineering. He was a candidate for recruitment to the 100 posts of Assistant Engineers advertised by the Punjab State Electricity Board in the year 1998. Some of the posts had been reserved for the members of the Scheduled Castes, Backward Classes, Ex-servicemen, Freedom Fighters and Sportmen. However, no post had been reserved for the handicapped persons. Thus, the petitioner claims that he had to apply "in the general category". He appeared in the written test. Having qualified, he was called for the interview. The petitioner alleges that the result was finalised by the Deputy Secretary (Recruitment) on 11th January, 1999. 85 persons were selected for the posts of Assistant Engineers (Electrical). No one belonging to the category of physically handicapped persons had been selected.

(2) The petitioner complains that the action of the Board in not reserving seats for handicapped persons is violative of the instructions issued by the State Government,—*vide* letter dated 21st August, 1997. According to these instructions, the posts at roster points 11, 40 and 71 are to be reserved for physically handicapped persons. These instructions had been adopted by the Board. He maintains that the Board was bound to reserve three posts for physically handicapped persons. Its action in failing to do so is illegal and violative of Article 14. The petitioner prays that the respondents be directed to consider his claim against the quota "of physically handicapped persons" as prescribed under the aforesaid instructions.

(3) A written statement has been filed on behalf of the Board by the Joint Secretary (Recruitment). It has been averred that provision for reservation of vacancies to be filled by direct recruitment is contained in the circular letter dated 2nd May, 1997 issued by the State Government. This circular was modified by the Board,—*vide* letter dated 15th September, 1997. It has been stated that the instructions "will be made applicable for reservation in Class I, II, III and IV services in the cadre of ministerial staff, accounts staff and Peon only. Broadly, there are two types of posts under the Respondent-Board viz. technical and non-technical. 38 posts are only reserved in the category of non-technical for physically handicapped persons, whereas reservation of handicapped persons in the recruitment of technical posts is not available." Since the petitioner had applied "under general category.....he is entitled to be considered for this post only. The petitioner

had not made any reference to the physically handicapped person nor attached any certificate showing him physically handicapped person." In para 9, it has been averred that the "offer of appointment to all the 85 candidates belonging to Electrical trade have been issued out of which 83 candidates have already joined the service". On these premises, the respondents maintain that the action is legal and valid.

(4) The petitioner has filed a replication. He has adverted to the provisions of "the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995". The petitioner asserts that with effect from 1996, the respondents are bound to make reservation in respect of the technical and non-technical posts unless the State Government "notifies any exemption from the provisions....." under Section 33. As the second respondent has not "obtained any exemption from respondent No. 1", the respondent No. 2 had to make reservation. Respondent No. 2 is bound by the circular Annexure R2/1 for all technical and non-technical posts. In "any case, even under respondent No. 2, many technical officers are doing table work which does not require field duty in which technical officers like Assistant Executive Engineers and Executive Engineers are working. These posts include various posts in the Head Office including those in the Purchase Department, Design department, Planning and Materials etc." The petitioner has also produced a copy of the letter dated 3rd June, 1998 issued by the Chief Secretary to Government, Punjab to the Principal Secretary, Department of Power. It has been directed that "roster register may be maintained and updated.....The available vacancies may be advertised and efforts on priority may to be made to fill the requisite quota."

(5) The case was posted for hearing before a Bench of this Court (Jawahar Lal Gupta and N. K. Agrawal, JJ.) on 4th June, 1999. On behalf of the petitioner, it was asserted that the action of the Board in not making 3% reservation was violative of the provisions of the 1995 Act as also the instructions issued by the State Government in the year 1997. The case was adjourned at the request of the counsel for the Board to enable him to obtain instructions. The matter was adjourned to 6th July, 1999. On that day, an affidavit dated 5th July, 1999 was filed by Mr. K. K. Gupta, Joint Secretary (Recruitment), Punjab State Electricity Board. In this affidavit, it was averred that "the case of the petitioner had been considered by the Board and they are of the opinion that the petitioner who had applied for the post of Assistant Engineer/Electrical under general category is not entitled to be posted under reserved category for physically handicapped persons..." This view was taken on the ground that "the posts for the physically handicapped

persons were not advertised. Therefore, no physically handicapped person applied. Even Dalbir Singh, petitioner had applied under the general category.” It was further asserted that the 1995 Act does not help the petitioner. Under Section 32, the State Government has to identify the posts where reservation has to be made for the physically handicapped persons. Thereafter, under section 33, 3% of the identified posts are to be reserved. At the time of advertisement in the year 1998, “no posts had been identified by the appropriate Government. Therefore, no reservation for the physically handicapped under the 1995 Act can be made.”

(6) It has been further averred that the posts of Assistant Engineers/Electrical find mention in Annexure-III to the instructions issued by the State Government,—*vide* letter dated 15th February, 1999. Furthermore, the Board has framed Service of Engineers (Electrical) Regulations, 1965 under the provisions of Section 79 of the Electricity (Supply) Act, 1948. Regulation 9 lays down that a person should be fit for performing the duties of the post. The petitioner who has 60% disability cannot be appointed.

(7) On behalf of the State Government, a short affidavit has been filed by the Special Secretary, Department of Social Security and Development of Women and Children. It has been averred that “the State Government had provided reservation of 38 in direct recruitment in Class I and II services w.e.f 16th January, 1997 and w.e.f. 24th November, 1982 in respect of Class III and IV services for physically handicapped persons in the State.” It has been further said that the “State Government had identified some posts for physically handicapped persons in respect of these services,—*vide* circular letter dated 4th May, 1966 anddated 15th February, 1999..... The matter regarding identification of jobs in respect of Class I and II services for physically handicapped persons is under active consideration of the State Government. Till date, no post of Class I and II services for physically handicapped persons has been identified by the State Government.”

(8) Mr. J. K. Sibal, learned counsel for the petitioner has contended that,—*vide* letter dated 2nd May, 1997, the Government has made a reservation of 38 vacancies which have to be filled up by direct recruitment in Class I and II services. The vacancies at roster points 11, 40 and 71 have to be filled up from amongst the persons belonging to the category of physically handicapped persons. The Board’s action in holding that there shall be no reservation in technical posts, is wholly illegal and without jurisdiction. It has been further contended that the 1995 Act is a piece of welfare legislation. Its provisions should be liberally

construed. If so interpreted, it was incumbent upon the Board to reserve three posts for persons who are physically handicapped. It failed to do so. The petitioner cannot be made to suffer for the fault of the respondents.

(9) The claim made on behalf of the petitioner was controverted by the counsel for the respondents. Mr. Mattewal contended that the petitioner never claimed to be a handicapped person. The regulations framed by the Board require the person to fulfil standards of physical fitness. A person who does not fulfil those standards cannot claim a right to be appointed. Still further, it was contended that the Electricity Board is an autonomous body. It is not bound by the decision of the Government. In any event, the Government has not so far identified any posts. It is still in the process of doing the needful. Till the posts are identified, the petitioner cannot claim that he has a right to be appointed.

(10) The Indian Constitution is the Bible that governs us all. Under this Constitution, equality of opportunity and equality before the law are guaranteed. The State in Article 38 is directed to "strive to minimise the inequalities in income and endeavour to eliminate inequalities infacilities and opportunities....." By Article 39, the State is required to "direct its policy towards securing.....the right to adequate means of livelihood." In particular, Article 41 directs the State to make "effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement....." Thus, the State is bound to ensure equality, to remove inequalities and to make effective provision for securing the right to work despite disablement.

(11) In December 1992, the Economic and Social Commission for Asia and Pacific had met in Beijing. It had adopted a proclamation "on the Full Participation and Equality of People with Disabilities in the Asian and Pacific region." The years 1993 to 2002 were declared as the decade of the disabled. India is a signatory to this proclamation. To implement and give effect to the proclamation, the Parliament enacted the "Persons with disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995" (Act 1 of 1996). It was to "come into force on such date as the Central Government may, by notification appoint." By a notification issued by the Ministry of Social Welfare, the Central Government notified "the 7th day of February 1996 as the date on which the provisions of the said Act shall come into force."

(12) The Act has XIV chapters. Chapter I consists of Sections 1 and 2. It gives the short title and the definitions. Chapter II consists of Sections 3 to 12. It provides for the constitution of a Central Coordination

Committee and other cognate matters. Similarly, Chapter III which consists of Sections 13 to 24 provides for the constitution of the State Coordination Committees and the matters connected therewith. Chapter IV has Section 25. The Government and the local authorities are required to take steps for "the prevention of occurrence of disabilities". Chapter V comprises of Sections 26 to 31. It contains comprehensive provisions which the appropriate Governments and local authorities have to make to provide free education, to make schemes and programmes for non-formal education, to design and develop new devices and teaching aids, to set up training institutes to provide transport and other facilities and to prepare comprehensive education scheme for the handicapped persons.

(13) Chapter VI is relevant for the present case. It has Section 32 to 41. In a nut-shell, it provides that the Government shall identify the posts which can be reserved for persons with disabilities. It is mandatory for the Government to appoint "not less than three percent.....persons with disability....." The proviso to Section 33 empowers the appropriate Government to, "having regard to the type of work.....exempt any establishment from the provisions of this Section." If a suitable person from the handicapped category is not available, "such vacancies shall be carried forward in the succeeding recruitment year....." Records have to be maintained. Schemes for ensuring employment of persons with disability have to be made. The educational institutions whether run by the Government or receiving aid from it have to reserve 3% seats for persons with disabilities. The appropriate Government and the local authorities are required to provide incentives to employers to ensure that at least 5% of their work force is composed of persons with disabilities.

(14) Chapter VII consists of Sections 42 and 43. Chapter VIII aims at eliminating discrimination on account of handicap. Chapter IX has Sections 48 and 49. It requires the appropriate Government and the authorities to promote and sponsor research. Chapter X has Sections 50 to 55. It deals with the recognition of institutions for persons with disabilities. Chapter XI contemplates setting up of institutions "for persons with severe disabilities." Chapter XII (Sections 57 to 65) deals with the appointment of Chief Commissioner and Commissioners for persons with disabilities. Chapter XIII (Sections 66 to 68) requires the appropriate Governments etc. to undertake rehabilitation of persons with disabilities. Chapter XIV has Section 69 to 74. It contains misc. provisions. Section 72 provides that the provisions of the Act or the rules made thereunder "shall be in addition to and not in derogation of any other law for the time being in force....." Section 73 empowers

the appropriate Government to frame rules for carrying out the provisions of the Act.

(15) The Act is a piece of welfare legislation. The basic object of the Statute is to help the handicapped. The Act is intended to secure the object which runs through the Constitution and is embodied in Article 14. The Constitution guarantees equality to all. The physically handicapped members of the society suffer from a disability. In order to make the guarantee of equality a reality, certain beneficial provisions have been made in the Act. These provisions are meant to carry out the constitutional mandate of removing inequalities and ensuring equality. The object of the Act is to remove the handicap, at least to an extent, so that the less fortunate can compete with others in the matter of recruitment to public service. This object needs to be promoted. The provisions have to be liberally construed so as to effectuate the real intent of the Parliament. An interpretation which does not promote the basic object of the Statute has to be avoided.

(16) It is in this background that the contentions of the learned counsel have to be considered.

(17) Sections 32 and 33 need to be noticed. These provisions provide as under :—

32. Identification of posts which can be reserved for persons with disabilities—Appropriate Governments shall—

- (a) identify posts, in the establishments, which can be reserved for the persons with disability ;
- (b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

33. Reservation of posts —Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent shall be reserved for persons suffering from —

- (i) blindness or low vision ;
- (iii) locomotor disability or cerebral palsy.

in the posts identified for each disability ;

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

(18) A perusal of Section 32 indicates that the posts which can be reserved for persons with physical disability have to be identified. The purpose is obvious. A person who stammers may not be able to teach. A person who has lost the thumb of his hand may not be able to effectively use the surgical scalp and operate on the patients. Thus, the necessity to identify the posts. The job requirements have to be examined and in cases where a person can effectively discharge the duties of the post, the competent authority can make a provision for reservation. Still further, the authority has been authorised to revise the list at periodic intervals "not exceeding three years." The obvious purpose is that if the appropriate Government finds that reservation has resulted in deficiency in performance, it may exclude the post from the list. Similarly, in cases, where it is felt that the physical handicap may not obstruct the efficient performance of duties, the Government can include the particular category in the list of posts identified as suitable for reservation. However, the appropriate authority is expected to identify the posts without loss of time. It cannot render the Act wholly irrelevant by its mere inaction.

(19) Under Section 33, the State Government is under a duty to "appoint in every establishment such percentage of vacancies not less than 3% from persons or class of persons with disability..... in the posts identified for each disability. By the proviso, the Government has been given the power to grant exemption to any establishment in view of the type of work carried on therein. The purpose is obviously to ensure that the organisation should not be handicapped by employing the handicapped. However, it is significant to note that the power to grant exemption is vested in the Government and the establishments have no right to ignore the provisions of the Act or the directions of the authority.

(20) What is the position in the present case? On 2nd May, 1997, the State Government had issued a circular reiterating the instructions which had been issued,—*vide* letters dated 24th November, 1982, 30th December, 1986 and 16th January, 1997. In paras 3 to 6 of these instructions, it was categorically provided as under :—

"The Government have already decided to reserve 3% vacancies in direct recruitment in Class I, II, III and IV services for

physically handicapped persons in the State. The break up of this reservation is as under :—

- | | |
|---|----|
| (i) Blindness of low visions | 1% |
| (ii) Hearing impairment | 1% |
| (iii) Locomotor disability or cerebral palsy. | 1% |

The definitions of the categories of the handicapped for purpose of reservation in employment are given in Annexure 'A' which are as per provision contained in 'The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995.

The above percentage of reservation should be implemented by means of a 100 point roster and vacancies falling at point 11, 40 and 71 be reserved for the above three categories respectively.

The reservation made for the categories of handicapped persons mentioned above is interchangeable amongst themselves, if candidates belonging to a category are not available or if the nature of vacancies in an office is such that a given category of persons cannot be employed."

(21) The above instructions contain a clear provision for reservation of 3% vacancies in direct recruitment for the physically handicapped persons in various services "in the State". The definition of the handicapped persons is as per provision contained in the 1995 Act. The vacancies falling at points 11, 40 and 71 in the 100 point roster have been reserved. In plain terms, there is a clear decision to reserve the vacancies. All posts falling in Class I and II services are covered.

(22) Admittedly, a copy of instructions dated 2nd May, 1997 was forwarded to the Electricity Board as well. On 15th September, 1997, the Board had issued circular No. 26/97. It was *inter alia* stated as under :—

"Punjab State Electricity Board has adopted these instructions contained in the above letter with the modification that the said instructions in the Punjab State Electricity Board will be applicable for reservation in Class I, II, III and IV services in the cadre of Ministerial staff, Accounts Staff and Peons only."

(23) Could the Board have said so ? Is its action in conformity with the provisions of the Statute ?

(24) On a perusal of Sections 32 and 33 as quoted above, it is clear that the power to identify the posts, to provide for reservation or to grant exemption to any establishment vests exclusively in the "Appropriate Government." Not in the establishment. Nor in any other authority. In view of the provisions of the Act, the Board had no jurisdiction to say that it adopts the instructions issued by the State Government under the provisions of the 1995 Act only "in the cadre of ministerial staff, accounts staff and Peons....." A consequence of this is that while issuing the advertisement for recruitment to the posts of Assistant Engineers which is a Class II post, the Board had to make reservation of 3%. It erred in failing to do so. Now it cannot be permitted to take advantage of its own wrong or to deny the benefit to the petitioner.

(25) It is undoubtedly correct that in the short reply filed on behalf of the State Government, it has been averred that "the matter regarding identification of jobs in respect of Class I and Class II services for physically handicapped persons is under active consideration of the State Government. Till date, no post of Class I and II services for physically handicapped persons has been identified by the State Government". Can the State Government render the provisions of the Act otiose by its mere inaction? In any event, should it be permitted to do so? As already noticed, the Act has a laudible object to serve. It is calculated to help the handicapped. It provides for the rehabilitation of the less fortunate. It imposes mandatory duties on the State Government to constitute Coordination Committees, to appoint Chief Commissioners and Commissioners, so as to effectuate the purpose of the legislation. The State cannot be permitted to defeat the object of the Act by a totally passive inaction.

(26) For the purposes of this case, we find that the circular issued by the State Government,—*vide* its letter of 2nd May, 1997 shall be considered as an order of identification of posts till such time as it is reviewed. Still further, the State Government having identified the posts, the Board was bound to fill up the vacancies at roster points 11, 40 and 71 from amongst the persons belonging to the category of physically handicapped. Its failure to do so was illegal. Equally, the decision of the Board as contained in its circular of 15th September, 1997 whereby it provided that the reservation shall be only in the cadre of ministerial staff, the accounts staff and the Peons was violative of Section 33 of the Statute. It cannot, thus, be sustained.

(27) Mr. Mattewal contended that the petitioner had not claimed to be a physically handicapped person while submitting his application

for the job. He had in fact competed for the posts in "the general category".

(28) Mr. Mattewal is right to the extent that the petitioner had not claimed to be a physically handicapped person while submitting his application to the Board. This was, however, as explained by the counsel for the petitioner, totally on account of the fact that in the advertisement issued by the Board, no post had been reserved for the physically handicapped persons. Had a post been duly reserved, the petitioner would have been able to compete therefor. Since the respondent-Board had failed to make any reservation, it cannot blame the petitioner for not indicating in the application that he is a handicapped person. Still further, in the written statement filed by the Board, the petitioner's assertion that he is a physically handicapped, has not been disputed. In fact, even at the stage of arguments, it was not suggested that there was any doubt regarding the petitioner's physical state. In this situation, we are not inclined to disallow the relief to the petitioner only on the ground that he had not claimed to be a handicapped person in his application.

(29) Mr. Mattewal contended that the Board has made statutory regulations under Section 79 of the Electricity (Supply) Act, 1948. According to Regulation 9(b), it is provided as under :—

"No person shall be appointed as an Assistant Engineer on training by direct appointment unless he—

(b) has obtained from the Medical Authority a certificate of mental and physical fitness as prescribed in Appendix C and is considered by the Medical Authority to be fit in all respects for active outdoor duty."

(30) In Appendix C, it has been *inter alia* provided that "to be passed as fit for an appointment as an officer of the Punjab State Electricity Board Service of Engineers, a candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of the duties of his appointment."

(31) It is undoubtedly true that according to this regulation, a person should be in good mental and bodily health. He should be free from a physical defect which is likely to interfere with the efficient performance of duties. However, in the present case, it has not been shown that the petitioner's physical defect is such as may be likely to interfere with the efficient performance of the duties. In any event, the regulations are a piece of subordinate legislation. The provisions of the

Act of Parliament would override. The Regulation to the extent of repugnance shall be void.

(32) It was then contended, that the Board has filled up all the posts. Other candidates who may be handicapped may not have applied. As such, no relief should be granted to the petitioner.

(33) As for the first contention, we may notice that the petitioner had approached the court on 6th February, 1999. It was not suggested that any appointment had been made on that date. The written statement was filed on 26th May, 1999. It was mentioned that the offer of appointment had been made to 85 selected candidates out of which 83 had joined. However, the date on which the offer had been made was not indicated. In any event,—*vide* order dated 18th February, 1999, it had been clearly observed by the Bench (V.K. Bali and A. S. Garg, JJ) that “any appointment made during the pendency of the petition shall be subject to the decision of the writ petition and this fact should clearly be mentioned in the appointment letters of those who are being appointed.” Counsel for respondent—Board was present before the court when this order was passed. It is, thus, clear that the petitioner cannot be denied relief merely because the selected candidates have joined after his having approached the court and during the pendency of the case.

(34) It was also contended that relief should be denied to the petitioner as the other handicapped persons may not have applied for the job.

(35) It is true that no stipulation regarding reservation for the handicapped persons having been made in the advertisement, persons belonging to that category may not have actually submitted their applications. However, no such person has approached the court. Still further, the petitioner had not only competed but he had even qualified the written examination. He was also called for the interview. It was not suggested that he was not found to be suitable. It would not be fair to deny relief to the petitioner on a purely hypothetical presumption that others like him may not have applied. In the absence of any definite evidence and no other person having approached the court, we do not think that it would be fair to deny the petitioner his legitimate due.

(36) A faint attempt was made by the counsel to contend that the Punjab State Electricity Board is an autonomous body. It is entitled to take its own decisions. It is not bound by the orders of the Government.

(37) In view of the provisions of the Act as noticed above, this contention is not tenable. The Parliament has imposed the duty of

carrying out the provisions of the Act on the State Government. Local authorities even if autonomous cannot violate the directions of the Government. Of course, it may be permissible for them to point out the relevant facts for the consideration of the competent authority so as to enable them to claim exemption etc. The Government is entitled to consider those facts and decide about the matter. However, the Board cannot claim the power or the right to ignore the directions of the State Government.

(38) No other point has been raised.

(39) In view of the above, the writ petition is allowed. The Respondent—Board is directed to consider the petitioner's claim against an existing vacancy or any vacancy that may become available in the immediate future. The needful shall be done within two months from the date of receipt of a certified copy of this order. In the circumstances, there will be no order as to costs.

J.S.T.

Before R.S. Mongia and J.S. Narang, JJ.

DR. S.S. BAINS,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

CWP No. 5611 of 1999

13th September, 1999

Punjab Civil Service Rules, Vol. I, Part I—Rl. 10 (2)—Punjab Agricultural Service (Class I) Rules, 1974—Rl. 12(1)—Transfer without consent from cadre post of Director Agriculture, Punjab to foreign service as Chairman-cum-Managing Director, PUNSEED—Such transfer accepted and not objected to—Tacit consent inferred—Rule 10.2 protecting a Govt. servant from transfer without consent—Second proviso to Rl. 10.2 giving unfettered power to transfer a Government employee in public interest—Checks and balances incorporated in Rl. 10—Second proviso is not ultra vires Rl. 10.2—Government appointing third party as Chairman PUNSEED—Petitioner ordered to continue as M.D. only—This order impugned on the plea that the petitioner's consent taken to continue as only M.D. PUNSEED at the time of extension—Prayer made for repatriation to parent department of Agriculture on his substantive post of Director Agriculture—Order requiring the petitioner to continue on the post of M.D. is not sustainable since the order passed without seeking verbal or written consent—No public interest involved or shown