

Case No. WP(C) 8 of 2009

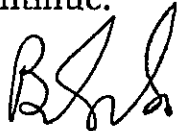
Serial No.	Date	Order (s) with Signature (s)
1	2	3
14.	10.06.10	<p style="text-align: center;">BEFORE</p> <p style="text-align: center;">HON'BLE THE CHIEF JUSTICE <u>MR. JUSTICE BARIN GHOSH</u></p> <p>Present : Petitioner in person.</p> <p>Mr. J. B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay Namgyal, Govt. Advocate and Mr. Santosh K. Chettri, Asstt. Govt. Advocate, Mr. D. K. Siwakoti, and Ms. Sunita Pradhan, Advocates for the respondent nos.1, 2, 4, 5, 8, 9 and 10.</p> <p>Mr. A. K. Upadhyaya, Senior Advocate with Mr. Dhurba Tewari, Advocate for the respondent nos.3, 6 and 7.</p> <p style="text-align: center;">***</p> <p>Respondent Board is a Body Corporate, constituted by and under The Sikkim Khadi and Village Industries Board Act, 1996. In terms of Section 3 of the Act, respondent Board is a Body Corporate having perpetual succession and entitled to sue and be sued in its corporate name. Respondent Board, in accordance with Section 4 of the Act, is made of members named therein, to be appointed by Government. One of the members named in Section 4 of the Act, is Executive Officer of the Board. Writ petitioner was appointed by Government as Executive Officer of the Board. Subsequently, by an ordinance, the words 'Executive Officer' occurring in the Act was replaced by the words 'Chief Executive Officer'. At that stage, writ petitioner approached this Court, but when the said writ petition was heard and decided, it was noticed that the ordinance has lapsed. Court, therefore,</p>



Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>did not go into the challenge thrown to the ordinance and concluded the matter by keeping the status quo as to the status of the petitioner intact. Subsequent thereto, by an Act, what was attempted to be done by the said ordinance, has been done, and, accordingly, the words 'Executive Officer' occurring in the Act have been changed by the words 'Chief Executive Officer'. Petitioner contends that by reason thereof his status is now in Limbo, for there is no post where he can be accommodated. In addition to that, it is the contention of petitioner that the manner in which the amendment has been effected, takes away his erstwhile recognised right of being Member Secretary of the Board. In the event, legislature decides that some one else shall be Member Secretary, a person who was Member Secretary pursuant to an earlier decision of legislature, cannot question the wisdom of legislature to change the person to be appointed as Member Secretary. In as much as, petitioner was Executive Officer of the Board, and, as such, Member Secretary thereof, it is not binding on the Government to appoint petitioner as the Chief Executive Officer of the Board and consequentially to permit him to continue to function as Member Secretary of the Board after legislature by the amendment directed that it shall be the Chief Executive Officer who shall be Member Secretary of the Board.</p>

BA.

Case No. WP (C) NO. 8/2009

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>2. However, there being no expressed or implied decision on the part of legislature or of Government to do away the services of petitioner, it was incumbent on the part of Board to accommodate petitioner by taking recourse to Section 14 of the Act, and thereby to create at least a post of Executive Officer, after the aforementioned amendment came into effect, in order to accommodate petitioner in that post. That has not been done. Before the amendment no post of Executive Officer could be created as the said post was created by legislature and Section 14 only permitted creation of other posts.</p> <p>3. I, accordingly, dispose of this writ petition by directing respondent Board to take recourse to Section 14 of the Act for the purpose of creation of at least a post of Executive Officer and to accommodate the petitioner in the said post. The above exercise be completed as quickly as possible, but not later than three months from today. Until such time the post is thus created and the same is supplied by petitioner, the status of petitioner as declared by this Court and directed to continue by its previous judgment and order shall continue.</p> <p style="text-align: right;"> Chief Justice <u>10.06.2010</u></p>

rsr/at