

All India Railway Institute Employees' Association through the General Secretary

Vs

Union of India through the Chairman

Civil Writ Petition No. 1389 of 1987

(Ranganath Misra, P.B. Sawant, K. Ramaswamy JJ)

27.02.1990

JUDGMENT

SAWANT, J. -

1. This petition is filed as stated in the petition by an Association of about 2000 employees working in 500 Railway Institutes and Clubs in various parts of the country. Their grievance, as in the case of the petitioners in the matters pertaining to Railways employees. It is their case that although the Institutes/Clubs in which they work are non-statutory, they are on par with the employees in the statutory canteens run in the railway establishments proper. According to them, the Railway Institutes and Clubs were set up to provide recreational facilities to the railway employees. They are managed by Committees consisting of representatives of all the members of the Institutes/Clubs elected periodically. The Institutes/Clubs have the following category of employees : (1) Manager (2) Accountant (3) Clerk (4) Librarian in-charge (5) Librarian (6) Watchman (7) Daftry (8) Watermen (9) Canteen employee (10) Billiards Marker etc. These employees are appointed by the Committee and their salaries are paid out of the contributions received from the members of the respective Institutes/clubs and the grants-in-aid given by the Railway Board to the Institutes/Clubs. The committee of management is presided over by a president who is the concerned Divisional Railway manager or his nominee. The railway administration has the right to dissolve or to form an ad-hoc Committee.

2. According to the petitioners further, the Railway Board has always treated the Institutes and Clubs as an integral part of the railways, since they not only receive grants-in-aid but also other facilities from the government. Section B of Chapter XXVIII of the Railway Establishment Manual makes a special provision for the Institutes and Clubs. Paragraph 2808 of the Manual states that a Railway Institutes should be looked upon as a club provided by the railway, rent free for the benefits of its employees and therefore, the railway should provide every thing which a landlord ordinarily would, and the Institutes should pay for all that a tenant would usually be liable to pay. Paragraph 2809 states that the railway administration will bear (a) the first cost of the building including the cost of electric installations with necessary furniture, roads, fences, tennis courts and other playgrounds. Wherever possible a garden will also be provided; (b) the cost of maintenance and alterations.

3. In the case of tennis courts and playgrounds the railway administration will bear only the cost of ordinary engineering repairs. The said paragraph however requires that the Institutes funds should bear (a) the cost of rolling, watering, grass-cutting and other maintenance charges of playgrounds, other than engineering repairs; (b) the cost of maintenance of its gardens and ornamental grounds; (c) the cost of maintenance and renewal, whether partial or complete, of electric installations (which

include electric fans) payable at a flat rate of 5 percent per annum on the capital cost of the installations; (d) the cost of electric current consumed and hire of meter; (e) the occupier's share of municipal taxes for specific direct services rendered to an Institutes by a municipality such as conservancy, water and the like taxes as distinct from taxes of a general nature; (f) water charges calculated at so much per tap, each railway administration fixing its own scale of charges. In cases where large quantities of water are supplied by the railway administration, as in the case of swimming baths, the actual cost of water supplied should be recovered. Paragraph 2810 provides that : (i) no rent is recovered in the case of railway buildings used as officers' club provided conditions stipulated in paragraph 1942-E are fulfilled : (ii) no rent is recoverable in the case of officers' clubs if the buildings are specially constructed against amounts specifically sanctioned by the Railway Board (iii) no rent is recoverable in the case of Clubs, if additional expenditure is incurred in converting an existing building into a Club or providing ancillaries to make it suitable as Club, if the expenditure is incurred with the specific approval of the Railway Board and (iv) no rent is recoverable in the case of Club where the building is erected by he Club at its costs on railway land. Paragraph 2811 further provides that : Class IV staff employed in Railway Institutes may be given residential accommodation free of rent provided such accommodation is either part and parcel of the Institutes building and its recognised outhouses, or is not required for any other railway purpose, or cannot be rented to outsiders and would otherwise lie vacant. According to paragraph 2813 the membership of the Institutes/Club is optional. Paragraph 2817 gives powers to the respective General Managers to frame rules to suit local requirements of the railway administrations and other circumstances of the place.

4. The employee of the Institutes/Clubs are entitled to free passes, and to get medical facilities provided by the Railway Hospitals. The employees belonging to class IV are eligible for absorption in the railways and for that purpose they are given relaxation in age.

5. The petitioners, therefore, claim that they should be treated on the same par as the employees in statutory canteens and non-statutory canteens there being no differences in their status.

6. The petition is resisted on behalf of the respondent Union of India. According to the respondents, the Institutes and Clubs have their origin in the rules regarding Staff Benefit Fund which is provided for in Chapter VIII of Railways Establishment Code Vol. I (1985 edition). According to the rules contained in this chapter as clarified/modified by the administrative instructions from time to time, the main objectives of the Fund are to provide additional amenities to the railway servants and their families in the sphere of education, recreation, relief to the distressed, financial assistance during sickness and development of sports and scouting activities. The Fund consists of contribution from railway/revenues at the rate of Rs. 14 per capita of the sanctioned strength of non-gazetted employees as on March 31 of each year. The contribution of Rs. 14 is broadly apportioned amongst various spheres of activities as under :

#(i) (a) Education 2.50 (b) Recreation other than sports 2.00 (c) Relief of distress, sickness etc. 3.50 (d) Miscellaneous items 0.50(ii) Sports activities 2.50(iii) Scouts activities 1.00(iv) Recreational facilities to 2.00 officer and supervisory staff##

7. According to the respondents further, as per the provisions of the Railway Establishment Code and the Establishment Manual, the Institutes and clubs are managed by a committee representing its membership. It is the managing Committee which engages such staff as is required and meets the cost of their wages and allowances. The conditions of service including the scale of pay of the staff are decided upon by the respective Managing Committee and hence they vary from Institute to

Institute and Club to Club. The cost of the staff running the Institute including the pay bill of the staff is met by the Managing Committee from membership fees and from grants received from the staff Benefit Fund. As will be evident from the apportionment of the per capita grant among the various activities, only a sum of 4 per capita comes to the share of the recreational facilities. The fund available for recreational facilities are further limited because the membership of the Institute/Cubs is optional. These facilities further, in the nature of things, are availed of by the members for a few hours beyond working hours. The Managing Committees therefore, engage only part-time staff. They engage full-time staff only when it is considered absolutely necessary. There are about 449 Institutes and 332 Clubs and they have engaged about 1741 employees of whom about 887 Clubs are on full-time basis, the rest having engaged in part-time basis. The wholetime employees are allowed passes and Privilege Ticket Orders on a restricted scale in terms of paragraph 1526 of the Railway Establishment Manual.

8. It is, therefore, contended on behalf of the respondents, that the railways are not the principal employers of the staff engaged in the Institutes/Clubs and they have no control whatsoever on it. The staff is not paid directly from the Consolidated fund of India. Whatever facilities are provided to the wholesome staff are provided only as a special case, and not on account of any obligation under any law. It is also contended that in fact it is the Managing Committees who have engaged the staff and they ought to have been joined as parties to the petition. The respondent Union of India having no relationship with the employees, the petition is liable to be dismissed on account of non-joinder/misjoinder of parties. The respondents have also questioned the locus standi of the present Association to file the petition since according to them no such Association exists.

9. The respondents further point out that the Managing Committees of the Institutes/Clubs do not receive any subsidy or loan from the railways for meeting specifically the wage bill of the employees as do the Managing Committee of the statutory/non-statutory recognised canteens and, therefore, the present employees stand on a different footing than that of the employees in the statutory/non-statutory recognised canteens. In reply to the contention of the petitioners that the rules framed for the constitution of managing Committee of the Institutes/Clubs give power to the railway administration to dissolve the Managing Committees or to appoint ad hoc Committees, it is pointed out that these rules are framed locally by General manager of Zonal Railways, Production Units etc. in terms of the provisions contained in paragraph 2817 of the Establishment Manual. They are not uniform and not all rule so framed provide for either the dissolution of the Managing Committee or appointment of ad hoc Committee by the railway administration. The respondents also deny that the Railway Board has treated Institutes/Clubs as an integral part of the railways. It is also pointed out that the railway free passes and privilege ticket orders are given only to the fulltime employees as special case. But even they are given on a restricted scale. As regards the medical facilities, again, it is pointed out that it is given to the employees and not to their family members or dependent relatives. As regards the facilities of absorption in the railways by relaxing the age limit, the respondent point out that it is not only this staff but also the staff of cooperative societies, canteen commission bearers, vendors of departmental canteen who are eligible for such relaxation in age limit to the extent of the service rendered in such organisation which ever is less, for appointment in Group D categories. But they have to appear before Railway Service Commissions/Railway Recruitment Board along with casual laborers and substitutes, and they are considered only after the eligible casual laborers and substitutes are considered. It is lastly submitted on behalf of the respondents that although there is no obligation on the railways, the railways have issued administrative instruction to the Zonal Railways etc. that whenever it is found absolutely necessary by the Managing Committee of the Institutes/Club to employ staff on fulltime basis they should be paid remuneration keeping in view the local market conditions.

10. It is also the contention of the respondents that the railways are providing financial assistance/grants-in-aid for various non-welfare activities and to non-railway agencies such as private schools run in the railway colonies, cooperative societies/bank etc. Since the employees engaged in these activities/non-railways organisation do not ipso facto become railway servants, the employee of these Institutes/Clubs can also not become the railway employees for the same reason. The service in the Railway Institute/Club is purely in the nature of private employment. On the other hand, the railway employees are recruited according to the rules of recruitment. They are subjected to rigorous standards with regard to age limit, educational qualifications, medical fitness, interviews, character verification etc. as well as to stiff competition. To treat the employees in Railway Institutes/Clubs as railway employees would amount to a backdoor entry of these employees to government service without following the regular procedure. It is also contended by them that the letters of appointment offered to these employees by the respective Managing Committee make it clear that they are not to be treated as railway servants. For all these reasons, these employee form a separate class and they are not comparable with any other category of staff of the railways. It is also submitted on behalf of the respondents that the analogy of the employees in railway canteen is not applicable to these employees because the status of the canteen employees is itself being contested by the respondents. It is lastly contended that if this court deems it proper to treat the fulltime employees of the Institutes/Clubs as railways servants it will have to be left open to the respondents to frame such rules as it considers necessary for the efficient running of the Institutes/Clubs and for engaging such staff as are considered necessary. If the employees concerned are then directed to be absorbed only subject to the requisite standard of age, educational qualification etc. and only such of them as are found suitable, many of the present employees may be faced with unemployment which will not be in the interests of the employees themselves.

11. After considering the respective contentions of the parties and the documents on record, we are of the view that there is a material difference between the canteens run in the railway establishments, and the Railways Institutes and Clubs. In the first instance, the canteens are invariably a part of the establishment concerned. They are run to render service during the hours of work since the services, by their very nature are expected directly to assist the staff in discharging their duties efficiently. The lack of canteen facilities is ordinarily bound to hamper and interfere with, the normal working of the staff and affect their efficiency. The importance of the services rendered by the canteens to the staff in the day-to-day discharge of their work therefore needs no further emphasis. Suffice it to say that the canteen services are today regarded as a part and parcel of every establishment. So much so that they have been made statutorily mandatory under the Factories Act, 1948 in establishment governed by the said Act where more than 250 workers are employed. The canteen services are thus no longer looked upon as a mere welfare activity but as an essential requirement where sizeable number of employees work. That is why even the railway administration has by its Establishment Manual made a provision for canteens even where the Factories Act does not apply, and has laid down procedure for registration and approval and for extending to them almost the same facilities and monetary assistance as in the case of the statutory canteens. However, the same can not be said of the Institutes and Clubs. Although for them also the Railway Establishment Manual makes provisions in the same Chapter XXVIII dealing with Staff Welfare, the provisions are of a materially different nature and pattern. In the first instance, there is no provision either for subsidy or loan directly from the funds of the railway administration. The Institutes/Clubs have to run on the membership fees and fixed grants Received from the Staff Benefit Fund. The Fund consists of receipts from the forfeited provident fund and bonus, and of fines. The grant is made as pointed out by the respondents, to each Institute/Club at the rate of Rs. 14 per capita of the non-gazetted staff employed at the relevant establishment. Out of this

contribution only Rs. 4 per capita are spent on the activities of the Institutes and Clubs, the rest of the amount being spent on education, relief in case of distress and sickness, sports, scouts activities and for other miscellaneous purposes. There is further no dispute that the wages and allowances of the staff of the Institutes/Clubs are paid by the Institutes/Clubs themselves and they are not subsidised by the railway administration as in the case of the statutory and non-statutory recognised canteens.

12. By their very nature further the services of the Institutes/Clubs are availed of beyond working hours only. It is common knowledge that not all members of the railway staff avail of them. One has to be a member to do so by paying fees. The membership is also optional. That is why most of the staff employed in the Institutes/Clubs is part time. As has been stated by the respondents, out of about 1741 employees engaged in 449 Institutes and 332 Clubs nearly half are part time employees. The services rendered by the employees are not of a uniform nature. They are engaged for different services with different service conditions according to the requirement. The Institutes/Club further do not engage in uniform activities, the activities conducted by them varying depending upon the infrastructure and the facilities available at the respective places.

13. What is more important as far as the issue involved in this petition is concerned, is that the provisions of the Institutes/Clubs is not mandatory. They are established as a part of the welfare measure for the railway staff and the kind of activities they conduct depend, among other things, on the funds available to them. The activities have to be tailored to the budgets since by their very nature the funds are not only limited but keep on fluctuating. If the costs of the activities go beyond the means, they have to be curtailed. So also, while starting a new activity, it is necessary to take into account its financial implications and the capacity of the Institute/Club to raise the necessary funds. The only varying component of the funds is the membership fee which is uncertain.

14. If as contended by the petitioner Association the workers engaged in these Institutes/Clubs are treated as railway employees, the danger is that these welfare activities which are otherwise encouraged by the railway administration may in course of time shrink and cease altogether for want of funds. This will not be in the interests of the workers themselves. One cannot lose sight of the fact that today the emoluments of government servants including those of the railway employees, may they belong to Class IV or to a higher category, are substantial and inhibit fresh recruitment. The services rendered by a government agency, therefore, become costly and uneconomical. Compared to the services which are rendered by the Institutes/Clubs and the benefits which flow from them, an increase in their administrative expenditure which may result from granting the status of the railway employees to their workers, will be disproportionately high and forbidding. This will also have a snow-balling effect on other welfare activities carried on by the railways and similar activities carried on by all other organisations. We also cannot lose sight of fact that the workers engaged in the welfare activities today are drawn from the respective localities without restriction on the qualifications of education, age etc. Whatever little scope for employment is available to the local population at the respective places may also vanish with the cessation of these activities. After all the number of employees who may benefit by becoming railway employees does not today exceed 887 who are the fulltime employees scattered all over the country. But, they may deprive many of their bread in the praesenti and in the future. For, as pointed out by the respondents, if the Railway Service Rules are made applicable, many of the present employees will also have to face immediate unemployment. This is of course yet a larger related socio-economic consideration.

15. On the facts placed before us which we have discussed above, we are also not persuaded to hold

that there is a relationship of employer-employee between the railway administration and the employees engaged in the Institutes and Clubs. Neither law nor facts spell out such relationship. If the present service conditions of those employees are unsatisfactory, the remedy lies elsewhere.

16. Since we are disposing of the petition on merits, it is not necessary to deal with the legal contentions raised on behalf of the respondents that the petitioner Association has non-joinder and/or misjoinder of the parties.

17. In the result, we dismiss the writ petition and discharge the rule with no order as to costs.

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