SUPREME COURT OF INDIA

R.R. Pillai (dead) through Lrs.

Vs.

Commanding Officer HQ S.A.C. (U)

C.A.No.3495 of 2005

(Dr.Arijit Pasayat, P. Sathasivam and Aftab Alam JJ.)

28.04.2009

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Doubting correctness of the view of this Court in Union of India v. Mohd. Aslam (2001 (1) SCC 720) reference has been made to a three-Judge Bench and that is how these appeals are before this Bench. The controversy lies within a very narrow compass.

2. The issue is as to the status of an employee of Unit Run Canteen in Armed Forces. While admitting Civil Appeal No.3495/2005 the matter was referred to a larger Bench as noted above and other cases were tagged with Civil Appeal No.3495 of 2005. We shall deal with the factual scenario in Civil Appeal No.3495 of 2005 and after deciding the legal issues involved, apply the decision to the other appeals.

3. Appellant Shri R.R. Pillai was recruited as Airman in the Indian Air force on 7.10.1967 and was discharged from service on 31.10.1988 as Junior Warrant Officer as he sought for premature retirement from service. Before his discharge he had been looking after the affairs of the Unit-Run-Canteen (in short the `URC'). After discharge he was engaged as Manager of URC at Southern Air Command on an honorarium of Rs.1,000/-P.M. w.e.f 1.2.1989. Para 6 of the appointment letter clearly stated that the appointment was governed by the terms and conditions as laid down in Air HQ letter No.20728/P/Org dated 31st January, 1984 issued under the relevant Regulations. The terms and conditions of service of canteen employees are covered by the rules called "The Rules regulating the Terms and Conditions of Service of' Civilian Employees of Air Force Unit Run Canteen paid out of Non Public Funds".

4. According to the appellant the view taken in Mohd Aslam's case (supra) is the correct view, it is stated that even if Canteen Store Department (in short the `CSD') was not the source of funding, other parameters clearly cover the employees in question of Government service.

5. Reference is made to certain decisions to support the stand, e.g., Kona Prabhakara Rao v. M. Seshagiri Rao and Anr. (1982 (1) SCC 442 (para 9) and Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and Anr. (1992 (4) SCC 404 at 412). Even if full funding is not there partial funding by quality discount is there which is the test for determining as to which employee is a government servant. Reference is also made to certain subsequent decisions in which Aslam's case (supra) has been referred to. It is pointed out that on the date the OAs were decided, Aslam's case (supra) was applicable and therefore de facto doctrine would apply. In any event, it is stated that Rule 24 cannot take out the benefits in the manner done. The High Court had not considered the challenge to Rule 24. It is pointed out that the decision which has been given can only be re-considered for compelling reasons and the view taken in Aslam's case (supra) is a possible view. In any event, the appointing body is an instrumentality of State and, therefore, Articles 14 and 16 of the Constitution of India, 1950 (in short the `Constitution') are applicable. With reference to Section 23 of the Indian Contract Act, 1923 (in short the `Contract Act') it is stated that Section 23 of the Contract Act clearly prohibits the appointments in the manner done.

6. Learned counsel for the Union on the other hand submitted that Aslam's case (supra) proceeded on erroneous factual basis. It proceeded on the basis as if the canteen or the establishment in question was funded by the CSD. The issue is not whether it is an instrumentality of the State. Issue is whether the concerned employees are government employees. It is submitted that Union of India and Anr. v. Chote Lal (1999 (1) SCC 554) clearly applies to the facts of the case.

7. It is submitted that unit run canteen is amenable to Shops and Commercial Establishments Statutes because the appointment cannot be made dehors the Rules. There is no prescribed qualification or age limit. Similarly there is no grade or cadre. Therefore, it cannot be said that the concerned employees are holders of civil posts.

8. In the case of Aslam's case (supra) a Bench of this court proceeded on incorrect factual premises inasmuch as after noticing that the URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that the URCs are funded by CSD as well as the articles were supplied by the CSD. Unfortunately, it did not notice that no such funding is made by the CSD. Further, only refundable loans can be granted by the CSD to URCs at the rate of interest laid down by it from time to time upon the application of URCs seeking financial assistance. URCs can also take from other Non- Public Funds. Further observation regarding supply is also not correct. URCs, in fact, purchase articles from CSD depots and it is not an automatic supply and relation between URCs and CSDs is that of buyer and seller and not of principal and the agent. This Court further went wrong in holding that URCs are parts of CSDs when it has been clearly stated that URCs are purely private ventures and their employees are by no stretch of imagination employees of the Government or CSD. Additionally, in Aslam's case (supra) reference was made to Chandra Raha and Ors. V. Life Insurance Corporation of India (1995 Supp (2) SCC 611). The Bench hearing the matter unfortunately did not notice that there was no statutory obligation on the part of the Central Government to provide canteen services to its employees. The profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds which are used by the units for the welfare of the troops. As per para 1454 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State.

9. The factors highlighted to distinguish Chotelal's case (supra) in our considered opinion are without any material. There was no scope for making any distinction factually between Aslam's case (supra) and Chotelelal's case (supra). In our view, therefore, Aslam's case (supra) was not correctly decided.

10. The question whether the URC can be treated as an instrumentality of the State does not fall for consideration as that aspect has not been considered by CAT or the High Court. Apparently, on that score alone we could have dismissed the appeal. But we find that the High Court placed reliance on Rule 24 to deny the effect of the appointment. From Rule 4 read with Rule 2 it is clear classification that all employees are first on probation and they shall be treated as temporary employees. After completion of five years they might be declared as permanent employees. They do not get the status of the Government employees at any stage. In Aslam's case (supra) CAT's order was passed in 1995. By that time 1999 Rules were not in existence and 1984 rules were operative.

11. It is to be noted that financial assistance is given, but interest and penal interest are charged. The URCs can also borrow from financial institutions. The reference is answered by holding that employees of URCs are not government servants.

12. The High Court has come to an abrupt conclusion about validity of Rule 24, distinguishing the decision of this Court in Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others (AIR 1991 SC 101). Present appellant had questioned validity of Rule 24. High Court should have considered that challenge in the proper perspective. But it is not necessary to examine that question as the original employee R.R. Pillai has already expired. But, in the peculiar facts of the case we

direct that a sum of Rs.2 lakhs be paid to his legal representatives within a period of three months in full and final settlement of all his claims.

13. The applications for intervention are dismissed.

14. This order shall operate in respect of the appeal filed by the deceased through his legal heirs and other appeals by the Union of India.

15. The appeals are disposed of accordingly.