

Union Of India [Railway Board] & Ors vs J.V. Subhaiah & Ors. Etc. Etc on 15 December, 1995

Equivalent citations: 1996 SCC (2) 258, JT 1995 (9) 488, AIR 1996 SUPREME COURT 2890, 1996 (2) SCC 258, 1996 AIR SCW 705, 1996 LAB. I. C. 960, (1996) 33 ATC 194, 1996 SCC (L&S) 558

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.N Kirpal

PETITIONER:

UNION OF INDIA [RAILWAY BOARD] & ORS.

Vs.

RESPONDENT:

J.V. SUBHAIAH & ORS. ETC. ETC.

DATE OF JUDGMENT 15/12/1995

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

FAIZAN UDDIN (J)

KIRPAL B.N. (J)

CITATION:

1996 SCC (2) 258 JT 1995 (9) 488

1996 SCALE (1) 193

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Ramaswamy, J.

Leave granted in all the special leave petitions. The respondents were admittedly appointed in Railway Employees' Consumer Co-operative Stores at Rajahmundry, Visakhapatnam, Vijianagaram

and Dharmavaram in South-Central Railway. They filed different O.As. before the Central Administrative Tribunal [CAT], Hyderabad Bench seeking declaration that they are "regular Railway employees in Class III posts" and entitled to be paid regular salary for continuous service from the date of the respective appointments in the Societies and also consequential promotion, increments and payment of arrears of salary. The CAT, Hyderabad Bench following the decision of the Madras Bench delivered on June 29, 1990 in O.A.No.305/88 allowed the O.As. and gave the directions for grant of the reliefs referred to earlier but payment of salary was directed to be made from the date on which respective applications were filed. By the time the present Special Leave Petitions came to be filed, a two-Judge Bench of this Court by order dated September 7, 1994 made in C.A. No.2932/91 confirmed the order of the CAT, Madras Bench but the review petition was pending. When these appeals had come up for hearing on October 16, 1995 it was pointed out to another Bench by the Additional Solicitor General that despite the dismissal the matter required examination and for that reason notice was already issued in another case, viz., C.A. @ SLP 24287/95. All the matters were accordingly tagged together. After the dismissal of the review petition a two-Judge Bench by order dated November 13, 1995 referred the matter to this Bench. Thus these appeals by special leave.

The admitted facts are that the respondents were appointed by the respective Railway Co-operative Stores registered under the Andhra Pradesh Co-operative Societies Act, 1964 as amended from time to time. The Co-operative Stores were organised by the Railway Administration as social welfare measure to inculcate thrift and cooperative spirit in the management of the societies, distribution of essential commodities and lending of credit facilities etc. to the members of the societies. Under the bye-laws, respective societies consist of serving members of the Railway Administration at the respective places. Normally these societies are formed at railway junctions. They are organised under the instructions issued by the Railway Administration in the Railway Establishment Manual [non- statutory orders]. Working of the societies are supervised by the welfare officers appointed by the Railway Administration. It is in dispute as to whether salaries to welfare officers are paid by the societies concerned or by the Railway Administration but that is not material for disposal of these appeals. It is also not in dispute that one third of the members of the societies are nominated by the Railway Administration.

Shri Tulsi, learned Additional Solicitor General contended, on the facts, that Co-operative Stores registered under the Co-operative Societies Act, a State Act and the articles of association or the bye-laws of the societies are sanctioned by the Registrar of Co-operative Societies [for short, "the Registrar"] of the concerned State appointed by the State Government under the respective State Acts. The constitution of the societies is regulated and registered under the State Act. Appropriate law, rules and bye-laws provide that the General Body of the society periodically elects the members of the committee which in turn elects the President or general body itself elects the President, for a specified term. The President and the committee, as the case may be, is empowered to appoint the officers, employees and servants of the Stores according to its bye-laws. The Registrar under the respective Acts, has supervision and control over the working of the societies and its employees. In case of dispute between the society and its members or the society and its officers or employees, the same is resolved by an arbitrator under the Act and appeal thereunder is provided to a Tribunal constituted or an appellate forum specified. The jurisdiction of a civil court stands excluded in

respect of the said disputes. Salaries to the staff are paid by the society. Railway Establishment Manual prescribes procedure for organisation of the welfare activities, one of which is establishment of consumer credit co-operative societies or house building societies. The share capital, though deducted from the salary of the member-employees, is only by way of an amenity to enable them to organise, as a co-operative movement, for self-help and thrift. The Administration has no control over selection, appointment and payment of salaries to the staff of the society. No qualifications are prescribed in that behalf. It is due to administrative exigencies of the concerned Stores or the Societies that appointment or dismissal can be made by the President/committee as per the procedure prescribed under the respective Acts or the Rules or bye-laws made thereunder. Thereby the Railway Administration has no managerial or administrative control over the staff of the Stores/Societies. The conditions of service of the officers of the Railway Administration are not applicable to them. If the Society is liquidated by the Registrar for its mismanagement the employees of the Societies seek the remedy only against the Societies. The societies have not been impleaded as respondents. The ratio in *M.M.Khan & Ors. v. Union of India & Ors.* [(1990) Supp. SCC 191] cannot be applied to the employees of the Societies/Stores. The rent-free accommodation and provision of electricity to the Stores and medical facilities to the employees are extended as a part of the welfare measure without creating an obligation on the part of the Railway Administration to treat them as Railway employees. In *M.M.Khan's* case recognised cooperative canteens were organised as a part of the statutory duty under Section 46 of the Factories Act where employees are 100 or above in number but below 250. The ratio laid down therein is inapplicable to the facts of these appeals. Shri K. Madhava Reddy, learned senior counsel and Mrs. Chandan Ramamurthy, learned counsel for the respondents contended that the ratio of *M.M.Khan's* case applies on all fours to the facts of these appeals. Co-operative Stores/Societies have been organised at the instance of the Railway Administration. Their work is controlled and supervised by the Welfare Officer appointed by the Railway Administration and subsidy is being paid by the Railway Administration. The society is merely an intervening agency or veil between the Railway Administration and the employees of the Cooperative Stores/Societies. The Railway Administration admittedly gives facilities like railway passes, quarters on nominal rent, free medical aid and other amenities given to the regular officers and servants of the Railway Administration from time to time. The Railway Board issues circulars from time to time to control, organise and supervise the working of the Stores. The Railway Establishment Manual itself is a complete code in that behalf. Merely because the Railway Administration kept its arms as an intervening agency between the Stores and the employees, it cannot disown its liability to treat the employees appointed by the Stores/Societies [like canteen cases] as its employees. The decision of the Madras Bench of the CAT since upheld by this Court in an appeal and review petition also having been dismissed, the employees appointed by the respective Stores in Southern Railway and South-Central Railway form a class discharging the same duties. Therefore, the respondents cannot be denied their Constitutional right to have equal treatment as had by the regular Railway employees. Smt. Chandan Ramamurthy placed strong reliance on yet another decision of a two-Judge Bench of this Court in *Parimal Chandra Raha & Ors. v. Life Insurance Corporation of India & Ors.* [(1995) Supp. 2 SCC 611].

In view of the respective contentions a question giving rise to far-reaching consequences emerges for decision in these appeals. The question is whether the officers, employees and servants appointed by a Co-operative Society/Stores registered under the Co-operative Societies Act of a

State or Societies Registration Act (for short, 'the Society') and organised as a welfare measure to inculcate co-operative movement, self-help and thrift among the officers and servants of Railway Administration, can be declared to be regularly appointed Railway employees? Whether they are Railway employees defined under the Railway Establishment Manual and entitled to all the consequential benefits? Before advertent to the instructions in the Railway Establishment Manual, it would be profitable to consider the legal setting of the appointments of the employees and servants of the Society. In this case since admittedly the A.P. Co-operative Societies Act [7 of 1964] (for short 'the Act') is applicable, its provisions and of the predecessor Acts repealed thereunder and of the Rules made thereunder as amended from time to time and bye laws of the society are required to be examined. The Act was enacted with a view to encourage co-operative movement, inculcate thrift and self-help and to organise the societies on democratic lines. The right to form a society is a statutory right and is not a fundamental right, a Society registered under Section 7, on compliance with and conforming to the requirements laid down therein and the rules made thereunder, is a body corporate under Section 9. The Registrar is empowered under Section 15 to divide the area of operation of the Society or amalgamate Societies for their day to day better working. The amendment to the bye- laws shall be approved by the Registrar and registered under Section 16. The rights and liabilities of the members are regulated in Chapter III subject to Section 21. Section 19 regulates the eligibility of a member and other qualifications. Section 21 prescribes disqualification for membership of the Society. Section 21-A prescribes disqualification for membership of the committee of the society. Section 21-AA envisages cessation of membership of a committee and the reinstatement under Section 21-B. Election and the right to vote is regulated by Section 25. Management of the society is regulated by Section 30.

The ultimate authority of the Society vests in its general body vide Section 30 (1) (a). It would be subject to the other provisions of the Act and the Rules and bye-laws made thereunder. Section 31 prescribes the procedure for constitution of a committee and their duties and responsibilities etc. Section 32 prescribes procedure for holding general body meeting of the Society and the committee and sub-section (4) thereof empowers the Registrar to appoint a Special Officer with remuneration for the management of the committee. Section 37, with an non- obstante clause and subject to the execution of an agreement, empowers the Society to deduct the share capital or any amount from monthly salary or wages payable to a member of the Society. The duration of elected body is five years. Chapter VII consists of Sections 50 to 60 for audit, enquiry, inspection and surcharge for the mismanagement and recovery of the amounts found mismanaged or defalcated from the members of the committee or the officers or servants of the Society. Chapter VIII deals with settlement of disputes. It consists of Section 61 to 63. Sub-section (1) of Section 61 with a non-obstante clause provides that any dispute touching upon the constitution, management or the business of the Society other than a dispute regarding disciplinary action taken by the Society or its committee against a paid employee of the Society, shall be resolved by arbitration on a reference under Section 62 and recovery of the monies due to it. Chapter IX deals with winding up of and cancellation of the registered Societies. Liquidator gets appointed to wind up the Society. Chapter X deals with execution of the decisions, decrees or orders. Chapter XI provides for constitution of a Co-operative Tribunal, appointment of the members of the Tribunal, appeal thereto, revision to the Registrar and review of the orders had been provided in Sections 76,77 and 78. Chapter XII deals with offences and penalties.

Section 79 (1) (a) provides that "it shall be an offence under the Act, if a committee, an officer, employee or any member of the society willfully makes a false return or furnishes false information, on a lawful order or direction issued" under the Act. Clause (aa) provides that "if the committee, an officer, employee or any member of the society furnishes false information to gain admission or to continue as member of a society etc., it/he shall be liable for prosecution as envisaged under the Act. Special Courts are empowered to take cognizance and try an offence against the officers etc. constituted under Section 83-A. Section 116-A with a non-obstante clause gives power in Chapter IVX to the Registrar to constitute a common cadre for the categories of employees for certain societies enumerated thereunder. Section 116-AA equally gives power to him to abolish the centralised services for certain categories of employees. Section 116-C empowers the societies with prior approval of the Registrar to fix staffing pattern, qualifications, pay-scales and other allowances. In case of a society receiving financial aid from the Government, appointment or removal of the Chief Executive of the society by whatever name called of any society should be made only with the prior approval of the Registrar as per sub-section (2) of Section 116-C. Section 121 bars the jurisdiction of courts and provides that no order, decision or action taken or direction issued under the Act by an arbitrator, liquidator, Registrar or Tribunal etc, shall be liable to be called in question in any court. The rights and liabilities are subject to the bye-laws, Rules and the Act. The Society owes its existence and continuance by its efficient and proper management by the Committee assisted in its day-to-day management by its staff.

Rules 28 and 29 of the Co-operative Societies Rules of 1964 [for short, "the Rules"] provide as under:

"28. Officers and servants of societies:

- (1) No society shall appoint any person as its paid officer or servant in any category of service, unless he possesses the qualification and furnishes the security as specified by the Registrar, from time to time, for such category of service in the society or for the class of societies to which it belongs.

(2) No society shall retain in service any paid officer or servant, if he does not, acquire qualifications, or furnish the security, as is referred to sub rule (1) within such time as the Registrar may direct.

(3) The Registrar may, for special reasons, relax in respect of any paid officer or servant, the provisions of this rule in regard to the qualifications he should possess or the security he should furnish.

(4) No society shall appoint as its paid officer or servant in any category of service any person who is related to any director or member of the committee of a financing bank to which the society is affiliated except with the prior approval of the Registrar.

(5) Notwithstanding anything contained in the bye-laws/special bye-laws, service regulations or common cadre regulations of the co-operative societies, every paid

servant and officer of a society, other than those in the last grade service, shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years.

29. Appointment of Secretary:- Every financing bank, every credit society with limited liability and a working capital of not less than Rupees one lakh shall appoint a paid secretary. The paid secretary shall be disqualified for being appointed as, and for being a member of the committee of the financing bank, the society or the mortgaged bank, as the case may be:"

A conspectus of these provisions would clearly indicate that registration of the society, election to the committee, the term thereof, rights and liabilities of the members and office bearers are regulated under the Act. Power to appoint officers, employees and servants of the society is given to the President or the committee, as the case may. They are regulated by the bye-laws, Rules and the Act. Their service conditions are regulated by those provisions with prior approval of the Registrar. A sample bye-laws of the society relating to the Consumer Stores at Rajahmundry has been placed before us. It shows that under bye-law 19, the management of the affairs of the society, subject to the resolutions passed from time to time by the general body or the committee from time to time, "shall vest in the managing committee". Under bye-law 20, the general body elects, amongst themselves, a President, a Secretary, an Assistant Secretary. Under bye-laws 23, subject to the resolutions passed by the managing committee from time to time, several officers of the society shall have the powers to manage the society as enumerated thereunder. Sub-bye-law (2) thereof provides that Society shall appoint a paid Manager who, among other things, shall be responsible to carry on day-to-

day work of the society on sound lines. Under sub-law (3), the managing committee is empowered to prescribe from time to time the strength of the establishment of the society and the scales of pay and allowances admissible to each member appointed by the President. Under sub-law (3) (c), the President shall have the power to fine, suspend or dismiss the members of the establishment. Except in the case of fine, an appeal shall lie to the Committee against every order awarding a punishment by the President. Under bye-law 27 (2), no officer or servant shall remain in any category of service in the Society, if he does not furnish security as prescribed by the Registrar. The other bye-laws are not relevant for the purpose of these cases.

It would thereby be clear that the power to prescribe strength of the establishment appointment of the staff of the Society, its officers, employees and servants, and their scale of pay are regulated by bye-laws, Rules and the Act. Disciplinary control lies with the President and the Committee. The disciplinary action against its employees is excluded from the arbitration proceedings, by operation of Section 60. For offences etc. are prosecuted under the Act, the jurisdiction of the civil court is excluded. Appointment of the officers, employees and servants of the Society is regulated by the provisions of the Act, Rules and the bye- laws as self-contained scheme and code. The Society enjoys autonomy as a body corporate subject to the provisions of the Act, Rules and bye-laws. It enjoys

exclusive power to appoint and keep disciplinary control over the staff in its establishment. The tenure is subject to bye-laws, Rules and Act and law so long as the Society is not liquidated as per law. In *Co-operative Central Bank Ltd. & Ors. etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad* [(1969) 2 SCC 43] this Court had held that Industrial Disputes Act would apply to the employees appointed under the Act by the Co-operative Central Bank. It would, thereby, be clear that appointments of the staff of the establishment, control and disciplinary actions are regulated under the provisions of the Act, the Rules and the remedies provided under law.

The question, therefore, emerges whether the officers, employees and servants appointed by Co-operative Society organised under the Railway Establishment Manual could be treated as Railway servants. Paragraph 10B of the Indian Railway Establishment Code defines "Railway Servant" to mean "a person who is a member of a service or who holds a post under the administrative control of the Railway Board and includes a post in the Railway Board". In other words, a person must be appointed to a service or a holder of a post under the administrative control of the Railway Board including a post in the Railway Board itself. Admittedly, respondents are not members of the service nor do they hold post under the administrative control of the Railway Board. They seek party only on the basis of the rule laid down by this Court in *M.M. Khan's case* [supra].

Before dealing with the effect of the ratio of *M.M. Khan's case*, it would be appropriate to deal with yet another decision rendered on the same day by the same Bench which was argued in the same batch but a separate Judgment was rendered, viz., *All India Railway Institute Employees' Association v. Union of India through the Chairman* [(1990) 2 SCC 542] to which one of us, K. Ramaswamy, J., was a member. Therein the question was whether the employees appointed in the institutes or clubs maintained by the Railway employees as welfare measure could be treated as Railway employees on par with Railway canteen employees [statutory or non- statutory recognised canteens]. This Court recognising that the establishment of the institutes or clubs, though recognised by the Railway, was only a welfare measure, had held that formation of the institutes or clubs was not mandatory. They are established as a part of the welfare measure for the Railway staff and the kind of activities they conduct, depends, among other things, on the funds available to them. The activities have to conform to the objects since by their very nature the funds are not only limited but keep on fluctuating. The institutes or clubs and the benefits that would flow on them will depend upon the budgetary provisions for the institutes and clubs and keep flowing from time to time. If the employees working in the institutes or clubs are recognised as Railway employees it will have snow-balling effect on other welfare activities carried out by the Railway and similar activities carried "on by all other organisations". In the light of those factual matrices, it was held that there was no relationship of employer and employee between the Railway Administration and the employees engaged in the institutes and clubs. Neither law nor facts spell out such relationship.

In *M.M.Khan's case* [supra], establishment of a canteen was one of the mandatory requirements as a part of efficient Railway Administration. Where the employees are 250 and above, Section 46 of the Factories Act mandates the industrial establishment to establish and maintain canteens. If the employees are 100 and above, though it was not mandatory but maintenance of a canteen under the Railway Establishment Manual is a part of the Railway Administration. In that factual and legal setting, this Court was to consider the effect of non-statutory recognised canteens registered under

the Co-operative Societies Act and the staff appointed in those societies. It was held that the management of the Societies was controlled by the Railway Administration by appointing a Chairman or Secretary as a member of the Society. The nominees of the Railway Administration are statutorily obligated to bring to the notice of the Railway Administration all the management and affairs of the committee which is likely to affect the interests of the Railway Administration in its capacity as the owner of the premises and furniture equipments etc. If the decision of the committee is likely to be of a considerable magnitude it is required to be brought to the notice of the Railway Administration. The General Manager of the Railway has supervisory control over the management of the committee as per the provisions contained in the Railway Manual. For the purpose of giving subsidy for wages, the rates of pay and allowances to the staff canteen employees are regulated by the Manual. Revision of the scales of pay and dearness allowance to the managing committee was also regulated therein. The Railway Administration had given directions from time to time to ensure compliance of those requirements. This Court also intervened and pending appeals, gave directions to pay to the canteen employees equal pay on par with regular employees of the Railway Administration and compliance was enforced by orders of this Court. Their service conditions are regulated by the instructions. The employees in the canteens are also entitled to free medical treatment as out-door patients in Railway hospitals etc. In the backdrop of those facts and the Rules, this Court had held that the employees appointed, even in non-statutory recognised canteens registered under Co-operative Societies Act or the recognised canteens, would be entitled to claim the status of Railway servants.

Shri Madhava Reddy, in all frankness admitted that there is a dichotomy of dual control exercised by the Registrar under the Act and the control by the Railway Administration. But he contends that since the staff appointed by the Co-operative Societies running canteens are treated as Railway servants the same ratio should be extended to the employees appointed by the Co-operative Stores/Society since this is also a welfare amenity totally controlled by the Railway Administration and 10 per cent subsidy is also regularly given.

It is not necessary to embark upon a detailed examination into the instructions given in various paragraph Nos.2901 to 2909 in chapter 29 of Railway Manual (placed before us) dealt with by the CAT, Madras Bench in its judgment. Suffice it to state that admittedly instructions have been issued to regulate the systematic organisation and management of the Stores/Societies. The Government, as a welfare measure, gives 10 per cent subsidy to enable the Society to manage its affairs supervised by the Welfare Officer of the Railway Department. Employees become members of the Societies by contributing towards share capital. Initial amount is paid by the Railway Administration and is later deducted from their salary. It also gives free accommodation for housing the Stores, electricity, free medical aid in its hospitals to those employed by the Stores. In the Manual it is specifically stated that they are entitled to traveling passes when they go to attend the committee meetings. Even otherwise the facilities extended are optional and are only a part of on-going welfare measure.

It is seen that service conditions of the employees, officers and servants of the Stores/Societies are not regulated by the Railway Administration. They are governed by the bye-laws of the Societies subject to control and sanction by the Registrar under the State Act or the relevant provisions. There is no obligation on the part of the Railway Administration to provide security for those employees.

The disciplinary control by the Society concerned is subject to other laws and is exclusively domestic in character. The Railway Establishment Code is not applicable to them. Their appointment is subject to bond prescribed by the Registrar. The arrears of funds or misappropriated amounts etc. are recoverable under the provisions of the State Act and the Rules made thereunder. The services of the staff are liable to termination in terms of the State Act, Rules and bye-laws.

In other words, there is a dual control over the staff by the Society and the Registrar. In that behalf, the Railway Administration has no role to play. If the subsidy is considered to be a controlling factor and the Societies/Stores as an intervening agency or veil between the Railway Administration and the employees, the same principle would equally be extendible to the staff, teachers, professors appointed in private educational institutions receiving aid from the appropriate State/Central Government to claim the status of Government employees. Equally, other employees appointed in other Co-operative Stores/Societies organised by appropriate Government would also be entitled to the same status as Government servants. Appointment to a post or an office under the State is regulated under the statutory rules either by direct recruitment or appointment by promotion from lower ladder to higher service or appointment by transfer in accordance with the procedure prescribed and the qualifications specified. Any appointment otherwise would be vertical transplantation into services de hors the rules. Appointment through those institutions becomes gate-way for back door entry into Government service and would be contrary to the prescribed qualifications and other conditions and recruitment by Public Service Commission or appropriate agencies. As contended, if the employees of the societies like co-operative canteens are declared to be railway servants, there would arise dual control over them by the Registrar and Railway Administration but the same was not brought to the attention of the court when M.M. Khan's case was decided.

It is true that the order of the two-Judge Bench of this Court had upheld the order of the CAT, Madras Bench which had become final. With due and great respect to our learned brethren constituting the Bench, these features noted by us do not appear to have been put up for their consideration and so they did not have occasion to consider the impact as envisaged hereinbefore. The Bench merely stated thus:

"... The Tribunal has examined in detail Chapter XXIX of the Indian Railway Establishment Manual and has preferred to paras 2901 to 2909. Based on the provisions of the Railway Manual and taking into consideration the actual working of the Stores, the Tribunal has come to the conclusion that the employees working in the Co-operative Stores are in fact and in law, the employees of the Railway Establishment. We have been taken through the judgment of the Tribunal and other relevant material on record. We so no ground to interfere with the reasoning and the conclusion reached by the Tribunal..".

In view of the above discussion and in view of the legal setting referred to hereinbefore, we are of the considered view that the Bench had not laid down any law except approving the reasoning and conclusion reached by the Madras Bench of the CAT. The Madras Bench had merely referred to the provisions in the Manual and proceeded on the premise that they gave rise to a legal base to treat

the employees of the Stores as the Railway employees. The reasoning is wholly illegal and unsustainable for the reasons stated above.

The principle of equality enshrined under Article 14 of the Constitution, as contended for the respondents, does not apply since we have already held that the order of the CAT, Madras Bench is clearly unsustainable in law and illegal which can never form basis to hold that the other employees are invidiously discriminated offending Article 14. The employees covered by the order of the Madras Bench may be dealt with by the Railway Administration appropriately but that could not form foundation to plead discrimination violating Article 14 of the Constitution.

We, therefore, have no hesitation to hold that the officers, employees and servants appointed by the Railway Co-operative Stores/Societies cannot be treated on par with Railway servants under paragraph 10B of the Railway Establishment Code nor they can be given parity of status, promotions, scales of pay, increments etc. as ordered by the CAT, Hyderabad Bench.

The appeals are accordingly allowed and the OAs stand dismissed but, in the circumstances, without costs.