A PHOOL BADAN TIWARI AND ORS.

*v.*

UNION OF INDIA AND ORS.

APRIL 3, 2003

B [SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

*Service Law:*

*Regularisation —Handicraft Centres—To help the wives and daughters* C *of Railway employees—Run with the aid of assistance received from Staff Benefit Fund constituted by Railway employees and fee collected from trainees—Persons selected and appointed to work as Supervisor—On a fixed remuneration as also on commission to be given on basis of work done—Supervisors so appointed filing O. As in C.A.T. claiming regularization, and consequential* D *benefits including pay-scales equivalent to Railway employees, on the ground that they were appointed by the Railway authorities—Held, it is not shown that the appointments given to the claimants were pursuant to or under any of the recruitment rules—The appointment orders indicate that the appointments were on remuneration of a fixed sum varying from Rs. 55 to Rs. 300 per month and 3% supervision charges from worker's bill—The appointment orders* E *issued on behalf of the Handicraft Centres are not by the Railway establishment as such—The Tribunal rightly concluded that the applicants were not Railway servants and as such the applications were not maintainable before the Tribunal—The High Court rightly did not disturb the order passed by the Tribunal—On the facts of these cases, looking to the appointment orders of* F *the appellants and the nature of work and the scheme, it cannot be said that the appellant are Railway employees.*

*M.M.R. Khan and Ors.* **v.** *Union of India and Ors.*, **[1990] (Supp.) SCC 191, held inapplicable.**

G *Union of India and Ors.* **v.** *J.V. Subhaiah and Ors.*, **[1996] 2 SCC 258 and** *All India Institute Employees' Association* **v.** *Union of India,* **[1990] 1 SCR 594, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 272 of 2001.

From the Judgment and Order dated 13.1.2000 of the Delhi High Court in C.W.P. No. 6654 of 1999. A

Anis Suhrawardy, Mrs. Shamama Anis, S. Mehdi Imam and Vinay P. Tripathy for the Appellants.

Mukul Rohatgi, Additional Solicitor General, S. Wasim A. Quadri, Mrs. Anil Katiyar for the Respondents. B

The following Order of the Court was delivered:

The appellants before us in this appeal, have called in question the validity and correctness of the order dated 13. 1. 2000 passed by the High Court in CWP No. 6654/99. The appellants in the first instance approached the Central Administrative Tribunal by filing O.A. No. 3099/91 and O.A. No. 1014/93. The Tribunal dismissed both the O. As. Not satisfied with and aggrieved by the said orders of the Tribunal they approached the High Court by filing the writ petition afore-mentioned. The High Court did not find any good reason or valid ground to take a different view than the one taken by the Tribunal in that view the writ petition was dismissed, affirming the orders passed by the Tribunal. C D

The appellants claimed that they were employees of Northern Railways and were working as supervisors in the Handicraft Centres; they were selected and appointed as supervisors by the railway authorities; they have been working as railway employees and as such they were entitled for the reliefs sought for in the original applications before the Tribunal. In O.A. 3099/91 the appellant No. 1 herein, namely, Phool Badan Tiwari was aggrieved by the notice dated 17.12.1991 by which the President of Mahila Sewing Centre. Ghaziabad had invited applications for filing up the post of supervisor in the Handicraft Centre of Ghaziabad. It was her case that when she had already been appointed pursuant to the selection held on 1.7.1989, no fresh appointment could be made for the same post. O. A. No. 1014/93 was filed by the appellants and one more person seeking the reliefs that their services be regularised with all consequential benefits, declare them as railway servants, direct the respondents to pay them regular pay-scales with all allowances and to quash such policy/ policies which may come in the way of seeking regularisation of their services. E F G

The Tribunal looking to the stand taken by the respondents came to the conclusion that the appellants are not at all railway servants and they being not railway servants the Tribunal had no jurisdiction to decide their cases, H

A although in O.A. No. 1014/93, the Tribunal referred to the contentions of the parties and ultimately following the order passed in O.A. No. 3099/91, holding that it had no jurisdiction, dismissed O.A. No. 1014/93 as well. As already noticed above, the High Court did not interfere with the orders passed by the Tribunal.

B Mr. Anis Suhrawardy, learned counsel for the appellants urged that the appellants have been working with the railways for long number of years, some of them have been working for the last more than 30 years; these Handicraft Centres are managed and controlled by railway authorities; for all practical purposes it is the railway authorities which run these Handicraft C Centres; the appellants have been working as regular employees of the railways and having regard to these facts their services need to be regularised. According to him, the Tribunal as well the High Court were not right in dismissing the claims made by the appellants. In support of his submissions the learned counsel relied on the decision of this Court in *M.M.R. Khan and Ors.* v. *Union of India and Ors.*, [1990] Supp SCC 191.

D In opposition, Mr. Mukul Rohtagi, learned Addl. Solicitor General, pointing out to the counter filed on behalf of the respondents and drawing our attention to the appointment orders issued to the appellants, contended that the Tribunal after detailed consideration of the respective contentions, E concluded that the appellants were not employees of the railways and as such it had no jurisdiction. The High Court, having regard to the facts and circumstances, was right in affirming the orders passed by the Tribunal. He added that the appellants were selected to work as supervisors in the Handicraft Centres under a beneficially intended scheme to do good and help the wives and daughters of the railway employees and in that scheme the appellants F were selected and appointed to work as supervisors, not as full time employees of the railways and not on any pay-scale but on a fixed remuneration and also on commission to be the given on the basis of the work done. It is also submitted that they were only part-time employees. In this view, according to him it cannot be said that the appellants are railway employees and the G impugned judgment is valid and justified.

We have carefully considered the respective submissions urged on behalf of the parties. It is not shown to us that the appointment of the appellants were pursuant to or under any of the recruitment rules. The appointment order relating to Kamala Rani indicates that those appointment were on H remuneration of a fixed sum varying from Rs. 55 to Rs. 300 per month, fixed

for training and 3% supervision charges from the worker's bill. The other appointment order relating to Smt. Kamala Ahuja, indicates that as a result of selection held, she has been offered appointment as a lady instructor for teaching, cutting, sewing etc., in the Railway Handicraft Centre at Lajpat Nagar, New Delhi. In that order it is also stated that the work centre will be run from the assistance received from Staff Benefit Fund and the fees collected from the trainees and it will not be a railway organisation. It is made specifically clear in the said order that it does not carry any privileges admissible to railway servants. Yet another appointment order, relating to Kumari Tulsi Rani, shows that she will not be entitled to any benefit as admissible to the railway employees as her appointment would not be on railways. The other appointment orders relating to the remaining appellants are, more or less on similar terms. In the counter filed on behalf of the respondents, as to the working and functioning of the Handicraft Centres, in paragraph 3 it is stated thus:

> "(a) That the Lady Supervisor in the Handicraft Centre is appointed to impart training about 2 to 3 hours daily to the wives/daughters/ widows of the Railway employees admitted in Handicraft Centres. They are paid remuneration to the tune of Rs. 300 per month from the Staff Benefit Fund in terms of para 5(ii) of page No. 31 of Staff Benefit Fund Rule Book. This remuneration is revised by the Central Staff Benefit Fund Committee from time to time and at present remuneration is Rs. 500 P. M. The funds allotted by the Central Staff Benefit Fund Committee for this year vide L. No. 989-E/117/2000-2001/E-IV dated 29/30.8.2000 (copy enclosed for information as Annexure P-1)."

It may also be noticed that the appointment orders issued on behalf of the Handicraft Centres are not by the Railway establishment as such. The Tribunal in the order passed in O.A. No. 3099/91 noticed that it had no territorial jurisdiction stating that the applicant was aggrieved by the notice dated 17.12.1991 by which the President of the Mahila Sewing Centre, Ghaziabad had invited applications for filling up the post of supervisor in the Handicraft Centre, Ghaziabad, the applicant had given place of her residence as Ghaziabad, situated in the State of U. P., the impugned notice had also been issued by the President of Mahila Sewing Centre, Ghaziabad, and that there was nothing to indicate that any action had been taken by the officers of the Railways located at New Delhi. The Tribunal also stated in paragraph 8 as under:

A "We further notice that even though the applicant has filed a copy of an order dated 27. 7. 89 (Annexure A-3) finding the applicant qualified for the post of Lady Supervisor, the detailed order regarding the terms of the appointment including the salary/commission has not been filed and it is admitted by the applicant in the rejoinder that no such detailed appointment letter was issued in her favour. We also find that the letter as at Annexure A-3 has been issued by the Divisional Engineer, Northern Railways, Ghaziabad in the capacity of President of the Handicarft Centre, Ghaziabad and not in his official capacity, thus supporting the contention of the respondents that the Handicarft Centre is not a department of railways. "

C In the light of what is stated in paragraph 8, extracted above, the Tribunal concluded that the applicant in O.A. No. 3099/91 was not a railway servant and as such the application was not maintainable before the Tribunal. Following the said order the Tribunal disposed of O.A. No. 1014/93 also as already noticed above. In other words, the Tribunal disposed of both the O. As. D taking an overall view on consideration of the materials placed before it that the applicants in those O. As. (the appellants herein) were not the employees of the Indian Railways and they were not even appointed by the Railway authorities. The High Court did not disturb the said orders passed by the Tribunal. In the absence of any material to show that the appellants were E appointed pursuant to any rules of recruitment or orders issued by the Railways it is difficult to accept that the appellant were the employees of the Railways. Further the very appointment orders, to some of which we have referred to above, clearly indicate that they were not full time or regular employees of the Railways for the reasons more than one. No pay-scales are given in the appointment orders, a meagre amount was fixed as remuneration per month F and a commission to be paid on the basis of the work done. It is also on record that they were employees on part-time basis. It is normally not acceptable that any Government servant or Railway servant could be appointed on a commission basis. The scheme under which the appellants were appointed was a beneficial scheme intended to help the wives and daughters of the Railway servants. The appellants were only given an opportunity to work as G supervisors. In this situation, it is not possible to hold by virtue of such appointments that the appellants were regular Railway employees. Once it is concluded that they are not Railway employees, irresistible conclusion that follows is that the Tribunal had no jurisdiction to entertain their applications. The judgment of this Court in the case of *M. M.R. Khan* (supra) in our view, H does not help the cause of the appellants as is evident from the position made

clear in paragraph 30, in which it is stated thus; A

> "We express no opinion on the subject as to whether the employees engaged in other welfare activities will or will not be entitled to the status of the railway employees, since neither they nor the facts pertaining to them are before us. Our conclusion that the employees in the statutory canteens are entitled to succeed in their claim is based B purely on facts peculiar to them as discussed above. If by virtue of all these facts they are entitled to the status of railways employees and they cannot be deprived of that status merely because some other employees similarly or dissimilarly situated may also claim the same status. The argument to say the least can only be described as one in C terrorem, and as any other argument of the kind has to be disregarded. "

That was a case relating to the employees working in a statutory canteen. From the very portion extracted above, it is clear that this Court did not express any opinion as to whether the employees engaged in other welfare D activities will or will not be entitled to the status of the railway employees. The position as to the scope of the *M.M.R. Khan's* case is explained by a three-Judge Bench of this Court in *Union of India and Ors.*, v. *J. V. Subhaiah and Ors.*, [1996] 2 SCC 258. Paragraph 18 of the judgment reads:

> "In other words, there is a dual control over the staff by the Society E 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 F private educational institutions receiving aid from the appropriate State/Central Government to claim the status of government employees. Equally, other employees appointed in other Cooperative Stroes/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 G 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 gateway for back - door entry into government service and would be H

A 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 cooperative 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. R. Khan* case was decided. "

B

In *All India Institute Employees' Association* v. *Union of India,* [1990] 1 SCR 594, this Court held that there is a material difference between the canteens run in the railway establishment and institutes and clubs and the C benefit given to the railway employees were not extended to the employees working in the railway clubs. In the case on hand, the appellants are working in Handicraft Centres under a scheme of the Railway Department but that does not make them the railway employees. Be that as it may, on the facts of these cases, as already observed looking to the appointment orders of the appellants and the nature of work and the scheme, it is not possible to say D that the appellants are railway employees. This being the position, the Tribunal was right and the High Court rightly did not interfere with the orders passed by the Tribunal. Under the circumstances, we do not find any merit in this appeal. As such it is dismissed but with no order as to costs.

R.P. Appeal dismissed.