

A R.R. PILLAI (DEAD) THROUGH LRS.
V.
COMMANDING OFFICER HQ S.A.C. (U) AND ORS.
Civil Appeal No. 3495 of 2005

APRIL 28, 2009

B (DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ.)

Service Law:

C *Rules regulating the Terms and Conditions of Service of
Civilian Employees of Air Force Unit Run Canteen paid out of
non public funds:*

D *Rules 2, 4 and 24 – Status of an employee of Unit Run
Canteen in Armed Forces – Held: They do not get the status
of Government employees at any stage – On the peculiar facts
of the case direction issued for payment of Rs.2 lakhs to the
family of the deceased employee – Regulations for the Air
Force, 1964, para 1454.*

E A reference was made to the three-Judge Bench as
regards the correctness of the decision in Union of India
vs. Mohd. Aslam [2001 (1) SCC 720].

Disposing of the appeals, the Court

F HELD : 1. In *Aslam's* case 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
G 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

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observation regarding supply is also not correct. URCs, A
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 B
that URCs are purely private ventures and their employees
are by no stretch of imagination employees of the
Government or CSD. [Para 8] [123-G-H; 124-A-B]

1.2 There was no statutory obligation on the part of C
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 D
of the Regulations for the Air Force, 1964 the losses incurred
by the non public funds are not to be borne by the State.
[Para 8] [124-C-D]

Union of India v. Mohd. Aslam 2001 (1) SCC 720 – affirmed.

Union of India and Anr. v. Chote Lal 1999 (1) SCC 554 – E
dissented from.

Kona Prabhakara Rao v. M. Seshagiri Rao and Anr. 1982
(1) SCC 442; *Satrucharla Chandrasekhar Raju v. Vyricherla*
Pradeep Kumar Dev and Anr. 1992 (4) SCC 404 and *Chandra*
Raha and Ors. V. Life Insurance Corporation of India 1995 F
Supp (2) SCC 611 – referred to.

1.3 The factors highlighted to distinguish *Chotelal's*
case are without any material. There was no scope for
making any distinction factually between *Aslam's case* G
and *Chotelelal's case*. *Aslam's case* was not correctly
decided. [Para 9] [124-E]

2. The question whether the URC can be treated as
an instrumentality of the State does not fall for consi- H
deration as that aspect has not been considered by CAT

A or the High Court. Apparently, on that score alone the
 appeal could have been dismissed. But it is found 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
 B 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
 CAT's order was passed in 1995. By that time 1999 Rules
 C were not in existence and 1984 rules were operative.
 [Para 10] [124-F-H; 125-A]

Union of India vs. Mohd. Aslam 2001 (1) SCC 720 –
 referred to.

D 3. 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. [Para 11] [125-A-B]

E 4. 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 employee has already expired. But,
 in the peculiar facts of the case we direct that a sum of
 F Rs.2 lakhs be paid to his legal representatives within a
 period of three months in full and final settlement of all
 his claims. [Para 12] [125-C-D]

*Delhi Transport Corporation v. D.T.C. Mazdoor Congress
 and others* AIR 1991 SC 101 – referred to.

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Case Law Reference

	2001 (1) SCC 720	affirmed	Para 1
	1982 (1) SCC 442	referred to	Para 5
H	1992 (4) SCC 404	referred to	Para 5

A 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.

B 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 D 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".

E 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.

F 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)

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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 de hors 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

A 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
B 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
C 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
D 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.

E 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.

F 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
G 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
H Government employees at any stage. In *Aslam's case* (supra)

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CAT's order was passed in 1995. By that time 1999 Rules were not in existence and 1984 rules were operative. A

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. B

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. C D

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. E

15. The appeals are disposed of accordingly.

G.N.

Appeals disposed of.