

UNION OF INDIA AND OTHERS

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v.

DYALU RAM

(Civil Appeal No. 12004 of 2018)

DECEMBER 11, 2018

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**[DR. DHANANJAYA Y CHANDRACHUD AND  
M. R. SHAH, JJ.]**

*Administrative Tribunals Act, 1985: s.14 – Jurisdiction of Tribunal – Respondents engaged on casual basis by Armed Forces in 1993 and 1994 respectively – Wages payable to them were disbursed out of Regimental Funds – Terminated from services in the year 2003 – Respondents challenged termination order before CAT – Tribunal quashed the order of termination and directed their reinstatement on the ground that the respondents were working as ‘civil cooks’ continuously since the date of their initial appointment and they could not have been treated to be privately engaged as daily wagers and Regimental Funds are not private funds raised out of individual contributions made by the Army officers – High Court dismissed the writ petitions – On appeal, held: It was held in R.R. Pillai case that employees of Unit run canteens are not engaged by the Army authorities and do not hold a post under the Union Government – Once it is held that employees of regimental canteens are neither government servants nor are they engaged in connection with a civil post under the Union, the Tribunal would not have jurisdiction to entertain the claim under s.14 of the Act – In view of this, the directions issued by the Tribunal were unsustainable – Office Memorandum dated 26 March 2012 of the Ministry of Defence was wrongly relied upon by the respondents as the said Memorandum was applicable to casual workers working in Directorates/ Departments of the Ministry of Defence – Respondents were not employed by either a Directorate or Department of the Ministry of Defence – Order of Tribunal and the order of High Court affirming the same, are set aside – Service law – Armed Forces – Jurisdiction.*

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**Allowing the appeals, the Court**

**HELD : Once it is held that they do not have the status of**

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A government servants, the order passed by the Tribunal and the order of the High Court affirming that decision are set aside. However, the continuance of the respondent-workmen would depend upon the authorities at the regimental canteens. It will be open to them to take a sympathetic view in regard to availing their services having regard to the long years of work which have been put in by them. [Paras 12, 13][945-F-H; 946-A]

*R.R. Pillai (D) Through Lrs. v. Commanding Officer, Headquarters, Southern Air Command (U)* [2009 (13) SCC 311] : [2009] 7 SCR 118 – relied on.

C *Union of India v. Gobinda Prasad Mula* 2012 (13) SCC 565 ; *Union of India versus M. Aslam* 2001 (1) SCC 720 : [2001] 1 SCR 62 – referred to.

Case Law Reference

D	[2009] 7 SCR 118	relied on	Para 5
	(2012) 13 SCC 565	referred to	Para 5
	[2001] 1 SCR 62	referred to	Para 8

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12004 of 2018.

From the Judgment and Order dated 12.03.2010 of the High Court of Himachal Pradesh at Shimla in CWP No. 201 of 2006.

With

F Civil Appeal No. 12005 of 2018.

Kailash Vasudev, Sr. Adv., R. Balasubramanian, Mrs. Sadhna Sandhu, Advs. for the Appellants.

Ashok Agarwal, Vipin Kumar Jai, Advs. for the Respondent.

G The Judgment of the Court was delivered by

**DR. DHANANJAYA Y CHANDRACHUD, J.**

Delay condoned.

Leave granted.

H 1. These appeals have arisen from a judgment dated 12 March

2010 of the High Court of Himachal Pradesh, affirming the decision of the Central Administrative Tribunal. A

2. The Respondents were engaged in 1993 and 1994 respectively on casual basis by the Headquarters, Army Training Command (ARTRAC), Shimla. The wages payable to them were disbursed out of Regimental Funds. They were terminated from service with effect from 1 September 2003. The respondents moved the Central Administrative Tribunal, Chandigarh for challenging the order of termination. By its judgment dated 8 November 2005, the Tribunal held that the respondents were working as 'civil cooks' continuously since the date of their initial appointment. In the view of the Tribunal, the respondents could not have been treated to be privately engaged as daily wagers and Regimental Funds are not private funds raised out of individual contributions made by the Junior Commissioned Officers. Consequently, the order of termination was quashed with a direction to reinstate the respondents. The Tribunal has denied back wages but directed that the respondents should be treated to be in continuous service as civil cooks for the period during which they remained out of employment. While observing that no specific scheme was shown to it under which regularization could be claimed, the Tribunal has granted liberty to the respondents to represent their cases for regularization before the appropriate authority and directed that if there is a scheme in existence, their applications should be considered in accordance with their position in seniority. B  
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3. The facts pertaining to the companion appeal are similar.

4. The Union of India assailed the above directions before the Division Bench of the High Court. The Writ Petitions have been dismissed. F

5. Assailing the judgment of the Tribunal, Mr. Kailash Vasudev, learned Senior Counsel appearing on behalf of the Union of India submits that the position of Unit run Canteens of the Indian Army is not res integra and has been settled by a judgment of a three-Judge Bench in *R.R. Pillai (D) Through Lrs. Versus Commanding Officer, Headquarters, Southern Air Command (U)*<sup>1</sup>. It has been submitted that following this decision, the position in law is well settled that employees of Unit run Canteens are not engaged by the Army authorities and do not hold a post under the Union Government. This decision, has G

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<sup>1</sup>[2009 (13) SCC 311]

A subsequently been followed in *Union of India versus Gobinda Prasad Mula*<sup>2</sup>.

6. In the above premises, it was urged that the basis on which reinstatement was granted is contrary to the law laid down by this Court. Learned counsel submitted that the Tribunal had no jurisdiction to entertain the Original Application, having regard to the provisions of Section 14 of the Administrative Tribunals Act, 1985 (“the Act”).

7. On the other hand, Mr. Ashok Agarwal, learned counsel appearing on behalf of the respondents submits that the Tribunal has elaborately considered the facts of the present appeals and has taken cognizance of the fact that though the respondents had worked continuously since 1993, their services were abruptly terminated in 2003. Learned counsel submitted that according to the finding of the Tribunal, the services of the respondents were arbitrarily terminated on the ground that they had declined to comply with a unilateral request to enter into a contract contrary to the original terms of engagement. Moreover, it was urged that following the decision of the Tribunal, they were reinstated on 9 January 2006, subject to the outcome of the Writ Petitions. Finally, it was urged that during the pendency of these proceedings, by an interim order dated 14 March 2014, this Court had directed that the pendency of the proceedings will not come in the way of the Union Government framing a policy for regularization of persons who are paid out of Regimental Funds. Learned counsel submitted that there is in fact such a policy, which is contained in Office Memorandum No.8(1) 2012/D (Civ II) dated 26 March 2012 of the Government of India in the Ministry of Defence.

8. The position of Unit run Canteens of the Indian Army is no longer res integra following the decision of the three-Judge Bench in *R.R. Pillai (supra)*. The reference to the Bench of three-Judges was occasioned as a result of a doubt having been cast on an earlier decision of a two-Judge Bench in *Union of India versus M. Aslam*<sup>3</sup>. The Bench of three-Judges observed that despite noticing that Unit run Canteens are not funded from the Consolidated Fund of India, the two-Judge Bench in *M. Aslam (supra)* erroneously held that these canteens are funded

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<sup>2</sup>[2012 (13) SCC 565]

H <sup>3</sup>[2001 (1) SCC 720]

by the Canteen Stores Department (CSD). In *R.R. Pillai (supra)*, after reviewing the position of regimental canteens, this Court held that the employees have not been granted the status of government employees at any stage. Hence the reference was answered by holding that employees of the Unit run Canteens are not government employees. This decision has been followed in a subsequent decision in *Gobinda Prasad Mula (supra)*.

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9. In the present case, the judgment of the Tribunal is rendered unsustainable by the position of law which has been elaborated in both the above decisions. Indeed, once it is held that employees of regimental canteens are neither government servants nor are they engaged in connection with a civil post under the Union, the Tribunal would have had no jurisdiction to entertain the claim under Section 14 of the Act.

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10. In this view of the matter, the directions which have been issued by the Tribunal are unsustainable. The submission which was sought to be urged by learned counsel appearing on behalf of the respondents based on the Office Memorandum dated 26 March 2012 of the Ministry of Defence is misconceived. The Office Memorandum applies to casual workers who are working in Directorates/Departments of the Ministry of Defence. Persons in the position of the respondents are not employed by either a Directorate or Department of the Ministry of Defence. Their role and position is already elaborated upon by the two judgments which we have cited above.

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11. In pursuance of the judgment of the Tribunal, the respondents were reinstated, though subject to the outcome of the writ petitions. As a result of the order of reinstatement, they are continuously in the service of the regimental canteens.

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12. Once we have come to the conclusion that they do not have the status of government servants, we will necessarily have to set aside the order passed by the Tribunal and the order of the High Court affirming that decision.

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13. However, we need to clarify that though we are allowing these appeals in the aforesaid terms, the continuance of the respondent-workmen would depend upon the authorities at the regimental canteens. It will be open to them to take a sympathetic view in regard to availing

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A their services having regard to the long years of work which have been put in by them.

14. The Civil Appeals are accordingly, allowed. The judgment of the High Court shall stand set aside. In consequence, Original Applications filed before the Tribunal shall stand dismissed. There shall be no order

B as to costs.

Devika Gujral

Appeals allowed.