

(1994) 08 SC CK 0068

In the Supreme Court Of India

Case No : Writ Petition (C) No. 457 of 1993.

S.K. Mukherjee

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 03-08-1994

Acts Referred:

Civil Defence Act, 1968 — Section 20, 3, 4(1), 5, 6
Civil Defence Regulations, 1968 — Regulation 13, 14, 4, 7, 8
Constitution of India, 1950 — Article 14, 16, 21

Citation : AIR 1994 SC 2485 : (1994) 5 JT 19 : (1994) LabIC 2502 : (1994) 3 SCALE 646 : (1994) 5 SCC 498 : (1994) 2 SCR 395 Supp : (1994) 2 UJ 372 : (1994) 3 UPLBEC 1921

Hon'ble Judges : S.P. Bharucha, J;A. M. Ahmadii, J

Bench : Division Bench

Advocate : Perty-In-Perso, for the Appellant; R.P. Srivastava, Public Prosecutor Parmeswaran and Avijit Bhattacharjee for Respondent in No. 2., for the Respondent

Final Decision : Dismissed

Judgement

A.M. Ahmadi, J.—The Director of Civil Defence, West Bengal, by Order No. 4729-HCD dated 24th July, 1965 appointed the petitioner on a temporary basis on the post of Staff Officer-cum-Instructor in the Directorate of Civil Defence, West Bengal in the scale of Rs. 175-325 plus usual allowances. The petitioner claims to be a member of the Civil Defence Corps. On this premise he contends that his case is governed by the Civil Defence Act, 1968 (Act No. 27 of 1968), hereinafter called 'the act'. The said Act was brought into force with effect from 10th July, 1968. It may be advantageous to notice the relevant provisions of the said Act at this stage.

2. The Act was enacted to make provision for civil defence and for matters connected therewith. It extends to the whole of India. The expression 'Civil Defence Corps' has been defined to mean the corps formed wholly or mainly to meet the needs of civil defence, including an organisation deemed to be a corps u/

s 4(1). That Sub-section provides for the Constitution of a Civil Defence Corps. It reads as under :

4(1) The State Government may constitute, for any area within the State, a body of persons to be called the Civil Defence Corps (hereinafter referred to as the 'Corps') and may appoint a person, not being, in its opinion, below the rank of a District Magistrate (to be known as the "Controller") to command such Corps :

Provided that if there is an existence in any area in a state, immediately before the commencement of this Act in that area, an organisation which, in the opinion of the State Government, may be entrusted with the functions of the Corps, the State Government may, instead of constituting a separate Corps for such area, call upon that organisation to take over or discharge the functions of the Corps in that area, and thereupon such organisation shall be deemed, for the purposes of this Act, to be the Corps for the area.

(2) The State government may, for the purpose of co-ordinating the activities of the Controllers within the State, appoint a Director of Civil Defence and every Controller shall comply with the directions given by such Director."

Section 5 empowers the State Government to appoint members and officers of the Corps. Sub-section (2) of Section 5 provides that every person appointed to be a member of the Corps shall be given a certificate of membership. Section 6 provides for the dismissal of a member of Civil Defence Corps while Section 7 provides for an appeal to the State Government against an order made u/s 6. Section 8 enumerates the functions of members of the Corps while Section 9 empowers the Central Government to make regulations. As the petitioner has sought directions in regard to the making of regulations we may reproduce the section for ready reference. It reads thus:

9(1) The Central Government may, by notification make regulations for carrying out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may -

(a) prescribe the functions of the members of the Corps and regulate the manner in which they may be called out for service;

(b) regulate the organisation, appointment, conditions of service, discipline, accoutrement and clothing of members of any or all of the Corps;

(c) prescribed the form of certificates of membership of any or all of the Corps.

Lastly Section 20 provides that every rule made u/s 3 and every regulation made u/s 9 by the Central Government shall be laid before each House of Parliament while in session for thirty days. Admittedly the Central Government has made rules in exercise of power conferred by Section 3 called the Civil Defence Rules, 1968. So also in exercise of power u/s 9 the Central Government made regulations called the Civil Defence Regulations, 1968. Regulation 4 lays down

the manner of applying for appointment to the Corps and regulation 7 prescribes the form of certificate to be given on appointment. Regulation 8 sets out the conditions of service as under:

8. Conditions of Service. - (1) The members of the Corps shall ordinarily serve in a voluntary and honorary capacity.

Provided that the State Government may, by order, authorise payment of duty allowance (at such scales as may be prescribed by it from time to time in consultation with the Central Government) to a member of the Corps when called on duty.

(2) Notwithstanding anything contained in Clause (1), the Central Government may declare any appointment or class of appointments as paid appointments. A person appointed on the basis of payment shall be entitled to such conditions of service as regards pay, leave and other benefits as the State Government may, by order, prescribe.

Regulation 13 provides for maintenance of service records whereas regulation 14 provides for resignation from the Corps. These, in brief, are the relevant legal provisions. It will thus be seen that the rules and regulations can be made by the Central Government only.

3. We may now briefly state the petitioner's case. The Civil Defence Organisation was set up in India in 1965 under the Defence of India Act and was later converted into a Civil Defence Corps under the Civil Defence Act, 1968. Accordingly the Civil Defence Organisation of West Bengal was converted into a Civil Defence Corps by Notification dated 10th July, 1968 and thereupon the petitioner became a member of the said Corps. He also ' claims to be the Secretary General of the Civil Defence Officers' Guild, India, a society registered under the West Bengal Societies Registration Act, 1961. The petitioner points out that the Central Government in compliance with the Calcutta High Court's Order in Civil Rule No. 6221 (W) of 1983 took over complete control of the Mobile Civil Emergency Force (MCEF) with effect from 1st April, 1992 under office order dated 26th February, 1992 whereby existing employees of MCEF, Calcutta became holders of civil posts under the Government of India and derived all the benefits admissible to such employees. Since the petitioner and others did not receive the same benefit as they were not covered under the said order there was hostile discrimination between two groups of the same organisation in total violation of the equality clause in Article 14 of the Constitution. According to the petitioner since the Civil Defence Act, 1968, is a Central Act and extends to the whole of India including West Bengal, it is incumbent on the Central Government to regulate the recruitment and conditions of service of persons appointed in the Civil Defence Organisation all over the country by making appropriate provisions in the rules or regulations so that every employee is governed by a uniform set of service conditions. Since the State Governments are laying down service conditions de hors the rules and regulations under the Act there is total lack of

uniformity which has resulted in the petitioner being discriminated in matters of pay, promotion, transfer, etc. Being aware that it has no power to frame regulations, the State of West Bengal resorted to obtaining undertakings from employees who desired to avail of the benefit of its regulations and those who were not prepared to furnish such undertakings were denied the benefits which introduced two sets of service conditions for employees working in the same organisation. It is said that members of the Guild like the petitioner are being victimised for their refusal to sign the undertaking. Thus the situation is that employees governed by State regulations on the strength of undertakings stand on a different footing from those who have refused to give such undertakings and both these classes taken together stand on a different footing from MCEF employees within the organisation governed by Central Government regulations. This, contends the petitioner, is clearly violative of Articles 14, 16 and 21 of the Constitution. The petitioner, therefore, seeks in the main the following two reliefs :

(A) Issue an appropriate writ upon the respondent No.1 to frame service rules governing service condition of members of Civil Defence Corps under the Civil Defence Act and take over administrative, financial and operational control of Civil Defence from State Government.

(B) Issue of an appropriate writ prohibiting the respondents from subjecting the petitioner and members of the Guild to any rules and regulations outside the provisions of Section 9(2)(b) of Civil Defence Act.

4. In the counter affidavit filed on behalf of the Union of India it is averred that under the Regulations made u/s 9(2)(b), a member of the Civil Defence Corps has to apply in Form A and B for enrolment and on being enrolled he would receive a certificate in Form C and a service record would be maintained in Form D. The petitioner should have produced some such documentary evidence to prove his say that he was a member of the Corps. On the contrary the petitioner is a full time paid employee of the State Government appointed under Notification dated 28th February, 1973. Thus he is an employee of the State Government governed by the State service conditions. Therefore, the petitioner cannot claim to be governed by rules and regulations made by the Central Government. While conceding that the State Government cannot make rules and regulations under the Act, it is alleged that he would be governed by executive directions of the State Government issued in this behalf. Therefore, he cannot secure the reliefs sought.

5. The State of West Bengal also denies the petitioner's claim that he is a member of the Civil Defence Corps. On the contrary it contends that the petitioner is in State service covered by the rules of the State Government. He cannot, therefore, invoke Section 20 of the Act. It is lastly said that the petitioner can base no case on the administrative set up of MCEF nor can he complain of discrimination on that basis. The petitioner's petition is, therefore, liable to be dismissed.

6. In his rejoinder to the aforesaid counters the petitioners has reiterated his stand and contended that the factum of his suspension on the allegation that he made baseless allegations in his letter of 7th May, 1991 in his capacity as the office bearer of the Guild and the failure of the Government to enquire into the matter has been deliberately suppressed. It is also not stated that in the Writ Petition filed by the petitioner questioning the suspension, the State Government had made a statement that the action was in exercise of the employer's general power to refuse to take work and had, therefore, agreed to pay full wages during suspension. Therefore, contends the petitioner, it is evident from the counters that the only point surviving for adjudication is whether he is entitled to the benefits under the Act as a full time salaried officer.

7. From the abridged facts it is evident that rules and regulations can be framed by the Central Government alone under the provisions of the Act. Such regulations u/s 9(2)(b) can inter alia relate to conditions of service. But there is no dispute that the Act could be brought into force by different States from different dates, so however, that such date shall not be earlier to the date on which the Defence of India Act, 1962 would expire. Even according to the petitioner the Act was brought into effect from 10th July, 1968. However, the Order No. 4729-HCD dated 24th July, 1965 appointing the petitioner to the temporary post of Staff Officer-cum-Instructor in the Directorate of Civil Defence, West Bengal, being earlier to 10th July, 1968, there can be no doubt that the petitioner's appointment was do hors the Act. Section 4(1) provides for the Constitution of the Civil Defence Corps by the concerned State but the proviso to that Sub-section says that if in any State there is in existence an organisation which can be entrusted the functions of the Corps, the State Government may instead of constituting a separate Corps, call upon the said organisation to take over and discharge the functions of the Corps whereupon such organisation shall be deemed to be the Corps for the area. Section 4(2) empowers the State Government to appoint a Director of Civil Defence to co-ordinate the activities of the Controllers within the State. u/s 5(1) it is the State Government which is empowered to appoint members of the Corps. Thus the Constitution of the Civil Defence Corps, the appointment of the Controller and the appointments of members/officers of the Corps is with the State Government. Section 17 provides for the delegation of the powers of the State Government/Controller to an officer of the State Government of the rank specified in the said provision. Even so, it is indeed true that the Rules and Regulations have to be made by the Central Government in view of the clear language of Sections 3 and 9 of the Act. The regulations may inter alia regulate the conditions of service of members of any or all the Corps. Regulation 8 of the Civil Defence Regulations, 1968, extracted earlier, bear on the service conditions of the members of the corps. On a plain reading of this regulation it becomes immediately obvious that members of the Corps are expected to render service in a voluntary and honorary capacity but if the State Government so desires it may authorise payment of duty allowance in consultation with the Central Government to a member of the Corps called on

duty. Clause (2) which begins with a non-obstante clause empowers the Central Government to declare any appointment or class of appointments as paid appointments whereupon the incumbent shall be entitled to the conditions of service as regards pay, leave, etc., as the State Government may by order, prescribe. Here again the power of prescribing the service conditions as to pay, leave, etc., rests with the State Government and not the Central Government. Therefore, the petitioner's contention that the service conditions as to pay, leave, etc., cannot be stipulated by the State Government is clearly misconceived. That function has clearly been entrusted to the State Government on a plain reading of regulation 8 extracted hereinabove. If that be so, and we think it is so, no writ can issue (assuming there is jurisdiction to issue such a writ) to the Central Government as prayed in prayer (A) nor can a prohibitory order of the type prayed in prayer (B) issue to the State of West Bengal. We are afraid the petitioner has been labouring under a misconception that it is only the Central Government and not the State Government which can prescribe the salary, allowances, leave, etc., in view of Section 9(2), but in so thinking he has totally overlooked regulation 8. We say so because in his petition, affidavits as well as written submissions, no emphasis is laid on regulation 8. The central Government's action in complying with court's orders in relation to MCEF can never offer a ground for contending that there has been discrimination and a violation of the equality clause in Article 14 of the Constitution.

8. For the above reasons we are convinced that the present petition is wholly misconceived and the petitioner cannot be granted either or both of the reliefs claimed by him. His petition, therefore, fails and is dismissed. Having regard to the fact that the petitioner is in dire circumstances since he is under suspension, we order parties to bear their own costs. Rule discharged. No order on I.A.