
(2018) 09 UK CK 0066

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 180 of 2016

Smt. Malti Pahwa & another

APPELLANT

Vs

Central Administrative Tribunal and others

RESPONDENT

Date of Decision : 19-09-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 09 UK CK 0066

Hon'ble Judges : Rajiv Sharma, ACJ; Manoj Kumar Tiwari, J

Bench : Division Bench

Advocate : M.C. Pant, Sanjay Bhatt, Anjali Bhargava

Final Decision : Disposed Of

Judgement

Manoj K. Tiwari, J.

2. This writ petition is directed against the judgment and order dated 17.11.2015 passed by Central Administrative Tribunal, Circuit Bench at Nainital

in Transfer Application No. 08 of 2014. Operative portion of the said judgment is extracted below:

“In view of the aforementioned, the T.A. is disposed of with the direction that if the applicants herein are willing to continue in the services of the

respondents and have not reached the age of 60 years, they should accept the revised terms and conditions of the services introduced by the

respondents by taking a policy decision.”

3. Petitioners were ministerial employees in Station Canteen, Headquarter Sub Area, Dehradun. Petitioner no.1 was appointed w.e.f. 23.02.1990,

while petitioner no.2 was appointed w.e.f. 09.06.1972. Appointment letter of petitioner no.1 is on record, paragraph no. 4 whereof provides that even

after confirmation of her appointment, her services would be terminable by giving one month's notice

4. It transpires that in the year 1994, a revised Standard Operating Procedure (in short 'S.O.P.') was formulated by the Army Headquarters,

which was circulated to all concerned authorities for implementation. In the said S.O.P., the terms and conditions of service of employees of Unit run

canteens were laid down.

5. Pursuant to the circular issued by the Army Headquarters, the Officer Incharge Canteen of Dehradun Sub Area called upon the petitioners to sign

the terms and conditions as spelt out in the S.O.P.. Petitioners declined to sign on the S.O.P. on the ground that it will alter their status from a regular

employee to a contract employee. Consequently, the services of the petitioners were terminated w.e.f. 01.10.1996.

6. Feeling aggrieved by termination of their services, petitioners filed Writ Petition No. 32660 of 1996 (S/S) before Hon'ble Allahabad High Court,

which was transferred to this Court upon State re-organisation and was renumbered as WPSS No. 5960 of 2001. The said writ petition was taken up

for hearing on 07.07.2014 and learned Single Judge of this Court found that the dispute is cognizable by Central Administrative Tribunal and instead of

dismissing the writ petition, directed for transfer of the record of the case to Central Administrative Tribunal, Allahabad Bench (hereinafter referred to

as 'Tribunal').

7. Upon receiving record of the case, learned Tribunal registered it as Transfer Application No. 08 of 2014, which was ultimately disposed of vide

judgment and order dated 17.11.2015, which is challenged in this writ petition.

8. Heard learned counsel for the parties and perused the material on record.

9. Learned counsel for the petitioners submits that the revised S.O.P., which was enforced in the year 1994, cannot have any retrospective operation,

so as to alter the status of employees who were serving before 1995. Thus according to him, termination of services of the petitioners due to non

acceptance of the terms of S.O.P., is unsustainable.

10. This aspect has been considered and discussed in great detail by learned Tribunal in paragraph no. 13 of the impugned judgment. In paragraph no.

11 of the said judgment, law regarding retrospective construction of a statute has been discussed and it is held that it is only vested rights, which

cannot be taken away by retrospective amendment of a legislation.

11. There is no material to indicate that before enforcement of S.O.P., petitioners were having the status of regular employee. Clause 4 of the

appointment letter issued in favour of the petitioner no.1, reveals that her services were terminable by giving one month's notice. Thus it can be

safely inferred that petitioners were temporary employees and they had no lien on the post. In other words, their appointment was not regular. A

regular employee of Unit run canteen alone can contend that his conditions of service are being altered to his detriment by enforcement of S.O.P.

Since petitioners were not enjoying status of regular employee, therefore the S.O.P. did not bring about any change in their condition of service.

12. We are in agreement with the view taken by learned Tribunal. Hon'ble Supreme Court in the case of T. Narasimhulu & Others vs. State of

A. P. & Others reported in (2010) 6 SCC 545 has held that only a vested right cannot be taken away by retrospective amendment of a statute.

13. Hon'ble Supreme Court in the case of R.R. Pillai vs. Commanding Officer, Headquarters Southern Air Command and others reported in

(2009) 13 SCC 311 has considered the status of employees of Unit run canteens in Army, Navy and Air Force. Paragraph nos. 9 to 12 of the said

judgment are extracted below:

9. In Aslam 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 that no such funding is made by 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.

10. Further observation in Aslam case 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 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.

11. Additionally, in Aslam case reference was made to Parimal Chandra Raha v. LIC. The 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

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 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State.

12. The factors highlighted to distinguish Chotelal case in our considered opinion are without any material. There was no scope for making any

distinction factually between Aslam case and Chotelelal case. In our view, therefore, Aslam case was not correctly decided.â??

14. In view of the aforesaid discussion, we concur with the view taken by learned Tribunal. Learned Tribunal has given liberty to the petitioners to

accept the terms and conditions contained in the S.O.P., if they are willing to continue in service. We make it clear that if petitioners accept the terms

and conditions of the S.O.P. and fulfill the age requirement, then respondent no.4 shall appoint the petitioners, within a period of four weeks.

15. In view of above, we find no reason to interfere with the judgment rendered by learned Tribunal. The writ petition is accordingly disposed of with

the aforesaid observations.

16. No order as to cost.