

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 200 OF 2007

UNION OF INDIA & ANR.

Appellant (s)

VERSUS

RAM SINGH THAKUR & ORS.

Respondent(s)

WITH

Civil Appeal NO. 1197 of 2007

O R D E R

Civil Appeal No. 200 of 2007

Heard learned counsel for the appearing parties.

This Appeal has been filed against the impugned judgments dated 15.09.2003 and dated 21.11.2003 passed by the High Court of Madhya Pradesh.

The facts have been set out in the impugned judgment dated 15.09.2003 as well as in the order of the Central Administrative Tribunal dated 30.05.2001 and hence we are repeating the same here.

The respondents were employees of a co-operative society of Railway Employees Consumer Co-operative Society Ltd. By its order dated 30.05.2001, the Central Administrative Tribunal (for short 'the Tribunal') has directed the Chairman, Railway Board to formulate a suitable scheme for induction of the respondents and

similarly placed employees of other co-operative societies in regular Group 'D' posts and alternatively also as Casual Group 'D' employees in the railways. This direction has been upheld by the High Court in the impugned judgments.

In our opinion, the order of the Tribunal as well as the impugned judgments of the High Court were totally unwarranted and illegal. There is broad separation of power in the Indian Constitution. As held by this Court in Divisional Manager, Aravali Golf Club & Anr Vs. Chander Hass & Anr., (2008) 1 SCC 683, it is not proper for the Judiciary to encroach into the domain of the Legislature or the Executive. The framing of a scheme such as the one done by the Tribunal and approved by the High Court was a purely executive function, and could not validly be done by the judiciary.

Moreover, in view of the judgment of this Court in Union of India [Railway Board] & Ors. Vs. J.V. Subhaiah & Ors. (1996) 2 SCC 258, the employees of a co-operative society are not employees of the Government.

In our opinion, the direction to frame a scheme for appointment can only be given by the Executive (and that too according to Article 16 and other provisions of the Constitution).

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For the reasons stated above, the Appeal stands allowed and the impugned judgments of the High Court as well as the order of the Tribunal are set aside. No costs.

Civil Appeal No. 1197 of 2007

Heard learned counsel for the appearing parties.

This Appeal has been filed against the impugned judgment dated 23.08.2005 passed by the High Court of Gujarat in Special Civil Application No. 8536 of 2003.

The facts have been set out in the impugned judgment and in the judgment of the Central Administrative Tribunal dated 28.03.2002 and hence we are not repeating the same here.

It appears that the respondents were working in a Mess run by the trainee officers in the Railway Staff College. That Mess was not run by the railways but was run by the trainee officers themselves so that they could get proper meals. It is evident that the respondents were not railway employees, but a direction has been given that they be regularised in railway service.

In our opinion, a direction regarding regularisation in service is a purely executive function and such a direction cannot validly be given by the judiciary.

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Consequently, this Appeal stands allowed. The impugned judgment as well as the judgment of the Tribunal are set aside. No costs.

.....J.
(MARKANDEY KATJU)

NEW DELHI;
JULY 14, 2011

.....J.
(CHANDRAMAULI KR. PRASAD)

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