

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2010
(Arising out of SLP(Civil.) No.21461 of 2008)

UNION OF INDIA & ORSAPPELLANTS.

VERSUS

A.S. PILLAI & ORS.RESPONDENTS

J U D G M E N T

ANIL R. DAVE, J.

1. Leave granted.
2. At the request of the learned counsel, the appeal was finally heard.

3. Being aggrieved by Judgment and Order dated 26th November, 2007 passed in Writ Petition No. 41579/2002 by the High Court of Madras, this appeal has been filed by Union of India and its officers, who were respondents in the writ petition.

4. The present respondents were petitioners in the petition before the High Court of Madras and, therefore, for the sake of convenience, they have been described as petitioners whereas the appellants before this Court were respondents in the High Court and, therefore, they have been described as respondents herein below.

5. The facts giving rise to the present litigation in a nut-shell is as under:-

6. The petitioners were working on part time basis in Civilian Bandsmen Team at Air Force Station, Tambaram. They were paid remuneration on daily wages basis and certain amount was paid to them per month as an incentive in addition to certain allowances for haircut, uniform washing etc. and they were also provided lunch or breakfast on certain days. Moreover, whenever they were asked to play music at any function organised by civilians, 20% of the amount received by the respondent-authorities from the civilians was paid to the team which had played music.

7. Some of the petitioners were engaged in 1982 whereas some were engaged in 1992. As they were not being

paid a regular pay scale, they had made representations on 22nd May, 2001 and 21st June, 2001. The said representations had been rejected on 20th September, 2001 and, therefore, the petitioners had approached the Central Administrative Tribunal by filing an Original Application No. 1162/2001 praying for an order to the effect that the respondents be directed to absorb them in one of the Group 'D' Posts. The respondent-authorities had filed their reply before the Tribunal stating that the petitioners were not entitled to regularization or appointment to Group 'D' posts, for the reason that there was no sanctioned post and the petitioners were paid from Non-Public Fund and there was neither any provision for regularization nor there was any sanctioned post to which they could be appointed. Ultimately, after considering the facts of the case and upon hearing the learned advocates appearing for the parties, the Tribunal rejected the application by an order dated 10th June, 2002. The Tribunal had observed in its order rejecting the application that the petitioners were not entitled to regularization because the petitioners had not been appointed against any sanctioned post and it was also

observed that the petitioners were daily-wagers who were paid Rs. 40 per day and Rs. 200/- per month as an incentive in addition to certain other perquisites. It was also observed that no material was placed before the Tribunal to show that the petitioners were performing duties which were similar to those performed by Bandsmen working in the Air Force.

8. Being aggrieved by the order passed by the Tribunal, the petitioners had preferred Writ Petition No. 41579/2002 which has been referred to hereinabove and which has been allowed by the High Court of Madras. The High Court found that the respondent-Authorities were acting in an unfair manner by giving only 20% of the charges received from private civilians when the petitioners were directed to play their instruments in functions organised by private citizens. Moreover, the High Court also found it unjust to continue the petitioners as daily wagers for such a long period without giving them regular pay-scale. The High Court, therefore, quashed and set aside the order passed by the Tribunal and gave directions to the respondents to regularize the services of the petitioners.

9. Learned Additional Solicitor General, Shri Mohan Parasaran, appearing for the appellants, who are original respondents, submitted that the impugned order is unjust and illegal and deserves to be quashed and set aside. He mainly submitted that the petitioners are not working in any sanctioned cadre or on any sanctioned post but they are working as part timers on daily wages basis as Bandsmen in Civilian Bandsmen Team at Air Force Station. He further submitted that the petitioners are paid remuneration on daily wages basis however, certain monthly emoluments are paid to them in addition to certain allowances, like haircut allowance, uniform and uniform washing allowances etc. He also submitted that the nature of duties performed by the petitioners and the persons appointed in Indian Air Force as Bandsmen are quite different and the petitioners could not adduce any evidence to show that their duties and responsibilities were similar to those of the persons working as Bandsmen in Indian Air Force. He further submitted that as the petitioners are paid from Non-Public Funds, they are not regular employees of the respondent-authorities.

10. Being part timers, the petitioners do not attend to the duties like other regular employees of Indian Air Force. Hardly, twice or thrice in a week they attend to work either for practice or for their performance at the functions of civilians. In addition to the daily wages and regular monthly amount paid to them, they are paid 20% of the amount received by the respondent-authorities from the civilians for whom the petitioners play tunes. He specifically stated that as the petitioners are not regular employees, it is open to them to have their own other occupation. So he clarified that there is no restriction on the petitioners with regard to working elsewhere. Thus, the petitioners being only part timers and as no assurance was ever given to them by the respondent-authorities with regard to their absorption in any Group Post, the petitioners do not have any right to be absorbed in any of the cadres of Indian Air Force and, therefore, the High Court was in error while giving directions to the respondent-authorities to regularize the services of the petitioners.

11. On the other hand, Mr. B.K. Prasad, learned counsel appearing for the respondents, who are original

petitioners, submitted that as some of the petitioners are working since 1982 and others are working since 1992 and as most of them are likely to be superannuated within five years or so, they would be deprived of terminal benefits which normally Government servants get upon their superannuation. Moreover, he also submitted that the petitioners are being exploited because they are paid a very meager amount by way of remuneration. Not only that, he further submitted that substantial amount received by the respondents from the civilians in consideration of the petitioners' orchestral performance is taken away by the respondent-authorities. According to him the respondent-authorities are acting in an unfair manner by retaining 80% of the amount received from the civilians.

12. He, therefore, submitted that the order passed by the High Court is just and proper and the present appeal deserves to be dismissed with costs.

13. We have heard the learned counsel at length and have also considered the judgment delivered in **State of**

Karnataka Vs. Uma Devi (2006)4 SCC, 1 cited by both the counsel.

14. It is an admitted fact that the petitioners have been working for several years under the respondent-authorities as Bandsmen in Civilian Bandsmen Team at an Air Force Station. It is also an admitted fact that the petitioners are working as part timers and they are not working in any sanctioned cadre and, therefore, they are not working on any sanctioned post. It appears that the respondent-authorities have imparted training to the petitioners as musicians and the petitioners play musical instruments belonging to and maintained by the respondent-authorities either for the respondents or at the functions organised by civilians. If the respondents depute the petitioners for playing orchestra in pursuance of a request from civilians, the petitioners put on special uniform given to them by the respondents and the petitioners get 20% of the amount received by the respondents from the civilians. The said amount is in addition to the usual wages paid to the petitioners by the respondents.

15. It is true that the petitioners have been working for several years under the respondents as part timers and they are not getting salary which is given to regular employees but it is also pertinent to note that working conditions of the petitioners and other Bandsmen appointed by the respondents are not same. The petitioners are not in regular employment. They are only part timers, who perform their duties twice or thrice in a week and they are paid daily wages whenever they perform their duties. In addition to the daily wages, they are also paid certain monthly amount by way of incentive and they are also given allowances for haircut, washing of uniform and at times they are also provided breakfast or lunch. The petitioners were never given regular appointment in any regular cadre. In our opinion, the petitioners do not have any right to get absorbed in any cadre to which they do not belong. In our opinion, the High Court was in error when it expressed its view to the effect that the petitioners were exploited by the respondent-authorities, because 80% of the amount received from the civilians was retained by the respondents whereas only 20% of the amount was given to the petitioners. It is

pertinent to note that the petitioners are daily wagers and in addition to the daily wages and other allowances referred to hereinabove, the afore-stated amount is paid to them whenever they perform show at a function organised by civilians. The respondent-authorities have imparted training to the petitioners as musicians and uniform is also provided to them by the respondents. In the circumstances, when the petitioners are paid 20% of the amount received by the respondents in addition to the daily wages paid to them, in our opinion it cannot be said that the petitioners are exploited by the respondents. The petitioners knew well that they were appointed as part timers and there was no scope for them to be absorbed in any regular cadre. Moreover, at no point of time any assurance was given to the petitioners that they would be given regular appointment or they would be absorbed in any of the Group 'D' Posts.

16. It is also very pertinent to note that the petitioners are part timers and they are free to get themselves engaged elsewhere as musicians and they are not restrained from working elsewhere when they are not working for the

respondent-authorities. On the other hand, those who are part of Bandsmen Team of Air Force, are not permitted to work elsewhere privately. Moreover, the petitioners are not full time employees and they are also not subject to service rules or other regulations which govern and control the regularly appointed staff of the Air Force. Thus, in our opinion, the petitioners cannot compare themselves with other regularly selected Bandsmen of Indian Air Force. So the petitioners cannot be compared with those who are in regular cadre of Bandsmen of the Indian Air Force.

17. We have carefully gone through the judgment delivered in case of **Umadevi (supra)** which has been relied upon by both the counsel.

18. In our opinion, this Court has rightly held in para 48 of the said case that:-

“There is no Fundamental Right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular

appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules.....”.

19. We are in respectful agreement with the aforestated judgment of this Court and in our opinion the aforestated judgment will not render any help to the petitioners because there is no separate cadre of civilian Bandsmen to which the petitioners can be absorbed. Moreover, they being part-timers, cannot be absorbed in another full time cadre. Therefore, no direction with regard to absorption of the petitioners in any cadre can be given.

20. For the reasons stated hereinabove, we are not in agreement with the impugned order passed by the High Court. We, therefore, quash and set aside the order passed by the High Court so as to restore the order passed by the Central Administrative Tribunal, by virtue of which the

application praying for regularization filed by the petitioners had been rejected.

21. The appeal is, therefore, allowed with no order as to costs.

.....J
(Dr. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

New Delhi
November 19, 2010