

PETITIONER:
UNION OF INDIA AND ORS. ETC.

Vs.

RESPONDENT:
TEJRAM PARASHRAMJI BOMBHATE AND ORS. ETC.

DATE OF JUDGMENT 03/05/1991

BENCH:
SHETTY, K.J. (J)
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SHETTY, K.J. (J)
YOGESHWAR DAYAL (J)

CITATION:
1992 AIR 570 1991 SCR (2) 685
1991 SCC (3) 11 JT 1991 (2) 572
1991 SCALE (1) 907

ACT:

Civil Service: Primary School catering to education needs of children of employees in ordinance factories- Teachers paid honorarium not full salary out of school fees- Teachers cannot claim pay scale of Government School Teachers-Central Administrative Tribunal cannot compel government to assess needs of school and create necessary posts.

HEADNOTE:

The appellant i.e. the Central Government sanctioned primary school from classes I-V to cater to the educational needs of children of persons employed in the ordinance factory at Ambazari. The employees on their own in the same premises opened a secondary school with classes VI to X. The respondents are teachers in the Secondary School and are being paid out of fees and other donations received by the school. They approached the Central Administrative Tribunal seeking regularisation of their service and demanded equal pay for equal work.

The Tribunal allowed their claim with certain directions to the appellants including the Union of India i.e. directing the Central Government immediately to take up an assessment of the needs of the School to carry on its activities at the present level and to create a sufficient number of posts to be filled up on a regular basis. The Tribunal further directed the Central Government to take steps to fill up the newly created posts in accordance with recruitment rules to be framed for the purpose.

Allowing Civil appeal No. 233 of 1991 of the Union of India, and setting aside the order of the Tribunal dismissing Civil Appeal No. 480 of 1989 of the respondents who have not been recruited as per direction of the Tribunal, the Court.

HELD: 1. There is no evidence in record that respondents were appointed as teachers on honorarium by or on behalf of the Central Government. There is no evidence that they were initially appointed in primary School and later shifted to the Secondary School. It is undisputed

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that the Central Government has not sanctioned the Secondary

School nor created any posts thereto. It had only sanctioned the Primary School and the posts connected therewith which are being occupied by regularly recruited teachers. [688A-B]

2. The directions of the Tribunal are indeed amazing compelling the Central Government to sanction the Secondary School. The Central Government has taken a decision that it will not involve itself in sanctioning or running classes beyond the Primary School level. It is a policy matter involving financial burden. No court or the Tribunal could compel the Government to change its policy involving expenditure. [688D-E]

3. The respondents are not paid by the Central Government. There is no relationship of master and servant between the Central Government and the respondents. The respondents are employed by the local officers so how the Central Government is accountable. [688G]

4. Even section 14 of the Administrative Tribunal Act, 1985 confers no jurisdiction, power or authority on the Tribunal to deal with the service matters of the employees like the respondents. the respondents cannot claim the pay-scale admissible to the Government school teachers and much less regularisation of their services by the Central Government. [688H-689A]

5. The directions of the Tribunal are apparently unjustified and without authority of law so cannot be sustained. [688F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 233 of 1991 etc.

From the Judgment and Order dated 21.6.1988 of the Central Administrative Tribunal, Bombay Bench in O.A. No. 58 of 1988.

V.C. Mahajan, S.N. Terdal, A.K. Srivastava, C.V. Subba Rao, S.K. Gambhir, Dr. B. L. Wadhwa, Sudarshan Menon, P. Parameshwaran and G.D. Gupta for the appearing parties.

The Judgment of the Court was delivered by

K. JAGANNATHA SHETTY, J. To cater to the educational needs of children of persons employed in the ordnance factory at Ambazari the Central Government has sanctioned and is running a Primary School from classes I to V. In the same premises, the employees

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of the ordnance factory, by their own arrangement are also having a Secondary School with classes VI to X. They have appointed the respondents as teachers in the Secondary School. They are paid honorarium and not full salary. Their honorarium is paid out of fees from the children and other donations received by the school. the respondents, however, approached the Central Administrative Tribunal seeking regularisation of their services and demanding equal pay for equal work. The Tribunal has allowed their claim with certain directions to the appellants including the Union of India. The directions issued by the Tribunal are as follows:

- "(i) The respondents will immediately take up an assessment of the needs of the school to carry on its activities at their present level and the number of additional teachers required for this purpose;
- (ii) After assessing the number of teachers needed, the respondents will proceed to create a sufficient number of posts to be filled up

on a regular basis; (iii) After completing the above exercise respondents will take steps to fill up the newly created posts in accordance with recruitment rules to be framed for the purpose. the applicants who have worked as teachers in past should be first considered for the posts and only if they are found unsuitable should candidates from sources like the Employment Exchange be considered; (iv) Once the procedure outlined above is completed all persons selected should be appointed on a regular basis and on remuneration admissible to the regular teachers of the primary school; (v) Similar procedure should also be followed in respect of posts of peon giving Shri Tadas an opportunity of competing for regular appointment; (vi) Till the exercise outlined above is completed which we hope will be done before the academic year 1989-90 commences the present procedure may continue and such of the applicants as are selected for appointment will be subject to the same conditions of service as before."

The Union of India and the officers of the ordnance factory have challenged the validity of these directions in Civil Appeal No. 233/1991. The respondents who have not been recruited as per the directions of the Tribunal have preferred Civil Appeal No. 480/1989.

We have considered the submissions of counsel on both sides in the light of the material on record. At the outset we may point out that

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there is no evidence that the respondents were appointed as teachers on honorarium by or on behalf of the Central Government. There is also no evidence that the respondents were initially appointed in the Primary School and latter they were shifted to the Secondary School. The fact, however, remains that when the respondents moved the Tribunal for reliefs they were only teaching in the Secondary School. It is undisputed that the Central Government has not sanctioned the Secondary School nor created any posts thereto. the Central Government has only sanctioned the Primary School and the posts connected therewith. Those posts are being occupied by regularly recruited teachers.

The Tribunal, however, has directed the Central Government immediately to take up an assessment of the needs of the School to carry on its activities at the present level and to create a sufficient number of posts to be filled up on a regular basis. The Tribunal has further directed the Central Government to take steps to fill up the newly created posts in accordance with the recruitment rules to be framed for the purpose. These directions are indeed amazing. It has compelled the Government to sanction the Secondary School, create adequate number of posts and fill up the posts after framing the recruitment rules for the purpose. There is no law requiring the Central Government to sanction the Secondary School. the Central Government has taken a decision that it will not involve itself in sanctioning or running classes beyond the Primary School level. It is a policy matter involving financial burden. No Court or the Tribunal could compel the Government to change its policy involving expenditure. The Tribunal therefore, could not have, could not have, issued the directions as it did to compel the Central Government to assess the needs of the school and create the necessary posts without support of law.

Secondly, the respondents are not paid by the Central

Government. They are not holding any appointment under the Central Government. There is no relationship of master and servant between the Central Government and the respondents. The respondents are employed in the Secondary School by local arrangement made by the officers of the ordnance factory. It is not proved that how the Central Government is accountable to such arrangement made by the local officers.

Thirdly, Section 14 of the Administrative Tribunals Act, 1985 confers no jurisdiction, power and authority on the Tribunal to deal with the service matters of the employees like the respondents.

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In any view of the matter, the respondents cannot claim the pay-scale admissible to the Government school teachers much less regularisation of their services by the Central Government. The directions issued by the Tribunal therefore, cannot be sustained. They are apparently unjustified and without authority of law.

In the result we allow the Civil Appeal No. 233/1991, and set aside the order of the Tribunal. the Civil Appeal No. 480/1989 is dismissed. In the circumstances of the case, however, we make no order as to costs.

S.B.

CA No. 233/91 allowed
and CA No. 480/89 dismissed.

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