

PETITIONER:
NATIONAL UNION OF ALL INDIA RADIO AND ORS. ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND ANOTHER ETC.

DATE OF JUDGMENT 05/04/1990

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
SAWANT, P.B.
RAMASWAMY, K.

CITATION:
1990 AIR 1720 1990 SCR (2) 340
1990 SCC (3) 596 JT 1990 (2) 49
1990 SCALE (1) 670

ACT:
Constitution of India--Article 32--A. 1. R. --Staff Artists--Continuation of contractual employment--Justification for.

HEADNOTE:

Staff Artists of All India Radio/Doordarshan, after complying with the initial requirements, used to be appointed to various positions like Announcer, News Readers, Conductor, Music Compere, Instrumentalists, Producer and Script Writer etc., on contract basis upto the age of 55 years. In May 1982, Union of India bifurcated the Staff Artists into two categories like (i) Staff Artists to be treated as artists and (ii) Staff Artists to be treated as Government Servants. These two sets of writ petitions have been filed by the Staff artists challenging the said Government decision conveyed through circular dated 3.5.1982 and calling upon the staff to exercise option by the end of December, 1983 for final allocation to the two categories aforesaid. In the first writ petition direction is sought to the respondents to treat the Staff Artists at par with regular government servants and to restrain the respondents from enforcing their direction in regard to their exercise of option and in the other writ petition, the petitioners have asked for a direction to treat the staff artists as government servants entitled to pensionary benefits.

The Court by its order dated 25.4.1988, on perusal of the letter together with the scheme, sent by the Director General of All India Radio and following its earlier decision in Civil Appeal No 384 of 1977 Union of India v. M.A. Chowdhary, A.I.R. 1987 S.C. 1526 declared that all the staff artists of All India Radio are holding civil posts under the Government, and they are governed by Article 311(2) of the Constitution and accordingly inter alia directed the Government of India to review the entire situation and to prepare a fresh scheme in accordance with law having regard to the nature of duties performed by each category of staff artists and further directed the case to come up for directions on 5.9.1988. Thereafter the Government of India formulated a scheme in compliance with the court's order and submitted it

to the Court.

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Disposing of the writ petitions with directions, this Court,

HELD: While dealing with the Artists as a class it is necessary that their special status be borne in mind. It is a class of people who are indeed specially privileged either by natural gift or by their own culturing of the art. This category of people cannot be equated with ordinary Government servants for every purpose. [348F]

The All India Radio and the Doordarshan in their normal functioning would to a considerable extent depend upon qualitative and efficient artists in order to make their programmes reach the desired level. [348G]

The age-old practice of the job of the staff artists being contractual (whether short or long) is being given up and contractual employment is being substituted by status based Government service. If there are really efficient Artists of different classifications who do not want to be branded as Government servants, there is no immediate justification for discontinuing and disturbing them in toto. [348H; 349A]

Administrative scrutiny instead of judicial determination would be more helpful. The Court therefore directed that in the appropriate Ministry a High Power Committee be set up for examination of the objections with reference to the terms of the scheme and the final decision be taken by the Government within six months. The views expressed in the present decision be taken into account while dealing with the objections for purpose of finalising the scheme. [349E; F-G]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 13636/83 & 11760-66/84.

(Under Article 32 of the Constitution of India).

G. Ramaswamy, A.K. Ganguli, M.K. Ramamurthy, Kapil Sibal, R.K. Garg, S. Srinivasan, D.K. Garg, Ms. A. Subhashini, B. Parthasarathi, C.V. Subba Rao, M.A. Krishnamurthy, V. Shekhar, H.S. Mann, Ms. Chandan Krishnamurthy and Ms. Kamini Jaiswal for the appearing parties.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. These are applications under Article 32 of the Constitution. Petitioner No. 1 in the first Writ Petition is the

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National Union of All India Radio Staff Artists; petitioner No. 2 is an Announcer of the All India Radio and happens to be the General Secretary of the Union; petitioners No. 3 to 8 are an instrumentalist, a few news readers, announcers and the like. The petitioners in the other writ petitions are seven in number consisting of six announcers and a tanpura player connected with the All India Radio. According to the petitioners, the prevailing practice in All India Radio used to be to offer appointments to various people as Staff Artists at the first instance ordinarily for an initial term of three months and on completion of appropriate formalities appointments used to be offered for a term of three years on contract basis at a minimum monthly fee. After the expiry of the initial period of two years out of the three years period of working which was considered as a period of probation contractual engagement up to the age of 55 years was being made available. On selection, as alleged by the petitioners Staff Artists used to be appointed to various posi-

tions like Announcer, News Readers, Conductor, Music Compere, Instrumentalists, Producer and Script Writer in the All India Radio or Producer, Production Assistant, Script Writer, Translator and General Assistant in Doordarshan.

In May, 1982 the respondent Union of India bifurcated the Staff Artists into two categories like:

- (1) Staff Artists to be treated as artists; and
- (2) Staff Artists to be treated as Government Servants.

This decision was conveyed in a letter dated 3.5.82 and opportunity to exercise option to everyone by the end of December, 1983 for final allocation to the two categories was provided. The letter stipulated that those of the Staff Artists who did not opt were to continue under the existing terms and conditions. The first writ petition was filed on 12th December, 1983, challenging the Government's order of 3.5.82 (Annexure 3) and for a direction to the respondents to treat the Staff Artists at par with regular Government servants and to restrain the respondents from enforcing their direction for exercise of option.

The other group of writ petitions was filed on 19th of March, 1984, the challenge therein was also to the same Government letter, and petitioners asked for a direction to the respondents to treat the Staff Artists as Government servants entitled to pensionary benefits.

A return was made to the rule in the first writ petition by filing an

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affidavit by the Under Secretary, Ministry of Information and Broadcasting. The respondents maintained that the Staff Artists did not form one homogeneous group and job requirements of the Staff Artists were different from post to post. It was suggested that the Staff Artists could be conveniently divided into two groups, namely, those who are appearing or performing before the micro-phone and the others who are managing production and connected jobs. It was also pointed out that all Staff Artists did not have the same terms as to remuneration. It was suggested that the terms and conditions governing the Staff Artists after their transformation into Government servants became different. In the interests of quality of broadcasting services, it was claimed, periodical assessments became indispensable and inevitable. The affidavit further stated that the scheme which was enclosed to the letter marked Annexure 3 contained a scheme which had been evolved after due deliberations and there was no prejudice to the Artists if the scheme was allowed to become operative.

On the 25th of April, 1988, with special reference to the first writ petition and a connected civil appeal which is not before us at this stage, the Director-General of All India Radio sent the following communication to the respondent's lawyer with a request that the same may be placed before the Court. The letter stated:

"Under the directions of Hon'ble Court, the Government have further examined the aspects of the scheme for artist category to safeguard the rights of the Staff Artists from any arbitrary factors in respect of discharge of duties under their contract of service renewable after satisfactory performance of their services. After careful examination, the Government have now set-up three types of committees to protect the rights of the staff artist from any arbitrary factors which are as under:

A. Since the renewal of contract is automatic if the records are satisfactory, it would be best to leave it to the Station Director or the Head of the Office concerned to review the contract after verification of the records.

B. In case, the records are not satisfactory, the question of renewal of contract may be considered by a Review Committee/Representation Committee as under:

B(i) Review Committee (Both for AIR/Doordarshan)

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(i) Station Director--Chairman

(ii) Two outside Assessors--Members who have expertise in the field to which the Artists belong.

B(ii) Representation Committee

(Both for AIR/Doordarshan)

(i) Director General--Chairman

Addl. Director

General (Programme)

(ii) Deputy Director--Member General (Administration)

(iii) Representatives of--Member the Ministry of Information and Broadcasting.

I am to request that a Government Counsel may please be briefed accordingly to place the facts before the Honourable Court in the hearing today, i.e., dated 25th April, 88 at 2 P.M."

On the basis of what transpired in Court after referring to the said letter, this Court on that date made the following order:

"In Civil Appeal No. 384 of 1977 Union of India v.M.A. Chowdhary, AIR 1987 Supreme Court 1526 we have declared that all the Staff Artists of All India Radio are holding civil posts under the Government and they are governed by Article 311(2) of the Constitution of India.

In view of the above decision it is no longer necessary to make any further declaration in these petitions that the Staff Artists are Government servants. The Circular dated 3rd May 1982 bearing No. 45011/26/80/B(A) issued by the Ministry of Information and Broadcasting, Government of India proceeded on the assumption that the Staff Artists who had entered the service of the All India Radio/Doordarshan under the contracts were not Government servants and that only those Staff Artists specifically mentioned in that Circular could become and be treated as Government

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Servants provided they satisfied the conditions mentioned therein. In view of the decision referred to above it has now become necessary for the Government to review the entire question covered by the Circular dated 3rd May, 1982. We, therefore, direct the Government of India to review the entire situation and to prepare a fresh scheme in accordance with law having regard to the nature of duties performed by each category of Staff Artists. While preparing such a scheme the Government may also keep in view the cases of Staff Artists who have already exercised their option as provided by the circular dated 3rd May, 1982. Such scheme shall be prepared on or before 31.7.1988. After the scheme is prepared a copy of it shall be made available to all the parties to this case. The parties aggrieved may file objections before this Court within August 15, 1988.

This case shall come up for directions on 5th September, 1988."

In terms of the direction given on the 25th of April, 1988, a draft scheme framed by the Government has been produced before the Court along with an accompanying affidavit. Paragraph 2 of the said scheme states:

"In pursuance of the above mentioned orders, those Staff Artists who opted for becoming 'Government Servants' and were found fit by duly constituted Screening Committee were treated as Government Servants with effect from 6.3. 1982. Such Staff Artists were made entitled to the same pensionary

benefits as are applicable to Government Servants. They were, however, not entitled to any special benefits available to them as Staff Artists. Likewise, Staff Artists in the 'Artists' category, who opted for being treated as 'Artists' and come over to the new terms and conditions were treated as 'Artists' with effect from 6.3.1982."

Paragraph 3 provides:

"The following categories of Staff Artists/Artists in All India Radio/Doordarshan are, however, still to be treated as Government Servants:

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(i) Staff Artists who opted for 'being declared as 'Government Servants' but were not found fit by the Screening Committee;

(ii) Staff Artists who opted for being treated as 'Artists' category and were declared as 'Artists' after screening by the Screening Committee';

(iii) Staff Artists who opted for being treated as 'Artists' but were not found fit by the Screening Committee for being treated as 'Artists' and

(iv) Staff Artists who did not opt for being treated as 'Government Servants' or for being treated as 'Artists'.

The scheme further indicates:

"4. The Government has reconsidered the entire Scheme in the light of the judgment of the Hon'ble Supreme Court delivered on 25.4.1988 in Writ Petitions Nos. 13636 of 1983 and 11760-66 of 1984 in National Union of All India Radio and Others .v. Union of India. In partial modification of this Ministry's letter No. 45001/26/80-B(A) dated 3.5.1982 and No. 45011/26/80-B(A) dated 26.8.1983, it has been decided as under:--

(i) All Staff Artists/Artists working in All India Radio and Doordarshan (except foreign nationals) will be deemed as Government Servants holding civil posts on prescribed Central Government scales of pay.

(ii) All such Staff Artists/Artists working in All India Radio and Doordarshan will be entitled to pensionary and other benefits on the same terms and conditions as are applicable to other Government Servants holding civil posts. They will be governed by all rules and regulations and general instructions issued by Government from time to time like FR and SR, GFR, CCS (CCA) Rules, CCS (Conduct) Rules and Pension Rules etc. etc. All facilities/ benefits available to regular Central Government employees will be automatically applicable to them also on the same terms and conditions as are applicable to regular Central Government servants. However, any special bene-

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fit/concession available to such Staff Artists/Artists of AIR and Doordarshan, in so far these are not in accordance with rules and regulations and general instructions applicable to Central Government servants, will be withdrawn from the date of issue of these orders.

(iii) The date of retirement on superannuation in respect of such Staff Artists/Artists of All India Radio and Doordarshan deemed as Government Servants will be the same as applicable to holders of civil posts in Central Government.

(iv) The contribution of such Staff Artists/Artists working in AIR and Doordarshan made to Contributory Provident Fund (CPF) along with interest thereon will be transferred to their General Provident Fund (GPF)."

"5. The Staff Artists/Artists working in AIR and Doordarshan deemed as Government Servants will continue to be in their

existing categories and grades with regular pay scales. The future recruitment to each grade will be made according to the Recruitment Rules as per procedures prescribed for recruitment to different posts."

"6. The posts held by the Staff Artists/Artists working in All India Radio and Doordarshan will stand converted into civil posts from the date of issue of these orders."

The order made by this Court on 25th of April, 1988, was not a final judgment and this Court had directed the Union of India to review the entire situation and to prepare a fresh scheme in accordance with law having regard to the nature of duties performed by each of the categories of Staff Artists. Obviously, the intention of the Court while making the order dated 25th April, 1988, was to have the scheme placed before the Court for consideration. Though the scheme has been styled as a draft scheme, its contents indicate that it has been implemented. The main objection of the petitioners against the present scheme is the stipulation therein that the Staff Artists will be taken as Government servants from the date of the order. According to them, the Allahabad High Court had in its decision dated 12th of July, 1974, given a declaration that all the Staff Artists were Government servants and the said decision was affirmed by this Court in a judgment dated May 7, 1987, reported in 1987 3 SCR 424 Union of India v. M.A. Chowdhary. It is the contention of the petitioners that the benefit of conversion or declaration should be effective from 12.7.1974 and those who were in employment then as Staff Artists should be considered as Government servants from this date and others who joined after 12.7.74 should be conferred the status of Government servants from the date of joining. There is also a claim by the petitioners to pension for those who have retired after 12.7.1974 and prior to the present scheme. It is the further contention of the petitioners that while formulating the present scheme the Court's direction of 25th of April, 1988, has not been strictly kept in view. Reliance has been placed on this Court's order dated 3rd April, 1984, where it was indicated that failure of Staff Artists to exercise the option should not prejudice their right in any manner and either a fresh opportunity to exercise the option should be given or even in the absence of option the same benefits should be given. Some of the objections which have been raised and are noticed above seem to be germane and require consideration. This Court's order of 25th April, 1988, requiring a fresh scheme to be formulated obviously meant that the exercise of option in terms of the order dated 3rd May, 1982, was not taken to be the final date for exercise of option. Opportunity to exercise fresh option should have been given or perhaps the new scheme could have accepted the position that unless one wanted to be not absorbed he should have been deemed to be accepting absorption. As in the changed setting the class of Staff Artists was really intended to be done away with in due course, such a deeming base should have been accepted for convenient implementation.

One class of Staff Artists engaged under contracts wants such status to continue. Otherwise stated, they do not want the contractual base to be changed into employment.

While dealing with the Artists as a class it is necessary that their special status be borne in mind. It is a class of people who are indeed specially privileged either by natural gift or by their own culturing of the art. This category of people cannot be equated with ordinary Government servants for every purpose. The All India Radio and the

Doordarshan in their normal functioning would to a considerable extent depend upon qualitative and efficient artists in order to make their programmes reach the desired level. The scheme necessarily contemplates a transitional period. The age-old practice of the job of the Staff Artists being contractual (whether short or long) is being given up and contractual employment is being substituted by status-based Government service. If there are really efficient Artists of different

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classifications who do not want to be branded as Government servants, there is no immediate justification for discontinuing and disturbing them in toto. The transitional period could be elongated to accommodate the appropriate category of Artists not willing to be absorbed as Government servants.

Of late, Government themselves are having a re-look at the matter. It is their stipulation that All India Radio and Doordarshan should be made into autonomous corporations and for that purpose legislation is in the process. What is in contemplation is contrary to what is in the scheme. This means that the matter is still in a fluid stage. It is, therefore, appropriate that either a deeming position should have been accepted in the scheme as indicated above or a fresh opportunity for exercise of option should have been provided. Again, the demand of the above group of artists should have also been considered.

The question of deeming the employees as Government servants from the date of the Allahabad High Court's judgment is another issue which requires examination. Connected with it would be the question of entitlement to pension. We are of the view that these are aspects which should first be initially examined by a Committee to be set up by the Government and after a definite view is taken it would be open to the petitioners to approach the appropriate Court to redress the remaining grievances, if any. The matter is such that administrative scrutiny instead of judicial determination would be more helpful. We, therefore, refrain from expressing any final view. We reiterate that the order dated 25th of April, 1988, intended a draft scheme to be drawn up for consideration of the Court. The scheme as produced in the Court along with the accompanying affidavit has also been described as a draft scheme. The objections raised by the petitioners to the said scheme are available on the record. We direct that in the appropriate Ministry a High Power Committee be set up for examination of the objections with reference to the terms of the scheme and the final decision be taken by the Government within six months. The views expressed in the present decision be taken into account while dealing with the objections for purposes of finalising the scheme. Liberty is given to the aggrieved parties when final decision is taken by Government to move the Court.

These writ petitions are disposed of with these directions.

No costs.

Y. Lal

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Petition disposed of.