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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd SEPTEMBER, 2022

IN THE MATTER OF:

\+ **W.P.(C) 7133/2003 & CM APPL. 12405/2003**

BUDH RAM ..... Petitioner

Through: None

versus

UOI &ORS ...... Respondents

Through: Mr. Anil Soni, CGSC with Mr. Rahul Mourya, Advocate with Major Partho Katyayan
Mr. Sunil Mund, Advocate for R-4 & R-5

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. This is a very old matter. Despite service. There is no appearance on behalf of the Petitioner.

2. Mr. Anil Soni, learned CGSC, along with Mr. Sunil Mund, learned Counsel, appear in the matter on behalf of Respondents.

3. The present writ petition arises out of the Judgment dated 05.04.2003 passed by the Central Administrative Tribunal in O.A. No.335/2002.

4. The facts of the case reveal that the Petitioner joined the military services as a Gunner on 21.05.1963, and after completing 28 years of

service, he superannuated on 31.05.1991.

5. The Petitioner, thereafter, joined the services in the military-run canteen *vide* letter dated 14.05.1993. On 29.05.1993, he was appointed as Salesman/Accountant for a period of two years.

6. The Petitioner was appointed for a period of two years from the date of joining, i.e. with effect from 14.05.1993. The service of the Petitioner was extended by another year and the extension continued from time to time upto 14.01.2002.

7. As the representation of the Petitioner to continue upto the age of 60 years was rejected by the Department, he approached the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') stating that he is entitled to continue till the age of 60 years. He took a plea that Government of India, Ministry of Defence *vide* Office Memorandum dated 13.05.1998 had taken a policy decision to increase the age of retirement from 58 years to 60 years, and, in those circumstances, he should also be entitled to continue upto the age of 60 years.

8. The Petitioner made a statement before the Tribunal that in the case of Union of India v. Mohd. Aslam, **(2001) 1 SCC 720** the Apex Court has held that the employees serving in unit run canteens are to be considered as government employees.

9. The Tribunal dismissed the original application and aggrieved by the said order, the Petitioner approached this Court claiming continuance upto the age of 60 years. The Petitioner's contention is that the employees of the unit run canteens have to be treated to be at par with government employees.

10. At this stage, Mr. Anil Soni, learned CGSC, has drawn the attention of this Court to the judgment passed by the Apex Court in R. R Pillai

Through LRs v. Commanding Officer, Headquarters Southern Air Command (U) & Ors., **(2009) 13 SCC 311** wherein it has been held that the employees of the unit run canteens are not government employees/employees of Ministry of Defence. The relevant portion of the said judgment reads as under:-

> *"8. Learned counsel for the Union on the other hand submitted that Aslam case [(2001) 1 SCC 720 : 2001 SCC (L&S) 302] proceeded on erroneous factual basis. It proceeded on the basis as if the canteen or the establishment in question was funded by CSD. The issue is not whether it is an instrumentality of the State. Issue is whether the employees concerned are government employees. It is submitted that Union of India v. Chotelal [(1999) 1 SCC 554 : 1999 SCC (L&S) 332] clearly applies to the facts of the case. It is submitted that unit-run canteen is amenable to shops and commercial establishments statutes because the appointment cannot be made dehors the Rules. There is no prescribed qualification or age-limit. Similarly, there is no grade or cadre. Therefore, it cannot be said that the employees concerned are holders of civil posts.*
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> *9. In Aslam case [(2001) 1 SCC 720 : 2001 SCC (L&S) 302] a Bench of this Court proceeded on incorrect factual premises inasmuch as after noticing that URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that URCs are funded by CSD as well as the articles were supplied by CSD. Unfortunately, it did not notice that no such funding is made by CSD. Further, only refundable loans can be granted by 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 [(2001) 1 SCC 720 : 2001 SCC (L&S) 302] 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 [(2001) 1 SCC 720 : 2001 SCC (L&S) 302] reference was made to Parimal Chandra Raha v. LIC [1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282] . 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 Fund, 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 [(1999) 1 SCC 554 : 1999 SCC (L&S) 332] in our considered opinion are without any material. There was no scope for making any distinction factually between Aslam case [(2001) 1 SCC 720 : 2001 SCC (L&S) 302] and Chotelal case [(1999) 1 SCC 554 : 1999 SCC (L&S) 332] . In our view, therefore, Aslam case [(2001) 1 SCC 720 : 2001 SCC (L&S) 302] was not correctly decided.

13. The question whether URC can be treated as an *instrumentality of the State does not fall for consideration as that aspect has not been considered by CAT or the High Court. Apparently, on that score alone we could have dismissed the appeal. But we find that the High Court placed reliance on Rule 24 to deny the effect of the appointment.*

14. From Rule 4 read with Rule 2 it is clear classification that all employees are first on probation and they shall be treated as temporary employees. After completion of five years they might be declared as permanent employees. They do not get the status of the government employees at any stage. In Aslam case [(2001) 1 SCC 720 : 2001 SCC (L&S) 302] CAT's order was passed in 1995. By that time the 1999 Rules were not in existence and the 1984 Rules were operative."

11. In addition to the above, it is also to be noted that the appointment of the Petitioner was purely on contractual basis for a period of one year and the contract was renewed from time to time. The Deed of Contract dated 16.03.2001 makes it very clear that the Petitioner was appointed for a fixed period only.

12. Another important aspect of the case is that the Petitioner, at the relevant point of time, was a pensioner and, in addition to his pension, he was given contractual appointment in a unit run canteen.

13. In the considered opinion of this Court, when contractual employees are governed as per the contract executed between the employer and the employee, the contractual employee, i.e. the Petitioner herein, cannot claim benefit at par with other government employees. Therefore, the question of granting relief to the Petitioner to continue upto the age of 60 years in the

peculiar facts and circumstances of the case, as he was a pensioner, and was subsequently given contractual appointment, does not arise.

14. The writ petition is accordingly dismissed. Pending applications, if any, stand disposed of.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

SEPTEMBER 22, 2022
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