



\$~71

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

Date of Decision: 12th December, 2024

+ W.P.(C) 8063/2021 & CM APPLs. 29917/2021, 31694/2021,
5709/2023, 28482/2023

BIPLAB DATTA & ORS.

.....Petitioners

Through: Mr. Sujoy Gaur, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Pratima N. Lakra, CGSC with
Mr. Chandan Prajapati, Advocate for
R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

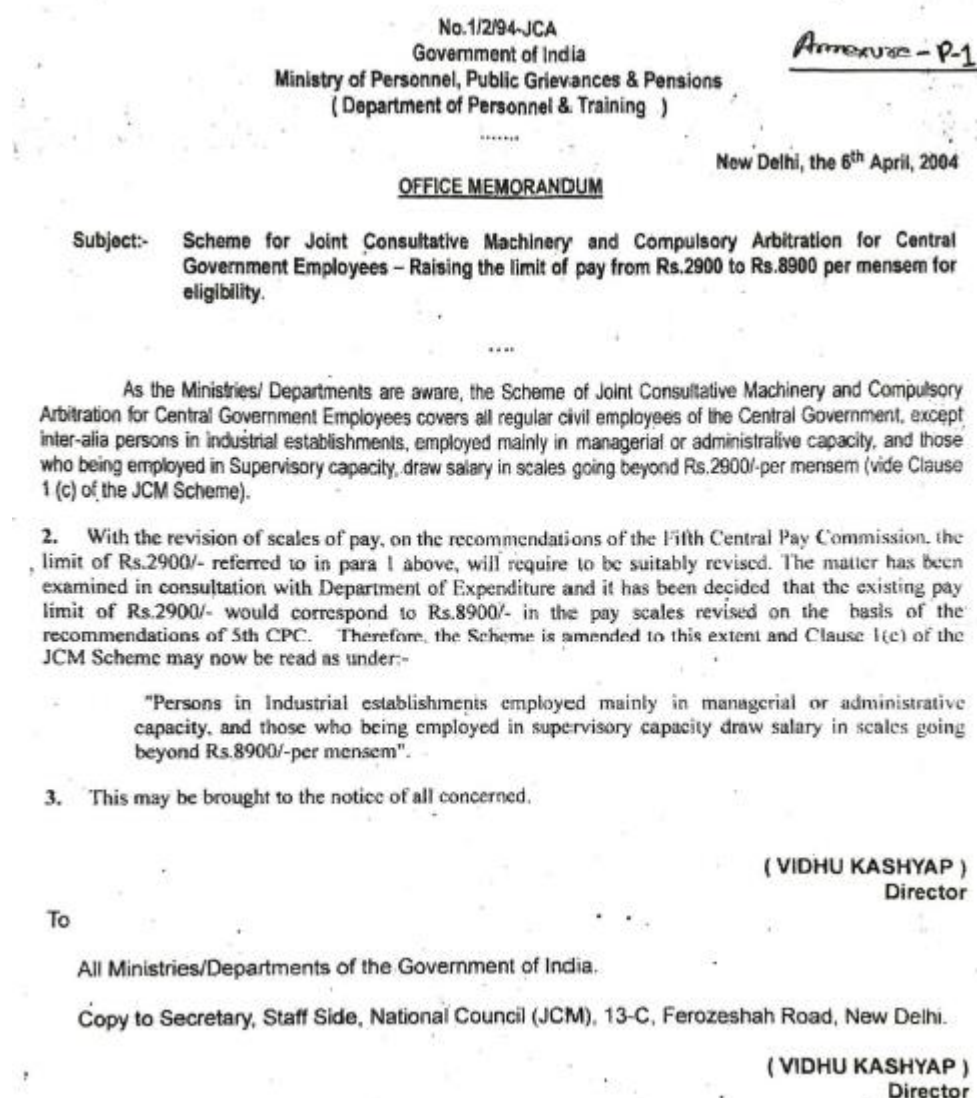
SANJEEV NARULA, J. (Oral):

1. The Petitioners are the members of All India Central Government Health Scheme Employees Association,¹ Respondent No.3. They assert that All India CGHS Association is an association of 'Group C' and 'Group D' Employees of CGHS. The aims and objects of the association are to safeguard and promote the interests of the CGHS Employees in general and members of the association in particular and to get redressal of their grievances; to provide the members with legal assistance whenever necessary to defend themselves from injustice; and to ensure that the members are part of the management of the association.



2. They further assert that the All-India CGHS Employees Association was formed for and by the Group C and Group D employees, as per the Department of Personnel and Training² guidelines and instructions.

3. The Petitioners rely on the Office Memorandum dated 6th April 2004, issued by DoPT which reads as follows:



4. The Petitioners assert that the Ministry of Health and Welfare, JCM

¹ "All India CGHS Association"

² "DoPT"



Cell (Welfare & PG Section) on 27th July, 2012 has clarified that, employees/officials drawing a Grade Pay of INR 4200/- or above are classified as 'Group B' and, as such, cannot be members of any Service Association/Union/Federation. Consequently, they are also not eligible to represent the Staff Side in any Councils functioning under the scheme for Joint Consultative Machinery and Compulsory Arbitration.³ The said clarification reads as under:

F.No.B12020/3/2008 JCM (Part)
Government of India
Ministry of Health & Family Welfare
JCM CELL
Welfare & PG Section

103 D, Nirman Bhavan
New Delhi dated the 27th July 2012

All the General Secretaries of Staff
Associations/Unions/Federations/Confederations of
Ministry of Health & Family Welfare
including Directorate General of Health Services
and its subordinate offices (As per list attached)

Sub: Inclusion of the names of representatives of CGHS in the
Departmental Council of Ministry of Health and Family Welfare

The undersigned is directed to refer to DoPT's O.M. F.No.16/7/2012 JCA dated 23rd May 2012 (copy enclosed) on the subject noted above and to inform that the officials who are drawing Grade Pay of Rs.4200/-and above has been classified as Group 'B' by the DoPT cannot be a member of any service Association/Union/Federation and accordingly cannot represent as Staff Side Member in any Councils functioning under JCM Scheme of this Ministry. This may strictly be adhered to.

(MAHENDRA SINGH)

Deputy Secretary to the Govt of India
Tel 23063481

5. The Petitioners argue that these directives have not been followed or

³ "JCM Scheme"



implemented by the All-India CGHS Employees Association to date. Despite multiple representations and discussions by Group C employees with the Association's managing committee, Group B officials continue to be members of this Association. Petitioners maintain that it is the responsibility of the members and office bearers to ensure that employees drawing a Grade Pay of INR 4200/- and classified under Group B withdraw from membership of the Association, which is intended for Group C and Group D employees.

6. The Petitioners also refer to Rule 5 of Central Civil Services (Recognition of Service Associations) Rules, 1993 which reads as follows:

"5. Conditions for recognition of Service Associations : A Service Association which fulfills the following conditions may be recognized by the Government, namely :-

- a. An application for recognition of Service Association has been made to the Government containing Memorandum of Association, Constitution, Bye-laws of the Association, Names of Office-Bearers, total membership and any other information as may be required by the Government;*
- b. the Service Association has been formed primarily with the object of promoting the common service interest of its members;*
- c. membership of the Service Association has been restricted to a distinct category of Government servants having common interest, all such Government servants' being eligible for member-ship of the Service Association;*
- d. (i) The Association re-presents mini-mum 35 per cent of total number of a category of employees provided that where there is only one Association which commands more than 35 per cent membership, another Association with second highest membership, although less than 35 per cent may be recognized if it commands at least 15 per cent member-ship;*
(ii) The member -ship of the Government servant shall be automatically discontinued on his ceasing to belong to such category;
- e. Government employees who are in service shall be members or office bearers of the Service Association;*
- f. the Service Association shall not be formed to represent the interests, or on the basis, of any caste, tribe or religious denomination or of any group within or section of such caste, tribe or religious denomination;*



- g. *the Executive of the Service Association has been appointed from amongst the members only; and*
- h. *the funds of the Service Association consist exclusively of subscriptions from members and grants, if any, made by the Government, and are applied only for the furtherance of the objects of the Service Association.”*

7. As noted above Rule 5(b) requires the Service Association to represent the common service interests of its members. However, when a member's group changes due to a shift in service category, the common interests no longer align. In this case, the Petitioners assert that Group C members have distinct service conditions and interests, which often conflict with those of Group B. Consequently, employees in Group B should not be included in the Group C association, as there is no shared service interest, and a separate association should be formed for each group. Additionally, the Petitioners refer to Rule 5(c), which stipulates that membership must be limited to a distinct category of government employees with common interests. In this case, there are two separate categories, each with its own service conditions and interests. Furthermore, they refer to Rule 5(d)(ii) which clarifies that an employee's membership in a Service Association will cease if they no longer belong to the relevant category. Petitioners contend that as the employees who have moved to a pay scale of INR 4200/-, fall into Group B, they are ineligible to be a part of All India CGHS Employees Association. Despite the aforementioned Service Rules as well as the OMs dated 6th April, 2004 and 27th July, 2012, Group B employees continue to be a part of the Association.

8. Aggrieved by the same, the Petitioners have filed the instant writ petition, seeking the following directions to Respondent No.1 (Department of Personnel and Training), Respondent No.2 (Ministry of Health &



Welfare) and Respondent No.3 (All India CGHS Employees Association):

- “i) That the respondent may be directed to provide a list of eligible members as per the DoPT guidelines before the election and names of the members drawing Grade Pay of Rs.4200/- and above may be discontinued/deleted from the list of members as per DoPT guidelines.*
- ii) Direct the respondents, the members who are drawing Grade Pay of Rs.4200/-and above and Group B; they cannot be a member of Service Association/ Union/ Federation. The membership of those employees will be arbitrary, illegal and unconstitutional. They cease to be member of association having no right to cast their votes.*
- iii) Direct the respondent association to take necessary immediate action on letter dated 27th July 2012 by Welfare & PG Section JCM Cell Ministry of Health & Family Welfare.*
- iv) Directing the Respondent Association to disclose the authority 3J. under which the Respondent allowed to continue the members who are drawing Grade Pay of Rs. 4200/- and above;*
- v) Direct the respondent association election officer to cancel the nomination of the candidate who is Group B and drawing Grade Pay of Rs 4200/- and above as per DoPT instructions;*
- vi) Direct the respondent to prepare the revised list of members having voting rights before commencing the election within stipulated time: In case the fresh list of members require time to finalise; it is humbly prays to deferred the election for short period in the interest of justice;”*

9. Respondents No.1 and 2, on the other hand, in their counter-affidavit, contend that the Petition has no merits and is liable to be dismissed. They argue that the All India CGHS Employees Association is governed by its constitution, wherein Clause 6(a) of the said document specifically stipulates that it is an association of all “non-gazetted employees” of Central Government Health Scheme. Furthermore, they clarify that the communication dated 27th July, 2012 and the OM dated 6th April, 2004, relied upon by the Petitioners, is not relevant for the purpose of election or membership of the association. These OM's of DoP&T provide for an



amendment to the JCM Scheme,⁴ whereas the All India CGHS Association is an association recognised under the Central Civil Services (Recognition of Service Associations) Rules, 1993. The JCM Scheme and Service Associations are two different systems with separate governing rules. Therefore, the reliance placed on OMs issued by the DoPT with regards to the JCM scheme are not relevant for the purposes of determining the membership of the association which is governed by its own constitution.

Procedural History

10. On 9th August, 2021, the first date of hearing, this court, taking note of the clarifications issued by Respondent No.1 and 2, directed Respondent No.3 to ensure that no employee falling in the Group B category was permitted to participate in the elections scheduled for 11th August, 2021. On 15th March, 2023, this court closed the right of Respondent No.3 to file counter affidavit as they failed to appear despite service. Thereafter, on 25th May, 2023, in the application for stay on elections scheduled for 27th May, 2023, this Court noted the circular dated 12th May, 2023 wherein employees falling under Group-B employees were permitted to participate in the elections. The court refused to stay the election given that it was two days away. However, the court directed the election officer to comply with the direction issued on 9th August, 2021.

Analysis and Findings

11. Firstly, it must be noted that the OMs relied upon by the Petitioner pertain to the JCM Scheme and before proceeding further, it is important to note the context in which the communication dated 27th July, 2012 was issued. The JCM Scheme is a platform for dialogue between the Central

⁴ “JCM Scheme”



Government and its employees to resolve disputes peacefully and applies to the following members:

“Applicability

3. *The Scheme covers all regular civil employees of the Central Government, except:*
 - a. *the Class I services;*
 - b. *the Class II services, other than the Central Secretariat Services and the other comparable services in the headquarters organization of the Government;*
 - c. *persons in industrial establishments employed mainly in managerial or administrative capacity. and those who being employed in supervisory capacity draw salary in scales going beyond Rs. 2900/- per mensem;*
 - d. *employees of the Union Territories; and*
 - e. *police personnel.”*

12. The OM dated 6th April 2004, relied upon by the Petitioners amends this very scheme. Thus, the OM's issued by Respondent No.1 and 2 pertain to the JCM scheme, particularly, who can be members of the Joint Councils and not as to the membership of the associations. This JCM Scheme provides for setting up of Joint Councils at the National, Departmental and Regional office levels. This Joint Council consists of members from both sides i.e., the official side (Employers) and the staff side (Employees). As explained in the FAQs published on the DoPT website, the staff side members are selected for various joint councils in the following manner:

“4. How are staff side members selected for various Joint Councils?

The representatives of the staff side for various Joint Councils are chosen / selected from members of the recognized service associations/ unions.”

5. xx ... xx ... xx

6. How recognition is granted to the staff associations?

The Department of Personnel & Training being the nodal department for matters relating to Joint Consultative Machinery and Compulsory Arbitration, has notified Central Civil Services (Recognition of Associations) Rules, 1993 for the purpose of granting recognition to various service associations. Recognition is actually granted by the concerned Ministry/ Department in accordance with the CCS (RSA) Rules, 1993.

In case of any doubt or confusion, the matter is referred to the JCA Section of the Department of Personnel & Training for clarification/ advice.”



13. The Central Civil Services (Recognition of Association) Rules, 1993 provides for rules for recognizing various service associations. The relevant rules are as follows:

“4. Service Associations already recognized : A Service Association or a Federation which has been recognized by the Government before the commencement of these rules and in respect of which the recognition is subsisting at such commencement, shall continue to be so recognized for a period of one year from such commencement or till the date on which the recognition is withdrawn, whichever is earlier.

5. Conditions for recognition of Service Associations : A Service Association which fulfills the following conditions may be recognized by the Government, namely :-

- a. An application for recognition of Service Association has been made to the Government containing Memorandum of Association, Constitution, Bye-laws of the Association, Names of Office-Bearers, total membership and any other information as may be required by the Government;*
- b. the Service Association has been formed primarily with the object of promoting the common service interest of its members;*
- c. membership of the Service Association has been restricted to a distinct category of Government servants having common interest, all such Government servants' being eligible for member-ship of the Service Association;*
- d. (i) The Association re-presents mini-mum 35 per cent of total number of a category of employees provided that where there is only one Association which commands more than 35 per cent membership, another Association with second highest membership, although less than 35 per cent may be recognized if it commands at least 15 per cent member-ship;*
(ii) The member -ship of the Government servant shall be automatically discontinued on his ceasing to belong to such category;
- e. Government employees who are in service shall be members or office bearers of the Service Association;*
- f. the Service Association shall not be formed to represent the interests, or on the basis, of any caste, tribe or religious denomination or of any group within or section of such caste, tribe or religious denomination;*
- g. the Executive of the Service Association has been appointed from amongst the members only; and*

14. Thus, the JCM scheme and the Service Rules only provide for who can be members of the Joint Councils and who can be recognised as 'Service Association.' Violation of Rule 5, 6 and 7 can lead to termination of the recognition granted but DoPT or the concerned Ministry has no control over the membership or elections of the said association which is governed by its own constitution. The communication dated 27th July, 2012 merely clarifies that the members representing the staff side at the Joint Councils cannot be employees falling in Category B. However, this cannot mean that memberships can be terminated at the behest of DoPT or the concerned Ministry. While Rule 5(d) (ii) stipulates that employee's membership in a Service Association will cease if they no longer belong to the relevant category, the constitution of All India CGHS Employees Association limits its members to 'non-gazetted' employees and not 'Group C and D' employees. Accordingly, in the opinion of the court, the remedy as regards the termination of membership of 'Group B' employees lies in



amending its constitution which provides memberships to all 'non-gazetted employees'. Any amendments to such constitution may be initiated by Respondent No.3 themselves in order to continue being recognised as a 'recognised association' by Respondent No.1 and 2. However, if the Petitioners wish to seek judicial intervention, it would have to be before a civil court of competent jurisdiction.

15. In light of the above, the Court is not inclined to interfere with the membership or elections of the All India CGHS Employees Association and the Petitioners request for directions to remove members falling in the category of 'Grade B' from the list of members cannot be granted. However, in order to enable the Petitioners to identify members falling in 'Group B' category, Respondent No.1 and 2 are directed to provide the list of members drawing a grade pay of Rs. 4200/- and above.

16. Disposed of with the above directions, along with pending applications.

CM APPL. 31694/2021 (Contempt application)

17. In light of the foregoing reasoning, no directions are required to be issued in the present application.

18. Accordingly, the contempt proceedings are dropped.

SANJEEV NARULA, J

DECEMBER 12, 2024

as