

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.11938 OF 2018  
(Arising out of SLP(C) No.4773 of 2012)

UNION OF INDIA & ANR.

Appellant(s)

VERSUS

K.GUNASEKHARAN (DEAD THROUGH LRS) & ANR.

Respondent(s)

O R D E R

Delay condoned.

Leave granted.

Heard learned counsel for the parties.

This appeal has been filed by the appellants against the judgment and order of the High Court of Kerala dated 15.11.2010 by which W.P.(C) No.35766 of 2008 was dismissed.

The respondents herein were claiming absorption to the Railway as Group 'D' employees. The respondents were working in Railway Co-operative Society until it became defunct in 1992. For about seven years the Society remained defunct and during this period respondents were deployed in another Society, though not connected with Railway. However, on revival of the Railway Society, they came back and joined the very same society.

The learned counsel for the appellants has referred to page 104, which is additional reply statement filed by the respondents. At page 114 details of the service rendered by all the respondents have been specifically mentioned. Learned counsel for the appellants submitted that respondents filed an original application

before the Central Administrative Tribunal seeking absorption as Group 'D' Employees in pursuance of the order of the Government of India, Ministry of Railways dated 30.05.2000 which required those staff of quasi-administrative offices/organizations who were working on roll continuously for a period of at least three years as on 10.06.1997 and are still on roll should be considered for Group 'D' posts.

The Tribunal after hearing the parties recorded the finding that Co-operative stores where respondents were working was defunct during the period 27.08.1992 to 31.03.1999. After taking into consideration the circular of the railways, the Tribunal vide order dated 05.03.2008 disposed of the O.A. by making following observation:

".....They are also educationally qualified and are still on the roll of the Society. The respondents have admitted in their reply statement that all the Societies registered under the Co-operative Societies, Tamilnadu and the appointments to various posts in the Consumer Co-operative Stores are made by the Managing Committee of that Store according to the exigency of service and as per conditions laid down by the Registrar of Co-operative Societies. In exercise of these powers only, they were transferred for some period from one of the Stores under the aegis of the Registrar of Societies to another, for protection of their service conditions. It cannot be taken as resulting in the severance of their connections with the Railway Co-operative Stores in whose service they were original appointed. Hence these employees have to be deemed to be the employees of the Railway Co-operative Stores, Erode and their service in the Fair price Shops connected with the Railway Co-operative Stores which were transferred temporarily and brought back cannot be ignored for consideration of their regularization. The Railway Co-operative Store has been revised on 01.04.1999 and started functioning. These two applicants are continuing in the service of the Store. Hence we are of the view that it would not be correct on the part of the Railway Administration to hold these services as ineligible and declare the applicants as not

qualifying for regularisation as per Annexure R-3 orders. In any case the respondents have to observe the procedure as prescribed in paragraph 3 of the order extracted at paragraph 12 supra. We would only make it clear that in the case of the applicants 1 and 4 they should be deemed to have continued in the service of the Railway Co-operative Stores during the temporary period of its disfunction and on that account they should not be denied the benefits of Annexure R-3 order dated 30.05.2000. The O.A. is disposed of with the above mentioned declaration and the respondents are directed to take action in pursuance thereof."

A writ petition was filed by the Union of India challenging the order of the Tribunal which came to be dismissed by the High Court. The learned counsel for the appellants submitted that the respondents have not completed three years period as required by circular dated 30.05.2000 and the Tribunal as well as the High Court committed error for considering them for appointment as Group 'D' employees. The learned counsel for the appellants has also placed reliance in *Union of India Vs. J.V. Subbaiah & ors.* - (1996) 2 SCC 258 by which this Court had allowed the appeal of Union of India.

Learned counsel for the respondents refuting the submission contends that the respondents had completed more than three years of working and with no fault of theirs they were sent to another co-operative society since the Co-operative Store of the Railway where they were working have become defunct. It is further submitted that respondents were in service during the period when co-operative store was defunct and they were continuously working in Co-operative Store, Erode.

We have considered the submissions of parties and perused the record.

There is no dispute regarding facts of the present case between the parties. The respondents had joined the co-operative store in the year 1991 and since the co-operative store became defunct in the year 1992 they were sent to District Co-operative Store, Erode where they work till the Railway Co-operative Society was revived and they were taken back and were working. The Tribunal has considered all the aspects of the matter and had stated that the distinctive features in the facts of the respondents is that the co-operative store where they were working became defunct, hence the period they worked in the co-operative society cannot be discredited from their continuity. We are of the view that Tribunal has taken just and fair view of the matter which does not warrant any interference by this Court. Now coming to the judgment of this Court in *Union of India Vs. J.V. Subbaiah & ors. (supra)* relied by learned counsel for the appellants, suffice it to say that the said judgment was delivered much before the Government of India, Ministry of Railway came with the circular dated 30.05.2000, prior to that there was no right to be absorbed of those who were working with the co-operative society and this Court rightly held that there was no right, observations and directions issued to the contrary by CAT, Hyderabad and was set aside. The present case is a case where respondents have claimed absorption under the circular dated 30.05.2000 which was subsequent to the judgment and provided for a new scheme for absorption of employees of the co-operative store of the societies, who were working since before 10.06.1997.

We thus are of the view that in the facts of the present case, no interference is called for in the judgment of the High Court and the Tribunal. The appeal is dismissed.

.....J.  
(ASHOK BHUSHAN)

.....J.  
(AJAY RASTOGI)

New Delhi  
December 03, 2018

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).4773/2012

(Arising out of impugned final judgment and order dated 15-11-2010 in WP No. 35766/2008 passed by the High Court Of Kerala At Ernakulam)

UNION OF INDIA &amp; ANR.

Petitioner(s)

VERSUS

K.GUNASEKHRAN (DEAD THROUGH LRS) &amp; ANR.

Respondent(s)

(IA 1/2011-Condonation of delay in filing)

Date : 03-12-2018 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN  
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s)

Mr. A.K. Panda, Sr. Adv.  
Mr. Liz Mathew, Adv.  
Ms. Rashmi Malhotra, Adv.  
Mr. Raj Bahadur Govt. Adv.  
Mr. Anil Katiyar, AOR

Mr. Gurmeet Singh Makker, AOR

For Respondent(s)

Mr. Wills Mathews, Adv.  
Ms. Reena Rao, Adv.  
Mr. Shaji Sebastian, Adv.  
Mr. Ginesh P., Adv.  
Mr. Paul John Edison, Adv.  
Mr. Manu Prakash Upadhyay, Adv.  
Mr. P. George Giri, AORUPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

Pending applications(s), if any, stands disposed of.

(ARJUN BISHT)  
COURT MASTER (SH)(RENU KAPOOR)  
COURT MASTER (NSH)

(Signed order is placed in the file)