

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1312 OF 2009

UNION OF INDIA & ORS.

APPELLANT(S)

VERSUS

S. RAJU & ORS.

RESPONDENT(S)

O R D E R

This appeal has been filed by Union of India challenging the judgment of the High Court dated 22.08.2007 dismissing the Writ Petition No.12315/2004, filed by the Union of India and two others, challenging the order of Central Administrative Tribunal dated 30.03.2004. The respondents in this appeal were engaged as daily wager by the Canteen Committee of Bhabha Atomic Research Centre, Government of India, Department of Atomic Energy, Kalpakkam. The canteen was neither set up by the Government nor any grant was sanctioned for starting the same, only the premises and some furnitures were provided by the department and the Canteen Committee was nominated to manage the day to day affairs of the canteen and the emoluments were paid on the basis of funds received by the Canteen Committee out of the revenue generated through day to day sales for which separate saving account was also

opened. The respondents, who were engaged in the said canteen on daily wage basis, filed original application before the Central Administrative Tribunal being O.A. No.805 of 2003 seeking a direction to appoint the applicants (respondents herein) in regular post of fitter/helper or any equivalent post and regularise their services as per Rule. The O.A. filed by the respondents were opposed by the Union of India. It was pleaded that canteen was started in 1989 with minimum requirement on a no profit no loss basis by a team of scientific officers. Few senior officers had also made modest contribution to begun the operation. The revenue generated on day to day sale basis was utilized for meeting the expenses. The Government was in no manner involved in engaging any person in the canteen. It was stated that applicants were only issued the entry permits by the department only for the purpose of entering the premises as and when required by the Canteen Management Committee, since the canteen was situated in a sensitive and prohibited zone. The Canteen Committee was not entitled to issue entry permits hence the entry permit was sought from the authorities. The payments made to the applicants were entirely managed by the Canteen Committee from their own funds. The claim was contested. The Tribunal vide judgment dated 30.03.2004 allowed the application and the respondents i.e. appellants herein were directed to consider the case of the applicants for regularization in accordance with the

rules. Aggrieved against the judgment of the Tribunal, the writ petition was filed in the High Court which too was dismissed by the High Court by the impugned judgment. The reasons given by the High Court in upholding the claim of the respondents is contained in paragraph 5, which is to the following effect:

"5. After hearing the learned counsel for the writ petitioners and the respondents 1 to 6 and on perusal of the materials available on record, this court is of the view that the writ petitioners cannot continue the respondents 1 to 6/applicants is when others cases were considered and regularised, the claim of the respondents 1 to 6/applicants is rejected on the ground that they are not appointed in regular vacancies. In view of the same, the order passed by the Tribunal in the Original Application is sustainable in law."

Learned counsel for the appellants submits that there being no relationship of master and servant between the appellants and the respondents and when there is no obligation on the appellants to even pay their salary, there is no question of issuing any direction to regularise them. The respondents were not engaged by the appellants or any Government officer and they were engaged only by Canteen Management Committee to be paid from their own revenue generated by the canteen. They are not the employees of the Government and could not claim regularization.

Learned counsel for the respondents refuting the submissions contends that one S.E. Kuppan, who was also similarly situated, has been regularised along with 19

others and the respondents have been discriminated by the appellants in not considering them for regularization. It is submitted that the name of the respondents find place in various orders issued by the Government of India. He further submits that Canteen Advisory Committee has also appointed by the Government of India, in this context he has referred to various orders passed by the Government of India from time to time.

We have considered the submissions of learned counsel for the parties and perused the record.

From the materials brought on record, it is clear that the respondents were working in the canteen which was being run by the Canteen Management Committee. There are no materials on record to indicate that respondents were ever appointed by Government of India in any capacity. There is specific pleading on behalf of the Union of India that no funds were granted by the Government for maintaining the canteen or any grant for running the canteen. The canteen has been run by the Canteen Management Committee from the revenue generated by sales and the respondents, who were employees of the Canteen Management Committee, were not the employees of the Government of India nor they were being paid any emoluments by the Government of India and Government of India had no control or any obligation to the canteen staff. In so far as the case of S.E. Kuppan is concerned, it has been submitted that S.E. Kuppan was already under

the employment of Union of India as a casual labourer and he was granted temporary status by order dated 24.04.1998 and thereafter he was regularised. The order dated 24.04.1998 brought on the record as Annexure P-5 includes the name of S.E. Kuppan on serial no.7, who was referred to as casual labourer who has granted temporary status w.e.f. 21.04.1998. The case of S.E. Kuppan was thus entirely different. He was casual labourer on the rolls of Government of India, Bhabha Atomic Research Centre and was granted temporary status and regularization. There is no material on record to indicate that at any time the respondents were engaged as a daily labourer or casual labourer or in any other capacity by the Government of India. It is clear that there was no master and servant relation between the appellants and the respondents. Before the Tribunal and the High Court the plea was raised by the appellants that they have not been employed by the appellants in any capacity, no direction can be issued for regularization but both Tribunal and the High Court had not adverted to the aforesaid pleadings and has directed for consideration of regularization. The respondents not being engaged by the appellants in any capacity, no direction can be issued for consideration of their regularization. The submission of the learned counsel for the respondents that other 19 persons were regularised, there is no material on record to indicate that 19 persons were regularised were similarly situated to the

respondents. This Court, in this appeal, on 21.01.2008 has stayed the implementation of the impugned judgment.

In view of the aforesaid, we are of the considered opinion that judgments of the High Court as well as the Tribunal are unsustainable. The appeal is allowed.

.....J.  
[ASHOK BHUSHAN]

.....J.  
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI;  
FEBRUARY 18, 2020.

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

Civil Appeal No(s).1312/2009

UNION OF INDIA &amp; ORS.

Appellant(s)

VERSUS

S.RAJU &amp; ORS.

Respondent(s)

Date : 18-02-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN  
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s)

Mrs. Kiran Suri, Sr. Adv.  
Mr. Ashok K. Srivastava, Sr. Adv.  
Ms. Aishwarya Kumar, Adv.  
Ms. Vaishali Verma, Adv.  
Mr. Nishesh Sharma, Adv.  
Mr. Gurmeet Singh Makker, AOR

For Respondent(s)

Mr. E. C. Vidya Sagar, AOR  
Mr. Ranjith Kumar, Adv.UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

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

(ARJUN BISHT)  
COURT MASTER (SH)(RENU KAPOOR)  
BRANCH OFFICER

(signed order is placed on the file)