

**Jay Kishore and ors. Vs. Union of India (Uoi) and ors.**

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**Court :** Central Administrative Tribunal CAT Kolkata

**Decided On :** Jul-14-2000

**Judge :** D Purkayastha, M A G.S.

**Appellant :** Jay Kishore and ors.

**Respondent :** Union of India (Uoi) and ors.

**Judgement :**

1. By this application 23 applicants who were appointed on different capacities in the office of the District Rehabilitation Centre (DRC in short), Midnapore as per letter dated 9.6.84, Annexure 'A/2' to the application, claim direction upon the respondents to treat them to be Central Government employees for all purposes of service security, service benefit, pay and allowances etc. It is stated by the applicants that they are employees of the District Rehabilitation Centre hereinafter referred to as DRC scheme, Kharagpur now transferred at Midnapore. In 1983 a Pilot Project indicating the detailed objectives and project cost was established in block areas of Kharagpur and accordingly a scheme was framed by the Government of India for regulating the said function and activities and indicating the detailed objectives and project cost with a stipulation that the project would be funded entirely by the Government of India, Ministry of Social Welfare and it is also stipulated in the said project that to expedite the implementation and to retain the adequate flexibility in the scheme, it would be advantageous if the Ministry of Social Welfare could fund a Government institution directly without the process of funding the project through the State budget. The Project Coordinator would be

able to utilise the funds according to the needs of the project in the light of experience gained in the project. It would be great advantage if the project could be funded through the institution in which the Project Coordinator is working. Keeping this in view the State Government may choose the Project Coordinator, the project district, and the institution. The scheme framed for establishment of the Pilot project for rehabilitation centre in the District are marked as Annexure 'A/1' series. In order to make effective of the said scheme a Project Committee was composed and criteria for selection of the Project Coordinator and Project Officer and Project District etc. were framed. It is stated by the applicants that they were appointed as a staff of DRC, Kharagpur as per Annexure 'A/3' to the application which has been attached with the memorandum dated 9.6.1984, Annexure 'A/2' to the application issued by the Project Coordinator, Pilot Project Rehabilitation Centre, Kharagpur under the Ministry of Social Welfare, Govt. of India, Annexure 'A/2'. It is stated by the applicants that as per policy decision of the Central Government, employees of the DRC in various states are borne in the respective State Government pay scales.

Service rules of the State Government have also been made applicable to these employees. This was done because it was thought that eventually these DRCs would be taken over by the State Governments. However, the State Governments having not taken over these DRCs continue to remain as belonging to the Ministry of Welfare, Govt. of India. As far back as on 17.06.1988 the Joint Secretary to the Govt. of India has clarified the status of the DRCs in his letter No. 15-20/88-HW III, Annexure 'A/ 7' to the application stating inter alia that it is Central scheme fully funded by the Central Government and the scheme is implemented through the State Governments and also the scheme for the time being is implemented on a pilot basis. The staff appointed in the DRC is governed by the State Government rules and are paid State Government pay scales. The overall administrative control of the DRCs rests with the State Level Advisory Committee which is headed by Secretary, Social Welfare/Health of the concerned State Government and the DRCs are not autonomous bodies as they are not separate and distinct registered organisations. Thereafter by another letter dated 10.8.1990, the Joint Secretary to the Govt. of West Bengal, Department of Relief and Welfare by his letter at Annexure 'A/8' for the purpose of determination of the status of the

employees of the DRC, Kharagpur and giving them the service benefits of Group Insurance Scheme and General Provident Fund Scheme enquired with the Project Director, CACU, New Delhi as to how long the Government of India will continue to fund the scheme of rehabilitation. In that letter it was also stated that determination of the status of the DRC, Kharagpur was necessary before extension of the said service benefits to the employees of the DRC, Kharagpur. In reply to the said letter the Project Director, District Rehabilitation Centre Scheme, Ministry of Welfare, Govt. of India by a letter dated 13.09.1990, Annexure 'A/9' intimated that the DRC project is a centrally funded project of the concerned State Governments and hence the employees of the DRCs should be regarded as employees of the concerned State Governments. But the Joint Secretary to the Govt. of West Bengal in a letter dated 27.12.1990, Annexure 'A/10' intimated the Project Director the disagreement of the Govt. of West Bengal with Project Director's contention that the employees of the DRCs should be regarded as employees of the concerned State Governments and it is clarified that the DRC Project is a part of a Central Government Scheme and funded fully by the Govt. of India, Under conflicting stand taken by the Union and the Govt. of West Bengal, the applicants made representation to the authority (Annexure 'A/11') which was duly forwarded to higher authority but without result. It is stated by the applicants that necessary budget has been provided for the financial year 1994-95 and 1995-96 and the expenditure has been shown to debitable to major head of social security and welfare and social welfare and welfare of the handicapped schemes and that budget grant for 1996-97 has also been sanctioned for DRC, Kharagpur and the first instalment of this shows that the Central Government consistently with their duties and responsibilities under Article 38 of the Constitution have been providing budget for continuation of the DRC at Kharagpur which is one of the DRCs established at Virar, Kharagpur, Bhubaneswar, Sitapur, Mysore and Chingelpattu spread out all over India. The C.A.G.is entrusted with the audit of the accounts paid out of the Consolidated Fund of India. The sanctioned letters of the budget grant are marked as Annexure 'A/13'. In short, the grievance of the applicants is that the DRC staff is an integral part of the Ministry of Social Welfare, Govt. of India and they are not employees of the State Government. According to them, they should be the employees of the Central Government since the scheme and

management thereof purely cause to show that the applicants are employees of the Central Government.

The applicants concerned are entitled to be treated at par with the employees of the Central Government.

2. The respondent No. 5, District Rehabilitation Officer, Kharagpur, Midnapore filed a reply to the OA on behalf of all the respondents.

However, the respondents except respondents No. 5 and 6 did not file any representation to the OA. The respondent No. 5 in his reply admitted that the applicants are employees of the District Rehabilitation Centre, hereinafter referred to as DRC not transferred to Midnapore. In 1983 a pilot project in the name of DRC started temporarily for survey about disabled person of Block area of Kharagpur-I. Afterwards some other blocks were taken for survey. At present there are 12 blocks under the project. The project is funded entirely by the Government of India, Ministry of Social Welfare. Till this date DRC, Midnapore is running as a scheme. The status of the employees of the DRC have not yet been decided. They are governed by the State Government Rules and their salaries are paid as per State Government scale. The members of the committee like State Level Advisory Committee, Project Level Advisory Committee, Selection Committee are formed of State Government officials. The applicants are not employees of the Central Government and hence this Tribunal has no jurisdiction to entertain the said application. It is also stated by the respondent No. 5 that at present DRC is running a scheme funded by the Central Government but governed by Committees constituted of State Government officials and the services of the applicants are governed by the State Government rules and the employees are being paid their salaries as per State Government scale and they are governed by the State Government Rules. It is also stated that the allegations that the applicants were facing total unemployment due to closure of DRC, Kharagpur are absolutely baseness and motivated. All the applicants are now service at DRC, Midnapore and they are getting their salaries according to the State Government scales. It is, however, stated that due to non-receipt of grants-in-aid from the Central Government timely on certain occasions payment of monthly salaries to

the applicants were delayed and there is no proposal for closure of DRC scheme. The respondents have denied other allegations made in the application by the applicants.

3. The learned advocate, Mr. Bandopadhyay appearing on behalf of the applicants along with Mrs. Banerjee has strenuously contended before us that the DRC being fully under the control and power of the Central Government and being funded by them as per scheme and decision taken by the Central Government from time to time the status of the aforesaid applicants ought to have been determined by the respondents for their service interest in respect of pay, promotion etc. But the respondents are neither taking any decision in this matter though representation has been submitted to them. Thereby they have been compelled to file this case for determination of the status of the employee or the applicants under the present circumstances and it is claimed by the applicants that they should be declared the employees of the Central Government. It is also contended by the learned advocate that appointment letters at Annexure 'A/2' also shows that the aforesaid applicants were appointed by the Project Director of the Pilot Project Rehabilitation Centre, Kharagpur under the Ministry of Social Welfare, Government of India. So, mere adoption of the service rules or pay scale of the State Governments as per policy decision of the Government for the convenience of the running the DRC in the respective states did not render them as State Government employees and they cannot become employees of the State Government and the applicants remain employees of the Central Government for all purpose since they have been serving as such for the last 13 years under the Ministry of Social Welfare, Government of India. Mr. Banerjee has also drawn our attention to various paras of the schemes and letters and contended that it is admitted by the respondents in the letter dated 17.6.88, Annexure 'A/7' that DRC scheme is a centrally scheme and fully funded by the Central Government. The scheme is implemented through the State Government and the scheme for the time being implemented on a pilot basis and staff appointed in the DRC are paid State Government's pay scales. The overall administrative control of the DRCs rests with State level Advisory Committee which is headed by the Secretary, Social Welfare/Health of the concerned State Government. He also submits that Clause 2 of the said letter is contrary to the scheme and contrary to 'para 3 of the said letter at Annexure 'A/7'

where it is mentioned that DRCs are not autonomous bodies as they are separate and distinct registered organisations but a part of the Central Government scheme which is implemented through State Government. So, all the applicants are to be treated as Central Government employees with retrospective effect from the date of their appointment and the respondents cannot deny the benefit of the service of the Central Government as admissible to other employees from time to time.

4. Mr. M.S. Banerjee, learned advocate appearing on behalf of the respondent No. 5 contended that since the applicants are being guided by the rules of the State Government of West Bengal and salaries etc.

are being paid according to the State Government scale, therefore, they cannot claim to be employees of the Central Government and they are to be treated as State Government employees. According to Mr. Banerjee the DRC project is being controlled by the Project Officer who is a Government employee of the State Government. So, they cannot claim to be employees of the Central Government and this Tribunal has no jurisdiction to decide the dispute cropped up between the applicants and the official respondents.

5. In order to controvert the submissions made by the learned advocate, Mr. Banerjee, Mr. Bandopadhyay, learned advocate for the applicants has also referred to a judgment reported in AIR 1957 SC 264, Dharangadhra Chemical Works Ltd. v. State of Saurashtra and Ors., wherein it has been held as below: "... the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work..... The proper test is whether or not the hirer had authority to control the manner of execution of the act in question." Referring to this judgment Mr. Banerjee, learned advocate also contended that the appointment letter issued by the Project Officer on behalf of the Central Government indicates that the Central Government has full control over the works and money relating to the execution of the works are being funded from the budget of the Central Government.

So, they had absolute control over the aforesaid applicants. Hence, the relationship of master and servant between the Central Government and the applicants are established in this case.

6. We have considered the rival submissions of both the parties. The controversy hinges in a narrow campus. The first question for decision arose in this case as to whether the applicants employed in the DRC at Kharagpur as per letter at Annexure 'A/2' are employees of the Central Government or the State Governments and if it is held that the applicants concerned are not Central Government employees, then this Tribunal will have no jurisdiction to try this case. So, in order to decide the question of jurisdiction as raised by the learned advocate of the respondents in their reply we are to first decide what would be the status of the aforesaid applicants as per letter of appointment and as per the scheme framed by the Government of India with reference to correspondences made by the State Government and the Central Government, as annexed with the application. The letter dated 3.1.93, Annexure 'A/1' clearly indicated that the project is being entirely funded by the Government of India, Ministry of Social Welfare and the Project Officer with supporting staff were appointed in each pilot project. A small Committee consisting of the Project Coordinator, the Project Officer and concerned local officials were set up to constantly guide the Project Officer in the development of the project and adequate funds have been provided in the Scheme by the Central Government for physical and economic rehabilitation of the disabled population by providing aids and appliances, training etc. It is further stated in the said letter at Annexure 'A/1' that to expedite implementation and to retain adequate flexibility in the scheme, it would be advantageous if the Ministry of Social Welfare could fund a Government institution directly without the process of funding the project through the State Budget and the Project Coordinator would be able to utilise the funds according to the needs of the Project in the light of experience gained in the Project. We find that the Government of India framed the scheme and circulated the same to the different states and institutions vide letter at Annexure 'A/5' to the application. Para 4.4 of the said scheme (Annexure 'A/1') deals with the responsibility of the District Rehabilitation Officer who is overall charge of CRC and his responsibilities include management of all activities and programmes in the DRC, PHC, CHC and village level

coordination with State Government agencies, non-governmental organisations, special and integrated schools, Panchayat and local government Institutions, and other training and self-employment activities of the Government etc.

7. Para 5.0 deals with the staff pattern for DRC, pay scales, the minimum qualifications and experience prescribed for the post, the method of recruitment and Selection Committee suggested for recruitment to these posts.

8. Para 8.0 deals with the cost of DRC and where it is stated that the total cost for each DRC will be met by the Government of India. Details of pay and other items on which expenditure will be met by Central Government.

9. Para 11.0 deals with the State Government responsibility where it is stated that the State Social Welfare Director will be the Project Coordinator. The DRCs can either run through the concerned State Governments or through voluntary organisations of standing who would be selected by the Central Government in certain cases. The Project Coordinator will be the main agency to implement the project and will function as the Member-Secretary of the State Level Advisory Committee (SLAC), receive and account for the funds earmarked for the project and send periodical reports to the Central Ministry and the SLAC will be chaired by the Secretary, Social Welfare Department, in charge of DRCs which will coordinate, monitor and review the functioning of all the DRCs in the State.

10. Para 12.4 deals with general provision where it is stated that the Ministry of Social Welfare shall be responsible for issue of guidelines to the State Governments, the Project Coordinators, the District Rehabilitation Officers, from time to time, on all matters relating to the project and its implementation, provision of funds for execution of the project for the entire duration of the project and evaluation of the project. The State Government will make available to the DRC the services of the staff of the District Hospitals, Community/Primary Health Centres, Special Employment Exchanges, Vocational Training Centres and the facilities available in these institutes as enumerated in the scheme.

11. On a perusal of the aforesaid paras of the scheme it is found that the scheme was framed by the Central Government and the entire responsibility of running the

DRC also rests with the Central Government and the scheme will be implemented through the State Government or different voluntary organisation. The State Government has no administrative control as well as the budgetary control for the purpose of running the project. The State Government has no responsibility in respect of processing the scheme. From the clause of the scheme it is found that the budgetary provision and management are totally left with the Central Government. It is found that the applicants were provided with the pay scale of the State Governments.

This adoption of the pay scales of the State Government is a different connotation for determining the status of the employees and for creation of the master and servant relationship between the employer and employee. It is clear from the appointment letter (Annexure 'A/2') that the Project Officer on behalf of the Central Government had appointed the aforesaid applicants in DRC under the scheme and the Project Director being an employee of the State Government is acting on behalf of the Central Government for implementation of the scheme. So, from the aforesaid letters at Annexures that the scheme is clearly caused to show that the Central Government had direct control over the DRC and the project is being implemented having a coordination with the State Government. It is clear from the scheme that the Central Government would have over all control in running the DRCs under the scheme and all these factors clearly cause to show that the DRC is being run and managed and controlled by the Central Government through the State Government and with the help of the Advisory Body to assist the Project Coordinator or District Rehabilitation Officer. A reference is made to the judgment reported in 1994(69) FLR 189 (C.L.U.K. Union v.State of Maharashtra and Ors.) wherein it is stated that the test that should be applied for the determine whether employer-employee relationship existed between the parties came to be considered by the Supreme Court in a number of cases. One of the oft-quoted tests is whether the so-called employer has the right to control and supervise the manner of work done by the workers. As observed by the Supreme Court in D. C. Workers Ltd. v. State of Saurashtra (supra) the prima facie test for the determination of relationship between master and servant is the existence of the right in the master of supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in

which he shall do his work. In other words, the proper test is whether or not the master has the right to control the manner of execution of the work. It was further observed that the nature of extent of control might vary from business to business and is by its very nature incapable of precise definition. It was also indicated that the test of control was not one of universal-application and that there were many contracts in which the master could not control the manner in which the work was done.

12. In *Bank Voor Handel en Scheepvaart N. V. v. Slatford*, reported in 1952 (2) All ER 956, Denning, LJ. said: "..... the test of being a servant does not rest nowadays on submission to orders. It depends on whether the person is part and parcel of the organisation...*Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments*, 1973(27) FLR 350 (SC), the Supreme Court discussed the above decisions and various other decisions on the point and observed that the right to control the manner of work is not the exclusive test for determining the relationship of employer and employee. It is also to be considered as to who provides the equipment.

Dealing with the tailoring work, it was observed that so far as tailoring is concerned, the fact that sewing machines on which the workers do the work generally belong to the employer is an important consideration for deciding that the relationship is that of master and servant. It was also observed that apart from this when the employer has the right to reject the end product if it does not conform to the instructions of the employer and direct the workers to restitch it, the element of control and supervision is also involved. It was made clear by the Supreme Court in the above case that even the fact that the employees take up the work from other tailoring establishments and do that work in the shop in which they generally attend for work and that they are not obliged to work for the whole day do not militate against their being employees of the proprietor of the shop where they attend for work. Ultimately the Hon'ble Apex Court held that the workmen concerned are employees of the Government of Maharashtra. So, we are, therefore, of the clear opinion that applicants were appointed by the Project Officer for and on behalf of the Central Government and the Central Government had direct control over the DRC and fund is being provided by Central

Government and we are satisfied from facts that the prima facie it is for determination of the relationship between the employer and the employee which is in existence in this case; Central Government is employer of the applicants and the employees are entitled to claim to be employees of the Central Government. In view of the aforesaid circumstances we find that there cannot be any dispute in this case that the Tribunal has no jurisdiction to adjudicate the grievance of the applicants who were directly appointed and being controlled by the Central Government. It is true that the aforesaid applicants are getting the pay and allowances as per rate prescribed by the Govt. of West Bengal. It is found that the scale prescribed by the Government of West Bengal has been adopted by the concerned authorities under the scheme. So, mere adoption of the scale of the State Government does not disentitle the applicants the right of status of the Central Government employees under the scheme.

13. In view of the aforesaid circumstances we are of the view that the applicants are employees of the Central Government, though their salary is being paid as per scale of the State Government. Under the circumstances stated above we allow the application with a direction upon the respondents to treat the aforesaid applicants as employees of the Central Government and to grant the reliefs to the applicants in accordance with the rules in respect of salary, provident fund etc.

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