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UNION OF INDIA & ANR.
v.
RAM SINGH THAKUR & ORS.
(Civil appeal No. 200 of 2007)

B

JULY 14, 2011

**[MARKANDEY KATJU AND CHANDRAMAULI KR.
PRASAD, JJ.]**

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Service Law:

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Employees of Railway Employees Cosumer Co-operative Society Ltd. – Central Administrative Tribunal directing induction of claimants and employees of other co-operative societies in regular group 'D' posts and alternatively also as casual group 'D' employees in Railways – Direction upheld by High Court – HELD: A direction regarding regularisation in service is a purely executive function and such a direction cannot validly be given by the judiciary – There is broad separation of powers in the Constitution of India – It is not proper for the judiciary to encroach into the domain of the Legislature or the Executive – The framing of a scheme such as the one done by the Tribunal and approved by the High Court was a purely executive function – The direction to frame a scheme for appointment can only be given by the Executive (and that too according to Article 16 and other provisions of the Constitution) – Moreover, the employees of a co-operative society are not employees of the Government – The impugned judgment of the High Court as well as the order of the Tribunal set aside – Constitution of India, 1950 – Article 16 – Constitutional law – Separation of powers.

Co-operative Societies:

Employees of co-operative societies – HELD: Are not Government employees.

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UNION OF INDIA & ANR. v. RAM SINGH THAKUR & 243
ORS.

Divisional Manager, Aravali Golf Club & Anr. Vs. Chander Hass & Anr. 2007 (12) SCR 1084 = (2008) 1 SCC 683; and *Union of India (Railway Board) & Ors. vs. J.V. Subhiah & Ors.* 1995 (6) Suppl. SCR 812 = (1996) 2 SCC 258 – relied on. A

Case Law Reference: B

2007 (12) SCR 1084 relied on para 6

1995 (6) Suppl. SCR 812 relied on para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 200 of 2007. C

From the Judgment & Order dated 15.9.2003 in WP No. 6661, 6662, 6663 & 6664 of 2002 and dated 21.11.2003 M.C.C. No. 3440 of 2003 in WPC No. 6661 of 2002, M.C.C. No. 3368 of 2003 in WP No. 6663 of 2002 and MCC No. 3439 of 2003 in WP No. 6664 of 2002 of the High Court of Judicature at Jabalpur. D

WITH

C.A. No. 1197 of 2007. E

Harin P. Raval, ASG, Wasim Quadri, Anando Mukherjee, Harsh N. Parekh, Anirudh Sharma, Arvind Kr. Sharma, Mukesh Verma, Shweta Verma, Zaid Ali, Shreekant N. Terdal, B. Krishna Prasad for the Appellants. F

Akshat Shrivastava, P.P. Singh, Inderjeet Yadav, Parthapratim Chaudhuri, Aditya Sharma, K.S. Rana for the Respondents.

The following Order of the Court was delivered G

ORDER

Civil Appeal No. 200 of 2007

Heard learned counsel for the appearing parties. H

A This Appeal has been filed against the impugned judgments dated 15.09.2003 and dated 21.11.2003 passed by the High Court of Madhya Pradesh.

B The facts have been set out in the impugned judgment dated 15.09.2003 as well as in the order of the Central Administrative Tribunal dated 30.05.2001 and hence we are not repeating the same here.

C The respondents were employees of a co-operative society of Railway Employees Consumer Co-operative Society Ltd. By its order dated 30.05.2001, the Central Administrative Tribunal (for short 'the Tribunal) has directed the Chairman, Railway Board to formulate a suitable scheme for induction of the respondents and similarly placed employees of other co-operative societies in regular Group 'D' posts and alternatively D also as Casual Group 'D' employees in the railways. This direction has been upheld by the High Court in the impugned judgments.

E In our opinion, the order of the Tribunal as well as the impugned judgments of the High Court were totally unwarranted and illegal. There is broad separation of power in the Indian Constitution. As held by this Court in *Divisional Manager, Aravali Golf Club & Anr Vs. Chander Hass & Anr.*, (2008) 1 F SCC 683, it is not proper for the Judiciary to encroach into the domain of the Legislature or the Executive. The framing of a scheme such as the one done by the Tribunal and approved by the High Court was a purely executive function, and could not validly be done by the judiciary.

G Moreover, in view of the judgment of this Court in *Union of India [Railway Board] & Ors. Vs. J.V. Subhaiah & Ors.* (1996) 2 SCC 258, the employees of a co-operative society are not employees of the Government.

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ORS.

In our opinion, the direction to frame a scheme for appointment can only be given by the Executive (and that too according to Article 16 and other provisions of the Constitution).

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For the reasons stated above, the Appeal stands allowed and the impugned judgments of the High Court as well as the order of the Tribunal are set aside. No costs.

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Civil Appeal No. 1197 of 2007

Heard learned counsel for the appearing parties.

This Appeal has been filed against the impugned judgment dated 23.08.2005 passed by the High Court of Gujarat in Special Civil Application No. 8536 of 2003.

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The facts have been set out in the impugned judgment and in the judgment of the Central Administrative Tribunal dated 28.03.2002 and hence we are not repeating the same here.

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It appears that the respondents were working in a Mess run by the trainee officers in the Railway Staff College. That Mess was not run by the railways but was run by the trainee officers themselves so that they could get proper meals. It is evident that the respondents were not railway employees, but a direction has been given that they be regularised in railway service.

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In our opinion, a direction regarding regularisation in service is a purely executive function and such a direction cannot validly be given by the judiciary.

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Consequently, this Appeal stands allowed. The impugned judgment as well as the judgment of the Tribunal are set aside. No costs.

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R.P.

Appeal allowed.