

STATE OF TAMIL NADU AND ORS. A

v.

V.S. BALAKRISHNAN AND ORS. ETC.

JULY 18, 1994

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.] B

*Service Law: Deputation/Foreign Service—Benefits of Liberalised Pension Rules—Employees transferred from Dairy Development Department to Dairy Development Corporation—Subsequently Corporation replaced by a Cooperative Federation—Govt. issuing GO 1921 granting benefits from the date Federation came into being or from date of continuance service whichever is later—Benefits of Liberalised Pension Rules—Entitlement to—Paras 3(c) and 3(f) of the GO struck down—All other provisions upheld.* C

**The Tamil Nadu Dairy Development Corporation was incorporated on May 4, 1972 to carry on the production, collection and distribution of milk throughout the State. The appellant-State directed the transfer of certain posts in various cadres of the Dairy Development Department to the Corporation. The incumbents were to be treated on deputation/foreign service to the Corporation.** D

**The question of absorbing the employees in the said corporation was under consideration. In the meanwhile the State Government issued GO.731 dated May 21, 1973 providing for the terminal benefits to its employees who had opted to join the service of Small Scale Industries Development Corporation Limited.** E

**By G.O. 378 dated April 18, 1975, the State Government decided to extend the benefits of GO 731 to all Government servants who were permanently absorbed in any of the public sector undertakings.** F

**The Government servants working in the Dairy Development Corporation were asked to exercise the option either for permanent absorption or for reversion back to State Government. In the meantime Government took a decision to keep GO 378 in abeyance since the Corporation was likely to be replaced by a Cooperative Federation. Thus, the action in respect of the options obtained from the employees of the Corporation was dropped.** G

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A G.O. 731 and GO 378 were amended by GO 284 dated March 31, 1980 and the employees to whom the aforesaid GOs were applicable, were disallowed simultaneous withdrawal of pension and it was provided that they would be entitled to pension for the period they served the Government only after their requirement from the Government Undertakings. The benefit of commutation or pension, if not availed earlier was to be available only on retirement from the Public Sector Undertaking. The employees of the Industries Corporation filed writ petitions before the High Court claiming that they were entitled to the benefits on their permanent absorption in the Industries Corporation. They also contended that after their options had been accepted the denial of benefits was wholly arbitrary and violative of the doctrine of Promissory estoppel. The High Court allowed the writ petitions and directed that the petitioners were entitled to the benefits under GO 731.

D The Dairy Development Corporation was replaced by the Tamil Nadu Cooperative Milk Producers Federation with effect from February 1, 1981. All the employees of the said Corporation including those who were no deputation/foreign service were transferred.

E Finally, the Tamil Nadu Government issued GO 1921 dated November 8, 1983 providing for the terminal benefits to the Government servants who were working with the Dairy Development Corporation and thereafter with the Federation on deputation/foreign service. The benefits were to be made available from February 1, 1981 or from the date of continuous service of the deputationist in the Federation whichever was later. This was challenged before the High Court by way of writ petitions by the employees working on deputation/foreign service with the Federation. These petitions were later on transferred to the State Administrative Tribunal. Some original applications were also filed before the Tribunal challenging the said GO. The Tribunal allowed the applications, Against which the State Government has preferred the present appeals.

G On behalf of the employees, it was contended that all the employees were continuing on deputation/foreign service with the Federation and as such were Government servants and that their status as civil servants cannot be terminated unless they are given options to be absorbed as permanent employees of the Federation. It was also argued that the options given by the employees in the year 1975 were linked with GO 378 and as such the terminal benefits offered in the said G.O. have to be given

to the respondents.

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The Appellant-State contended that the respondents left Government service way back in 1972/74 and have, in fact been serving the Corporation and thereafter the Federation; and that the Government could not issued formal orders absorbing them permanently in the service of the Federation because of the stay orders issued by Courts.

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Allowing the appeals, this Court

**HELD : 1.** A Government servant cannot be deprived of his status as a "civil servant" without his consent. This proposition of law is unexceptionable. But in the instant case the only course left for the respondents is to accept the service under the Federation as permanent employees. The Corporation was created in the year 1972 and 762 posts were transferred to the Corporation by the State Government. Obviously, all these posts constituted the Dairy Development Department of the Government. There may not be as many posts left in the Dairy Development Department to accommodate these employees who decline to opt for permanent absorption in the service of the Federation, Therefore, the only practical way to solve the problem at this point of time and in the special facts and circumstances of this case, would be to hold that all the employees shall be deemed to have opted to join the service of the Federation. [747-E-G]

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2. It is no doubt correct that some sort of options were given to the employees in the year 1975 but the same were not acted upon for the reason that the operation of GO 378 was put in abeyance and latter on it was substituted by GO 284. Apart from that a decision was taken to wind up the Corporation and in its place constitute a Cooperative Federation. In this view of the matter, no fault could be found with the stand of the State Government that the action in respect of the options was dropped.

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[748-A-B]

3. Except the provisions regarding family pension and application of Future Liberalised Pension Rules (item 3(c) and 3(f) of GO 1921) all other provisions of the GO are reasonable and no fault can be found therewith. Once an optee for permanent absorption in the Federation is entitled to prorata pension in respect of the period of service rendered by him under the Government, he is also entitled to the benefit of the family pension. Therefore, para 3(c) of the GO is struck down. The respondents shall be entitled to the benefit of family pension on the basis of prorata given to

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**A** them. Similarly, there is no justification why the employees, after their permanent absorption in the service of the Federation, be not given the benefit of further liberalisation of pension rules, if any, in respect of the pension which they are already drawing from the Government. This provision is also on the face of it arbitrary. Therefore, para 3(f) of the said GO is struck down. The employees after their permanent absorption with the Federation shall be entitled to the benefit of the liberalised pension rules, if any, in future. All other provisions of the GO 1921 are reasonable and as such are upheld. [748-F-H; 749-A]

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**C** 4. All those employees who have retired after February 1, 1983 shall be deemed to have opted to join the service of the Federation permanently and, as such, they would be entitled to the terminal benefits in terms of GO 1921. [749-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1387 to 1395 of 1993.

**D** From the Judgment and Order dated 26.6.92 of the Central Administrative Tribunal, Madras in T.A. Nos. 704, 705/91, 313/90 (W.P. Nos. 11943, 12118/86, 4519/87) O.A. Nos. 2376, 2914/90, 770/91, 2215/91, 2904, & 1635 of 1991.

**E** V. R. Reddy, Solicitor General and P.R. Seetharaman, for the Appellants in C.A. No. 1387-95.

Kapil Sibal, Chidambaram Arun Jaitley, J.K. Das, Ms. Nina Gupta, Nand Kumar, Vineet Kumar (NP), Ms Indu Malhotra and Ms. V. Mohana, for the Respondents.

**F** Rajinder Sachhar, A.V. Rangam and Ambrish Kumar for the intervenor/applicant.

The Judgment of the Court was delivered by

**G** **KULDIP SINGH, J.** The Tamil Nadu Government decided in March 1972 to form a government company with a view to take over the entire business activity of the Dairy Development Department of the State Government. As a consequence the Tamil Nadu Dairy Development Corporation Limited (the Corporation) was incorporated on May 4, 1972. The objects of the Corporation were to carry on the business of production, collection and distribution of milk throughout the State of Tamil Nadu. The

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Tamil Nadu Government by the Order dated June 29, 1972 directed the transfer of 431 posts in various cadres of the Dairy Development Department to the Corporation with effect from July 1, 1972. 296 posts were transferred along with the incumbents of the said posts and the remaining transferred posts were vacant. Subsequently, by another Order 331 posts - 217 with incumbents - were further transferred to the Corporation with effect from July 1, 1974. The incumbents of the posts were to be treated on deputation/foreign service to the Corporation.

While the question of absorbing about 500 employees on deputation/foreign service serving the Corporation was under consideration, the Tamil Nadu Government came to be seized of another similar situation pertaining to the deputationist with the Small Scale Industries Development Corporation Limited (the Industries Corporation). The Government issued Government Order (GO) No. 731 dated May 21, 1973 wherein the terminal benefits to be given to the employees who opted to join the service of the Industries corporation were provided. The benefits included the payment of pension/gratuity earned by the employees for the period they remained in government service. They were also allowed to have the full pension commuted or to draw the same simultaneously along with the salary they were to get from the Industries Corporation.

The Tamil Nadu Government by GO 378 dated april 18, 1975 decided to extend the benefits of GO 731 - meant for industries Corporation employees - to all government servants who were permanently absorbed in any of the public sector undertaking.

The government servants working in the Corporation were asked - presumable with reference to GO 378 - to exercise their options either for permanent absorption in the Corporation or for reversion back to the State Government. It is, however, the case of the Government that in the meanwhile a decision was taken to keep GO 378 in abeyance. It is further stated by the Government that Since the Corporation was likely to be replaced by a cooperative federation, the action in respect of the options obtained from the employees of the Corporation was dropped.

It would be useful to mention here that GO 731 and the GO 378 were amended by GO 284 dated March 31, 1980 and the employees to whom the aforesaid GO's were applicable were disallowed simultaneous withdrawal of pension and it was provided that they would be entitled to

A pension for the period they served the government only after their retirement from the government undertakings. The benefit of commutation of pension, if not availed earlier, was to be available only on retirement from the public sector undertaking.

B The employees of the Industries Corporation filed writ petitions Nos. 1917 & 1928 of 1980 *S. Ananda & Ors. v. State of Tamil Nadu & Ors.*, decided on January 18, 1993, before the Madras High Court wherein it was stated that the petitioners therein were given certain terminal benefits by GO 731 and they became entitled to the said benefits on their permanent absorption in the Industries Corporation. It was further contended  
C that the withdrawal of those benefits by GO 284, after their options had been accepted, was wholly arbitrary and in violation of the doctrine of promissory estoppel. The High Court came to the conclusion that accepting the terminal benefits offered in GO 731, the employees had exercised their options which were accepted and the terminal benefits were granted  
D to them by the Government. The High Court further came to the conclusion that the options of the employees were linked with GO 731 and as such could not be unilaterally withdrawn. The High Court, therefore, allowed the writ petitions and directed that the petitioners therein were entitled to the benefits which were offered to them under GO 731.

E Coming back to the employees of the Corporation with whom we are concerned, the Government issued another order dated March 21, 1980 by which the Corporation was replaced by the Tamil Nadu Cooperative Milk Producers Federation (the Federation) with effect from February 1, 1981. All the employees of the Corporation including those who were on deputation/foreign service were transferred to the Federation.  
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The Tamil Nadu Government finally issued GO 1921 dated November 8, 1983 providing for the terminal benefits to be given to the Government - employees who were working with the Corporation and thereafter with the Federation on deputation/foreign service. It was stated in the  
G Government Order that the employees, opting for permanent absorption in the Federation, would be given the following terminal benefits :-

1. Transfer of General Provident Fund accumulation to the Provident Fund account under the Federation.

H 2. Immediate cash payment of gratuity.

3. The pension in respect of the period spent in government service to be calculated at the time of transfer but payable by State Government only on retirement of the employee from the Federation. The employee on retirement from the Federation would be entitled to commute up to 1/3rd value of pension like government employees who retire from government service.

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4(A). In the case of industrial workers who do not opt for service in the federation would be reverted to their parent department if there is no post to accommodate them in the parent department, they would be paid retrenchment compensation according to the labour laws.

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4(B). In the case of non-industrial workers who do not opt to serve the Federation, they would be revered to their parent department. If there is no post in their parent department to accommodate them they would be given compensation - pension as provided for in the Tamil Nadu Pension Rules.

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5. *Family Pensions*. Since the optee for permanent absorption in the Federation would cease to be a government servant, the government's liability for family pension would cease.

6. *Earned Leave*. The employee would be paid by Government cash equivalent of 50 percent of the quantum of earned leave at his credit as on the date of absorption. The balance of credit will be transferred to the accounts of the individual under the Federation with full leave liability thereof being paid to the undertaking by government to meet the leave salary payable to the employees absorbed in the undertaking.

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7. Other kinds of leave on absorption of the employee in the Federation the Government's liability towards leave on medical certificate and leave on private affairs will cease.

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8. Any further liberalisation of pension rules decided by the Government for government employees after the permanent absorption of a government servant in the Federation would not be extended to them.

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9. In cases where an employee at the time of absorption has less than ten years service in government and is not eligible to pension, he will be eligible only to proportionate service gratuity in lieu of pension and death-cum-retirement gratuity based on the length of service.

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A The GO 1921 further provided that the crucial date for calculating the terminal benefits in respect of the employees opting to join the Federation would be from the date of formation of the Federation (February 1, 1981) or from the date of continuous service of the deputationist in the Federation whichever is later.

B The above quoted GO 1921 was challenge before the Tamil Nadu High Court by way of three writ petitions by the employees working on deputation/foreign service with the Federation. These writ petitions were later on transferred to the Tamil Nadu. Administrative Tribunal (the Tribunal). Some original applications were also filed before the Tribunal challenging the same Government Order. All the matters were heard together by the Tribunal. The Tribunal by its lengthy judgment dated June 26, 1992 allowed the applications and held as under :-

D "(1). the orders issued in GOMs No. 1921, Agriculture dated. 8.11.1983 requires to be : re-considered in the light of the observation in this order and accordingly we quash that order.

E (2) Persons who have retired on reaching the age of superannuation or otherwise before specific orders are issued for their absorption in the Tamil Nadu Cooperative Milk Producers Federation after considering the option of the individuals in each case, will be retiring as Government servants and will be entitled to all the benefits on that basis.

F This will apply not only to the applicants before us but also to all persons retiring before they are absorbed in the Federation on the basis of their option, by specific orders in each case.

G Since the delay in cases of persons who have retired already had arisen due to pendency of these proceedings, for a decision regarding their status, no interest will be payable except under the Government orders regarding gratuity."

H Mr. P. Chidambaram, learned senior counsel appearing for the employees has contended that all the employees are continuing to be on deputation/foreign service with the Federation and, as such, are government servants. According to him, their status as civil servants cannot be terminated unless they are given options to be absorbed as permanent

employees of the Federation. He has further argued that the options given A  
 by the employees in the year 1975 were linked with GO 378 and, as such,  
 the terminal benefits offered in the said Government Order have to be  
 given to the respondents. Mr. Kapil Sibal, Learned senior counsel, on the  
 other hand, has contended that 762 posts - included 513 with incumbents B  
 - were transferred to the Corporation by the State Government in the year  
 1972/74. According to him the Government department was converted into  
 a corporation for the purpose of achieving better results in the field  
 concerned. It was fully known to all the employees that they were going to  
 be absorbed permanently in the service of the Corporation. Mr. V.R.  
 Reddy, Learned Additional Solicitor General, appearing for the State of C  
 Tamil Nadu has vehemently contended that the respondents left the  
 government service as back as 1972/74 and have, in fact, been serving the  
 Corporation and thereafter the Federation. According to him, the Govern-  
 ment could not issue formal order absorbing the respondents permanently  
 in the service of the Federation because stay orders by the courts have been  
 operation throughout. The operation of the GO 1921 remain stayed D  
 throughout the proceedings.

We agree with Mr. Chidambaram that government servant cannot be  
 deprived of his status as a "civil servant" without his consent. This proposi-  
 tion of law is unexceptionable. But at the same time the facts and cir- E  
 cumstances of this case leave no manner of doubt that the only course left  
 for the respondents - employees is to accept the service under the Federa-  
 tion as permanent employees. The Corporation was created in the year  
 1972 and 762 posts were transferred to the Corporation by the State  
 Government. Obviously, all these posts constituted the Dairy Development  
 Department of the Government. There may not be as many posts left in F  
 the Dairy Development Department to accommodate those employees who  
 decline to opt for permanent absorption in the service of the Federation.  
 Therefore, the only practical way to solve the problem at this point of time  
 and in the special facts and circumstances of this case, would be to hold  
 that all the employees shall be deemed to have opted to join the service G  
 of the Federation. We are, however, inclined to examine the question as to  
 whether the terminal benefits offered in GO 1921 are reasonable or are  
 arbitrary in any respect.

We have given our thoughtful consideration to the contention raised H  
 by Mr. Chidambaram that the employees are entitled to the terminal

A benefits as provided in GO 378. We are not inclined to agree with him. It is no doubt correct that some sort of options were given to the employees in the years 1975 but the same were not acted upon for the reason that the operation of GO 378 was put in abeyance and later on it was substituted by GO 284. Apart from that a decision was taken to wind up the Corporation and in its place constitute a Cooperative Federation. In this view of the matter, we find no fault with the stand of the State Government that the action in respect of the options was dropped. We, therefore, see no force in the contention that the respondents are entitled to the terminal benefits as provided in the GO 378.

C The judgment of the Madras High Court in *S. Ananda's* case (supra) is of no assistance to the respondents. In that case the options given to the employees of the Industries Corporation were directly linked with GO 731. They were specifically asked to give their options on the basis of the terminal benefits detailed in GO 731. They accepted the terminal benefits and opted to join the service of the Industries Corporation. The Government also accepted the offers given by the employees. The whole circle, based on the terminal benefits contained in GO 731 was completed. The High Court, under the circumstances, came to the conclusion that the Government was bound by the principle of equitable estoppel and could not back out from its commitments under GO 731.

E We may now examine the terminal benefits offered in GO 1921. We have already enumerated in detail the said benefits in earlier part of the judgment. We are of the view that except the provisions regarding family pension and application of Future Liberalised Pension Rules (item 3(c) and 3(f) of GO 1921] all other provisions of the said GO are reasonable and no fault can be found therewith. We are of the view that once an optee for permanent absorption in the Federation is entitled to prorata pension in respect of the period of service rendered by him under the Government, he is also entitled to the benefit of the family pension. We, therefore, strike down para 3(c) of the GO and direct that the respondents shall be entitled to the benefit of family pension on the basis of prorata pension given to them. Similarly, we see no justification why the employees, after their permanent absorption in the service of the Federation, be not given the benefit of further liberalisation of pension rules, if any, in respect of the pension which they are already drawing from the Government. This provision is also on the face of it arbitrary. We, therefore, strike down para

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3(f) of the said GO and hold that the employees after their permanent absorption with the Federation shall be entitled to the benefit of the liberalised pension rules, if any, in future. All other provisions of the GO 1921 are reasonable and as such we upheld the same. A

We make it clear that all those employees who have retired after February 1, 1983 they shall be deemed to have opted to join the service of the Federation permanently and, as such, they would be entitled to the terminal benefits in terms of GO 1921. B

We allow the appeals in the above terms, set aside the judgment of the Tribunal and dismiss the transfer applications and original applications filed by the respondents before the Tribunal. No costs. C

G.N.

Appeals allowed.