
(2010) 11 DEL CK 0102
In the Delhi High Court
Case No : Writ Petition (C) 514 of 2007

Ajay Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Citation : (2010) 11 DEL CK 0102

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Mathew D, for the Appellant; Atish Grover, for Puneet Khurana, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On 9.6.1999, working as a Scooter Mechanic at the ACC Taurus Canteen, the petitioner was called upon to respond as to why his services be not terminated on account of closure of the Scooter Repair Section of the Taurus Canteen stating that the Repair Section was incurring regular losses. It was informed that the notice was issued as per para 13(j) of the Taurus Shopping Arcade Standing Orders. The petitioner responded by informing that he was an employee in the Vehicle Mechanical Department and not the Scooter Mechanical Department. He informed that he was not working as a Vehicle Mechanic but was doing duties as a driver. Rejecting his representation, vide order dated 16.7.1999, the petitioner was informed that his services stood terminated on account of closure of the Scooter Repair Section of the Auto Care Centre of Taurus Canteen.

2. Petitioner approached the Labour Commissioner and since conciliation failed, a Reference was made by the Central Government to the Industrial Tribunal and after participating before the Industrial Tribunal from the year 1999 till the year 2005, petitioner withdrew the claim before the Industrial Tribunal stating that he reserved right to approach the Central Administrative Tribunal and vide order dated 27.4.2005 the Industrial Tribunal returned the Reference as withdrawn

with liberty granted to the petitioner to approach the Tribunal.

3. The petitioner filed OA No. 1177/2005, inter-alia urging that he was appointed as a Vehicle Mechanic at the Auto Care Centre of Taurus Canteen and the closure of the Scooter Repairing Section could not be a ground to terminate his services. Additionally, he pleaded that though appointed as a Vehicle Mechanic he was assigned duties to drive a three-wheeler scooter i.e. he was not working in the Scooter Repair Centre. Secondly, he pleaded that certain other employees like Sh. Shiv Pal Singh and John D'Silva were given alternative jobs. Lastly, he urged that his services have not been terminated as per the Industrial Employment (Standing Orders) Act, but in what manner was not highlighted.

4. As per the respondents, the claim before the Tribunal was not maintainable as the petitioner did not hold a post under the Union of India. It was highlighted that the respondents before the Tribunal were the Union of India, the Chief of the Army Staff and the Area Commander, Delhi. It was highlighted that the petitioner holds no post under the Union and was appointed as a Scooter Mechanic with the Auto Care Centre, Taurus Shopping Canteen HQ Delhi Area and that due to closure of the Scooter Repair Section, services of the petitioner were discontinued.

5. It may be noted that in the pleadings it was not highlighted, but as is to be found in the impugned order passed by the Tribunal, the respondents successfully showed that the Taurus Canteen was a private affair managed out of private funds and not from the Consolidated Fund of India. It was shown that Regimental Funds were utilized to run the canteen as a private body for the benefit of the servicemen.

6. In the rejoinder the petitioner highlighted the letter of appointment dated 11.7.1986 which shows his being appointed as a Vehicle Mechanic in the Auto Care Centre. The petitioner thus highlighted that the closure of the Scooter Repair Section of Auto Care Centre could not be the foundation to remove him from service.

7. It is apparent that at the outset the jurisdictional issue before the Tribunal was to the very maintainability of the Original Application. This led the Tribunal to decide whether the petitioner was appointed to a post under the Union or was appointed by a privately managed fund. The finding is against the petitioner.

8. The Tribunal has noted that the Taurus Canteen was functioning as a No Profit No Loss entity and was funded through the Regimental Funds and not through the Consolidated Fund of India. The petitioner could not shake the said finding. We may only add that for the benefit of members of a service, the members of the service get together to run, akin to co-operatives, private ventures for the benefit of each other. This has happened in the instant case. Lowly paid members of the armed forces maintain private scooters which require servicing, repairs etc. and rather than run around and chase mechanics in the market, since enough work is available within the Cantonment area, private Regimental Funds

are generated and utilized to provide services to the members of the Regiment. This has happened in the instant case. Private funds were utilized to run the Taurus Canteen which had a unit of Scooter Repair. Thus, the question of the petitioner maintaining the Original Application against the Union of India or the Armed Forces does not arise. We may note the latest decision of the Supreme Court on the point being R.R. Pillai (dead) through Lrs. Vs. Commanding Officer HQ S.A.C. (U) and Others, where it was held that employees of privately funded unit run canteens cannot be treated as employees of Instrumentality of the State.

9. We may additionally note the finding of the Tribunal in this regard as under M

10. Learned Counsel of the respondents has stated that the service of the applicant was terminated as per the Standing Order, copy of which has been produced. It is stated that Station Canteen and Taurus Canteen were two different and distinct establishments. The Auto Care Centre which was working under Taurus Canteen was functioning on "no profit and no loss" basis and was being funded from the Regimental Fund and that the Standing Orders, which apply to the employees of Auto Care Centre of the Taurus Canteen, empowered the respondents to terminate the services of the applicant. Though learned Counsel of the applicant has submitted that the Standing Order were not framed as per the requirement of Industrial Employment (Standing Orders) Act, 1946. It is not disputed that said Act applies to an establishment having more than 100 workers whereas in Auto Care Centre hardly two Vehicle Mechanic and one Scooter Mechanic were working and total number of employees in the Taurus Canteen was not more than 35, which would also appear from the copy of the Attendance Register filed by the applicant.

10. The aforesaid finding also takes care of the Standing Orders of the Canteen being questioned with reference to the Industrial Employment (Standing Orders) Act 1946. Admittedly, the Auto Care Centre was employing 3 persons and the canteen as a whole was employing not more than 35 persons.

11. The controversy projected by the petitioner that he was employed as a Vehicle Mechanic is neither here nor there for the simple reason even a scooter is a vehicle. Employed as a Vehicle Mechanic, as per the respondents, petitioner was deployed to repair scooters in the Auto Care Centre. The petitioner has no material to show that he never worked in the Auto Care Centre. That apart, the finding of fact returned by the Tribunal that the petitioner had worked at the Auto Care Centre cannot be interdicted by us unless it is shown that the finding is perverse or ignores relevant evidence.

12. In this connection we may note that Annexure R-1 being the application dated 13.2.1986 submitted by the petitioner to the canteen while seeking employment reads as under:

The Canteen Officer,

HQ Delhi Area Station Canteen,

25 Mall Road,

Delhi Cantt. - 110 010

Subject: For the post of Scooter Mechanic in Taurus Auto Care Centre.

Dear Sir,

From as reliable source I have come to know that there is a post vacant for Scooter/Two Wheelers mechanic in Taurus Auto Care Centre for which I offer my services. My particulars are as under:

Name: Ajay Kumar Fathers" Name: Shri Summer Singh AGE:- 21 Years Date of birth:- 1.1.65. Local Address:- WZ-202A Uttam Nagar, New Delhi - 110 059.

Qualification:

1. Passed 9th Class from Sri Budh

Sain Prem Chand Inter College,

Bulandshahar, U.P.

2. Worked with S.V. Bajaj Automotive

H-26, Bali Nagar, New Delhi as head mechanic

for two wheeler for 2? years.

3. Worked with Shiela Auto Centre, Kirti Nagar,

New Delhi, as head mechanic for 2 years.

4. Worked with M/s. S.K. Automobiles, Bali Nagar,

for 2 months.

If given a chance I assure you that I will work with utmost care & satisfaction.

13. It is apparent that the petitioner applied for the vacant post of a Scooter Mechanic at the Taurus Auto Care Centre. We note that the Tribunal has dealt with the said issue in para 9 of the impugned decision which reads as under:

9. The first contention of the applicant is that he was appointed as a Vehicle Mechanic and not as a Scooter Mechanic. He has referred to appointment letter dated 11.7.1986 (Annexure A/3), which shows that the applicant was appointed as a Vehicle Mechanic in Auto Care Centre with retrospective effect. However, it has not been denied by the applicant that he was working in the Scooter Repairing Section of the Auto Care Centre. The learned Counsel of the respondents drew our attention to Annexure R/1 filed on 23.3.2006, which is an application submitted by the applicant on 13.2.1986 for his appointment to the post of Scooter Mechanic in Taurus Auto Care Centre. The applicant's appointment was made on the basis of this application. The applicant has not disputed that the workshop in which the applicant was working had been closed

down. Admittedly the section of the workshop in which repairs of two wheelers, scooters etc. was being done has been closed down because it was suffering losses. The applicant in his reply and representation has given explanation for the losses suffered by that section that the prices of the spare parts have not been revised since long. As such the fact remains that the applicant had been working in the Scooter Repairing Section of the Auto Care Centre. The workshop in which the applicant's services were being utilized has been closed down. The applicant was repairing two wheelers, scooters etc., whatever may be the nomenclature or designation of his post. Since the section of the workshop in which the applicant was working had been closed down, his services were no more required for repairing two wheelers. Learned Counsel for the applicant has also submitted that certain other employees, who were working with the respondents in other trades/shops in Taurus Shopping Arcade were provided alternative job after their services were terminated for similar reason. He has been given the name of such persons but the respondents in their reply have stated that they were accommodated against available vacancies but no vacancy was available to give alternative job to the applicant when his services were terminated. Needless to state that the persons, who were given alternative jobs, were not the employees of the Auto Care Centre. Unless a vacancy is available with the respondents, respondents cannot be supposed to provide an alternative employment to the applicant.

14. We concur with the same.

15. There is no merit in the writ petition which is dismissed but without any orders as to costs.