

(1989) 10 AP CK 0003

In the Andhra Pradesh High Court

Case No : W.A. No's. 881 and 882 of 1987 and W.P. No. 439 of 1986 etc.

Andhra Pradesh Dairy Development Co-operative Federation
Ltd.

APPELLANT

Vs

Shivadas Pillay and Others

RESPONDENT

Date of Decision : 05-10-1989

Acts Referred:

Factories Act, 1948 — Section 46, 46(1)
Industrial Disputes Act, 1947 — Section 2, 25

Citation : (1991) 1 APLJ 410 : (1992) 1 LLJ 153

Hon'ble Judges : N.D. Patnaik, J;K. Jayachandra Reddy, J

Bench : Division Bench

Judgement

N.J. Patnaik, J.—The writ appeals are filed against the judgment of a learned single Judge in W.P. Nos. 6720/84 and 13767/86.

2. The Andhra Pradesh Dairy Development Cooperative Federation Limited, (hereinafter referred to as the "Federation"), is running a canteen for the workers employed in the factory and office establishment at Lalpet in Hyderabad. The petitioners 1 to 21 were working in the said canteen. They filed W.P. 6720/1984 for the issue of a Writ of Mandamus directing the Federation to treat them as employees of the Federation to fix appropriate regular sales of pay as applicable to the employees of the Federation. The other Writ Petition 13767/86 was filed by them challenging the illegal and unlawful termination of the petitioners with prayer to reinstate them into service with full backwages. The petitioners alleged in their affidavit that till 1977 the canteen was being run by a private contractor and afterwards it was run by the Federation itself under the supervision on of the Welfare Officer and all appointments were being made by the Welfare Officer on behalf of the Federation. The petitioners were appointed in the canteen from various dates from March 1, 1969 and were working without break. The grievance of the petitioners is that though the other employees are being given regular pay scales, the petitioners are being paid meager salaries without attendant benefits, which accrue to the regular employees of the

Federation. They contended that u/s 46 of the Factories act, the Federation is under an obligation to establish and maintain a canteen for the workmen and hence the canteen has been established in discharge of the statutory obligation cast upon the Federation. Therefor, they contend that they must be regarded as employees of the Federation and not as workers in the canteen. They further alleged that on January 16, 1986 the Federation issued a tender inviting quotations from outsiders for managing the canteen and one of the terms and conditions is that the 24 workers in the canteen shall be continued to the in the employment of the canteen. While matters stood thus, the respondent terminated all the petitioners en masse from April 30, 1986. This action of the Federation amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and the termination being in contravention of Section 25-F of the Industrial Disputes Act the same is void ab initio.

3. In the counter affidavit filed on behalf of the Federation it is contended that the petitioners are not the employees of the Federation, but they are only the employees of the canteen run by the co-operative society which was registered under the A.P. Co-op. Societies Act in 1981. They have been appointed by the management of the said society and the federation has nothing to do with their appointment or their continuance in service. There is no employee-employer relationship between the petitioners and the respondent. It is further alleged that during 1981 the workers of the Federation have expressed their desire to run the canteen on cooperative bases and the cooperative canteen was formed in 1981 and the canteen was handed over to the said society. On April 30, 1986 the canteen was closed down by the said society abruptly. Subsequently after calling for quotations a private contractor was appointed and he started running the canteen. The responded Federation is not at all responsible for keeping the petitioners out of service from April 30, 1986.

4. The learned Single Judge accepted the petitioners' contention that they are the employees of the Federation and allowed both the writ petitions. In W.P. No. 6720/84 he directed the Federation to treat the petitioners 1 to 21 as employees of the Federation and fix appropriate regular scales of pay as applicable to the employees of the Federation., In W.P. No. 13767/86 he directed that the petitioners should be reinstated in the service of the Federation within a period of 8 weeks from the date of receipt of the order, but the petitioners are not entitled to any backwages and other attendant benefits during the period between termination and reinstatement and allows the writ petition accordingly. The Federation has filed the two Writ Appeals 881 and 882/87 against the said order.

5. W.P. 439/86 is filed by the Federation challenging the order of the Authority under the Minimum Wages Act in Miscellaneous Application No. 1/1985 directing the Federation to pay the difference of wages between the wages paid to the workers of the canteen and the minimum wages payable to them of the period from March 2, 1983 to February 2, 1985 together with compensation. W.P. 4971/87 was filled by the Federation challenging the order of the Authority under

the Minimum Wages Acts dated February 12, 1987 ordering the Federation to pay to the workers the difference in wages paid under the Minimum Wages Act for the period February 3, 1985 to January 3, 1986 accepting the contention of the workers the Federation is liable to pay the minimum wages to the workers in the canteen.

6. As could be seen from the respective contentions while the workers are contending that they are the employees of the Federation, the Federation is contending that they are the employees of the canteen, run by a Co-op. society but not the employees of the Federation. So, the main question which arises for determination in all these matters is whether the workers in the canteen are the employees of the Federation. Section 46(1) of the Factories Act provides that the state Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. Sub-section (2) such that without prejudice to the generality of the foregoing power, such rules may provide for the matters enumerated in the said sub-section. It is not in dispute that the Dairy Development Federation is a Factory. It is also not in dispute that the canteen is established by the Federation as required u/s 46 of the Factories Acts. The contention of the Federation is that as required under the rules they have constructed the canteen but the running of the canteen was entrusted to the employees Co-op. society and as that Co-op. society had appointed the petitioners they are not the employees of the Federation. It also contended that a managing committee was appointed for running the canteen, which included representatives of the workers and the committee was managing the affairs of the canteen. Rules have been framed as prescribed u/s 46. They are rules 65 to 71 of the A.P. Factories Rules. Rule 65 lays down that the employer of every factory where more than 250 workers are ordinarily employed shall provide in or near the factory, canteen according to the standards prescribed by the rules. It also provides for specification of the canteen building. Rule 66 deals with dining hall. Rule 67 deals with equipment i.e. utensils crockery etc. Rule 68 deals with prices to be charged. Rule 69 deals with the accounts. Rule 70 deals with the managing committee. Rule 71 deals with the medical examination of the canteen staff. Rule 71-A empowers the Chief Inspector to relax the provisions of rules 65 to 70 in the case of some factors. Rule 68(2) which deals with the prices to be charged says that in computing the price referred to in sub-rule (1) the items of expenditure enumerated therein shall not be taken into consideration but will be borne by the occupier. CI.(5) refers to the wages of the employees serving in the canteen and the cost of uniforms if any provided to them. According to this rule the wages of the employees have to be paid by the occupier and it shall not be taken into consideration while fixing the prices. This rule, according to the contention of the learned counsel of the employees, shows that the workers in the canteen are the employees of the Federation. Rule 70 providing that the manager shall appoint a canteen managing committee which shall be consulted from time to time

regarding quality and quantity of the food stuffs to be served in the canteen, the arrangement of the means, times of meals in the canteen and any other matter as many be directed by the committee.

7. A similar question arose for consideration in *The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others*, . In that case the management of the canteen set up a canteen as required in Section 46 of the Factories Act and the Rules made therein. The company then handed over the management of the canteen to a Co-op. Society. A dispute arose between the workmen in the canteen band the company about the payment of wages and D.A. in accordance with the direction contained in the Award of the Bombay Industrial Court which was applicable to the said company. The Supreme Court held that the workers employed in the canteen, though it was being run by a Co-op society could not be treated as being different or separate from the regular employees of the company. In a recent case reported in *Kanpur Suraksha Karamchari Union (Regd.) Vs. Union of India (UOI) and Others*, it was pointed out by the Supreme Court that the employees of a canteen run by the Defence Industrial Installations as required u/s 46(f) are the employees of the occupier of the factory and not cooperative managing committee. It was pointed out by Venkataramiah. J. (as he then was) as follows (p. 30) :

"There cannot be a canteen without sufficient number of workers working in the canteen. They have to be appointed by the occupier. Otherwise he would not be fully compelling with S. 46 of the Act. The Managing Committee cannot be the employer of those workmen in the true sense of the term. The Managing Committee constituted under S. 46 which is not an incorporated body and whose financial position is uncertain cannot be considered to be the employer who has to bear the legal responsibilities under the several labour laws in force in India".

It was further observed as follows :-

"We may however add that in the case of a canteen run by a contractor or a co-operative society or some other body, the portion may be different."

Relying on this observation the learned Advocate General appearing for the Federation contended that since the canteen was being run by a Co-op. society the workers of the canteen are not the employees of the Federation and that there is no relationship of master and servant between the Federation and the canteen workers. But the decision further says, "But even then there has to be a Managing Committee, if such as canteen is treated as a canteen established of purposes of satisfying the requirements of Section 46 of the Act, Even in this case the contractor or the co-op society or some other body will be the employer, but not the Managing Committee. In this situation it is difficult to hold that the employees in canteens established u/s 46 of the Act would not be employees of occupier, even though for purposes of management a canteen Managing Committee whose functions are advisory pointed out above has to be constituted under the Rules". It is therefore clear Section 46 of the Factories Act the

employees in the canteen would become employees of the occupier.

8. Therefore, we agree with the contention of the learned counsel for the workers that they are the employee of the Federation.

9. The workers also wanted that a direction may be given to the Federation to fix suitable pay scales for them. It is for the federation to fix their talking into consideration the nature of work done by them and the pay given to similar categories of employees. The two appeals are dismissed. No costs.

W.P. Nos. 439/86 & 4971 of 1987 :

10. In these two writ petitions the orders of the Authority under Minimum Wages Act is questioned. The authority has directed the Federation to pay the minimum wages to the workers and directed them to pay compensation for the delayed payment. In view of our decision that they are employees of the federation, the minimum wages have to be paid to them. But, so far as the compensation is concerned, we do not think that the Corporation should be mulcted with, since the matter was pending in the court. Therefore, the compensation of Rs. 41,805/- awarded in W.P. No. 49771 of 1987 and a sum of Rs. 80,215 awarded in W.P. No. 439 of 1986 is set aside. The rest of the awards are confirmed. The two writ petitions are ordered to the extent indicated above. No costs.

11. Advocate's fee Rs. 250/- (consolidated in all the four cases).