
(2001) 03 BOM CK 0105
In the Bombay High Court
Case No : A.S.L.P.A. No. 90 of 1998

Mahanagar Telephone Nigam Ltd. and Others	APPELLANT
Vs	
Umesh Korga Bhandari and Others	RESPONDENT

Date of Decision : 09-03-2001

Acts Referred:

Constitution of India, 1950 — Article 309
Industrial Disputes Act, 1947 — Section 10(1), 2, 25F

Citation : (2001) 90 FLR 713 : (2001) 2 LLJ 157

Hon'ble Judges : T.K. Chandrashekhara Das, J; P.S. Patankar, J

Bench : Division Bench

Advocate : S.R. Rajguru, for the Appellant; N.D. Buch, for the Respondent

Final Decision : Allowed

Judgement

1. All these three appeals can be disposed of by this common Judgment since the point involved is the same. In addition, Writ Petitions, out of which these L.P.As. arise, were disposed of by the learned Single Judge by the common Judgment.

FACTS IN L. P. A. NO. 90 OF 1998:

The service of one Kitanna Shetty, who was working as Halwai in the Canteen, came to be terminated and respondent No. 1 was appointed by the Departmental Canteen Committee at Prabhadevi Telephone Exchange of the appellant on January 1, 1986. There is no dispute that no appointment order or any other candidate was called from the Employment Exchange at the time of his appointment. As per the directions of the Assistant Labour Commissioner, Kitanna Shetty was re-appointed on November 17, 1986. Hence, the service of the respondent No. 1 came to be terminated on November 29, 1986. This came to be challenged by respondent No. 1 before the Central Government Industrial Tribunal, constituted under the Industrial Disputes Act.

FACTS IN L. P. A. NO. 94 OF 1998:

Respondent No. 1 was appointed in November/December 1985 by the Departmental Canteen Committee in the Central Telephone Exchange Building Canteen of the appellant for serving canteen items to the Ladies Retiring Room. Her appointment was made without calling for any candidate from the Employment Exchange. Her services came to be terminated on June 28, 1988 with effect from September 7, 1988 as her appointment was not approved by the Chief General Manager. This was challenged by the respondent No. 1 before the Central Government Industrial Tribunal.

FACTS IN L. P. A. NO. 95 OF 1998:

In December 1982, April-May 1983 and April 1986 Respondents No. 1 to 4 came to be appointed as labourers on daily wages at Mhatre Pen Building Canteen of the appellant. On December 31, 1988 the said Exchange was shifted to Prabhadevi Telephone Exchange. Hence, the Canteen and all other employees were shifted. The services of respondents No. 1 to 4 came to be terminated on September 25, 1989. This was challenged by them before the Central Government Industrial Tribunal.

2. The contention of the respondents was that the respondents were "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act. They have completed 240 days of their service and they were terminated without giving retrenchment compensation and thus violating Section 25-F of the Industrial Disputes Act and without giving one month's notice. Hence, their termination was illegal. This contention came to be accepted by the said Tribunal and it has been approved by the learned Single Judge in the Writ Petitions filed under Article 226 of the Constitution of India. The Writ Petitions came to be dismissed.

3. The appellants challenged the said decision of the learned Single Judge by filing the present L. P. As. Earlier, the Division Bench of this Court on March 12, 1998 summarily dismissed them. However, the appellants challenged the same before the Apex Court and the Apex Court remanded the matters to this Court to hear and dispose of the same on merits and also to decide the question regarding back wages and continuity of service of the respondents. Hence, these L.P.As. are finally heard.

4. At the outset, we may point out that all the respondents have been taken back in service, some time in 1993. The learned Counsel for the appellants very fairly made an offer that the appellants are prepared to regularise their services from the date the Government lifted ban on recruitment. However, the learned Counsel for the respondents declined to accept it and stated that their services should be regularised from the date of the Award passed by the Central Government Industrial Tribunal. This is not acceptable to the appellants.

5. The learned single Judge has noted about the departmental communication dated February 18, 1982 mentioning the fact that the departmental candidates are excluded from the definition of "Industry" u/s 2(j) of the Industrial Disputes Act. He has also noted about the rules. The grievance of the learned counsel of

the appellants is that the learned single Judge has not dealt with the main contention that the Notification was issued on December 12, 1979 by the Government. Similarly, the Notification dated December 23, 1980 bearing G.S.R. No. 54 came to be issued by which rules, conditions of service etc. came to be framed in respect of departmental canteens or Tiffin Rooms, run departmentally in Central Government Offices or Establishments. They came to be published in the Government Gazette on January 17, 1981 and the office memorandum came to be issued by the Government on January 12, 1982 making this position clear that departmental canteens are excluded from the purview of the definition "Industry" contained in Section 2(j) of the Industrial Disputes Act as the canteen employees are holding Civil posts since October 1, 1979. It is submitted that hence C.G.I.T. has no jurisdiction and only Administrative Tribunal can deal with these cases. The learned Counsel for the respondents submitted that the appellants are declared to be an "Industry" by the Apex Court. The Departmental Canteen is a part and parcel of it as it comes under the supervision of the Departmental Canteen Committee. The Departmental Canteen Committee is constituted of high ranking officers of the appellants. The Canteen workers cannot be separated from the appellants' other workers. It is submitted that it cannot be held that the canteen workers are only holding civil posts. While all other workers are "workmen" within the meaning of the Industrial Disputes Act in view of the Judgments of the Apex Court.

6. We find that all other findings recorded by the learned Single Judge require no interference. The findings i recorded by the C.G.I.T. and also by the learned Single Judge are based on the appreciation of evidence and on the Judgments of the Apex Court. But the point raised by the learned Counsel for the appellants goes to the root of the matter. It has not been dealt with by the learned Single Judge. If the submission is accepted, then the C.G.I.T. will have no jurisdiction.

7. The Central Government issued the Notification dated December 11, 1979. It says that all posts in the Canteen and Tiffin Rooms run departmentally in the Central Government Offices or establishments are civil posts. The incumbents would qualify as holders of civil posts under the Central Government. Necessary Rules under proviso to Article 309 of the Constitution governing their conditions of service will be framed with retrospective effect, from October 1, 1979. Accordingly, the Rules dated December 23, 1980 came to be framed and gazetted on November 7, 1981. It is G.S.R. 54. It mentions about the declaration made by Notification dated December 11, 1979. In view thereof, the conditions of service of the incumbent of these posts are framed under proviso to Article 309 of the Constitution, with retrospective effect from October 1, 1979 by the President. They are called "Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980. Chapter II thereof provides for the constitution of the service and how many posts shall be in a canteen and how vacancies shall be filled in. They deal with how the appointment on regular basis should take place, who shall be the appointing authority, period of probation, seniority, promotion etc. Rule 11 deals with the age of retirement. Generally, it is

60. The other details regarding holidays, leave, medical facility, gratuity, provident fund are also provided. Chapter IV thereof deals with the conduct and discipline. It mentions about the disciplinary authority and the procedure for imposing major and minor penalties etc. Chapter V thereof deals with disqualifications. Schedule "A" thereof framed under Rules 3, 4 and 5(1) provides for the different types of posts in the Departmental Canteen and Tiffin Room. Schedule "B" framed under Rule 5(2) deals with the educational qualification, mode of recruitment etc. Schedule "C" framed under Rules 7 and 19 speak about the appointing authority and the disciplinary authority. Schedule "D" deals with the Conduct Rules framed under Rule 17. Thus, detailed provisions are made. Office Memorandum came to be, issued by the Government on January 12, 1982. It also reiterates that the employees of canteen are treated as holders of civil post under Article 309 of the Constitution vide G.S.R. 54 dated January 7, 1981. Hence the canteens run departmentally in Central Government offices would be regarded as excluded from the definition of "Industry" u/s 2(j) of the Industrial Disputes Act and those employees do not come within the purview of the said Act. We find that further Administrative Instructions (1988 edition is placed on record) are issued by the Personnel and Administration Department of the Government of India from time to time. They mention that those canteens are required to be managed by following the prescribed norms and methods. The canteens run through private contractors shall be stopped. They also mention about the types of Canteens and Tiffin Rooms. The Canteens are categorised as A, B, C and D and Tiffin Rooms as A and B depending upon the employees they have to serve. The strength of employees in each canteen is also fixed. Then, there are instructions regarding accommodation and Civil/Electrical works and funds. They also mention what type of equipments or kitchenware should be available for these types of Canteens and Tiffin rooms. Again, Chapter V dealing with personnel mentions that those employees are holders of civil posts with effect from October 1, 1979. They mention about the scales of pay, training etc. The instructions also provide for Managing Committee. The most important is about Hygiene and Sanitation. They provide that there shall be regular and surprise checks by the authorities mentioned therein. There is mention about the standard of personal hygiene and medical examination of the Canteen workers. They provide that the workers shall be physically examined and should have uniform and proper hair-cuts, their nails should be trimmed and clean and it should be ensured that they do not have any skin disease or symptom of ailments of the alimentary canal and hence regular medical examinations are required to be undergone. The Sanitary Rules framed separately are also made applicable. Then there are provisions relating to welfare of canteen employees and about the grievance redressal machinery. It mentions that Trade Union activities are not permissible in the departmental canteens. There can only be Service Associations. It also provides for the meals to canteen employees. Then, provisions relating to audit and accounts etc. are made. Thus, the said provisions are made regarding the various aspects of these Canteen and Tiffin Room Employees.

8. We may point out that the above mentioned Notifications dated December 11, 1979 and December 23, 1980 and Administrative Instructions were considered by the Supreme Court in M.M.R. Khan and others etc. Vs. Union of India and others, etc., while considering whether employees of non-statutory recognised canteens are employees of the Railway Establishment.

9. There is no dispute that the respondents are employed in the canteens, which are departmentally run in the Central Government establishment. Therefore, they are covered by the said Departmental Canteen Employees (Recruitment and Conditions of Service) Rules 1980.

10. We shall now refer to the various Judgments of the Apex Court cited by the parties.

The learned Counsel for the respondents relied upon the Judgments of the 7 Judges Bench of the Apex Court reported in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . In support of her contention that respondents are workmen within "the meaning of Industrial Disputes Act as appellant is an industry. However, we find that the Judgment does not support the respondents, but it is against the respondents. The Apex Court laid down the tests to find out whether an undertaking is an "Industry" or not within the meaning of Section 2(j) of the I.D. Act. Para 131 gives certain types of Industries or their workmen are not covered by the Industrial Disputes Act. The relevant part for our purpose is:

131. (iv)(d) the dominant nature test:

"131 (d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act" categories which otherwise may be covered thereby Thus, in case legislative provisions are made, then certain industries or the employees may be taken out of the purview of Industrial Disputes Act.

11. The learned Counsel for the respondents then relied upon Judgment in M.M.R. Khan and Ors. v. Union of India and Ors. (supra). The Apex Court dealt with employer employee relationship in respect of canteens in the establishment of railways. The Court dealt with statutory canteens, non-statutory recognised canteens and non-statutory non-recognised canteens. It was held that the workers engaged in statutory canteens, as well as those engaged in non-statutory recognised canteens in the railway establishment are railway employees and they are entitled to be treated as such, while workers in the non-statutory non-recognised canteens are not entitled to claim the status of railway servants. After considering the Notifications dated December 1, 1979, December 23, 1980 and Administrative Instructions, the Apex Court negated the contention of the Railways that those employees are having the status of civil post holders for the purpose of Factories Act only and no other purpose. It was observed in 1995 IIL LLJ 166:

"26. In fact as has been pointed out earlier the Administrative Instructions on

departmental canteens in terms state that even those canteens which are governed by the said Act have to be under a complete administrative control of the concerned Department and the recruitment, service conditions and the disciplinary proceedings to be taken against the employees have to be taken according to the rules made in that behalf by the said Department. In the circumstances, even where the employees are appointed by the Staff Committee/ Co-operative Society it will have to be held that their appointment is made by the Department through the agency of the Committee/Society as the case may be."

It was further observed that:

"27. The admitted facts, however, are that these canteens have been in existence at their respective places continuously for a number of years. The premises as well as the entire paraphernalia for the canteens is provided by the Railway Administration and belong to it. The employees engaged in the Canteens have also been in service uninterruptedly for many years. Their wages are reimbursed in full by the Railway Administration. The entire running of the canteens including the work of the employees is subject to the supervision and control of the agency of the Railway Administration whether the Agency is the staff-committee or the society. In fact, as stated by the Railway Administration in its Establishment Manual the legal responsibility for running the canteen ultimately rests with it, whatever the agency that may intervene. The number and the category of the staff engaged in the canteen is strictly controlled by the Administration. As has been pointed out earlier much before the order of this Court dated October 22, 1980, the employees of the departmental canteens/tiffin rooms were declared as holders of civil posts under the Government of India Notification No. 6(2)/23/77-Welfare dated December 11, 1979 which notification is at annexure-4 to the Administrative Instructions referred to above. That notification stated that all posts in the said canteens/tiffin rooms are to be treated as posts in connection with the affairs of the Union, and accordingly, present and future incumbents of such post would qualify as holders of civil posts under the Central Government. The notification further stated that necessary rules governing the conditions of service of the employees would be framed under proviso to Article 309 of the Constitution to have retrospective effect from October 1, 1979. Accordingly, the service rules were framed under Article 309 as per the Notification No. GSR-54 issued by the Government of India, Department of Personnel & Training on December 23, 1980. These rules contained both the recruitment rules and conditions of service of the said employees including the procedure for disciplinary action to be taken against them. As stated earlier the Administrative Instructions are applicable to other canteens/tiffin rooms run by all the Ministries including the Railway Ministry unless they have previously decided to be exempt from them and had framed their own rules in that behalf.

It was, therefore, held that the Notifications which were issued by the Government dated December 11, 1979 and December 23, 1980 were applicable

to the employees of the Railway Canteens and hence, the employees in the Statutory Canteens and non-statutory recognised canteens will have to be treated as railway servants. Again, the Judgment does not help the respondents in the contention that the Industrial Tribunal under I.D. is having jurisdiction in such cases.

12. The learned Counsel for the appellants relied upon the Judgment in *R.N.A. Britto Vs. Chief Executive Officer and others*, : The question arose whether the Panchayat Secretaries appointed under the Karnataka Village and Local Boards Act are holders of civil posts or not and consequently, they are entitled to invoke the jurisdiction of the Administrative Tribunals under the Administrative Tribunals Act.

"15. Thus, the provisions of the Act and the Rules, to which we have adverted to, leaves no option for us except to hold that Panchayat Secretaries under the Act are the State Government Servants. If that be so, they are persons who are appointed in the civil service of the State or civil post under the State within the meaning of Clause (b) of Sub-section (1) of Section 15 of the Administrative Tribunals Act, as would enable them to invoke the jurisdiction of Tribunal in relation to any service matter concerning them. Hence, the Tribunal, we hold fell into a patent error in rejecting the review application of the appellant filed before it on the ground that it had no jurisdiction to deal with the matter relating to the termination of his services as the Panchayat Secretary."

13. The learned Counsel for the appellant relied upon the Judgment of the Two Judge Bench of the Apex Court, reported in *Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India and another*, . This is concerning canteen employees. In the said case, we find that two questions were dealt with. The first one was whether the Telephone Nigam Ltd., Bombay, or Telecommunication Department is an Industry or not? and second being holders of civil post, can there be Reference u/s 10(1) of the Act. As far as the first question was concerned, the Court relied upon another two Judge Bench Judgment of the Apex Court reported in *Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,* . It was in respect of extra departmental packer. In the said case also the first question arose was whether the postal department is "Industry" or not and second, when the services of the said employees were governed under the Extra Departmental Agents Conduct and Service Rules, they can be called as "workmen" within the meaning of the Industrial Disputes Act. It was held that department is not an "Industry". It was also held that they cannot be called as "workman" falling under the Industrial Disputes Act. It was observed in *Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,* :

"8. It would thus be seen that the method of recruitment, the conditions of service, the scale of pay and the Conduct Rules regulating the service conditions of ED Agents are governed by the statutory regulation. It is now settled law of this Court that these employees are civil servants regulated by these conduct

rules. Therefore, by necessary implication, they do not belong to the category of workmen attracting the provisions of the Act. The approach adopted by the Tribunal, therefore, is clearly illegal".

In Bombay Telephone Canteen Employees Association case it was held that Telecom Nigam Ltd. or Telecommunication Department is not an "Industry". While dealing with that question it was observed in Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India and another, :

"11. If the doctrine laid down in Bangalore Water Supply Board, case, (supra), is strictly applied, the consequence is catastrophic and would give a carte blanche power with laissez faire legitimacy which was build fathoms deep under the legal blow of Article 14 of the Constitution which assures to every person just, fair and reasonable procedure before terminating the services of an employee. Instead, it gives the management/employer the power to dismiss the employee/workman with one month's notice or pay in lieu thereof, and/or payment of retrenchment compensation under the Act".

As regards maintainability of Reference u/s 10(1) is concerned, it was observed;

"13. On an overall view, we hold that the employees working in the statutory canteen, in view of the admission made in the counter-affidavit that they are holding civil posts and are being paid monthly salary and are employees, the necessary conclusion would be that the Tribunal has no jurisdiction to adjudicate the dispute on a reference u/s 10(1) of the Act. On the other hand, the remedy to approach the constitutional Court under Article 226 is available. Equally, the remedy under Sec. 19 of the Administrative Tribunals Act is available."

It was held that as the employees working in the statutory canteens are holding civil posts and provisions are made in that respect by Statutory Rules they are not "workmen" within the meaning Section 2(s) of the Industrial Disputes Act and hence, the Industrial Tribunal has no jurisdiction to adjudicate the reference u/s 10(1).

14. The learned Counsel for the respondents submitted that both these Judgments are over-ruled by the Three Judges Bench of the Apex Court in General Manager, Telecom Vs. A. Srinivasa Rao and Others, : A careful reading of this Judgment makes it clear that the Apex Court was concerned and dealt with only one question i.e. whether Telecom is an "Industry" or not? It was held that any smaller Bench, cannot take contrary view than what is stated in Bangalore Water Supply case. It has to be followed, therefore, it was not correctly decided that the Telephone Nigam or Postal Department are not "Industry" in the two Judgments i.e. Bombay Telephone and Canteen Employees Association, and Theyyam Joseph, (supra). Hence, the contention raised by the learned Counsel for the respondents that these two Judgments are over-ruled in respect of both the points is not correct. The question of jurisdiction under the Industrial Disputes Act was not for consideration. In fact, as pointed out, even the case of

Bangalore Water Supply and Sewerage Board, (supra,) excludes such employees, in respect of whom statutory Rules are framed, from the purview of "workman" under the Industrial Disputes Act. As far as the first question is concerned, both the Judgments Bombay Telephone Canteen Employees Association and Theyyam Joseph are consistent with Bangalore Water Supply case (supra).

15. The learned Counsel for the respondents submitted that the stand taken by the learned Counsel for the appellants is not followed uniformly by the appellants and it is taken whenever it is convenient. However, the learned Counsel for the appellant has denied it and submitted that Statutory Rules framed are binding. We have already pointed out the Judgments of the Apex Court in this respect and hence, the learned Counsel for the appellants is right. We feel that the Rules give better protection to the employees in the Departmental Canteens in certain respects, but also lay down certain conditions and strict requirements for better uniform and hygienic services. In such Canteens and Tiffin Rooms it is not only desirable, but necessary to implement these Rules strictly as these employees deal with preparing and serving of food. These Rules are applicable not only for workers in appellants canteens and Tiffin Rooms, but they are general and applicable to all the canteens and tiffin rooms run by the Central Government offices and establishments. There is no reason to say that they are not attracted in the case of appellants' canteens.

16. Hence, these Appeals are allowed. The impugned Judgment and Order is set aside. It is held that references u/s 10(1) of the Industrial Disputes Act were not maintainable.

17. A simple copy of this judgment and Order duly authenticated by the Sheristedar of this Court, be given to the parties.