(2013) 09 DEL CK 0135

In the Delhi High Court

Case No : Writ Petition (C) No. 2768 of 2011

Rajesh Tiwari APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2013) 09 DEL CK 0135

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sriparna Chatterjee, for the Appellant; Amrit Pal Singh, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioner is an employee of CSD Canteen. Employees of CSD Canteens are not employees of State or instrumentalities of State. This aspect has been so held by a Division Bench of this Court in the case of Shashi Kant & Ors. Vs. Union of India and Ors. in W.P.(C) No. 7357/1999 decided on 23.7.2012. Paras 1,2,3 and 6 of the said judgment are relevant and the same read as under:-

1. Overruling the decision reported as Union of India and Others Vs. M. Aslam and Others etc, , in the decision dated April 28, 2009 in C.A. No. 3495/2005 R.R. Pillai (dead) (Through LRs) v. Commanding Officer HQ SAC & Ors., the Supreme Court held that employees of Unit Run Canteens in the Armed Forces are not government employees and thus cannot claim such benefits as could be asked by Government employees. The Supreme Court held that only those persons whose salaries are paid from the Consolidated Fund of India could claim the status of Central Government employees. But the question whether Unit Run Canteens are instrumentalities of the State and in that context what was the status of the employees of the Unit Run Canteen, was left open.

Petitioners seek a mandamus to be issued to the Army Authorities to regularize their services as Grade-IV Civilian Employees of the Indian Army and to be paid wages accordingly.

They allege that for distributing rations to the Air Force personnel, an Air Force Officers Ration Distribution System (AFORDS) has been put in place, officer in-charge whereof is a person in the rank of a Squadron Leader. Alleging petitioner No. 1 being appointed as a Store Keeper/Distributor of items and petitioners No. 2 to 4 appointed to collect and distribute the rations, it is alleged that whereas petitioner No. 1 was being paid Rs. 1,500/- per month, the other petitioners were paid Rs. 1,000/- per month as salary. It was pleaded that recognizing the master-servant relationship between the petitioners and the Indian Air Force, an official accommodation was allotted to petitioner No. 1 for which rent was paid by him evidenced by the receipts, Ex.B collectively.

2 As per the respondents, and for which we may highlight that pleadings are a little sketchy in the counter affidavit, the position is that rations for Air Force personnel are brought at the respective stations and in respect of which transportation, neither petitioner has a role. At the Air Force Station, such rations which have to be delivered at the mess are so delivered and such rations which are to be delivered to officers within the precincts of the Air Force Station are so delivered. Pertaining to the rations which have to be delivered to officers living outside the precincts of Air Force Stations, it is the obligation of the officers to come to the Air Force Station and collect the rations. To facilitate easy collection, the Air Force Officers Ration Distribution System has been set into place, purely as a private venture by Air Force officers, who depute their personal staff, privately engaged, to receive the rations and as regards the Air Force Authorities, it only recognizes AFORDS as a system to facilitate its officers receiving rations. It is stated that AFORDS is neither a society nor a body corporate. It is just a name given for convenience to a private system put into place by Air Force officers.

6. From the rival versions it emerges that AFORDS is a non-juristic entity. It is a private creation of Air Force officers who have been given accommodation outside the Air Force stations. These officers pool their resources and provide a transport and engage private help or depute their personnel staff, privately engaged, and for which apart from wages paid as domestic helps, some more many is collectively paid to fetch rations from the Air Force stations and deliver the weekly quota in the houses of the officers. The venture is purely a private venture. Merely because there is an interface with the Air Force Authorities would not mean that it is a venture having public character. The distribution system cannot be called an instrumentality of the State. It is not created by the State. It is not funded by the State. There is no deep and pervasive control of the State. No State function is performed by the Distribution System. The Distribution System did not take over what was therefore performed by the State.

A learned Single Judge of this Court A.K. Sikri (as he then was) has in the case of Layak Ram Vs. Quarter Master General and Others, also similarly held that employees of canteens in Army Headquarter cannot file a writ petition as such employees are not employees of a State or an instrumentalities of the State within the meaning of Article 12 of the Constitution.

2. do not find that the CSD Canteen is in any manner an instrumentality of State because petitioner has not shown how there is government funding with respect to such Canteens or how there is deep and pervasive control of the government.

3. Counsel for the petitioner sought to draw the attention of this Court to two documents filed at pages 24 and 27 of the rejoinder affidavit and which documents are letters which are addressed to tax authorities, however, I do not find anything in these letters which show that there is government funding or all pervasive control of the government to make the CSD Canteen an instrumentality of the State.

4. Therefore, the CSD Canteen is not a State or an instrumentality of State for a writ to be maintainable under Article 226 of the Constitution of India. The writ petition is therefore dismissed, leaving the parties to bear their own costs.

