

(1995) 10 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12654 of 1993

Sarasamma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) 112 PLR 392

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Rameshwar Malik, for the Appellant; R.P. Singh Ahluwalia, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner who was appointed as a Clerk in the Kharga Army Canteen, impugns the provision in the Standing Order by which it has been provided that the "maximum permissible service for an employee is 15 years" and that "the services of an employees will be automatically relinquished based on completion of age limit or maximum permissible service, whichever occurs first. The maximum age upto which an employee can serve, is 60 years. The petitioner alleges that the provision is arbitrary and thus violative of Article 14 of the Constitution.

2. The respondents contest the petitioner's claim. It has been inter alia pleaded that the canteen is not an instrumentality of the State as contemplated Under Article 12 of the Constitution. It has been further pleaded that the Government of India has got nothing to do with the running of the Canteen. The employees who can be civilians or ex-serviceman are paid their salaries "from the profits of the Canteen and not from the State ex-Chequer. The finances for running the canteen are arranged by the units themselves." The appointment of the petitioner is contractual and the service conditions are governed by the Stating Orders of the Canteen. Prior to June 1988, no age of retirement or the tenure of

appointment had been fixed. Consequently, an amendment was made in the Standing Orders on June 5, 1988. If the petitioner has any grievance, he has the remedy of filing a civil suit for damages. According to the respondents, the writ petition is wholly lacking in merit and deserves to be dismissed.

3. The petitioner has filed a replication and produced certain documents.

4. Counsel for the parties have been heard.

5. Mr. Rameshwar Malik, learned counsel for the petitioner has contended that the impugned provisions is vitiated as no opportunity had been granted to the petitioner before the amendment of the Standing Order. He has further submitted that the impugned provision cannot apply to the persons who are already in service. According to the learned counsel, the provisions cannot be applicable to civilian employees but can be implemented only against ex-serviceman who are employed in the canteens. It has been further submitted that in all other canteens an employee is entitled to continue to the age of 60 years. The action of the respondent-Canteen in fixing a tenure of 15 years is, thus, arbitrary and unfair. The claim made on behalf of the petitioner has been controverted by Mr. R.P. Singh Ahluwalia who has appeared on behalf of the respondent-Canteen.

6. The two questions that arise for consideration are :-

i) Is the Respondent-Canteen a State within the meaning of Article 12 of the Constitution.

ii) Is the impugned provision illegal and ultra vires Article 14 of the Constitution.

Reg. (i)

7. Mr. Malik submits that the Respondent-Canteen is under the direct and complete control of the Ministry of Defence. It functions under the instructions issued by the Army Headquarters. The items for sale in the canteens are provided by the Canteen Stores Department. Reference has also been made to the fact that a committee had been appointed by the Rajya Sabha. It had submitted its report on September 13, 1991. This report dealt with the service conditions of the civilian employees of the Defence Unit-run Canteens. On the basis of this report, it is contended that the Canteen is an instrumentality of the State. These facts as averred in the replication have been controverted in the affidavit filed on behalf of the Respondent-Canteen. It has been inter alia pointed out that the "Canteen is not the creation of any Statute Act or legislation. The conditions of service of the employees are governed by the Standing Orders issued by the Canteen from time to time. The Ministry of Defence or the Quarter Master General branch have got nothing to do with the Canteen or its employees. It has also been emphasised that the Canteen is regularly paying rent as well as water and electricity charges for the use of the premises provided to it. The accounts are audited by the Private Chartered Accountants namely Ms. Batra and Comp. of Ambala. The Canteen stores Departments supplies the goods at the

fixed rates. The registration number is issued for the running of the canteen.

8. The canteen is not created by or under a Statute. There is no law or statutory provision governing its affairs. There is nothing on record to show that any funds are provided by the government. Still further, there is no evidence of any control much less than of a pervasive control of the Government in the running of the Canteen. It is true that the canteen Stores Department has issued a registration number to the respondent. It is also true that the Department supplies various articles as required by the Canteen. This is, however, no evidence of control by the Government. The registration number is allotted only for the purpose of regulating the supply of goods which in the very nature of things, is a purely commercial transaction, furthermore, even the accounts of the canteen are not audited by any agency of the Government. There is no control or regulation regarding the appointment of personnel. Taking the totality of circumstances into consideration, it cannot be said that the tests enunciated by their Lordships of the Supreme Court in *Ajay Hasia's* case are fulfilled.

9. Accordingly, it is held that the Respondent-Canteen is not an instrumentality of the State. The first question is, thus, answered in the negative.

Reg. (ii)

10. A copy of the Standing Order has been produced as Annexure R-31 with the written statement. A perusal thereof shows that the affairs of the Canteen are managed by a Managing Committee. The terms and conditions of the staff are laid down in Appendix "B". In para 3(b) it was categorically provided that "the Canteen Managing Committee shall have the option to terminate the services of any of the canteen staff after giving him 30 days" notice....." In case of misconduct, the services could be terminated without any notice. Under Para 4, the scales of pay and allowances of the staff were to be decided by the managing committee with the approval of the Patron-in-Chief. It is, thus, clear that prior to the impugned amendment, there was no security of tenure. The services of an employee could be terminated at any time by giving him a 30 days notice. No age of retirement had been prescribed. It was by the impugned amendment that the age upto which a person could serve in the Canteen was fixed. It was also provided that an employee could serve for a maximum period of 15 years. In the circumstances of the case, the action cannot be said to be arbitrary or unfair. Normally, ex-servicemen are appointed in the Canteens. Sometimes, even civilians are selected. A tenure of 15 years or permission to serve upto the age of 60 years whichever is earlier, is in the circumstances of the case, just and fair.

11. Mr. Malik submits that the provision is violative of the principles of natural justice as no opportunity had been afforded to the petitioner before the amendment of the Standing Order.

12. The contention is wholly untenable. The employer has the right to stipulate the conditions of service. Prior to the impugned amendment, the petitioner did not have a right to continue in service till any particular age. Even in the order of

appointment a copy of which has been produced as Annexure P-1 with the writ petition, it has nowhere been stipulated that the petitioner shall have a right to continue in service till she attains a particular age. The impugned provision in the Standing Order does not violate any term of appointment. There is nothing to show that the petitioner had a right to continue in service till she attained the age of 60 years. In this situation, it cannot be said that her conditions of service were varied to her dis-advantage or that the impugned provision is not applicable to her. Accordingly the contention raised by Mr. Malik that the action is violative of the principles of natural justice or that the impugned provision cannot apply to the person who had joined service prior to June 1986, cannot be sustained.

13. Equally lacking in merit is the contention that the impugned provision can be applicable only in case of ex-serviceman and not in case of civilian. There is no basis for such a contention.

14. It was then submitted that in other canteens, the employees have a right to continue till the age of 60 years. Nothing has been produced to show that it is actually so. Even if it is assumed that certain canteens, have permitted the employees to continue in service upto the age of 60 years without prescribing the maximum period of service, it cannot be said that the action is illegal. If each canteen is an independent unit, it has a right to take its own policy decision. The provision made by one managing committee does not bind another.

15. No data has been placed on record to show that the provision is in any way arbitrary or unfair. Even if it is assumed that the Respondent-Canteen is an instrumentality of the State, there appears to be no reason to support the contention that the action of the respondent is violative of Article 14 of the Constitution.

16. Accordingly, I find no merit in this writ petition. It is dismissed. However, in the circumstances of the case, there will be no order as to costs.