

(2012) 07 DEL CK 0513

In the Delhi High Court

Case No : Writ Petition (C) 7357 of 1999

Shashi Kant and Others

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0513

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Rajeshwar Gupta and Ms. Meenakshi, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Overruling the decision reported as 2001 (1) SCC 720 Union of India v. Mohd. Aslam, 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.

3. Admitting that petitioner No.1 was permitted to stay in the servant quarters attached to the flat of an officer, it is denied that any rent was charged. The receipts relied upon by petitioner No.1 have been explained as minimum charges towards electricity and water.

4. We are informed that as of today persons who render services of distributing rations are paid monthly wages of Rs. 4,000/- .

5. 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 money 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.

6. Learned counsel for the petitioners cites U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, . that the Distribution System is the instrumentality of the State.

7. Daily wage employees of the Co-operative Electric Supply Society were seeking regularization of their services in the State Electricity Board. The Supreme Court noted that on April 03, 1997 the Co-operative Electric Supply Society had been taken over by the Electricity Board. 34 daily wage employees of the Co-operative Electric Supply Society were taken over by the Board and they continued to serve the Electricity Board as ad-hoc/daily wage employees till they made a request for being regularized. The Supreme Court noted that these 34 employees had put in about 22 years service.

8. Relief was granted because the Co-operative Electricity Supply Society was taken over by the State Electricity Board and the employees of the society became the employees of the State Electricity Board, whether those who were permanently engaged by the Co-operative Society or whether those were engaged on ad-hoc basis. Employment of the petitioners is purely private and thus the writ petition is dismissed without there being any orders as to costs.