

(2012) 03 DEL CK 0163

In the Delhi High Court

Case No : Writ Petition (C) 3774 of 2011

Shri Krishan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Factories Act, 1948 — Section 46

Citation : (2013) 136 FLR 275 : (2012) 4 LLJ 308

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sunil Malhotra, for the Appellant; R.V. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This writ petition is directed against the orders dated 21.09.2010 and 16.11.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal), whereby OA No. 2341/2009 and RA No. 295/2010 in OA No. 2341/2009 respectively were dismissed. The petitioners are working as Cooks and Helpers in the Signaling and Telecommunication Training Centre, Ghaziabad. The Mess is managed by a Managing Committee chaired by the principal of the Centre and the emoluments to the petitioners are paid by the Secretary of the Managing Committee. Claiming to be railway employees, the petitioners filed OA No. 2341/2009, seeking regularization of their service in conformity with the provisions applicable to the employees of the non-statutory canteens of the Railways. The OA was contested on the ground that Signaling and Telecommunication Training Centre, where the applicants were working, was a Private Establishment to serve food to Trainees of different Divisions of Northern Railway and N.C. Railway which is run by a temporary Mess Management Committee, consisting of staff members of the training Centre and trainees. It was further stated in the reply filed by the respondents that the mess was being run from the mess funds coming from different divisions by raising the debit on FA & CAO/N. Rly. who, issued a

consolidated cheque in favour of STC Mess Management Committee. It was also stated that the mess workers were privately engaged from the market on payment basis and they were paid for their working days only. The Tribunal, by the impugned order dated 21.09.2010 observed that mere recognition of a canteen in a railway cannot brand it as private. It was noted that Signaling and Telecommunication Training Centre had provided the space, facilities like water, electricity, etc. for the canteen and the mess/canteen was not run by a contractor. It was further noted that the Managing Committee headed by the Principal and the majority of the members were from the Railway Administration. The Tribunal noted the contention of the learned counsel for the respondents that the mess/canteen was managed by a batch of trainees who come periodically for training, but, felt that the role of the trainees would be with regard to the type of menu for breakfast, lunch and dinner. The Tribunal observed that the only hitch seemed to be that the mess/canteen had not been recognized by General Manager of the Northern Railways. The Tribunal was also of the view that the non-recognition of the canteen would not deprive the mess/canteen to be known as non-statutory canteen and, therefore, Signaling and Telecommunication Training Centre was a non-statutory non-recognized mess/canteen.

On the issue of regularization, the Tribunal was of the view that long period of work alone cannot be the basis for regularization of railway employees. It was noted that there is no rule in Railways as to how non-statutory non-recognized mess/canteen employees are to be treated. Relying upon the Secretary, Secretary, State of Karnataka and Others Vs. Umadevi and Others, the Tribunal held that the applicants were not entitled to be termed as railway employees. The Tribunal, however, directed the respondents to examine and decide the issue of recognition of the canteen as a non-statutory recognized canteen within four months from the date of the order.

Admittedly, the respondents, on consideration of the matter pursuant to the order passed by the Tribunal, informed the petitioners vide letter dated 04.03.2011 that they cannot be equated with a non-statutory recognized or un-recognized canteen and cannot be treated as railway employees. This had also been confirmed by the Railway Board vide letter dated 04.02.2011.

It has also been stated in the counter-affidavit to the writ petition that pursuant to a decision taken by the Mess Management Committee in its meeting held on 25.05.2011, the mess has already been closed on 26.05.2011 and all the mess workers have left the mess on the same day.

2. The first question which comes up for consideration in this petitioner is as to whether the employees of the mess which was being run at Signaling and Telecommunication Training Centre, Ghaziabad are railway employees or not.

3. In M.M.R. Khan and others etc. Vs. Union of India and others, etc., Supreme Court classified the canteens run by railway establishment into three categories, viz. (i) Statutory Canteens-these are canteens required to be provided

compulsorily in view of the provisions of Section 46 of the Factories Act, 1948 (hereinafter referred to as the Act) since the Act admittedly applies to the establishments concerned and the employees working in the said establishments exceed 250; (ii) Non-Statutory Recognized Canteens-these canteens are run in the establishments which may or may not be governed by the Act but which admittedly employ 250 or less than 250 employees, and hence, it is not obligatory on the railways to maintain them. However, they have been set up as a staff-welfare measure where the employees exceed 100 in number. These canteens are established with the prior approval and recognition of the Railway Board as per the procedure detailed in the Railway Establishment Manual; and (iii) Non-Statutory Non-Recognized Canteens-these canteens are run at establishments in category (ii) above but employ 100 or less than 100 employees, and are established without the prior approval or recognition of the Railway Board. It was noted that the statutory canteens are established wherever the railway establishments employ more than 250 persons as is mandatory under the provisions of Section 46 of the Act while non-statutory canteens are required to be established under paragraph 2831 of the Railway Establishment Manual where the strength of the staff is 100 or more. With respect to non-statutory canteens, the Supreme Court observed as under:-

the non-statutory canteens to be recognized have to be approved of by the Railway Board in advance. Every Rly. Administration seeking to set up such canteens is required to approach the Railway Board for their prior approval/recognition indicating financial implications involved duly vetted by the Financial Advisor and Chief Accounts Officer of the Railway concerned. It is only when the approval is accorded by the Railway Board that the canteen is treated as a recognized non-statutory canteen. By the sanction, the details in regard to the number of staff to be employed in the canteen, recurring and non-recurring expenditure etc. are regulated. The only material difference between the statutory canteen and non-statutory recognized canteen is that while one is obligatory under the said Act the other is not.

Supreme Court was of the view that a classification made between the employees of statutory canteens and non-statutory recognized canteens would be unreasonable and will have no rational nexus with the purpose of classification. The Court directed that the cases of the employees of non-statutory recognized canteens should be treated at par with that of the employees of the statutory canteens and they should also be treated as railway servants for all purposes.

With respect to non-statutory non recognized canteens, Supreme Court, *inter alia*, held as under:-

The difference between the non-statutory recognized and non-statutory non-recognized canteen is that these canteens are not started with the approval of the Railway Board as required under paragraph 2831 of the Railway Establishment Manual. Though, they are started in the premises belonging to the

Railways they are so started with the permission of the local officers. They are not required to be managed either as per the provisions of the Railway Establishment Manual or the Administrative Instructions (supra). There is no obligation on the Railway Administration to provide them with any facilities including the furniture, utensils, electricity and water. These canteens are further not entitled to nor are they given any subsidies or loans. They are run by private contractors and there is no continuity either of the contractors or the workers engaged by them. More often than not the workers go out with the contractors. There is further no obligation cast even on the local offices to supervise the working of these canteens. No rules whatsoever are applicable to the recruitment of the workers and their service conditions. The canteens are run more or less on ad hoc basis, the Railway Administration having no control on their working neither is there a record of these canteens or of the contractors who run them who keep on changing, much less of the workers engaged in these canteens. In the circumstances we are of the view of that the workers engaged in these canteens are not entitled to claim the status of the railway servants.

4. In the case before us, there is no document evidencing recognition of the mess which was being run at Signaling and Telecommunication Training Centre, as a canteen. There is no material on record to indicate that the said mess is of the nature of non statutory canteen required to be established under paragraph 2831 of the Railway Establishment Manual. There is no document evidencing approval of this aforesaid mess by Railway Board either in advance or even ex post facto. There is no evidence of the management of the mess having approached the Railway Board before starting the mess for approval/recognition. In case of non-statutory recognized canteens, such a proposal has to be forwarded to the Railway Board, indicating the financial implications involved, duly vetted by the Financial Advisor and General Accounts Officer of the railway concerned, and it is only when the approval is accorded by the Railway Board that the canteen is treated as a non-statutory. Sanction by the railway is also required to indicate the number of staff to be employed in the canteen as well as the recurring and non-recurring expenditure, etc. are to be regulated by Railways. The Tribunal, on examining the matter, found that the aforesaid mess/canteen was not a recognized canteen. We find no reason to take a contrary view of the matter. The letter dated 14.02.2011 written by Railway Board to the General Manager, Northern Railways clearly shows that the mess workers are not comparable with employees of other statutory canteens or non-statutory recognized canteens. It further shows that in terms of the new policy, directions advised under Railway Board's letter dated 19.12.2011, a copy of which was enclosed with the letter dated 14.02.2011, no new departmental canteens are to be opened nor existing non-recognized canteens are to be departmentalized.

5. In *Employers in relation to the Management of Reserve Bank of India Vs. Their Workmen*, the employees engaged in various catering establishments of Reserve Bank of India claimed to be the workmen of the RBI and sought regularization. In that case, the bank had been providing canteen facilities to its employees

though there was no statutory or other obligation for the bank to run the canteen. It was being done as a welfare measure. The bank was bearing by way of subsidy to the extent of 95% of the costs incurred by the canteens for payment of salary, provident fund contribution, gratuity, uniform etc., and was also providing premises, fixtures, utensils, furniture, electricity, water etc., free of charges. The canteens were run either by Implementation Committee or by Cooperative Societies or by contractors. It was contended on behalf of the employees that the bank was under a statutory obligation to provide canteen facility to its employees and this was being done through the Implementation Committees, Co-operative Societies and Contractors instead of the bank doing it on its own, by employing persons directly. It was also contended by them that the entire economic control was with the bank. On behalf of the bank, it was contended that its management was not responsible for employment of persons in the canteen who were employed by the Implementation Committee, Cooperative Societies or the Contractor and it was not supervising or controlling the working of the canteens. It was further submitted by the bank that the employees were under no obligation to purchase the eatables from the canteen and there was no relationship of master and servant between the bank and the persons employed in the canteen, the staff canteen having been established only as a welfare measure. The Court was of the view that the case before it was not covered within the ratio laid down in *M.M.R. Khan* (supra). It was held that in the absence of any statutory or other legal obligation and in the absence of any right in the bank to supervise and control the work of the canteen workers, it cannot be said that relationship of master and servant existed between the bank and the various persons employed in the canteens. The Court found the demand for regularization to be unsustainable.

6. In the case before us, the mess is being managed primarily by the railway employees who come for training at Signaling and Telecommunication Training Centre. The mess cannot be said to be of the Indian Railway merely because the Managing Committee is headed by the principal of the centre or because the Secretary of the Managing Committee happens to be a railway officer. The characteristics noted by Supreme Court with respect to non-statutory recognized canteen are clearly absent in the case of this mess and, therefore, the aforesaid mess cannot be said to be a non-statutory recognized canteen. If the mess is held to be a non-statutory non-recognized canteen, the persons working therein are not railway employees as held by Supreme Court in *M.M.R. Khan* (supra) and consequently they cannot seek regularization in the service of Indian Railways.

7. In Civil Appeal No. 1197/2007, *Union of India v. Ram Singh Thakur & Ors.*, 2011 (7) SCALE which was a case of the persons working in a mess run by a trainee officers in a railway staff college, the Supreme Court, inter alia, held as under:-

It appears that the Respondents were working in a Mess run by the trainee officers in the Railway Staff College. That Mess was not run by the railways but

was run by the trainee officers themselves so that they could get proper meals. It is evident that the Respondents were not railway employees, but a direction has been given that they be regularised in railway service.

In our opinion, a direction regarding regularisation in service is a purely executive function and such a direction cannot validly be given by the judiciary.

In view of the above-referred decision, it cannot be disputed that the persons working in a mess run by trainee officers cannot be said to be a mess run by the Railways. The persons working therein cannot be said to be railway employees and no direction can be given for their regularization in the service of Indian Railways. For the reasons stated hereinabove, we find no merit in the writ petition and the same is hereby dismissed, without any order as to costs.