

(2008) 10 DEL CK 0139

In the Delhi High Court

Case No : LPA No. 2419 of 2006 and CMA 17784 of 2006

The Workmen of Northern Railway Zonal Training School

APPELLANT

Vs

The Management of Mess Committee, Uttar Railway

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Citation : (2008) 154 DLT 220 : (2006) 111 FLR 972 : (2009) 2 ILR Delhi 352

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : B.K. Pal, for the Appellant; Atar Singh, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—Admit. With the consent of the learned Counsel for the parties, the appeal is taken up for final hearing.

2. The appellant had raised a dispute before the Central Government Industrial Tribunal in the following terms:

Whether the action of the president, Mess committee Uttar Railway zonal Training School, Chandausi Muradabad terminating the services of 25 workmen with effect from 16.8.84 is justified, If yes to what relief the workman is entitled to?

Whether the service conditions of all the workers of Mess Committee should be in accordance with the service conditions of Railway workers, if yes, to what relief the workmen are entitled to?

Whether all the workers of Mess Committee should be no (at) (sic.) par with industrial workers and given D.A. And bonus. If yes, to what relief the workmen are entitled to?

Whether the president Mess Committee is justified in compulsory (compulsorily) (sic) retiring Moti Ram, Safaiwalle, Choke Safaiwala and Roop ram Chapati man from 31st July, 1984. If not, to what relief the workmen are entitled to?

3. The said dispute resulted in an award dated 30th July, 1993 of the Tribunal dismissing the claim of the members of the appellant/writ petitioner who were working in the Mess run for the trainees of the Railway Institute. The Tribunal had inter alia held that the activities carried on by the members of the petitioner union did not amount to industry covered by the tests laid down in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The aforesaid award was challenged before the learned Single Judge by filing writ petition No. 1884/1994. The learned single Judge dismissed the writ petition by adopting the following reasoning:

7. An organisation in order to qualify as an industry must satisfy the triple test laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, - viz. (i) systematic activity (ii) cooperation between employer and employee and (iii) production and distribution of goods and services calculated to satisfy human wants and wishes. It is obvious that the production and distribution of goods and services envisaged by the Supreme Court are those which the employer produces or generates for others; if an employer produces or generates goods or services with the help of an employee for his own consumption then it cannot be said that the organisation or committee is an industry.

8. In the present case, mess committee had employed members of petitioner to cook food etc. for their own consumption. They had not employed the petitioners to produce goods or services to satisfy the needs of others.

4. The learned Single Judge in paragraph 7 of the judgment correctly laid down the three tests set out by the Hon''ble Supreme Court in the case of A. Rajappa (supra) to determine whether the requirement of being an industry were satisfied namely (i) systematic activity (ii) cooperation between employer and employee and (iii) production and distribution of goods and services calculated to satisfy human wants and wishes. In spite of laying down the correct principles, in our view the learned Single Judge had erred in holding that the aforesaid tests do not apply to the present case. It is not in dispute that the members of the petitioner/union were employed in the Mess to cook and serve food for the trainees. Thus there was definitely a systematic activity of production of food for consumption by the trainees of the Railway Training Institute. This obviously involves cooperation between the employer the Mess and the employee, i.e., the member of the petitioner union satisfying the first and second tests formulated in the judgment of Bangalore Water Supply & Sewerage Board (supra). The third test relates to production and distribution of goods and services calculated to satisfy human wants and wishes. The production of food stuff and distribution thereof obviously satisfies the third test applied in the above judgment. There can be no more basic human want than hunger. Therefore, neither the learned Single Judge nor the Industrial Tribunal were justified in dismissing the writ petition and the claim before the Tribunal on the ground that the activity carried on by the member of the appellant union did not amount to an activity which led

to the existence of an industry. In our view, all the three tests laid down by the Bangalore Water Supply case (supra) being satisfied, the dismissal of the claim and the writ petition on the ground of the test of "industry" not having been satisfied, was clearly unsustainable.

5. In our view, the learned Single Judge had also erred in applying the law laid down by the Hon"ble Supreme Court in MGT. of Som Vihar Apt. Owners Housing Maintenance Society Ltd. Vs. Workmen, Indian Engg. and General Mazdoor, , as the members of the petitioner who were working in a mess could not be equated with the analogy of domestic servants given in the above judgment. The above judgment in fact arose from a dispute raised by employees of a housing society. It was held in para 7 as under by the Hon"ble Supreme Court:

...It is clear when personal services are rendered to the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees, we do not think its activity should be treated as an industry nor are they workmen....

The above judgment related to employees of an apartment block which in our view would not stand on the same footing as employees of a mess canteen. In the present case, the mess canteen was not constituted only for the purposes of the members to engage the services of such employees and accordingly cannot apply in the present case. We have only answered the question on the maintainability of the claim before the Tribunal and the claim raised by the workmen would have to be examined on merits by the Tribunal.

6. In view of the above, the appeal is allowed. The judgment of learned Single Judge dated 12th September, 2006 and the award of the learned Central Government Industrial Tribunal dated 30th July, 1993 are set aside and the matter is remanded to Central Government Industrial Tribunal. The parties are directed to appear before the Central Government Industrial Tribunal on 27th November, 2008. The Tribunal is directed to dispose of the matter on merits as expeditiously as possible and preferably by 31st December, 2009.

7. The appeal and all pending applications stand disposed of accordingly.