

(1996) 01 SC CK 0235
In the Supreme Court Of India
Case No : SLP (C) No. 7359 OF 1995

Workmen Employed in the Canteen in S.R.F. Ltd.	APPELLANT
Vs	
Govt. of T.N. and Others	RESPONDENT

Date of Decision : 25-01-1996

Acts Referred:

Citation : (1997) 10 SCC 437 : (1997) SCC(L&S) 1718

Hon'ble Judges : A. M. Ahmadii, C.J; Sujata V. Manohar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These petitions are directed against the judgment and order of the Division bench of the High court in Writ Petitions Nos. 1935 and 4256 of 1994. By the impugned judgment the High court dismissed the writ petitions. The few facts which are relevant to be stated may be set out thus: Writ Petition No. 1935 of 1994 was filed by the workmen employed in the canteen provided by S.R.F. Limited but run by a contractor, for a mandamus to forbear the Company from dispensing with the services of 1 19 canteen employees without prior permission under Section 25-0 of the Industrial Disputes Act, 1947 (hereinafter called "the Act"). The Company has a factory unit registered under the Factories Act, 1948. Within the premises of the factory there is a canteen meant for the workers of the factory run by a contractor under certain terms and conditions imposed by the Company. Section 46 of the Factories Act requires that there shall be a canteen provided and maintained by the employer for the use of the workers. The workmen contended that they were employed through the contractor on the terms determined by the Company and, therefore, they were the employees of the Company. They, therefore, contended that their services could not be terminated without prior permission under Section 25-0 of the Act.

2. Writ Petition No. 4256 of 1994 was also filed by the canteen employees for a writ of certiorari to quash the order dated 22/2/1994 in Application No. 6 of 1993 on the file of the Commissioner of Labour, i.e., the authority under Section 25-0

of the Act. That was an application filed by the contractor seeking permission to close the canteen with effect from 1 -4- 1994. That permission application is still pending before the authority after one round of litigation to the High court. It will thus be seen that the main petition was Writ Petition No. 1935 of 1994 in which the relief was claimed on the premise that the canteen employees were the direct employees of the Company. The other writ petition was merely to have the proceedings before the authority quashed.

3. When these special leave petitions were taken up for hearing, a preliminary objection was raised by Mr K.K. Venugopal, the learned counsel for the Company, that the writ petition was not maintainable, in that, no writ petition could lie for a writ of mandamus against a Company for seeking the relief which the canteen employees had sought in the said petitions. This contention was raised before the High court, but the High court did not examine it and instead went into the question whether the claim of relationship of direct employment with the Company was well founded. It is another thing that the High court ultimately dismissed the writ petition but that is not a matter of significance because if a writ petition was not maintainable ab initio, the High court ought not to have examined the merits. When we enquired of the learned counsel for the petitioners- employees to satisfy us as to how the writ petition seeking writ of mandamus against the Company was maintainable he was unable to do so. We are, therefore, of the opinion that these petitions which arise out of the said writ petition cannot be entertained.

4. However, the learned counsel for the petitioners rightly pointed out that the dismissal of these petitions as well as the writ petition by the High Court should not preclude the workmen from pursuing a remedy of seeking a reference under Section 10 of the Act from the appropriate government and from pursuing the reference, if made. If and when such a reference is sought, the appropriate government will decide the same without being influenced by the impugned judgment of the High court. We say this without prejudice to the learned counsel for the Company's contention that such a reference is not maintainable in view of the decision of this court reported in Gujarat Thermal Power Station v. Hind Mazdoor Sabha. We may, however, make it clear that we do not express any opinion as to the maintainability or otherwise of such a reference because that would be a matter which the appropriate government would have to consider on its own merits. As regards the Application No. 6 of 1993 pending before the authority, we can only say that the authority would do well to dispose it of, one way or the other, at an early date. With these observations, we dispose of these special leave petitions.