IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/01/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 17457 OF 1997
AND
W.M.P. NO. 26341 OF 1997

1. P. Ramakrishnan
2. V.K.Mohandas .. Petitioner

- Vs -

1. Union of India rep. By
Secretary, Ministry of Defence
New Delhi.

2. The Commandant
MRC Regiment
Wellingdon
The Nilgiris. .. Respondents

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Mandamus as stated therein.

For Petitioners : Mr. T.K.Ramkumar

For Respondents : Mr. V.Vaidyanathan, ACGSC

:ORDER

1. Two petitioners have joined together and have prayed this Court for the issue of a writ of mandamus directing the respondent to regularise the services of the petitioners with all consequential and attendant benefits.
2. The petitioners are working as bakermen in the MRC canteen under the control of the 2nd respondent. The first petitioner was recruited during 1983 as a casual labour with the 2nd respondent during 1979 and since their initial recruitment they have been continuously working with sincerity and diligence. Despite large number of years of service, they have not been given the benefit of regularisation till date. The petitioners are being paid only consolidated salary. The petitioners approached the respondents periodically and they were being assured of regularisation from time to time in due course. The petitioners state that despite such assurances, no positive action has been taken. The petitioners made a representation on 15.7.97 to the 2 nd respondent seeking for regularisation. The petitioners also pointed out that there are some regular vacancies in the 2nd respondent establishment and that

they may be considered for absorption against those posts atleast. Both the petitioners possess qualification and experience for being appointed as a bakerman or any other suitable Group 'D' post, yet the petitioners' have not been regularised.

3. Despite rendering fifteen long years of continuous service, there service have not been regularised, yet they are being treated as casual labourers. The Ministry of Defence has issued a memorandum framing a scheme for regularisation of casual labourers. In terms of the said memorandum, the petitioners are entitled to be regularised. Consequent to non-regularisation, the petitioners have suffered monetarily and they have been deprived of valuable rights. The petitioners approached the Central Administrative Tribunal, Madras Bench in O.A. Nos.855 and 856 of 1998. On a question of maintainability and want of jurisdiction, the said Tribunal dismissed the application since the petitioners are employees paid out of regimental fund and they are not civil servants. Hence, the present writ petition.

4. The 2nd respondent issued an order dated 31.8.1999 terminating the services with effect from 1.9.99, but the petitioners continue even after issue of such termination. Even as on date of hearing also they continue to work continuously. It is contended that the services of the petitioners are required as a bakerman and the work is of perennial in nature. The petitioners are therefore entitled to be regularised by issue of a writ of mandamus.

5. The first respondent filed a counter contending that there is no provision for employment of a civilian in the Peace Establishment Tables of the Madras Regimental Centre. Civilians are being engaged on adhoc basis temporarily to assist functioning of various regimental institutes and they are being paid out of regimental funds. The regimental bakery was started to generate funds for welfare of troops and to provide quality food products to the service personnel and their families in Wellingdon. There is neither fixed organisational structure nor regular object for running the bakery. Civilian bakers are employed temporarily depending upon the need and work load. Major part of the work force is formed by available combatants. As there is no permanent post for bakers, the civilians are employed temporarily as and when need is felt. Therefore, no questi on of regularisation arises. The bakers are hired by the Madras Regimental Centre on daily/ monthly wages from the open market without going through the employment exchange. At no point of time the petitioners were assured of regularisation of service and the averment to the contra are denied as false.

6. There is no fixed organisational structure for the regimental bakery and, hence, there was no fixed post for grouping such as Group 'D'. There is no scheme by the Government of India, particularly, Ministry of Defence to regularise the services of the petitioners. The regimental bakery is a formal regimental institution established out of the regimental funds without any organisational structure. The job for which the petitioners are employed is neither perennial nor permanent. The employment of the petitioner is subject to availability of competent manpower depending upon the operational commitment of the regiment. The services of the petitioners were terminated on receipt of the order passed by the Central Administrative Tribunal, Madras Bench. Again the petitioners are employed with effect from 12.10.1999 because adequate combatant manpower was not available to manage the regimental bakery. The termination of the service of the petitioner is not punitive. The bakers

are being engaged as casual employees and whenever there is a requirement. At present there is no requirement of a civilian baker. Hence, they are not entitled for a direction to regularise. There is no violation of Articles 14 or 16 as alleged by the petitioners. The refusal to regularise the services is not arbitrary nor it is illegal nor unjust. Hence, the respondents pray for the dismissal of the writ petition.

7. Heard Mr.T.K.Ramkumar, learned counsel appearing for the petitioners and Mr.V.Vaidyanathan, learned Additional Central Government Standing Counsel appearing for the respondents. With the consent of counsel for either side, the writ petition itself is taken up for final disposal.

8. The learned counsel for the writ petitioners took the Court through the typed set of papers filed by the petitioners to substantiate their case. It is not in dispute that the petitioners were engaged or working as bakers in the MRC Canteen (Cafteria) for the past nearly two decades and above and they have been working continuously, also is not in dispute, but they were being paid consolidated salary. The requirement of the petitioners service is perennial as the consumption and supply of bakery products in the canteen is perennial in nature. It is unfortunate that the petitioners have been kept as casual labourers for more than 20 years and being paid consolidated wages, which definitely works hardship. When the services of a bakerman is required on a permanent basis and sale and consumption of bakery items is perennial in nature in the MRC canteen, and when the petitioners have continuously worked for more than two decades, it is not known as to how the respondents could still contend that the engagement is only temporary or casual and that there is no sanctioned post. If there is no sanctioned post, it is incumbent on the part of the respondents to have created the post and they cannot keep the individual as casual or on a consolidated wages for decades together and deny them their service benefit. Such a treatment by the respondents to the petitioner is shocking and it is definitely violative of Articles 14 and 21 and it reflects on the respondents. When the petitioners have been working as casual or daily wage workers and when they are in continuous service for more than two decades, such workmen should have been regularised.

9. In STATE OF HARYANA VS. PIARA SINGH & OTHERS reported in 1992 (4) SCC 118, the Apex Court issued various directions for regularisation of service of casual/daily wage workers in work charged establishment and ultimately held that the normal rule is regular appointment, if an adhoc or temporary employee is continued for long period, the authorities must consider his case for regularisation, provided he is eligible and qualified according to the rules, if necessary by preparing a scheme, if a scheme is not in force. It has also been held that it becomes obligatory for the authority concerned to examine the feasibility of regularisation and they have to adopt a positive approach coupled with an empathy for the person since security of service is necessary for an employee to give his best to the job.

10. In PARIMAL CHANDRA RAHA & OTHERS VS. LIFE INSURANCE CORPORATION OF INDIA & OTHERS reported in 1995 Supp. (2) SCC 611, even workers of canteens of LIC of India entrusted by the Corporation to a contractor and, consequently, run and managed by contractors in respect of whom certain control is being exercised, the Apex Court held that workers of such canteens although the canteens were non-statutory, on facts, the Apex Court directed to treat such canteen workers as employees of the Corporation after elaborate consideration. In that context, it has been held thus :-

"25. What emerges from the statute law and the judicial decisions is as follows:
(i) Whereas under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.
(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.
(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award, etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.
Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.
(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc.
29. The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. The canteen committees, the Cooperative Society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation.

The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the record shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time, whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz., the premises, furniture, electricity, water etc. is supplied by the Corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the Corporation, as pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them, only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation.

11. In INDIAN OVERSEAS BANK VS. I.O.B. STAFF CANTEEN WORKERS' UNION & ANOTHER reported in AIR 2000 SC 1508, in respect of a canteen run by the bank itself for the benefit of its staff, the Apex Court held that no straight-jacket formula could be laid down to examine the existence of a master and servant relationship and in that context held thus :-

"20. The standards and nature of tests to be applied for finding out the existence of Master and Servant relationship cannot be confined to or concretised into fixed formula(s) for universal application invariably in all class or category of cases. Though some common standards can be devised, the mere availability of anyone or more or their absence in a given case cannot by itself by held to be decisive of the whole issue, since it may depend upon each case and the peculiar device adopted by the employer to get his needs fulfilled without rendering him liable. That being the position, in order to safeguard the welfare of the workmen, the veil may have to be pierced to get at the realities. Therefore, it would be not only impossible but also not desirable to lay down abstract principles or rules to serve as a ready reckoner for all situations and thereby attempt to compartmentalise and peg them into any pigeonhole formulas, to be insisted upon as proof of such

relationship. This would only help to perpetuate practising unfair labour practices than rendering substantial justice to the class of persons who are invariably exploited on account of their inability to dictate terms relating to conditions of their service. Neither all the tests nor guidelines indicated as having been followed in the decisions noticed above should be invariably insisted upon in every case nor the mere absence of any one of such of such criteria could be held to be decisive of the matter. A cumulative consideration of a few or more of them, by themselves or in combination with any other relevant aspects may also serve to be the safe and effective method to ultimately decide this often agitated question. Expecting similarity or identity of facts in all such variety or class of cases involving different type of establishments and in dealing with different employers would mean seeking for things, which are only impossible to find.

* * *

22. ..... The materials placed on record also highlight the position that the Bank was always conscious of the fact that the provision and availing of canteen services by the staff are not only essential but would help to contribute for the efficiency of service by the employees of the Bank. That it was restricted to the employees only, that the subsidy rate per employee was being also provided, and the working hours and days of the canteen located in the very Bank buildings were strictly those of the Bank and the further fact that no part of the capital required to run the same was contributed by anybody else, either the Promoters or the staff using the canteen are factors which strengthen the claim of the workers. It was also on evidence that the canteen workers were enlisted under a welfare fund scheme of the Bank besides making them eligible for periodical medical check up by the doctors of the Bank and admitting them to the benefits of the Provident Fund Scheme. The cumulative effect of all such and other facts noticed and considered in detail provided sufficient basis for recording its findings by the Tribunal as well as the Division Bench of the High Court ultimately to sustain the claim of the workers, in this case."

12. In INDIAN PERTOCHEMICALS CORPORATION VS. SHRAMIK SENA reported in 1999 (6) SCC 439, the Apex Court, while holding that workman of statutory canteen or a public undertaking, the High Court could in equity and for labour welfare, could grant relief of regularisation subject to certain conditions regarding eligibility.

13. In UNION OF INDIA VS. M. ASLAM reported in 2001 (1) SCC 720, in respect of unit-run canteens of Army, Navy, Air Force, etc., the apex Court, while applying the principles laid down in Parimal Chandra Raha's case (1995 Supp. (2) SCC 611), held that employees working in unit-run canteens are Government servants. The Apex Court held that employees serving in Unit-run canteens are Government servants, but that by itself ipso facto would not entitle them to get all the service benefits that are applicable to their counterparts in the Government. In that context, the Apex Court held thus :-

"4. ..... As already stated, we have come to the conclusion about the status of the employees serving in the Unit-run Canteens to be that of government servants, but that by itself ipso facto would not entitle them to get all the service benefits as is available to the regular government servants or even their counterparts serving in the CSD canteens. It would necessarily depend upon the nature of duty discharged by them as well as on the rules and regulations and administrative instructions issued by the employer. We have

come across a set of administrative instructions issued by the competent authority governing the service conditions of the employees of such Unit-run Canteens. In this view of the matter, the direction of the Tribunal that the employees of the Unit-run Canteens should be given all the benefits including the retiral benefits of regular government servants cannot be sustained and we accordingly, set aside that part of the direction. We, however, hold that these employees of the Unit-run Canteens will draw at the minimum (sic of) the regular scale of pay available to their counterparts in CSD and, we further direct the Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit-run Canteens at an early date, preferably within six months from the date of this judgment." (emphasis supplied)

14. In the light of the above pronouncement of the Apex Court in UNION OF INDIA VS. M.ASLAM, which is on the point, this Court directs the respondents to forthwith regularise the service of the petitioner and see that the petitioners services are regularised, if necessary by creating post or shifting them to regular establishment with all attendant benefits with effect from the date on which they were initially appointed or engaged. Such order shall be passed within a period of four months. It is made clear that the petitioners will not be entitled for arrears of monetary benefits on this account for the past services, but they shall be placed in the appropriate scale while issuing orders of regularisation.

15. In the result, this writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

16. Since the writ petition has been allowed, the petitioners who continue in service shall not be terminated and orders shall be issued within four months regularising their services, as ordered by the Supreme Court in M.ASLAM'S case.

Index : Yes
Internet : Yes
GLN

To

1. The Secretary
Government of India
Ministry of Defence
New Delhi.

2. The Commandant
MRC Regiment
Wellingdon
The Nilgiris.

□