

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-06-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION NO.20253 OF 2003
AND
WPMP.NO.25273 OF 2003 & WVMP.NO.1938 OF 2005

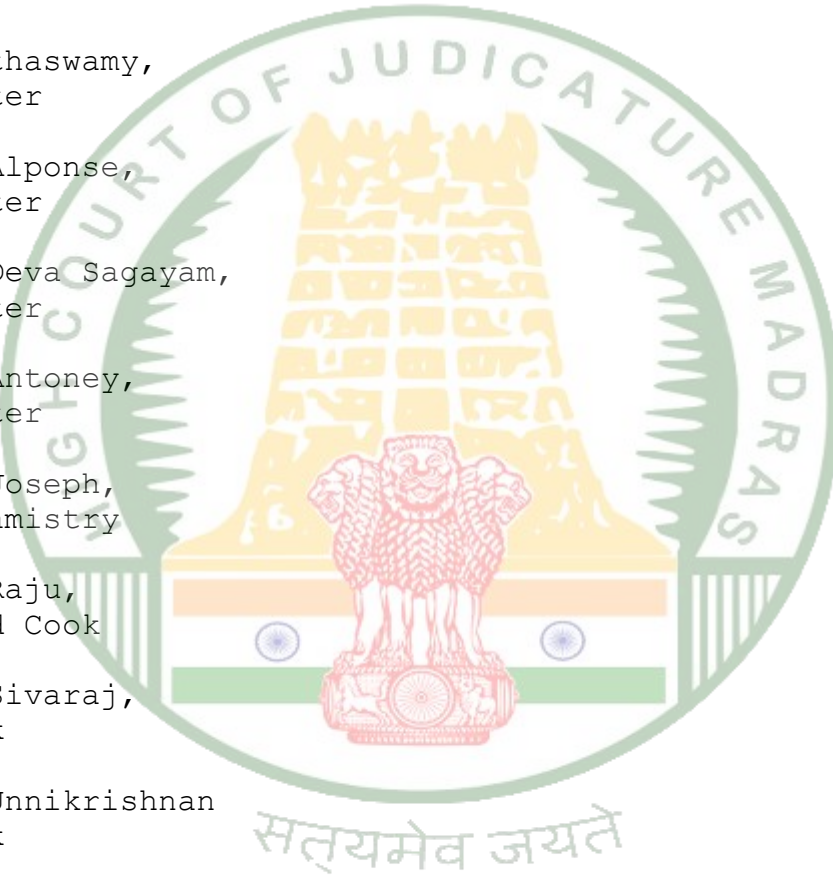
1. Union of India,
rep. by its Secretary,
Ministry of Defence,
New Delhi.
2. The Commandant,
Defence Services Staff College,
Wellington Barracks,
Nilgiris.
3. The Mess Secretary,
Officers Mess Defence Services,
Staff College, Wellington Branch,
Nilgiris. .. Petitioners

Vs.

1. A. Packiyathan,
Waiter
2. A. Sekher,
Waiter
3. K. Dorairaj,
Waiter
4. Francis,
Waiter
5. E. Stephen
Waiter

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6. D. Kumar
Waiter
7. M. Ravi
Waiter
8. M. Raja
Waiter
9. E Sunderdas
Waiter
10. Parthaswamy,
Waiter
11. S. Alponse,
Waiter
12. M. Deva Sagayam,
Waiter
13. S. Antoney,
Waiter
14. B. Joseph,
Sodamistry
15. A. Raju,
Head Cook
16. E. Sivaraj,
Cook
17. K. Unnikrishnan
Cook
18. Amulraj,
Sodamistry
19. S.K. Gopalan,
Masalchi
20. A. John,
Masalchi
21. M. Kamala
Safaiwala



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22. S. Radhika
Safaiwala

23. R. Vasanthi
Safaiwala

24. P. Jayaraj
Masalchi

25. Leema
Safaiwala

26. A. Sebastian,
Masalchi

27. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for the records pertaining to O.A.No.1039/2001 on the file of the 27th respondent Tribunal and to quash the order dated 25.7.2002 passed by the Tribunal in O.A.No.1039 of 2001.

For Petitioners : Mr.R. Santhanam, SCGSC

For Respondents 1-26: Mr.G. Rajagopalan
Senior Advocate for
Mr.A. Thirumurthy

Respondent-27 : Tribunal
- - -

J U D G M E N T
सत्यमेव जयते

P.K. MISRA, J

The present writ petition is filed by Union of India, the Commandant, Defence Services Staff College and the Mess Secretary, Officers Mess Defence Services Staff College, Wellington Branch, Nilgiris, against the order passed by the Central Administrative Tribunal in O.A.No.1039 of 2001.

2. The aforesaid Original Application has been filed by the present contesting respondents 1 to 26. The prayer in the said Original Application filed before the Tribunal was for quashing the letter dated 29.5.2001 to the effect that the request of the present respondents 1 to 26 for grant of temporary status and regularisation of their services was not acceptable. The Tribunal quashed the letter dated 29.5.2001 and directed the present writ petitioners,

"... to consider the case of the applicants for grant of temporary status and the consequent regularisation. In case it is required to formulate the service conditions, this may be done. Having regard to this fact that this may take time, we grant six months time for completing the entire exercise of grant of temporary status and the consequent regularisation".

The present writ petition is against the aforesaid direction of the Tribunal.

3. The brief facts as culled out from the Original Application and the counter affidavit filed before the Tribunal, the affidavit and the counter affidavit filed in this Court are as follows :-

Union of India has established Defence Services Staff College at Wellington (Nilgiris), for the purpose of imparting training to middle-level Commissioned Officers of all three Services in the rank of Lieutenant/Major and their equivalents in Navy and Air Force, Officers from Para-Military Forces, Civil Services, Officers and Service Officers from friendly foreign countries. Such officers attend staff training course come from various Head Quarters / Units all over India and abroad. Duration of the course is for 11 months. The total strength of the Directing Staff (Teaching Staff) and the trainees attending such course during any particular year is approximately 550. All such teaching staff and the trainees avail the mess facility. For the aforesaid purpose, a building is provided by the Union Government. The mess is known as 'Defence Services Staff College Mess' in short 'DSSC Mess'. The applicants before the Tribunal have been engaged, some of them for a pretty long period, in different capacities such as waiter, cook, sodamistry, masalchi and safaiwala to do various chores in connection with preparation of food, serving of food, beverages and cleaning of the mess. Such applicants are employed by the Mess Secretary and directly under his control, who is usually an officer in the rank of Brigadier. Since such applicants had been continuing for a long period, representation had been made on their behalf to regularise them and treat them as regular employees. One of the co-workers, namely, S. Arumugam, had filed O.A.No.266 of 2000, which was disposed of by the Tribunal by giving a direction to dispose of

his representation on merit and in accordance with law. While considering the said representation, the present Petitioner No.3 issued the impugned letter dated 29.5.2001, rejecting the request for regularisation mainly on the basis that such employees were not paid out of any defence services budget/estimates nor had been employed as per rules of the Government of India regarding recruitment and had been privately employed and were being paid out of subscription contributed by members of the mess.

4. The main contention of the petitioners before the Tribunal, which has also been reiterated before us, is to the effect that various employees had been engaged by the Officers' Mess and they were being paid salary from out of the contribution made by various officers, namely, the members of the teaching staff as well as members of the trainees and it cannot be said that such persons had been employed by the Union of India.

5. It is no doubt true that for the purpose of making payment of salary, mess contributions are collected from different officers. However, there is no dispute that the building is provided by the Union of India and such building has also been maintained by the Union of India. Moreover, certain grants are made available for the maintenance and upkeep of the mess and ration is made available by the Union of India. It is also not disputed that an officer in the rank of Brigadier is kept in charge of running the mess and he has got the disciplinary control over the persons employed. The employees are also given regular uniform by the Union of India. In the above background, which is not seriously disputed, legality of the direction of the Tribunal granting temporary status and consequent regularisation is to be considered.

6. Learned counsel appearing for the petitioners has placed strong reliance upon the decision of the Supreme Court reported in AIR 1999 SC 376 (UNION OF INDIA AND ANOTHER v. CHOTELAL AND OTHERS). The aforesaid case related to the question of regularisation of Dhobis (Washermen) who had been engaged to wash the clothes of the cadets at NDA, Khadakwasla and were being paid from the fund called "Regimental Fund". The Tribunal had given direction to the Government to prepare a scheme for appointment of Dhobis on permanent basis and put them on regular footing as permanent government employee, which was challenged before the Supreme Court. The Supreme Court, while considering the aforesaid issue, analysed the provisions contained in the Defence Services Regulation and came to the conclusion that the Regimental Fund from which Dhobies were being paid could not be considered as a public fund as defined in Regulation 801(a) and ultimately observed :-

"5. In view of the characters of the Regimental Fund, as discussed above, we have no hesitation to come to the conclusion that the said fund cannot be held to be public fund by any stretch of imagination and the Dhobis paid out of such fund cannot be held to be holders of civil post within the Ministry of Defence so as to confer jurisdiction on the Central Administrative Tribunal to issue direction relating to their service conditions. It is of course true that the Commanding Officer exercises some control over such Dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such post is made from out of the Consolidated Fund of India or of any public fund under the control of Ministry of Defence."

On the basis of the aforesaid conclusion, the direction of the Tribunal was set aside.

7. The aforesaid decision of the Supreme Court, however, is being distinguished by the learned counsel appearing for the respondents on the footing that in the present case the concerned employees are being provided with dress at the cost of the Union Government. Moreover, the building itself belongs to the Union Government and is being maintained regularly by it for which provision is also made. It has been submitted by him that the present case is more or less similar to the case reported in AIR 2001 SC 526 (UNION OF INDIA v. M. ASLAM AND OTHERS).

8. The aforesaid decision relates to the question as to whether the employees of the Unit-Run-Canteens, which provide canteen facilities for the troops at the unit level, should be considered as employees under the Union of India as either regular defence personnel or at least as civilian employees. According to Union of India, in the said case, the Unit-Run-Canteens were operated by the non-public funds and the expenditure required to run the Unit Canteens was made out of the profits earned by the canteens themselves and there was no relationship of master and servant between the Government of India and the employees. The earlier decision of the Supreme Court in AIR 1999 SC 376 had been pressed into service strongly by the Union of India. However, distinguishing the earlier decision, the Supreme Court speaking through G.B. Pattanaik, J, who incidentally had also delivered the earlier decision, after extracting from another Supreme Court decision, observed as follows :-

"3. . . . As has been stated earlier, for effective functioning of the defence services it is absolutely necessary to provide canteen facilities through out the country and while the Canteen Stores Department serve as whole sale outlet it is the Unit-Run Canteens which serve as retail outlet. A set of Rules regulating the terms and conditions of service of the employees of Unit-Run canteens have been framed which confers all pervasive control over the employees with the authorities of Defence services. Though the funding of the Unit-Run Canteens is not made out of the Consolidated Fund of India but it is made by the Canteen Stores Department and this Department in its turn has formed a part of the Ministry of Defence, admittedly. In *Parimal Chandra Raha v. Life Insurance Corporation of India*, 1995 Supp (2) SCC 611:(1995 AIR SCW 2609: AIR 1995 SC 1666), the employees of different canteens in different offices of the Life Insurance Corporation whether were employees of the Corporation itself was under consideration by this Court. This Court evolved four principles which are quoted hereunder:-

"(i) Canteens maintained under obligatory provisions of the Factories Act for the use of the employees became a part of the establishment and the workers employed in such canteens are employees of the management.

(ii) Even if there is a non-statutory obligation to provide a canteen, the position is the same as in the case of statutory canteens. However, if there is a mere obligation to provide facilities to run a canteen, the canteen does not become part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. 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.

(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 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.

Applying the aforesaid principle to the facts in the present case, it is difficult to conceive as to how the employees working in the Unit-Run Canteens can be held to be not Government servants, when it has emerged that providing canteen facilities to the Defence service personnel is obligatory on the part of the Government and in fact these Unit-Run Canteens discharge the duty of retail outlets after getting their provision from the wholesale outlet or depot of the Canteen Stores Department. ... "

9. In our considered opinion, the factual scenario in the later decision of the Supreme Court, namely, AIR 2001 SC 526 (cited supra) are more or less similar to the facts of the present case. The Tribunal in para 17 of its decision has set out the nature of employment, and how the petitioner has utilised the services and granted benefits which would go to show that the nature of employment is not just casual. The findings of the Tribunal on the factual aspects regarding the benefits given to the respondents are not disputed. It is no doubt true that salary for the concerned employees is possibly paid from the contribution made by the officers themselves, but the fact remains that Union of India makes regular contribution for maintenance and upkeeping of the mess, including the maintenance of the building. The uniforms of the employees are regularly provided by Union of India. An officer in the rank of Brigadier is posted for the purpose of looking after the mess and therefore it can be said that all pervasive control is exercised by the Union of India even though such officer is euphemistically called the Mess Secretary. As observed by the Supreme Court in AIR 2001 SC 526 (cited above), the mess facilities is being provided to the members of the teaching staff as well as trainees almost as a matter of right. An officer in the rank of Brigadier has pervasive control over the mess as well as the employees serving in the mess.

10. Apart from the above consideration, from the additional affidavit filed on behalf of Union of India, certain additional features can also be noted. From such additional affidavit, it is apparent that Union of India, which is having Indian Military Academy, National Defence Academy and Officers Training Academy, has engaged civilian mess staff for the four Cadet Messes as per Peace Establishment. It is of course true that in such affidavit, it has been indicated that for the Officers Mess at such stations no such establishment is being made. The employees in such Officers Mess, including the Defence Services Staff College Officers' Mess, have to interact with the officers holding several sensitive posts. Such employees serving in various Messes co-act with such persons on daily basis. It is all the more necessary for the purpose of maintaining security as well as confidentiality the

employees in various mess should come under regular establishment under Union of India so as to maintain minimum amount of discipline and confidentiality. It is also to be noted as observed by the Tribunal that recommendations were made in the year 1997 as well as in 2004 for attachment of authorised mess staff in the Defence Services Staff College Officers' Mess (Tri Service Institution) Wellington. From such recommendations, which are available in the typed set of papers filed by the present respondents, a case has been made out, however, such recommendations are yet to be considered by the Union of India.

11. For the aforesaid reasons, we do not find any illegality in the order passed by the Tribunal. It is of course true that technically speaking there may not be any strict relationship of master and servant between the Union of India and the concerned employees, but keeping in view the recommendations made in 1997 and 2004 and keeping in view the sentiments expressed by the Supreme Court in AIR 2001 SC 526, we do not find any illegality in the order passed by the Tribunal. The writ petition is accordingly dismissed, subject to the observations made. No costs. The matter is required to be considered by the present writ petitioner within a period of six months from the date of receipt of the present order. Consequently, the connected miscellaneous petitions are closed.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Central Administrative Tribunal,
Chennai Bench,
High Court Buildings, Chennai.

+ 1 cc to Mr.R. Santhanam, Advocate SR No.28206
+ 1 cc to Mr.A. Thirumurthy, Advocate SR No.28368

AMB(CO)
SR/19.7.2006

JUDGMENT IN WP.20253/2003