

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Judgment reserved on : 26.11.2007**
Judgment delivered on : 04.06.2008

% **W.P. (C) No.5716/2000**

Commissioner of Police & Ors. ...Petitioner
Through: Mr. Amiet Andley and
Mr. Arun Sharma, Advocates

versus

Rajender Singh & Ors. ...Respondents
Through: Mr. Arun Birbal, Advocate

AND

W.P. (C) No.1925/2006

Prem Singh ...Petitioner
Through: Mr. A.K. Trivedi &
Mr. Rajiv Manglik, Advocates

versus

Govt. of NCT of Delhi & Ors. ...Respondents
Through: Mr. Rohit Madan, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI,J.

1.The aforesaid two writ petitions have been filed by: -

(i) The Commissioner of Police i.e. WP(C) No.5716/2000 arising out of the decision of the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.969/1999 "*Rajender Singh & Ors. v. Union of India & Ors.*" dated 10.02.2000 and in R.A. No.239/2000 in O.A. No.969/1999 dated 17.08.2000, and;

(ii) Prem Singh i.e. WP(C) No.1925/2006 arising out of the decision of the Tribunal in O.A. No.498/2004 "*Prem Singh v. NCT of Delhi & Ors.*" dated 15.07.2005.

2.By the impugned order dated 10.02.2000 in O.A. No.969/1999 and in R.A. No.239/2000 dated 17.08.2000, the Tribunal directed the petitioners Commissioner of Police and the other authorities to take further action under the relevant rules and instructions to regularise the services of the respondents in the said petition taking into account the observations of the Tribunal, within three months and the Tribunal rejected the review application filed before it on the ground of limitation and as not disclosing a ground for review of the order dated 10.02.2000 passed in O.A. No.969/1999. Quite contrary to the view taken by the Tribunal in O.A. No.969/1999, which was decided by a single member bench, a two member bench of the Tribunal in the original application filed by Prem Singh, the petitioner in WP(C) No.1925/2006, took the view that the original application itself was not maintainable before it, since the petitioner was not the holder of a civil post under, or in connection with the affairs of, the Union or the State.

3.The respondents in W.P.C. No.5716/2000 as well as the petitioner in W.P.C. No.1925/2006 (referred to as 'employees' for convenience)

were engaged to work as Halwais, bearers, Mess boys etc. in Canteens being run by the police personnel for the last many years. To run the canteens, workers are engaged as daily wagers in the canteen and they have been engaged for more than a decade. Since the daily wagers were not being regularised and were being treated only as daily wagers with no security of their services or regular pay scales, and were not even being paid the minimum wages as prescribed by the law, some of them preferred an original application before the Tribunal being O.A. No.1617/1997 "*Rajender Singh & Ors. V. Union of India & Ors.*" to seek regularisation of their services. They relied on instructions issued by the Department of Personnel and Training dated 20.03.1997. The Tribunal disposed of the said O.A. on 13.08.1998 whereby the authorities were directed to pass an order taking into account the aforesaid O.M. issued by the Department of Personnel and Training. On 02.11.1998, the Department passed an order rejecting the representation of the daily wagers by observing that "*in view of the facts and circumstances as discussed above the O.M. No.18(1)/97-Dir.,(C) dated 27.1.97 and O.M. dated 29.1.92 cited in the Hon'ble CAT Judgment dated 13.8.98 and other rules and instruction are not attracted in the instant case. Therefore, there are no grounds in the contentions of the Judgment in question to consider them as regular employees.*"

4.The employees again approached the Tribunal by filing O.A. No.969/1999, which, as aforesaid has been allowed by the Tribunal by issuing a direction to the authorities to take further action in

accordance with the relevant rules and instructions to regularise the services of the employees in O.A. No.969/1999 by taking into account the observations of the Tribunal within a period of three months. Against the aforesaid decision, the petitioner, Commissioner of Police and Ors., preferred W.P.C. No.3859/2000, before this Court. That petition was disposed of on 19.07.2000 by this Court by a short order, which reads as follows: -

“19.07.2000

Present: Mr. V.K. Shali for the petitioners.

This petition is directed against the order dated 10th February, 2000 passed by the Central Administrative Tribunal, Principal Bench. The Tribunal has merely directed the petitioners to take further action in accordance with the relevant rules and instructions for regularising the services of the respondents taking into account the observations made in the Order. The petitioners have also moved an application for extension of time for complying with the directions as contained in the Order. The learned counsel for the petitioners seeks leave to withdraw the writ petition with liberty to take appropriate proceedings to approach the Tribunal in accordance with law. Leave and liberty is granted. The petition is dismissed as withdrawn.”

5.The petitioners Commissioner of Police and Ors., then preferred a review application, which has also been dismissed by the Tribunal on 17.08.2000, as aforesaid, on the ground of limitation and also as not disclosing a ground for review under Order 47 Rule 1 CPC read with Section 22 (3) (f) of the Administrative Tribunals Act, 1985.

6.The first submission of learned counsel for the Commissioner of Police is that the Tribunal had no jurisdiction to entertain the original

application, since the respondents were not the holders of a civil post under, or in connection with the affairs of the Union, or the State. It is argued that the said canteens are non-statutory and non-recognised bodies being run from out of the Delhi Police Welfare Canteen Fund. From this fund the wages of the employees are being paid. The canteens do not get any fund or subsidy either from the Government of India or from the Govt. of NCT of Delhi. The rates of various items like tea, samosa etc., which were prepared by way of snacks are fixed by the Dy. Commissioner of Police. The Commissioner of Police only provides the space, while all other arrangements with regard to the fuel, utensils, raw materials etc. are provided from out of the welfare fund. There are no sanctioned posts of Halwais, Bearers etc. in Delhi Police. Consequently, there are no recruitment rules. There is no budgetary provision made for payment of salaries by the Delhi Police/Govt. of NCT of Delhi. The canteens are being run on a no profit no loss basis. The respondents are not even engaged or employed by the Delhi Police or by the Government of NCT of Delhi and that their engagement is by the police officers who are managing the canteens. The engagements are made without following any due process or selection from amongst candidates in an open competition. The engagement of the respondents is not by the State and they are not the holders of a civil post under or in connection with the affairs of the State or the Union.

7.This submission of the petitioners is opposed by the respondents on the ground that no such objection had been raised by the petitioners

before the Tribunal either in the first round when the original application was entertained and decided by the Tribunal by its decision dated 10.02.2000, or at the stage of review, which was also dismissed on 17.08.2000. The petitioners have acquiesced in the jurisdiction of the Tribunal and it is not open to them to question the same in the present proceedings for the first time. It is also contended that such an objection ought to have been raised, if at all, before the Tribunal passed the orders dated 24.09.1996 in O.A. No.2587/1994 and 13.08.1998 in O.A. No.1617/1997.

8. On the other hand, the submission of learned counsel for the petitioners is that since the issue of jurisdiction is a pure question of law and is a fundamental issue, which strikes at the very root of the maintainability of the original application, the same can be permitted to be raised by this Court even at the stage of judicial review of the orders passed by the Tribunal. He further submits that a two member Bench of the Tribunal itself has taken a view in favour of the department in O.A. No.498/2004 decided on 15.07.2005 and that decision of the Tribunal is also pending judicial review before this Court, and is being considered simultaneously with this petition. It is, therefore, argued that the said issue is alive and in any event has to be decided by this Court in WP(C) No.1925/2006 filed by Prem Singh. He argues that if it is decided in WP(C) No.1925/2006 that the Tribunal did not have jurisdiction to entertain the original application, that decision would be equally binding upon the respondents in the present case and would govern the outcome of the present petition as well.

9.The impugned decision is also assailed on the ground that the direction issued by the Tribunal to regularize the services of the employees is in the teeth of the decision rendered by the Constitution Bench of Supreme Court in “**Secretary, State of Karnataka v. Umadevi**” (2006) 4 SCC 1 = (2006) SCC (L&S) 753, wherein the Supreme Court has taken the view that there is no right vested in a daily wager to seek the regularisation of his services and the Supreme Court has held that the machanzim of regularizing the services of daily wager and adhoc employees who are recruited other than in accordance with the recruitment rules and selection procedure established for the post tantamounts to a back door entry which is violative of the right to equality of other eligible aspirants for the post.

10.We are inclined to entertain the submission of the petitioner that the Tribunal did not have the jurisdiction to entertain the original application filed by the respondents on the ground that the respondents were not the holders of a civil post under or in connection with the affairs of the Union or the State for the reason, that the said issue is a purely legal one, which strikes at the root of the impugned orders and the said issue, in any event, is alive and calls for determination by this Court, in view of the decision of a two member Bench of the Tribunal in the case of *Prem Singh* in O.A. No.498/2004. The said issue is necessarily to be decided by this Court. In case we take a view that the decision of the Tribunal in *Prem Singh* (supra) is correct and we uphold the same, it would lead to an incongruous situation, if we were to simultaneously uphold the impugned decision

in Writ Petition (C) No.5716/2000 without going into the aspect of maintainability of the original application.

11. At this stage, therefore, it would be appropriate to consider the correctness or otherwise, the decision of the Tribunal rendered in O.A. No.498/2004 "*Prem Singh v. NCT of Delhi*", whereby the Tribunal has held that the applicant therein, namely, Prem Singh was not the holder of the Civil post under or in connection with the Union or the State, and that, therefore, the Tribunal has no jurisdiction to entertain the original application.

12. The petitioner Prem Singh was engaged as a mess boy in police station Shahdra sometime in the year 1986. He approached the Tribunal with the grievance that he had not been considered for regularisation of his services despite the fact that he had put in 240 days of service year after year, and that he had not been paid even the minimum wages to which he is entitled. The respondent department contested the petitioner's claim by stating that the petitioner had been engaged on a monthly wage and remuneration of Rs.500/- by the officer in charge of the police station, Shahdara. The petitioner was receiving his salary from the mess fund for the days that he worked and he was not paid for the period he did not work. His remuneration had been increased to Rs.1200/- per month besides breakfast, lunch, dinner and residential facility. The mess is running on no profit or loss basis. The petitioner has not been engaged as a government servant or as an employee of Delhi police. The government of National Capital Territory of Delhi does not provide any grant to run the mess. The cost

of eatable items, that is vegetables, pulses, breads/chapatis etc. is calculated on the basis of purchase of raw material, LPG cylinder and Labour etc. The petitioner is being paid from out of the mess fund which is generated from the sales of eatables to the mess members. The mess is not even a registered entity. It is a purely private regimental body comprising of police personnel of police stations Shahdara.

13.The petitioner Prem Singh in support of his claim in turn relied upon to the decisions of the tribunal in the case of "*Rajender Singh and others v. Union of India and others*", OA No.969/1999 decided on 10th of February 2000. Reliance was also placed on another single bench decision of the Tribunal in the case of "*Pramod Kumar v. Government of NCT of Delhi and others*" in OA No.2043/2003 decided on 20th of January 2004. In this case as well, the Tribunal had directed the respondents to consider the claim of the applicant for regularisation.

14.The Tribunal, however, distinguished, and in our view view rightly so, the aforesaid decisions on the ground that the issue of maintainability had not been raised, considered or decided by the Tribunal in either of the aforesaid two cases. Therefore, these decisions could not be considered as binding authorities on another bench of the Tribunal for the proposition that the original application was maintainable before the Tribunal. On the contrary, the Tribunal relied on a two member bench decision of its own in the case of "*Dhanwanti v. The Director of Education, Delhi and others*" in O.A. No.2406/1994 decided on 19.3.1996. The applicant therein was working as a

domestic science helper on part-time basis. He was not being considered for regularisation. He was being paid his wages from out of the pupils fund. The Tribunal held that it had no jurisdiction to entertain the original application on the same ground that the applicant was not the holder of a civil post under, or connected with the affairs of the Union or the State, and dismissed the same.

15.The Tribunal also relied on its earlier decision in the case of "*Satish Kumar v. Commissioner of Police and others*" in OA No.486/2002 decided on 20.2.2003. In that case, the services of the applicant had been terminated. He approached the Tribunal for quashing the termination order. The applicant had been appointed by the Deputy Commissioner of police, but was not paid from the funds of Delhi police. The Tribunal held that it had no jurisdiction to entertain the application. As the payment was made from private funds, the applicant was not considered as the holder of a civil post under or connected with the affairs of the Union or the State.

16.The Tribunal also repelled the argument of the petitioner Prem Singh founded upon a Full Bench decision of the Himachal Pradesh High Court in the case of "*Arti Gupta v. State of Himachal Pradesh and others*", 1997 (2) ATJ 135. The full bench of the Himachal Pradesh High Court in the said decision had taken the view that the Administrative Tribunals had the jurisdiction to deal with matters relating to disputes which arose before the actual appointment of any person to a civil post. As rightly observed by the Tribunal, there cannot be any quarrel with this proposition laid down by the Full Bench

of the Himachal Pradesh High Court. However, in the present case the moot question is whether the petitioner Prem Singh, who was serving as a mess boy could be said to be holding a civil post. Consequently, the said decision has no bearing on the issue raised in the present case.

17. "Service matters" has been defined in section 3(q) of the Administrative Tribunals Act (the Act) in the following manner:

"3(q). "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respect -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, revision, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;"

18. Section 14 of the said Act, which deals with the jurisdiction, power and authority of the Central Administrative Tribunal and reads as follows:

"14. Jurisdiction, Powers and Authority of the Central Administrative Tribunal. -

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal

shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation. - For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."

19.As rightly observed by the Tribunal, on a co joint reading of section 3(q) and section 14 of the Administrative Tribunal's Act, 1985, it emerges that the applicant before the Tribunal must be a

holder/applicant of for a civil post under or connected with the affairs of the union. The Tribunal has also relied upon the decision of the Supreme Court in ***“Union of India and others v. Chotelal and others”*** JT 1998 (8) SC 497 in a case relating to Dhobis appointed to wash the clothes of cadets at the National Defence Academy, Kharakwasla. The question arose whether the Dhobis were holders of civil post or not. Reversing the decision of the Tribunal that it had jurisdiction to entertain the original application, the Supreme Court held as follows:

“3. In view of the rival contentions raised, the most crucial question that arises for consideration is what is the nature of the post against which the Dhobis get their appointment for discharging the duties of washing clothes of the cadets? From the terms and conditions of the letter of appointment issued to such Dhobis it is crystal clear that the appointments cannot be held to be one against any civil post. On the other hand it clearly indicates that the appointment is purely private payable out of Regimental Fund. Initially these Dhobis were being paid at a particular rate per cadet on the basis of actual number of cadets a Dhobi is required to serve, but later on a monthly salary, no doubt, has been fixed for being paid to such Dhobis. The terms of appointment, no doubt vest certain control over such Dohbis on the Commandant of the Academy but nonetheless such control cannot impress the post of Dhobis with the character of a Civil post. It is also borne out from the record that each cadet is granted a monthly Dhobi allowance and the said allowance is put into a fund called 'Regimental Fund' under the management of Commanding Officer of the institution.....”

Thereafter, it was further held:

“6. 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 of 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.”

20.The position is no different in the present case than that before the Supreme Court in **Chotelal** (supra). The petitioner has not rebutted the fact that he was employed as a mess boy by the officer in charge of the police station Shahdara; that he received the payment of his wages from the mess fund for the days that he worked; that the Govt. of NCT of Delhi does not provide any grant to run the mess; that the mess is a purely private regimental body comprising of police personnel of police station Shahdara; that it is running on the basis of contribution/allowances of the police personnel; that he was never engaged as the government servant or as an employee of Delhi police.

21.In our view therefore, the decision of the Tribunal that the petitioner was not a holder of a civil post under or in connection with the affairs of the Union or the State cannot be faulted. That being the position, in our view the Tribunal rightly did not entertain the claim of the petitioner for regularisation of his services or for payment of minimum

wages. We, therefore, dismiss WP(C) No.1925/2006 filed by Prem Singh.

22. Resultantly, the petition filed by the Commissioner of Police against the employees must succeed on the ground that the Tribunal had no jurisdiction to pass the impugned order. Moreover, we also find merit in the submission of learned counsel for the petitioner– Commissioner of Police that the decisions of the Tribunal in O.A. No.969/1999 and R.A. No.239/2000 fall foul of the Supreme Court decision in **Umadevi** (*supra*). Admittedly, the employees were not recruited against sanctioned posts. There are no recruitment rules in existence and the question of following a transparent method of recruitment, therefore, does not arise. Such an appointment does not confer any right to seek regularization on the employees. Therefore, the direction issued by the Tribunal in **Rajender Singh** (*supra*) is illegal and is set aside.

23. Having said that, we are of the view that the Commissioner of Police should ensure, by issuing appropriate directions to the police personnel running the mess at police station Shahdara, and all other similar messes in Delhi to pay to the employees the minimum wages to which they are entitled under the law, since it is an offence under the Minimum Wages Act not to pay the minimum wage to a worker. The police force is obliged to enforce the law and to book breaches of law. It, therefore, does not reflect well on the conduct and reputation of the police personnel to resort to exploitation of the workers employed by them to manage their mess at a police station. We, therefore, direct that the Commissioner of Police should ensure, by passing necessary

orders and enforcing the same, that the employees in all police messes in Delhi are paid the minimum wages in accordance with the law. Parties are left to bear their respective costs.

**VIPIN SANGHI
JUDGE**

**A.K. SIKRI
JUDGE**

June 04, 2008
RSK/AJ