

Reportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 5161 of 2007

% Reserved on: 12.02.2009
Pronounced on: April 02, 2009

Union of India & Ors. Petitioners

through : Mr. R.V. Sinha with
Mr. R.N. Singh, Advocates

VERSUS

Vinod Kumar Respondent

through : Mr. Arvind Kr. Shukla with
Mr. P. Mubarak and
Mr. Nihal Ahmad, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Before coming to this case which relates to an employee employed in Unit Run Canteen, we deem it appropriate to trace out the legal battle dealing with the status of such employees employed in Unit Run Canteens. For this purpose reference to the two judgments of the Supreme Court would suffice. First judgment is *Union of India & Others v. Mohd. Aslam & Others, 2001 (1) SCC 720*. Vide that judgment three appeals were decided by the Supreme Court which arose from decisions of the Central Administrative Tribunals. The

employees of the Unit Run Canteens which provide canteen facilities to the troops at the unit level had approached different Tribunals claiming benefits as regular defence personnel employees or at least as civilian employees serving under the Ministry of Defence. This claim was predicated on the averments that such Unit-Run Canteens are part of the Canteen Stores Department and since the Canteen Stores Department forms a part of the Government in the Ministry of Defence there is no reason as to why the Unit-Run Canteens should not be held to be a part of Ministry of Defence. The Union of India in the said OA took preliminary objection questioning the jurisdiction of the Central Administrative Tribunal to adjudicate upon the claims of the employees on the ground that since such employees could not be held to be Government employees, consequently the Tribunal did not have the jurisdiction to entertain their applications. The Jodhpur and Bombay Benches of the CAT took the view that the Unit-Run Canteens are the part of defence establishment and consequently the holder of a post in the management of such canteen must be held to be connected with the Defence Service. It is against those decisions that the Union of India had filed the aforesaid appeals which came to be decided in the case of Mohd. Aslam by the Supreme Court vide its judgment dated 04.01.2001. After detailed analysis of the nature of these canteens, the Supreme Court concurred with the view of the Central Administrative Tribunal and held that status of the employees in these canteens must be treated to be that of Government employees

and consequently the Central Administrative Tribunal would have jurisdiction to entertain the applications of these employees.

2. The Tribunal had directed that these employees should get the minimum of the salary presently being paid to their counter parts in the CSDI and all the benefits of other service conditions available to the regular Government servants in the CSDI. It was also directed that they should be treated as Government employees from the date of filing of the application before the Tribunal and they would also be entitled to retiral benefits. After agreeing with the Tribunal that such an employees would be treated as Government employees, the Supreme Court dealt with the aforesaid directions of the Tribunal for grant of minimum of salary paid to their counter parts in CSDI and other service conditions etc. In this behalf the view of the Supreme Court was that even if the status of the employees serving in the Unit-Run Canteens is to be that of Government servants, that by itself would not entitle them to get all the service benefits which were available to the regular Government servants or even their counter parts serving in the CSDI canteens. According to the Court this was to depend upon the nature of duty discharged by them as well as on the Rules and Regulations and Administrative Instructions issued by the employer. Therefore, the directions of the Tribunal for grant of same salary and benefits as enjoyed by their counter parts in CSDI canteens was set aside and the Ministry of Defence, Union of India was directed to determine the service conditions of the employees in the Unit Run Canteens at an early date. The Supreme

Court also clarified that these employees would not automatically be governed by the Fundamental Rules as well.

3. Pursuant to the aforesaid directions of the Supreme Court to frame service conditions for these employees, the Ministry of Defence formulated such terms and conditions which were circulated vide letter No. 96029/Q/DDGCS dated 28.04.2003. These are known as “Rules Regulating the Terms and conditions of service of Civilian employees of Unit Run Canteen paid out of Non Public Funds” (hereinafter referred to as the ‘Rules). We may reproduce here it two such conditions which arise for consideration in this case as would be noted subsequently at an appropriate stage. These are Rules 3 and 5 which are extracted below:-

“3. Application :

(a) These rules shall apply to all civilian employees of Unit Run Canteen paid out of Non Public Fund Account but shall not apply to any person engaged on daily wages or on casual employment or to those hired on a contractual basis whose conditions of service will be regulated by their appointment letters. These Rules shall also not apply to serving defence personnel who may for the time being be detailed to work therein in any capacity whosoever in addition to their own duties.

(b) These Rules will govern the terms and conditions of Unit Run Canteen employee serving in various Unit Run Canteens as on 4th January, 2001 and on subsequent days and will bring forth uniformity on matters governing the terms and conditions of such employees.

xx xx xx

5. Classification of Employees:

(a) All employees shall be under probation during their first year of service. On successful completion of probation, the employees will be termed as permanent. Services of any

employees under probation are liable to be terminated by the employer if the employee was found unfit for performance of assigned duties.

(b) All the employees who have completed one year of probation as on 4th January, 2001 will be treated as permanent employees.

(c) All the employees, whether under probation or permanent, could be treated at par with Government Servants employed in CSD as far as pay scale are concerned. The classification of employees and the pay scale is given at Schedule 'A'."

4. The second case is *Dharma Nand & Anr. v. Union of India*, (2004) 10 SCC 609. In this case, the services of two employees who were engaged in the said Unit Run Canteen on contract basis were terminated and their dispute also landed up in the Apex Court in the form of writ petition (Civil Appeal No. 87/1998 filed by them). This writ petition was decided by the Supreme Court on 29.04.2004. In this judgment the Apex Court dealt with and considered its earlier judgment in *Mohd. Aslam's* case. Significantly some observations are also made in respect of the rules framed by the Government pursuant to the directions in *Mohd. Aslam's* case. The facts were that the two petitioners were appointed on 28.03.1988 and 15.09.1988 respectively as the Salesmen at Stations Canteen, Kotdwar, Garhwal Rifles, Regimental Centre, Lansdowne , U.P. They were being paid consolidated amount of Rs. 550/- per month which was enhanced to Rs. 750/- with effect from 07.04.1989. When they were appointed as Salesman in Golden Fish Canteen, Kotdwar, they were promoted, thereafter, as Store Keeper Incharge on 01.09.1995 and their remuneration was enhanced further. However, in December, 1998

the services of the first petitioner were terminated and he was informed that he had completed five years of tenure, and his service was no longer required. In a similar fashion the services of the second petitioner were also terminated. Subsequently, they filed the aforesaid writ petition challenging their termination. The Union of India took up the plea that since they were engaged on contract basis and they were contractual employees and after the completion of contract it was within the right of the Union of India to terminate their services. Referring to the judgment of *Mohd. Aslam* (supra), the Supreme Court opined that the petitioners were treated as Government servants. On this basis, the Supreme Court came to the conclusion that in their services they could not be given fixed term and on completion of the term, their services were terminated in the manner it was done by the respondent. The relevant portion of the said judgment is quoted below:-

“Applying the aforesaid principles canteen employees were to be treated as Government servants.

In the present case also, the petitioners Dharma Nand and Dayal Singh were working as canteen employees which was under the Defence Ministry and they were also entitled to be treated as Government Servants. The counsel for the Union of India submitted that the petitioners alongwith others were appointed as canteen employees on temporary basis and the appointment itself was given for a fixed term and on completion of the term , their services were terminated. The counsel also drew our attention to the rules framed for this purpose for the canteen employees. The aforesaid rules have been framed as if they were not government servants. The decision quoted above would show that the canteen employees should have been treated as Government servants. That by itself is sufficient to hold that the rules, framed for such temporary appointment are not to be applicable to these employees.

We are of the view that if these petitioners should have been treated as Government servants, the services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating service that it was only for five years tenure and their services were no longer required. We hold that termination was illegal and petitioners are entitled to be reinstated in service forthwith. The Petitioners are also entitled to get consequential benefits.”

5. With the aforesaid background, we revert to the factual position as exists in the present case.
6. On 9.12.1996, the petitioner, namely, the Commandant & MD, 510, Army Base Workshop had invited applicants to appear for interview for ‘temporary posts of Sales Persons’ which was slated for 12.12.1996 at 1400 hours. In this communication, it was *inter alia* stipulated that “terms and conditions of service will be intimated at the time of interview”. The respondent appeared in the interview and keeping in view his performance, he was selected and appointed as Assistant Salesperson w.e.f. 29.8.1997. After the promulgation of the aforesaid Rules in compliance with the directions contained in the Supreme Court judgment, the respondent submitted representation dated 2.12.2004 requesting for regularization of his services and treating him as a permanent employee. It was followed by reminder dated 28.2.2005 wherein he also pointed out that instead of making him permanent, he was transferred to work in the MI Room instead of URC. He also complained that salaries for the month of January and February were not released to him. His cause was also espoused by all India Defence Civilian Canteen Employees Union in their

representation dated 1.3.2005. The respondent also sent further reminders on 7.6.2005 and 22.9.2005. For the first time, reply dated 16.11.2005 was received by him mentioning that order of the Supreme Court in *Mohd. Aslam* (supra) was not applicable in his case as he was engaged as a daily wager. He replied to the same vide his representation dated 23.11.2005 stating that it was for the first time the plea was taken that the respondent was a daily wager. He reiterated that he was entitled to the benefit of the said judgment and the Rules framed subsequently and, therefore, he may be regularised to the said post. Vide letter dated 2.1.2006, his representations were turned down on the same ground as contained in earlier decision dated 16.11.2005. In this letter it was also alleged that the respondent was absenting from job since 25.11.2005, whereas according to the respondent he was not allowed to enter the premises to resume his duties. The respondent further pleaded that on 4.2.2006, he was coerced to sign a letter withdrawing all his claims and representations submitted on different dates and on this condition only he was allowed to continue in service giving him so-called 'fresh appointment' and giving go-by to his past service of nine years. In the meantime, fresh advertisement was issued by the petitioners advertising the vacancy of Sales Accountant/Technician. According to the respondent, it was done with the intention to terminate his services. At this stage, he approached the Tribunal and filed OA No. 1485/2006 seeking regularization.

7. The contention of the respondent before the Tribunal was that plea of daily wager was solely raised by the petitioners herein for the first time and communicated to him vide letter dated 16.11.2005 with the intention to harass and deprive him regularization. The respondent had been selected for temporary post of Salesperson after qualifying the interview and hence there arises no question of his being treated as daily wager. The petitioners also ignored the fact that he was working continuously and uninterruptedly since 29.8.1997. Without assigning any reason, the petitioners terminated his services and that too by an oral order. He made representation dated 20.12.2005 stating therein that he was not absenting, but in fact was not allowed to enter the premises to resume his duties by the Canteen Officer. He was forced to remain away from his duties for quite some time without any letter in writing, nor was he paid the salary. The petitioners issued another letter dated 2.1.2006 repeating their old story that benefits under the terms and conditions dated 29.4.2003 were not applicable. Under the coerced circumstances, he signed letter dated 14.2.2006 withdrawing his claims and representations submitted on different dates, and only then he was allowed to resume his duties, giving a go-by to his past continuous service of 9 years. An advertisement appeared in the daily newspaper "Amar Ujala", Meerut dated 5.2.2006 inviting applications for the post of Sales Attendant/Technician with the intention of terminating his services and finding suitable replacement. The petitioners had neither issued fresh letter of joining nor allowed him to sign the

Attendance register, although he was on the roster of employees, which is evident from the receipts issued by the Canteen from 10.2.2006 to 01.03.2006, establishing purchase of certain items by him.

8. The petitioners, on the other hand, reiterated its decision contained in letters dated 16.11.2005 and 2.1.2006 on the basis of which it was argued that since the respondent was only a daily wager, the rules framed for regularization pursuant to the judgment of *Mohd. Aslam* (supra) did not apply to him.
9. In this backdrop, the main question which fell for consideration before the Tribunal was the nature of appointment of the respondent, namely, whether he was appointed on daily wage basis or on temporary basis. The Tribunal, after considering the relevant record, took the view that since the respondent was called for interview “for a temporary post of Salesperson” and was put on probation as well, such an appointment could not be treated as on daily wage basis.
10. The Tribunal also took note of the fact that as per para 5 of the Army Headquarters letter dated 28.4.2003, all employees were placed on probation during their first year of service. On completion of the said service, they were to be termed as permanent. The respondent had been working with the petitioners since 29.8.1997 till the year 2005 uninterruptedly and without any break. According to the Tribunal, his harassment started when he requested for

extension of judgment of the Supreme Court in *Mohd. Aslam* (supra) and persisted that relentlessly. At this stage only the authorities took somersault and communicated that he was employed as a daily wager. It was only with a view to frustrate the extension of benefits of the orders of the Supreme Court in the case of the respondent. The Tribunal also found that the case of the petitioner was identical as the one decided by the Apex Court in *Dharma Nand* (supra). In the said case also, two petitioners therein were appointed in the year 1998 as Salesmen on a consolidated salary, which had been enhanced from time to time. Their services were terminated in the year 1998 stating that since they had completed 5 years tenure, their services were no longer required. The question arose whether employees working in Canteen Stores Department under Ministry of Defence could be treated as Government servants or not? Relying upon earlier judgments in *Parimal Chandra Raha & Ors. v. Life Insurance Corporation of India & Ors.*, (1995) Supp. (2) SCC 611 as well as *Mohd. Aslam* (supra), the Supreme Court rejected Union of India's contention that the petitioners therein were appointed as canteen employees on temporary basis against a fixed term and on completion of their term, their services were rightly terminated, as projected. The Apex Court held that if these petitioners should have been treated as Government Servants, the services could not have been terminated on the ground that their services were no longer required. Accordingly, their termination was held to be illegal and

they were ordered to be reinstated in service forthwith with all consequential benefits.

11. In these circumstances, the Tribunal was of the opinion that the action of the petitioners lacked fairness. Thus, allowing the OA of the respondent, it is directed by the Tribunal that as the respondent had completed more than one year of service, he is deemed to be a Government servant w.e.f. 4.1.2001 and consequently eligible for minimum of pay scale with arrears of pay and allowances.
12. Learned counsel for the petitioner submitted that the Tribunal clearly overlooked the nature of appointment of the respondent, which was clearly on daily wage basis. In this behalf, he submitted that it was specifically mentioned in the appointment letter that terms and conditions would be supplied to him later. These terms and conditions were thereafter given to him, in which nature of appointment was stated to be “purely temporary” and against the column of pay it was mentioned “daily wage at Rs.40/-”. He referred to Rule 5-B of the Rules as per which such rules were applicable to the case of daily wager. He submitted that even record showed that the respondent had drawn pay as a daily wager. Relying upon the judgment of the Supreme Court in the case of *Suresh Chandra Jha v. State of Bihar & Ors.*, (2007) 1 SCC 405, he argued that daily wager was only a species of ‘temporary employee’ and, therefore, merely because the respondent was given

appointment on temporary basis would not mean that he was not a daily wager when he was in fact paid accordingly.

13. The answer to the issue would depend upon the nature of appointment of the respondent herein. The advertisement which was issued, pursuant to which the respondent applied, reads as under:-

“Required Sales Attendant/Technician for 510 Army Base Workshop Unit Run Canteen. Vacancy – 02

- (a) Qualification - 12th Pass with knowledge of computer Preference will be given to experienced persons.
- (b) Age - 20 to 30 years.
- (c) Pay scale - 2650-65-3300-70-4000/- (Total Emoluments)

2. Desirous candidates (Male/Female) may send their application with complete details, photograph and photocopies of qualification certificates within 15 days to the under mentioned addressee.

Chairman
Unit Run Canteen
510 Army Base Workshop
Meerut Cantt

Eligible Candidates will be called for selection process.”

14. As per the above, it is clear that post was advertised in a proper pay scale. Advertisement also mentions that eligible candidates will be called for ‘selection process’, which means the post was to be filled after proper selection process. The respondent had applied for this post; he was found eligible; and accordingly he was sent letter dated 9.12.1996 calling him for “interview for the temporary post of Salesperson”. Para 5 of this letter mentioned that “terms and

conditions of service will be intimated at the time of interview”. No such terms were intimated on the selection of the respondent. The Tribunal has noted contradictory stand of the petitioner in this behalf. In the one breath it is stated that before the interview terms and conditions of service were supplied in writing to all the candidates and it was also stated in the reply to the OA that “*no appointment letter was given in writing to the applicant*”. However, the petitioner at least expected that nature of appointment was ‘*purely temporary*’ and respondent was placed on ‘*probation for 89 days*’. Taking note of these facts, the Tribunal came to the conclusion that the appellant was not on daily wage basis. Discussion in this behalf is contained in paras 12 and 13 of the impugned judgment, which we reproduce below as we are in agreement with the opinion expressed therein :-

“12. The question now arises is that can a daily wager be placed on probation? In our considered view, we have not come across any such incidence in service jurisprudence where a person appointed on daily wages was made to undergo a probationary period and that too of 89 days. We may also note with concern that no records of applicant’s appointment were produced before this Tribunal to justify the contention raised vide their reply. Para 3 of Army HQrs letter dated 28.04.2003, which are the rules relating to the terms & conditions of civilian employees of Unit-Run-Canteens paid out of Non Public Fund Account clearly & unambiguously stipulates that said rules shall apply to all civilian employees of URCs but shall not apply to any person engaged on daily wages or on casual employment or to those hired on contractual basis. Said rule is qualified with further requirement that condition of service of such persons “**will be regulated by their appointment letters**”. In other words, in case of daily wagers, casual employees and/or engaged on contractual basis, conditions of service have to be explicitly clear and regulated by their appointment letters. On the one hand, respondents’ stand is very specific, unambiguous and clear that he was interviewed for “temporary post of salesperson”, but on the other hand they described him as having been appointed on “daily wages”. The term “temporary post” or “daily wager” are two distinct and different, carrying different meanings. There is a vast difference

between a person who is said to be holding a “temporary post” or appointed on “daily wages”. As per respondents’ own regulations, the terms and conditions of daily wager/casual employment/engaged on contractual basis, have mandatorily be regulated by their appointment letters. It is not the case of respondents that either in the year 1997 or any time thereafter, they had ever issued any appointment letter. On the other hand, as per reply para 1, specific stand taken by respondents is that **“no appointment letter was given in writing to the applicant”**. We may also note that pursuant to directions issued by Hon'ble Supreme Court in *Union of India vs. Mohd. Aslam* (supra), respondents had framed terms and conditions of URCs employees on 14.09.2001, but the same were not approved by Hon'ble Supreme Court & therefore, another terms & conditions were issued on 28.04.2003.”

15. The Tribunal has also pointed out another shortcoming in the case of the petitioner in the following words :-

“13. Furthermore, respondents failed to explain as to how same authority, i.e. Shri Sanjay Dawar, Lt. Col, acting as Canteen Officer took a contrary and quite opposite view on 22.04.2003 and 28.04.2003. As noticed hereinabove, vide first communication, details of civilian employees working in URC at 510 Army Base workshop, Meerut Cantt had been detailed, which included the applicant’s name, though vide latter communication against columns “authorized”, “held”, “surplus” and “deficient”, remarks made were “nil” against each of them. At no point of time, prior to 16.11.2005, applicant was ever informed that he was employed & treated to be working on daily wages. From a cumulative reading of all these aspects, it appears that all these have been done by said official only in order to deprive him the status of a Government servant as declared by Hon'ble Supreme Court in *Union of India vs. Mohd. Aslam* (supra).”

16. Once issue regarding nature of appointment of the respondent is settled in the manner indicated above, all other arguments of learned counsel for the petitioner automatically stand answered. As the respondent was not a daily wager, he shall have the benefit of the rules and is not excluded by virtue of Rule 5(e). Judgment of the Supreme Court in *Suresh Chandra Jha* (supra) is also not applicable in

such a case. On the contrary, the case would be covered by *Mohd. Aslam* as well as *Dharma Nand*, as rightly held by the Tribunal.

17. We, thus, find no merit in this writ petition and dismiss the same with costs quantified at Rs.10,000/-.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

April 02, 2009
nsk