

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29th September, 2011

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Date of decision: 30th April, 2012

+ **WP(C) 5695/2000**

UNION OF INDIA & OTHERS

.....Petitioners

Through: Mr. Anurag Kasana, Advocate with
Mr. Anuj Gupta, Advocate.

-versus-

FEDERATION OF ALL INDIA CENTRAL GOVT. CANTEEN
EMPLOYEES WORKERS ASSOCIATION & OTHERS

.....Respondents

Through: Mr. Naresh Kaushik Advocate with
Ms. Anita Kalkal Chaudhary, Advocate for
R-1.
Ms. Rekha Palli, Advocate with Ms. Amrita
Prakash, Advocate for R-3. .

**CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

SIDDHARTH MRIDUL, J.

1. The present writ petition filed by Union of India assails the order dated 3rd December, 1999 in O.A. No.572/1996 whereby the Central Administrative Tribunal (CAT), Principal Bench, New Delhi has directed that the Central Government Canteen employees be given the benefit of the entire past service prior to the said employees being declared as Government servants for counting towards pensionary benefits.

2. The facts as necessary for the disposal of the present writ petition are that:

- (i) As per decision taken by the Government of India all posts in non-statutory canteens and tiffin rooms run departmentally by the Government of India were treated as posts in connection with the affairs of the Union vide Notification bearing No.6(2)/23/77-Welfare dated 11th December, 1979 w.e.f. 1st October, 1979. The said notification provided, *inter alia*, that necessary rules governing the service conditions of the canteen employees will be framed having retrospective effect from 1st October, 1979.
- (ii) Accordingly, the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980 were notified on the 23rd December, 1980. These rules comprehensively provided for the various service conditions like rules of recruitment/promotion, appointing/disciplinary authority, probation, seniority, medical facilities, gratuity, provision of EPF, rules for conduct and discipline, pay and allowance applicable to various posts. These rules entitled the canteen employees to be treated as a separate cadre, although they were not considered full-fledged Government employees.
- (iii) Some sections of canteen employees in order to obtain the status of regular Government employees filed a writ petition before the Supreme Court being Writ Petition No.6189-

7044/1983 and 8246-55/1983 (*C.K. Jha and Others vs. Union of India* and *V.N. Sharma and Others vs. Union of India*). In these petitions, the respondents herein mainly pressed for the status of full-fledged Government employees. In these petitions the Supreme Court passed an interim order dated 26th September, 1983 in the following terms:-

“We direct that pending hearing and final disposal of these petitions all employees of non-statutory canteens will be paid at the same rate and at the same basis on which employees of statutory canteens are being paid.”

- (iv) In the meanwhile, employees of the Railway Canteen also filed writ petitions bearing Writ Petition No.2275-96/1982(lead case captioned as *M.M.R. Khan & Others vs. Union of India*) before the Supreme Court of India. The said writ petitions were decided by the Apex Court on 27th February, 1990 declaring the employees of statutory, non-statutory and non-statutory recognized canteens as Railway employees w.e.f. 1st April, 1990 and consequentially entitled to all the benefits of Railway employees except those employees who had already been granted status of regular employees since 22nd October, 1980.
- (v) In order to implement the judgment of the Apex Court the Railway Department issued suitable Office Orders dated 4th December, 1990.
- (vi) Pursuant thereto the writ petitions of the respondents herein i.e. employees working in the canteens of the Government of India

was also allowed by the Supreme Court vide order dated 11th October, 1991. The said order and judgment was in the following terms:-

“In fact, this group of cases should have been finally disposed of along with the main case W.P.(C) Nos.2275-76 of 1982 reported as M.M.R. Khan & Ors. Vs. Union of India & Ors. (1990 (Spple) SCC 191).

We are of the view that the facts before us in these cases squarely attract the decision in the reported case to be applied to them. In that view of the matter, we allow the Writ Petitions for the reasons indicated in the said Judgment and direct the benefits to be given to the Petitioners in the following way:

By an interim order dated 26.9.1983 certain reliefs had been granted. In respect of the reliefs already granted this order shall be deemed to be operative from that date. In case any further benefits are admissible, those will be admissible from 1.10.1991.

For the purpose of calculation of pension, service from the date of the interlocutory order shall be counted.”

- (vii) The Government of India implemented the order of the Supreme Court by issuing direction vide O.M. dated 29th January, 1992 granting full-fledged status of the Government employees to employees of the canteens. A corrigendum containing detailed orders was issued on the 16th December, 1993 by the Department of Personnel and Training extending the service and GPF benefits to the employees. The O.M. clarified that the services rendered prior to 26th September, 1983 are to be taken into account as quasi permanent to the extent their actual qualifying service falls short of the minimum service required.

(viii) In the meantime, the Railway Department issued further orders dated 5th December, 1993 and 9th November, 1993 for giving benefits by recognizing entire past service of the canteen employees prior to 22nd October, 1980 and 1st April, 1990 to be rendered on regular basis for pensionary benefits.

(ix) On becoming aware of the orders passed by the Railway Department for the benefit of their canteen employees, the employees of the canteens of the Government of India being similarly situated approached the Supreme Court demanding parity of status with the Railway canteen employees. The Supreme Court vide order dated 3rd October, 1994 dismissed the writ petition, granting liberty to the canteen employees of the Government of India i.e. petitioners therein to approach the High court or the CAT whichever has jurisdiction. The said order dated 3rd October, 1994 is as follows:-

“The Writ Petition is dismissed, but the dismissal will not preclude the petitioner from approaching the High Court/Central Administrative Tribunal whichever has jurisdiction.”

(x) In the context of the factual matrix as set out hereinabove the respondents herein approached the CAT culminating in passing of the order impugned before us.

3. On behalf of the petitioner it was urged that the Supreme Court while passing the order in the case of Railway Canteen employees was clearly aware of the fact that employees serving in non-statutory canteens under the

Railway Department had already been granted the benefit of pensionary scheme by taking into account the entire service rendered by them as being regular service and that despite this the Supreme Court while passing the order dated 26th September, 1983 in writ petitions of the employees of canteens of Government of India consciously made a departure and held that the pension may be given to the employees serving in non-statutory canteens who retired after 1st October, 1991 by reckoning their regular service only from 26th September, 1983. It was urged that the Supreme Court vide order dated 10th August, 1993 even went to the extent of clarifying that only those employees whose service falls short of the qualifying period, the service rendered by them prior to 26th September, 1983 will be considered in order to make good the shortfall. It was then argued on behalf of the Union of India that the decision of the Railway Department for reckoning the entire past service rendered by their Canteen employees for availing pensionary benefits is independent and no parity can be claimed by employees of Government canteens on the basis of the same.

4. The petitioner relied on the decision of the Supreme Court in ***Union of India & Ors. v. Kamla Devi, V (2005) SLT 601***, where the Supreme Court held that “*the issue as far as cut-off date of classification of non-statutory canteen employees is concerned, it must be taken to have been concluded by the order dated 10.8.1993 passed by this Court.....The order dated 10th August, 1993 has attained finality and there can be no dispute as to the language of the order.*”

5. We do not agree with the contentions raised on behalf of the petitioner for the following reasons. **Firstly**, the Supreme Court in the order dated 11th October, 1991 disposing of the Writ Petition No.6189-7044/1983 and 8246-8255/1983 clearly recorded that the writs filed by C.K. Jha and others should have been finally disposed of along with the main case Writ Petition No.2275-76/1982(*M.M.R. Khan & Others vs. Union of India*). Consequently, the Supreme Court acknowledged that the cases squarely attracted the decision in the main case reported as *M.M.R. Khan (supra)*. **Secondly**, the issue of the Supreme Court being aware of the fact that the employees serving in non-statutory canteens under the Railway Department having already been granted the benefit of pensionary scheme by taking into account the entire service rendered by them as being regular service at the time of passing the interim order dated 26th September, 1983, is not correct since the decision of *M.M.R. Khan (supra)* was noticed by the Supreme Court only in its order dated 11th October, 1991 and no other material has been furnished on behalf of the petitioner in this behalf. **Thirdly**, in *Kamla Devi (supra)*, relied upon by the petitioner, it was clearly noted that “*We are making it clear that this decision will not affect the proceedings said to be pending before the CAT on the application of the Federation dated 3.12.1999 in any manner*”. **Fourthly**, if the issue of the respondent claiming parity with employees of the Railway canteens had been finally determined by the order dated 10th August, 1993; in that event the Supreme Court would not have granted the respondent herein liberty to approach the High Court/CAT whichever has jurisdiction on 3rd October, 1994. **Lastly**, we are in complete agreement with the observations of the CAT as recorded in paragraph 10 of the impugned order to the following effect:-

“10. Equally is the first principle of justice. When a particular benefit is granted to employees of one Department of the Govt. of India, the same cannot be denied to other similarly placed employees of other Departments under the same Government. It would otherwise be violative of the Article 14 and 16 of the Constitution and will be against the spirit of justice. The employees of the canteens of the Central Government Departments need to be given the same benefit as has been given to the employees of the Railway canteens both being under the Central Government. It is noteworthy that while allowing the Writ Petition in the case of C.K. Jha and Ors, the Hon’ble Supreme Court has acknowledged that these cases squarely attract the decision in the main case reported as M.M.R. Khan & Ors v. UOI & Ors (Supra). Thus there is no denial that these employees are similarly placed to the employees of the Railway canteens. The applicants’ case is further strengthened by the judgment in the case of employees of canteens of Defence Industrial Establishments as reported in 1988(4) SCC 478.”

6. In the circumstances, the writ petition is devoid of merits and consequently dismissed, without any order as to costs.

SIDDHARTH MRIDUL, J.

ACTING CHIEF JUSTICE

APRIL 30, 2012

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