

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.4958 of 2011

Date of decision: 24.8.2015

Hostel Mess Workers Union

... Petitioner

Versus

The Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.K.Malik, Sr.Advocate with
Mr.Vijay Dahiya, Advocate
for the petitioner.

None for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The Hostel Mess Workers Union of the Kurukshetra University has filed the present petition against the Kurukshetra University etc. assailing the award of the Presiding Officer, Labour Court, Ambala dated 19th August, 2010. The Labour Court has held that the workers are not entitled to any relief whatsoever as the provisions of the Industrial Disputes Act, 1947 were not applicable or attracted to the instant case. The Labour Court has held that the Union has filed the present claim statement in the industrial reference by willfully and intentionally taking false and frivolous pleas which are in abuse of the process of law. The reference has been

answered against the workmen and in favour of the management. The first question is: were these comments called for on the facts in the decision making when the labour court was tasked to adjudicate the disputes in the reference made by the appropriate government. This issue will be examined after introducing the background of the disputes between the parties

2. The brief facts are that the workers have a registered union namely Hostel Mess Worker Union (registered), Kurukshetra University, Kurukshetra. The members of the Union are employed to work in different hostels run by Kurukshetra University on campus and have been working for the last several years as cooks and waiters etc. before the reference was made. They were appointed by verbal orders of the Chief Warden of the Hostels and were paid consolidated salary from the establishment fund of the University. They worked under the control and supervision of the Wardens of hostels where they were posted. They were transferred from one hostel to another by the Chief Warden as per his wishes. The hostels belonged to the University. The mess facilities for students of the University where the members of the petitioner union worked were meant to provide food exclusively to the students who resided in hostels of the University. The students pay mess charges to the University from where the funds are garnered to pay salaries to the mess staff.

3. Dispute arose among the parties, one of which dispute was the call by workers seeking regularization of their services which demand had been voiced for a sufficiently long time. The University disputed their status as employees of the University and disclaimed direct relationship of master-servant. The University defended the action before the labour court pleading

that the hostels are run by different Mess Committees and all the Mess Committees are independent units and take their own decisions as per the need of the hour. The salaries are paid to the workers by the respective Mess Committees from funds collected from student to defray the cost of meals. The disputes by and large covered areas of working hours and regularization of services as the mess rooms were an integral part of the university without which the student body could not survive. There is no gainsaying that so long as there are students they require a square meal. Without students there is no university. The argument is cyclic.

4. The Labour Court framed as many as 10 issues for trial, the 8th of which was whether there was no relationship of master-servant between the parties. The Labour Court has returned a finding that the University cannot contend that it bears no relationship with the workers and the University is an employer even though mess workers are controlled by Mess Committees and the work and conduct of the workers are controlled and supervised by the respective Mess Committees. Therefore, the first jurisdictional test was satisfied when the relationship of employee-employer was established on the file by the findings of the labour court.

5. However, on the issue of regularization, the Labour Court misled itself to assume that the mess workers held a public post which needs to be filled in accordance with statutory rules and therefore the appointments were not in consonance with the constitutional scheme of appointments contained in Articles 14 and 16 of the Constitution which required filling up of posts by inviting applications from the public and giving equal opportunity to all the eligible candidates to compete for the

posts in different mess facilities.

6. The Labour Court over read the cross-examination of the witnesses produced by the workmen and thought that the workers had conceded that the University was governed by Act and Ordinances and worked under them. The workman in the stand deposed in the cross-examination admitting that before a post is created or is filled the sanction and approval of the Government has to be obtained. Without the wish of the Government, no posts are filled in the University. The witness stated that he had never seen any advertisement in the newspaper calling applications for filling up the posts of mess workers. He was not in a position to say that there was no document on the basis of which it may be said that the applications were invited to consider cases of appointment of mess workers or that a Selection Committee has been constituted for the purpose. None of the workers had been appointed to the mess facilities after public advertisements were issued inviting applications. They fairly conceded that the mess workers are not appointed after an interview. None of the workers had appointment letters in hand. He admitted that the workers had approached the High Court but the petition was not accepted and was dismissed. He admitted that the workers were paid out of from mess charges. The Labour Court was swayed by this cross-examination and has dismissed the reference on the ground that the appointments of the mess workers were violative of Articles 14 and 16 of the Constitution of India. Therefore, the question of regularization of services does not arise. To understand the line of reasoning, it is best to reproduce the reasoning in the

impugned award verbatim : -

“16. Therefore, it goes undisputed on the record of the file that the petitioners were appointed only on application made by them neither any advertisement was issued in the newspaper nor any interview was conducted whereas the judgment relied upon by the respondent-management emphasize and point towards the mandate of the constitution that the public post on which the workman have sought reinstatement/regularization was required to be filled upon by following the principles of article 14 and 16. Since, admittedly no such procedure was adopted, therefore, the appointment itself being illegal, the question of regularization into service does not arise. Thus on account of this alone factor, it has to be held in emphatic terms that the petitioner were estopped from filing the present claim statement by their own act and conduct.

17. Therefore, in view of my aforesaid discussions, it becomes crystal clear that the petitioners just cannot be held entitled to any relief what-so-ever as the provisions of the Industrial Disputes Act were not applicable/attracted in the instant case and further that the petitioners have filed the present claim statement by way of willfully and intentionally taking up false and frivolous pleas just as an abuse of process of law. Accordingly, all these issues are hereby decided against the petitioners-workmen and in favour of the respondents-management.”

7. The award was passed on 19th August, 2010 by the Presiding Officer, Labour Court, Ambala.

8. It may be noted that the case mentioned in the cross-examination refers to CWP No.8562 of 2003 where the Union had approached this Court seeking regularization of services and a direction was issued to the University to consider the representation dated 10th June, 2003 and pass orders. It was in the process of consideration of that representation that the Chief Warden of the University rejected the demand of the Union by passing an order dated 26th March, 2004 in which the Warden denied the relationship of employee-employer between the workers and the University. Therefore, this Court did not decide anything on merits when it passed the orders and the Labour Court has used this handle without appreciating the nature of the orders passed by the Court to foreclose the case of the workers. When this Court passes orders to decide representations it expresses no opinion on the merits of the case unless it is specifically indicated in the order for the respondents to act in a particular fashion. In the award, the Labour Court has picked up this writ petition and used it as a reason to non-suit the workers.

9. It is the contention of Mr. R. K. Malik, learned senior counsel that once the Labour Court rejected the stand of the University that there is no relationship of master-servant between the workers and the University, then there can be no justification in denying consideration of the benefit of regularization on merits which benefit has been extended by the University with respect to its other employees thereby occasioning unfair discrimination without there being any intelligible differentia between the two set of employees. He refers to the policy of the Kurukshetra University

P-5 to P-9 to submit that the University was not without regularization

policies dated 27th May, 1993, 11th May, 1994, 7th March, 1996, 18th March, 1996 and 1st October, 2003 under which the University acted to implement the scheme of regularization in the University, the University being an instrumentality of the State was bound in their ordinances to implement the directions of the State Government addressed to it.

10. It is the further contention of Mr. Malik that even in the decision of the Supreme Court in **Secretary, State of Karnataka v. Uma Devi;** (2006) 4 SCC 1, directions have been issued that those who are working for the last 10 years, they may be considered for regularization. The decision in **Uma Devi** case has been explained as inapplicable to labour laws in the judgment of the Supreme Court in **Maharashtra State Road Transport Corporation & anr v. Casteribe Rajya P. Karmchari Sanghatana,** (2009) 8 SCC 556 which the labour court would keep in mind.

11. The operative part of the judgment in Uma Devi with respect to regularization is reproduced below for ready reference : -

“The Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date.”

12. This aspect has not been considered by the Labour Court. The very flaw pointed out by Mr.Malik is that once the Labour Court has recorded a finding that the workers of the Union are employees of the University and it is undisputed that Kurukshetra University is an industry and the petitioners are workmen, then there is no justification to deprive the petitioner worker union the benefits of the provisions of the Industrial Disputes Act, 1947 and particularly Entry 10 of the 5th Schedule to the Act where keeping *badlis* for long years as temporary amounts to unfair labour practice. He refers to a decision of this Court rendered in **Khajjan Singh v. State of Haryana** reported in 2015 (1) SCT 604 on the interpretation of Entry 10 Schedule V of the Industrial Disputes Act. He informs that the letter patent appeal against the judgment stands dismissed.

13. Mr. Malik further submits that if directions have been issued that the workers of the petitioning union that they are entitled to the protection of the provisions of the Act, then the University was bound to follow the principles laid down in the Act. By denying this valuable benefit under the applicable Act, the award of the Labour Court suffers from error and fundamental flaw and to that extent, the award deserves to be set aside. Still further, he laments that even the benefit of the Minimum Wages Act, 1948 is denied to the members of the worker's union and exploitation is writ large in taking work out from the mess workers for years together which is exploitative in nature, character and degrees. On the question of public appointments and constitutional scheme under Articles 14 and 16, Mr.Malik cites the law laid down by the Supreme Court in **Harjinder Singh v.**

Punjab State Warehousing Corporation; (2010) 3 SCC 192, **Deepali**

Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & Ors;
(2013) 10 SCC 324, **Anoop Sharma v. Executive Engineer Public Health Division No.1, Panipat (Haryana)**, (2010) 3 SCC 497 to contend that the mess workers stand in the non-rule territory since no rules have been framed governing the terms and conditions of mess workers in Kurukshetra University and therefore there is no violation of any constitutional provisions in their appointments.

14. In the written statement filed by the University, it is admitted that Government of Haryana has a deep and pervasive control in the affairs of the university in the matter of sanction and creation of new posts and filling up of various vacancies as per Kurukshetra University Act and prior consent of the State Government is required for creating and filling new vacancies. There are no sanctioned posts of mess workers in Kurukshetra University. If there are no sanctioned posts then there is no rule or regulation which sanctions appointments and these can only be treated as engagements and if the engagement go on for a number of years, then rights may accrue for regularization. This aspect should have been considered by the labour court in right earnest as it was the referred dispute.

15. I have considered the arguments of Mr. Malik without any assistance from Kurukshetra University since none has appeared to represent them and the matter has been pending since 2011 to the detriment to the interest of the mess workers union.

16. I find myself in agreement with the contentions advanced by Mr. Malik as above that on all fronts the award is seriously impaired and defective and cannot be sustained for the reasons pleaded by him in the

petition and pressed at the time of hearing and recorded in this order. There was no occasion to have made such harsh comments on the worker's case for no rhyme or reason.

17. However, since the finding of employer-employee relationship in favour of the worker union has been recorded but the other issues have been side-tracked for irrelevant reasons, then it is not open to this Court for the first time to examine the issue of regularization of services or the other disputes raised in the demand notice by the hostel mess workers union (registered) and in the circumstances, the matter deserves to be remanded to the Labour Court for fresh consideration on all aspects except on the point adjudged properly that the relationship of employer-employee exists between the workers and the University and to that extent, the award is saved as far as issues No.1 and 9 are concerned. In the remand proceedings, only issues No.2 and 3 will be re-adjudicated by passing a fresh award. However, the Labour Court will not be influenced by anything said in this order and would be free to form its own opinion on the evidence adduced by the parties. The remaining issues were dismissed as not pressed and given up by the management before the Labour Court and are no longer open to adjudication.

18. For the foregoing reasons, the petition is allowed. The award is partially set aside to the extent indicated above. The case is remanded to the labour Court, Ambala to adjudicate afresh issues 2 and 3 on merits.

19. Parties to appear before the learned Presiding Officer, Labour Court, Ambala on remand on 28.9.2015.

20. The learned labour court would make an endeavour to finalize the remand proceeding as expeditiously as possible so that the matter is not unnecessarily delayed any further, the case being an old one.

21. Copy of this order be sent to the respondent university by the office for information and further necessary action.

(RAJIV NARAIN RAINA)
JUDGE

August 24, 2015
Paritosh Kumar