

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 14.05.2018****CWP No.23471 of 2017 (O&M)**

Rakesh Kumar Sharma & others

...Petitioners

Vs.

Union of India & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. G.S.Bal, Senior Advocate, with
Mr. Harmanpreet Kaur, Advocate,
for the petitioners.Mr. Malkeet Singh, Advocate,
for the respondents.**RAJIV NARAIN RAINA, J.**

Of the 10 co-petitioners, 3 are Ex-servicemen released from the Army. They joined civil service on different posts i.e. Upper Division Clerk, Cashier, Billing Clerk, Peon, Salesman etc. with Panther Canteen, Amritsar Cantt in different years ranging from 1984 to 2008. Their names were either sponsored by the Employment Exchange or they came by way of Press advertisements. Their appointments and service conditions are governed by the Guidelines Regulating the Terms & Conditions of Service of Civilian Employees of Unit Run Canteen Paid out of Non Public Fund.

In R.R.Pillai (dead) through LRs Vs. Commanding Officer, HQ S.A.C(U) & others, AIR 2010 SC 188, a three Judges' Bench of the Supreme Court ruled that URC employees are not Government employees

by any stretch of imagination. As a result, the guidelines governing the terms & conditions of employment of Unit Run Canteen (URC) issued on 28.04.2003 in terms of the then prevailing law declared by the Supreme Court on 04.01.2001 in 'Union of India & others Vs. M. Aslam & others' stood annulled. Revised Guidelines were issued on 11.08.2014 w.e.f. 01.07.2013. These URC employees are paid out of Non Public Funds and from income generated by the Canteen. In the new dispensation, the Guidelines define the terms & conditions of employment. 'Unit Run Canteen Employee' was defined in Rule 2(h) of the Guidelines to mean a person who is appointed as a regular employee of such Unit Run Canteen under 'these guidelines', whereas URCs are classified under Rule 4 based on annual turnover of a canteen having regard to the profit earned in the manner prescribed. Rules 6 & 7 deal with 'Classification/Recruitment of Employees' and 'Termination of Employment' respectively. Both the Rules read as follows:

“6. Classification /Recruitment of Employees - All employees shall be classified as under probation during their first year of service. On successful completion of one year of probation, they shall be termed as temporary employees till five years of service (including the period of probation). On successful completion of five years of service, they shall be termed as regular employees up to the age of superannuation or up to the date of resignation/termination of service. The employees shall remain on probation or temporary employees unless they are communicated in writing about their status as regular. The initial recruitment of employees will be done based on Qualitative Requirements (QRs) formulated by the respective URC Managements through a Board of Officers. Employees will be subsequently confirmed as regular, if they meet the terms, conditions and QR as formulated by the URC Management through a Board of Officers.

7. Termination of Employment - The services of an employee on probation may be terminated by the employer at any stage without assigning any reason during the period of probation. The services of a temporary employee may be terminated by the employer if he/she is found to be unfit for performance of the assigned duties.”

On record is Annex P-6 of pay drawn for the month of January, 2016 and the status of the 10 petitioners of the 11 workers were shown as ‘Permt. Emp.’ with their date of next increment falling on 01.07.2016. At Sr.No.9 is one K.J.Rana, Billing Clerk, who is not the petitioner herein, while the rest are.

The services of the petitioner, namely, Kamaljit Rana were confirmed vide order dated 01.03.2005 (Annex P-3) and similar appointments orders were issued in respect of other petitioners. They are recorded as regular hands in the papers and are entitled to continue in service till they attain the age of 60 years. They were shown permanent employees till April, 2017. Thereafter, their names have been clubbed with contractual employees. This is where the dispute lies to be resolved in this petition. The 4th respondent, In-charge of the Canteen, issued letter dated 26.10.2016 advising the petitioners to produce the copy of the letter of confirmation given by Panther Canteen confirming their regular appointment. They were asked to supply information by the next day. The petitioners responded by a representation informing that they had joined long time back and have served for decades and as per the guidelines of 2003, those who completed one year of service as on 2001 are to be treated as regular employees, but no confirmation letter was issued to them by the Canteen Management. The 4th respondent - Canteen Officer, addressed letter dated 08.11.2016 to petitioner No.6 that the guidelines dated 26.04.2003 stand annulled. Therefore, they

should submit copy of confirmation letter within two days before further action is taken. Similar letters were issued to the rest of the petitioners.

As the Panther Canteen falls within the cantonment area, entry is restricted and without proof of identity, none can enter the Army cantonment area. To tide over this, the petitioners had been issued Canteen Smart Cards to facilitate entry. The adverse action taken by the 4th respondent started when the petitioners were asked to sign a service contract for a period of not exceeding 350 days w.e.f. 01.10.2017 to 16.09.2018. They were called upon to deposit security of one month's salary, which would be refunded on termination of contract (less deduction if any at that time). On their refusal to sign the contract, the petitioners were issued show cause notice/s dated 06.09.2017 to show cause as to why disciplinary action should not be taken against them. The petitioners responded to the notices, one of which is Annex P-16. Thereafter, their services were abruptly terminated vide letters dated 28.09.2017 without any further notice or hearing, copies of which are annexed as Annex P-17/1 to P-17/10 to each of the 10 petitioners.

The petitioners submit that the termination order/s have been passed without complying with the provisions of Rule 28 read with Annexure 2 which lay down the procedure for dismissal. They urge that their status from permanent employees has been changed to contract arbitrarily. Service of decades would indicate confirmation and the 4th respondent was wrong in insisting for production of letters of confirmation in the face of letters of 2005 conferring status of regular employees on the petitioners. The letter dated 01.03.2005 (Annex P-3) addressed to petitioner, namely, Kamaljit Rana in para.2 records that *"you are hereby confirmed in your*

present appointment of Salesman -cum- Billing in Panther CST Canteen Amritsar Cantt with effect from 01.03.2005”.

The Supreme Court in *R.R.Pillai's* case held only that the petitioners were civil employees, but their status earned even before the 2003 Guidelines (some of the petitioners) would carry on regardless of the substitution of the 2003 Guidelines with the 2014 Guidelines. Even the Guidelines of 28.04.2003 recorded the petitioners as civilian employees of URC paid out of Non Public Fund. The petitioners could not be forced to sign service contract, as insisted by 4th respondent for assured continuance in service on contract basis altering their status to their disadvantage. There may be employees engaged on contract basis working in the same Canteen (non-petitioners), but their cases are not similar to the petitioners, who have served for one to three decades.

The 3rd and 4th respondents have filed written statement contesting the case. They object that the URC is neither State nor instrumentality of the State and, therefore, is not amenable to jurisdiction under Articles 12 and 226 of the Constitution. The Canteen has been established basically to cater to the requirements of esteemed defence personnel, ex-servicemen and their families in the area by providing consumable stores purchased out of the funds generated through profit earned out of the same. They admit that the canteen is itself a welfare measure, as it provides to meet the basic facilities of Canteen services apart from generating employment to the local ex-servicemen/genuine civilians. The canteen works under the directions of integrated headquarters of Ministry of Defence through its Canteen Management Committee, the Patron of which Committee is the General Officer Commanding (GOC), 15 Int.

Division and includes the Deputy GOC and two Colonels, a Secretary nominated Officer from 171 Med. Regt. and the Manager, who is a retired from rank Lt. Col./Major or equivalent. They inform that there are 43 employees working in the Panther Canteen and the contract agreement in respect of 32 employees is renewed every year. It is stated that initially the appointment of the petitioners was made on contractual basis and used to be renewed every year till June, 2001, but thereafter neither the contract has been renewed nor any letter of appointment issued to them. There are, therefore, two sets of employees i.e. 32 contractual employees (non-petitioners) and 10 petitioners who have approached this Court against their termination. The answering respondents call activity of running Canteen services as a private venture. Rule 5 quoted in para.7 of the preliminary objections reads as follows:

“5. These guidelines shall apply to all civilian employees of URCs paid out of Non Public Fund account, but shall not be applicable to any person engaged on daily wages or on casual employment or those hired on a contractual basis whose conditions of service will be regulated by their appointment letters. These guidelines shall not be applicable to any government employee, who may for the time being, be detailed to work therein in any capacity whatsoever.”

The answering respondents have studiously avoided any reference to the letter dated 01.03.2005 (Annex P-3) issued to the petitioners confirming their services/appointment. There is no mention of this letter in the written statement. This absence of pleading or explaining its nature is what is insisted upon by the petitioners to their advantage as the best evidence of service status to persuade this Court to hold that a declaration of permanence by deemed confirmation is to be drawn. The insistence of 4th

respondent for production of confirmation letter is an excuse to terminate their services, if the petitioners did not relent to change of status from permanent to contractual. There is also no reference to Annex P-6, where the petitioners are shown in the heading of the document as “PERMT EMP”, meaning thereby, permanent employee.

When this matter came up for hearing on 12.10.2017, this Court while issuing notice of motion observed that consideration of interim prayer would be after service of notice to the respondents. On notice, the respondents appeared and were directed to file statement of objections, both on main matter as well as interim prayer before the next date of hearing failing which interim prayer would be extended in favour of the petitioners. Thereafter, the matter was posted for 30.01.2018, when respondents appeared and filed written statement. On the next date of hearing i.e. 21.03.2018, the Court passed the following interim order:

“Heard the matter at length. Having regard to the nature of appointment issued to the petitioners that they were on probation in the year 1984, respondents cannot hold that petitioners were appointed on contract basis.

Accordingly, Annexures P-17/1 to P-17/10 are stayed until further orders.

List this matter on 12.05.2018.”

Meanwhile, an application bearing CM No.5919-CWP of 2018 was filed by the petitioners with the prayer to join their post unconditional under the interim orders by bringing to the notice of the Court a letter dated 22.04.2018 issued by the 4th respondent to the petitioners with reference to stay order passed by this Court received in Panther Canteen on 06.04.2018. The relevant extract from the letter dated 22.04.2018 reads as follows:

“1. Reference stay order by Honourable High Court of Punjab & Haryana at Chandigarh dated 21 Mar 2018 received by post in Panther Canteen on 06 Apr 2018.

2. You are hereby instructed to join the duties at Pantheer Canteen Amritsar with effect from 17 Apr 2017 on the following conditions:

(a) Your services with Panther Canteen will be purely on contractual basis upto 350 days or till finalization of case as given out in the subject whichever is earlier.

(b) You have to sign the letter of appointment document on joining the duties. Contractual agreement can be extended or terminated based on your disciplinary record.

(c) You have to deposit back the Canteen Smart Cards immediately on joining the duties as Canteen employee are not authorized to the same vide AO 2/2006/QMG read in conjunction with para 2(h) of the Guidelines for Civ Employees of the URC vide IHQ of MoD (Army) letter No.96029/Q/DDGCS dt. 11 Aug 2014 and para 6 of IHQ of MoD (Army) letter No.96029/Q/DDGCS dated 11 Aug 2014.

(d) You have to respect and abide by the terms and conditions contained in Panther Canteen SOP and letter of appointment.”

The learned senior counsel Mr. G.S. Bal submits that the tone and tenor of this letter flies in the face of the interim order dated 21.03.2018 and is rather contemptuous and irreverent. It is a rabid insistence of the reasons which led to the termination in pending litigation. A serial termination brought about without notice and hearing and is plainly in violation of principles of natural justice. If the contractual appointment document is signed, it will create a fiat accompli to the main prayer in the petition. They would be seen as succumbing to the change of status and acceptance of the new order. If the Canteen Smart Cards are deposited, the

petitioners would lose access to the workplace within the Cantonment area. Their entry in the cantonment area would be prohibited. It would be another way of saying good bye, for all intents and purposes acting as termination by itself.

Heard.

I find merit in the submission of Mr. Bal that the status of the petitioners could not be altered adversely after the probation period was over long years ago. They have been confirmed in 2005, which is a crucial aspect brushed aside by the answering respondents under the carpet. The termination order/s deserve to be set aside not only for the reason that the petitioners are permanent/confirmed employees of Panther Canteen, but also for the reason that the termination order has been passed without notice and affording an opportunity of hearing to the petitioners. The petitioners are not government servants in view of *R.R.Pillai's* case, but that does not mean that they are defenceless to be left to the mercy of the 4th respondent.

The Supreme Court in *R.R.Pillai's* case held that the question; whether URC can be treated as an instrumentality of the State, does not fall for consideration as that aspect had not been considered by the Central Appellate Tribunal or the High Court.

On the question of maintainability, Mr. Bal has relied on the judgment of the Uttarakhand High Court in Gopal Singh Vs. Union of India & others [WPSS No.2446 of 2015 decided on 03.05.2017] involving similar controversy. The Bench dwelt on Rule 5 and observed as follows:

“Petitioners were appointed on 1.6.2005 as per the Rules notified on 28.4.2003. Their suitability was adjudged by a duly constituted committee. Rule 5 of the Rules reads as under:

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 04 Jan. 2001 will be treated as permanent employees.*
- (c) *All employees, whether under probation or permanent, could be treated at par with government servants employed in CSD as far as pay scales are concerned. The classification of employees and the pay scales is given at Schedule 'A'."*

Petitioners have completed their probation satisfactorily. Thereafter, they were treated as permanent employees as per Annexure No.3 dated 30.5.2008 and subsequently on 16.1.2009. The emoluments of the petitioners were also hiked vide Annexure No.CA3 to the counter affidavit, but the same, till date, has not been given effect to.

Petitioners surprisingly, though attained permanent status, have been asked to sign a Deed of Contract/Agreement vide the impugned order dated 5.11.2015.

Petitioners have already been appointed as per the Rules on 1.6.2005. They have been conferred the permanent status, as noticed hereinabove. Petitioners had approached the employer to implement the letter dated 3.4.2013. Thereafter, the respondents have asked the petitioners to sign the Deed of Contract. Signing of such a Deed of Contract would alter the service conditions of the petitioners to their detriment. Their status would be changed from permanent to a

contractual appointment. There is a reference to the judgment of Hon. Supreme Court in letter dated 5.11.2015. However, the Hon. Supreme Court has only declared that the petitioners are not the government servants. The action of the respondents asking the petitioners after 10 years of their regular service to sign the Deed of Contract is arbitrary, unreasonable and thus, violative of Articles 14 and 16 of the Constitution of India.

Accordingly, the writ petitions are allowed. Impugned Annexure No.10 dated 5.11.2015 is quashed and set aside. The respondents are directed to give effect to the Circular dated 3.4.2013 (Annexure No.6) within ten weeks from today.”

The action of the respondents asking the petitioners after 10-30 years of their service to sign deed of contract is held to arbitrary, unreasonable, oppressive and harsh and, thus, in violation of Articles 14, 16 and 21 of the Constitution of India.

It is not the case that workload has diminished or the respondents are surplus and are unable to meet and defray salaries to the petitioners in the financial arrangement of payments from non-public funds and from the earnings of sale of consumables etc. in Panther Canteen engaged in public service on the Indian Army. Canteens are necessary adjuncts to Army from the past and are intrinsic part of welfare services.

In view of the above discussion, the instant petition is allowed. The termination order/s are set aside. The petitioners are ordered to be reinstated to service with all consequential benefits.

The petitioners would return their Canteen Smart Cards and the respondents will re-issue as many as there are petitioners on the date of

joining fresh identity cards to facilitate entry into the Cantonment area for carrying out their duties in Panther Canteen, Amritsar.

14.05.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>