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

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Date of Decision:30.05.2019

% W.P.(C) 6446/2019

MINISTRY OF EXTERNAL AFFAIRS AND ANR..... Petitioner

Through: Mr. Ravi Prakash, CGSC with Mr.
Farman Ali and Mr. Shahan Ullah,
Advs.

versus

SH. RAJENDER SINGH AND ORS. Respondent

Through: Mr. Manoj V. George with Ms. Shilpa
Liza George, Advs. for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

CAV No. 616/2019

Learned counsel for the respondent caveator has appeared. The
caveat stands discharged accordingly.

C.M. No. 27368/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

C.M. No. 27367/2019

This application has been moved to seek condonation of delay in filing the petition. Considering the fact that the impugned order was passed by the Tribunal on 23.07.2018 and there is no limitation prescribed for preferring a writ petition, we allow this application. Delay, if any, is condoned.

W.P.(C) 6446/2019 & C.M. No. 27366/2019

1. The petitioner assails the order dated 23.07.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in O.A. No. 283/2014. The Tribunal has allowed the said Original Application and directed the petitioner herein to consider the cases of the respondents – applicants in terms of paragraph 44 of the judgment of the Supreme Court in *Secretary, State of Karnataka and Others v. Uma Devi and Others*, AIR 2006 SC 1806. The Tribunal has held that the respondents would be entitled to all consequential benefits but the payment of arrears would be with effect from date of filing of the Original Application i.e. 24.01.2014.

2. The respondents had preferred the Original Application claiming that two of them joined as cook and tea maker in the departmental canteen run by the Regional Passport Office (RPO), New Delhi in the year 1994. Applicant No.3 joined as a waiter in the same canteen in the year 1997. The

said departmental canteen was exclusively meant for the employees and officers of the RPO at New Delhi. The applicants sought regularisation by placing reliance on the decision of the Supreme Court in ***Uma Devi*** (supra). In the first round, the Original Application was dismissed by the Tribunal vide order dated 29.05.2015. The said dismissal came about in view of the finding returned by the Tribunal at that stage, that there was no recognised canteen in the RPO prior to 2008, nor it was having any sanctioned post, or recruitment rules, against which the respondent applicants could claim to be appointed on casual/ daily wage basis. The Tribunal, in the said order, had observed:

*8. As pointed out in earlier paras, the applicants in the present OA have not been able to establish that they were duly qualified persons appointed to duly sanctioned posts and as such cannot claim the benefit of the law laid down in **Uma Devi** (supra). Counsel for respondents also relied on judgment of **Sombir Singh Vs. Union of India & Ors.**, (WP(C) No. 1463/2014 dated 29.04.2014. We find that the petitioners therein were employees of unit run canteen of the Army Headquarters. As the pattern of working of the canteen in the Army and civil offices are quite different, we do not find that judgment to be relevant in the present case.*

3. The respondents then approached this Court by preferring W.P. (C.) No. 7510/2015. The said writ petition was disposed of on 07.08.2015 with liberty to the petitioners therein to produce relevant documents at the time of the hearing of the Original Application. The petitioners therein were permitted to seek review of the order dated 29.05.2015. The respondent –

applicants then filed additional documents, and after considering the same, the Original Application has been allowed by the impugned order.

4. The submission of Mr. Ravi Prakash, learned counsel for the petitioner is that there was no department- run canteen at the RPO during the period when the respondents claimed to have been appointed as cooks/ waiters. He submits that merely because the respondents, who are 3 in number, got together and started to run their own canteen, would not give them the right to seek regularisation in terms of *Uma Devi* (supra). He submits that there was no sanction for setting up of the departmental canteen; no sanctioned posts created; no recruitment rules framed and; no appointments made – even on casual basis, for the purpose of running the canteen.

5. Mr. Ravi Prakash submits that even in the impugned order, the finding returned by the Tribunal in the earlier round – that prior to 2008, there was no departmental post, has not been upset.

6. Counsel for the respondent, on the other hand, submits that departmentally run canteens, which were informally being run in several Government Departments, were brought into the organizational fold after the decisions of the Supreme Court. He submits that the respondents produced evidence before the Tribunal to show that they had been engaged on casual basis and they were serving in the said canteen, which was running from the time that the respondents have joined the same. Learned counsel has drawn our attention to the O.M. dated 21.04.2008 issued by the DOP&T on the subject of casual workers in Non-Statutory Canteens/ Tiffin

Rooms located in Central Government Offices- Regularization of qualified workers-reg. The said O.M. reads as follows:

“The undersigned is directed to refer to this Department's O.M. of even number dated 24.1.2007 on the above subject and to say that in the said O.M. Ministries/Departments were requested to submit the information showing the number of casual workers working in their Departmental Canteens (being paid from canteen funds). In response, 24 Ministries/Departments have submitted the information. The matter has further been examined in consultation with the Establishment (C) Desk of this Department in regard to regularization of the qualified workers appointed in the Departmental Canteens against the sanctioned posts in irregular manner. Earlier, Estt.(C) Desk of this Department had issued an O.M. NO.49019/1/2006-Estt.(C) dated 11th December, 2006 (copy enclosed) requesting all the Ministries/Departments to implement the direction of the Hon'ble Supreme Court to regularize the qualified persons appointed against the sanctioned posts as a one time measure.

2. Since, the canteen employees have been declared Govt. employees w.e.f. 1.10.1991 on the basis of the Hon'ble Supreme Court judgement and the Departmental Canteens have become part and parcel of the office from where it has been functioning and all the CSS Rules are applicable to the Canteen employees, the direction, issued by the Hon'ble Supreme Court in Civil Appeal No. 3595 - 3612/1999 etc., in the case of Secretary, State of Karnataka and Others v/s Uma Devi and Others has to be implemented in the case of canteen employees also. Ministries/Departments are requested to examine the whole issue of regularizing the qualified casual workers engaged in irregular manner in their departmental canteens in terms of the statutory recruitment rules for the post and who have worked for 10 years or more in duly sanctioned posts but not under cover of orders of Courts or Tribunals, as a one time measure on priority basis.”

7. Learned counsel has also drawn our attention to the inter departmental communication dated 25.08.2008 issued by the Superintendent (Admn) Regional Passport Office, Delhi to the Administrative Officer in the Ministry of External Affairs on the subject of “Setting Up/ Re-Organizing Canteen in the Premises of RPO, Delhi-reg.”

8. Before proceeding further, we may, at this stage itself, observe that the subject of this inter – departmental communication itself indicates that the departmental canteen was not merely started for the first time and set up by virtue of the said communication, or thereafter. Pertinently, this communication dealt with the aspect of re-organising the canteen in the premises of RPO, Delhi-reg. This communication reads as follows;

*“The Administrative Officer (PVIV)
Ministry of External Affairs
New Delhi*

Subject:- Setting Up/Re-organising Canteen in the Premises of RPO, Delhi – reg.

Sir,

Please refer to your letter No.V.IV/551/28/07 dated 28th July 2008 on the subject stated above wherein approval of competent authority has been communicated for (I) setting up of a Departmental Canteen “D” type (II) Setting up of a Managing Committee for Departmental Canteen to be headed by the Regional Passport Officer; and (III) an amount of Rs.18,400/- as initial capital grant for equipment, crockery and furniture etc; to be met out of the budgetary grant of RPO, Delhi.

In accordance to the approval as above, Managing Committee for Departmental Canteen has been constituted as below:-

<i>1. Chairman – Shri V. Mahalingam, Regional Passport Officer, Delhi</i>		
<i>Sl No.</i>	<i>Name</i>	<i>Post for which nominated</i>
<i>2.</i>	<i>Sh S P Kothari</i>	<i>Honorary Secretary</i>
<i>3.</i>	<i>Sh S K Awasthi</i>	<i>Member</i>
<i>4.</i>	<i>Sh S S Khanna</i>	<i>Member</i>
<i>5.</i>	<i>Sh V K Sharma</i>	<i>Member</i>
<i>6.</i>	<i>Smt Ravi Kant Sharma</i>	<i>Member</i>
<i>7.</i>	<i>Sh Rajender Singh</i>	<i>Member (Canteen Staff)</i>

In view of Revised Model Recruitment Rules (copy enclosed), working experience and educational qualification of four existing canteen workers, these four workers may be absorbed against the posts stated as below:-

<i>Name and existing responsibilities</i>	<i>Post against which may be absorbed</i>	<i>Pay Scale</i>
<i>Sh Rajender Singh (9th passed) working as Halwai cum cook cum Manager for the last fourteen years</i>	<i>Assistant Halwai cum Cook</i>	<i>3050-4590</i>
<i>Sh Dheeraj (8th passed) working as tea/coffee maker cum bearer</i>	<i>Tea/Coffee Maker</i>	<i>2610-3540</i>
<i>Sh Sanjay Kumar (5th passed) working as Bearer cum Wash Boy for the last ten years</i>	<i>Wash Boy/ Dish Cleaner</i>	<i>2550-3200</i>
<i>Sh Vikram Singh (8th passed) working as Bearer cum Wash Boy for the last seven years</i>	<i>Bearer</i>	<i>2610-3540</i>

As per administrative instructions for 'D' type canteen maximum_____ (illegible) employees may be engaged as below:

<i>One</i>	<i>Manager/ Salesman</i>
<i>One</i>	<i>Counter Clerk/ Kitchen Clerk</i>
<i>One</i>	<i>Coupon/ Reserve Clerk</i>
<i>One</i>	<i>Halwai</i>
<i>One</i>	<i>Tea/Coffee Maker</i>
<i>Two</i>	<i>Bearer</i>
<i>One</i>	<i>Wash Boy/Dish Cleaner</i>

In place of eight as above, the existing working strength is four only. Approval of competent authority for absorbing the four existing canteen staff may be obtained in the first instance for setting up the Departmental Canteen.

This issues with the approval of Regional Passport Officer, Delhi”.”

9. Learned counsel has also pointed out that the State has also provided subsidy for the purpose of running the canteen and in this regard, he has drawn our attention to the sanction order dated 25.11.2009, whereby sanction was awarded to expenditure of Rs.8565/- for payment to the canteen in charge, RPO, Delhi.

10. The phenomenon of setting up of non-statutory departmental/ co-operative canteen of employees in Central Government Offices is rather old, and was widely prevalent. Since there was no statutory or formal recognition of such like canteens, they were being run informally by the

concerned government department, or by the Government servants posted in the concerned Government Department collectively through formal, or informal co-operative societies on subsidized rates, generally on no profit – no loss basis.

11. The staff engaged to run such canteens, which were either subsidized or run on no profit no loss basis, who were serving in such canteens for long periods of time, clamored for their re-organization and regularization as a part of the department. In this regard, we may refer to the Office Memorandum dated 29.01.1992 issued by the DOP&T on the subject of implementation of Supreme Court judgment in case of Non-Statutory Departmental/ Cooperative canteen employees located in the Central Government Offices. This OM records that the Supreme Court has decided that the employees of the Non-Statutory Departmental/ Cooperative canteens/ Tiffin rooms located in Central Government offices should be treated as government servants w.e.f. 1.10.1991. The employees of these canteens may, therefore, be extended all benefits as are available to other Central Government employees of comparable status from 1.10.1991 except GPF, Pension and Group Insurance Scheme in respect of which a separate communication will follow.

12. This OM directed implementation of the said decision with due care and scrutiny. The expenditure on payment of 'Pay and Allowances' to the employees of canteens was to be booked under a new sub-head 'Departmental Canteens' below minor head 'Other Expenditure' under the major head of account to which the revenue expenditure of the related

Ministry/ Department is ordinarily debited, and exhibited as such in the Detailed Demands for Grants.

13. So far as the RPO Delhi is concerned, it is seen as early as on 07.02.2002, aspect of establishment of full fledged canteen at RPO, Delhi was considered. We find on record a noting dated 23.03.2004, which also records the fact that since 1994 when the office of the RPO moved into its current premises and ad hoc arrangement was put into operation, where a cook supported by three other workers were operating from a space provided on the third floor by the office. The said team was providing refreshments and very limited range of simple foods at rates much cheaper than the open market to the employees of the RPO.

14. The proposal recommended the setting up of a departmental canteen in the premises of the RPO, Delhi, which could be run under the aegis of the welfare division of the MEA on the same lines as in other buildings of MEA.

15. From the materials placed on record, it is, therefore, evident that the respondents were, in fact, informally employed to man and service the canteen at the RPO, Delhi since 1994. The same was being run on no – profit no – loss basis through an informal co-operative society of the staff of the RPO and the canteen was providing food at subsidized rates. It appears that the process of setting up of a departmental canteen gained ground and, in that process, the regularisation of the three respondents was also recommended since they had been serving in the said canteen informally since 1994.

16. Though the sanctioned posts may have been created for the departmental canteen at RPO, Delhi in 2008, the fact remains that the respondents were serving the said canteen from 1994 onwards. Thus, in our view, the direction issued by the Tribunal does not call for interference.

17. It goes without saying that while considering the respondents' case in terms of *Uma Devi* (supra), the fact that the sanctioned posts were created only in 2008 would be taken into account.

18. The petition stands disposed of in the aforesaid terms.

19. We grant three months time to the petitioners to implement the decision of the Tribunal.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

MAY30, 2019

N.Khanna