IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3094 of 2016 alongwith connected matters.

Decided on: 12.11.2020.

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1. CWP No. 3094 of 2016

Ranjana Kumari …Petitioner

Versus

Union of India and others ..Respondents

2. CWP No. 335 of 2016

Kamlesh Chand ...Petitioner

Versus

Union of India and others ...Respondents

3. CWP No. 336 of 2016

Jagat Ram Thakur ….Petitioner

Versus

Union of India and others ...Respondents

4. CWP No. 338 of 2016

Hem Raj and others ...Petitioners

Versus

Union of India and others ...Respondents

5. CWP No. 3097 of 2016

Lt. Col.(Retd.) D.S. Patyal ...Petitioner

Versus

Union of India and others ...Respondents

6. CWP No. 3098 of 2016

Desh Raj Sharma ...Petitioner

Versus

Union of India and others ...Respondents

7. CWP No. 3099 of 2016

Purshotam Kumar ...Petitioner

Versus

Union of India and others ...Respondents

8. CWP No. 3100 of 2016

Pritam Chand ...Petitioner

Versus

Union of India and others ...Respondents

9. CWP No. 3101 of 2016

Karam Chand ...Petitioner

Versus

Union of India and others ...Respondents

10. CWP No. 3102 of 2016

Parshotam Dutt ...Petitioner

Versus

Union of India and others ...Respondents

11. CWP No. 3104 of 2016

Dharam Singh ...Petitioner

Versus

Union of India and others ...Respondents

12. CWP No. 3105 of 2016

B.D. Sharma ...Petitioner

Versus

Union of India and others ...Respondents

13. CWP No. 3106 of 2016

Yash Pal ...Petitioner

Versus

Union of India and others ...Respondents

14. CWP No. 3107 of 2016

Sunil Dutt Sharma ...Petitioner

Versus

Union of India and others ...Respondents

15. CWP No. 3113 of 2016

Jai Pal ...Petitioner

Versus

Union of India and others ...Respondents

16. CWP No. 3114 of 2016

Parbhat Singh ...Petitioner

Versus

Union of India and others ...Respondents

17. CWP No. 3115 of 2016

Rajesh Kumar ...Petitioner

Versus

Union of India and others ...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting ?[1] No

For the Petitioner(s) : **Mr. Kul Bhushan Khajuria, Advocate, in all the petitions.**

For the Respondents : **Mr. Shashi Shirshoo, Central Government Standing Counsel in CWP Nos. 3094, 335, 336, 338, 3097 and 3098 of 2016.**

Mr. Rajesh Kumar Sharma, Assistant Solicitor General of

[1] *Whether reporters of Local Papers may be allowed to see the Judgment ? Yes*

India, in CWP Nos. 3099, 3100, 3101, 3102, 3104 and 3105 of 2016.

Mr. Lokender Paul Thakur, Senior Panel Counsel, in CWP Nos. 3106, 3107, 3113, 3114 and 3115 of 2016.

(Through Video Conferencing)

Tarlok Singh Chauhan, Judge (Oral)

All these petitions have been filed primarily against Trishul Canteen on the premise that petitioners here are the Government employees and thus entitled to file and maintain these writ petitions. This assumption is ostensibly based upon the judgment of the Hon'ble Supreme Court in ***Union of India vs. Mohd. Aslam (2001) 1 SCC 720***, wherein it was held that even Canteen Stores Department (in short the 'CSD') was not the source of funding, other parameters clearly cover the employees of the Canteen and in turn were held to be in Government service.

2. However, doubting the correctness of this view, a three Hon'ble Judges bench of the Hon'ble Supreme Court has then decided the issue in question in ***R.R. Pillai (dead) through LRs*** vs. ***Commanding Officer, Headquarters Southern AIR Command (U) and others (2009) 13 SCC 311*** and while

over-ruling ***Mohd. Aslam's*** case (supra), it was held that the case was wrongly decided and the status of the employees working in Unit-Run-Canteens (for short 'URCs) in Army, Navy and Air Force are not Government servants. It was held that URCs are not funded from Consolidated Fund of India (for short 'CFI') and profits of URCs are also not credited to CFI. It was further held that URCs are also not part of the CSD and they are free to borrow from other financial institutions.

3. It is apt to reproduce the relevant observations as contained in paras 6 to 15 of the judgment, which read as under:

> ***"6.*** *According to the appellant the view taken in Mohd Aslam's case (supra) is the correct view, it is stated that even if Canteen Store Department (in short the `CSD') was not the source of funding, other parameters clearly cover the employees in question of Government service. Reference is made to certain decisions to support the stand, e.g., Kona Prabhakara Rao v. M. Seshagiri Rao and Anr. (1982 (1) SCC 442 (para 9) and Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and Anr. (1992 (4) SCC 404 at 412). Even if full funding is not there partial funding by quality discount is there which is the test for determining as to which employee is a government servant.*
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> ***7.*** *Reference is also made to certain subsequent decisions in which Aslam's case (supra) has been referred to. It is pointed out that on the date the OAs were decided, Aslam's case (supra) was applicable and therefore de facto doctrine would apply. In any event, it is stated that Rule 24 cannot take*

out the benefits in the manner done. The High Court had not considered the challenge to Rule 24. It is pointed out that the decision which has been given can only be re-considered for compelling reasons and the view taken in Aslam's case (supra) is a possible view. In any event, the appointing body is an instrumentality of State and, therefore, Articles 14 and 16 of the Constitution of India are applicable. With reference to Section 23 of the Contract Act, 1872 (in short the `Contract Act') it is stated that Section 23 of the Contract Act clearly prohibits the appointments in the manner done.

8. *Learned counsel for the Union on the other hand submitted that Aslam's case (supra) proceeded on erroneous factual basis. It proceeded on the basis as if the canteen or the establishment in question was funded by the CSD. The issue is not whether it is an instrumentality of the State. Issue is whether the concerned employees are government employees. It is submitted that Union of India and Anr. v. Chote Lal (1999) 1 SCC 554) clearly applies to the facts of the case. It is submitted that unit run canteen is amenable to Shops and Commercial Establishments Statutes because the appointment cannot be made dehors the Rules. There is no prescribed qualification or age limit. Similarly there is no grade or cadre. Therefore, it cannot be said that the concerned employees are holders of civil posts.*

9. *In Aslam's case (supra) a Bench of this Court proceeded on incorrect factual premises inasmuch as after noticing that the URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that the URCs are funded by CSD as well as the articles were supplied by the CSD. Unfortunately, it did not notice that no such funding is made by the CSD. Further, only refundable loans can be granted by the CSD to URCs at the rate of interest laid down*

by it from time to time upon the application of URCs seeking financial assistance. URCs can also take from other Non-Public Funds.

***10**. Further observation regarding supply is also not correct. URCs, in fact, purchase articles from CSD depots and it is not an automatic supply and relation between URCs and CSDs is that of buyer and seller and not of principal and the agent. This Court further went wrong in holding that URCs are parts of CSDs when it has been clearly stated that URCs are purely private ventures and their employees are by no stretch of imagination employees of the Government or CSD.*

***11.** Additionally, in Aslam's case (supra) reference was made to Chandra Raha and Ors. V. Life Insurance Corporation of India (1995 Supp (2) SCC 611). The Bench hearing the matter unfortunately did not notice that there was no statutory obligation on the part of the Central Government to provide canteen services to its employees. The profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds which are used by the units for the welfare of the troops. As per para 1454 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State.*

***12.** The factors highlighted to distinguish Chotelal's case (supra) in our considered opinion are without any material. There was no scope for making any distinction factually between Aslam's case (supra) and Chotelelal's case (supra). In our view, therefore, Aslam's case (supra) was not correctly decided.*

***13.** The question whether the URC can be treated as an instrumentality of the State does not fall for consideration as that aspect has not been considered by CAT or the High Court. Apparently, on that score alone we could have*

dismissed the appeal. But we find that the High Court placed reliance on Rule 24 to deny the effect of the appointment.

14. *From Rule 4 read with Rule 2 it is clear classification that all employees are first on probation and they shall be treated as temporary employees. After completion of five years they might be declared as permanent employees. They do not get the status of the Government employees at any stage. In Aslam's case (supra) CAT's order was passed in 1995. By that time 1999 Rules were not in existence and 1984 rules were operative.*

15*. It is to be noted that financial assistance is given, but interest and penal interest are charged. The URCs can also borrow from financial institutions. The reference is answered by holding that employees of URCs are not government servants."*

4. Similar issue was considered by me in case titled ***The Officer Commanding Central Ration Stand*** vs***. Mohan Singh***, ***2015 (6) ILR, 756,*** wherein the question before this Court was whether a workman employed in the Canteen Store Department can be said to be a Government servant. Negating such contention, it was held that an employee working in the Canteen Store Department does not fall within the definition of Government servant.

5. It shall be apposite to refer to the relevant observations as contained in paras 6 to 10 of the judgment, which read as under:

*"**6**. The learned Tribunal, on the basis of the judgment passed by the Hon'ble Supreme Court in Union of India & Ors Vs. M. Aslam & Ors (2001) 1 SCC 720 concluded that the respondent could claim the privilege of a workman being a government servant while working in the canteen.*

***7.** It appears that the Tribunal was totally oblivious to the fact that the judgment in Aslam's case (supra) holding the canteen employees to be government servant was specifically set aside by a larger Bench of Hon'ble three Judges in R.R. Pillai through L.Rs Vs. Commanding Officer, Headquarters Southern AIR Command (U) and ors (2009) 13 SCC 311, wherein the Hon'ble Supreme Court while over ruling the judgment made in Aslam's case (supra), held that the employees of unit-run canteens (URCs) run in Army, Navy and Armed Forces are not the government servants.*

8. That apart, it would also be noticed that the respondent had led no evidence whatsoever to show as to how the petitioner could be termed to be an industry. It would further be noticed that the learned Tribunal has relied upon the judgment of the Hon'ble Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa & ors, reported in (1978) 2 SCC 213 to conclude that the industrial character of an organization could be seen on the basis of activities carried on and the functions discharged by it. Since the function of the canteen was to provide service to the military persons by supplying certain commodities of public utilities, therefore, it was an industry.

***9.** Notably, the Tribunal again appears to be oblivious to the fact that insofar as the judgment of the Hon'ble Supreme Court in Bangalore Water Supply's case (supra) is concerned, same is pending for re-consideration before a larger Bench of the Hon'ble Supreme Court in view of the order passed by the*

Constitution Bench of the Hon'ble Supreme Court instead of State of U.P. Vs. Jaibir Singh, reported in 2005 Vol.V SCC 1. Not only this, once it was the case of the petitioner that the respondent's services were taken only for a brief stint that too for the purpose of loading and unloading the Arms during the Kargil War, it is not understood as to on what basis the Tribunal concluded that the respondent had been serving in the unit-run canteen to provide service to the military persons by supplying certain commodities or public utility. Thus, the award passed by the Tribunal is contrary to the record and, therefore, suffers from perversity and is accordingly set-aside.

***10**. However, before parting, it may be noticed that the respondent had earlier approached the Central Administrative Tribunal, which had directed the respondent to approach the petitioner for the redressal of his grievance. However, as per the reply filed by the petitioner before the Industrial Court, it appears that the respondent did not approach the petitioner for the redressal of his grievance. Therefore, it is clarified that the dismissal of this petition would not stand in the way of the petitioner in considering the case of the respondent for grant of any relief to which he may be entitled to under the law."*

6. Lastly and more importantly, the issue is otherwise no longer *res integra* in view of the latest judgment of the Hon'ble Supreme Court in ***Union of India and others*** vs. ***Dyalu Ram 2019 (1) Scale 352*** wherein similar issue regarding Cooks working in the Canteen was under consideration and after placing reliance upon the judgment of ***R. R. Pillai's*** case (supra), it was observed as under:

> ***"8.*** *The position of Unit run Canteens of the Indian Army is no longer res integra following the decision of the three -Judge Bench in R.R. Pillai (supra). The reference to the Bench of three-Judges was occasioned as a result of a doubt having been cast on an earlier decision of a two-Judge Bench in Union of India versus M. Aslam. The Bench of three-Judges observed that despite noticing that Unit run Canteens are not funded from the Consolidated Fund of India, the two-Judge Bench in M. Aslam (supra) erroneously held that these canteens are funded by the Canteen Stores Department (CSD). In R.R. Pillai (supra), after reviewing the position of regimental canteens, this Court held that the employees have not been granted the status of government employees at any stage. Hence the reference was answered by holding that employees of the Unit run Canteens are not government employees. This decision has been followed in a subsequent decision in Union of India vs. Gobinda Prasad Mula, (2012) 13 SCC 565.*
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> **9**. *In the present case, the judgment of the Tribunal is rendered unsustainable by the position of law which has been elaborated in both the above decisions. Indeed, once it is held that employees of regimental canteens are neither government servants nor are they engaged in connection with a civil post under the Union, the Tribunal would have had no jurisdiction to entertain the claim under Section 14 of the Act."*

7. Thus, in view of the aforesaid discussion, this Court has no hesitation to conclude that the petitioner(s) are not Government employees and, therefore, the present petitions at their instances are not maintainable. In addition thereto, it would

be noticed that in some of the cases the petitioners after having completed five years of service in the appointment of Billing Clerk in Trishul Canteen, were termed as regular canteen employees and permitted to serve at the age of superannuation or upto the date of resignation/termination of service. However, said orders were thereafter held to be not valid as per IHQ of Mod (Army) letter No. 96029/Q/DDGCS dated 11 Aug 14 and, therefore, their conversion to permanent employees from temporary stand cancelled and their status thereafter was restored to that of contractual employees.

8. Lastly and more importantly, the respondents in May, 2018 had issued SOP and in terms of Clause 24 thereof, contractual employees are the employees contracted to work for the VSC on contractual basis. In terms of Clause 27, the contract period will always be 350 days or less. There will always be at least 10 days break before the same person is employed for similar contract.

9. In view of the aforesaid discussion and for the reasons stated above, we find that the petitioner(s) are not Government employees and, therefore, the present petitions at their instances are not maintainable and are dismissed as such.

10. However, the dismissal of these petition(s) shall not come in the way of the petitioner(s) in seeking any other remedy, which may be available to them under law.

11. All the petitions stand disposed of in the aforesaid terms, so also the pending application(s), if any.

(Tarlok Singh Chauhan)
Judge

12th November, 2020
(GR)

(Jyotsna Rewal Dua)
Judge