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

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Decided on: 06.02.2020

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W.P.(C) 2751/2011

RAJ KUMARI

..... Petitioner

Through: Mr. Rajat Sharma, Adv.

versus

THE CHAIRMAN, LOCAL IMPLEMENTATION
COMMITTEE, STATE BANK OF INDIA

..... Respondent

Through: Ms. Jaya Tomar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition impugns the award dated 26.02.2010 passed in I.D. No. 33/2009 of the learned Industrial Tribunal apropos the issue “*Whether the action of the Chairman, Local Implementation Committee, State Bank of India, Tigri Branch, Khanpur, New Delhi in terminating services of Smt. Rajkumari w/o Shri Girish Babu w.e.f. 2.6.1995, is just and legal? If not, to what relief the applicant is entitled?*”.

2. It is the petitioner’s case that she had been working as a peon since 1989 drawing a monthly salary of Rs. 1,500/- per month with the Local Implementation Committee (Committee). She was not given annual increment, transport allowance, house rent allowance or any other benefits under the relevant labour laws. Upon demand of the same, the management of the Committee terminated her services w.e.f. 02.06.1995 without paying

wages for the month of May and 1st June, 1995.

3. The matter was contested by the respondent on the ground that it has no juridical existence, and no nexus with the State Bank of India (SBI). The Committee may engage a person to run a canteen and serve refreshments to its members. The Committee discontinued the services of the petitioner when the same were not needed any more. The petitioner was neither under the direct supervision or control of the SBI nor did the latter have any right to take any disciplinary action against her. Therefore, she could not be equated with the employees of a canteen set up under the statutory scheme of the SBI. The Committee was under no obligation to run a canteen. The SBI did not exercise any supervision or control over this canteen or its employees.

4. In *Reserve Bank of India vs. Workmen* 1996 (3) SCC 267, the Supreme Court has held that in the absence of any obligation, statutory or otherwise, for running of a canteen by bank, an employee of the canteen cannot be termed as bank's employee. Furthermore, in *State Bank of India & Ors. vs State Bank of India Canteen Employees' Union (Bengal Circle) & Ors.* (2000) 5 SCC 531 it has been held that "*employees of the canteens which are run at various branches by the Local Implementation Committees as per the welfare scheme framed by the SBI would not become employee of the Bank as the bank is not having any statutory or contractual obligation or obligation arising under the Award to run such canteens*".

5. In a bipartite agreement with the bank management of the All India SBI Staff Federation, the bank may provide canteen facilities to a branch office having staff strength of 100 or more employees. In other words, in a branch office having less than 100 employees, there would be no such

obligation. In the instant case, the branch office had less than 25 employees. The aforesaid scheme obviously would not be applicable for running a canteen by the SBI. Surely the petitioner cannot seek the benefit of this scheme, which is not applicable to her. In this regard, the impugned order has reasoned as under:

“...12. As is evident that claimant was working with the Committee which has no connection with the bank. The claimant cannot seek reinstatement of her job with the bank. Since she is not an employee of the management bank, her case is also not covered within the ambit of the circular issued by the bank on 25.8.1991. The circular dated 25.8.91 highlights that the bank invited application from casual employees for their absorption. Bank had also invited applications from Canteen boys, from whom jobs of casual nature were taken by the bank, for the purposes of absorption of their services. Circular referred above is not applicable to the case of the claimant. It is not her case that she ever performed jobs of casual nature with the bank. Even otherwise, the said circular is not applicable to her. On the strength of the said circular, referred above, employees who have worked in temporary capacity with the bank between 1.7.75 to 31.7.88 were considered for the purpose of absorption in bank's services. Smt. Raj Kumari claims to have served the Committee from 1989 to 2.6.1995. The said circular does not come to her rescue, since she stands on different and distinct footings than those employees whose cases were considered for absorption in the services of the bank.

13. Whether claimant can seek application of the said circular to her case? For an answer, legal provisions are to be take note of. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should

be equal and should be equally administered and that like should be treated a like. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates, offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.....

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16. To claim equality with the aforesaid canteen boys, it was for the claimant to show that she stood on equal footing with them. Not even an iota of fact has been brought over the record by the claimant to show that she was at par with the aforesaid canteen boys. Circular was issued in 1991 to consider the case of the canteen boys, who served the bank for casual jobs also between 1.7.75 to 31.7.88. The claimant claims to have served the Committee from 1989 to 1st June, 1995. Claimant fell in a different class than those canteen boys, who were considered for absorption in the services of the bank, on the strength of the above circular. In such a situation it cannot be said that the claimant was discriminated when her services were not regularised by the bank.

17. The Committee is not part and parcel of the bank. As detailed above it works for welfare of its employees. It is not an extension or branch of the bank. Consequently activities of the Committee cannot be considered as

activities of the bank. Whether activities of the Committee can be termed as an industry? Answer lies in negative. The Committee arranges tea and snacks for its members and for that purpose engages a canteen boy. Except the canteen boy no other employee is engaged by the Committee. The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated or single little assistant or attendant. The later category is more or less like personal avocation for livelihood taking some paid or part-time from another. To fall within the ambit of an industry the activity should be predominantly carried on by employment of organized labour force for production or distribution of goods, or for rendering material services to the community at large or a part of such community. Activities run by the Committee does not answer the ingredients of an “industry”. Hence activities run by the Committee can not be termed as an “Industry” within the meaning of clause (j) of section 2 of the Industrial Disputes Act, 1947. Law to this effect was laid by the Apex Court in Bangalore Water Supply and Sewerage Board (1978 Lab.I.c.778)...”

6. What emanates from the above is that the rationale and the decision of the learned Industrial Tribunal is in consonance with the judgement of the Supreme Court and with the facts of the present case. Therefore, it calls for no interference.

7. The petition is without merit and it is, accordingly, dismissed.

NAJMI WAZIRI, J

FEBRUARY 06, 2020/kk