



W.P.Nos.25043 to 25048 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.25043, 25044, 25045, 25046, 25047
and 25048 of 2013
and M.P.Nos.1,1,1,1,1 and 1 of 2013 and
M.P.Nos.2,2,2,2,2 and 2 of 2013

The Divisional Personnel Officer
Chennai Division, Southern Railway
Park Town, Chennai – 600 003.

.... Petitioner in all W.Ps.

-Vs-

1.The Presiding Officer
The Central Government Industrial
Tribunal-cum-Labour Court, Chennai.

.... R1 in all W.Ps.

2.C.Porchezian (Died)
3.P.Santhi
4.P.Ajith Kumar
(Respondents 3 and 4 impleaded as
legal heirs of the deceased 2nd
respondent vide order dated 28.06.2023
made in W.M.P.No.17655/2023 by VLNJ)

... Respondents 2, 3 and 4 in
W.P.No.25043 of 2013

W.P.Nos.25044 to 25048 of 2013

2. M.Jaisankar

... R2 in W.P.No.25044/2013

N.Selvan

... R2 in W.P.No.25045/2013

S.Mohanraj

... R3 in W.P.No.25046/2013



W.P.Nos.25043 to 25048 of 2013

S.Murali

... R2 in W.P.No.25047/2013

E.Sridhar

... R2 in W.P.No.25048/2013

Common Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records of the 1st respondent in I.D.Nos.62 to 67 of 2011 including the award dated 31.05.2012 and quash the same.

In all W.Ps.

For Petitioner : Mr.Vijay Anand

For Respondents : R1 – Court
Mr.K.M.Ramesh, Senior Counsel
for Mr.K.Bharathi – for R3 & R4
in WP Nos.25043 of 2013
for R2 in all the other W.Ps.

COMMON ORDER

This batch of writ petitions challenge the award of the Central Government Industrial Tribunal (CGIT) in I.D.Nos.62 to 67 of 2011 dated 31.05.2012. For the sake of convenience, the parties are referred to as Management and Workmen.

2. The Management is the Divisional Personnel Officer, Southern Railways and the workmen are those who were working in the Canteens running at Basin Bridge Yard. The workmen have been working for more than three decades. It



W.P.Nos.25043 to 25048 of 2013

is an admitted case that Mr.C.Porchezian, petitioner in I.D.No.63 of 2011 was working from 1989 and Mr.Selvan, the petitioner in I.D.No.65 of 2011 was working from 1987. The remaining have also worked, as pointed out above, for more than two decades.

3. The Basin Bridge Yard Canteen caters to the needs of the Railway servants of about 1500 persons. As per Section 46 of the Factories Act, if a canteen is being run for more than 250 employees, it is statutory in nature and for workmen less than 250, while it is non-statutory, it is treated as non-recognised canteen. The difference being that, one is being run as per the Statute and one as per the Railway Manual 2831. In and about 1991, a circular had been issued by the Railway Board in E(W)/91/CN/Mass Circular dated 29.11.1991, which stated that the canteens which are non-statutory but recognised, require prior approval of the Railway Board.

4. Mr.Vijay Anand, learned counsel appearing for the Management would argue that the workmen have not produced any evidence to show that the said canteen was being run after recognition from the Railway Board.

5. Mr.K.M.Ramesh, learned Senior Counsel appearing for the respondent workmen would submit that a perusal of Ex.W15 shows that the fixation of



W.P.Nos.25043 to 25048 of 2013

wages was by the advisory committee which consists members of only Southern Railways. Apart from that, it was pointed out that from Ex.M4, the advisory committee was kept updated about the financial implications of running a canteen.

6. Since there was a dispute as regards their rights, the petitioners moved the Central Government which referred the matter for adjudication.

COMMON AWARD

The Central Government, Ministry of Labour and Employment vide the above order of references referred the IDs mentioned above to this Tribunal for adjudication:

I.D.62/2011

"Whether the demand of the workman Sri E.Sridhar for regular employment in the Basic Bridge Yard Railway Canteen which is a statutory canteen of Southern Railway is legal and justified? To what relief the workman is entitled?"

I.D.63/2011

"Whether the demand of the workman Sri C.Porchezian for regular employment in the Basic Bridge Yard Railway Canteen which is a statutory canteen of Southern Railway is legal and justified? To what relief the workman is entitled?"

I.D.64/2011

"Whether the demand of the workman Sri S.Jaisankar for regular employment in the Basic Bridge Yard Railway Canteen which is a



W.P.Nos.25043 to 25048 of 2013

statutory canteen of Southern Railway is legal and justified? To what relief the workman is entitled?

I.D.65/2011

"Whether the demand of the workman Sri N.Selvan for regular employment in the Basic Bridge Yard Railway Canteen which is a statutory canteen of Southern Railway is legal and justified? To what relief the workman is entitled?"

I.D.66/2011

"Whether the demand of the workman Sri S.Murali for regular employment in the Basic Bridge Yard Railway Canteen which is a statutory canteen of Southern Railway is legal and justified? To what relief the workman is entitled?"

I.D.67/2011

"Whether the demand of the workman Sri S.Mohan Raj for regular employment in the Basic Bridge Yard Railway Canteen which is a statutory canteen of Southern Railway is legal and justified? To what relief the workman is entitled?"

7. On behalf of the petitioners they examined one S.Mohanraj as W.W.1. Mr.T.R.Mukunthan was examined as M.W.1. On the workmens' side, they marked photo identity card issued by the Railways as well as the proceedings of the Senior DPO absorbing the substitutes as Railway servants. The Management mainly relied upon the Railway Board Circulars and would take a stand that the Railway Board was not aware that a canteen was being run from 1987 till the time the dispute was raised in 2007.



W.P.Nos.25043 to 25048 of 2013

8. A perusal of W.15 would show that the advisory committee had enhanced the price of consuming items. This makes one draw a conclusion that without the knowledge of the persons in the capacity as the writ petitioners, the said canteen could not have been run. I further have to point out that the committee members being senior officers of the Railway Board, it is unbelievable that the entire canteen was being run without the knowledge of the petitioners or of the Railway Board.

9. The persons similarly situated had taken up the matter before the Supreme Court as early as 1990 and in **MMR Khan and Others -vs- Union of India and Others** reported in **(1990) 2 LLN 197**, the Supreme Court was pleased to grant the benefits to persons who were working in statutory recognised canteens and non-statutory recognised canteens, but only denied the benefit to persons who were working in non-statutory non-recognised canteens. This is clear from a perusal of the judgment in **MMR Khan and Others -vs- Union of India and Others**, in particular Para 36 of the said judgment.

10. In order to torpedo the case of the writ petitioners, Mr.Vijay Anand would bring to my attention the judgment of the Supreme Court in **Sri Krishan and Others -vs- Union of India and Others** reported in **(2014) 10 S.C.C.415**. This judgment did not hold me for a fraction of moment for the



W.P.Nos.25043 to 25048 of 2013

simple reason that the petitioners in the said case were working in non-statutory non-recognised canteens. They cannot be treated on par with those working in non-statutory recognised canteens. This subtle distinction has already been explained in the case of **MMR Khan and Others -vs- Union of India and Others** and therefore, the judgment in **Sri Krishan and Others -vs- Union of India and Others** does not apply to the facts of the present case.

11. It is here the judgment in **Parimal Chandra Raha and Others -vs- Life Insurance Corporation of India and Others** reported in **1995 Supp (2) S.C.C.611** becomes relevant. In the said judgment, the Supreme Court, as in the case of **Sri Krishan's** case, has held if the canteen is being run under the control of an agency of the Railway Administration, it matters not whether the agency concerned is a staff committee or a society. The court went on to hold that as per the Establishment Manual of the Indian Railways, the ultimate responsibility was with that of the Railway Administration.

12. In this particular case, it is not in dispute that the the Chairman of the Canteen Committee was the Additional Divisional Mechanical Engineer (ADME) in-charge of the Basin Bridge Yard. This shows that the advisory committee which was formed by the Railways was playing an active role in the running of the canteen.



W.P.Nos.25043 to 25048 of 2013

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13. The findings of the Central Government Industrial Tribunal (CGIT) is also to the effect that the enhancement of wages was with the tacit approval of the Railway Administration. It also come to the conclusion that if the Railway Committee was to exceed the powers conferred on it, the Railway Administration would have swung into action and taken immediate steps to rectify the situation. This is a finding of fact and therefore, I am not empowered under Article 226 to interfere with the same unless and until it has been shown to be so perverse that it has to be interfered with. The said logic does not apply to the facts of the present case.

14. The CGIT also found that there is a relationship of employer-employee between the members of the non-statutory recognised canteen being run at the Basin Bridge Yard and the Railway Administration. A perusal of the pleadings as well as the documents also would lead to the said conclusion. Therefore, I am unable to accept the argument of Mr.Vijay Anand, learned counsel for the Management that the Management had no role in the appointment or day-to-day running of the canteen.

15. I agree with the findings of the CGIT that the petitioners commenced their services with the non-statutory non-recognised canteen by the Railway



W.P.Nos.25043 to 25048 of 2013

Administration. I have to point out that it is not in dispute that Mr.Selvan was working from 1987 and Porchezian was working from 1989. To say that a person who has been issued an identity card and who was reporting to duty almost every day was not within the knowledge of the Railway Administration begs the very issue.

16. The appointments made by the management committee cannot be termed as illegal because, during the relevant time it was entitled to make the appointments. The Master Circular came into force after 1989, to say, in 1991, and obviously it cannot be given retrospective effect. This is more so when the Railway Administration has not disputed the fact that the workmen were regularly working in the canteen.

17. All these aspects have been analysed threadbare by the CGIT. It has appreciated the law in a proper perspective and has come to a just conclusion that persons who have given the best years of their life to the Railway Administration should be regularised in service. As the largest employer in the country, it is expected that the Railway Administration would comply with the judgment of the Supreme Court in **MMR Khan and Others -vs- Union of India and Others** and does not do a legal hair split. Unfortunately, they have done so and it has come to a conclusion before the CGIT.



W.P.Nos.25043 to 25048 of 2013

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18. Mr.Vijay Anand, learned counsel for the petitioner Management relied upon the case of **Secretary, State of Karnataka and Others -vs- Umadevi and Others** reported in **(2006) 4 SCC 1** to state that there is no question of regularisation and that has been frowned upon by the Supreme Court. **Umadevi's** case applies to different circumstances. Insofar as the Railway Administration is concerned, the judgment that should be made applicable is the case of **MMR Khan and Others -vs- Union of India and Others** reported in **(1990) 2 LLN 197** and that judgment has been property applied by the CGIT. When there is a direct judgment on the point, I need not search or labour by applying the judgment of **Umadevi's** case which arose under totally different circumstances.

19. I do not find any illegality or irregularity or perversity in the order. Under such circumstances, the scope for interference is very limited. Therefore, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

28.06.2023

1/2

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST



W.P.Nos.25043 to 25048 of 2013

To

The Presiding Officer
The Central Government Industrial
Tribunal-cum-Labour Court, Chennai.



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W.P.Nos.25043 to 25048 of 2013

V. LAKSHMINARAYANAN, J.

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W.P.Nos25043 to 25048 of 2013

28.06.2023