

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 13869 of 2018

Eastern Railway Quasi Employees Union, Asansol & Ors.

Vs.

Union of India & Ors.

For the Petitioner : Mr. Rohit Banerjee,
Mr. S.N.Chakraborty.

For the Union of India : Mr. Sukanta Ghosh,
Mr. A. Chatterjee.

Hearing concluded on : 13.08.2025

Judgment on : 17.09.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the award dated 13.02.2018 passed by the Central Government Industrial Tribunal in Reference no. 99 of 2006.
2. The petitioners were all working as quasi-employees/workmen in the Non statutory recognized canteen under the name and style of Asansol Railwaymen's Cooperative stores Ltd. (Canteen) located in

the Railway premises at Station road Asansol and at Hutton road Asansol.

3. The two wings of the said Canteen, one at Station Road, Asansol and the other at Hutton Road, Asansol was locked up by the Railway Management on 19.12.2005, forcibly, without notice and by assaulting the workmen working in the canteen engaging RPF Railways. This was because the quasi workers of the aforesaid wings of the said canteen were on relay hunger strike demanding regularisation of quasi workers, the petitioners herein, in Railway service. Notice was served to the Railway Management by the Union, the petitioners here-in and copies were submitted to R.L.C. (C) Regional Labour Commissioner (Central). While quasi workers were on relay hunger strike, a big force of RPF along with Railway Officials forcibly entered the Canteen Premises on 19.12.2005 and threw out all the cooked food materials, utensils, furnitures on the roadside and arrested the Union leaders and workmen who were on Relay Hunger Strike. Conciliation failed, industrial disputes raised and a reference was made by the Central Government being Reference No. 99 of 2006 and the schedule/issue is as follows:-

“The Schedule

“Whether the following demands of the Eastern Railway Quasi Employees Union, Asansol raised against the management of DRM, Eastern Railway, Asansol Division are proper and justified:

- i) *For treating the Asansol Railwaymen’s Co-operative store Ltd., as non-statutory recognized canteen.*

- ii) *For treating the lockout of Asansol Railwaymen's cooperative store Ltd. as illegal and;*
- iii) *Non absorbing /regularizing the services of the employees engaged by Asansol Railwaymen's Cooperative Store Ltd. If so, what relief the concerned applicants /Union is entitled to?"*

4. The learned Central Government Industrial Tribunal (CGIT), the respondent No. 8 to the writ petition decided all the three issues referred to in the above mentioned **reference in the negative** and passed an '**Award**'. The real issues raised in the reference are not decided on existing facts and was not in accordance with law.

5. **Being aggrieved, the writ petition has been preferred on the grounds that:-**

- i) The learned Central Government Industrial Tribunal (CGIT), the respondent No. 8 to the writ petition decided all the three issues referred to in the above mentioned reference in the negative and passed an '**Award**'. The real issues raised in the reference were not decided on existing facts and in accordance with law.
- ii) The Railway Administration treated the "said Canteen" as non-statutory recognized canteen at par with the statutory canteen, as it would be evident that 6 (six) quasi workers were chosen from Non-Statutory Canteen, Asansol Railwaymen's Cooperative store Ltd (Canteen) referred to as the "said canteen" and were absorbed permanently in Railway service.

iii) The employer employee relationship between the Management of Divisional Railway Manager, Eastern Railway, Asansol and the petitioners, having been established, the petitioners are entitled to be absorbed in Railway Service.

Therefore the finding of the tribunal on employer-employee relation is liable to be set aside/quashed.

6. It is further stated by the petitioner that:-

- i) The Railway management engaged the said canteen for the benefit of Railway staff within the manufacturing premises of Railways and the canteen run by the cooperative was incidental to and connected with the manufacturing process and therefore a necessary concomitant of the manufacturing process and therefore a necessary concomitant of the manufacturing activity carried out in Railway 'premises'.
- ii) The Railway Management had deep and pervasive control on the organization engaged by it i.e. the Cooperative which is amply clear that the Railway Quasi Department had chosen Quasi workers and permanently absorbed them in Railway service, therefore said Canteen has always been treated as non-statutory recognized Canteen as the said Canteen satisfies the provision of Paragraph 2232, 2233, 2234 of I.R.E.M. (Indian Railway Establishment Manual Vol. II).
- iii) There is hardly any difference between Statutory recognized Canteen and Non-Statutory recognized Canteen and the

workers of Non-Statutory Recognized Canteen are entitled to be absorbed in Railway Service permanently. As such, the findings of the C.G.I.T. on the issue of lock-out and employer-employee relation is not tenable and liable to be set aside and quashed.

The petitioner has relied upon the judgment in **M.M.R. Khan and others vs. Union of India & Others, on 27th February, 1990, 1990 (Supp) Supreme Court Cases 191, Para -29**, wherein the Court held:-

“29. The next question is whether the said employees are railway employees for all purposes. Mr Ramaswamy, the learned counsel appearing for the railways contended that the railways undertake varied welfare activities in the nature of handicrafts centres, co-operative stores, banks, housing societies, credit societies, educational institutions etc. and the railways spend about a hundred crores annually on these activities. He submitted that if it is decided to treat the employees engaged in the canteens as railway employees it will be difficult to resist the claim from employees of these other institutions numbering over 27,500 for a similar status. He also submitted that the railways provide financial assistance to various non-railway institutions such as non-railway schools. But teachers and other employees working in these schools are the employees of the respective organisations and cannot be treated as railway servants. Since, according to him, the canteens are run for the benefit of the staff, the government has only a general responsibility to see that the labour laws are properly followed and not infringed. He further submitted that an identical responsibility also devolves on the railways in regard to contractors who execute works for the railways with their own labour. In addition, the railways have nearly 2.3 lakh casual labourers who are normally employed on works which are of seasonal nature, intermittent or extending over short periods. These employees are engaged by the contractor to whom the execution of work is entrusted. In case the employees of the canteens are to be treated as railway servants, similar demands will be made from such casual labourers. His next contention in this behalf

was that the railways have a primary objective of carrying goods and passengers, and the welfare activities are ancillary to the main objective. Hence, the canteens continue at the discretion of the railway administration where they have provided 70 per cent subsidy to the management of the statutory canteens. If at any stage the government so decides, it can change the form of this welfare measure and may choose to have another set up which in their view may prove more convenient and financially workable such as engaging a contractor or an established agency like Tea Board, Coffee Board, Women's Organisation, etc. to run the canteens. For all these reasons, he submitted the employees in the statutory canteens should not be treated as the railway employees."

- iv) Choosing some from the Quasi workmen from the said Canteen for permanent Railway service and leaving the others in the lurch is highly discriminatory (violation of Art. 14, Art. 16 Constitution). Those who have been chosen for permanent Railway service are named in Paragraph 8 to the writ petition.
- v) The said Canteen though Non-Statutory but is recognized and comes within the ambit of 'Subject Canteen'. A subject Canteen is incidental to and connected with the manufacturing process.

Petitioner relies upon the judgment in ***Mohan Singh & Others vs. The Chairman, Railway Board & Ors., decided on 3rd August, 2015, (2015) 10 SCC 759.*** (Relates to the definition "statutory canteen" within meaning of Section 46 of the Factories Act).

- vi) With 3 years experience the quasi workers in the 'said Canteen' acquire a right to be chosen in permanent Railway Service as

provided under 121-B I.R.E.M. (Indian Railway Establishment Manual Volume 1).

7. The petitioners submit that they are deprived of permanent Railway Service due to discriminatory method of choosing candidates from the 'said Canteen' and are entitled to be absorbed in Railway Service.

And anyone who has crossed the retirement age such as Kartik Dutta and Bablu Gorai, the petitioner no. 3 and 8 of the writ petition, who were deprived of employment in violation of fundamental rights, are entitled to compensation in cash, alternatively a job in Railways to their ward on compassionate ground.

8. Both parties have filed their written notes.

9. **The petitioner has relied upon the following judgments:-**

(i) *M.M.R. Khan and others vs. Union of India & Others,* on 27th February, 1990, 1990 (Supp) Supreme Court Cases 191, the Supreme Court held:-

“30. While discussing above the contention that the employees in the statutory canteens cannot be treated as railway employees even for the purposes of the said Act, we have referred to the various developments, and documents on record including the court decisions. It is not necessary to repeat them here. In view of the same, the contention advanced by Mr Ramaswamy that the railway administration is engaged in varied welfare activities, and the employees engaged in these activities will also have to be treated as railway employees, in case, the canteen employees are recognised as railway employees does not appeal to us. We express no opinion on the subject as to whether the employees engaged in other

welfare activities will or will not be entitled to the status of the railway employees, since neither they nor the facts pertaining to them are before us. Our conclusion that the employees in the statutory canteens are entitled to succeed in their claim is based purely on facts peculiar to them as discussed above. If by virtue of all these facts they are entitled to the status of railway employees and they cannot be deprived of that status merely because some other employees similarly or dissimilarly situated may also claim the same status. The argument to say the least can only be described as one in terrorem, and as any other argument of the kind has to be disregarded.”

(This judgment relates to “statutory canteens”).

- (ii) *Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup & Ors.*, 1956 SCC OnLine SC 39.**
- (iii) *Mohan Singh & Others vs. The Chairman, Railway Board & Ors.*, decided on 3rd August, 2015, (2015) 10 SCC 759.** (Relates to the definition “statutory canteen” within meaning of Section 46 of the Factories Act).
- (iv) *Rudul Sah vs State of Bihar & Anr.*, (1983) 4 SCC 141;**
- (v) *Indusind Bank Limited and Anr. vs Simarjit Singh*, (2022) 4 SCC 809.**
- (vi) *Chambara Soy vs State of Orissa & Ors.*, 2007 SCC OnLine Ori 42.**
- (vii) *Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) vs State of Orissa & Ors.*, (1993) 2 SCC 746.**

(viii) Maya Singh & Ors. vs Oriental Insurance Co. Ltd. and Ors., 2025 SCC OnLine SC 266.

10. The respondents no. 1 to 3 in their written notes have argued that:-

- a) The petitioners organization is an autonomous body, having registration no. 49 of 1948 in the books government of West Bengal as per 2232 IREM vol II of 1990. There was no representative of Railway Administration in the management of the said co-operative. Moreover, no canteen has been entrusted by the railway administration to the said co-operative and thus it does not come under the purview of either a statutory or non-statutory canteen (recognized).
- b) That in case the management of the canteen is entrusted to a consumer co-operative society, it shall be mandatory for such society to have its bye laws suitably amended to provide for and over all control by the Railway Administration. In the instant case, no such amendment has been incorporated by the co-operative society.

The said cooperative society availed railway accommodation and electric installation as per the rules of the consumer co-operative society.

- c) That as per the railway board letter No-E(NG)II/99/RR-1/15 dated 30.05.2000 circulated through CPO/ER/KKK vide letter no.E-257/1/CO-OP/PT dated 14.07.2000,

absorbed quasi administrative employees up on fulfillment of pre-defined conditions. The members of the said co-operative could not fulfil the said condition.

- d) That the petitioners have falsely stated that Mr. S. Bell, the then DPO/ER/ASN and Mr. M.P. Manalar, the then APO/ER/ASN were elected and not nominated.
- e) That the railway administration provided the quasi organization employees, the benefit of complementary pass, PTO and Medical facilities as welfare measures to the extent as laid down in the establishment manual Vol I and not at par with the railway employees.
- f) That the railway administration had no managerial role and /or administrative control over the co-operative and its staffs. The railway administration never paid any salary to the employees of the said co-operative. This shows that there was no management and work relationship between the petitioner and the quasi employees of the co-operative.

11. It is further stated by the respondent that the Hon'ble Supreme Court has opined in civil appeal no.12148 of 1995 and civil appeal no. 12149 and 12150 of 1995, that office employees appointed by the cooperative cannot be treated as par with a railway servant under the Railway Establishment Code nor can he be given parity of status, promotions, scale of pay, increment etc.

12. Vide the award under challenge, the tribunal decided the issues as follows:-

(i) Issue No. (3): Non absorbing/regularizing the services of the employees engaged by the Asansol Railway Men's Co-operative Stores Limited.

Shri Rajendra Vijay Kumar Singh Bhati, the learned union representative appearing on behalf of workmen has vehemently argued that employees of Non-statutory Railway Canteens run by Asansol Railway Men's Co-operative Stores Limited are Railway Servants, they should be regularised as per Para-121-B of Indian Railway Establishment Manual, Volume-I. It has been filed as Annexure-M. They are quasi Railway Employee and Quasi Railway employee should be absorbed as per above Para. He has also argued that these Quasi Railway employees are issued Railway passes. PTO.s and provided Medical facilities. Copies of these are on record. Therefore they should be absorbed /regularized in the Railways. On the other hand Shri Sisir Kumar Mukherjee, the learned advocate on behalf of the management of Divisional Railway Manager, Eastern Railway, Asansol had argued that there is no employer employee relationship between worker of Co-operative society and Railway administration, therefore they cannot be regularized as Railway does not pay them wages. Passes and P.T.O.s and Medical facilities

have been provided as complimentary not as a Railway Servant.

*Shri Rajendra Vijay Kumar Singh Bhati, the learned union representative during course of argument has filed and relied on Letters of Divisional Railway Manager, Eastern Railway, Asansol dated 30.08.2001 and Sr. Divisional Personnel Officer, Eastern Railway, Asansol dated 27.5.2003. On the basis of these letters he has argued that the certain workmen were directed to appear before screening committee for appointment. Therefore, remaining workmen of Non-statutory Recognized Canteen run by Asansol Railway Men's Co-operative Stores Limited are eligible for absorbing in Railway. **Shri Sisir Kumar Mukherjee, learned advocate of the management of Divisional Railway Manager, Eastern Railway, Asansol has argued that if vacancy exists, if workmen of society are eligible for appointment then the management of Divisional Railway Manager, Eastern Railway, Asansol can consider their appointment provided they fulfil the criteria of the eligibility but workmen cannot claim employment as matter of right.***

*The Constitution Bench of the Hon'ble Apex Court in **Secretary, State of Karnataka & others v/s Umadevi & others (2006) 4 SCC 1** had held that:-*

“There must be sanctioned post and applicants must have necessary qualification then only a workman who is already working can be regularized”

Functioning in Co-operative Society is one thing and eligibility for a particular post is another thing.

In view of Umadevi case a person can only be regularized or absorbed if there is sanctioned vacancy/post and applicant had necessary qualification or eligible for the post. If certain workmen of Co-operative Society has been directed to appear before screening committee does not create right in favour of others to claim for appointment unless and until in light of Umadevi case the other conditions are fulfilled.

*In light of discussion the Issue No.(3) Non absorbing /regularizing the services of the employees engaged by the Asansol Railway Men’s Co-operative Stores Limited, is **decided in negative.***

(ii) Issue No. (1) : For treating the Asansol Railway Men’s Co-operative Stores Limited as Non-Statutory Recognized Canteen.

The jurisdiction to give assent to the amendment of bye-law is vested in the Registrar of Co-operative Society under Section 17 of West Bengal Co-operative Societies Act, 1983. Without prior approval of the Registrar of Co-operative Society the approval of the General Manager will not have any positive impact. Therefore letter of the General Manager

(Annexure-D) does not provide any assistance to the Asansol Railway Men's Cooperative Stores Limited and it cannot be treated as Non-statutory Recognized Railway Canteen. Neither there is any documentary evidence nor oral evidence that after letter of the General Manager there was any execution of agreement between the management of Divisional Railway Manager, Eastern Railway, Asansol and Asansol Railway Men's Cooperative Stores Limited as provided In Para -2833 (vi) of Indian Railway Establishment Manual (2nd edition).

In view of above discussion the Asansol Railway Men's Co-operative Stores Limited cannot be treated as Non-Statutory Recognized Canteen.

Issue No. (1): For treating the Asansol Railway Men's Co-operative Stores Limited as Non-Statutory Recognized Canteen is decided in negative.

(iii) Issue No. (2): For treating the Lock –out of Asansol Railway Men's Co-operative Stores Limited Canteens as illegal.

Shir Rajendra Vijay Kumar Singh Bhati, Vice President of Eastern Railway Quasi Employee Union as learned representative of the workmen has argued that in spite of notice under Section 22 (B) of Industrial dispute Act, 1947 management of Divisional Railway Manager, Eastern Railway, Asansol Locked out the concern premises and

took forcible possession of the Premises and Utensils of Asansol Railway Men's Co-operative Stores Limited, recognized as Non-statutory Railway Canteen which is illegal.

Lock out has been defined under section 2(1) of Industrial Disputes Act, 1947:

“lock out” *means the [temporary closing of a place of employment], or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.”*

It is apparent that concept of Lock-out comes into play where there is employer-employee relationship. As per finding of Issue No. (3), there is no Employer and Employee relationship between management of Divisional Railway Manager, Eastern Railway, Asansol and Employees engaged by Asansol Railway Men's Co-operative Stores Limited. Therefore provision of Lock-out does not comes into play. Rules for rent and recovery of rent is mentioned in Para-2909(v)(b) and para -214, respectively. The management of Divisional Railway Manager, Eastern Railway, Asansol was within the right to proceed for recovery of unpaid dues from Asansol Railway Men's Co-operative Stores Limited. Therefore management of Divisional Railway Manager, Eastern Railway, Asansol took

the possession of the concerned premises under the Public Premises Act, 1971.

*Issue No. (2) : For treating the Lock-out of Asansol Railway Men's Co-operative Stores Limited Canteens as illegal is **decided in negative.***

The tribunal finally held:-

In light of the findings in issue No. (3), (2) & (1), there is no Employer and Employee relationship between the management of Divisional Railway Manager, Eastern Railway, Asansol and workmen of Asansol Railway Men's Co-operative Stores Limited, Asansol Railway Men's Co-operative Stores Limited is not Non-statutory Recognized Canteen since there is no employer and employee relationship. Therefore action under Public Premises Act, 1971 cannot be said to be illegal. The concerned workmen of the Asansol Railway Men's Co-operative Stores Limited are not entitled to any relief.

13. From the materials on record the following is evident:-

- a) The petitioners claim to be employed by Asansol Railway Men's Co-operative Store Limited which they claim is a non-statutory canteen.
- i) Admittedly the said co-operative store Ltd. is registered under the West Bengal Government bearing Registration No. 49 of 1948.

- ii) There is no execution of any agreement as per Para 2833 of the Railway Manual, which is as follows:-

“30. Para 2833 of Indian Railway Establishment Manual (2nd Edition) provides for Non-Statutory Canteen which is as follows:-

“(i) These canteens can be run either by a Committee of Management to be formed for the purpose or by a Consumer Co-operative Society.

(ii) The Committee of Management should consist of the duly elected representatives of the staff for whose benefit the canteen is run, representatives of shareholders of the Co-operative Society, in case the canteen is managed by a Co-operative Society, and a representative of the Railway Administration to be nominated either as a Chairman or Secretary or as a Member of the Committee.....

(iii) In cases where canteens are managed by consumer Co-operative Societies, the Societies should have suitable provisions in their bye-laws to permit of supervision by the Committee of management as described in sub-paragraph (ii) above

(vi) The committee of management who are permitted to run canteens in Railway owned buildings and to whom the facilities detailed in paragraph 2834 are extended should execute an agreement in Form no. 76 of Appendix 9. The agreement should be executed on plain paper with the addition of a clause as follows in the Licence Deed:

‘That the Govt of India agree to bear the stamp duty in respect of this instrument.’

The agreement should be signed by an officer duly authorized to do so under Article 299(1) of the Constitution. The names of all the members of the committee of management should be mentioned in the agreement which should be executed by all of them. In the case of canteen run by a Consumer Co-operative Society, the Committee of

Management being only a supervisory committee, vide paragraph 2833(iii), the agreement should be executed by the Co-operative Society."

- iii) There is no amended bye-laws by the Registrar of Co-operative Societies Act, 1983, whose approval is to be granted first and only then other approvals are applicable if necessary.
- iv) No permission of supervision has been given by the Divisional Railway Manager, Eastern Railway, Asansol under Para 2833 of the Indian Railway Establishment Manual (2nd edition).

Thus there being no valid agreement between the parties, the said co-operative stores limited does not qualify as a Non-statutory Recognized Railway Canteen.

- b) The petitioners were admittedly never appointed by the Railway administration. They are employees of the Co-operative stores ltd. The passes and medical facilities were (Specific period/journey) complementary under Rule -11(2) which is issued to non-railway servants or to staff of Quasi Railway Institution under Rule-XVIII.

Thus there is no materials or evidence on record to prove, prima facie relationship of employer-employee between the parties.

- c) The claim for absorption/regularization of services of the petitioner's member's arises from (b) above.

The petitioners claim, that certain workmen of the Co-operative society were directed to appear before the Screening Committee, does not create any right to claim for appointment.

For appointment as a regular employee, considering their qualification, the petitioners might have been given an opportunity to appear for the interview/examination and to compete with other candidates on merit, as a regular candidate and being directed to appear does not create any right to be automatically absorbed/ regularized. No claim as a special case can be made by the petitioners in such circumstances.

d) In the present case, the co-operative has been formed independently by the petitioners and duly registered under the Co-Operative Society Act and as such the said co-operative is not part of the railway administration.

14. Thus the findings of the learned tribunal in the award under challenge, being in accordance with law, requires no interference.
15. **The writ application having no merit stands dismissed.**
16. All connected application, if any, stands disposed of.
17. Interim order, if any, stands vacated.
18. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)