Indian Overseas Bank vs I.O.B. Staff Canteen Workers Union & Anr on 11 April, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1508, 2000 (4) SCC 245, 2000 AIR SCW 1475, 2000 LAB. I. C. 1495, 2000 (3) SERVLJ 258 SC, 2000 (2) LRI 1080, 2000 (3) SCALE 255, 2000 LAB LR 647, (2000) 4 JT 503 (SC), 2000 (3) UPLBEC 1920, 2000 (5) SRJ 228, (2000) 3 SERVLJ 258, 2000 (4) JT 503, (2000) 2 ALL WC 1571, (2000) 1 LABLJ 1618, (2000) 2 SCT 682, (2000) 85 FACLR 672, 2000 SCC (L&S) 471, (2000) 96 FJR 629, (2000) 2 LAB LN 930, (2000) 2 SERVLR 408, (2000) 3 UPLBEC 1920, (2000) 3 SUPREME 344, (2000) 3 SCALE 255, (2000) 2 CURCC 167, (2000) 2 CURLR 268

Bench: S.S.Ahmad, Doraswami Raju

CASE NO.:
Appeal (civil) 1407-1409 of 1998

PETITIONER:
INDIAN OVERSEAS BANK

Vs.

RESPONDENT:
I.O.B. STAFF CANTEEN WORKERS UNION & ANR.

DATE OF JUDGMENT: 11/04/2000

BENCH:
S.S.Ahmad, Doraswami Raju

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J J U D G M E N T Raju, J.

These three appeals relate to a common grievance of a group of 33 canteen employees of Indian Overseas Bank Staff Canteen and involve for consideration a vexed question but often relentlessly fought and put in issue between the workers and management as to status and relationship of workers in such canteens vis-a-vis the main industry or establishment concerned. At the Central Office of the Indian Overseas Bank at Madras (for short IOB), the canteen facilities have been provided to the staff employees and the departments of the Central Office, in the main building, new

building and canteen block as also C&I Branch and Cathedral Branch. Initially, it appears that the said canteen was run through a contractor engaged by the management of the bank. But subsequently on the representation of the All India Overseas Bank Employees Union, the Central Office of IOB agreed for the floating of a society in the name and style of Indian Overseas Bank Staff Co-operative Canteen with effect from 3.1.73. In order to facilitate the running of such a canteen, the Central Office has not only got the erstwhile contractor, who was running the same in the canteen block, vacated the canteen premises on 30.10.72 but wanted the Co-operative Canteen to commence its functions from 2.1.73 to ensure continuity in providing the services to the staff. The Central Office agreed to provide all infrastructural facilities, such as premises, furniture, utensils, electricity (other than fuel), cost of fuel initially upto a maximum of 600 per month, subsequently increased to 6000 per month and water supply. This was in addition to providing the oven and burners, wash basin, gas and cylinders and a subsidy @ Rs.12.50 per member of the staff using the canteen. The Co-operative canteen was promoted in that manner not only with the blessings and active co-operation and assistance of the Central Office but the all promoters were actually the serving members of the staff of the bank. No doubt, after the formation of the Co-operative canteen, a separate account has been opened in the name of the canteen which was operated by the promoters and periodically funds have been credited to the said account by the Central Office to carry on the day-to-day administration of the bank. It is also a fact that the staff required were employed by the promoters who have been administering the canteen. It is seen from the inter se correspondence and the material placed on record that the amount of contribution of funds and the subsidy was being increased from time to time depending upon the escalation of the costs of maintenance on the representation of the persons in charge of the running of the co-operative canteen. Despite such increase, having regard to the subsidised and concessional rate of supply of the edibles as also the beverages supplied to the staff employees both ends could not be economically met resulting in the persons incharge of the canteen declaring their inability to continue the canteen in the absence of further increase in the subsidy and grant to make up the vast difference. Since the bank was indifferent, the canteen was closed with effect from 26.4.90.

There is no controversy or dispute over the further fact that the canteen was being run only with the funds provided by the Central Office and the amounts realised from day-to-day receipts and neither the promoters nor any of the employees using the canteen otherwise had either contributed any capital or was obliged to make any such contribution to make the canteen economically viable or keep going at any cost. It is also not in dispute that with the closure of the canteen the workers engaged have been thrown out of employment and this resulted in an industrial dispute, raised through the workers union. Their stand was that the staff canteen in question was really managed by the bank though the day-to-day affairs of the management was entrusted to the employees of the bank nominated by the recognised union of the bank and, therefore. the canteen employees have to be treated as the employees of the bank and restored to work. In this connection, the union sought to draw inspiration from the practice in vogue in the Railways and other Nationalised banks, including State Bank of India. Per contra, the Central Office took the stand that except providing the facilities as well as funds in the nature of grant and subsidy, the Staff Canteen was operated only by the promoters by engaging the required workers and there is no nexus or any relationship of an employer-employee between the management of IOB and workers of the canteen and consequently they cannot be considered to be the employees of the management.

The conciliation proceedings having failed, the Government of India in exercise of the powers conferred under clause (d) of sub Section (1) and sub Section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication by the Industrial Tribunal, Chennai:

> ``Whether the demand of the workmen of the Indian Overseas Bank Staff Canteen represented by the Indian Overseas Bank Staff Canteen Workers Union, Madras for treating the staff of such canteens which are run by the local implementation committees, as workman of Indian Overseas Bank for giving them the same status, pay and facilities as are available to other Class IV employees of the Bank is justified ? If so, to what relief the workmen concerned are entitled ?
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> This was taken on file as I.D. No.72 of 1990.
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> Subsequently, on 17.2.91, the Government of India again referred the following dispute for adjudication by the Industrial Tribunal, Chennai:
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> ``Whether the demand of the Indian Overseas Bank Staff Canteen Workers Union, Madras for reinstatement of 33 canteen employees for whose names are given in the Annexure, into the services of the Indian Overseas Bank, as a result of the closure of the canteen by the local implementation committee, is justified ?
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> This dispute was taken on file as I.D. No.83 of 1991.
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> While matters stood thus, the Central Office had made arrangements with a third party for running the canteen on contractual basis with effect from 15.3.92 and aggrieved complaint No.4 of 92 under Section 33-A of the Industrial Disputes Act, 1947 [hereinafter referred to as The Act] read with Rule 59 of the Industrial Disputes (Central) Rules, 1957 [hereinafter referred to as The Central Rules] came to be filed on behalf of the workers. The two disputes as well as the complaint were taken up for hearing together and in view of a joint memo stating that evidence may be recorded in complaint No.4 of 92 and the said evidence may be treated as evidence in I.D.No.72 of 90 and I.D. No.83 of 91, all the three matters can be tried together and a common award be passed.
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> The Tribunal, after considering the pleadings, the oral and documentary evidence adduced by both parties, held as follows:
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> 26. So, bearing in mind these decision, if we take into consideration the following facts namely; (1) That the canteen is in the premises of the Bank; (2) That the canteen is for the exclusive use of the staff of the Bank;

(3) That the working hours and days of the bank; (4) That the Bank provided the infrastructure like furniture, utensils, refrigerators, water coolers apart from meeting the cost of gas, electricity and

water; (5) That the cost of the materials were met and wages for the workmen are also met only from the funds provided by the bank; (6) That neither the workers nor the Managing Committee contributed either to the capital or the expense for running the canteen; (7) That the bank gave the subsidy for supplying the food articles to its employees at concessional rates; (8) That they even provided cycles and tricycles to the canteen for the supply of food stuffs then it will be clear that the employees of the canteen will have to be treated as the employees of the bank, despite the fact that the ultimate control and supervision over the employees of the canteen was with the Managing Committee, and also the fact that the employee of the canteen were appointed only by the Managing Committee, itself comprised only of the employees of the respondent-bank. So, I have to hold that it was the Bank who was running the canteen through the Managing Committee which consisted of the employees of the bank. So, in the light of the discussions above, I find that the 33 employees of the canteen have to be treated as the workmen of the respondent bank for giving them the same status, same facilities as are available to the Class IV employees of the bank.

It was also held that there had been violation of Section 25-O (6) of the Act and the closure of the canteen shall be deemed to be illegal from the date of the closure of the workmen shall be entitled to all the benefits under the law for the time being in force, as if the canteen had not been closed. The Tribunal also allowed the claim made in the complaint No.4 of 92, since concedingly the Central Office had arranged the function from 15.3.92 by entrusting the same to a contractor and such an action during the pendency of the disputes before the Industrial Tribunal constituted an alteration in the service conditions of the canteen employees.

Aggrieved against the common Award dated 27.5.94, the bank management filed three Writ Petitions Nos.21251-21253 of 1994 challenging the award in the three proceedings, noticed above. They were heard in common and a learned Single Judge of the Madras High Court by his order dated 8.3.96 quashed the awards holding that there was no employer- employee relationship between the bank management and the canteen employees and consequently the question of reinstatement of the 33 canteen workers or taking cognizance of the complaint under Section 33-A of the Act do not arise. Aggrieved, the workers union pursued the matter on appeal before the Division Bench in Writ Appeal No.463-465 of 1996. The learned Judges of the Division Bench accepted the appeal by setting aside the order of the Single Judge and restoring the award of the Tribunal, on the view that not only the bank in question had an obligation to run the canteen but in fact was only running the canteen. It would be useful as also necessary to advert to the factual details noticed by the Division Bench which weighed with it to overrule the decision of the Single Judge and restore the award passed by the Industrial Tribunal in the matter. In paragraphs 6 to 9 of their judgment, the learned Judges of the Division Bench analysed the factual position recorded by the Tribunal, while pointing out the infirmities in the approach as well as the impermissibility of the exercise undertaken by the learned Single Judge by observing as follows:

> 6. It is therefore our difficult task to go through facts of the present case and come to a conclusion one way or the other. The first aspect of the case is that even here, there is no statutory obligation on the part of the bank to provide canteen facilities to its employees. But the question is whether there is any legal obligation implicit or explicit, as pointed out in the LIC case.

Before the Tribunal, the following aspects were emphasised by the canteen employees:

(i) Three promoters were appointed from among the permanent employees of the bank for a period of one year;

(ii) At the end of one year, another committee was nominated by the bank. The promoters were looking after the day to day supervision of the canteen apart from doing their regular work as bank employees;

(iii) The management had taken upon itself the responsibility of providing canteen facilities to the employees under a subsidised scheme;

(iv) The bank provided the basic requirements like building, utensils, crockery, cutlery and furniture etc.;

(v) The bank was giving subsidy for meeting the salary of the canteen employees and were increasing the same from time to time.

(vi) Supply of foodstuffs at concessional rate was also done by the bank;

(vii) The cost fuel, electricity and water supply charges apart from providing refrigerators and water coolers were also met by the bank; and

(viii) In effect, the canteen was run out of the funds of the bank.

As against the above, the bank contended (i) that there was no employer employee relationship; (ii) it was only at the request of the union that the bank agreed to provide a canteen; (iii) the bank had no say in choosing the members of the committee and (iv) the canteen is not for the exclusive use of the bank.

7. In evidence, one other important fact was brought out, viz., that the canteen workers were employed under a Welfare Fund Scheme of the Bank. They are made eligible for periodical medical check up by the Doctors of the bank. On the above rival submissions and evidence, the Tribunal came to the following conclusions: (i) that the canteen run in the premises of the bank; (ii) the canteen is for the exclusive use of the bank staff; (iii) the bank provided the infrastructure facilities; (iv) the managing committee did not contribute anything towards the capital or the expenses for running the canteen; (v) the bank gave subsidies to subsidise the purchase of food articles and

(vi) the bank provide cycles and tricycles to the canteen for the supply of foodstuffs - Consequently, the Tribunal came to the conclusion that the thirty three employees have to be treated as workmen of the bank and should be given the same status and facilities as are available to the class IV employees of the bank. The Tribunal also held that the closure of the canteen when the dispute was pending was illegal.

8. The question is whether in view of such categorical findings of fact arrived at by the Tribunal, the learned Single Judge exercising jurisdiction under Article 226 of the Constitution of India could re-appreciate the evidence and come to a different conclusion. We have already pointed out that the learned single Judge had erred in appreciating certain documents and the evidence in the case. We are clearly of the opinion that the learned Single Judge had no material to characterise the judgment of the Tribunal as perverse. We will once again refer to certain important matters which would go a long way to decide the matter. The inference drawn from Ex.M1 that it was the Union, who wanted the canteen is far from truth. The subsequent evidence has got to be looked into on this aspect of the case. In Ex.M4, dated 23.4.1988, the Union has informed the bank about the new canteen promoters for the record of the bank. The inference drawn by the learned Judge from Ex.M5 that the canteen was not exclusive for the bank is based on a misconception. The evidence of MW1 clearly shows that the canteen is meant only for the bank. His evidence is as follows:

> The canteen is meant only for the staff of the bank the canteen will remain only for closed on bank holidays.
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> The observation that the bank was running the canteen to retain good relationship between the union and the management is not appropriate and on the other hand, it only shows that the bank was implicitly bound to maintain the canteen. The learned Single Judge has not given due weight to the two principles enunciated in the LIC case and undisturbed by the RBI case. We have already quoted those principles.
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> 9. One other significant fact which has escaped the attention of the learned Single Judge is the letter written by the Central Office of the bank when the promoters expressed their inability to run the canteen with effect from 26.4.90. Says the management as follows:
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> Member of staff are advised that the canteen will function in our canteen block with effect from 21.10.1992. The contractors will run the canteen with minimum staff for a week on a trial basis to overcome the difficulties if any. The canteen will run normally after a week or so.
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> The bank further says that the canteen is for the welfare of the staff and directs as follows:
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> All members are requested to avail this facility and refrain from going out for coffee and tea. Since the canteen has started functioning the Department Heads should inform all the staff members to restrict their lunch time to half an hour between 12.30 and 3.00 p.m. and the staff may be permitted to go for lunch in fixed time to avoid heavy rush at the canteen.
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> The above passage quoted from the letter of the Central Office of the Bank amply establishes that the bank had an obligation to run the canteen and in fact, was running the canteen, through contractors, even though the promoters had withdrawn

their services. Actually, it appears that the promoters were desirous of forming a co-operative society and it did not fructify. In this view of the matter, it is clear that as in the LIC case, the bank had been running the canteen by one or other of the agency.

Before dealing with the contentions of the counsel on either side, it is necessary to refer to the earlier, at least of a few pronouncements of this Court, which lay down the approach to be adopted and guidelines to be followed, in analysing as well as answering the issues raised, which at any rate have generated much heat, for almost nearly a decade. The first in the series is the decision of this Court rendered by a Bench of three learned Judges reported in M.M.R. Khan & Ors. vs. Union of India & Ors. [1990 (Supp.) SCC 191]. In this case, this Court classified the canteens into three categories: (1) Statutory canteens which are required to be provided compulsorily in view of Section 46 of the Factories Act, 1948; (2) Non- statutory recognised canteens- such of those which are established with the prior approval and recognition of the Railway Board as per the procedure detailed in the Railway Establishment Manual; and (3) Non-statutory non- recognised canteens - which are canteens established without prior approval or recognition of the Railway Board. Of the employees in the statutory canteens, it was held that they are entitled to the status of Railway Employees, also for the reason of the factual findings found discussed in the judgment. So far as the employees of the non-statutory recognised canteens are concerned, they were also held entitled to be treated on par with those employees in the statutory canteens and as Railway servants, for all purposes. The third category of employees were held not entitled to claim the status of Railway servants.

P.B. Sawant, J., who authored the decision in MMR Khans case (Supra), has once again spoken for an another Bench of himself and Majmudar, J., in the decision reported in Parimal Chandra Raha & others vs. Life Insurance Corporation of India & Others (for short LIC case) [1995 Supp. (2) SCC 611] and after review of the case-law on the subject, culled out the principles emanating from them as hereunder:

25. What emerges from the statute law and the judicial decisions is as follows:

(i) Whereas under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

> (iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award, etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc. Thereupon, the factual matrix disclosed from the materials on record in that case were dealt with besides noticing the fact that though the LIC has not explicitly undertaken to provide canteen services to its employees working in the offices but only accepted explicitly the obligation to provide to the employees facilities to run the canteen, the facts on record established that the LIC had implicitly accepted the obligation to provide canteen services and not merely the facilities to run the canteen. It was also observed thereunder as follows:

> 29. The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. The canteen committees, the Co- operative Society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services.

The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say

in the matter. Further, the record shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time, whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz., the premises, furniture, electricity, water etc. is supplied by the Corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the Corporation, as pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them, only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the co- operative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation.

In Employers in relation to the Management of Reserve Bank of India vs Workmen [(1996) 3 SCC 267], after adverting to all those principles, it was held on facts established therein that in the absence of any statutory or other legal obligation and in the absence of any right in the Bank to supervise and control the work or details thereof in any manner regarding the canteen workers employed in the three types of canteens, it cannot be said that the relationship of master and servant existed between the bank and the various persons employed in three types of canteens. The demand for regularisation was considered to be unsustainable since the workers could not substantiate the existence of relationship of employer-employee.

In Indian Petrochemicals Corporation Ltd.& Anr. vs Shramik Sena & Ors. [(1999) 6 SCC 439] the claim of workmen of statutory canteen managed by a Contractor fell for consideration and while explaining LIC case (Supra) and following the decision in MMR Khans case (Supra) and Reserve Banks case (Supra), it was held that the deemed employment of such workers is only for the purposes of the Factories Act and not for all purpose, because the Factories Act, as such, does not govern the rights of employees with reference to recruitment seniority, promotion, retirement benefits etc., which invariably and otherwise are governed by other Statues, Rules, Contracts or Policies. Consequently, it was observed, the contention of the workmen that employees of a statutory canteen ipso facto became the employees of the establishment for all purposes, cannot be

accepted and the said question depended upon the further and other materials placed on record, which when cumulatively considered in that case, established the factual position that: (a) The canteen has been there since the inception of the appellants factory.

(b) The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen.

(c) The premises, furniture, fixture, fuel, electricity, utensils etc. have been provided for by the appellant.

(d) The wages of the canteen workers have to be reimbursed by the appellant.

(e) The supervision and control on the canteen is exercised by the appellant through its authorised officer, as can be seen from the various clauses of the contract between the appellant and the contractor.

(f) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.

(g) The workmen have the protection of continuous employment in the establishment.

This Court further held that since the services of such workmen are being regularised by the Court not as a matter of right of the workmen arising under any statue, but with a view to eradicate unfair labour practices and as a measure of labour welfare to undo social injustice, it was but necessary, at times, to issue appropriate directions or guidelines and conditions, subject to which such regularisation of services have to be made, depending upon facts of each case.

Mr. S. Ganesh, learned counsel for the appellant-Bank, while placing stress on one or the other of the facts disclosed, contended that the canteen employees in the present case cannot be considered to be employees of the Bank, judged in the context of the principles laid down in Indian Petro chemicals case (Supra). Strong reliance was also placed upon the decision in Reserve Banks case (Supra) by further contending that the staff canteen of the appellant-Bank was similar to the one found run in that case. By adverting to the fact that between 26.4.90 and 21.10.92 there was no staff canteen in the appellant Bank, it is claimed to sufficiently indicate that the canteen facilities are not a condition of service of the employees of this Bank. An apprehension has also been expressed while submitting that if the claim of the canteen workers in this case is upheld, the appellant-Bank would have to face similar claims made by every employee of the canteen run everywhere and even subsequently by various contractors, for the similar reason that the Bank had provided subsidy either in cash or kind or in both to facilitate the running of a staff canteen. We may point out even at this stage that this type of submission based on apprehensions came to be rejected even in MMR Khans case (Supra) as an argument in terrorem, and that if really the workers are entitled to the status they are claiming, they cannot be deprived of such status merely because some other employees similarly or dissimilarly situated may also claim the same status. Lastly, it was urged that in any event the appropriateness of awarding compensation in lieu of the claim for employment may

also be considered.

Mr. S. Ravindra Bhat, learned counsel appearing for the workmen, invited our attention to the factual findings recorded by the Tribunal, which had its approval of the Division Bench noticed by us supra, and vehemently contended that the learned Single Judge committed a grave error in undertaking for himself the re-appreciation of facts as though exercising an appellate jurisdiction, even ignoring certain vital aspect of facts and belittling the relevance and importance of portions of evidence strongly relied upon by the Industrial Tribunal in support of the factual findings recorded by it and that the Division Bench rightly interfered with his order for valid and justifying reasons. According to the learned counsel, the order under appeal does not call for any interference, in view of the principles laid down by this Court in the various judgments noticed above - the decision in the question being always one ultimately depending upon the peculiar facts of each case and categorically found in this case in favour of the workmen by the fact- finding authority.

The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re- appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the Writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below.

The standards and nature of tests to be applied for finding out the existence of Master and Servant relationship cannot be confined to or concretised into fixed formula(s) for universal application, invariably in all class or category of cases. Though some common standards can be devised, the mere availability of anyone or more or their absence in a given case cannot by itself be held to be decisive of the whole issue, since it may depend upon each case to case and the peculiar device adopted by the employer to get his needs fulfilled without rendering him liable. That being the position, in order to safeguard the welfare of the workmen, the veil may have to be pierced to get at the realities. Therefore, it would be not only impossible but also not desirable to lay down abstract

principles or rules to serve as a ready reckoner for all situations and thereby attempt to compartmentalise and peg them into any pigeonhole formulas, to be insisted upon as proof of such relationship. This would only help to perpetuate practising unfair labour practices than rendering substantial justice to the class of persons who are invariably exploited on account of their inability to dictate terms relating to conditions of their service. Neither all the tests nor guidelines indicated as having been followed in the decisions noticed above should be invariably insisted upon in every case, nor the mere absence of any one of such criteria could be held to be decisive of the matter. A cumulative consideration of a few or more of them, by themselves or in combination with any other rele1vant aspects, may also serve to be the safe and effective method to ultimately decide this often agitated question. Expecting similarity or identity of facts in all such variety or class of cases involving different type of establishments and in dealing with different employers would mean seeking for things, which are only impossible to find.

The decision in Indian Petrochemicals case (Supra) does not, in our view, lay down any different criteria than those declared in the other decisions for adjudging the issue, except that it had also considered specifically the further question as to the effect of a declaration, that the workers of a particular canteen, statutorily obligated to be run render no more than to deem them to be workers for the limited purpose of the Factories Act and not for all purposes. In the case before us, the claim is not that there was any such statutory obligation and the entire consideration proceeded only on the footing that it is a non-statutory recognised canteen falling within the second of the three categories envisaged in the earlier decisions and the Tribunal as well as the Division Bench of the High Court endeavoured to find out whether the obligation to run was explicit or implicit, on the facts proved in this case.

The factual findings recorded by the Tribunal and the Division Bench as also the materials relied upon therefor, have been already set out in detail, supra and it is unnecessary to refer to them in greater detail once over again. The canteen in question was being run from 1.1.73 and even before that, indisputably, the Bank itself had arranged for running of the same through a contractor and similar arrangement to run through a contractor was once again made by the Bank on its closure on 26.4.90, though after a period of some break from 21.10.92. Besides this, the nature and extent of assistance, financial and otherwise in kind, provided which have been enumerated in detail, would go to establish inevitably that the Bank has unmistakably and for reasons obvious always undertaken the obligation to provide the canteen services, though there may not be any statutory obligation and it will be too late to contend that the provision of canteen had not become a part of the service conditions of the employees. The materials placed on record also highlight the position that the Bank was always conscious of the fact that the provision and availing of canteen services by the staff are not only essential but would help to contribute for the efficiency of service by the employees of the Bank. That it was restricted to the employees only, that the subsidy rate per employee was being also provided, and the working hours and days of the canteen located in the very Bank buildings were strictly those of the Bank and the further fact that no part of the capital required to run the same was contributed by anybody self, either the Promoters or the staff using the canteen are factors which strengthen the claim of the workers. It was also on evidence that the canteen workers were enlisted under a welfare fund scheme of the Bank besides making them eligible for periodical medical check up by the doctors of the Bank and admitting them to the

benefits of the Provident Fund Scheme. The cumulative effect of all such and other facts noticed and considered in detail provided sufficient basis for recording its findings by the Tribunal as well as the Division Bench of the High Court ultimately to sustain the claim of the workers, in this case.

The learned Single Judge seems to have not only overlooked certain relevant material but by adopting a negative approach had belittled the relevance and importance of several vital and important factual aspects brought on record. If on the facts proved, the findings recorded by the Tribunal are justified and could not be considered to be based upon `no evidence, there is no justification for the High Court in exercising writ jurisdiction to interfere with the same. The promoters of the canteen being permanent employees in the service of the Bank, permitted to run the canteen, by merely being in control of the day-to-day affairs of the canteen, the Bank cannot absolve of its liabilities when it was really using the canteen management as its instrumentality and agent. The cloak apart, the `voice definitely is that of Jacobs. Consequently, we could neither find any error of law or other vitiating circumstances in the judgment of the Division Bench nor any infirmities in the process of reasoning or gross unreasonableness and absurdities in the conclusions arrived at to restore the Award, so as to justify and warrant our interference in the matter.

The claim of the appellants to consider the question of awarding compensation than to allow them to be reinstated, does not also appeal to us. The canteen services have to be necessarily provided throughout for the staff and the Bank can always utilise the services of the workers for the purpose and there is no justification to deny them of the hard earned benefits of their service.

For all the reasons stated above, we see no merit in the appeals and the appeals shall stand dismissed. No costs.