# Harmohinder Singh vs Kharga Canteen, Ambala Cantt on 9 July, 2001

CASE NO.:
Appeal (civil) 4024 of 2001
Special Leave Petition (civil) 16797 of 1999

PETITIONER:
HARMOHINDER SINGH

Vs.

RESPONDENT:
KHARGA CANTEEN, AMBALA CANTT.

DATE OF JUDGMENT: 09/07/2001

BENCH:
D.P.Mohapatro, Ruma Pall

JUDGMENT:

Ruma Pal, J. Leave granted.

The basic question which arises in this appeal is whether an employee's service can be terminated in accordance with the Standing Orders introduced subsequent to his entering into service. The employee in question is the appellant. The employer is the respondent canteen which, according to the respondent, is a non- profit social welfare institution meant for defence personnel both serving and retired. The appellant was appointed as a salesman by the respondent canteen on 1st June,1974 and subsequently as a cashier on 9th August,1975. The letter of appointment and the Standing Orders, inter alia, provided that the service of the appellant could be terminated by one month's notice by either party. The Standing Orders also provided that the "services of all canteen employees will be on temporary basis extendable on six monthly basis".

In 1988 para 3A was introduced in the Standing Orders of the respondent. It provided "a) Maximum age limit for an employee is 60 years.

b) Maximum permissible service for an employee is 15 years.

c) The service of an employee will be automatically relinquished based on completion of age limit or maximum permissible service whichever occurs first.

d) One month pay and allowance will be given to the individual once his services are relinquished."

As the appellant had joined service in June,1974 notice was issued to him on 15th May,1989 to the effect that his service would be "relinquished" (sic) with effect from 30th June,1989 as he would complete 15 years of service with the canteen. In addition, the appellant was granted one month's additional pay and allowance on the last day of his service. The appellant initially asked for extension of the service period beyond 30th June, 1989. This was refused by the respondent. The appellant then filed a suit and obtained an order of injunction, as a result of which the appellant served in the canteen till September,1989. The interim order was subsequently vacated. The appellant withdrew the suit and raised an industrial dispute. The State Government referred the following dispute to the Labour Court :

> "Whether the termination of services of Shri Harmohinder Singh is valid and justified. If not, to what relief is he entitled ?"

The Labour Court rejected the claim of the appellant and held that Para 3A of the Standing Orders of the respondent was binding on the appellant and the termination of the appellant's service after the contractual period was valid. The appellant filed a writ application challenging the award before the High Court of Punjab & Haryana. The High Court dismissed the writ petition inter-alia on the ground that the writ application was not maintainable against the respondent-canteen.

Challenging the decision of the High Court the appellant has contended that it was contrary to the decision of this Court in Uptron India Ltd. -vs-. Shammi Bhan [1998 (6) SCC 538]. According to the appellant para 3A of the Standing Orders was violative of Sections 9A, 25J and 25F of the Industrial Disputes Act, 1947 (referred to briefly as the Act). The appellant urged that his appointment as cashier was not temporary but permanent. Since there was no prescribed tenure when the appellant was appointed, the appellant was entitled to continue in service at least as long as other government servants. The appellant also drew our attention to the decision of the Punjab and Haryana High Court in Balbir Singh vs. Kurukshetra Central Coop. Bank Ltd. and Anr. :

> 1990 (1) LLJ 443.

> The respondent on the other hand contended that the appellant had accepted the Standing Orders including para 3A. It was further contended that no provision of the Industrial Disputes Act, 1947 had been violated and the appellant's services had been duly terminated in terms of the Standing Orders.

> We are of the view that the decision of the High Court impugned before us is correct. The respondent had raised an issue before the Labour Court that the reference was bad as the Union of India had not been impleaded as a party. To this objection the appellant filed an affidavit before the Labour Court contending :

> "The canteen is not carrying the business under the authority of any Government/Ministry of Defence. It has its independent identity, more so not exist

> any relationship between the employees and the state which does not exercise any control to select, appoint, suspend or dismiss any employee. The employees are not governed by any service rules of the State/Ministry of Defence. The State/Ministry of Defence has no control over the management and working of the canteen."

It was not open to the appellant to take a different stand before the High Court - more so when the question whether an institution is a "State" or "other authority" within the meaning of Article 12 of the Constitution is essentially a question of fact.

Because the appellant had contended before the Labour Court that the respondent had no connection whatsoever with the Government, neither the Government nor any department of the Government was made a party to the reference. But in order to sustain a contrary claim before the High Court under Article 226, the appellant could not, as he has done, proceed only against the Canteen.

Even on the merits the appellant's arguments on the validity of para 3A are without substance. That Standing Orders bind the workmen of a canteen had not been disputed. It has also not been argued that merely because Standing Orders are amended after a workman joins service it ipso facto means that the workman is not bound by the amendment. [See Salem-Erode Electricity Distribution Co. (P) Ltd. -vs- Their Employees' Union AIR 1966 SC 808; Agra Electric Supply Company Ltd. -vs- Alladin and Ors. (1969) 2 LLJ 540; Dunlop India Ltd. -vs- Their Workmen (1972) 2 LLJ 1]. What was contended by the appellant was that the amendment had to be in accordance with the provisions of the Act. There can be no dispute to this proposition.

Section 9A of the Act relied upon by the appellant only provides that an employer proposing to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the 4th Schedule to the Act cannot affect such change without giving to the workmen notice in the prescribed manner. The provisions of the Section are no doubt mandatory. But the preconditions to their applicability are

(i) there must be a change in the conditions of service.

(ii) the change must be such that it adversely affects the workmen; See Workmen - vs- Hindustan Lever Ltd.[(1973) 1 LLJ 427] and

(iii) The change must be in respect of any matter provided in the Fourth Schedule to the Act.

In other words, not all changes are required to be notified. The Fourth Schedule provides for eleven conditions of service for change of which notice is to be given. Apart from the express conditions, there may be conditions which by a process of interpretation can be included within one or other of the eleven listed.

The conditions of service for change of which notice is to be given under the 4th Schedule does not in terms include the subject matter of Para 3A, namely, the fixation of a period of service or date of

retirement. No argument has been advanced as to which of the eleven items could, even by a process of interpretation, include para 3A. There is nothing on record to show that prior to the introduction of Para3A, the workmen of the Canteen continued as a matter of right till they reached the age of superannuation applicable to government servants. On the contrary the Standing Orders expressly provide that the services of canteen workers were temporary and for a period of six months. It cannot be said that the introduction of a maximum period of service would operate to the detriment of the employee who was otherwise entitled to serve only for six months and was liable to be dismissed merely upon service of a month's notice. Although the latter stipulation has been held to be unconstitutional as far as government employees are concerned in Uptron Ltd. -vs- Shammi Bhan (1998) 6 SCC 538, the principle would not apply to the appellant who, on his own showing before the Labour Court, was not serving in or under the Government or any governmental or government controlled institution. It was not necessary, therefore, to give any notice to the workmen under Section 9A of the Act before introducing para 3A in the Standing Orders. Besides, the respondent's averment that the amended Standing Orders were duly intimated to all its employees who had also signed the same has not been controverted by the appellant.

The argument on the basis of Section 25F is equally misconceived. This section deals with conditions precedent to retrenchment of workmen. It would not apply to para 3A because of the definition of retrenchment in Section 2(oo)(bb) which expressly excludes "termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained thereon". Contracts of service for a fixed term are, therefore, excluded. This Court in Uptron's case (supra) has also held that the principles of natural justice are not applicable where the termination takes place on the expiry of the contract. The decision of a Learned Single Judge of the Punjab and Haryana High Court in Barbir Singh vs. Kurukshetra Central Cooperative Bank Ltd. [(1990) 1 LLJ 1990] to the extent that it holds to the contrary is erroneous.

As far as Section 25J is concerned it provides that the provisions of Chapter V-A of the Industrial Disputes Act, 1947 would have overriding effect irrespective of any other law including Standing Orders made under the Industrial Employment (Standing Orders) Rules 1956. Chapter V-A deals with Lay offs and Retrenchment. The introduction of a retirement age is neither. There is no substantive provision in Chapter V-A of the Act which pertains to the period of service of an employee. Consequently, Section 25J has no application at all to the present case.

We have already held that paragraph 3A of the Standing Orders of the respondent was binding on the appellant and it is nobody's case that the termination was not in terms thereof.

We accordingly dismiss this appeal without any order as to costs.