

State Bank Of India And Others vs State Bank Of India Canteen Employees ... on 17 April, 2000

Equivalent citations: 2000 LAB LR 675, AIR 2000 SUPREME COURT 1518, 2000 (5) SCC 531, 2000 AIR SCW 1415, 2000 LAB. I. C. 1481, 2000 (3) SERVLJ 291 SC, 2000 (3) SCALE 290, 2000 (2) LRI 955, 2000 (2) UPLBEC 1703, 2000 (6) SRJ 85, (2000) 3 SERVLJ 291, (2000) 5 JT 63 (SC), 2000 (5) JT 63, (2000) 2 ANDHWR 34, (2000) 1 LABLJ 1441, 2000 SCC (L&S) 714, (2000) 2 GUJ LH 547, (2000) 2 LAB LN 906, (2000) 3 SERVLR 1, (2000) 2 UPLBEC 1703, (2000) 3 SUPREME 478, (2000) 3 SCALE 290, (2000) 2 CURCC 186, (2000) 2 CURLR 241

Bench: A.P.Misra, M.B.Shah

PETITIONER:

STATE BANK OF INDIA AND OTHERS

Vs.

RESPONDENT:

STATE BANK OF INDIA CANTEEN EMPLOYEES UNION(BENGAL CIRCLE)

DATE OF JUDGMENT: 17/04/2000

BENCH:

A.P.Misra, M.B.Shah

JUDGMENT:

Shah, J.

Leave granted, in SLP (Civil) No.7229 of 1999 which is filed against the Award dated 7th October, 1998 passed by Central Government Industrial Tribunal, Calcutta in Reference No.2 of 1992.

Civil Appeal Nos.552-553 of 1994 are filed against judgment and order dated 2nd September, 1993 passed by the High Court of Calcutta in Writ Application No._____of 1993 deciding the question whether the employees of the canteens of some of the branches of State Bank of India (hereinafter referred to as SBI in short) can claim to be absorbed as employees of the State Bank of India?

In the said Writ Application the State Bank of India Canteen Employees Union sought the relief that

the canteen employees who were ostensibly employed by the Local Implementation Committee (LIC for short) as per the scheme framed by the SBI for providing certain amenities were in fact employees of the State Bank. It was contended that canteen facilities are meant for serving tea, meals to the employees of the bank and the salary of canteen employees are paid by the Implementation Committee from the funds created by the bank for the same. It was pointed out that SBI and SBI Staff Federation reached an agreement which is contained in the Handbook of staff welfare activities and canteen facility is one part of such welfare activities, which is looked after by the LIC for which funds are provided by the Central Board of the Bank as subsidies out of its annual profits. The High Court directed that the SBI is bound to treat them its employees in all the branches, where such canteens exist and to treat them equally as employees of the bank and not to peer at such employees through the opaque curtain of the LIC.

Further, the State Bank of India Employees Association (Bengal Circle) for and on behalf of employees of the canteens established in the branches of the bank on the basis of welfare scheme propounded by the bank in or about the year 1963 raised a dispute for which Government of India by order dated September 17, 1975 made a reference to the Tribunal as under:-

Whether the demand of the workmen of the State Bank of India represented by the State Bank of India Employees Association, Bengal Circle, for treating the staff of such canteens which are run by the Local Implementation Committees, as workmen of State Bank of India 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?

The Tribunal considered that whether canteen staff should be regarded as workmen of the Bank is a relevant or substantial dispute between the Bank and its workmen and after considering the various facts arrived at the conclusion that the canteen employees were workmen of the bank and they would be entitled to the same status, pay and other facilities as are available to other Class-IV employees of the Bank and those rights will accrue in their favour w.e.f. 01.11.1976. That award dated 30.11.1976, known as Justice Moidu Award, was challenged by filing appeal bearing Civil Appeal No.840 of 1977 in this Court, which was admitted and the operation of the Award was stayed pending hearing and disposal of the appeal.

Pending appeal, on 31st October, 1977 the Bank and All India State Bank of India Staff Federation arrived at first settlement. The terms of the settlement inter alia provide that the Bank will take over from the concerned Local Implementation Committees at 51 branches and offices mentioned therein, the management and running of the staff canteens and conduct the same in the manner provided in the scheme attached to the agreement. The settlement also provided that the Bank will provide the canteen staff, who will be appointed and paid by the bank instead of by way of subsidy. The agreement further provides for absorption of the canteen employees of the said 51 branches if they qualify in an interview and found physically fit in a medical examination and after verification of character and antecedents in the

usual manner. Thereafter between the same parties, a second settlement took place on 17th September, 1984 which inter alia provided that the Bank will take over from the concerned Local Implementation Committees at local head offices, regional offices and such branches having a minimum staff strength of 200 where the canteens are still being run by the said committees and conduct the same in the manner provided in the scheme attached to the settlement.

On the basis of the aforesaid settlements, the Civil Miscellaneous Petition No. 39299 of 1985 in Civil Appeal No.840 of 1977 was filed before this Court by the parties for disposal of the appeal in terms of the compromise arrived at between the parties. In that application it has been inter alia stated that two settlements, which have been reached between the Management and the Staff Federation on 31.10.1977 and 17.9.1984 respectively have been acted upon and the same are in operation and the operation of the impugned Award is stayed by this Court. It was stated that under the circumstances, the functioning of the canteens and the service conditions of the canteen employees in Bengal Circle were governed by the terms of the aforementioned two settlements and that the said settlements have been regarded by the Management as well as the Staff Federation to be fair and reasonable and in view of the fact that these settlements have been in operation it was submitted that it would be in the interest of justice to dispose of the Appeal in terms of the said settlements in substitution of the impugned Award. It was, therefore, prayed that the appeals be disposed of in terms of settlements dated 31.10.1977 and 17.9.1984 in substitution of the impugned Award dated 30.11.1976 in Reference No.63 of 1975 published in the Gazette of India dated 25.12.1976. Hence, this Court passed the following order on 14.10.1985 in pending appeal challenging Justice Moidu Award: -

The settlement is recorded and the appeal is disposed of in terms of the compromise.

After disposal of the said appeal, it is contended that the unabsorbed canteen workers formed union known as Workmen represented by the State Bank of India Canteen Employees Union in February, 1988 and they filed an application for clarification of the order dated 14.10.1985 passed by this Court. That application was disposed of by passing the following order: -

Learned counsel for the applicants states that the applicants shall raise their dispute in the appropriate forum and this petition may consequently be permitted to be withdrawn. This application is accordingly allowed to be withdrawn.

Thereafter, a third settlement was arrived at on 9th January, 1991 between the Bank and All India SBI Staff Federation which inter alia provided that whereas, a review of such provision of canteen facility under the said agreement was undertaken in 1977 and 1984 and Agreements dated the 31st October, 1977 and 17th September, 1984 were arrived at to the effect that canteens at Local Head Offices, Zonal Offices, Specified Branches and other Branches/Offices, where minimum staff strength was not less than 200, would be taken over by the Bank and the staff thereat will be employed by the Bank on full time basis. These settlements were in affirmation of the said

understanding between the parties and with a view to streamline the administration and control of canteens taken over by the Bank. It was further agreed as per paragraph 48 of the minutes of the bipartite discussions held with the Federation on 9th June, 1989 that the Bank will take over from the concerned Local Implementation Committees at such offices/branches having a minimum staff strength of 150 on that date, where the canteens are still being run by the said Committees, subject to the conditions that the existing premises at Branches/offices are considered adequate for establishing a full fledged canteen and conduct the same in the manner provided in the scheme attached to the aforesaid Agreement dated the 31st October, 1977 provided, however, that the particulars of canteens to be so taken over and the date of such taking over will be decided mutually by the Bank and the Federation from time to time. The staff canteens at Branches/offices where staff strength is less than 150 will continue to be run and managed by the Local Implementation Committee, as hitherto, and staff thereat will continue to be engaged by such committees on such terms and conditions as they may decide.

Subsequently, a dispute was raised by the State Bank of India Canteens Employees Union (Bengal Circle) and the Government by order dated 22.1.1992 made reference to the Industrial Tribunal as stated below: -

Whether the action of the management of State Bank of India, Alambazar Branch, in not regularising the services of the workman Shri Judhithir Debsena, as canteen boy in class-IV cadre of the bank, and in denying him the full salary for the month of April, 1991 is justified? If not, what relief the workman is entitled to?

Pending the Reference, 4th settlement dated 2nd April, 1992 was arrived at between the parties which inter alia provided that Bank will take over from Local Implementation Committees concerned at such offices/branches having a minimum staff strength of 100 where canteens are still being run by the said committees.

Thereafter, on refusal by the Bank to absorb rest of the canteen employees, a writ petition was filed by the Union of canteen employees in the High Court at Calcutta on 3.6.1993. The learned Single Judge declined to pass any interim order and directed the S.B.I. to file affidavit. Against that order, appeal was filed before the Division Bench of the High Court. The parties agreed that the writ petition and the appeal be disposed of together by the Division Bench. The Division Bench by its judgment dated 2.9.1993 held that the writ petitioners being the balance of the canteen workers were entitled to be absorbed as Bank employees.

Against that judgment, the Bank preferred Civil Appeal Nos. 552 and 553 of 1994 before this Court. At the time of hearing by order dated May 5, 1998, this Court passed interim direction {(1998) 5 SCC 74} as under: -

In the circumstances, taking advantage of the pendency of the identical issue in Ref. No.2/92 before the Central Government Industrial Tribunal at Calcutta, instead of directing the parties to go before the same Tribunal in this matter as well, to avoid delay and in the interest of both the parties, we direct the Central Government Industrial Tribunal to expedite the hearing of Ref. No.2/92 and

render the Award within six months. The parties shall avoid taking adjournments. The party, aggrieved by the Award of the Tribunal to be passed pursuant to the direction as given above, will be at liberty to move this Court.

These appeals will be listed after the disposal of the Reference by the Central Government Industrial Tribunal as aforesaid alongwith the SLP, if any, filed against the Award of the Central Government Industrial Tribunal.

In view of the aforesaid directions, it appears that the Tribunal expedited the hearing of the reference in question. Preliminary objections were raised by the learned counsel for the Bank to the effect that (1) since the workman was never engaged by the management, no industrial dispute in terms of Sections 2(k) of the Industrial Disputes Act, 1947 (herein after referred to in short as the I.D. Act) exists. Under Section 2(k) there must be relationship of master and servant between the employer and employee; the sponsoring Union is neither a union of the employees of the Bank nor any of the employees of the Bank is a member of the said union. (2) the Union cannot represent any workman as it has not sufficient number of members within its fold to give it a representative character. Against that, learned counsel for the Union contended that the Bank employees are also members of the sponsoring Union and when a reference is made under Section 10 of the Act there is a presumption of existence of an industrial dispute. He further contended that the management should be estopped from raising this contention of maintainability of the case inasmuch as the management did not take this point before this Court in SBIs case which was pending in CA No.552-53/1994.

After discussing the contentions, the Tribunal held that it is required to decide the reference both on point of maintainability as well as on merits. It held that there is no relationship of employer and employee between the Canteen boys appointed by the Local Implementation Committee (LIC) run canteens and the Bank. The Tribunal dealt with the contention that the Bank has an obligation to maintain canteens and held that since amenity for canteen can be provided for in various ways like through contractors, cooperative societies or any independent body without really maintaining such canteen by the bank, it cannot be said to have created any obligation for the Bank to run canteens. The Tribunal negated the contention of the learned counsel for the employees that in view of Justice Moidus award passed in Reference No.63 of 1975, the canteen boys are direct employees of the Bank, hence, the concern workman should be held to be an employee of the Bank, by holding that in that case, compromise was entered into between the parties, therefore, the award having been substituted by the settlements, no question of the Union claiming any right under the said award can arise.

Thereafter, the Tribunal considering the question whether there is any similarity between the LIC run canteens and the canteens run by the Bank - observed that admittedly, the canteen of those branches of the Bank having staff strength of 100 and above are directly run by the management of the Bank and the canteens having lessor staff strength are managed by the LIC, formed by some of the staff of the Bank alongwith Branch Manager as ex-officio President. From the evidence on record, the Tribunal found that the Bank provides canteen facilities to its employees as amenities and for that purpose set up of canteens is provided by giving subsidies by the Bank. The canteens are

run by the LIC and the Bank has nothing to do with the supervision or the day to day running of the canteens. The composition of the LIC is entirely from the members of the staff with the Branch Manager as Ex-Officio Secretary. The control of the Bank, if any, over the LIC is limited being its Branch Manager, Ex. Officio Secretarys for accountability of proper utilization of the amount paid as subsidy. Such control, if it can at all be said to be control by the Bank over the LIC, being neither effective nor all pervasive no question of the canteen boys, who are employees of the LIC, being employees of the Bank can arise. Further, regular appointment to any post in the Bank being always proceeded by certain tests of the candidates, the canteen boys cannot claim to be employees as they had not gone through those tests. Therefore, the canteen boys cannot be said to be the employees of the Bank.

The Tribunal further negated the contention that the Banks action in giving appointment to some of the persons doing same nature of work on the basis of consideration that those persons who are rendering service in bigger branches having the staff strength of 100 and above should be absorbed, while those rendering service in branches having lessor staff strength will not be entitled to such regularization, is discriminatory. The Tribunal observed that under Section 46 of the Factories Act it is obligatory that canteens are to be established where more than 250 workers are employed. In Section 25 K of the Industrial Disputes Act, 1947 provisions have been made in respect of those employees working in bigger establishments. Further, the discrimination, even if there be any, being the outcome of protracted negotiations between the parties from 1977 to 1991 as expressed in four settlements between the Bank and the Union which represented all employees of the Bank till 1988 at least, before the sponsoring union was born, ceases to be discriminatory as the elements of give and take is necessary commitment in every amicable settlement. The Tribunal following the decision in Reserve Bank of India v. Workmen, {(1996) 3 SCC 267} held that the employees of LIC run canteens shall not be entitled to the regularization as there is no relationship of employer and employee between the Bank and the concerned workman. The Tribunal further held that the membership of the sponsoring union being limited to persons who are not employees of the bank, as it transpires from evidence, the concerned union is not permitted under law to raise an industrial dispute under Section 2(k) of the Act. The Tribunal also considered the decisions of this Court Hussainbhai v. The Alath Factory Thezhilali Union and others, {(1978) 4 SCC 257}; M.M.R. Khan and others v. Union of India and others, {1990 (Supp) SCC 191} and Parimal Chandra Raha v. LIC of India, {1995 Supp. (2) 611} and observed that in Hussainbhais case the Court considered the position of the contractors employee. Finally the Tribunal relied on RBIs case (Supra) and held that unless there is any statutory obligation for the management to provide employment to the canteen boys, no question of accepting them as employees of the Bank can arise. Accordingly, the Tribunal held that the concerned employee Judhisthir Debsona was not entitled to any relief.

Against that Award of Tribunal, Employees Union filed special leave petition before this Court, which was listed on 14.5.1999 and was ordered to be tagged along with CA Nos.552-53/1994.

At the time of hearing of these appeals, the learned counsel for the parties submitted that for deciding these matters following two questions would be required to be dealt with by this Court: -

(i) Although, it is not a statutory obligation to provide canteen, whether it is otherwise an obligation of the bank to provide canteen?

or Whether it has an obligation to provide facilities to run the canteen?

It is admitted position that in law if there is an obligation to provide a canteen, the employees working in the canteen would be employees of the Bank, and if not, the employees working in the canteen may not become part of the establishment.

(ii) Secondly, whether the petition for same cause of action was maintainable after the order dated 14.10.1985 passed by this Court in Civil Appeal No.840/1977, wherein the award passed by Justice Moidu was challenged and this Court substituted the said award by passing the order the settlement is recorded and the appeal is disposed of in terms of the compromise on the basis of application filed by the parties.

It is contended that in view of the aforesaid order it is not open to the employees working in the canteen to re-agitate the question that they would become employees of the Bank.

Mr. Jaydeep Kar, learned counsel for the Employees Union submitted that the Bank has an obligation to provide canteen facility on the basis of Sastri Award. For that purpose, he referred to paragraph No.609 of the Sastri Award dated 26.3.1953. He also referred to the Hand-book on Staff Welfare Activities prepared by the S.B.I. on 08.8.1963 on the basis of agreement between the Bank and the representative of the Staff Federation, which provides for Staff Welfare Fund and a scheme for creation, conduct and accounting procedure of such funds.

As against this, Mr. Shanti Bhushan, learned senior counsel for the Bank submitted that neither Sastri Award nor Hand-book on Staff Welfare Activities provides that it would be obligatory to S.B.I. to provide canteen facilities to its employees. Sastri Award pertained to disputes raised by All India Bank employees Association and was not limited to State Bank of India. The Hand-book prepared by the S.B.I. for the Welfare Scheme of its employees also does not cast any such obligation.

For appreciating the contentions raised by the learned counsel for the parties, we would refer to the relevant part of Sastri Award upon which reliance is placed by the learned counsel for the employees. Chapter begins with Item No.8 Right to existing terms of service. Thereafter, para No. 602 mentions that what was considered was Right to existing terms of service where they are more liberal than those of the awards of this Tribunal and paras 603 and 604 specifically deal with the demand of the Unions affiliated to the All-India Bank Employees Association that no rights as on 8.4.1951 of any employee shall be altered to the prejudice of the employee concerned including demands of various associations of Imperial Bank of India employees with regard to the privileges in any respect whatsoever. After considering the contentions in paras 608 and 609 it is observed as under:- 608. If any option is to be given at all, it should be left to the exercise of individual discretion of each workman concerned, and in our opinion the option should be exercised only once.

609. The next important question relates to the scope of this option i.e., whether it should be only with reference to what is called the totality of all the pre-existing terms and the totality of all the terms of our award. The workmen demand that distinctive groups of benefits should be recognized and the choice should be given with reference to each of such groups. The banks oppose the splitting up of the totality of the terms of service. Several distinctive groups in relation to the monetary benefits, present and future, and service conditions and other amenities do exist. In our judgment such distinctive groups should be sorted out and a choice should be given with reference to the pre-existing terms and the terms of our award in relation to some at least of the groups but taking each of them as one unit. Even the Banks Counsel had to admit that in evaluating the benefits of pre-existing terms and the terms of our award there are certain service conditions which cannot be valued in terms of money. We have carefully considered the matter of grouping and we are of the opinion that the grouping should be on the following lines:

(1) Pay, dearness allowance, special allowance, house rent allowance, and officiating allowance.

(2) Provident Fund.

(3) Gratuity and Pension.

(4) Bonus.

(5) Leave Rules.

(6) Working hours and overtime.

(7) Conditions of service other than working hours and (8) Amenities e.g. canteen, club-house payment of taxes etc. We are of the opinion that no option should be given in respect of the following groups :

(1) Leave Rules. (2) Working hours and overtime. (3) Conditions of service other than working hours and overtime, and (4) Amenities, except as otherwise provided for in our award.

We may in particular make it clear that there will be no choice in respect of the following items viz., other allowances, and medical relief except as otherwise provided for in our award. In these matters also the awarded terms will apply to all the workmen.

From the aforesaid quotation, it is apparent that the discussion in the award with regard to the canteen facility is not confined to only employees of the State Bank of India. Secondly, it deals with the contention that option should be given to the employees for opting for pre-existing facilities and the Award makes it clear that individual option should be given with regard to items No.1 to 4 namely, pay, dearness allowance and other allowances, PF, gratuity and pension and bonus. However, no option should be given with regard to the service condition for leave rules, working

hours and overtime, other conditions and amenities except as otherwise provided for in the award. This would not mean that paragraph 609 of the Award cast any obligation that amenities, such as canteen, club-house payment of taxes etc. must be provided by the Bank. Learned counsel for the appellant failed to point out any part of the Award which makes it obligatory for the Bank to provide canteen facilities by running a canteen. Award only mentions what type of amenities could be or were provided by various banks and for that it has been stated that canteen, club-house payment of taxes etc. would be such amenities for which no option can be given to the employees, meaning thereby if canteen facilities or other amenities are provided by the Bank no choice to individual employee is to be given because as stated in the award there are certain service conditions which can not be valued in terms of money. It nowhere mentions that Banks shall provide canteens for its staff. Therefore, it is difficult to accept the contention of the learned counsel for the employees that the aforesaid paras cast an obligation on the S.B.I. for running canteen.

The learned counsel for the employees further placed reliance on Hand-book on the Staff Welfare Activities prepared by the S.B.I. on the 08.8.1963 on the basis of agreement between the Bank and representative of the Staff Federation. It provides for Staff Welfare Fund and a scheme for creation, conduct and accounting procedure of such funds, and the relevant part thereof is as under:

STAFF WELFARE FUND Creation, Conduct and Accounting Procedure (i) The Staff Welfare Fund consists of funds sanctioned annually by the Executive Committee of the Central Board of the Bank. The funds to the extent utilised are drawn from the charges account at the end of the year. The funds are the property of the Bank earmarked for providing amenities to the staff and carrying out welfare activities for the employees of the Bank as a whole.

(ii) It is for Central Office to allocate suitable amounts to the various Circles to be utilised for the welfare activities in the Circles.

(iii) For certain welfare activities organised and/or conducted at the Central level, separate funds are allocated by Central Office as per the provisions made.

(iv) Welfare activities are generally of the following nature but the list is not exhaustive:

- a) promotion of canteen facilities
- b) provision of libraries and reading rooms
- c) encouragement of sports and games indoor and outdoor
- d) promotion of cultural activities
- e) improved medical facilities including reservation of beds in hospitals and sanatoria

f) establishment of holiday homes and convalescent Homes

g) educational facilities provision of educational scholarships etc. to sons and daughters of employees and reservation of seats in schools

(v) At each Local Head Office there should be a Circle Welfare Committee to organise, conduct and supervise the welfare activities in respect of offices located in the area covered by the Circle. One of the main functions of the Circle Welfare Committee will be to allot funds either generally or activity-wise for the welfare activities in the offices located in the area covered by the Circle including Central Office establishments. It will also be the function of the Circle Welfare Committee to satisfy itself that funds are being utilised properly for the purpose intended.

(vi) Local Implementation Committees should be formed at each Branch and also at the respective Regional Offices, Local Head Offices and Central Office establishments & other offices, if any, to determine the particular welfare activity or activities to be conducted at their respective establishments out of the funds allocated to them by the Circle Welfare Committee and within the heads of activities specified. Such Local Implementation Committees will be in charge of the management of the welfare activities, if necessary, through sub-committees and will also suggest which consulted by the Circle Welfare Committee, the particular types of activities which should be undertaken at the respective offices. These Committees will render appropriate accounts of the Circle Welfare Committees every six months or as otherwise directed.

Promotion of Canteens Subsidy (11) (a) In order to provide further subsidy to staff canteen from outside the scope of the staff welfare fund the wages of canteen employees on a uniform scale on monthly basis : paid out of the Banks Charges Account, on the basis of the number of employees served at the canteen as shown in Annexure I at the end of this Chapter. It may, however, be noted that it will not be in order to utilise for the canteen any amount excess of its actual wage bill or the prescribed ceiling as shown in Annexure-I, whichever is less. Wherever canteen employees are engaged by the Local Implementation Committee their wages in excess of the subsidy will have to be borne by the LIC.

This hand-book also makes it clear that bank would earmark the funds for providing amenities to the staff and carrying out welfare activities for the employees of the bank as a whole. Clause (iv) quoted above mentions various welfare activities which may be carried out, such as, promotion of canteen facilities, provision of libraries and reading rooms, encouragement of sports and games (indoor and outdoor), promotion of cultural activities, improved medical facilities including reservation of beds in hospitals and sanatoriums, establishment of holiday homes and convalescent homes, educational facilities which may include provision of educational scholarships etc. to sons and daughters of employees and reservation of seats in schools. This clause

(iv) nowhere provides that said welfare activities are to be carried out by the Bank. On the contrary, it has been specifically mentioned that it would promote such facilities. Particularly for canteen the

words used are promotion of canteen facilities. It nowhere provides that Bank shall establish canteens or provide canteen facilities and that is in the consonance with the scheme of giving subsidy for various welfare activities depending upon the requirement in various branches. For the subsidy clause (11) quoted above provides elaborate procedure and how much subsidy is to be given from outside the scope of welfare fund. That amount is mentioned in Annexure-I which is at the end of the chapter providing for subsidy based on number of employees working in the branch and not on the basis of persons working in the canteen. For the management of the canteen and other welfare activities, scheme provides that Local Implementation Committee should be formed at each branch and also at the respective regional offices, local head offices and central establishment and other offices, if any. That committee has to determine the particular welfare activity or activities to be conducted at the respective establishment out of funds allotted to them by Circle Welfare Committee. Result would be in some cases Local Implementation Committee may not opt for canteen facility but may opt for sports and games, libraries and reading rooms. There is no compulsion on Local Implementation Committee to run canteen. With regard to the funds provided for such welfare activities elaborate checks and balances are kept but that would not mean that Bank is conducting such establishment of running canteen, library, sports and games or other cultural activities. From the aforesaid scheme it is difficult to draw any inference that the Bank is under any obligation to run canteens or have library or provide for such other amenities.

Further, this Hand-book is prepared on the basis of agreement reached between the Bank and the representatives of the Staff Federation and the staff federation has itself settled the dispute by four agreements dated 31.10.1977, 17.9.1984, 09.1.1991 and 2.4.1992 as stated above. This would also indicate that there was no obligation on the part of the Bank to provide canteen facilities to its staff, otherwise staff federation would not have settled the appeal against Justice Moidus award, which was pending before this Court, on the basis of settlements. Further, it cannot be said that an outsider who is not employed by the Bank, but who is working in the canteen run by the LIC can claim that he is discriminated. Discrimination between two equals may arise in case where employees are appointed by the Bank.

Further, as there was no statutory, legal or contractual obligation of the Bank to run the canteen or provide for canteen in its branches, the Tribunal was right in relying upon the decision in R.B.'s case (supra). In that case, three different categories of canteens [Canteens run by the Implementation Committee, Cooperative Societies and Contractors] were being run and the Reserve Bank of India was making grant by way of subsidy @ 95 per cent of the cost incurred by the canteens for payment of salary, P.F. contribution, gratuity, uniform etc. besides providing fuel, water, fixtures, utensils, furniture, electricity, premises etc. free of charge. In the canteen run by the Implementation Committee (Canteen Committee), out of the 12 representatives 3 of them were from the Bank the Currency Officer, Personnel Officer and the Officer from the Personal Policy Department. The Currency Officer is to be appointed as the Chairman of the Canteen Committee. The Bank relieved four employees who were in the Committee, two for full day and two for half day to supervise the day-to-day affairs of the canteen. Further, the Committee could not increase the strength of the canteen employees without the permission of the Bank. The rates of eatables also could not be revised without the consent of the Manager. They could not effect any wage revision without the approval of the bank. The Bank was also reimbursing the expenses incurred over the periodical

medical check-up of the employees attached to the kitchen and counters. In the background of the said facts and after considering the earlier decisions and the contentions, the Court held that:

- (a) There is no right in the Bank to supervise and control the work done by the persons employed in the Committee nor has the Bank any right to direct the manner in which the work shall be done by various persons. The Bank has absolutely no right to take any disciplinary action or to direct any canteen employee to do a particular work.

(b) In the absence of any obligation, statutory or otherwise, regarding the running of a canteen by the Bank and the details relating thereto similar to Factories Act or the Railway Establishment Manual, and in the absence of any effective or direct control in the Bank to supervise and control the work done by various persons, the works in the canteen run by the Implementation Committee (Canteen Committee) cannot come within the ratio laid down by this Court in MMR Khan case.

(c) As per the agreement the Bank has detailed the subsidy and other facilities afforded by it to run the canteen and has also stipulated certain conditions necessary for conducting the canteen in a good, hygienic and efficient manner like insistence of the quality of food, supply of food, engagement of experienced persons etc. Such conduct cannot in any manner point out any obligation in the Bank to provide canteen as wrongly assumed by the Tribunal.

(d) On the facts of this case, 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 the 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.

In the present case also, the facts are similar. There is no obligation statutory or otherwise to run the canteens by the Bank. The scheme as stated above only provides for grant of subsidy, for promoting running of canteen and if some more cost is incurred in running the canteen, the members of the staff working in that particular branch are required to bear it. The Bank is not employing the canteen workers. The Bank is not supervising or controlling the work or the details regarding the canteen or its employees appointed by the Local Implementation Committee. Auditing the work of Local Implementation Committee whether subsidy given by it is properly utilised or not, also would not be a ground for holding that Bank is having any control in running the canteen. Bank is not taking any disciplinary action or directing any canteen employee to do a particular work or for that purpose no scheme is laid down by the Bank. Not only this, the other most important aspect is the recruitment by the Bank is to be made as per the statutory rules framed by it after giving proper advertisement, test and/or interview. As against this, for appointing a canteen employee there are no rules framed by the Bank.

Learned counsel for the employees referred to clause (12) of the Scheme which provides that canteen should be run on no profit no loss basis. The said clause also makes it clear that subsidy provided is only to the extent of funds made available and that concerned members of the LIC would ensure that articles are purchased on cash payment and no liability is incurred from any source. It has nothing to do with the running of the canteens by the Bank. It is part of the scheme which provides how efficiently the LIC should run the canteens.

Learned counsel for the appellants further relied upon the decision in *M.M.R. Khan and Others v. Union of India and Others* [(1990) Supp. SCC 191] and submitted that status of the employees of the canteen run by the LIC should be that on non-statutory recognized canteens as held in the said case. In our view, that very judgment was considered by this Court in *R.B.'s case* and was distinguished. Therefore, it does not require further discussion in this matter. However, it is to be stated that in that judgment itself, the Court has observed that the canteens run by the different Railway establishments were classifiable into three categories, namely, (1) Statutory Canteens These are canteens required to be provided compulsorily in view of Section 46 of the Factories Act 1948.

(2) Non-Statutory Recognized Canteens These are run by any establishment which may or may not be governed by the Act, but which admittedly employ 250 or less than 250 employees and hence, it is not obligatory on the Railway to maintain them. However, they have been set up as a staff welfare measure where employees exceed 100 in number. These canteens are established with prior approval and recognition of the Railway Board as per the prescribed detailed in the Railway Establishment Manual.

(3) Non-statutory Non-recognized canteens These canteen are run at establishments under category (2) above, but employ 100 or less than 100 employees and are established without prior approval or recognition of the Railway Board. With regard to the employees in categories (1) and (2) above, the Court held that they are Railway employees for all purposes and they cannot be deprived of the status merely because some other employees similarly or dissimilarly situated may also claim the same status. With regard to the third category, the Court held that employees of non-statutory non-recognized canteens are not entitled to claim the status of the Railway servants because Railway administration was having no control on their working. It also observed that no rules whatsoever were applicable to the recruitment of the workers and their service conditions.

In the present case, in our view, the canteens run by the LIC in a branch having strength of less than 100 employees are non-statutory non- recognized canteens because admittedly there is neither statutory provision nor any obligation arising out of award or contract between the employees of the Bank in running such canteens. As stated earlier, finally the 4th settlement was arrived at between All India SBI Staff Federation and the Bank which inter alia provides that Bank will take over canteens from Local Implementation Committees concerned at such offices/branches having a minimum staff strength of 100 where the canteens are still being run by the said Committees. Hence, contractual obligation is limited to that extent. For the canteens run by the Local Implementation Committees, there is no question of its recognition by the State Bank as in the case of recognised canteens in the Railways where Railway Board granted recognition to the canteens as per prescribed detail in the Railway Establishment Manual. On the contrary, the status of canteens

run by the Local Implementation Committees would be non-statutory non-recognised canteens. The employees of such canteens were not under the control of the Bank and their appointments are not governed by any rules framed by the SBI.

The learned counsel for the employees further relied upon the decision in *Parimal Chandra Raha and Others v. Life Insurance Corp. Of India and Others* [1995 Supp (2) SCC 611] and submitted that as held in para 25 of the said decision, it should impliedly be held that Bank was under an obligation to provide canteen facilities to the employees as part of the service conditions. Relevant para is as under:-

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 provisions of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen service 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 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. As stated above, in the present case there is no statutory or otherwise obligation of the employer to provide the canteen. Therefore, the aforesaid decision would have no bearing. However, the learned counsel for the employees submitted that obligation to maintain canteen may be explicit or implicit as held in the said decision and that can be inferred from the facts of the present case as the Bank has admitted by four settlements stated above that it would provide canteen facilities to the employees where staff strength in a particular branch is 100 and above. He, therefore, submitted that thereafter there cannot be any discrimination for remaining branches. Hence it should be impliedly held that there is an obligation to run the canteens. In our view, this type of inference is not possible because the SBI Staff Federation in various settlements stated above has not considered it to be an obligation of the Bank to run such canteens. At the most, it can be inferred that Bank has an obligation to promote running of canteens at its branches as a part of its staff welfare activities.

Further, we entirely agree with the decision rendered in the R.B.Is case (supra) by the three-Judge Bench and the facts in the present case are similar to the facts of that case. Presuming that privilege of providing canteen facilities to the employees exist, yet it would be difficult to hold that the Bank should provide the said facility by running canteen by itself. To promote canteen facilities by providing subsidy or other facilities is altogether different from running the canteen. Running of a canteen in a small branch having staff strength less than a particular limit may not be economical, but may be a waste. It has been pointed out by the learned counsel for the Bank that in some areas, staff strength may be less than 10. Further, the appointment of the employees by the Bank has been regulated by the State Bank of India General Regulations, which are statutory regulations framed by the Reserve Bank of India with previous sanction of the Central Government in exercise of powers conferred by sub-section (3) of Section 50 of the State Bank of India Act, 1955. In the case of canteen employees run by the LIC, the Bank does not have any control in their appointment and the aforesaid recruitment rules are not required to be observed.

We may mention here that learned counsel for the employees submitted that in such cases Court should lift the veil and find out the real situation and if that is done it would be apparent that as a part of the service conditions Bank is required to provide canteen facility to its employees. We may state that there is no veil and, therefore, there is no question of lifting it. The Scheme framed by the Bank is crystal clear. It provides that Bank shall promote certain welfare activities for the benefit of its employees. One of such welfare activities is promotion of canteen facility. There is a vast difference between promotion and providing.

Further, whether Bank should provide canteen facilities in a branch having staff strength of 100 or more employees on the basis of bipartite agreement between the Bank Management and All India SBI Staff Federation, is a matter of policy decision and may depend upon viability and other factors of running of such canteens at other branches. It is for the Bank to decide in which branches canteen facilities should be provided and not by the employees of the canteens run by the Local Implementation Committees. At the most, employees of the Bank can raise such a contention.

The learned counsel for the appellant further submitted that LIC consist of employees of the Bank and those employees are directly under the control of the Bank, therefore, it should be held that Bank is the employer of the persons working in the canteen. This submission, in our view, is totally far-fetched. Firstly, it is to be stated that in a canteen which provides facilities to the members of the staff, outsider is not required to be included in the Committee or its Management. In the case of RBI (Supra), the LIC not only consisted of Bank employees but some Bank employees were required to do full time work. Still, however, this Court has not considered that Bank was having any control in working of the canteens.

We may also state that in the present case there is no question of application of provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and, therefore, the decisions rendered by this Court interpreting the said Act are not discussed.

We, therefore, hold 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 employees of the Bank as the Bank is not having any statutory or contractual obligation or obligation arising under the Award to run such canteens. Hence, it is not necessary to decide the second question that fresh petition for the same cause was not maintainable in view of the order dated 14.10.1985 passed by this Court in Civil Appeal No.840 of 1977.

In the result, appeals (CA Nos.552-553/1994) filed by the State Bank of India and others are allowed and the impugned judgment and order dated 2nd September, 1993 passed by the High Court of Calcutta is quashed and set-aside. Appeal filed by the Workmen represented by the SBI Canteen Employees Union (Bengal Circle) against the Award dated 7th October, 1998 passed by the Central Government Industrial Tribunal, Calcutta in Reference No.2 of 1992 is dismissed. There shall be no order as to costs.