

Supreme Court of India

Board Of Trustees For The Port Of ... vs Achintya Kumar Mondal And Others on 27 April, 1993

Equivalent citations: AIR 1993 SC 2278, JT 1993 (4) SC 37, 1993 LabLC 1314, (1993) IILLJ 640 SC, 1993 (2) SCALE 656, 1993 Supp (3) SCC 25

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Bench: K J Reddy, N Singh

ORDER N.P. Singh, J.

1. The Board of Trustees for the Port of Calcutta have filed this appeal, for setting aside the judgment of the High Court, directing the appellant to treat the writ petitioners-respondents, who are the employees of the non-statutory canteens, at par with the employees of the statutory Canteens and to pay at the same rate what is being paid to the employees of the statutory Canteens run by the appellant.

2. The writ application in question had been filed alleging that there were twenty-two Canteens, which were non-statutory in nature, but were being managed under the direct supervision and control of the appellant and, as such, employees of such Canteens were entitled to the same salary, allowances and other benefits which are available to the employees of the statutory Canteens established and maintained by the appellant. The said writ application was dismissed by the learned Single Judge on a finding that employees of such non-statutory Canteens, had neither been appointed by the appellant, nor they were under the administrative control of the appellant: rather the different Managing Committees were managing those Canteens and, as such, the employees of such Canteens cannot be held to be employees of the appellant, there being no relationship of employer and employee.

3. On appeal being filed on behalf of the writ petitioners, the Division Bench came to the conclusion, that if the veil was lifted, it left no manner of doubt that the appellant was the real employer of the persons engaged in such non-statutory Canteens and not the contractors concerned. A direction was given on basis of the aforesaid finding that appellant should treat the employees of such non-statutory Canteens and restaurants as its employees and should pay the same salary, allowances and other emoluments, which were being paid to the employees of the statutory Canteens.

4. this Court in the case of MM.R. Khan v. Union of India (1990) Supp. SCC 191, examined the question in respect of the status of employees in (i) Statutory Canteens- Canteens required to be provided compulsorily in view of Section 46 of the Factories Act, 1948; (ii) Non-Statutory Recognised Canteens-Canteens run in the establishments which may or may not be governed by the Act aforesaid, but such non - statutory Canteens have been established with the prior approval and recognition of the Railway Board as per the procedure detailed in the Railway Establishment Manual; and (Hi) Non-Statutory Non-Recognised Canteens - Canteens which employ 100 or less than 100 employees, but are established without the prior approval or recognition of the Railway Board. It was held that even employees of the non-statutory Canteens have to be treated at par with the employees, in the statutory Canteens, because such Canteens had been established with the prior approval and recognition of the Railway Board as per the procedure detailed in the Rail way

Establishment Manual. For arriving at the said conclusion, this Court made reference to different paragraphs of the Railway Establishment Manual and to the materials on record to show as to how such non-statutory Canteens were being managed under the direct supervision of the railway administration. In that connection, it was also pointed out, as to how Railway Board had prescribed a minimum dearness allowance relief to employees of such non-statutory Canteens and the scales of pay, the enhanced dearness allowance were being revised. In respect of employees working in the metropolitan cities, the Railway Board had fixed the scales of pay" of the employees working in all non-statutory Canteens, which were being revised from time to time by different orders issued by the Railway Board. It was also pointed out that employees in such Canteens were entitled to free medical treatment as out-door patients in railway hospitals and were governed by the provisions of the Employees Provident Funds Act. The Railway Board had also framed recruitment rules for these employees, which prescribed the minimum qualification and age for recruitment and superannuation, including the mode of recruitment and eligibility for promotion to various posts. The nominees of the railway administration, who were on the Managing Committees of the Canteens, were the appointing authorities. After taking into consideration different orders, instructions and other materials, it was held that the administrative control of such Canteens was with the railway administration, as such there was no justification for a classification being made between the employees of statutory Canteens and employees of non-statutory Canteens, which had been established with the prior approval and recognition of the Railway Board.

5. In respect of third category i.e. Non-Statutory Non-Recognised Canteens, it was said:

The difference between the non-statutory recognised and non-statutory non-recognised canteen is that these canteens are not started with the approval of the Railway Board as required under paragraph 2831 of the Railway Establishment Manual. Though, they are started in the premise belonging to the railways they are so started with the permission of the local officers. They are not required to be managed either as per the provisions of the Railway Establishment Manual or the Administrative Instructions (*supra*). There is no obligation on the railway administration to provide them with any facilities including the furniture, utensils, electricity and water. These canteens are further not entitled to nor are they given any subsidies or loans. They are run by private contractors and there is no continuity either of the contractors or the workers engaged by them. More often than not the workers go out with the contractors. There is further no obligation cast even on the local offices to supervise the working of these canteens. No rules whatsoever are applicable to the recruitment of the workers and their service conditions. The canteens are run more or less on ad-hoc basis, the railway administration having no control on their working neither is there a record of these canteens nor of the contractors who run them who keep on changing, much less of the workers engaged in these canteens. In the circumstances we are of the view that the workers engaged in these canteens are not entitled to claim the status of the railway servants.

6. The learned Solicitor General appearing on behalf of the appellant, pointed out that the writ petitioners-respondents have not produced any material to show that the Canteens in question had been established by the appellant: or with the approval of the appellant. These Canteens have been established by the different Clubs formed by the employees of the appellant and are being managed under bye-laws framed by the Clubs concerned, for serving refreshments to the employees of the

appellant. The appellant has no administrative control over the management of such Canteens. The appointment of the employees of such Canteens are not regulated in any manner by any rule or administrative instruction issued by the appellant. They are recruited by the different contractors. In this background, there was no occasion to record a finding that they are the employees of the appellant. It was asserted on behalf of the appellant that these Canteens will fall in category (iii) i.e. Non-Statutory Non-Recognised Canteens, as indicated by this Court in the judgment aforesaid. In this connection, our attention was drawn to that part of the judgment of the court of appeal, where it has been observed, "There is no dispute in regard to the factum of disciplinary action by the Port administration for any lapse in performance of the duties and responsibilities in so far as the employees of the non-statutory canteens are concerned." It was stated that at no stage any such admission had been made on behalf of the appellant before the learned Judges that Port administration had been taking disciplinary actions, against the employees of such Canteens, for any lapse on their part,

7. Mr. Mukhoty, the learned Counsel appearing for the writ petitioners-respondents, could not contest this statement made on behalf of the appellant. After some argument, however, he submitted that all the relevant materials could not be brought on the records of the case, in support of the contention that the Canteens although being non-statutory, were under direct administrative control of the appellant and the terms and conditions of the employment of the employees of such Canteens are also regulated and governed, as is the case in respect of the employees of the statutory Canteens. According to him, as the dispute relates to large number of employees of such non-statutory Canteens, it is only just and proper that this Court by way of indulgence, should give them an opportunity to bring those materials on record for proper consideration by the Court as to whether such employees can be treated at par with the employees of the statutory Canteens. Normally, a case is to be decided one way or the other on the basis of the materials produced before the original court, subject to conditions prescribed, for being produced before the appellate or higher courts. But, as this dispute relates to large number of employees and even the learned Solicitor General, who has appeared on behalf of the appellant, did not contest the request made on behalf of the respondents, so that the question involved be settled one way or the other, on examination of all the relevant documents and materials,, we are of the opinion that it is a fit case where an opportunity should be given to both the parties to take all pleas in support or opposition of the issue involved and to produce all relevant documents and to produce all relevant documents and materials in support of such stand. Accordingly, we allow this appeal to the extent that judgments of the learned Single Judge and the Division Bench both are set aside. We direct the parties to the connected writ petition, to produce all relevant documents and materials in support of their respective contentions. It will also be open to them to amend their pleadings, if so advised. Thereafter, the writ application shall be heard and disposed of by the learned Judge in accordance with law at an early date. In the circumstances of the case, there shall be no orders for costs.