

Supreme Court of India

Employee In Relation To ... vs Their Workmen on 28 February, 1996

Equivalent citations: 1996 AIR 1241, 1996 SCC (3) 267

Author: K Paripoornan

Bench: Paripoornan, K.S.(J)

PETITIONER:

EMPLOYEE IN RELATION TO THE MANAGEMENT OF RESERVE BANK OF INDIA

Vs.

RESPONDENT:

THEIR WORKMEN

DATE OF JUDGMENT: 28/02/1996

BENCH:

PARIPOORNAN, K.S. (J)

BENCH:

PARIPOORNAN, K.S. (J)

AHMADI A.M. (CJ)

SEN, S.C. (J)

CITATION:

1996 AIR 1241

1996 SCC (3) 267

JT 1996 (3) 226

1996 SCALE (2) 708

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PARIPOORNAN,J.

Special leave granted.

2. This appeal is filed by "Employers in relation to the Management of Reserve Bank of India (hereinafter referred to as "the Bank") against the award of the Central Government Industrial Tribunal NO. 1 at Bombay dated 28.2.1995 and rendered in Ref. No. CGIT-96 of 1991. The workmen engaged in the catering establishments of the bank is the respondent in this appeal.

3. Government of India, by letter dated 13.12.1991, referred the following dispute for adjudication under section 10(1) (d) read with sub-section 2A of the Industrial Disputes Act, 1947 to the Tribunal:

"Whether 166 employees engaged in various catering establishments of the Reserve Bank of India at Bombay are the workmen of the Reserve Bank of India? If so, whether their demand for regularization with retrospective effect was justified? If so, the extent of relief payable to these 166 persons may be indicated."

4. The employer -- Reserve Bank of India is a Corporation established under the Reserve Bank of India Act, 1934 (No.

2) and vested with some sovereign functions such as issue of currency notes etc. It acts as Bankers' Bank and as Banker to the Central and State Governments. For carrying on the business, the Bank employs various categories of staff such as Officers (Class-I), (Class-II), Clerks, Stenographers, Typists etc. (Class III) and Peons, Mazdoors etc. (Class- IV). The Bank has been providing canteen facilities to its employees in Classes III and IV. The Reserve Bank "Lounge" caters to the needs of its officers at some centers. There is no obligation either under any statute or otherwise, for the Bank to run the canteens. It is so done only as a welfare measure. The Bank bears by way of subsidy to the extent of 95% of the costs incurred by the canteens for payment of salary, provident fund contribution, gratuity, uniform etc., and also provides premises, fixtures, utensils, furniture, electricity, water etc., free of charges. It is seen that the canteens are run either by "Implementation Committee (Canteen Committee)" or "Co- operative Societies" or "contractors". As stated, such canteens are solely for Class III and Class IV employees of the Bank. The Bank has its office at Amar building, Fort, Bombay wherein 1500 employees are working. Similarly, the Bank has its office at Byculla and another office at Bandra, Kurla Complex Building. In each of the latter places 1000 persons are employed.

5. It has come out in evidence that the constitution and functioning of the aforesaid canteens for Class III and Class IV employees and functioning at Amar Building, Byculla Building and Bandra, Kurla Complex Building are different. The canteen at Amar Building is managed by an Implementation Committee (Canteen Committee). It is functioning ever since 1959. The canteen Committee consists of four representatives from the Class IV employees Union, five representatives from the Class III employees Union and three representatives from the Bank. The three representatives of the Bank are the Currency Officer, Personnel Officer and the Officer from the Personal Policy Department. The Currency Officer is always the Chairman of the Canteen Committee. About 77 workmen are employed in the said canteen.

At Byculla the Bank is running a canteen through a Co- operative Society since 1989. 25 workmen are employed therein. One of the employees of the Bank, who is a member of the Managing Committee of the Society, is relieved of his work for the whole day to look after or supervise the work of the canteen. The Bank reimburses the Society the charges incurred for getting the licences under the Shops and Establishments Act. Prior permission of the Bank is required to increase the strength of the employees.

In the Bank office at Bandra, Kurla Complex and the one situated at New Central office building canteen contractors are engaged. In the Bandra Kurla Complex/Building, M/s. N.T. Shetty the contractor has employed 21 persons. In the new Central Office building, the contractor M/s. Alva

Caterer has employed 35 persons. (The total number of persons employed in all the canteens amount to only 158, though the case has proceeded on the basis that there are '166' persons).

6. The point at issue between the parties is whether the persons working in the various canteens aforesaid are employees of the Reserve Bank of India. The plea of the Federation on behalf of the workmen is that the Bank is under a statutory obligation to provide canteen facility to the employees and the same is being done through agencies such as Implementation Committee (Canteen Committee), Co-operative Society and contractor instead of the Bank doing it on its own by employing persons directly. On behalf of the workmen, it was further contended that the Bank cannot shift its responsibility to others, that the entire economic control is With the bank and so the worker. employed in all these canteens, whether by the Implementation Committee or by the Co-operative Societies or by the contractors should be directed to be absorbed with retrospective effect with point to point adjustment and the Bank be directed to pay difference of wages.

7. The Bank disputed the claim made by the Federation on behalf of the workmen. It was contended that the Bank makes available space for running the canteens on leave and licence basis and various facilities are also provided to the Implementation Committee, Co-operative Society or the contractor, whosoever runs the canteen. The canteens are in the nature of clubs. The management of the Bank is not responsible for employment of persons in the canteens. Persons serving in the canteens are employed by the Implementation Committee, the Co-operative Society or the Contractor, as the case may be.

The Bank does not supervise or control the working of the canteens or the supply of eatables to employees. The employees are not under an obligation to purchase eatables from the canteen. There is no relationship of master and servant between the Bank and the various persons employed in the canteens aforesaid. The Bank does not carry any trade or business in the canteens. The staff canteens are established only as a welfare measure. Similar demands made by the staff canteen employees and the request made to the Central Government to refer the dispute for adjudication was rejected by the Central Government and the challenge against the same before the Calcutta High Court was unsuccessful. According to the Bank, it has no statutory or other obligation to run the canteens and it has no direct control or supervision over the employees engaged in the canteens. It has no right to take any disciplinary action or to direct any canteen employee to do a particular work. The disciplinary control over the persons employed in the canteens does not vest in the Bank nor has the Bank any say or control regarding the allocation of work or the way in which the work is carried out by the said employees. Sanctioning of leave, distribution of work, maintenance of the Attendance Register are all done either by the Implementation Committee (Canteen Committee) or by the Co-operative Society or by the contractor.

8. The Tribunal, on the basis of the materials available before it and on hearing the parties, held that 166 persons mentioned in the list attached to the reference and employed in various canteens are employees of the Reserve Bank of India and they are entitled to appropriate relief in that behalf. An award was passed affording relief to 166 employees working in the various canteens in the following terms:

"From the nature of the work that is being performed by the 166 persons mentioned in the list attached to the reference it is seen that they have comparable employees employed in the Officers lounge. The exercise of fitting of these 166 employees in the corresponding categories will have to be carried out by the Reserve Bank of India, that they will have to be paid difference in ways which they would have earned and which they have been paid. As can be seen from the Annexure 'A' to the statement of claim certain categories of employees are clubbed together for the purposes of pay scale. The Assistant cook, tea boys & farash is one such clubbing, Supervisor and coupon clerk is another. The just direction in my view would be that they will be entitled to absorption and difference in back wages with effect from 1st of March 1995. In respect of employees who are working in the canteens run through the contractors they will be entitled to the benefit with effect from the date the respective contracts come to an end."

It is the aforesaid award that is assailed by the Bank in this appeal filed by Special Leave.

9. A perusal of the award passed by the Tribunal as a whole shows, that in its view the plea raised by the workmen employed in various canteens clearly falls within the ratio laid down by this Court in *M.M.R. Khan v. Union of India* [1990 (Supp.) SCC 191] and so they are entitled to the reliefs prayed for. We are of the view that the Tribunal misread and misunderstood the decision in *M.M.R. Khan's* case (supra) and has misapplied the ratio laid down in the said decision to the instant case. Therefore, a review of the said decision and the extent to which the principles or ratio laid down therein can be said to be applicable in the instant case calls for a detailed analysis and we shall advert to the said aspect a little later.

10. One aspect is clear. The Reserve Bank of India (the bank) is under no statutory or other legal obligation to provide canteen facilities to its employees. The Tribunal has not found any such statutory or legal obligation in the Bank. That apart, we have to bear in mind the following salient feature in the matter of recruitment of staff by the Banks. It is a well known fact that recruitment of staff (inclusive of class-IV) to the banks is done by a Selection Board, and there are guidelines governing the process of selection. So also in the case of Reserve Bank of India, the process of selection and recruitment of the staff is by a different Board and appropriate qualifications are prescribed for the particular posts. In the case of persons employed in the canteens, they are not subject to the rigor and discipline of the above rules and methods of selection. This distinguishing feature is relevant in adjudicating the controversy raised herein. The Tribunal has held that (1) Regarding canteens run by the Implementation Committee, the Bank exercises "remote control", which is as effective as any, (para 26 of the award); (2) Regarding the canteens run by Co-operative Societies, the Tribunal has held that they are non-statutory but recognised canteens and by nominating the representative of the bank to the Committee, it exercises control (para 28 of the Award); (3) Regarding the canteens run by contractors, "non-statutory", "non- recognised canteens", in the absence of distinguishing features highlighted in para 38 of the decision *M.M.R. Khan's* case (supra), they could be said to be "recognised canteens" by the Bank and the persons employed by the contractors are also entitled to the benefit similar to the one afforded to persons employed in the canteens run by the Implementation Committee and Co-operative societies (para

32 of the award). The question that falls for our consideration is whether the aforesaid view of the Tribunal is justified in law, holding that the instant case is covered by the decision of this Court in M.M.R. Khan's case (supra).

11. The test to determine as to whether a person is a workman and the relationship of master and servant exists in a particular case has been laid down by this Court in innumerable decisions. In one of the earliest oft quoted cases, Dharangadhra Chemical Works Ltd. v. State of Saurashtra and others (AIR 1957 SC 264), delivering the judgment of the four-member Bench, Bhagwati, J. considered in detail the various decisions on the point and laid down the law thus:

"The principle which emerges from these authorities is that the Prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work or to borrow the words of Lord Uthwatt at page 23 in Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd., 1947-I AC 1, at page 23(E), "The proper test is whether or not the hirer had authority to control the manner of execution of the act in question."

The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition.

The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer"

(Emphasis supplied) In the case of persons employed in the canteens, they are not subject to the rigour and discipline of the above rules and methods of selection. This distinguishing feature is relevant in adjudicating the controversy raised herein. The Tribunal has held that (1) Regarding canteens run by the Implementation Committee, the Bank Exercises "remote control", which is as effective as any, (para 26 of the award); (2) Regarding the canteens run by Co-operative Societies, the Tribunal had held that they are non-statutory but recognised canteens and by nominating the representative of the bank to the Committee, it exercises control (para 28 of the Award); (3) Regarding the canteens run by contractors, "non-statutory", "non-recognised canteens", in the absence of distinguishing features highlighted in para 38 of the decision M.M.R. Khan's case (supra), they could be said to be "recognised canteens" by the Bank and the persons employed by the contractors are also entitled to the benefit similar to the one afforded to persons employed in the canteens run by the Implementation Committee and Co-operative societies (para 32 of the award). The question that falls for our consideration is whether the aforesaid view of the Tribunal is justified in law, holding that the instant case is covered by the decision of this Court in M.M.R. Khan's case (supra).

The above decision was followed by a three member Bench in *Chintaman Rao v. State of M.P.* (AIR 1958 SC 388). In this decision the Court also observed at page 392, paragraph 10, thus:

"There is, therefore, a clear-

cut distinction between a contractor and a workman. The identifying mark of the latter is that he should be under the control and supervision of the employe in respect of the details of the work."

(Emphasis supplied) In *Management of M/s. Puri Urban Co-operative Bank v.*

Madhusudhan Sahu [1992(2) SCR 977], delivering the judgment on behalf of the Bench, Punchhi, J. at page 980, after referring to the aforesaid decisions, stated thus:

"It stands established that Industrial law revolves on the axis of master and servant relationship and by a catena of precedents it stands established that the prima facie test of relationship of master and servant is the existence of the right in the master to supervise and control the work done by the servant (the measure of supervision and control apart) not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. And this Principle holds the field".

(Emphasis supplied)

12. In applying the law laid down by this Court, as stated above, we should distinguish those line of cases, where a statutory liability is cast on the employer for maintaining the canteen viz. as per Section 46 of the Factories Act or due to the extended meaning given to the definition of the word 'employer' in the particular statute, any other person like a contractor to whom an owner of the undertaking had entrusted the execution of any work which was ordinarily part of an undertaking or industry was also covered. See in this connection *Saraspur Mills Co. Ltd. v. Ramanlal Chimanlal* [1974(3) SCC 66] and *Basti Sugar Mills Ltd. v. Ram Ujagar* (AIR 1964 SC 355). We should at once state that the principles laid down in those line of cases cannot apply herein, since admittedly (a) no statutory liability is cast on the Bank to run a canteen and Section 46 of the Factories Act is inapplicable herein; and (b) the Industrial Disputes Act does not contain an extended definition of the word employer'.

13. We heard Mr. Salve, Senior Counsel who appeared for the appellants and Mr. Tarkunde, Senior Counsel who appeared for the respondent.

14. We Shall now advert to the decision of this Court in *M.M.R.Khan's* case (*supra*) to understand its scope and effect. In the said case, the court was dealing with the workers in canteens run in the different railway establishments. The workers claimed that they should be treated as "railway employees" and should be extended all service conditions which are available to the railway employees. The 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 canteens are established with the prior approval and recognition of the Railway Board as per the procedure detailed in the Rail was Establishment Manual; and (3) Non- statutory Non-recognised Canteens - these are canteens established without the prior approval or recognition of the Railway Board.

Category No.1: statutory Canteens: This Court in Civil Appeal No. 368 of 1978 dated 22.10.1980 had held that the employees in the statutory canteens were railway employees for the purpose of the Factories Act. In the said decision, this Court declined to interfere with the rejection of the demand of the workers for pay and allowances to them as if they were railway employees. As a result of subsequent orders passed by the government, Railway Board and the decision of this Court and instructions of the department, it became evident that the government has complete control over the canteens and the workers employed therein became holders of civil posts within the meaning of Article 311 of the Constitution. Their recruitment and service conditions are governed by the rules applicable to the employees of the government department/office/establishment to which the canteens are attached. In this background, the Court adverted in detail to the various government orders and circulars of the Railway Board vis-a-vis section 45 of the Factories Act and held that the employees in the "statutory canteens" of the railways will have to be treated as "railway servants". It was further observed that the employees in the statutory canteens are entitled to the status of railway employees and they are entitled to succeed in their claim purely on facts peculiar to them discussed in the judgment.

Dealing with the second category - "Nonstatutory Recognised Canteens", the Court adverted to paragraphs 2831 to 2834 of the Railway Establishment Manual and held that the aforesaid provisions enjoin the Railway Administration to take steps to develop their canteen organization to the maximum possible extent as a measure of staff welfare preferably by encouraging the development of canteens for staff on co-operative basis. This mandate was stated to be in addition to the canteens required to be established by the Factories Act. On a review of the various provisions of the Railway Establishment Manual the details whereof were adverted to in paragraphs 31 to 35 of the judgment) and proceedings of courts, it was hand in paragraph 36 of the judgment that there is hardly any difference between the statutory canteens and non-statutory recognised canteens. Detailed provisions of the Railway Establishment Manual were highlighted to show that the obligations of the Board under the Manual are substantially similar to those enjoined under the Factories Act and no distinction can be made between the employees of the two types of canteens -- statutory canteens and non-statutory recognised canteens -- so far as their service conditions are concerned. So, it was further held that the employees in the non-statutory recognised canteens should be treated on par, with those employees in the statutory canteens and they should be treated for all purposes as railway servants.

Dealing with the category of persons employed in the "non-statutory non-recognised canteens", in paragraph 38 of the judgment, this Court highlighted the fact that they were not started with the prior approval of the Board as required under paragraph 2831 of the Railway Establishment Manual. They are not required to be managed either as per the provisions of the Railway Establishment Manual or the administrative instructions. There is no obligation on the railway administration to provide them with any facility nor are they given any subsidy or loan. The

canteens are run by private contractors and there is no continuity either of the contractors or the workers engaged by them. There is further no obligation cast even on the local officers to supervise the working of these canteens, there existed no rules for recruitment of the workers and their service conditions, and the canteens are run on ad hoc basis; and in these circumstances it was held that the workers engaged in these canteens are not entitled to claim the status of the railway servants.

15. We have held earlier that there is no statutory or other obligation for the bank to run canteens. The provisions of the Factories Act do not apply. So, we are only concerned with categories 2 and 3 (Non-statutory Recognised Canteens and Non-Statutory Non-recognised Canteens) dealt with in M.M R. Khan's case (supra). It should be remembered that the plea of the canteen workers of three categories in M.M.R. Khan's case (supra) was that they were railway servants. With regard to the Non-statutory Recognised Canteens, on an appraisal of the relevant paragraphs of the Railway Establishment Manual, the notifications and circulars issued by the Board from time to time and the orders passed by courts, this Court held that there is hardly any difference between the statutory canteens and Nonstatutory Recognised Canteens and no distinction is possible between the employees of the two types of canteens so far as their service conditions are concerned. Indeed in a later decision of this Court in Parimal Chandra Raha vs. Life Insurance Corporation of India (JT 1995 (3) SC 288) at page 304, in paragraph 26 of the judgment, this Court highlighted the fact that M.M.R. Khan's case (supra) which had decided the claim of the Non- statutory Recognised Canteens was decided on the facts of that case including the provisions of the Railway Establishment Manual, the notifications and circulars issued by the Railway Board from time to time and other documents. The non-statutory recognised canteens were also to be on par with the statutory canteens in view of the mandate contained in paragraphs 2830 to 2834 of the Railway Establishment Manual. In our opinion, the said reasoning and conclusion of this Court in M.M.R. Khan's case (supra) rested on its own facts.

16. Similarly, dealing with the plea of the various persons engaged in the non-statutory non recognised canteens, that they are entitled to get the status of the railway servants, it should be stated that the plea was negatived in paragraph 38 of the judgment by reference to the provisions of the Railway Establishment Manual and other administrative instructions. Here again the decision rested on its own facts.

17. Before the Tribunal, on behalf of the canteen employees the decision of the Central Government Industrial Tribunal at Calcutta Ref.No. 63/75 in a matter between the State Bank of India and their workmen and the decision of the Bombay High Court in W.P. 933/90 were relied on as supporting their plea. On the other hand, the Bank relied on the decision of the Calcutta High Court in civil order No. 11488/W/83, wherein the plea of the employees of Co-operative canteens as workmen of the Reserve Bank of India was rejected, for reference. A decision of the Bombay High Court in W P. 610/82 to similar effect was also relied on. We do not have all the relevant papers and documents as also the complete text of the decision in those cases to appreciate the reasoning and conclusion arrived at in those cases. So we do not propose to deal with them. If at all, it is the latter decisions of Calcutta and Bombay High Courts which seem to be more in point.

18. Now we have to examine the reasons which persuaded the Tribunal in this case to hold that the instant case falls within the ratio laid down by this Court in M.M.R. Khan's case (Supra). In all the three different categories of canteens -- canteens run by the implementation committee (Canteen Committee), Co- operative Societies and Contractors

-- the Bank was making grants by way of subsidy at 95% of the costs 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. We will take up the individual facts highlighted by the Tribunal in respect of the different categories of canteens. When the question between the employees in relation to Reserve Bank of India and their class III workmen came up before Justice Sri Dinghe on a reference, on an earlier occasion, the Bank had submitted that adequate canteen facilities are available to the employees of the Bank and that the Bank has provided facilities in that regard. Regarding the canteen run by the Implementation Committee (Canteen Committee), out of the 12 representatives 3 of them are from the bank -- the Currency Officer, Personnel Officer and the Officer from the Personal Policy Department. The Currency Officer is always the Chairman of the Canteen Committee. The Bank relieved four employees who are in the Committee, two for full day and two for half day to supervise the day to day affairs of the canteen. The committee cannot increase the strength of the canteen employees without the permission of the bank. The rates of the eatables also cannot be revised without the consent of the Manager. They cannot effect any wage revision without the approval of the Bank. The Bank is also reimbursing the expenses incurred over the periodical medical check up of the employees attached to the kitchen and counters. In these circumstances, the Tribunal held that the case clearly falls within the ratio laid down by this court in M.M.R. Khan's case (supra), since the Bank exercises "remote control" which is as effective as any. As against the above aspects, the fact remains that according to the Bank it has only a limited role to play regarding the functioning of the committee and do not have any control whatsoever on the employees engaged by the committee so far as taking of disciplinary action against any particular employee is concerned. The Bank has further brought out in cross-examination of the employees' representative that the recruitment of the workers for the canteen is made by the Canteen Committee, and the attendance record as well as the sanctioning of leave to the workers is done by the committee. It was also brought out in evidence that the only role played by the Bank in the running of the canteen was the nomination of the three members to the committee. It is common ground that the canteen run by the Implementation Committee (Canteen Committee) is not under any legal obligation as was the case in M.M.R. Khan's case (supra). Moreover, 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. Even according to the Tribunal, the Bank exercises only a 'remote control'. We are of the view that 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 workers in the canteen run by the Implementation Committee (Canteen Committee) cannot come within the ratio laid down by this Court in M.M.R. Khan's case (supra).

19. We shall now take up the case of canteens run by the Co-operative Societies. Apart from subsidy, and other matters provided free of charge like water, electricity, premises, furniture etc., the Tribunal has adverted to the fact that the licence renewal charges paid by the committee are reimbursed by the Bank. Neither the strength of the workmen employed, nor the wages can be revised without the prior sanction of the Bank and so these canteens, are non- statutory recognized canteens, and there is direct control exercised by the Bank in the form of nominating the representative of the Bank. Here again none of the peculiar aspects adverted to by this Court in M.M.R. Khan's case (supra) regarding the non-statutory recognized canteens are present. The mere fact that the Bank nominates its representative the committee or reimburses the licence renewal charges will not in any way provide any direct control.

20. we will now take up the matter regarding the non- statutory non-recognised canteens. In dealing with this matter, the Tribunal has referred to the various aspects stressed in paragraph 38 of the judgment in M.M.R. Khan's case (supra) that the workmen therein are not railway servants. The Tribunal has adverted to the agreement executed between the Bank and the contractor which, according to it, will show that the distinguishing features mentioned in M.M.R. Khan's case (supra) are not present in this case. It may be so. That leads us to no positive conclusion regarding the matter at issue. 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. Since the distinguishing features mentioned in M.M.R. Khan's case (supra) are not present in this case, the Tribunal by a negative process was inclined to hold that though the canteens may be non-statutory and non-recognised in nature, they 'could be said to be' non-statutory recognised ones and so they will be entitled to get all the benefits like the recognised canteens. This is a wrong approach to the issue. We have already held that non-statutory recognised canteens in the instant case are not similar to the non-statutory recognised canteens considered in M.M.R. Khan's case (supra). If the workers in the non-statutory recognised canteens themselves cannot be considered to be workmen under the Bank, by the same token, the workers employed by the contractors, even if they are considered to be nonstatutory recognised canteens as held by the Tribunal, will not be entitled to get any benefit. It is only by holding that the canteens run by contractors are similar to non-statutory recognised canteens, the Tribunal has given the same benefit, as was given to the workmen in the recognised canteens. It should also be noticed that the various factors noticed in paragraph 38 of the judgment in M.M.R. Khan's case (supra) were adverted to by this Court to deny the plea that the canteen workers "are not railway servants" in the context of the various provisions contained in the Railway Establishment Manual and other documents. The said decision rested on its own facts.

21. We, therefore, hold that the assumption made by the Tribunal that the instant case clearly falls within the ratio laid down by this Court in M.M.R. Khan's case (supra), is totally unjustified and incorrect. 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. 166 persons mentioned in the list attached to the reference are not workmen of the Reserve Bank of India and that they are not comparable employees employed in the officers lounge. Therefore, the demand for regularization is unsustainable and they are not entitled to any relief. We hold that the award passed by the Tribunal is factually and legally unsustainable.

22. Before concluding the case, we should advert to the decision of this Court reported in *Parimal Chand a Raha v. Life Insurance Corporation of India* (Supra) brought to our notice. Both sides extensively referred to this judgment to reinforce their plea. After adverting to the earlier decisions, this Court has summarized the law in paragraph 27 of the impugned thus:

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

(i) Where, as 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."

Counsel for the appellant Mr. Salve submitted that propositions No. 3 and 4 contained in paragraph 27 of the judgment are very wide and require reconsideration and appropriate modification, whereas Mr. Tarkunde, Counsel for respondents submitted that propositions No. 3 and 4 May down the law correctly. It is unnecessary, on the facts of this case, to consider to what extent propositions No. 3 and 4 require to be clarified or modified, since in this case the Tribunal has proceeded only on the basis that the instant case clearly falls within the ratio laid down by this Court in M.M.R. Khan's case (supra), which we have held is a totally wrong perspective. In these circumstances, we are not called upon to consider the rival pleas regarding the scope and ambit of propositions No. 3 and 4 contained in para 27 of the Judgment in Parimal Chandra Raha's case (Supra).

We set aside the award passed by the Tribunal. This appeal is allowed. There shall be no order as to costs.