M. M. R. Khan and Others

Vs

Union of India and Others

Writ Petitions (Civil) Nos. 2275-86 of 1982 With Special Leave Petition (C) No. 4090 of 1985

(Ranganath Misra, P.B. Sawant, K. Ramaswamy JJ)

27.02.1990

JUDGMENT

SAWANT, J. –

1. This group of petitions concerns the workers in canteens run in the different railway establishments. The relief claimed in all the petitions is that the workers concerned should be treated as railway employees and should be extended all service conditions which are available to the railway employees.

2. For our purpose, these canteens have to be classified into three categories, viz (i) Statutory Canteens - These are canteens required to be provided compulsorily in view of the provisions of Section 46 of the Factories Act, 1948 (hereinafter referred to as 'the Act') since the Act admittedly applies to the establishments concerned and the employees working in the said establishments exceed 250; (ii) Non-Statutory Recognized Canteens - These canteens are run in establishments 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 railways to maintain them. However, they have been set up as a staff welfare measure where the employees exceed 100 in number. These canteens are established with the prior approval and recognition of the Railway Board as per the procedure detailed in the Railway Establishment Manual; and (iii) Non-Statutory Non-Recognised Canteens - These canteens are run at establishments in category (ii) above but employ 100 or less than 100 employees, and are established without the prior approval or recognition of the Railway Board.

3. The present petitions concern employees in all the three types of canteens. It will be convenient to deal separately with the employees in the three types of canteens, because, the history of litigation and the arguments advanced in respect of each of the categories are different.

4. (i) Statutory Canteens : Section 46 of the Act which makes it obligatory on an occupier of a factory as defined under the Act, to provide a canteen or canteens where more than 250 workers are ordinarily employed runs as follows :

> "46. Canteens - (1) The State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.
>
> (2) Without prejudice to the generality of the foregoing power, such rules may provide for -

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c)."

It is evident from the aforesaid provision that the occupier of a factory (a railway establishment for the purposes of the said provision is a factory within the meaning of the Act) is not only obliged to run a canteen where more than 250 workers are employed but is also obliged to abide by the rules which the concerned government may make, including the rules for constitution of a managing committee for running the canteen and for representation of the workers in the management of the canteen. The occupier may also be required to bear a part of the expenses of running the canteen and to comply with the rules prescribing standards in respect of construction, accommodation, furniture and other equipment of the canteen the foodstuffs to be served and the prices to be charged for them. In other wards, the whole paraphernalia of the canteen has to conform to the statutory rules made in the behalf. As is pointed out on behalf of the railways it appears that there are 89 such statutory canteens functioning in the railway premises.

5. It appears that the workers working in the statutory canteen at Loco-Carriages and Electrical Workshops of the South Eastern Railways Workshop, Kharagpur had preferred a writ petition in the Calcutta High Court praying for a direction to the Union of India to recognised them as railway employees and grant them all service conditions available to the railway employees. A learned Single Judge by his decision dated August 7, 1973 dismissed the said petition holding that the workers were not entitled to the reliefs claimed by them. Against the said decision, the workers preferred an appeal before the Division Bench of the said court and the Division Bench by its decision of July 16, 1974, allowed the same and directed the respondent Union of India to recognised the workers as employees of the railway administration under the Factories Act, but rejected the demand to pay salary and allowances to them as if they were railway employees. On the other hand, the High Court held that the employment of the worker must be deemed to be on the basis of appointment letters and that they had no statutory or legal obligation to pay salaries etc., above the minimum wages, or dearness allowances as claimed by them. The court held that their service conditions were in the realm of contract or depending on a policy followed by the railway administration, at its discretion. Being aggrieved, the Union of India had come in appeal to this Court being Civil Appeal No. 368 of 1978. This Court by its order of October 22, 1980 disposed of the appeal as follows :

"The benefits accruing to the workers under the decisions of the Calcutta High Court do not require to be interfered with in this appeal. Prima facie we are inclined to

> agree that the High Court decision is right. Moreover, the learned Attorney General agrees to apply the Act as if it were applicable to canteen employees. In this view, a final pronouncement on this question by this Court need not be given in the present case. We leave it open to Union of India in an appropriate case to raise the point and seek a pronouncement."

6. The Act referred to in the aforesaid order obviously means the Factories Act. Therefore, what was confirmed by this Court was the declaration given by the Calcutta High Court that the employees of the statutory canteens were railway employees for the purposes of the Factories Act and that their service conditions were determined by the contract as incorporated in their appointment letters or by the policy decision of the railway administration which was discretionary. It is necessary to note this fact at the very outset.

7. It has further to be remembered that the Calcutta High Court has given the aforesaid declaration in favour of the statutory canteen workers notwithstanding the fact that the canteens were managed by the Committee of Management nominated by the railway administration or by a managing committee elected or nominated by the employees or by the Cooperative society relying on the express provision contained in Chapter XXVIII of the Railway Establishment Manual. It may, however, be mentioned that the High Court had taken into consideration Note 2 of para 2834 (2) of the Manual which had declared that in cases where the canteens were being run on co-operative basis either by the cooperative society or the managing committee of the staff, the canteen staff shall not be treated as railway servants because in that case master and servant relationship existed between the co-operative society (though its managing committee) and the concerned employees. The High Court had relied upon the fact that even in such cases the entire cost of the staff was reimbursed by the railway administration to the co-operative society managing committee and that overall control over the canteen and the staff, vested in the railway administration. In fact, the direction under para 2832 of the Railway Establishment Manual was that where even a co-operative society was running the canteen, the bye-laws of the society should be suitably amended to provide for such overall control by the railway administration since the legal responsibility for the proper management of the canteen vested not with the agent like the co-operative society but solely with the railway administration.

8. It is undoubtedly true, however, that this Court in its order dated October 22, 1980 had reserved the right to the Union of India to raise the question as to whether the employees of the statutory canteens were the employees of the railway establishment under the Factory Act and get a pronouncement on the same. It appears that after the said order of this Court, the Railway Board had issued a letter dated May 22, 1981 to the General Manager, South Eastern Railway, Calcutta conveying the decision of the Ministry of Railways that the employees of Kharagpur Workshop Statutory Canteen (which employees were a party to the said decision) should be deemed to be railway servants with effect from October 22, 1980 and till government decided otherwise, the said workers would continue to be governed by the conditions of service and emoluments as existed on October 21, 1980. It was also stated there that what was stated in the letter had the sanction of the President and the letter was issued with the concurrence of the Finance Directorate of the Ministry of Railways. Subsequently, the Board issued another circular letter of June 8, 1981 addressed to the General Managers of all Indian Railways stating therein that it was decided that employees of all other statutory canteens on the railways irrespective of the type and management of the canteens should also be deemed to be railway servants w. e. f. October 22, 1980 and that till government decided otherwise, the staff of the statutory canteens would continue to be governed by the conditions of service and emoluments as existed on October 21, 1980.

9. On March 11, 1982, the Railway Board issued a letter and referred to its earlier communication of June 8, 1981 and September 18, 1981. In this letter, it was stated that pursuant to the said two earlier communications (where it was stated that the question of pay scale and retirement benefits were under consideration and that a separate communication would follow), a schedule showing revised pay scale applicable to the employees of the statutory canteens of the railways was enclosed for necessary action. The letter stated that the existing employees of these canteens would be entitled to exercise an option under Rule 2019 (F. R. 23) and Rule II either to retain their existing pay scale as presently applicable to them or opt for the revised pay scale. However, on promotion such employees would be compulsorily brought on to the revised pay scale. It was made clear that those who opt for the revised scales would not be eligible to other facilities/perquisites admissible to them in their existing pay scale such as free food, snacks, commission etc. A period of three months was given for exercising the option and it was stated that if no option was exercised it would be assumed that the employees concerned had elected to be governed by the revised pay scales w. e. f. October 22, 1980. The schedule annexed to the letter mentioned, among other things, that the canteen employees will be entitled to the dearness allowance, house rent allowance and city compensatory allowance as per the instructions issued by the Railway Ministry, that the age of retirement of employees would be 58 years as in the case of other railway employees; and that the employees of the canteen would be entitled to the benefit of productivity linked bonus on the principles applicable to the staff of the office/establishment to which they were attached from the date of their being declared as railway servants.

10. In a decision of this Court in Kanpur Suraksha Karamchari Union (Regd.) v. Union of India, this Court directed that for the purpose of calculating pensionary benefits, the service rendered by the said employees prior to October 22, 1980 should also be computed. By its letter dated May 13, 1983, addressed to all the General Managers, the Ministry of Railways placed on record the fact that pursuant to the order of this Court dated October 22, 1980 the employees of all the statutory and 11 Delhi based non-statutory canteens had been treated as railway servants w. e. f. October 22, 1980, and the revised pay scale applicable to the employees had been communicated vide the Railway Board's letter dated March 11, 1982.

11. On December 4, 1984, a Division Bench of the Madras High Court delivered a judgment in Writ Appeal No. 414 of 1978, Railway Board v. Parthasarthy and in Writ Appeal No. 415 of 1978 relying upon the order dated October 22, 1980, passed by this Court and held that canteen employees will have to be treated as railway employees for the purposes of the Factories Act, in view of the concession made by the railways before this Court and also the concession made by the counsel appearing for the railways before the High Court.

12. We have then on record an office order dated July 27, 1983, issued to an employees of a statutory canteen conveying to him appointment as a TY/Cleaner in a scale of pay plus usual allowances w. e. f. January 12, 1983. In this order, it is stated that the employee would be eligible for house rent allowance under the Rules in force from time to time, that he will be on probation for a period of one year and that the appointment would be terminated with 14 days' notice on either side. It is, however, added that no such notice would be required, for the termination of service as and by way of removal or dismissal as a disciplinary measure effected after compliance with the provisions of clause (2) of Article 311 of the Constitution of India. It is also stated that the employees should take oath of allegiance to the Union of India and that he should apply for allotment of quarters within 7 days from the date of his appointment and then along should apply for house rent allowance.

13. It is now necessary to refer to the relevant provisions of the Railway Establishment Manual which deal with the canteens. Paragraph 2829 of Chapter XXVIII of the Manual refers to the provisions of Section 46 of the Factories Act, 1948 and underwrites the fact that under these provisions, there is a statutory obligation on the railway administration to set up canteens in railway establishments which are governed by the said Act and which employ more than 250 persons. The paragraph further mentions that railway administration should strictly abide by the rules which are framed by the respective State Governments under sub-section (2) of the Act regarding the constitution of the managing committees of such canteens. Paragraph 2832 then ordains that the staff served by the said canteens should be actively associated in their management, and for this purpose a committee of management of the staff should be formed in accordance with the rules framed by the concerned State Government. The paragraph further states that although the administration can employ as agent a staff committee or a co-operative society from management, the legal responsibility for proper management rests not with the agency but solely with the railway administration. In case the management is entrusted to a consumer co-operative society the bye-laws of the society are directed by the said paragraph to the amended suitably to provide for an overall control by the railway administration. Paragraph 2934 deals with the incidence of cost of the canteens. As regards the statutory canteens, the paragraph directs that in addition to the facilities which are given to the non-statutory canteens, the administration will have also to bear the expenditure on the entire paraphernalia including the furniture as well as the salaries of the cook and the canteen staff. Note 2 of the said paragraph then states that where the canteens are being run on co-operative basis either by co-operative society or by managing committee of the staff and there subsists a relationship of master and servant between the society/managing committee and the workers, i. e. where the canteen staff has been employed by the society/managing committee and not by the administration as such, the canteen staff are not to be treated as railway servant even though the cost of this staff is reimbursed by the administration.

14. We have also on record the second edition (1988) of "Administrative Instructions on Departmental Canteens in Offices and Industrial Establishments of the Government" issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions of the Government of India, first published in 1980 (hereinafter briefly called as 'the Instructions'). The are applicable to :

(a) Canteens/tiffin rooms set up on departmental basis and run as per scheme issued by the Department of Personnel and Training;

(b) Canteens/tiffin rooms set up on co-operative basis by a society of government employees with the Head of the Department/Office/Establishment or his nominee as Chairman; and

(c) Canteens/tiffin rooms set up in industrial establishments (other than those covered under Section 46 of the Factories Act) of the government and which have not been exempted from following the rules in the said Instructions due to the availability of a separate and distinct set of rules and guidelines framed by the controlling Ministries/Departments. (para 1.3)

It is made clear in these Instructions that the orders issued under the said Instructions are applicable to all canteens/tiffin rooms functioning or to be set up in any ministry, department, establishment, office, installation of the Government of India (industrial or non-industrial) which should be centrally registered with the office of the Director of Canteens, Department of Personnel and

Training, New Delhi including those functioning under the Ministries of Defence, P & T and Railways, unless these three ministries had previously decided to exempt any of their canteens/tiffin rooms from the purview of the said Instructions due to specific reasons, and they had framed or they propose to frame a separate set of instructions for the exempted canteens (para 1.4). The Instructions further state that the policy matters and coordination on canteen matters will be centrally done by the Department of Personnel and Training (Director of Canteens) (para 1.14). To be entitled to subsidy all the departmental canteens have to get themselves registered centrally with the Director of Canteens and Training (para 1.15). The canteens are entitled to subsidy on wages and gratuity payable to the worker employed in the canteens and for their uniforms as well as to capital and replacement grants for equipment including utensils, crockeries, cutlery and furniture and also to interest-free loans. In addition to subsidy for equipment, the canteens are also entitled to other facilities such as accommodation on nominal rent of Re 1 electricity, water etc. The Instructions in terms state that since the canteens are run departmentally as a measure of staff welfare, the beverages, snacks and meals etc. have to be made available to the staff at economical rates and for this purpose the government has to provide necessary accommodation at the nominal rent and provide the necessary grants, subsidy and loans (para 1.2). In addition, the concerned department/office has to bear the electricity and water bills. In Chapter V which deals with the personnel in the canteens, the Instructions lay down the entitlement of canteens/tiffin rooms to the number and categories of employees according to the grades of canteens/tiffin rooms. With regard to the recruitment rules, conditions of service, status and the scales of pay of the canteen workers, the procedure for taking disciplinary action against them as well as for giving training to them, the chapter makes it clear that since the canteen workers have acquired the status of the holders of civil posts w. e. f. October 1, 1979, their recruitment and conditions of service etc. would be governed by the rules framed under proviso to Article 309 of the Constitution contained in GSR 54 issued under Government of India, Department of Personnel and Training Notification dated December 23, 1980. It is made clear that the said rules also apply to the employees of the canteens run by the co-operative societies in conjunction with the bye-laws of the society and local co-operative laws in force. It is further made clear that the workers in the non-statutory departmental and co-operative canteens/tiffin rooms will be paid the pay and allowances at the same rate and on the same basis w. e. f. September 26, 1983 on which the employees of the statutory canteens are paid the same.

15. The chapter also mentions that before taking any disciplinary action against any canteen worker procedure as set out in Chapter IV (Conduct and Discipline) of GSR of 1954 dated December 23, 1980 published in the Gazette of India Part II Section 3, sub-section (1) dated January 17, 1981 will be followed. The chapter further directs periodical training programmes to be arranged by the Director of Canteens for managerial, personnel and other canteen staff.

16. Chapter VI contains guidelines for constituting the managing committees of the canteens. This chapter ordains that the Chairman of the managing committee should preferably be the Head of the Department/Office himself or his Deputy,. and that the Honorary Secretary of the managing committee should normally be the Welfare Officer or the Administrative Officer of the department/office of the minimum rank of a Section Officer or a Major or equivalent in services, who shall be nominated by the office/establishment, and in the case of co-operative canteens may be elected as per the bye-laws of the society. One of the officials who should be of the rank of Section Officer/Major or above is to be nominated on the managing committee by the Chairman. Paragraph 6.11 defines the legal status of the managing committee. It says that the committee functions in the department/office establishment of the Government of India for the welfare of the government employees, under the orders of the Government of India and its functions are connected with the affairs of the Union. The committee, therefore does not enjoy an autonomous status. With respect to

the contractual obligations, it functions "for and on behalf of the President of India". The proceedings of the committee will not be conducted or decided on resolutions or voting system, but the official decision will rest with the Chairman of the managing committee or the Head of the Department/Office. In the case of canteens run by the co-operative societies, this provision is to apply as per the bye-laws of the society and the co-operative law in force. The presence of the Chairman and the Hony. Secretary is necessary to constitute the quorum for holding the meeting of the managing committee. The Head of the Department/Office is given power to depute a government servant of the rank of Section Officer/equivalent or below if he can be spared, for part time or wholetime assistance to the managing committee. The department/office concerned is required to provide stationery, stencils, cyclostyling facilities, postage stamps, office assistance etc. to enable the managing committee to conduct its business.

17. The annual accounts of the canteens have to be submitted to the Financial Advisers of the department/office concerned with copies thereof to the Director of the canteens, and the audit of the accounts of the canteens/tiffin rooms is to be carried out by the Departmentalised Accounts Organisations of the concerned ministries/departments/offices. Out of the surplus of net profits of the canteens, 1/3 amount is required to be remitted to the Director of Canteens Funds for welfare to the canteen employees in general.

18. All the aforesaid provisions apply to all types of tiffin room classified into Type B and Type A where the strength of the department/office is between 25-49 and 50-99 respectively and to the canteens classified in Types D, C, B and A where the strength is between 100-249, 250-499, 500-699 and 700-1200 respectively. Where the strength is above 120-0 a further higher classification is given to the canteens.

19. These provisions contained in the Instructions, therefore, show that the government has a complete control over the canteens and the worker employed therein are 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.

20. It is against this background that we have to consider the question as to whether the staff employed in the statutory canteens in the railway establishment, industrial or non-industrial, are railway employees or not. According to the workers, in view of the aforesaid documents on record there is no reason why the employees in the canteens concerned should not be given the status of the railway employees with all consequential benefits. On the other hand, the contention advanced on behalf of the railways is that the documents in question show that the employees of the statutory canteens are to be deemed railway employees only for the purpose of the Factories Act and for no other purpose. In no case, they can be deemed as holders of civil posts either for Article 309 or for Article 311 or for any other purpose.

21. On behalf of the employees, a preliminary objection was raised, namely, that in view of the order of this Court dated October 22, 1980 in Civil Appeal No. 368 of 1978 and another, it is not open to the railways to agitate the question whether the employees in the statutory canteens are railway employees or not, and further whether they are railway employees for the purposes of the Factories Act. We are not inclined to entertain this objection for it is clear from the said order that the court had left open even the question as to whether the employees of the statutory canteens where railway employees for the purposes of the said Act. Hence, the question whether they are employees of the railways for all purposes necessarily remains res integra. We may reproduce here

the said order which is clear enough on the subject :

> "The benefits accruing to the workers under the decision of the Calcutta High Court do not require to be interfered with in this appeal. Prima facie we are inclined to agree that the High Court decision is right. Moreover, the learned Attorney General agrees to apply the Act as if it were applicable to canteen employees. In this view a final pronouncement on this question by this Court need not be given in the present case. We leave it open to the Union of India in an appropriate case to raise the point and seek a pronouncement.
>
> Leave granted in the petition files by Railway Canteen Karamchari Association.
>
> We have in C. A. No. 368 of 1978 passed on order and the point raised by the workmen in this appeal closely resembles the one raised in the sister case just referred to. We apply the same principle as has been decided the Calcutta High Court to this case also and the workmen will be given the same benefits. We, however, make it clear here also that the Union of India will be free in an appropriate case to challenge the correctness of the legal point decided by the Calcutta High Court. It will be equally open to the workmen to challenge the decision of the Delhi High Court if it becomes necessary. With these observations we dispose of both the appeals. The appellants in C. A. No. 368 of 1978 will pay the costs of the respondents."

22. It must be remembered in this connection that both the Calcutta and the Madras High Courts had taken the view that the employees in the statutory canteens were the employees of the railways for the purposes of the said Act. The Delhi High Court had distinguished the decision of the Calcutta High Court on the ground that, that decision did not apply to the employees in the non-statutory canteens with which it was concerned, and had held that the employees of the non-statutory canteens were not railway employees for any purpose. It is in this circumstance that this Court had been liberty to the railway administration as well as the employees to challenge the respective decisions of the Calcutta and Delhi High Courts. It will not, therefore, be correct to say that this Court had pronounced its final opinion on the said issue by the said order. It has also to be remembered in this connection that the issue before this Court in those matters was whether the employees either of the statutory or non-statutory canteens were the railway employees for the purposes of the Factories Act. The larger issue whether they were railway employees for all purposes was neither discussed nor even tentatively decided in those proceedings. We are, therefore, of the view that both the said issues are at large in the case of the employees of the statutory as well as of the non-statutory canteens.

23. Before us therefore two issues arise for consideration, viz. (a) whether the employees of the statutory canteens are railway employees for the purposes of the said Act? and, (b) whether they are railway employees for all other purposes as well?

24. As regards the first contention, namely, whether the said employees are the employees of the railway administration for the purposes of the said Act, according to us the view taken by the Calcutta High Court in that behalf is correct. Section 2 (a) of the Factories Act defines "worker" as follows :

> "2. (1) "Worker" means a person employed, directly or by or through any agency

(including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;"

25. Since in terms of the Rules made by the State Governments under Section 46of the Act, it is obligatory on the railway administration to provide a canteen, and the canteens in question have been established pursuant to the said provision there is no difficulty in holding that the canteens are incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provision of the canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. Paragraph 2829 of the Railway Establishment Manual recognises the obligation on the railway Administration created by the Act and as pointed out earlier paragraph 2834 makes provision for meeting the cost of the canteens. Paragraph 2832 acknowledges that although the railway administration may employ anyone such as a staff committee or a co-operative society for the management of the canteens, the legal responsibility for the proper management rests not with such agency but solely with the railway administration. If the management of the canteen is handed over to a consumer cooperative society the bye-laws of such society have to be amended suitably to provide for an overall control by the railway administration.

26. In fact as has been pointed out earlier the Administrative Instructions on departmental canteens in terms state that even those canteens which are not governed by the said Act have to be under a complete administrative control of the concerned department and the recruitment, service conditions and the disciplinary proceedings to be taken against the employees have to be taken according to the rules made in that behalf by the said department. In the circumstances, even where the employees are appointed by the staff committee/cooperative society it will have to be held that their appointment is made by the department though the agency of the committee/society as the case may be. In addition, as stated earlier, the Railway Board by its circular dated June 8, 1981 had communicated that it was decided to treat the employees of all statutory canteens, as railway servants irrespective of the type and management of the canteens, and to extend to them the conditions of service and emoluments of the railway servants as existed on October 21, 1980, w. e. f. October 22, 1980. No doubt it was stated in this letter that the said decision would prevail till government decided otherwise. Subsequently on March 11, 1982, the Board also prescribed the pay scales, dearness allowances, house rent allowance, city compensatory allowance and productivity bonus, and fixed the age of their superannuation. As also pointed out earlier, this Court in its decision reported in Kanpur Suraksha Karamchari Union (Regd.) v. Union of India, subsequently directed that for the purpose of calculating pensionary benefits the service rendered by the said employees prior to October 22, 1980 would be computed. What is further, the Ministry of Railways by its letter of May 13, '983 placed on record the fact that not only the employees of all the statutory canteens but the employees of 11 Delhi based non-statutory canteens had been treated as railway servants with effect from October 22, 1980. It must be remembered in this connection that neither the Railway Ministry nor the Railway Board had stated in their letters/orders that the employees of the statutory canteens and of the 11 Delhi based non-statutory canteens were being treated as railway servants only for the purposes of the Factories Act or that they were to be so treated till further decision of this Court.

27. It is possible to place a liberal construction on these letters/orders and interpret the relevant direction namely, "till further directions from the government" as being the directions after the

decision of this Court in the present matters, and for the sake of argument we may proceed on that basis while dealing with the present contention. The admitted facts, however, are that these canteens have been in existence at their respective places continuously for a number of years. The premises as well as the entire paraphernalia for the canteens is provided by the railway administration and belong to it. The employees engaged in the canteens have also been in service uninterruptedly for many years. Their wages are reimbursed in full by the railway administration. The entire running of the canteens including the work of the employees is subject to the supervision and control of the agency of the railway administration whether the agency is the staff committee or the society. In fact, as stated by the railway administration in its Establishment Manual the legal responsibility for running the canteen ultimately rests with it, whatever the agency that may intervene. The number and the category of the staff engaged in the canteen is strictly controlled by the administration. As has been pointed out earlier, much before the order of this Court dated October 22, 1980, the employees of the departmental canteens/tiffin rooms were declared as holders of civil posts under the Government of India Notification No. 6 (2) /23/77 Welfare dated December 11, 1979 which notification is an Annexure 4 to the Administrative Instructions referred to above. That notification stated that all posts in the said canteens/tiffin rooms are to be treated as posts in connection with the affairs of the Union, and accordingly, present and future incumbents of such post would qualify as holders of civil post under the Central Government. The notification further stated that necessary rules governing the conditions of service of the employees would be framed under proviso to Article 309 of the Constitution to have retrospective effect from October 1, 1979. Accordingly the service rules were frames under Article 309 as per the Notification No. GSR-54 issued by the Government of India, Department of Personnel and Training on December 23, 1980. These rules contained both the recruitment rules and conditions of service of the said employees including the procedure for disciplinary action to be taken against them. As stated earlier the Administrative Instructions are applicable to the canteens/tiffin rooms run by all the ministries including the Railway Ministry unless they had previously decided to be exempt from them and had framed their own rules in that behalf. On behalf of the respondents, one Shri Sud, Joint Director of Establishment, Ministry of Railways has filed an affidavit contending that Section F of Chapter XXVIII of the Railway Establishment Manual (to the relevant paragraphs of which we have made a reference earlier) contains the necessary instructions for running the canteens and hence the railway administration should be deemed to have been exempted from the operation of the said Administrative Instructions. Although there is nothing expressly on record to show that the railway canteens are exempted from the said Instructions, we will proceed on the assumption that they are so exempted by virtue of the relevant provisions of the Railway Manual. But the fact remains that there are as yet no notifications on the lines of December 11, 1979 and December 23, 1980 issued for the benefit of the employees in the railway canteens. Whatever the difference in the nature of work performed by the other staff in the different ministries, it cannot be argued that there is any difference in the work performed by the employees in the canteens run in the establishments of the ministries. Hence, we are of the view that if the said two notifications are applicable to the employees in the canteens run by the other departments of the Government of India, there is no reason why the same should not apply also to the employees in the canteens run by the railways. On behalf of the railway administration no material has been placed before us to treat the employees in their canteens as a class separate from the employees in the canteens run by the other departments of the government. In the circumstances, it would be highly discriminatory not to apply the said two notifications to the employees in the railway canteens. It would be violative of Articles 14 and 16 of the Constitution. We are, therefore, of the view that the employees in the statutory canteens of the railways will have to be treated as railway servants.

28. Thus the relationship of employer and employee stands created between the railway administration and the canteen employees from the very inception. Hence, it cannot be gainsaid that for the purposes of the Factories Act the employees in the statutory canteens are the employees of the railways. The decisions of the Calcutta and Madras High Courts (Supra) on the point, therefore, are both proper and valid.

29. The next question is whether the said employees are railway employees for all purposes. Mr. Ramaswamy, the learned counsel appearing for the railways contended that the railways undertake varied welfare activities in the nature of handicrafts centers, co-operative stores, banks, housing societies, credit societies, educational institutions etc. and the railways spend about a hundred crores annually on these activities. He submitted that if it is decided to treat the employees engaged in the canteens as railway employees it will be difficult to resist the claim from employees of these other institutions umbering over 27,500 for a similar status. He also submitted that the railways provide financial assistance to various non-railway institutions such as non-railway schools. But teachers and other employees working in these schools are the employees of the respective organisations and cannot be treated as railway servants. Since, according to him, the canteens are run for the benefit of the staff, the government has only a general responsibility to see that the labour laws are properly followed and not infringed. He further submitted that an identical responsibility also devolves on the railways in regard to contractors who execute works for the railways with their own labour. In addition, the railways have nearly 2.3 lakh casual labourers who are normally employed on works which are of seasonal nature, intermittent or extending over short periods. These employees are engaged by the contractor to whom the execution of work is entrusted. In case the employees of the canteens are to be treated as railway servants, similar demands will be made from such casual labourers. His next contention in this behalf was that the railways have a primary objective of carrying goods and passengers, and the welfare activities are ancillary to the main objective. Hence, the canteens continue at the discretion of the railway administration where they have provided 70 per cent subsidy to the management of the statutory canteens. If at any state the government so decides, it can change the form of this welfare measure and may choose to have another set up which in their view may prove more convenient and financially workable such as engaging a contractor or an established agency like Tea Board, Coffee Board, Women's Organisation, etc. to run the canteens. For all these reasons, he submitted the employees in the statutory canteens should not be treated as the railway employees.

30. While discussing above the contention that the employees in the statutory canteens cannot be treated as railway employees even for the purposes of the said Act, we have referred to the various developments, and documents on record including the court decisions. It is not necessary to repeat them here. In view of the same, the contention advanced by Mr Ramaswamy that the railway administration is engaged in varied welfare activities, and the employees engaged in these activities will also have to be treated as railway employees, in case, the canteen employees are recognised as railway employees does not appeal to us. We express no opinion on the subject as to whether the employees engaged in other welfare activities will or will not be entitled to the status of the railway employees, since neither they nor the facts pertaining to them are before us. Our conclusion that the employees in the statutory canteens are entitled to succeed in their claim; is based purely on facts peculiar to them as discussed above. If by virtue of all these facts they are entitled to the status of railway employees and they cannot be deprived of that status merely because some other employees similarly or dissimilarly situated may also claim the same status. The argument to say the least can only be described as one in terrorem, and as any other argument of the kind has to be disregarded.

31. (ii) Non-statutory Recognised Canteens : Paragraph 2830 of the Railway Establishment Manual

enjoins upon the railway administration to take steps to develop their canteen organisation 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 injunction is for provision of canteens in addition to the canteens as required by the Factories Act for which provision is made in paragraph 2829 of the said Manual. paragraph 2831 lays down the principles governing the setting up of the canteens which apply also to the non-statutory canteens provided for under paragraph 2830. It says, among other things, that a regular canteen should be provided where the strength of the staff is 100 or more and a scheme for provision of a new canteen should be submitted to the Railway Board for approval indicating financial implications duly vetted by the FACO. Paragraph 2833 contains provisions for the management of such non-statutory canteens. Among other things, it states that such canteens can be run either by committee of management to be formed for the purpose or by a consumer co-operative society. The committee of management should consist of the duly elected representatives of the staff and where it is run by a co-operative society, it should consist of the representatives of the shareholders of the society. However, in either of the cases, a representative of the railways administration is to be nominated either as chairman or a Secretary or as a member of the committee. This nominee of the railway administration is under an obligation to bring to the notice of the administration any decision of the managing committee which is likely to affect the interests of the railway administration in its capacity as an owner of the premises and of the furniture, equipment, etc., or if the decision is likely to be of considerable harm to the staff. In such cases, the managing committee cannot take action on the particular decision till the General Manager of the Railway has recorded his decision thereon. The paragraph further ordains that where the canteens are managed by a co-operative society, the society should make a suitable provision in its bye-laws for supervision of the canteens by the committee of management. The paragraph also makes provision for granting loans to such canteens as initial capital from the Staff Benefit Fund. paragraph 2834 then details various facilities which are extended to such canteens which include the necessary accommodation, sanitary and electric installations, furniture and cooking utensils. The railway administration is also required to bear rent on sanitary and electric installations, service taxed and charges for the electricity and water consumed. These canteens are also entitled to subsidies at present to the extent of 70 per cent of the wages of the employees engaged therein.

32. It is further an admitted position that for the purposes of giving subsidy for wages, the rates of pay and allowances as obtaining in July 1963 were adopted as a basis. In September 1967, on account of a representation received from the canteen employees, the Railway Board left the question of revision of the scales of pay and dearness allowance to the managing committees. However to ensure that the canteen employees functioning at the metropolitan cities were not affected adversely, the Board prescribed a minimum dearness allowance relief to the said employees. In may 1970, the Board reviewed the question of scales of pay, and decided to enhance the dearness allowance relief in respect of employees working in the metropolitan cities, and also fixed the scales of pay of the employees working in all non-statutory canteens (vide a Railway Board's letter N. E (W) 69 C. N. 1-12 dated May 29, 1970). These scales of pay were again revised in December 1979, including dearness allowance for employees working in the metropolitan cities as well as for those working in cities other than metropolitan cities with effect from October 1, 1979 (Railway Board's letter No. E (W) /79-C. N. 1-12 dated December 14, 1979). A further revision of pay scales was effected by the Board in May 1983 (Railway Boards' letter No. E (W) /83/C. N. 1-8 dated May 13, 1983) to ensure compliance with the interim directions given by this Court on April 22, 1983. The direction of this Courts was to the effect that the salary and allowances of the employees of the non-statutory canteens (recognised) should be at the same rate and on the same basis as applicable to the employees of the statutory canteens deemed as railway servants with the

effect from October 22, 1980. This direction was on the basis of the decision of this Court given on October 22, 1980 (supra). It is further an admitted fact that the Board has made applicable to these employees the scales of pay as recommended by the Fourth Pay Commission with effect from January 1, 1986.

33. The employees in these canteens are also entitled to free medical treatment as outdoor patients in railway hospitals, to railway passes/PTO's, one increment as an incentive for adoption of a small family. The are also governed by the provision of the Employees' Provident Funds Act. The Board has also framed recruitment rules for these employees vide its letter dated June 7, 1978. These rules, among other things, lay down minimum qualifying age for recruitment, and superannuation age, minimum educational qualifications, the mode of recruitment and eligibility for promotion for various posts. the nominee of the railway administration on the managing committee of the canteen is to be the appointing authority. At present there are about 173 non-statutory recognised canteens employing about 2145 workers.

34. As pointed out earlier, from the decision dated March 7, 1980 of Delhi High Court in Writ Petition No. 269 of 1980 filed on behalf of the employees of 11 Delhi based non-statutory recognised canteens, the Railway Canteen Karamchari Association had filed a special leave petition before this Court being S. L. P. No. 4132 of 1980 which was disposed of by this Court by its decision of October 22, 1980 (supra). By that decision, this Court had disposed of the said appeal in terms of the order which was passed in another similar Civil Appeal No. 368 of 1978, and the employees of the non-statutory canteens were directed to be treated on par with the employees of the statutory canteens, although by giving liberty to the railway administration to agitate the point that neither the employees of the statutory nor of the non-statutory recognised canteens were railway employees either for the purposes of the Factories Act or for any other purpose.

35. Shri Ramaswamy advanced the same contentions in the case of these employees as he advanced in the case of the employees of the statutory canteens. He submitted that these employees are appointed by the staff managing committees or co-operative societies and not by the railway administration, that their service in the canteen in purely in the nature of a private employment as in a private sector undertaking and that the recruitment procedures differ widely from canteen to canteen and they are not akin to the procedure followed by the railways. The Managing Committee which appoints the employees. supervises and controls the canteens is a non-government body. The said committee functions as a separate entity independent of the railway administration and the control when exercised by the railway administration is only to ensure that the canteen is run in conformity with certain requirements. There is no relationship of master and servant between the railway administration and the canteen employees. The letters of appointment issued to the employees make it expressly clear that the employment is non-governmental and purely temporary and does not carry any pensionary or gratuity benefits. The employees recruited further are not subjected to rigorous standards as to age limit, educational qualifications, medical fitness, character verification etc. He further submitted that the order dated October 22, 1980 passed by this Court in the case of the employees of the 11 Delhi based non-statutory canteens is expressly subject to the liberty given to the railway administration to contend in a future appropriate case that they are not railway employees and hence it cannot act as a precedent. He also contended as he did in the case of the statutory canteen employees, that if the employees engaged in these canteens are treated as railway servants, the employees engaged in other welfare activities, casual labourers etc. may have also to be treated as such.

36. These arguments can be dealt with together. In the first instance there is hardly any difference

between the statutory canteens and non-statutory recognised canteens. The statutory canteens are established wherever the railway establishments employ more than 250 persons as is mandatory under the provisions of Section 46 of the Act while non-statutory canteens are required to be established under paragraph 2831 of the Railway Establishment Manual where the strength of the staff is 100 or more. In terms of the said paragraph, the non-statutory canteens to be recognised have to be approved of the Railway Board in advance. Every railway administration seeking to set up such canteens is required to approach the Railway Board for their prior approval/recognition indicating financial implications involved duly vetted by the Financial Advisor and Chief Accounts Officer of the railway concerned. It is only when the approval is accorded by the Railway Board that the canteen is treated as a recognised non-statutory canteen. By the sanction, the details in regard to the number of staff to be employed in the canteen, recurring and non-recurring expenditure etc. are regulated. The only material difference between the statutory canteen and non-statutory recognised canteen is that while one is obligatory under the said Act the other is not. However, there is no difference in the management of the two types of canteens as is evident from the provisions of paragraphs 2932 and 2833 which respectively provide for their management. Regarding the incidence of cost to be borne by the railways again, as far as the Manual is concerned, the only additional obligation cast on the administration, in the case of the statutory canteens is that in addition to the facilities given to the non-statutory canteens, the administration has also to meet the statutory obligations in respect of the expenditure for providing and maintaining canteens arising from the said Act and the rules framed thereunder. A persual of the relevant provisions shows that the said Act and the rules made thereunder do not make demands on the administration for more expenditure that what is provided for in the Railway Manual for the non-statutory canteens. We have already referred to the service conditions applicable to the employees of the statutory and non-statutory canteens we have pointed out the relevant provisions of the Administrative Instructions on departmental Canteens in Government Offices and Government Industrial Establishments. These Instructions are applicable to both statutory and non-statutory recognised canteens. The Instructions do not make any difference between the two so far as their applicability is concerned. In fact these Instructions require that the canteens run by engaging soley part time daily wages workers may be converted to departmental canteens (para 1.3). Hence we do not see why any distinction be made between the employees of the two types of canteens so far as their service conditions are concerned. For this very reason, the two notifications of December 11, 1979 and December 23, 1980 (supra) should also be equally applicable to the employees of these canteens. If this is so, then these employees would also be entitled to be treated as railway servants. As classification made between the employees of the two types of canteens would be unreasonable and will have no rational nexus with the purpose of the classification. Surely it cannot be argued that the employees who otherwise do the same work and work under the same conditions and under a similar management have to be treated differently merely because the canteen happens to be run at an establishment which employs 250 or less than 250 members of the staff. The smaller strength of the staff may justify a smaller number of the canteen workers to serve them. But that does not make any difference to the working conditions of such workers.

37. We have already dealt with the other arguments advance by Shri Ramaswamy while dealing with the cases of employees in statutory canteens. It is not necessary to repeat the said discussion here. We are, therefore, of the view that the case of these employees should be treated on par with that of the employees in the statutory canteens and they should also be treated for all purposes as railway servants. This is apart from the fact that by an order of this Court the employees of 11 Delhi based non-statutory recognised canteens have already been directed to be treated as railway servants for all purposes.

38. (iii) Non-statutory Non-recognised Canteens : 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 premises belonging to the railways they are not required to be managed either as per the provision 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 then 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.

39. The result, therefore, is that the workers engaged in the statutory canteens as well as those engaged in non-statutory recognised canteens in the railway establishments are railway employees and they are entitled to be treated as such. The Railway Board has already treated the employees of all statutory and 11 Delhi based non-statutory recognised canteens as railway employees. w. e. f. October 22, 1980. The employees of the other non-statutory recognised canteens will, however, be treated as railway employees w. e. f. April 1, 1990. The would, therefore, be entitled to all benefits as such railway employees with effect from the said date, according to the service conditions prescribed for them under the relevant rules/orders.

40. The writ petitions and appeals of these employees are allowed to the above extent accordingly with no order as to costs.

41. As far as the employees in non-statutory non-recognised canteens are concerned their petitions are dismissed. There will, however, be no order as to costs.

</html