

G.B. Pant University of Agriculture and Technology, Pantnagar, Nainital

Vs

State of Uttar Pradesh and others

Civil Appeal No. 13087 and 13089 of 1996

(Mr. S.B. Majmudar and Mr. Umesh C. Banerjee, JJ.)

10.08.2000

### JUDGEMENT

**Umesh C. Banerjee, J:**— Redressal of grievances of the Cafeteria workers in Govind Ballabh Pant University of Agriculture and Technology, Nainital by reason of an award of the Presiding Officer, Labour Court, Haldwani, Uttar Pradesh and subsequent confirmation thereof by the High Court prompted the University to move this Court in Appeal against the same.

G.B. Pant University of Agriculture and technology established under U.P. Agricultural University Act, 1958 happens to be a residential University having about 14 hostels to provide accommodation to the students and a Cafeteria to provide food services to the residents of the hostels and others. There are about 170 employees working in these Cafeterias and these are the employees who claim regularisation of the services as regular employees of the University which, however, stands negated by the University authority. The records depict that by reason of refusal to accept such a claim, the disputes were referred under two separate References in terms of Section 4(k) of the Uttar Pradesh Industrial Disputes Act in November 1991 which were registered as Reference No. 141 of 1991 and 142 of 1991. The Labour Court upon acceptance of the claim of the employees in no uncertain terms found the entitlement of the employees of Cafeteria and declared the latter to be the regular employees of the University from the date of the award and held entitled to receive the same salary and other benefits as the other regular employees of the University. The University however, being aggrieved by the award moved two Writ Petitions by way of challenges to the two awards under Article 226 of the Constitution. The High Court also on a detailed scrutiny of the Regulations and other materials on record dismissed the Writ Petitions with an observation that the impugned award of the Labour Court are perfectly justified in the facts and circumstances of the case and do not suffer from any error of law. It is this order which is under challenge in this Appeal being Civil Appeal No. 13087 of 1996 and 13089 of 1996 (G.B. Pant University of Agriculture and Technology, Nainital vs. State of Uttar Pradesh and Others).

There cannot possibly be any doubt that socialistic concept of the society as laid down in Part III and IV of the Constitution ought to be implemented in the true spirit of the Constitution. Decisions are there of this Court galore wherein this Court on more occasions than one stated that democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. In D.S. Nakara's case (1983 1 SCC 305) as also lately in Secretary, H.S.E.B. vs. Suresh & Ors. etc.etc. (1999 3 SCC 601), the same has been well pronounced and we need not dilate on that score any further.

Mr. Trivedi, the learned Additional Solicitor General appearing in support of the Appeals rather strongly contended that the High Court has totally misconstrued the Regulations framed under the Statute pertaining to the Hostel and Cafeteria (Hostel and Cafeteria Regulations under U.P.

Agriculture University Act, 1958) and rather after a longish narration of the Regulations contended that it is not the University which has any control over the employees of the Cafeteria but the Food Committee which has specific role in the matter of management and control of the cafeteria and since there exists no evidence whatsoever on record that the employees working in the cafeteria were appointed by the University in accordance with the provisions contained in the Act or the statute framed thereunder, question of there being any master - servant relationship would not arise. It is in this context also it has been contended by Mr. Additional Solicitor that there is no budgetary allocation provided in the University Budget to meet the expenses on account of the salaries of the Cafeteria employees and as such, question of the Cafeteria employees being termed to be the employees of the University would not arise. Strong reliance was placed on the decision of this Court in All India Railway Institute Employees Association vs. Union of India (1990 2 SCC 549) wherein this Court observed.

"12. By their very nature further the services of the Institute/Clubs are availed of beyond working hours only. It is common knowledge that not all members of the railway staff avail of them. One has to be a member to do so by paying fees. The membership is also optional. That is why most of the staff employed in the Institutes/Clubs is part time. As has been stated by the respondents, out of about 1741 employees engaged in 499 Institutes and 332 Clubs nearly half are part time employees. The services rendered by the employees are not of a uniform nature. They are engaged for different services with different service conditions according to the requirement. The Institute/Clubs further do not engage in uniform activities, the activities conducted by them varying depending upon the infrastructure and the facilities available at the respective places.

13. What is more important as far as the issue involved in this petition is concerned, is that the provisions of the Institutes/Clubs is not mandatory. They are established as a part of the welfare measure for the railway staff and the kind of activities they conduct depend, among other things, on the funds available to them. The activities have to be tailored to the budgets since by their very nature the funds are not only limited but keep on fluctuating. If the costs of the activities go beyond the means, they have to be curtailed. So also, while starting a new activity, it is necessary to take into account its financial implications and the capacity of the Institute/Club to raise the necessary funds. The only varying component of the funds is the membership fee which is uncertain.

The facts of the matter under consideration are rather a pointer to the material difference between the canteens run in the Railways Establishment and that of the Railway Institute and Clubs. This Court on a very poignant note observed that canteen services are no longer looked upon as a mere welfare activity but as an essential requirement where sizeable number of employees work, this Court went on to record that the same however, cannot be said to be of Institutes and Clubs.

While the Appellants' contention is, as noticed above, the Respondents contended that the under the provisions of the Act and Statute, it is obligatory on the students to reside in hostel and avail of food services and there being an obligation to provide food services to the inmates of the hostel, the Cafeteria is maintained and the obligations of the University cannot be run down. Mr. Gupta, the learned Advocate appearing for the Respondent No.3 strenuously contended that there is per se a statutory and legal obligation and the University authorities are under a duty to maintain residential accommodation, promote the health and welfare of the students, make housing and messing arrangement and the existence of Cafeteria together with its staff members cannot but be a part of such accommodation and arrangements. Strong reliance has also been placed on the Regulations for their true purport, scope and effect.

We find substance in the submission of Mr. Gupta. A perusal of the Regulations as framed under the statute (U.P. Agricultural University Act) unmistakably depict that the twin conventional tests of implicit obligation and factors of over all control and supervision by the University stands satisfied and the legal responsibility cannot be shifted to the students as is sought to be contended.

Reliance by Mr. Trivedi on to the Regulations 48, 49 64, 67, 68, 69, 78, 86, 92 and 93 though apparently may have some relevance pertaining to the issue, but reading the Regulations as a whole, it cannot be doubted that the same are only framed for moral, persuasive and democratic reasons so as to the involve the students and to elicit their views, suggestions and ensure their participation in mutual exercise of co-operation. We, however, feel it expedient to quote herein below a few of the Regulations which would unmistakably depict total control of the University in the matter of running and maintenance of the Cafeteria and the same being as below:

54. It shall be compulsory for each student residing in a hostel to join the cafeteria of that hostel unless otherwise permitted by the Chief Warden of the hostel on the request of the guardian of the student, and the recommendation of the Warden of that hostel to take food with his guardian. In that event the Chief Warden shall inform all concerned officers of the University, for example, Comptroller, Dean Student Welfare, Hostel Warden, etc.

76. The Comptroller of the University shall operate the "G.B.P.U.A. Food Services Account", issue cheques, maintain the cash book and classified accounts (unitwise/head wise) of income and expenditure as well as students ledgers in his office like other accounts of the University. In addition to arranging timely payment of the Cafeteria bills duly authorised by the Warden and ensuring recovery of all Cafeteria dues from the students and staff members concerned the Comptroller shall be responsible for getting the Cafeteria accounts audited Cent-Percent regularly.

80. The accounts Clerk-Cum-Store Keeper of the hostel Cafeteria shall be responsible for the proper and up-to-date maintenance of the Cafeteria stores, Stores records and account books including daily menu book, cash book, consumable stock book, daily preparation and sales register, cash credit and coupon transaction register, Stores day book (Roznamcha) indents, challans, bill register, daily sales sheets, Cash memo book bill book etc. under the direct supervision, control and guidance of the Hostel Manager. His functions and duties shall be as follows:

82. The other cafeteria staff including tea man, Head-Cook, Bearers, etc. shall work in accordance with the instructions of the Hostel Manager/Warden. The duties of these staff members shall be defined/prescribed by the Warden of the Hostel.

88. The accounts of the Warden's Office (bill and vouchers) shall be taken by the Hostel Manager to the Office of the Comptroller for scrutiny and checking.

92. The entire Cafeteria staff shall work under the direct supervision of the Warden/Asstt. Warden in accordance with the advise of the Food Committee and under the administrative control of the Chief Warden. All cases of appointments, termination of service and other punishments and promotions, rewards etc. shall be dealt with by the Chief Warden in consultation with the Warden and the Food Committee.

93. (i) All the appointment of Cafeteria staff would be made by the Food Committee of the hostel with the approval of the Chief Warden.

(ii) The leave, annual increments, uniform, travelling allowance etc. to the Cafeteria staff shall be

governed in accordance with the policies laid down by the Central Food Committee.

106. (i) The bills/vouchers/imprest/temporary advance adjustment accounts and monthly food accounts duly passed by the respective Food Secretary/Chairman, Food Committee to their entire satisfaction and entered in the Food Provision control Registrar shall be sent to Comptroller directly for the scrutiny and payment/adjustment/recovery of dues expeditiously. The Wardens, Hostel Managers and the respective Food Secretaries will be fully responsible for making stock entries of all purchases made in respect of their Hostels. The payment will be made only if a certificate in the following form is given on the bill (rubber stamp for which could be got made for convenience).

"Certified that the goods as per specification have been received and entered in the stock books".

(ii) The Warden shall have full financial and administrative control of their Hostel Cafeteria funds and be responsible for up-to-date maintenance of accounts books and submission of bills/vouchers/adjustment accounts, the preparation of monthly food accounts and submission of monthly recovery lists accurately within the time and according to the procedure prescribed in the Hostel Cafeteria Regulations. The Wardens/Hostel Managers/Food Secretary concerned will be fully responsible for checking of rates charged in the bills and payments will be authorised on the basis of the Certification.

107. (i) Similarly, the preparation of vouchers for adjustment account of temporary advances and recoupment of the permanent advance shall be done by the Accounts Clerk-Cum-Store Keeper/Hostel Manager which shall be checked and signed by the food Secretary, Warden expeditiously and the Warden shall ensure that no cash is drawn and retained by the Hostel Cafeteria when it is not required for its immediate expenditure.

109. The Hostel Cafeteria's Accounts Clerk cum Store-Keeper shall be responsible to Warden/Chief Warden on the one hand and on the other be also responsible to the Comptroller for correctness of the Cafeteria accounts.

The detailed analysis as above has been introduced in this judgment so as to exhibit the control of the University in the matter of running of the Cafeteria. As noticed above, a residential University having a canteen facility and the inmates of the hostel not being permitted to have food from outside cannot possibly be said to be a mere welfare service to the students. It is a requirement of the Regulations framed under the Act and thus having statutory sanction and force- the issue thus comes up for consideration as to whether it is a mere ancillary benefit conferred on to the inmates of the hostel or an essential requirement. The Regulations pertaining to the hostel accommodation and the supplies of food do not warrant any other conclusion than to treat it as an essential requirement so far as the inmates of the hostel are concerned. The involvement of the Vice-Chancellor, the Warden and the Food Managers who admittedly all belong to the University as employees thereof cannot negate the cry of the labour force asking for a parity in their scale of pay. Regularisation will undoubtedly bring forth a parity with the other employees of the University. The requirement of the number of employees also cannot be brushed aside. More than 175 employees are required for the purpose of providing food to the inmates of the hostels - there are altogether 14 hostels and the inmates have to depend on to the Cafeteria for their food service since nobody else can, as a matter of fact, avoid the needs of the Cafeteria - it is a requirement of the Regulation.

Admittedly, Cafeteria employees need succour for livelihood - would they continue to remain half fed and half clad as long as they live - is this is the society that we feel proud of: Is this the

guarantee provided by the founding fathers of our Constitution or is this the concept the socialism which they conceived? None of the answers can possibly be in the affirmative. The situation is rather awesome and deplorable - the University by compulsion directs students to be residents of hostel with a definite ban on having food from outside agencies excepting under special circumstances and the provider of food, namely the staff of the Cafeteria ought not to be treated as an employee of the University - whose employees they are if we may ask and we think it would not be impertinent on our part to ask the same -is it the consumer of food? Since when the consumer of food becomes the employer? These are the questions which remain unanswered: The society shall have to thrive: The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social good and benefit. It is not bestowing any favour to anybody but it is a mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now come to cry halt and it is for the law courts to rise up to the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not a mere legal jargon but in the new millenium, it is the obligation for all to confer this economic justice to a seeker: Society is to remain, social justice is the order and economic justice is the rule of the day. Narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long cateria of cases in regard thereto- the law thus is not in a state of fluidity since the situation is more or less settled. As regards interpretation widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice - social and economic, as noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt of by the founding fathers can thrive and have its foundation so that the future generation do not live in the dark and cry for social and economic justice.

We can in this context, usefully record the observations of this Court in Parimal Chandra Raha & Ors. vs. Life Insurance Corporation of India & Ors. (J.T. 1995 3 SC 288) wherein this Court in paragraph 31 of the Report observed:

"31. The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. The canteen committees, the cooperative society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where by should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the records shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz, the premises, furniture, electricity, water etc. is supplied by the Corporation to the managing agency for running the canteen. Further, it

cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the Corporation, as pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them, only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation."

The Regulations if read on the lines as noticed hereinbefore lead to unmistakable conclusion that the employees of the Cafeteria cannot but be termed to be the employees of the University.

It is on this score the High Court in the judgment impugned observed as below:

"The learned counsel also assailed the findings of the Labour Court on the question of relationship of master and servant. I have perused the findings and in my opinion this contention is also not correct. The Labour Court has referred to various documents, appointment letters, transfer orders which clearly demonstrate the control of the University over the Cafeteria staff. The documents have been fully corroborated by oral evidence. No evidence was adduced on behalf of the University to controvert this documentary and oral evidence. In these facts and circumstances, it cannot be said that the findings suffer from any error of law. The relationship of employer and the employees between the University and the Cafeteria staff is established from the provisions contained in the Act, the Statutes and the Regulations framed thereunder and also by the documentary and oral evidence filed before the Labour Court. The claim raised by the members of the Cafeteria staff in the two cases has rightly been accepted. The impugned awards of the Labour Court are perfectly justified in the facts and circumstances of the case and do not suffer from my error of law".

In a faint attempt Mr. Trivedi wanted to introduce a pragmatic approach to the problem and contended that the law courts should consider the matter from different angles applying practical experience and factual contexts before arriving at the solution. It has been contended that the financial implications would be rather much too heavy on the University to be borne by it and unless State assistance is made available, it would be a well nigh impossibility to meet the burden, we are, however, unable to record our concurrence thereto. Pragmatism does not necessarily be deprivation of the legitimate claims of the weaker sections of the society. The submission, if we may say with respect, is totally misplaced and does not warrant any further discussion thereon.

In that view of the matter, we do not see any merit in these two appeals. The appeals are dismissed. All interim orders are vacated. The University is directed to regulate the services of the

employees in terms of the award passed by the Labour Court by 31st August, 2000 so as to entitle the employees of the Cafeteria to obtain the monthly wages at par with the other employees of the University, as directed by the Labour court. The arrears of salary, if there be any payable, as per the said directions, as confirmed by the High Court be paid to the canteen staff concerned by 12 equal monthly instalments alongwith the regularised salary.

The learned additional Solicitor General submitted that once the Cafeteria staff employees are held to be direct employees of the University, then the University, in exercise of its entrepreneurial or managerial functions, can constitute a separate cadre of Cafeteria staff employees with suitable hierarchy of posts in the said cadre with separate pay scales as would be commensurate with the other perquisites and facilities available to all such staff under the relevant regulations framed by the University. We are not concerned with this aspect of the matter in the present proceedings, as such we are not expressing any opinion thereon excepting recording that the parties would be at liberty to take appropriate steps in accordance with law.

The appeals are accordingly dismissed with no order as to costs.