SUPREME COURT OF INDIA

Shri Krishan

Vs.

Union of India (UOI)

(H.L. Dattu and Abhay Manohar Sapre JJ.)

16.09.2014

JUDGMENT

H.L. DATTU, J.

1. This special leave petition(s) is directed against the judgment and order passed by the High Court of Delhi in Writ Petition (Civil) No. 3774 of 2011, dated 30.03.2012 and final judgment and the order passed by the High Court of Delhi in Second Review Petition No. 117 of 2014 in Writ Petition (Civil) No. 3774 of 2011, dated 09.05.2014.

2. The matter arose before the High Court of Delhi against order dated 21.09.2010 passed in O.A. No. 2341 of 2009 and against review order dated 16.11.2010 in R.A. No. 295 of 2010 in O.A. No. 2341 of 2009, passed by the Central Administrative Tribunal (for short, "the Tribunal"), whereby the Tribunal dismissed the plea of the Petitioners-herein to be regularised in the services of the Respondents-herein.

3. The aforesaid writ petition was filed against the orders of the Tribunal by the Petitioners in the High Court of Delhi claiming regularization of their services as Railway Employees. The Division Bench of the High Court, by judgment and order dated 30.03.2012, dismissed the said writ petition, on the ground that there was no document placed on record to recognise the Mess, being run at the Signalling and Telecommunication Training Centre, Northern Railway, Ghaziabad (for short, "the S&T Training Centre"), as a non-statutory recognised canteen. The Court held that the said Mess was not sanctioned by the Railway Board, in accordance with Rule 2831 of the Railway Establishment Manual, in order to be

classified as a non-statutory recognised canteen. Thereafter, the High Court of Delhi, by order dated 09.05.2014, found no merit in the review petition filed against its judgment and order dated 30.03.2012. The Petitioners, in the review petition before the High Court of Delhi, had additionally placed a letter dated 09.11.1976, an unsigned typed copy, to indicate that an advance had been sanctioned to the Mess Management Committee and that the said advance was approved by the Railway Board vide its letter dated 01.11.1976. However, the High Court was of the view that the mere payment of refundable advance would not lead to grant of proper sanction by the Railway Board and that the said letter cannot be considered, authorising the Mess in question as a non-statutory canteen.

4. The present special leave petition arises out of the issue pertaining to whether the canteen workers engaged by Mess/Canteen of the S&T Training Centre could be treated as Railway Employees. The Petitioners-herein are seeking permanent absorption as railway employees and regularization of their services, in conformity with the statutory provisions as are applicable to non-statutory canteens of the Railway administration.

5. The Petitioners-herein are working as cooks and helpers in the Mess/canteen of the S&T Training Centre. It is an admitted fact that the Mess/canteen has been running from 1992 to cater to the needs of trainee batches undergoing training in the S&T Training Centre. The Mess/canteen is under the supervision of a Management Committee chaired by the Principal of the said Training Centre, where the other railway officials are members. The Secretary of the Management Committee pays the salaries and allowances to the said workers, for which expenses are borne by Northern Railways. Thus, claiming to be railway employees, the Petitioners had filed O.A. No. 2341 of 2009, before the Tribunal, seeking regularization of services for being employed in a non-statutory recognised canteen of the Railways.

6. The Tribunal vide its order dated 21.09.2010 is of the view that since the Mess/canteen, run in the S&T Training Centre, had not been recognized by the General Manager of the Northern Railways, the said Canteen would be a non-statutory non-recognised Canteen. In support of the said finding, the Tribunal further relied upon the decision in MMR Khan and Ors. v. Union of India and Ors.

(1990) Suppl. SCC 191, as well as the Rules of the Railway Establishment Manual. Thereafter, a review was sought by the Petitioners against order dated 21.09.2010 in O.A. No. 2341 of 2009. The Tribunal, in review, vide its order dated 16.11.2010, is of the view that since there were no fresh averments on the grounds urged by the Petitioners, the position of law in this regard is well settled and that there was no error, either in fact or in law, in the aforesaid order.

7. The question is whether workers engaged in non-statutory canteens could be treated as railway employees is elaborately discussed by a three-Judge Bench of this Court in the M.M.R. Khan case (supra). The Court in the M.M.R. Khan case (supra) classified canteens into three categories, namely, (i) Statutory canteens; (ii) Non-statutory recognised canteens; and (iii) Non-statutory non-recognised canteens. It is submitted by the learned Counsel for the Petitioners that the Petitioners must be regularized as Railway employees, since they are canteen workers falling within the aforementioned category (ii), that is, a Non-Statutory Recognised Canteen.

8. The Court, in order to determine the status of the employees, in the MMR Khan case (supra), categorically distinguished between Non-Statutory Recognised Canteen and Non-Statutory Non-recognised canteens. The three-Judge Bench of this Court observed as follows:

> 38. 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 so started with the permission of the local officers. They are not required to be managed either as per the provisions of the Railway Establishment Manual or the Administrative Instructions (Supra). There is no obligation on the Railway Administration to provide them with any facilities including the furniture, utensils, electricity and water. These canteens are further not entitled to nor are they given any subsidies or loans. They are run by private contractors and there is no continuity either of the contractors or the workers engaged by them. Very often than not the workers go out with the contractors. There is further

> no obligation cast even on the local offices to supervise the working of these canteens. No rules whatsoever are applicable to the recruitment of the workers and their service conditions. The canteens are run more or less on ad-hoc basis, the Railway Administration having no control on their working neither is there a record of these canteens or 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 of that the workers engaged in these canteens are not entitled to claim the status of the railway servants.

9. The Court in the M.M.R. Khan case (supra) sought to clarify that the workers engaged in a Mess, which may or may not be statutory, must be recognised as a "canteen" by the Railway Administration, for being treated as Railway employees and claim subsequent benefits thereof. It emphasized upon the approval by the Railway Board as required under Rule 2831 of the Railway Establishment Manual to be classified as a non-statutory recognized canteen.

10. As the decision in the M.M.R. Khan case (supra) was delivered by a three-Judge Bench of this Court, and has been duly approved by subsequent decisions, this Court would be bound by the ratio decidendi of the said case. Therefore, in light of the decision in the M.M.R. Khan case (supra), in our considered opinion, the Petitioners-herein, being held to be working in a non-statutory non-recognised canteen by the Tribunal as well as the learned Judges of the High Court of Delhi, would not be entitled to regularisation of their services.

11. Further, it would be pertinent to note that the Tribunal is the final fact-finding authority. It is settled law that this Court in exercise of its jurisdiction Under Article 136 of the Constitution of India, 1950, cannot normally interfere with the findings of fact of a Tribunal. In support of the given principle, we may take support of the case of Metroark Ltd. v. CCE (2004) 12 SCC 505, wherein this Court observed that:

> 8.... The Tribunal is the final fact-finding authority. Unless it is shown that there is something perverse in its finding, this Court would not interfere. No authority is required for this purpose. But as a large number of authorities

> are cited, we refer to them: Pragati Computers (P) Ltd. v. Collector of Customs (2000) 10 SCC 150; Reliance Silicon (I) (P) Ltd. v. CCE (1997) 1 SCC 215; Asian Paints India Ltd. v. CCE (1988) 2 SCC 470 and Collector of Customs v. Swastic Woollens (P) Ltd. 1988 Supp 796.

12. Further, a three-Judge Bench of this Court in the case of Piara Singh v. Natha Singh 1991 Supp (2) SCC 289, held as follows:

> 3....The short question before the High Court was whether the Will executed by Sadhu Singh in 1962 was genuine or not. Both the first appellate court and the High Court have concurrently held that the Will was genuine. This is purely a finding of fact with which we cannot and do not interfere Under Article 136 of the Constitution. The appeal is, therefore, dismissed.

13. In the case of Traders and Traders v. Ramnarayan Bhattad 1995 Supp (2) SCC 661, while dismissing a petition filed Under Article 136 of the Constitution of India, 1950, a three-Judge Bench of this Court held as follows:

> 3. We have heard the learned Counsel for Appellant at length. His main effort has been to demolish the finding of fact recorded by the Division Bench by taking us through these documents. We find no merit in it. A finding based on appreciation of evidence is a finding of fact which cannot be interfered. Even assuming that two views were possible on construction of documents that would not justify interference in Article 136 of the Constitution of India. It is not every error or mistake committed by the High Court, which under the constitutional scheme is contemplated as the final court of appeal, to be corrected by this Court in exercise of the power Under Article 136 of the Constitution....

14. Therefore, in light of the settled principle of law as enunciated hereinabove, we are of the considered view that this Court cannot interfere with the finding of fact by the Tribunal. The Tribunal held that the Petitioners-herein are working in a non-statutory non-recognised canteen. We find no reason to interfere with the said finding.

15. It would be necessary to take note of the fact that, in the present case, the Petitioners have relied upon an unsigned copy of a letter dated 09.11.1976 to show

that a refundable advance was sanctioned for the Mess Management Committee and that the said advance was approved by the Railway Board. It is contended by the learned Counsel for the Petitioners that the said letter dated 09.11.1976 would reflect that the canteen was duly sanctioned by the Railway Board and therefore, the said canteen must be of the nature of a non-statutory recognized canteen. The said unsigned letter dated 09.11.1976 was brought on record for the first time only before the High Court of Delhi in the review petition. The authenticity of the said letter has been doubted, by the High Court, and therefore it is held that the same could not amount to the due sanction of the canteen granted by the Railway Board. We are in agreement with the aforesaid view taken by the learned Judges of the High Court.

16. Further, as has been noted hereinabove, the said letter dated 09.11.1976 was not produced before the final fact finding authority. The Petitioners seek to rely on the letter shows that the same implies or assumes that sanction was granted. According to Rule 2831 of the Railway Establishment Manual, for the grant of such sanction for recognition of the canteen, the Railway Board must be approached, prior to starting the said canteen. Further, the sanction must indicate the financial implications involved, which would thereafter have to be duly vetted by the Financial Advisor and General Accounts Officer of the Railway Board to fulfill conditions of a Non-statutory recognized canteen. The said sanction must provide details regarding the number of staff to be employed in the canteen as well as the recurring and non-recurring expenditure to be regulated by Railways.

17. On a perusal of the said letter dated 09.11.1976, we find that it does not reflect the grant of any such sanction. We cannot agree with the said assumption of the Petitioners in the absence of a finding on that by the final fact finding authority. The Petitioners have failed to place on record any documents before the Tribunal to support the fact that sanction was granted by the Railway Board, recognising the Mess being run at the S&T Training Centre, as a non-statutory recognised canteen.

18. Therefore; in the instant case, since there is no material placed on record, regarding the grant of sanction by Railway before any forum to highlight that the

said Mess was of the nature of non-statutory recognised canteen, such a sanction cannot be assumed.

19. Further, Shri Jagdev Singh Manhas, learned Counsel for the Petitioners, would further make a reference to the decisions of this Court in S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1 and Hamza Haji v. State of Kerala (2006) 7 SCC 416. The said cases would be referred for the purposes of elaborating upon the question of fraud played by one party on another party to the lis and on the Court as well. However, in our considered view, the said cases would be of no assistance to the Petitioners as the question of whether there was any fraud is not before this Court in the present special leave petition(s).

20. In light of the discussion above, we find no infirmity with the impugned judgment (s) and order(s) passed by the High Court, dated 09.05.2014 and 30.03.2012, whereby the learned Judges upheld the view of the Tribunal stating that the Petitioners-herein were working in a Non-statutory non-recognised canteen of the Railway Establishment and therefore would not be entitled to claim regularisation of their services.

21. In view of the above, we dismiss the special leave petition(s) and confirm the impugned judgment(s) and order(s) passed by the High Court.

Ordered Accordingly.