

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(20)

O.A. No. 311/90
T.A. No.

199

DATE OF DECISION 14.12.1990.

Shri Leela Ram & 17 Others

~~Petitioner~~ Applicants

Shri D.K. Nag,

Advocate for the ~~Petitioner~~(s) Applicant

Versus

Union of India through the
Secy., Miny. of Defence & Drs.

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The question whether persons employed to work in an Army Hospital Mess under the control and supervision of an officer of the Army, can be termed as private servants of the said Mess or whether they are to be treated as Government servants, is an issue in the present case.

2. Admittedly, the 18 applicants before us have been working in the Army Hospital Probationary Nurses School Mess in the Delhi Cantonment which is under the control and supervision of Principal Tutor, who has been impleaded

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as the second respondent in the present petition. They have worked for periods varying from 5 to 35 years. Their grievance is that they have not been given the pay-scales and benefits on par with similar employees in other Civil Defence establishments under the Union of India. Therefore, they have prayed for a declaration to the effect that they are entitled to seek pay and benefits as employees of the Union of India. Of the 18 applicants, four are Cooks, 7 are Bearers, 3 are Masalchis, 3 are Sweepers and 1 a Dhobi. The respondents have annexed to their counter-affidavit a comparative table of wages paid to them and the minimum wages prescribed by the Delhi Administration

Name and designation of post	Year of employment	Pay per month	Total emoluments	Minimum wages fixed by Delhi Admn.	Difference between cols. 4 and 5
1.	2.	3.	4.	5.	6.
<u>Cooks</u>					
1. Narain	1962	Rs. 342/-	Rs. 820/-	Rs. 635/-	+ Rs. 185/-
2. Radhe Ram	1966	Rs. 306/-	Rs. 784/-	-do-	+ Rs. 149/-
3. Bhagat	1985	-do-	Rs. 737/-	-do-	+ Rs. 102/-
4. Madho Ram	1986	-do-	Rs. 784/-	-do-	+ Rs. 149/-
<u>Bearers</u>					
5. Chander	1953	Rs. 294/-	Rs. 772/-	Rs. 635/-	+ Rs. 137/-
6. Sheela	1973	Rs. 276/-	Rs. 754/-	-do-	+ Rs. 119/-
7. Devi Ram	1983	-do-	-do-	-do-	+ Rs. 119/-
8. Bhim Ram	1973	-do-	Rs. 707/-	-do-	+ Rs. 72/-
9. Govind	1959	-do-	Rs. 754/-	-do-	+ Rs. 119/-
10. Gopal	1983	-do-	Rs. 707/-	-do-	+ Rs. 72/-
11. Kishan	1987	-do-	-do-	-do-	-do-

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1.	2.	3.	4.	5.	6.
<u>Masalchi</u>					
12. Govind Ram	1957	Rs.276/-	Rs.707/-	Rs.562/-	+Rs.145/-
13. Leela Ram	1983	-do-	-do-	-do-	-do-
14. Sohan Lal	1961	-do-	-do-	-do-	-do-
<u>Sweepers</u>					
15. Jawali Ram	1959	Rs.400/-	Rs.400/-	Rs.562/-	+Rs.162/-
16. Ram Swaroop	1961	-do-	-do-	-do-	-do-
17. Sampat	1967	-do-	Rs.831/-	-do-	+Rs.269/-
<u>Dhobi</u>					
18. Shanker	1954	Rs.108/-	Rs.586/-	Rs.562/-	+Rs. 24/-

3. In the comparative table furnished by the respondents, mentioned above, they have added to the monthly pay the value of the amenities/benefits given to them free of cost. These consist of a residential quarter for which House Rent has been notionally fixed between Rs.361/- and Rs.408/- per month. Rs.20/- is shown towards water supply and Rs.50/- towards electricity bill per month. The employees are also given the benefits of one month's leave with full pay, 10 days' casual leave with pay, weekly day off, medical aid in O.P.D. and free food daily (vide p.73 of the paper-book).

4. The learned counsel for the applicants contended that the applicants are performing similar functions and discharging similar duties and responsibilities as that of similarly placed employees of the Union of India, but they have been denied equal pay for equal work. They have contended that the respondents 1 and 2 have failed to

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function as model employers by not treating them as regular employees.

5. The respondents have contended in their counter-affidavit that the applicants are employed as "private servants" of P.N. Mess only. Their strength has varied from time to time. They are being paid from the grant made by the Government under the Head 'Mess Servants Grant'. The respondents have stated that to cater to the needs of nursing officers in the Defence service hospitals, eight Probationer Nurses' Schools and a College of Nursing at Pune have been set up by the Government. These eight schools are attached to large hospitals. Each school has different capacity for students. The Army Hospital at Delhi has also one of the schools known as School of Nursing at Delhi Cantonment. Probationer Nurses are selected by the D.G., AFMS and detailed for three years' training at the eight schools. One school can accommodate a maximum of 130 students. All the expenses in connection with the training of the students are met by the Government. For running a Mess for the Probationer Nurses, the Government sanctions some amount every year. The amount so granted relates to the probationer students and not the employees. The rates are revised from time to time. The School Management has to engage some employees to run the Mess for the Probationer Nurses.

or



6. In the instant case, the School in which the applicants have been engaged, has been functioning since 1953. Some of the employees have been working since then. No age-limit or educational qualification has been prescribed. The employees are also not sponsored through the Employment Exchange. They have been engaged in varying strength from time to time and are being paid a fixed amount out of the amount of grant sanctioned by the Government.

7. The respondents have contended that at the time of their entry, the employees accepted the wages at the rates offered to them and they had willingly accepted the same. Since the Management does not have any other source of extra money to increase their wages, they have to be paid out of the available grant only.

8. The applicants had been agitating for the last two years for pay on par with those employees working in the Raj Kumari Amrit Kaur College of Nursing, New Delhi, which is a part of the Health Ministry, Govt. of India. The respondents had given them the option to leave the service on their own accord with their dues and seek jobs outside. However, since most of them are occupying accommodation, which is the most sought after thing in Delhi, in addition to monthly wages, the

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applicants are not leaving the service and prefer to serve with the amount of salary offered to them. It has been argued that the Management cannot improve their wage scales unless their number is cut down.

9. 18 persons were employed at a time when 130 students were dining in the Mess. At present, the strength of students has declined to 23, making the servants surplus. After 29.3.1991, only 5 students will be left in the School.

10. The respondents have also stated that a proposal was mooted to make the Mess servants regular employees, but the Government considered the same in 1988 and rejected it. However, the Government agreed to enhance the Mess Servants' grant by 20 per cent.

11. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The basic question arising for consideration is whether there is a 'master and servant' relationship between the Union of India and the applicants who are before us. If such a relationship exists, Q in law and fact ~~Q~~, the applicants should be treated as Government servants.

12. The question whether a relationship of 'master and servant' exists, has to be determined on a consideration

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of all the relevant circumstances in each case. Several factors are relevant in this context. In general, selection by the employer, coupled with payment by him of remuneration or wages, the right to control the method of work, and power to suspend or remove from employment, are indicative of the relation of 'master and servant'. Co-existence of all the indicia is not necessary in every case. Ordinarily, the right of an employer to control the method of doing work and the power of superintendence and control may be treated as strongly indicative of the relation which imparts the power not only to direct the doing of some work but the power to direct the manner in which the work is to be done. If the employer has that power, prima facie, the relation is that of 'master and servant'.

13. In the instant case, admittedly, the School of Nursing in which the applicants are employed, had been functioning since 1953 under the supervision and control of the Principal Tutor, who is a full-time Government servant. The activity of imparting training to the Probationer Nurses is also a governmental activity. The budget provision for payment of wages is also sanctioned by the Government. The employees are to work under the

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supervision and control of the Principal Tutor. In our opinion, therefore, to treat the applicants as private servants, is a camouflage, whereas they really are the employees of the Government.

14. There may be some force in the contention of the respondents that the applicants who constitute the ministerial staff performing the work of Cooks, Bearers, etc., are to be treated separately from the regular Government employees insofar as payment of salary and allowances is concerned. The respondents have pointed out that in addition to the monthly wages, the applicants have been given residential accommodation and food free of cost. No Government employee is ordinarily given food free of cost.

15. It will, however, be seen that the applicants have worked in the said institution for several years. Out of the applicants, five have worked for more than 30 years, five for more than 20 years, and the remaining for periods ranging from 3 to 7 years. All of them have become over-aged by now for any other employment in the Government or other organisation. It is not the case of the respondents that the conduct and performance of the applicants are not up to the mark. In view of these considerations, we are of the opinion that the respondents should consider the

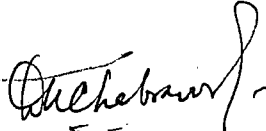
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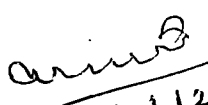
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question of creation of regular posts and absorbing the applicants against the same. The respondents should also consider the question of fixing the applicants on appropriate pay-scales and confer on them the right to suitable retirement benefits, like pension, gratuity, etc. The service rendered by them should be reckoned for the purpose of qualifying service for pension and other retirement benefits. We, however, make it clear that the applicants would not be entitled to any back wages on the fixation of their pay-scales, as directed by us.

16. The respondents are directed to comply with the above directions within a period of four months from the date of receipt of this order.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A) 14/12/90


14/12/90
(P.K. KARTHA)
VICE CHAIRMAN (J)