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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
Registration O.A. No. 791 of 1987

Ashok Kumar

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Applicant

vs.

Union of India & Others

Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member(A) -----;

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was appointed directly as Manager cum Storekeeper of Canteen, Government of India Press Aligarh on 7th August, 1985 in which persons are said to be working approached this Tribunal against the abrupt termination order dated 23.6.87 without any warning chargesheet and enquiry, or explanation for any alleged acts of omission and commission as required under the Rules known as Departmental Canteen Employees (Recruitment and condition of Service Rules 1980 framed under Article 309. The applicant completed the probationary period of 6 months (Rule 8(3) which was not extended meaning that he completed it satisfactory.

2. The respondents have resisted the claim of the applicant pleading inter alia that the rules referred to by the applicant are not applicable to him and that Government of India Press Aligarh is a factory with in the meaning of Factories Act 1948 which under Section 46 of the said Act is under obligations to provide a canteen for workers and is not departmental canteen as he is not entitled to benefit of statutory rules. The appointment of applicant was temporary and under administrative exigencies. His services were terminated and he was not entitled.

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to any opportunity of hearing.

3. The canteens which are necessarily to be established and have been so established under Section 46 of the Factories Act are statutory canteens. The employees of the departmental canteens/ tiffin rooms were declared as holders of civil post under the Government of India notification no. 6(2)/ 23/ 77 welfare dated 11.12.1979. The said notification further provided that necessary rules governing the conditions of employee would be framed under proviso to Article 309 of the Constitution of India and would have retrospective effect from 1st October, 1979. Service Rules were accordingly framed vide notification no. GSR 54, dated 23rd December, 1980.

The same are applicable to:

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

(b) Canteens/tiffin room set up on cooperation basis.

(c) Canteens/tiffin room set up in Industrial establishments (other than those covered under Section 46 of the Factories Act).

These instructions have made it clear that the same are applicable to all canteens/tiffin rooms functioning or to be set up in any ministry department, establishment, office, installation of the Govt. of India (Industrial or non Industrial) which should be centrally registered with the office

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of the Director of Canteens, Department of Personnel and Training. The exemption has been provided for three Departments from purview of these instructions, if a decision for same is taken by the Ministries viz Defence, Post and Telegraphs and Railways (The Canteen in the instant case is not canteen in either of these three departments in respect of which exemption notification could be issued, chapter V of these instructions provide that since the canteen workers have acquired the status of holders of civil posts with effect from 1 st October 1979 the recruitment and conditions of service would be governed by rules framed under Article 309 of the Constitution contained in GSR 54 issued under the Government of India Department of Personnel and Training Notification dated 23 rd December 1980, chapter VI of the said instruction contains guide lines for constituting the managing committee of the canteens. It also provides that the functions of the committee connected with the affairs of the Union and the official decision will rest with the Chairman of the Managing Committee or the Head of the Department.

The employees/statutory canteen like the canteen run in the Government of India Press Aligarh are holders of 'Civil Post' under the Government of India and are governed by statutory rules framed under the Article 309 of the Constitution of India and ~~is not Government Servant~~ as such have attained the status of Government Servant and entitled to protections to which Government Servants are entitled to. In the case of M.M.R.Khan Vs. Union of India 1990 (Supra) A.C.C. Page 191 it was held that the provisions contained in instructions (referred to above) show that the Government has a complete control over the canteens and the workers employed therein are holders of civil posts within

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the meaning of Article 311 of the Constitution.

The recruitment and service conditions are governed by the rules applicable to the employee of the government department establishment to which canteens are attached. In the earlier decision Kanpur Suraksha Karamchari Union (Regd) Vs. Union of India 1988(4) S.C.C. 478 the court held that workers of Government Factories Canteen established under Section 46 of the Factories Act are employees of government factories (Such as ordinance factories) to be treated as Government Servants from the date of that appointment as such and entitled to pension accordingly.

4. The employees of instant canteens like the applicant, ^{to} thus to be treated as Government Servant and governed by rules framed under Article 309, ^{and} ~~any~~ ^{the} protection available to Government Servant, can not be thrown out ^{of} service arbitrarily in violation of Article 14 of the Constitution of India. Even if it could ^{be} ~~not~~ be accepted that the applicant did not become a permanent employee in the absence of any formal order as to confirmation, the termination of his services despite the fact of running of canteen, absence of retrenchment, termination of services ~~of~~ ^{without} previous ^b any disciplinary action without any previous warning or pointing out of any short coming and defect in his working is arbitrary.

5. In the case of termination of services of an adhoc and ~~which was~~ temporary employee after 3 years ^{of} service it was held that even on the ground of unsatisfactory work without there being any pointing of lapses and shortcoming regarding work and giving opportunity to employee to improve the termination would be arbitrary. The plea of respondent that the applicant was not Government Servant or equated within ~~an employee~~

and nor entitled to benefited G.P. of 1979 is without substance.

6. The application is accordingly allowed and the termination order dated 26.6.87 is quashed and set aside. The applicant would be deemed to be continuing in service entitled to all benefits except that for the period he has not worked he will be not entitled to get salary from the date of termination upto this date. He should be taken back in service without delay. No order as to costs.

Member (A)

Vice-Chairman.

Dated: 18.2.92 Allahabad.