



GAHC010196102022

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6307/2022

SUBHASH DAS AND 8 ORS.
S/O LATE SATISH DAS,
R/O MALIGAON, GOSHALA, OFFICERS COLONY, MADHADEV NAGAR,
P.O.- MALIGAON,
PIN- 781011,
P.S.- JALUKBARI, DIST.- KAMRUP.

2: NARAYAN DAS
S/O NARAN DAS

VILL.- LAROGAON DASPARA

P.O.- BIJNI

PIN- 783383

P.S.- BIJNA

DIST.- CHIRANG.

3: HIRU DAS
S/O PRASANNA KUMAR DAS

VILL.- PANDU NEW COLONY
QTR NO. B/B 96 B

P.O.- PANDU

PIN- 781012

P.S.- JALUKBARI

DIST.- KAMRUP.

4: KARTIK SARKAR



S/O GOPAL SARKAR

R/O B.G. COLONY
SATI JOYMOTI NAGAR
BE LANE NO. 6
MALIGAON
GUWAHATI- 781011.

5: VENKAT RAMA TELGU
S/O RAMU TELGU

TOWN- WEST NAMBAR
B.G. COLONY

P.O.- MALIGAON

PIN- 781011

P.S.- GOSHALA

DIST.- KAMRUP
ASSAM.

6: KAUSHIK RAJKHOWA
S/O LATE JOGENDRA NATH RAJKHOWA

VILL.- BOKOTA BHABHARA

P.O.- PATSAKU

PIN- 781334

P.S.- NEMUGURI

DIST.- SIVASAGAR

7: GOKUL CHANDRA DAS
S/O TARUN CHANDRA DAS

VILL.- PANARA

P.O.- DAGAON

PIN- 781381

P.S.- RANGIYA



DIST.- KAMRUP
ASSAM.

8: GUNESHWAR KUMAR
S/O LATE KABIN KUMAR

VILL.- BARPALAHA (BORICHULEA)

P.O.- BARPALAHA

PIN- 781381

P.S.- BAIHATA CHAIRIALI

DIST.- KAMRUP
ASSAM.

9: NIREN DAS
S/O KHAGEN DAS

VILL.- GOSHAINGAON

P.O.- MAINARY TINIALI

PIN- 783360

P.S.- PALASHBARI

DIST.- KAMRUP

VERSUS

THE UNION OF INDIA AND 8 ORS.
REP. BY ITS SECRETARY, MINISTRY OF RAILWAYS, RAIL BHAWAN, NEW
DELHI- 110001.

2:THE CHAIRMAN
RAILWAY BOARD
MINISTRY OF RAILWAYS
GOVT. OF INDIA
11001.

3:THE GENERAL MANAGER
NORTH-EAST FRONTIER RAILWAYS
MALIGAON
781011.

4:THE GENERAL MANAGER (CONSTRUCTION)



NORTH-EAST FRONTIER RAILWAYS
MALIGAON
781011.

5:THE FINANACIAL ADVISOR AND CHIEF ACCOUNTS OFFICER (FA AND
CAO)
CONSTRUCTION
N.F. RAILWAYS
MALIGAON
781011.

6:THE FINANACIAL ADVISOR AND CHIEF ACCOUNTS OFFICER (FA AND
CAO)
OPEN LINE
NF RAILWAYS
MALIGAON
781011.

7:THE CHIEF PERSONNEL OFFICER
N.F. RAILWAY
MALIGAON
781011.

8:THE SECRETARY
GM (CONSTRUCTION) MALIGAON STAFF CANTEEN
MALIGAON
781011.

9:A TO Z CATERING COMPANY
REP. BY ITS AUTHORIZED REPRESENTATIVE HAVING ITS OFFICE AT NO.
26
JORPUKHURI
UZAN BAZAR ROAD
NEAR IDEAL PHARMACY
UZAN BAZAR
GUWAHATI
781001

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI



Advocates for the petitioners: Shri P. Mahanta
Shri RB Gohain

Advocates for the respondents: Shri K. Gogoi, CGC

Date of hearing : **14.02.2023**

Date of Judgment : **21.04.2023**

JUDGMENT & ORDER

The grievance expressed by the petitioners, who are 9 in numbers, is with regard to not recognizing the canteen run by the petitioners as a statutory canteen and as a result of which, the petitioners are deprived from the status of being a permanent Railway employees. On the other hand, the prayer of the petitioners has been resisted by the respondent / Railways by contending that the entire basis in raising the present claim is erroneous and accordingly, no rights, whatsoever of the petitioners have been violated and there is no enforceable legal rights.

2. Before going to the issue to be decided, it would be convenient to place the facts of the case in brief.

3. As noted above, the 9 numbers of petitioners have described themselves as staff of a canteen established in the premises of the Office of the General Manager (Construction) in the year 1987. The petitioners claimed that they have been appointed in various posts including Head Cook, Assistant Cook Helpers etc. in the year 1999. The petitioners further claimed that such appointments were made by a Committee constituted by the staff of the Office of the General Manager (Construction), Maligaon. The petitioners claimed that although they were appointed by the Staff Committee of the Employees, they are receiving all the benefits like Free Travel Passes, Residential Accommodations and Uniforms from the Railway Authorities. The petitioners claim to be catering to the requirement of more than 700 employees of the Organization.



4. The petitioners claim to have submitted representations to induct them formally in the services of the Railways on which a process also initiated in terms of Section 46 of the Factories Act, 1948. Though such process was initiated, the same has not been brought to a logical conclusion. The petitioners contend that while their prayer for regularization of the services is awaiting consideration, the Railways had issued a tender notice dated 01.09.2022 inviting contractors to run the Staff Canteen. Being aggrieved, this writ petition has been filed.

5. I have heard Shri P. Mahanta, learned counsel for the petitioners. I have also heard Shri K. Gogoi, learned CGC. The materials placed before this Court have been carefully examined.

6. Shri Mahanta, learned counsel for the petitioners submits that the action of the Railways in publishing the tender notice dated 01.09.2022 is not only unreasonable and arbitrary but also illegal inasmuch as, the entire rights and the expectations of the petitioners for regularization of their services have been totally extinguished. He submits that the process for the regularization was in contemplation of the authorities and to establish the same, a chart of the staff position in the canteen has been annexed to the writ petition. The same was also taken up for consideration by the authorities and in this connection, letter dated 13.12.2013 issued on behalf of the General Manager - SPO/Con. has been referred to. Along with the letter, a detail comments on the proposal was also furnished which took into account the financial implication involved. He submits that the canteen in question has been in existence since a long period of time. A reminder to the said proposal was issued on 19.09.2014. There were further communications in this regard including one dated 19.12.2014 by the Executive Director, Estt. (G) of the Ministry of Railways whereby the matter was directed to be looked into and the proposal be sent. The said communication was replied by the NF Railway vide letter dated 10.05.2015.

7. Shri Mahanta, learned counsel for the petitioners has emphasized the part of

the letter containing the observation of the FA & CAO / COM / NFR / MLG. The observation included the financial implication which was Rs.29,96,244/- per year wherein 9 numbers of canteen staff would be required to be absorbed through creation of additional / extra post which will have to be abolished on the retirement / death and no further appointment to be made against the post. It was further recommended that the canteen may be operated on lease or handed over to other agencies after expiry of the term of the existing staff. The case of the petitioners is that subsequently another communication dated 30.12.2016 was issued by the respondent on the said subject of absorption.

8. The petitioners had also submitted a representation dated 09.03.2018 which according to them has not been acted upon. It has been pointed out that though there was some disruption in the functioning of the canteen during the Covid-19 period, vide a communication dated 01.10.2021, the same was again operationalized with some restrictions. It is submitted that under those circumstances, issuing of the NIT for running of the staff canteen is absolutely unreasonable and arbitrary as the same would amount to a complete halt to the on-going process of consideration of the case of the petitioners.

9. Shri Mahanta, learned counsel for the petitioners submits that the case of the petitioners is required to be considered as one under the Factories Act, 1948 as the canteen in question is a statutory canteen. He further submits that since the canteen is catering to the requirements of a number of staffs and employees of the General Manager (Construction), the impugned action is not sustainable in law.

10. In support of his submission, Shri Mahanta, learned counsel for the petitioners has placed reliance upon the case of **Mohan Singh Vs. Chairman, Railway Board** reported in **(2015) 10 SCC 759**. In the said case, the Hon'ble Supreme Court was in seisin of a matter regarding a canteen at the Moradabad Division of the Northern Railway. It was held that the said canteen was the statutory canteen under the

Factories Act, 1948. Accordingly, a direction was given for consideration of the cases of the incumbents.

11. *Per contra*, Shri K. Gogoi, learned CGC appearing for the Railways has submitted that no case requiring interference by this Court in exercise of powers conferred under Article 226 of the Constitution of India is made out. He submits that the petition is based on speculation and the very premises upon which the challenge has been based is erroneous. He submits that no fault can be attributed with the decision to call for tenders to run the canteen in question. He has submitted that an affidavit-in-opposition has been filed on 11.11.2022.

12. Questioning the claim of the petitioners on the applicability of the Factories Act, 1948, Shri Gogoi, learned CGC raises two basic issues-

- i. Whether the office of the GM (Construction) can be held to come within the ambit of the Factories Act, 1948?
- ii. Whether the petitioners can be deemed to be employees of the aforesaid GM (Construction)?

13. Shri Gogoi has referred to the following provisions of the Factories Act, 1948.

“ 2 ...

(k) "*manufacturing process*" means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or 1

[(ii) pumping oil, water, sewage or any other substance; or]

(iii) generating, transforming or transmitting power; or

[(iv) composing types for printing, printing by letter press, lithography,

photogravure or other similar process or book binding; [or]]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; 3 [or] 3

[(vi) preserving or storing any article in cold storage;]

(l) "worker" means a person 4 [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 3 [but does not include any member of the armed forces of the Union];

(m) "factory" means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,— but does not include a mine subject to the operation of 5 [the Mines Act, 1952 (35 of 1952)], or 6 [a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place]."

14. The learned CGC submits that the case projected by the petitioners does not fulfill any of the criteria to be entitled to be given any benefits under the Act. He submits that firstly, there is a vast difference between the petitioners and the



employees of the Office under the GM (Construction) and secondly, the said Office cannot, by any stretch, be deemed to be a 'Factory'. It is submitted that only because "Construction" is suffixed after the designation of GM, the said Office does not become a Factory as there is no construction activity at all. The Office is mainly engaged in the administrative work of acquiring land, laying of Railway lines, calling for tenders etc. which are primarily administrative activities.

15. The learned CGC submits that as per the Master Circular No. 38 of the Railway Board, there are two types of canteens- (a) Statutory and (b) Non-Statutory (Recognized). However, it is the specific case of the Railways that the present canteen is neither a Statutory canteen nor a Non-Statutory canteen as it does not fulfill the terms and conditions of the said Circular. The Office of the GM (Cons.) is an Administrative Office and no tools and equipments are repaired and manufactured and therefore there is no application of the Factories Act.

16. The learned CGC submits that the case of **Mohan Singh (Supra)** relied upon by the petitioners would not come to their aid and rather would support the case of the Railways. He submits in paragraph 10 of the said judgment it was clearly observed that there was an admission that the Moradabad Division is a part of the Northern Railway which is dissimilar to the other Divisional Offices where manufacturing activities is absent. Further in Paragraph 17, there is a clear finding that the Railway Wagons were repaired and maintained in the Moradabad Division unlike the present case. In Paragraph 18, the Hon'ble Supreme Court had come to a conclusion that the DRM Office, Moradabad was required to be treated as a Factory under the Factories Act, 1948 and correspondingly the canteen there was to be treated to be Statutory Canteen within the meaning of Section 14 of the said Act.

17. Additionally, Shri Gogoi, learned CGC has placed reliance upon the following case laws-

i. 1990 (supp) SCC 191 [MMR Khan and Ors. Vs. Union of

India and Ors.

ii. (1990) 2 SCC 542 [All India Railway Institute Employees' Association Vs. Union of India through the Chairman]

iii. (1996) 3 SCC 267 [Employers in relation to the Management of Reserve Bank of India Vs. Workmen].

18. In the case of ***MMR Khan (Supra)***, the Hon'ble Supreme Court has explained the difference between non-statutory recognized and non-statutory non-recognized canteen. These canteens are not started with the approval of the Railway Board and were done only with the permission of certain local officers. There is no obligation cast even on the local offices to supervise these canteens. It was held that workers engaged in these canteens are not entitled to claim the status of railway servants.

19. In the case of ***All India Railway Institute (Supra)***, the Hon'ble Supreme Court had rejected the claim of certain workers of institute / clubs in the Railways to be treated as Railway employees.

20. In the case of ***Reserve Bank of India (Supra)***, the earlier case of ***MMR Khan (Supra)*** was discussed and the claim for regularization of certain canteen workers of the Reserve Bank of India was rejected. It was held that merely because of nomination of a few representatives to the Canteen Committee by the Bank or grant of subsidy would not be enough to have a master-servant relationship and therefore, such persons are not entitled for regularization.

21. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have also been duly examined.

22. It appears that the edifice of the case of the petitioners is that the canteen is existing in the Office of the GM (Constructions) and therefore there is application of the Factories Act, 1948. However, the admitted case is that the canteen in question is



in the said office at Maligaon wherein there is no construction activities to bring it under the ambit of the Factories Act. This Court has been apprised that the functions of the said Office is only with regard to administrative work of acquiring of land, calling for tenders, laying of lines etc. and has got nothing to do with any manufacturing activities.

23. While emphasis was put by the learned counsel for the petitioners on the observations of the FA & CAO / COM / NFR / MLG, the said letter has also contained the observations of FA & CAO / Open Line / NFR / MLG which stated that the same was a non-recognized canteen operating in the complex of the GM / CON since 1987. It has further been stated that there is neither any policy nor any precedent for absorption of such staff in the Railways and rather that it will set an example for the future. The total financial implication for the 9 staff was calculated to be Rs.34.27 lacs per annum.

24. With regard to the communication dated 30.12.2016, Shri Gogoi, learned CGC has clarified that the said communication had specifically mentioned that the canteen was a non-recognized one, running without Board's approval.

25. The relevant provisions of the Factories Act which have been quoted above, more specifically the definitions of "worker", "manufacturing process" and "factory" as given in Sections 2(k), 2(l) and 2(m) would make it clear that under the facts and circumstances projected, the present case would not fall under the purview of the aforesaid Act.

26. As referred to above, the Hon'ble Supreme Court in the case of **MMR Khan (Supra)** has clearly laid down that the criteria which are to be taken into consideration while examining a claim for regularization of canteen workers. For ready reference, the relevant portion of the said judgment is extracted hereinbelow -

“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 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. More 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 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."

27. As indicated above, the case of **Mohan Singh (Supra)** is distinguishable inasmuch as, in the said case, the Hon'ble Court had come to a clear finding that there were manufacturing activities at the Moradabad Division of the Northern Railway including activities of repairing of wagons and maintenance. Juxtaposed, there is no such activities in the present matter and therefore, the said case will not have any application.

28. Under the aforesaid facts and circumstances, this Court is of the view that the no case for interference is made out and accordingly, the writ petition stands



dismissed. Interim order passed earlier stands vacated.

29. No order as to cost.

JUDGE

Comparing Assistant