

A KANPUR SURAKSHA KARAMCHARI UNION (REGD.)
v.
UNION OF INDIA & ORS.

AUGUST 26, 1988

B [E.S. VENKATARAMIAH AND MURARI MOHON
DUTT, JJ.]

Factories Act, 1948: Section 46—Canteens maintained in Defence Industrial Installations—Employees working in such canteens—Employees of the factories in which canteens have been established.

C The President of India, by order dated July 25, 1981 accorded sanction to treat all employees of canteens established in Defence Industrial Installations under section 46 of the Factories Act, 1948, as Government employees. The order was given effect from 22.12.1980.

D The petitioners were working in the canteens of the three Defence establishments at Kanpur, forming part of the Defence Department of the Union of India. On their retirement after 22.10.1980 the petitioners claimed that the period of service rendered by them prior to 22.10.1980 canteens be counted towards their qualifying service for the purposes of pension. Their claim was not accepted. The respondents' contention E was that prior to 22.10.1980 the canteens in Ordnance factories were supervised and controlled by the Canteen Managing Committee consisting of equal number of elected representatives of the factory workers and nominees of management, and these Committees were the appointing authority of the Canteen workers and paid their salaries.

F Allowing the petitions, it was,

HELD: (1) It was admitted by the respondents that by the letter dated 24.5.1965 of the Ministry of Defence, provision had been made for subsidising the canteens maintained in Defence Industrial Installations under section 46 of the Act. The letter also contained directions G regarding pay-scales, conditions of service, etc. of the employees. The cost of supervisory and clerical staff and cooks etc. was to be reimbursed by the Government and the canteen buildings formed part of the industrial establishment concerned. [595A-B]

(2) The expression 'occupier' of a factory is defined in section H 2(n) of the Factories Act, 1948 as the person who has ultimate control

over the affairs of the factory. Under clause (iii) of section 2(n), in the case of a factory owned or controlled by the Central Government, the person or persons appointed to manage the affairs of the factory by the Central Government shall be deemed to be the occupier: [596C-F]

(3) A canteen is an integral part of the Defence establishment belonging to the Union of India. There cannot be a canteen without sufficient number of workers working in the canteen. They have to be appointed by the occupier. Otherwise he would not be fully complying with section 46 of the Factories Act. The Managing Committee cannot be the employer of those workmen in the true sense of the terms. The Managing Committee constituted under section 46 of the Act which is not an incorporated body and whose financial position is uncertain cannot be considered to be the employer who has to bear the legal responsibilities under the several labour laws in force in India. [597C-D]

(4) The basic requirements of the canteen, such as buildings, utensils, crockery, cutlery, furniture, etc. are to be supplied by the occupier. [597B-C]

(5) In this situation it is difficult to hold that the employees in canteens established under section 46 of the Act would not be employees of the occupier, even though for purposes of management a Canteen Managing Committee, whose functions are advisory, has to be constituted under the Rules. [597F]

(6) It is also not shown that the workers in the canteens becoming the Government employees on 22.10.1980. They were paid by the previous management, namely, the Canteen Managing Committee constituted under rule 68 of the U.P. Factories Rules, 1950 any compensation in lieu of services rendered by them prior to 22.10.1980. [597F-G]

(7) It is, therefore, difficult to hold that the employees working in such canteens were not employees of the factories in which the canteen had been established. If they are employees of the factories in which the canteen is established, the service rendered by them in these factories should be counted as part of the qualifying service for pension. [597G-H]

ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 5187-89 of 1985 etc.

(Under Article 32 of the Constitution of India)

A P.S. Khera and Mrs. Sushma Suri for the Petitioners.

Kuldip Singh, Additional Solicitor General, C.V.S. Rao, Ms. A. Subhashini, Girish Chandra and N.S.D. Behl for the Respondents.

The Judgment of the Court was delivered by

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VENKATARAMIAH, J. The question involved in these petitions is whether the workmen who were working in canteens established under section 46 of the Factories Act, 1948 (hereinafter referred to as 'the Act') in Ordnance Equipment Factory, Kanpur, Central Ordnance Depot, Kanpur and Air Force Station, Kanpur are entitled to claim the period of service in such canteens prior to 22.10.1980 as part of the qualifying service for claiming pension.

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The three industrial establishments, referred to above, namely; Ordnance Equipment Factory, Central Ordnance Depot and Air Force Station, Kanpur are defence establishment forming part of the Defence Department of the Union of India. By the Order No. 18(1)80/D(JCM) dated the 25th July, 1981 sanction was accorded by the President of India to treat all employees of canteens established in Defence Industrial Installations under section 46 of the Act as Government employees with immediate effect. By an amendment, the said Government Order was given effect from 22.10.1980. The Government Order

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E further provided that it would be applicable to all employees of the statutory canteens irrespective of the type and management of the canteens and till the Government decided otherwise the employees of the said canteens would continue to be governed by the terms and conditions of service laid down in their appointment letters and contracts of employment already subsisting. It was further stated that they would be continued to be paid such emoluments to which they were entitled then. When some of the employees retired after 22.10.1980 they applied for payment of pension. The Defence Department declined to treat the period of service rendered by them prior to 22.10.1980 in such canteens as part of qualifying service for purposes of pension on the ground that it was only with effect from 22.10.1980

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G from which date they had become Government employees their qualifying service could be counted. Aggrieved by the rejection of the claim of the workers in those canteens, the petitioners herein, have filed these petitions in this Court for declaration that the service rendered by the employees of such canteens prior to 22.10.1980 should be treated as qualifying service for purposes of pension. On behalf of the Union of India counter-affidavits were filed resisting the claim of the peti-

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tioners. As the information furnished in the counter-affidavits was inadequate for purposes of disposing of the cases, the Court by its order dated 22.3.1988 directed the Union of India to file a fuller affidavit giving information about the following matters, namely; the authority which had the power to appoint workers in such canteens prior to 22.10.1980, the authority which was paying salary to the workers in the said canteens prior to 22.10.1980, the authority which was controlling such canteens prior to 22.10.1980, the particulars of the persons who were consumers of the service rendered by the said canteens prior to 22.10.1980 and other relevant matters in order to decide the status of the workers in the said canteens prior to 22.10.1980. Thereupon a further affidavit has been filed by Shri N. Sivasubramanian, Joint Secretary (Ordnance Factories) to the Government of India, Ministry of Defence, New Delhi. In the said affidavit it is stated that (a) prior to being declared as Government servants w.e.f. 22.10.1980 the canteens workers in Ordnance Factories were under the canteen managing committees constituted as per provisions of section 46 of the Act; (b) the supervision and control of such canteens were exercised by the Canteen Managing Committee consisting of equal number of elected representatives of the factory workers and nominees of the management and the Canteen Managing Committee was the appointing authority of the canteen workers; and (c) that the Canteen Managing Committee was paying the salary to the workers and also controlling the canteens. It was further admitted that by the letter dated 24.5.1965 of the Ministry of Defence it had been ordered thus:

“The question of subsidising the canteens maintained in Defence Industrial Installations with reference to provisions of Section 46 of the Factories Act 1948 has been under the consideration of Government for some time. After a detailed examination of the matter it has been decided that in order to reduce the cost of meals and snacks served by the canteen to the personnel of the Defence Industrial Installation registered as factories and subject to the conditions indicated in the succeeding paras, the cost of supervisory and clerical staff and cooks, bearers, helpers, vendors etc. employed in these canteen should be reimbursed by the Govt. to the Managing Committee of such canteens

The Commandants of the installation will simultaneously ensure that the cost of the meals/snacks provided by these canteens is reduced proportionate to the subsidy re-

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ceived from Govt. for the cost of the staff

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In order to ensure that uniform standards for employment of staff and payment of salaries as far as possible and the subsidy paid by the Government is related to total number of personnel served by the canteens the number and grades of supervisory clerical and working staff and the scales of pay that should be allowed to them are given in Appendix 'A' to this office Memorandum for the guidance of the installation Commanders and the Managing Committee. These scales of staff and salaries are the maximum outer limits within which the local Management may engage the staff and workers actually required. Where staff can be engaged on more economical rates it may be employed on such rates. The existing supervisory clerical and working personnel may be brought over to those pay scales to the extent necessary by taking into account their existing emoluments and thereafter annual increments may be allowed after one year from the date of switch over to these scales. Other concessions or allowances of any kind should be allowed to the staff in addition to these consolidated pay scales. Other terms and conditions of service may continue to be regulated by the Managing Committee as here-to-fore Reimbursement of the cost of staff will be limited to the scales indicated in the appendix

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These orders are not applicable to the canteens which are at present run by contractors. Such canteens can, however, be switched over to this scheme after the terms of the contract with the contractor have expired or by terminating the contract, in accordance with the existing clauses thereof if any. This scheme will also be applicable to new canteens organised by cooperative societies of the staff of Managing Committee appointed under the guidance of the administration in pursuance of section 46 of the Factories Act in other Defence Industrial Installations which are registered as "factories" and where canteens have not so far been opened".

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It is seen from the above letter of the Ministry of Defence that prior to 24.5.1965 there were three kinds of canteens, namely; (i) canteens run by contractors, (ii) canteens run by co-operative societies of the staff, and (iii) canteens which had been established under sec-

tion 46 of the Act. We are not concerned with the first two categories of the canteens but only with the last category of canteens in this case. The above Ministry of Defence letter provides for subsidising the canteens maintained in Defence Industrial Installations under section 45 of the Act. It also gives directions regarding pay-scales, conditions of service etc. The consumers of the services rendered by such canteens were the factory employees for whose benefit they had been established. It is also not disputed that the building or buildings in which such canteens had been established formed part of the industrial establishment concerned.

The Act is applicable both to the factories run by Government and the factories run by other private companies, organisations, persons etc. It was enacted for the purpose of improving the conditions of the workers in the factories. Section 46 of the Act reads thus:

"46. Canteens.—(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made thereof;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuff and which shall be borne by the employer;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c)."

- A Rule 68 of the U.P. Factories Rules, 1950 (hereinafter referred to as 'the Rules') framed under sections 46 and 112 of the Act gives particulars regarding the type of building that should be made available for running a canteen and the manner in which accounts should be maintained in such canteens. It further provides that a canteen managing committee should be established under clause (20) of rule 68 of the
- B Rules. The Managing Committee shall consist of an equal number of persons nominated by the occupier and elected by workers. The number of elected workers shall be in the proportion of 1 for every 1,000 workers employed in the factory, provided that in no case shall there be more than 5 or less than 2 workers on the Committee. The object of providing for the establishment of Canteen Managing Committee is to see that the employees of the factories have some
- C amount of say in the management of the affairs of the canteens but the obligation to establish a canteen under section 46 of the Act is imposed on the occupier. The expression 'occupier' of a factory is defined in section 2(n) of the Act as the person who has ultimate control over the affairs of the factory, provided that (i) in the case of a firm or other
- D association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier; (ii) in the case of a company, any one of the directors shall be deemed to be the occupier; and (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the
- E Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier. Under clause (iii) of section 2(n) of the Act, in the case of a factory owned or controlled by the Central Government, the person or persons appointed to manage the affairs of the factory by the Central Government shall be deemed to be the occupier. The person so appointed to manage the
- F affairs of the factory of the Central Government is under an obligation to comply with section 46 of the Act by establishing a canteen for the benefit of workers. The Canteen Managing Committee, as stated above, has to be established under rule 66 of the Rules to manage the affairs of the canteen. The functions of the Canteen Management Committee are merely advisory. It is appointed by the Manager appointed
- G under section 7 of the Act and the Manager is required to consult the Canteen Managing Committee from time to time as to the quality and quantity of foodstuff served in the canteen, the arrangement of the menus, times of meals in the canteen etc. The food, drink and other items served in the canteen are required to be sold on 'no profit' basis and the prices charged are subject to the approval of the Managing
- H Committee. The accounts pertaining to a canteen in a Government

factory may be audited by its departmental Accounts Officers.

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The building for the canteen has to be provided by the occupier. Under sub-rule (13) of rule 68 of the Rules there shall be provided and maintained sufficient utensils, crockery, cutlery, furniture and any other equipment necessary for the efficient running of the canteen. Suitable clean clothes for the employees serving in the canteen shall also be provided and maintained. Thus the basic requirements of the canteen, such as buildings, utensils, crockery, cutlery, furniture etc. should be supplied by the occupier. Under the Ministry of Defence letter dated 24.5.1965 the prices of food, drink and articles supplied for the canteens are to be subsidised. A canteen is an integral part of the Defence establishment belonging to the Union of India. There cannot be a canteen without sufficient number of workers working in the canteen. They have to be appointed by the occupier. Otherwise he would not be fully complying with section 46 of the Act. The Managing Committee cannot be the employer of those workmen in the true sense of the term. The Managing Committee constituted under section 46 of the Act which is not an incorporated body and whose financial position is uncertain cannot be considered to be the employer who has to bear the legal responsibilities under the several labour laws in force in India. We may, however, add that in the case of a canteen run by a contractor or a co-operative society or some other body the position may be different. But even then there has to be a Managing Committee, if such a canteen is treated as a canteen established for purposes of satisfying the requirements of section 46 of the Act. Even in this case the contractor or the co-operative society or some other body will be the employer but not the Managing Committee. In this situation it is difficult to hold that the employees in canteens established under section 46 of the Act would not be employees of the occupier, even though for purposes of management a Canteen Managing Committee, whose functions are advisory as pointed out above, has to be constituted under the Rules. It is also not shown that on the workers in the canteens becoming the Government employees on 22.10.1980 they were paid by the previous management, namely, the Canteen Managing Committees constituted under rule 68 of the Rules any compensation in lieu of the services rendered by them prior to 22.10.1980. We find it, therefore, difficult to hold that the employees working in such canteens were not employees of the factories in which the canteen had been established. If they are employees of the factories in which the canteen is established, the service rendered by them in these factories should be counted as part of the qualifying service for pension. Hence, the plea of the Union Government that the service rendered by the

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- A** workers in canteens established under section 46 of the Act on and after 22.10.1980 alone can be included in the qualifying service for pension cannot be accepted. The period prior to 22.10.1980 also should be counted for purposes of pension.

- B** We, therefore, direct the Union Government to treat the period during which the workers had served in the canteens established under section 46 of the Act in the Defence establishments at Kanpur with which we are concerned in these cases prior to 22.10.1980 also as part of the qualifying service for purposes of pension. We further direct that the pension payable to those employees who have retired from service on or after 22.10.1980 shall be recomputed by taking the period of service during which they had worked prior to 22.10.1980 in such
- C** canteens into consideration. Such computation shall be made within six months from today. The arrears of pension payable to those who have retired from service shall be disbursed to them within three months after such computation.

- D** The petitions are accordingly allowed. No costs.

R.S.S.

Petitions allowed.