CASE NO.:
Appeal (civil) 5992 of 1997

PETITIONER:
MISHRA DHATU NIGAM LTD. ETC. ETC.

RESPONDENT:
M. VENKATAIAH AND ORS. ETC. ETC.

DATE OF JUDGMENT: 13/08/2003

BENCH:
S.RAJENDRA BABU & DORAISWAMY RAJU

JUDGMENT:
JUDGMENT

2003 Supp(2) SCR 411

The Judgment of the Court was delivered by RAJENDRA BABU, J. Civil Appeal No. 5992 of 1997:

The above appeal has been filed by the 1st respondent in W.P.No. 18722 of 1996 before the High Court of Andhra Pradesh, which, in turn, came to be filed by a group of workers seeking for a Writ of Mandamus declaring the action of the appellant in not absorbing them as its regular employees and not paying the pay and other benefits on par with the regular employees of the appellant-company is illegal and arbitrary, and to direct the appellant-company: (a) to absrob the workers as its regular employees; (b) to prescribe the appropriate scale of pay and other service conditions for them from the date of their initial appointment together with arrears of salary. A Division Bench of the High Court by a common order dated 24.1.97 in this and two other writ petitions passed the following order:

"The above cases, it is stated, are covered by the judgment in writ appeal No. 385 of 1996 dated 27.11.96. Let the petitions accordingly be disposed of and directions issued."

Hence, this appeal.

Civil Appeal No.3159 of 1997:

The above appeal has been filed by the 1st respondent in W.P. No. 10967 of 1988, who was the appellant in W.A. No. 1493 of 1996 before the High Court of Andhra Pradesh. In the Writ Petition, the Canteen Employees Union of B.H.P.V., and worker in the canteen, who was also the General Secretary of the Union at that time, prayed for an appropriate direction to declare the action of the appellant in not regularizing the services of the workers in the canteen and paying them wages on par with other permanent workers of the appellant and withdrawing B.H.P.V. dispensary facilities to them, is arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution of India, and direct the appellant to accord those reliefs. A learned Single Judge allowed the Writ Petition by following an earlier decision of the same court dated 30.10.95 rendered in W.P.No. 5682 of 1992: VST Industries Ltd. v. VST Industries Workers Union and Anr., [1996] 1 A.L.D. 97. A review filed thereon in W.M.P.No. 19114 of 1996 having also been rejected on 1.10.1996, W.A. 1493 of 1996 came to be filed before a Division Bench. The Division Bench of the High Court, adverted to the earlier decisions of the Division Bench rendered in W.A.Nos. 430 and 385 of 1996 and in the light of the principles laid down therein, not only confirmed the view taken by the learned Single Judge but also held that in the teeth of Rules 65 to 71 of the Andhra Pradesh Factories Rules, 1950, it requires to be affirmed that the appellant has a statutory duty to provide a canteen for the workmen and consequently dismissed the appeal, resulting

in the filing of the above appeal.

Civil Appeal No.5991 of 1997:

The above appeal has been filed by the respondents in W.P.No.8015 of 1992 before the High Court of Andhra Pradesh, which, in turn, came to be filed by the respondent canteen workers seeking for a Writ of Mandamus directing the appellants herein (respondents before the High Court) to regularize their services from the date of appointment with all consequential benefits. By an order dated 27.11.1996, the Division Bench adverted to the decision rendered in Writ Appeal No.385 of 1996 and allowed the claims by passing the following order:

"This writ petition has to succeed vide judgment in writ appeal No.385 of 1996 delivered by us today as facts are similar to the facts in the said case, except that the petitioners are the employees of the instrumentality of the Government of India i.e., Bharath Dynamic Limited. The instant petition is ordered on the same terms as in writ appeal No. 385 of 1996."

Hence, this appeal.

Civil Appeal No.6532 of 1997;

The above appeal has been filed by the respondents No. 1 & 2 in W.P.No.8113 of 1993 before the High Court of Andhra Pradesh, which, in turn, came to be filed by the canteen workers seeking for a declaration: (a) that the appointment of contractor for running the industrial canteen (night shift) at H.P.C. Visakhapatnam Refinery as illegal and arbitrary (b) declaring the action of the appellants in not treating the said workers as the employees of the H.P.C. Ltd., as illegal and arbitrary and (c) consequently, direct the appellants to treat the canteen workers as the employees of the H.P.C. Ltd., and grant appropriate scales of pay to them on par with the regular employees of the Corporation from the date of their respective appointment with all consequential benefits. The Division Bench by an order dated 24.1.1997 held as follows:

"The above cases, it is stated, are covered by the judgment in writ appeal No.365 of 96 dated 27.11.96. Let the petitions accordingly be disposed of and directions issued."

Hence, this appeal.

Heard the learned senior counsel for the appellants and the respondents. On behalf of the appellant in C.A.No. 5991 of 1997, our attention was invited to Paras 125 (3) to (6) and 117 in the decision reported in Steel Authority of India Ltd. and Ors. v. National Union Waterfront Worker and Ors., [2001 ] 7 SCC 1] in support of the plea against regularization of the canteen workers. For the appellant in C.A. No. 6532 of 1992, our attention was invited to certain observations in the decision in Indian Petrochemicals Corpn. Ltd. and Anr. v. Shramik Seta and Ors., [1999] 6 SCC 439; Indian Overseas Bank v. I.O.B. Staff Canteen Workers Union and Anr., [2000] 4 SCC 245 and VST Industries Ltd. v. VST Industries Workers Union and Anr., [2000] 1 SCC 298 to support the claim against regularisation. The other learned counsel adopted the above submissions. On behalf of the respondents, relevant portions of the very judgments which are claimed to support the stand of the workers were brought to our notice, to contend that no interference is called for in these appeals. The submissions on behalf of the appellants relying upon certain observations in the Steel Authority of India case (supra) proceed upon an erroneous assumption that the regularization of canteen workers were being allowed and ordered on the basis of the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970 [for short "the CLRA Act"]. The series of decisions commencing from M. M.R. Khan and Ors. v. Union of India and Ors., [1990] Supp. SCC 191 do not lend any sustenance or credit to such a claim and,

therefore, we are not persuaded to countenance the same. The relevant observations made in Paragraphs 106 and 107 by the Constitution Bench in Steel Authority of India case (supra), after specifically noticing the decision reported in VST Industries case (supra), also go against any such claims.

Further, the decision of the Division Bench of the Andhra Pradesh High Court dated 27.11.96 in W.A No. 430 of 1996 was the subject matter of appeal in the decision reported in VST Industries Ltd. case (supra), which, as pointed out supra, was noticed by the Constitution Bench which rendered the decision in Steel Authority of India Ltd. case (supra) and considered such line of cases not only to stand on a different footing than the one which was the subject matter before the Constitution Bench, but also observed that where in discharge of a statutory obligation of maintaining a canteen in an establishment the principle employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer and that such cases do not relate to or depend upon abolition of contract labour. So far as the decision dated 27.11.1996 of the same Division Bench rendered in Writ Appeal No. 385 of 1996 is concerned, the appeal filed against the same in C.A. No. 5990 of 97 [National Thermal Power Corporation Ltd. v. Karri Pothuraju and Ors.] was considered separately and by our judgment separately delivered today has been affirmed and the appeal by the Management has been dismissed. This decision also would squarely govern all these cases in favour of the workers. Consequently, we see no merit whatsoever in the submissions made to the contra by way of challenge in all these appeals, wherein the appellants concerned, indisputably are obliged to run the respective canteens in their establishment on account of the obligation cast upon them under the mandatory provisions of the Factories Act, 1948, and the Rules made there under.

For all the reasons stated above, these appeals fail and shall stand dismissed. No. costs