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W.P(C)No. 687 OF 1998
ITEM NO. 105COURT NO.09 SECTION X

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO. 687/1998

Dharma Nand & Anr.

...
PETITIONER(S)

VERSUS

U.O.I. & Ors.

...
RESPONDENT (S)
(With Office Report)

Date :29
04/2004
This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant (s)Ms. Subhadra Chaturvedi,Adv.
Mr. Amitabh Chaturvedi,Adv.
Ms. Suman Bala Rastogi,Adv.

For Respondent (s)Mrs. Indra Sawhney,Adv.
Mrs. Sushma Suri,Adv.
Mr. Arvind Kumar Sharma,Adv,

UPON hearing counsel, the Court made the following
O R D E R

Heard learned counsel for the parties for an
hour.

The writ petition is disposed of in terms of
signed order.

(Y.P.Dhamija)
AR-cum-PS

(Veera Verma)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 687 OF 1998

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RESPONDENT (S)

O R D E R

This Writ Petition is filed under Article 32 of the

Constitution of India.

The petitioner Dharma Nand was appointed on 28th March 1988 as Salesman at Station Canteen, Kotdwar, Garhwal Rifles Regimental Centre, Lansdowne, U.P. and the second petitioner Dayal Singh was appointed on 15th September 1988 at same canteen. Both of them were being paid consolidated amount of Rs.550/-per month. Later, on 7th April 1989 their remuneration was enhanced to Rs.750/- per month and they were appointed as Salesman in Golden Fish Canteen, Kotdwar and they were promoted as Store Keeper Incharge on 1st September, 1995 and their remuneration was enhanced. In December 1998 the first petitioner was terminated from the service and he was informed that he had completed 5 years tenure, and his service was no longer required. Similarly, the service of the second petitioner was also terminated. The counsel for the petitioners submits that these petitioners had been working as canteen employees under the control of the Defence Ministry and in view of the decision of this Court in Union of India Vs. M.Asalam & Ors. (2001) 1 SCC 720 they should have been treated as Central Govt. employees and their termination was illegal. In that case the question arose whether the employees working in the Canteen Stores Department Canteens under the Defence Ministry could be treated as Government servant or not. This Court held that:

"As has been stated earlier, for effective functioning of the defence services it is absolutely necessary to provide canteen facilities throughout the country and while the Canteen Stores Department serve as wholesale outlet it is the Unit-run Canteens which serve as retail outlet.

A set of rules regulating the terms and conditions of service of the employees of Unit-run Canteens have been framed which confers all-pervasive control over the employees with the authorities of defence services. Though the funding of the Unit-run Canteens is not made out of the Consolidated Fund of India but it is made by the Canteen Stores Department and this department in its turn has formed a part of the Ministry of Defence, admittedly. In Parimal Chandra Raha Vs. LIC of India the employees of different canteens in different offices of Life Insurance Corporation whether were employees of the Corporation itself was under consideration by this Court. This Court evolved four principles which are quoted hereunder:

(i) Canteens maintained under obligatory provisions of the Factories Act for the use of the employees become a part of the establishment and the workers employed in such canteens are employees of the management.

(ii) Even if there is a non-statutory obligation to provide a canteen, the position is the same as in the case of statutory canteens. However, if there is a mere obligation to provide facilities to run a canteen, the canteen does not become part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc."

Applying the aforesaid principles canteen employees were to be treated as Government servants .

In the present case also, the petitioners Dharma Nand and Dayal Singh were working as canteen employees which was under the Defence Ministry and they were also entitled to be treated as Government servants. The counsel for the Union of India submitted that the petitioners along with others were appointed as canteen employees on temporary basis and the appointment itself was given for a fixed term and on completion of the term, their services were terminated. The counsel also drew our attention to the rules framed for this purpose for the canteen employees. The aforesaid rules have been framed as if they were not Government servants. The decision quoted above would show that the canteen employees should have been treated as Government servants. That by itself is sufficient to hold that the rules framed for such temporary appointments are not to be applicable to these employees.

We are of the view that if these petitioners should have been treated as Government servants, the services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating service that it was only for 5 years tenure and their services were no longer required. We hold that termination was illegal and petitioners are entitled to be re-instated in service forthwith. The petitioners are also entitled to get consequential benefits. The petitioners are entitled to get consolidated amount from the date of the termination till the date of judgment in Union of India Vs. M. Aslam namely 4th January 2001, and from that date till reinstatement they shall be paid minimum of the pay-scale applicable to their counterpart serving in the CSD Canteens. The Writ Petition is disposed of.

.....J.
(K.G. BALAKRISHNAN)

.....J.
(B.N. SRIKRISHNA)
New Delhi,
April 29, 2004.