Kendriya Vidyalaya Sangathan and Others Vs Shri Sadhu Singh and Others

Court: Delhi High Court

Date of Decision: Sept. 19, 2002

Acts Referred: Administrative Tribunals Act, 1985 â€" Section 14(2), 2(1)
Constitution of India, 1950 â€" Article 226

Citation: (2004) 1 LLJ 746

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: S. Rajappa, for the Appellant; Nemo, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, C.J.
The petitioners herein is an autonomous body. It is financed by the Ministry of Human Resources Development;

Department of Education. It runs a chain of institutions known as Kendriya Vidyalayas all over the country. Such institutions have been set up to

cater to the educational needs of the children of Central Government employees including defense personnel. The Kendriya Vidyalayas are situated

in civil and defense sectors where there exists a large concentration of transferable Central Government employees including defense personnel.

Such Kendriya Vidyalayas also function under the auspices of public sector undertakings which are fully financed by them.

2. The respondents herein are daily wage employees employed in between 16th July 1974 and 22nd September 1983. They have been employed

for the purpose of assisting the kitchen staff of Kendriya Vidyalayas at Delhi Cantt. The kitchen staff are provided free meals and lodging.

3. The hostel affairs are managed by the Hostel Warden and a few students of Class X and XII, Therefore a committee had been set up. Such a

committee decides the menu and controls the purchasers and pays wages to the kitchen staff out of the contributions made by the students.

4. The respondents herein filed a writ petition in this court which was marked as CW 2950/1996 wherein a prayer for issuance of a writ in the

nature of mandamus directing the petitioner to regularize their services as Class D employees was made. The said writ petition was transferred to

the Central Administrative Tribunal as the petitioner was brought within the ambit and jurisdiction thereof w.e.f. 1st January 1999 in terms of a

notification issued by the Central Government u/s 14(2) of the Administrative Tribunals Act, 1985.

5. By reason of the impugned judgment, the learned single Judge, inter alia, relying on the basis of the decisions of the Apex Court in Hussainbhai,

Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, and Secretary, H.S.E.B Vs. Suresh and Others etc. etc., held:

10. We are not very happy about the contention of the learned counsel for the respondents that just because the hostel activity of KV No. 1 is not

resulting in any financial benefits to the KVS as was the case in the case of Hussainbhai (supra), no benefit can be accorded to the hostel

employees. KVS is engaged in imparting education all over the country. Imparting education is a nation building activity. If a school is considered

to be a menu-factory for a moment its hostel and persons employed for the hostel are certainly engaged in the product i.e. education being

manufactured by the school. We cannot allow the management of the KVS to disassociate themselves from the management of the hostel which is

part and parcel of a school providing residential facilities to all or some students. The argument of the learned counsel of the respondents that no

comparison should be made with the hostel of KNKVG and KV No. 1 is absolutely unconvinced and unreasonable. When the applicants have

been working for the hostel of KV No. 1 for the last couple of decades the work being done by them is certainly perennial in nature. The

employees working in the hostel cannot be allowed to be exploited on the ground that the hostel is being managed by the committee and the funds

are contributed by the students. In this committee too the Hostel Warden of the KVS is a member. The ratio in the case of Ward Servant

Association Bihar Institute of Technology, Sindri (supra) is absolutely applicable to the facts and circumstances of the present case. The applicants

cannot be denied regularisation of services and payment of salary and allowances in the scales provided to the hostel employees in KNKVG.

6. On the afore-mentioned findings, the Original Application was allowed and the respondents were directed to pay wages and allowances to the

respondents in the scale prescribed for the staff of the hostel of Kamla Nehru Kendriya Vidyalaya, Ghaziabad.

7. Mr. Rajappa, the learned counsel appearing on behalf of the petitioner would submit that the learned Tribunal went wrong in passing the

impugned judgment in so far as it failed to take into consideration that there exists no privity of contract between the parties. According to the

learned counsel, having regard to the fact that the respondents were appointed by a committee, the impugned findings could not have been arrived

at. According to the learned counsel, the decision of the Apex Court in Hussainbhai (supra) was wrongly applied.

8. It was submitted that the employees having not been regularly employed, they were not entitled to the same scale of pay as were being paid to

the employees by another organization.

9. Mr. Rajappa would urge that for such purposes, posts must be created and which can be done only by taking a policy decision in the matter

inasmuch as creation of posts is an administrative act. In any even, having regard to the embargo placed by the Finance Ministry the petitioner

herein could not create any post. In view of this matter, the learned counsel would contend as it has not been shown that the respondents had been

discharging similar functions, the impugned judgment could not have been passed.

10. It is not in dispute that whereas the claim of the respondents had been that they are working as kitchen staff in Kendriya Vidyalaya No. 1, the

contention of the petitioner was that they have been appointed by a committee controlling the hostels. There is nothing on record to show that the

Boards of Governors of the appointment had taken any decision for treating the kitchen staff of the hostel as group D employees or created any

such posts.

11. According to the respondents, Kamla Nehru Kendriya Vidyalaya, Ghaziabad is a Vishesh Kendriya Vidyalaya which had been opened for

education of students from Ladakh and other border areas. The said contention is not disputed. The hostel, on the other hand, is being run by the

committee. Neither any reason as to why the employees of both the institutions shall be similarly treated in the matter of grant of scale of pay etc.

has been assigned nor any material was brought on record to show that both the establishments were similarly situated.

12. In a case of this nature, inter alia, two questions arise:

(i) Whether the hostel can be said to be a canteen?; and

(ii) Whether the petitioner herein has any statutory liability to establish such a canteen and/or recognize the same?

13. Answer to both the questions must be rendered negative.

14. The affairs of the petitioner herein are not governed by any statute. Provisions of establishment of a hostel which incidentally may have been to

render service to the students by itself would not give rise to the liability on the part of the petitioner to render canteen facilities. It appears from the

contentions raised by the appellants that the management of running the hostel canteen vests in the Committee. It is a self financed one.

15. Regarding the question as to whether liability of grant of such canteen facilities is of the petitioner or not, suffice it to refer to the decisions of the

Apex Court in Employees in relation to the Management of Employers in relation to the Management of Reserve Bank of India Vs. Their

Workmen, wherein it has been held:

27. ...As per the argument the Bank has detailed the subsidy and other facilities afforded by it to run the canteen and has also stipulated certain

conditions necessary for conducting the canteen in a good hygienic and efficient manner like insistence of the quality of food, supply of food,

engagement of experienced persons etc. Such conduct cannot in any manner point out any obligation in the Bank to provide "canteen" as wrongly

assumed by the Tribunal. Since the distinguishing features mentioned in K.J. John, Assistant Public Prosecutor, Grade-I, Palai Vs. The State of

Kerala and others, are not present in this case, the Tribunal by a negative process was inclined to hold that though the canteens may be non-

statutory and non-recognized in nature, they ""could be said to be"" non-statutory recognized ones and so they will be entitled to get all the benefits

like the recognized canteens. This is a wrong approach to the issue. We have already held that non-statutory recognized canteens in the instant

case are not similar to the non-statutory recognized canteens considered in M.M.R. Khan case (supra). If the workers in the non-statutory

recognized canteens themselves cannot be considered to be workmen under the Bank, by the same token, the workers employed by the

contractors, even if they are considered to be non-statutory recognized canteens as held by the Tribunal, will not be entitled to get any benefit. It is

only by holding that the canteens run by contractors are similar to non-statutory recognized canteens, the Tribunal has given the same benefit as

was given to the workmen in the recognized canteens. It should also be noticed that the various factors noticed in para 38 of the judgment in

M.M.R. Khan case were adverted to by this Court to deny the plea that the canteen workers ""are not railway servants"" in the context of the

various provisions contained in the Railway Establishment Manual and other documents. The said decision rested on its own facts.

16. It is not contended that the said committee is on facade or camouflage or now has it been established that the same had being acting as a

smoke and screen for the petitioner.

17. It is also not contended that if the veil of the committee is lifted, it will be found that there exists a relationship of "employer" and "employee"

between the petitioner and the private respondents.

18. In the said decision, notice had been taken of the earlier decision of the Apex Court in K.J. John, Assistant Public Prosecutor, Grade-I, Palai

Vs. The State of Kerala and others, and Parimal Chandra and Others Vs. Life Insurance Corporation of India and Others,

19. This court is not oblivious of the fact in the event it be held that there is no liability of the establishment of the petitioner to maintain a canteen

under the provisions of any statute, no statutory duties emanate in relation thereto.

In Sri Raj Kumar Sardar v. Union of India and Ors. reported in 199 (1) CLJ 125 it has been held:

19. Furthermore, whether is a given situation the mess committee or a Contractor is merely a body of straw or a mere screen can be judged only

by an Industrial Tribunal if and when an Industrial dispute is raised, as was done in The Workmen of The Food Corporation of India Vs. Food

Corporation of India, or in Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others,

21. In Indian Iron Steel Co. Ltd. v. U.C.W. U. reported in 73 FLR 1056, it has been held:-

We have already indicated that whether the job is perennial or not, it requires factual investigation under the parameter of the said Act and if there

is any dispute as to such investigation, then it should be gone into by the appropriate Government being the prescribed authority under the said

Act.

20. It is now well settled that in the event it be held that the said committee is a "contractor" of the establishment, even this court in exercise of its

jurisdiction under Article 226 of the Constitution of India, cannot direct abolition of contract labour.

21. It is furthermore well-settled that this court cannot convert itself into an industrial court.

In Raj Kumar Sardar (supra) it was noticed:

23. This aspect of the matter has been considered in Basant Kumar v. Eagle Folling Mills reported in 1995 (1) PLJR 43; Gopi Lal Tell v. State of

Rajasthan and Ors. reported in 1995 LIC 1105; Tapas Mandal and Ors. v. Eastern Coal Fields Ltd. reported in 1995 LIC 1433; Mohini v.

General Manager, Syndicate Bank reported in 69 FLR 1061; Thakur Majhi and Anr. v. The Chairman-cum-Managing Director, Eastern Coal

Fields Ltd. and Ors. reported in 1995 (2) Cal LJ 127 and Arindam Chatterjee v. Coal India Limited and Ors. reported in 1996 Lab IC 416.

22. In any event, the Original Application involved disputed questions of fact. In a situation of this nature, the decision of the Apex Court in

Hussainbhai (supra) must be held to be not applicable to is case.

23. In fact, a Constitution Bench of this Court of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and

Others etc. etc., observed:

71. By definition to the term ""contract labour"" is a species of workman. A workman shall be so deemed when he is hired in or in connection with

the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in

an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the

work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal

employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he

merely acts as an agent so there will be master-and-servant relationship between the principal employer and the workman. But where a workman

is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the

establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contactor is mere camouflage

as in Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, and in Indian Petrochemicals Corpn. Ltd. and Another

Vs. Shramik Sena and Others, etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the

answer is in the negative, the workman will be a contract labour.

24. It has clearly been held that where such a question is raised, the same can be adjudicated in an industrial court. In this case according to the

petitioner, there does not exist any relationship of employer and employee between the parties. The learned Tribunal did not address itself to this

aspect of the matter. A direction to pay equal wages may be issued, if:

(a) there exists a relationship of employer and employee

(b) There is otherwise a statutory liability on the part of the petitioner to pay such wages.

(c) The employees of both the organizations are similarly situated in all respects.

25. Another question which was raised in Steel Authority of India, (supra) is as under:

B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of

master and servant between him (the principal employer) and the contract labour emerges.

26. It was held that there exists a distinction between a workman and a contract labour. It was held:

119. We are not persuaded to accede to the contention that a workman, who is not an outworker, must be treated as a regular employee of the

principal employer. It has been noticed above that an outworker falls within the exclusionary clause of the definition of ""workman"". The word

outworker"" connotes a person who carries out the type of work, mentioned in Sub-clause (C) of Clause (i) of Section 2(1), of the principal

employer with the materials supplied to him to such employer either (i) at his home, or (ii) in some other premises not under the control and

management of the principal employer. A person who is not an outworker but satisfied the requirement of the first limb of the definition of

workman"" would, by the very definition, fall within the meaning of the term ""workman"". Even so, if such a workman is within the ambit of the

contract labour, unless he falls within the aforementioned classes, he cannot be treated as a regular employee of the principal employer.

27. Furthermore, the learned Tribunal did not arrive at a finding of fact to the effect that the employees of both the establishments are similarly

situated.

28. We are not oblivious of a decision in Secretary, H.S.E.B Vs. Suresh and Others etc. etc., but with utmost respect, it appears that in the said

decision, a binding precedent of the Apex Court in Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., had not been taken

notice of.

29. In State of U.P. and Ors. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Anr., reported in 1996 (1) SLR 303 the Apex Court

observed that a direction can be issued to consider the claims of regularisation of services and payment of salary would arise provided posts are

created or existing.

30. Reference may also be made to M. Nageswar Rao v. Government of Andhra Pradesh, Housing Department, Hyderabad and Ors. 1996 (7)

SLR 793 where it has clearly been held that only because a person works for 240 days, the same does not confer any right upon him to be

regularized in service.

31. It is now trite that regularisation is not a mode of recruitment. The court or the Tribunal cannot issue any direction for regularisation of

employees. Such a direction would be vocative of the statutory rules or other policy decisions regulating recruitment in a regular manner. Any

appointment, it is well settled, which is made without following the statutory rules, would be a nullity.

32. For the reasons afore-mentioned, the impugned judgment cannot be sustained which is set aside accordingly and the writ petition is allowed.

But in the facts and circumstances of this case, there shall be no order as to costs.