A PARIMAL CHANDRA AND ORS.

v.

LIFE INSURANCE CORPORATION OF INDIA AND ORS.

MARCH 29, 1995

B [P.B. SAWNT AND S.B. MAJMUDAR, JJ.]

Service Law : Life Insurance Corporation—Claim of canteen employees that they are employees of corporation and thus entitled to parity with employees of Corporation—Canteen facilities provided to staff for a very long
C *time—By usage and customary benefits canteen facilities becoming the condition of service—Corporation having dominating say in dictating the terms of canteen contract—Contract indicating that Corporation was desirous of running the canteen—Held on facts there was implicit obligation to provide canteen services—Canteen workers held employees of Corporation—Factories*
D *Act and West Bengal shops and Establishment Act held inapplicable.*

Principle of equal pay for equal work—Applicability of.

Constitution of India, 1950 : Articles 226 and 32

E *Writ—Canteen employees of LIC—Prayer for wages equivalent to wages paid to employees of LIC—Withdrawal of writ—Filing of writ in Supreme Court—Preliminary objection that relief claimed in this Court was not claimed before High Court—Held not maintainable on facts.*

Pleadings—Interpretation of—Should be read as a whole and construed
F *accordingly.*

The appellant-workmen—working in the canteens at different offices of the respondent-Corporation filed a writ petition in the High Court of Calcutta for directions to the respondent-Corporation to comply with the
G **policy of equal pay for equal work and accordingly pay to the appellants the minimum salary that was enjoyed by the staff of the Corporation and also to follow the policy which was prevalent for canteen workers in other Government departments, railways and statutory corporations. The appellants specifically pleaded that (i) the staff of the respondent-Corporation at all its establishments were provided with facilities of canteen by the**
H **respondent-Corporation for more than few decades and that by usage and**

customary benefits canteen facilities became the condition of service of the employees - a fact not specifically controverted by the Respondent-Corporation. (ii) being canteen employees and engaged in operation incidentally connected with the industry carried on by the respondent-corporation, the appellants automatically became the direct employees under the respondent-Corporation and as such they cannot be discriminated against and denied the prevalent minimum wages.

The case of the respondent-Corporation before the Single Judge of the High Court was that the canteens did not belong to it nor were they run by it. The Corporation only gave its employees the facilities to run the canteens. The canteens were run during different periods either by the canteen-committees of the staff or their cooperative society. It has no connection much less contract of employment with the appellants. Nor does it have any control over their working conditions of service or the termination of their services. Appellants were therefore not the employees of the Corporation and cannot be deemed to be so.

However, the facts on record revealed in unmistakable terms that canteen services were provided to the employees for a long time and from time to time the Respondent-Corporation was taking steps to provide the said services. Further from the terms of the contract which was exclusively entered into between the Corporation and the canteen Contractor - it was clear that the Corporation has the dominating say in dictating the terms and conditions of the contract and that it was the Corporation and not the employees of the Corporation or their union or cooperative society which was desirous of running the canteen.

A Single Judge of the High Court allowed the writ petition and granted the relief prayed for. The respondent- Corporation preferred a Letters Patent Appeal before the Division Bench of the High Court. The averments made by the appellants in their rejoinder before the Division Bench of the High Court to the effect that the job done by the canteen employees was of perennial nature and was incidental to the running of the main business of the Corporation and it was being done by the Corporation through their intermediaries - sometimes by contractors, sometimes by cooperative society and sometimes by canteen employees themselves was not denied by the Corporation. However, the Division Bench set aside the decision of the Single Judge and dismissed the

A appellants' writ petition by holding that (i) the canteen was being run by a committee or cooperative society of the staff members of the Corporation (ii) the Corporation only agreed to provide space to house the canteen and certain chairs and tables for the use of its staff members, (iii) an independent contractor had been appointed to run the canteen (iv) and since no letter of appointment had ever been issued by the Corporation and no B attendance register was maintained and the salary of the canteen workers was being paid by the independent contractor and not from the funds of the Corporation, there was no employer and employee relationship between the Corporation and the appellants.

C In appeal to this Court the questions which arose for consideration were : (i) Whether the appellants should be deemed to be the regular employees of the respondent-Corporation, and if so (ii) what Pay-scales and other service conditions should be made available to them. A preliminary objection was raised on behalf of the respondent-Corporation that in these proceedings the appellants have claimed relief which they had not D claimed before the High Court and hence they cannot ask for the relief in question.

Allowing the appeal, this Court

E HELD : 1. The averments made in the writ petition, before the High Court show in unmistakable terms that the appellants approached the High Court with a specific plea that they are the employees of the respondent-Corporation and as such, they should be paid the minimum wages which are being paid to other regular employees. The relief of minimum wages paid to the other regular employees of the corporation on the basis F of the principle of equal pay for equal work is thus claimed on the ground that they are also the regular employees of the Corporation. Thus, the relief claimed includes in it the basis of the relief, viz., their status as the regular employees of the Corporation. Pleadings have to be read as a whole and construed accordingly. Thus construed, the relief claimed leaves no G doubt that it is based on the claim for the status of the regular employees of the Corporation. Therefore, there is no substance in the preliminary objection. [43-E-G]

2. (i) Where, as under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes H

a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management. [58-E] A

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment. [58-F] B C

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provisions of the canteen may be held to have become a part of the service conditions of the employees. 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. [58-G-H] D E

Where, to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management. [59-B]

F

(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, G H

A 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. [59-C-D]

B *The Ahmedabad manufacturing and Calico Printing Company, Ltd. (Calico Mills)* v. *Their Workmen*, (1953) II LLJ 647; *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal and Ors.*, [1974] 3 SCC 66; *Elphinstore Spinning and Weaving Mills Company Ltd.* v. *S.M. Sable and nine other Clerks (the Bombay Taxtile Clerks Union*, (1953) I LLJ 752; *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*, [1957] SCR 152; *Cassidy* v. *Ministry of* C *Health*, (1951) 1 T.L.R. 539; *Simmons* v. *Health Laundry Company*, [1910] 1 K.B. 543; *Basti Sugar Mills Ltd.* v. *Ram Ujagar and Others*, [1963] 2 SCR 838; *Hussainbhai, Calicut* v. *The Alath Factory Thozhilali Union, Kozhikode and Others*, [1978] 4 SCC 257; *Workmen of the Food Corporation of India* v. *Food Corporation of India*, [1985] 2 SCC 136; *M.M.R. Khan and Ors.* v. *Union of India and Ors.*, [1990] Supp. SCC 191; *All India Institute* D *Employees' Association* v. *Union of India*, JT (1990) 1 S.C. 319 and *Surendra Prasad Khugsal* v. *Chairman, MMT Corporation of India Ltd.*, JT (1993) 5 SC 80, referred to

E 3. There is no dispute that the respondent-Corporation has not explicitly under taken to provide canteen services to its employees working in the offices in question. The only obligation that it has explicitly accepted was to provide to the employees facilities to run canteen, such as premises, furniture, electricity, water etc. However, the facts on record show that the Corporation had implicitly accepted the obligation to provide canteen services and not merely the facilities to run the canteen. The facts on F record show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from time to time, taking steps to provide the said services. In the circumstances, the canteen has become a part of the establishment of the Corporation. The canteen committees, the G cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. Therefore, there is no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation. [59-F, 66-H, 67-B]

H 4. In view of the finding that the appellants are entitled to be the

employees of the Corporation, they are entitled to the first relief they have claimed. They should be deemed to have become the regular employees of the Corporation from the date of the filing of the writ petition before the High Court and should, therefore, be paid the arrears of salary and other monetary benefits, if any, from the said date after adjusting the salary and monetary benefits that they may have received. The years of continuous service put in by them even prior to the aforesaid date as canteen workers should, however, be taken into account for the purpose of calculating their retiral benefits. [67-D, 68-C] A B

5. However, there is distinction between the present service conditions of the appellants and the other Class IV employees of the Corporation. It is not possible for the Court to evaluate the work done by each of the categories. Hence different service conditions will have to be prescribed for the different appellants. The Corporation may have, therefore, to prescribe appropriate service conditions for the canteen workers. Pending the prescription of such service conditions, the Corporation should pay to all the appellants the minimum of the salary presently paid to its Class IV employees taking into consideration and making allowance for the special facilities, if any, available to them and also their special working conditions. In addition, the Corporation should also give them the benefit of the other service conditions available to its Class IV employees. [67-E, G, H 68-A] C D

6. The above direction to treat the appellants as the regular employees of the Corporation will be subject to two conditions, viz., (a) that they were above the minimum and below the maximum age limit and medically fit as per the regulations of the Corporation on the date of the filing of the writ petition and (b) that on the date of the filing of the writ petition before the High Court, and also during the pendency of the proceedings, they had put in a minimum of three years continuous service as canteen workers in the canteens in question. For the purposes of calculating the said three years qualifying service and the retiral benefits, the service prior to the attainment of the minimum qualifying age under the Corporation's regulations shall be ignored. [68-D-E] E F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1744 of 1992.

From the Judgment and Order dated 10.10.91 of the Calcutta High Court in A. No. 655/89 (Mattar No. 2303/86). H

V.M Tarkunde and S.K. Nandy with him for the Appellants.

G.L. Sanghi, H.K. Sil and Kailash Vasdev with him for the Respondents.

The Judgment of the Court was delivered by

B

SAWANT, J. The appellants-42 workmen - working in the canteen at four different offices of the respondent - Corporation in Calcutta, are involved in the present proceedings. In 1985, they had approached this Court for certain reliefs by a writ petition under Article 32 of the Constitution. By its order of 19th July, 1986, this Court had directed them to approach the High Court. Hence they had withdrawn the writ petition with liberty to move the High Court under Article 226 of the Constitution, which they did and the present appeal arises out of the said proceedings. Since on behalf of the respondents an objection is raised that the appellants have been claiming in these proceedings relief which they had never prayed for in the writ petition before the High Court, we may at the outset summarise the contents of the writ petition filed by them in the High Court.

2. In para 2 of the writ petition, the appellants have averred that they are canteen employees of the Corporation and working in the canteens managed by the Corporation. In para 3, they have stated that they are employed in the canteens of the Corporation and some of them for decades, since the inception of the Corporation and others for a minimum of seven years, and are holding the designations variously of Canteen General Manager, Canteen Manager-cum-Salesman, Kitchen Clerk, Canteen Clerk, Halwai, Assistant Halwai, Cook, Bearer, Wash-boy and
F Sweeper etc. In para 4 they have specified the four departmental canteens of the Corporation where they have been working. In para 5, they have averred there that they are paid at the rate much below the rate at which canteen employees working under different Government departmental canteens including those run by statutory Corporations and Railways are paid. They have also stated there that the employees of the canteens in
G different Government offices and Railways throughout the country are enjoying at least the pay-scales which are enjoyed by the peons of the respective offices. In para 6, they have given the emoluments which the Class-IV employees of the Corporation get which are between Rs. 700 and 800 per month against the wages they get as canteen employees ranging
H from Rs. 100 to Rs. 200 per month. In paras 7 and 16 of the writ petition,

to quote them verbatim, it is then averred as follows : A

> "Your petitioners state that the employees and the staffs of the respondent No. 1 at all its establishments are provided with facilities of canteen by the respondents for more than few decades and as such providing of canteen facilities forms a condition of service of the employees and staffs of the respondent No. 1. Your B petitioners state that by usage and customary benefits, canteen facilities has become the condition of service of the employees of the respondent no. 1 and as such running of the Canteen is incidental to the running business and/or industry of the life Insurance Corporation of India (Respondent No.1). C
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> x x x x x x x x
>
> Your petitioners state that they are engaged in the work of the canteen which is incidentally connected with the main industry of the respondent no. 1 and as such they are workmen working under D the respondent no.1."

It is against the background of the said averments in the main body of the writ petition that in paragraph 18 thereof they have averred that the respondent-Corporation being an instrumentality of the State and being the State within the meaning of Article 12 of the Constitution, cannot deny E them equal pay-scales with other canteen employees of the Government departments/Railways and other statutory Corporations or take a stand or policy different from that followed by the Government departments, Railways and other instrumentalities of the State. With regard to pay-scales of the canteen employees, they have stated there that till date the respondent- F Corporation has not framed any pay-scale for the canteen employees and as such have acted in a discriminatory manner violating Article 14 of the Constitution. Thereafter, in ground No. 2 of the petition they have stated that the canteen workers of the respondent-Corporation being engaged in operation incidentally connected with the industry carried on by the G respondents, the respondents cannot deny them the minimum wages given to their employees. In ground No. 3 it is alleged that the canteen facility being condition of service of the staff and employees of the respondent-Corporation as per usage and custom, the appellants, being canteen employees and engaged in operation incidentally connected with the industry carried on by the respondent, "automatically become the direct H

A employees under the respondents and as such they cannot be discriminated against and denied the minimum wages that is prevalent in the Life Insurance Corporation. In ground No. 4, they have stated that the appellants are working under the respondents through the agencies, and being engaged in work incidentally connected with the industry carried on by the Corporation, they are entitled to get the pay that is admissible to regular B employees of the Corporation. It is with these averments in the main body of the petition and the grounds that the appellants have in prayer (b) of the petition, claimed the relief of the issuance of the writ of *mandamus* commanding the respondent-Corporation to comply with the policy of "equal pay for equal work" and pay them the minimum salary that is C enjoyed by the staff of the Corporation and also to follow the policy that is prevalent for canteen workers in other Government departments, Railways and statutory Corporations. It is thus clear from the writ petition filed by the appellants before the High Court that they have prayed for the relief of minimum wages paid to the employees of the respondent-Corporation on the ground that they are the regular employees of the Corporation. In D other words, it is implicit in the said relief claimed by them that they are to be deemed to be the regular employees of the Corporation and paid the minimum salary that is paid to its other regular employees.

3. The case of the respondent-Corporation before the learned Single E Judge of the High Court as made out in their counter to the writ petition was that the canteens did not belong to it nor were they run by it. The Corporation only gave its employees the facilities to run the canteens. The canteens were run during different periods either by the canteen-committees of the staff of their cooperative society through the contractors, and F the appellants were engaged by the contractors or the cooperative society. It has no connection much less contract of employment with the appellants. Nor does it have any control over their working, conditions of service or the termination of their services. They are, therefore, not the employees of the Corporation and cannot be deemed to be so. Hence they are not entitled to the relief claimed by them. The learned Single Judge by his G decision of 27th September, 1989 allowed the writ petition and directed the respondent-Corporation to implement the policy of equal pay for equal work and pay the appellants minimum salary as is enjoyed by the regular staff of the Corporation or such pay as is enjoyed by regular canteen workers in the other Government establishments or public undertakings. H The learned Judge also directed that the appellants shall be treated as

direct workers under the Corporation and shall be given all service benefits accordingly. A

4. Against the said decision of the learned Single Judge, the respondent-Corporation preferred a Letters Patent Appeal before the Division Bench of the High Court which by the impugned decision dated 10th October, 1991, allowed the appeal, set aside the decision of the learned Single Judge and dismissed the appellants' writ petition. It is this decision of the Division Bench which is under challenge in the present appeal. B

5. The questions to be answered in this appeal, therefore, are : (i) whether the appellants are or should be deemed to be the regular employees of the respondent-Corporation, and if the answer is in the affirmative, (ii) what pay-scales and other service conditions should be made available to them. C

6. A preliminary objection was raised to the framing of the first issue by Shri Sanghi appearing for the respondent-Corporation, as pointed out at the outset, that the appellants had not claimed any such relief in the writ petition itself and hence they cannot widen the scope of the petition and ask for the relief in question in this appeal. We have referred *in extenso* to the averments made in this writ petition, earlier. They show in unmistakable terms that the appellants approached the High Court with a specific plea that they are the employees of the respondent-Corporation and as such, they should be paid the minimum wages which are being paid to its other regular employees. The relief of minimum wages paid to the other regular employees of the Corporation on the basis of the principle of equal pay for equal work is thus claimed on the ground that they are also the regular employees of the Corporation. Thus, the relief claimed includes in it the basis of the relief, viz., their status as the regular employees of the Corporation. It is unnecessary to restate here the law regarding the interpretation of the pleadings. They have to be read as a whole and construed accordingly. Thus construed, the relief claimed leaves no doubt that it is based on the claim for the status of the regular employees of the Corporation. We, therefore, find no substance in the preliminary objection. D E F G

7. Coming now to the main question as to whether the appellants should be deemed to be the regular employees of the Corporation, we may first refer to the statutory provisions with regard to the canteen. H

A Section 46 of the Factories Act, 1948 which is a Central enactment read as follows :

"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
B shall be provided and maintained by the occupier for the user of the workers.

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

C (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
D be made therefor;

(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
E are not to be taken into account in fixing the cost of foodstuffs 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
F (c)."

This provision has to be read with the relevant provisions of Section 47 (1) of the said Act which are as follows :

"47. Shelters, rest rooms and lunch rooms. - (1) In every factory
G wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water where workers can eat meals brought by them, shall be provided and maintained for the use of the workers;

H Provided that any canteen maintained in accordance with the

provisions of Section 45 shall be regarded as part of the requirements of this sub-section : " A

There is no dispute that the Factories Act is not applicable to the offices of the respondent-Corporation. What is applicable is the West Bengal Shops and Establishment Act which is a State enactment. However, there is no provision in the said Act with regard to canteens. B

8. We may now refer to the law on the subject as is evolved through various judicial decisions.

In *the Ahmedabad Manufacturing and Calico Printing Company Ltd. (Calico Mills)* v. *Their Workmen*, (1953) II LLJ 647, which is a decision of the Labour Appellate Tribunal of India and which is quoted approvingly in *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal and Ors.*, (infra), the facts were that by notifications issued by the State Government, the provisions of Section 46 of the Factories Act, 1948 were made applicable to a large number of textile mills including the appellants before the Tribunal. As a result, it was compulsory for the mills to maintain suitable canteens for the use of their workmen. The contention of the appellant-Mills was that assuming that the canteens were run through the contractors, the canteen was not a part of the undertaking so as to render the management responsible for the wages and dearness allowance of the staff of the canteen and that the maintenance of the canteen was not in the course of, or for the purpose of conducting the undertaking. The Tribunal held that in view of the statutory obligation cast on the mills to run the canteen, the running of the canteen was a part of the undertaking. For this purpose, the Tribunal also relied upon the decision of its Special Bench in *Elphinstone Spinning and Weaving Mills Company Ltd.* v. *S.M. Sable and nine other Clerks (the Bombay Textile Clerks' Union)*, (1953) I LLJ 752 where the Tribunal had considered the case of employees of the grain shops run in the Mills by the contractors. The Special Bench had held there that the employees of the grain shops were entitled to be regarded as the employees of the Mills since the running of the grain shop had become a part of the undertaking within the meaning of the definition of 'employer' in sub-section (14) (e) of Section 3 of the Bombay Industrial Relations Act. The Tribunal held that there was a considerable similarity between the grain shop and the canteen for the purposes of the said definition. The Tribunal overruled the contention that the earlier decision of the Special Bench was C D E F G H

A erroneous and needed further consideration.

In *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*, [1957] SCR 152, the question was whether the agarias who were engaged by the manufactures of salt were the workmen of the manufactures or whether they were independent contractors. The facts were that the appellant-manufacturers were the lessees holding licences for the manufacture of salt on the demised land. The salt was manufactured by a class of professional labourers known as agarias from rain water that got mixed up with the saline matter in the soil. The work was seasonal in nature and commenced in October after the rains and continued till June. Thereafter, the agarias left for their own villages for cultivation work. The demised lands were divided into Plots called pattas and allotted to the agarias with a sum of Rs. 400 for each patta to meet the initial expenses. The same patta was generally allotted to the same agaria every year and if the patta was extensive in area, it was allotted to two agarias. After the manufacture of salt, they were paid 5 as. 6 pies per maund. At the end of each season, accounts were settled and they were paid the balance due to them. They worked with the members of their families and were free to engage extra labour on their own account and the manufacturer had no concern therewith. No hours of work had been prescribed, no muster rolls maintained nor were working hours controlled by the appellants. There were no rules as regards leave or holidays and they were free to come out of the works after making arrangements for manufacture of salt. On these facts, the Industrial Tribunal found that the agarias were workmen within the meaning of the Industrial Disputes Act, 1947. This finding was confirmed by the High Court which also held that the reference of the dispute made by the Government under Section 10 of the Industrial Disputes Act was competent. This Court while confirming the finding of the Industrial Tribunal and of the High Court, held that it was well-settled that the *Prima facie* test of the relationship of master and servant was the existence of the right in the employer not merely to direct what work was to be done but also to control the manner in which it was to be done, the nature and extent of such control varying in different businesses and being by its very nature incapable of being precisely defined. The correct approach is to consider whether having regard to the nature of the work, there is due control and supervision of the employer. A person could be workman every though he did piece work and was paid not per day but by the job, or employed his own workmen and paid them for it. The Court noted the observations of

Somervell, LJ, in *Cassidy* v. *Ministry of Health*, (1951) 1 T.L.R. 539, which had taken the view that it was not necessary for holding that a person was an employee that the employer should be proved to have control over his work. The test of control was not one of universal application and there were many contracts in which the master could not control the manner in which the work was done. The correct approach would be to consider whether having regard to the nature of the work, there was due control and supervision by the employer. The Court quoted the opinion of Fletcher Moulton, L.J., in *Simmons* v. *Health Laundry Company*, [1910] 1 K.B. 543 where the learned Judge has observed as follows :

> "In my opinion it is impossible to lay down any rule of law distinguishing the one from the other. It is a question of fact to be decided by all the circumstances of the case. The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service."

The Court then observed that the broad distinction between a workman and an independent contractor lies in this that while the former agrees himself to work, the later agrees to get other persons to work. A person who himself agrees to work and does so work and is, therefore a workman, does not ceases to be such by reason merely of the fact that he gets other persons also to work along with him and those persons are under his control and are paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he gets the assistance from other persons would not affect his status.

In *Basti Sugar Mills Ltd.* v. *Ram Ujagar and Others*, [1963] 2 SCR 838, the case of the appellant-employer was that the work of the removal of the press mud had been given by it to a contractor and the respondent-workmen were employed by that contractor to do that work. It is the contractor who had terminated their services and the management had nothing to do with the workmen who had approached the Court for relief against the termination of their services and also for paying them the

A minimum wages prescribed under the Government notifications. This Court held that the workmen were persons employed in the industry to do manual work for reward Further, the appellant-Company was their employer as the workmen were employed by the contractor with whom the company had contracted in the course of conducting the industry for the execution by the said contractor, of the work of removal of press mud B which is ordinarily part of the industry. The Court also held that the expression "employed by the factory" which occurred in the definition of 'workman' in the standing Orders applicable to the company, included every person who was employed to do the work of the factory and was wide enough to include the workmen employed by the contractor of the factory C also.

In *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal and Ors.*, [1974] 3 SCC 66, the facts were that the appellant- Company which was responsible for maintaining the canteen under the provisions of Section 46 of the Factories Act and the rules made thereunder, had entrusted the task of D running the canteen to a co-operative society. The society employed the respondent- workmen in the canteen. The workmen filed an application before the Labour Court under the Bombay Industrial Relations Act, 1946 making a grievance that they were not paid wages and dearness allowance in accordance with the award of the Industrial Tribunal. In support of their E claim, the workmen alleged that they become workers of the appellant, who was bound to pay wages and dearness allowance as per the award. Since the appellant was running the canteen under an obligation to do so under the Factories Act, the running of the canteen was ordinarily a part of the undertaking although the appellant did not itself run the canteen but F handed over the premises to the co-operative society to run it for the use and welfare of the company's employees and to discharge it legal obligation. The appellant had resisted the claim by contending that the workmen had never been employed by it or by its agent or contractor. They were in fact, employed by the Co-operative society which was its licensee. The Labour Court dismissed the workers' claim. However, in appeal, the In- G dustrial Court allowed the claim by holding that the employees of the co-operative society were the employees of the appellant. This Court referred to the amended definition of 'employee' and employer' in Section 3 (13) and 3 (14) of the Bombay Industrial Relations Act which read as follows :

H "(13) 'employee' means any person (including an apprentice)

employed in any industry to any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied and includes-(a) a person employed in the execution of any work in respect of which the owner of an undertaking is an employer within the meaning of sub-clause (e) of clause (14). A B

x x x x x x x

(14) 'employer' includes -

x x x x x x x C

(a) Where the owner of any undertaking in the course of or for the purpose of conducting the undertaking entrusts the execution of the whole or any part of any work which is ordinarily a part of the undertaking, to any person otherwise than as the servant or agent of the owner, the owner of the undertaking." D

The Court also referred to the definition of 'worker' under the Factories Act, 1948. The Court then referred to its earlier decision in *Basti Sugar Mills Ltd.* v. *Ram Ujagar and Others*, [1963] 2 SCR 838 and held that since under the Factories Act, it was the duty of the appellant to run and maintain the canteen for use of its employees. The ratio of the decision in E *Ahmedabad Mfg. and Calico Printing Co. Ltd. & Others* v. *Their Workmen*, (1953) II LLJ 647, would be fully applicable in which the very same provisions of the Act were considered and confirmed the finding of the Industrial Court.

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In *Hussainbhai, Calicut* v. *The Alath Factory Thozhilali Union, Kozhikode and Others*, [1978] 4 SCC 257, the facts were that the petitioner was a factory owner manufacturing ropes. A number of workers were engaged by him to make ropes. According to the petitioner, they were hired by contractors who had executed agreements with the petitioner to get the G work done. Out of the workmen engaged by the contractor, 29 were denied employment. They raised an industrial dispute which was referred by the State Government to the Industrial Tribunal. The Tribunal upheld the contention of the workmen that they were the employees of the petitioner and directed their reinstatement. The award of the Tribunal was upheld by the learned Single Judge of the High Court as well as by the Division Bench H

A in appeal. This Court while dismissing the employer's petition at the admission stage itself with an elaborate judgment, held that the work done by the workmen was an integral part of the industry. The raw material was supplied by the management. The factory premises as well as the equipment used belonged to the management and even finished product was taken by the management for its own trade. Defective articles were B directed to be rectified by the management. The workmen were broadly under the control of the management. On these facts, the Court held that where a worker or a group of workers, labours to produce goods or services and these goods or services are for the business of another, that other is in fact, the employer. He has economic control over the workers' subsis- C tence, skill and continued employment. If he for any reason, chokes off, the workers are virtually laid of. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequence, when on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, D though draped in different perfect paper arrangement that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A E of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the *maya* of legal appearances. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence F of dubious intermediaries of to make-believe trappings of detachment from the management cannot snap the real life-bond. The liability cannot be shaken off. The Court, however, added that if there is total dissociation in fact, between the disowning management and the aggrieved workmen, the employment is, in substance and in real-life terms, by another. The management's adventitious connections cannot ripen into real employment. G On this reasoning, the Court confirmed the finding of the High Court and dismissed the petition.

In *Workmen of the Food Corporation of India* v. *Food Corporation of India*, [1985] 2 SCC 136, initially the work of handling foodgrains at Siliguri H depot of the respondent- Corporation was entrusted by it to a contractor.

The contractor engaged handling-mazdoors for the purposes of the work. The mazdoors received the wages from the contractor as determined by him or as agreed between the contractor and the workmen. From January 1973, pursuant to an agreement between the Corporation and the workers working in the Corporation's godown, the direct payment system to the workmen was introduced in place of the existing contract labour system. Under this system, the bills for the piece-rate wages payable to the handling-mazdoors were to be prepared by the depot staff and the Sardar/Mondal was to accept the payment after giving acquittance and signed bills on their behalf and distribute the wages to the handling-mazdoors. The bill with acquittance in the original would remain with the Corporation. The Union of the workmen was informed to advise local representative of the workmen to submit the wage bill in time mentioning therein particulars 'per head out-turn by name' till January 1975. This system of payment was in vogue till January, 1975 when the Corporation superseding the direct payment system reintroduced the contract labour system without giving any notice to the affected workmen. Consequently, 464 workmen attached to the Siliguri depot were treated as employed by the contractor. An industrial dispute was raised by the union against this action of the Corporation and a reference was made to the Tribunal for adjudication. The Tribunal justified the corporation's action and held that reintroduction of the contractor system did not constitute discontinuance of the services of the affected workmen. The questions for determination were whether as a result of the introduction of the direct payment system, the concerned workmen had become direct workmen of the Corporation and whether the reintroduction of the contractor system of payment resulted in discontinuance of the services under the Corporation for which notice under Section 9A of the Industrial Disputes Act, 1947 was essential. The Court while allowing the workmen's appeal held that the essential condition for a person to be workman within the meaning of the Industrial Disputes Act is that he should be employed to do the work in an industry and there should be an employment of his by the employer and that there should be a relationship of the employer and employee as between master and servant. Where the contractor employs a workman to do the work which he contracted with a third person to accomplish, the workmen of the contractor would without something more become the workman of that third person. When the contractor system was in vogue, the contractor was being paid in lump sum arrived at by multiplying the rate per bag to total

A number of bags. Thus, the Corporation was solely concerned with the number of bags handled by the contractor. It was not a contract for supply of labour, but specifically a contract for handling bags of foodgrains. Therefore, when the contractor system was in vogue, the workmen employed by the contractor were not workmen of the Corporation. But B introduction of the direct payment system, brought about a basic qualitative change in the relationship between the Corporation and the workmen engaged for handling foodgrains in that on the disappearance of the intermediary contractor, a direct relationship of master and servant came into existence between the Corporation and the workmen. It was obligatory on the Corporation to arrange for handling the bags of foodgrains. The C workmen handled the foodgrains for the Corporation and none else. For this service rendered, the Corporation agreed to pay and paid wages at piece rate to each workman whose name appeared in the register maintained for the purpose as per the directions given by the District Manager. If the pay packets were actually distributed by Sardars/Mondals, they can D be said to be doing clerical work on behalf of the Corporation. Thus since the introduction of the direct payment system, the workmen became the workmen of the Corporation and a direct master-servant relationship came into existence. When workmen working under an employer are told that they have ceased to be the workmen of that employer and have become E workmen of another employer, viz,. the contractor in this case, in legal parlance such an act of the first employer constitutes discharge, termination of service or retrenchment by whatsoever name called, and a fresh employment by another employer, viz., the contractor. If the termination of service by the first employer is contrary to the well- established legal F position, the effect of the employment by the second employed is wholly irrelevant. The introduction of a contractor so as to bring about a cessation of contract of employment between the workmen and the Corporation and a fresh contract of employment between the workmen and the contractor, if motivated to effect retrenchment, *ex facie* the action is contrary to Section 25-F of the Industrial Disputes Act. Viewed from either angle, the action G of re-introducing the contractor so as to displace the contract of service between the Corporation and the workmen would be illegal and invalid and *ab initio* void and such action would not alter, change or have any effect on the status of the affected workmen who had become workmen of the Corporation. Even assuming that the scheme of the Food Corporation Act, H 1964 permits the Corporation to engage a contractor, the Act would not

permit the Corporation, which is an instrumentality of the State comprehended in the expression 'other authority' in Article 12, to act in a manner thoroughly arbitrary by first keeping a contractor, removing him and reinducting him without a semblance of consideration for the fate of the workmen working for it for its benefit or for some work connected with the functions of the Corporation. By cancelling the direct payment system and introducing the contractor, both the 'wages' and the 'mode of the payment' within the meaning of Item I of the Fourth Schedule to the Industrial Disputes Act are being altered to the disadvantage of the workmen. Therefore, a notice of change under Section 9-A was a must before introducing the change, otherwise it would be an illegal change which would attract penalty under Section 31 (2). Such an illegal change would be wholly ineffective.

In *M.M.R. Khan & Ors.* v. *Union of India & Ors.*, [1990] Supp. SCC 191, the facts were that the canteens run by different railway establishments were classified into three categories, viz., (i) statutory canteens, i.e., canteens required to be provided compulsorily in view of Section 46 of the Factories Act, 1948, (ii) non-statutory recognised canteens set up as a staff welfare measure with the prior approval and recognition of the Railway Board as per the procedure detailed in the Railway Establishment Manual, and (iii) non-statutory non- recognised canteens, i.e., those which were established without the prior approval or recognition of the Railway Board. The Government of India notification dated 11th December 1979 had declared the employees of the departmental canteens/tiffin rooms as holders of civil posts. The Division Bench of the Calcutta High Court had directed the Union of India to recognised the workers of the statutory canteen at Kharagpur as employees of the Railway administration under the Factories Act but had rejected the workers' demand to pay salary and allowances to them as if they were railway employees. The appeal preferred by the Union of India against the said decision was disposed of by this Court by its order of October 27, 1990 in the following words :

> "The benefits accruing to the workers under the decision of the Calcutta High Court do not require to be interfered with in this appeal. *Prima facie* we are inclined to agree that the High Court decision is right. Moreover, the learned Attorney General agrees to apply the Act as if it were applicable to canteen employees. In this view, a final pronouncement on this question by this Court

need not be given in the present case. We leave it open to Union of India in an appropriate case to raise the point and seek a pronouncement."

On December 4, 1984, a Division Bench of the Madras High Court relying upon the aforesaid order of this Court held in a case that canteen employees will have to be treated as Railway employees for the purpose of the Factories Act in view of the concessions made by the Railways before this Court and also the concessions made by the counsel appearing for the Railways before the High Court. Against this background, writ petitions under Article 32 and appeals by special leave were filed by the employees of all the three types of railway canteens claiming that they should be treated as railway employees and should be extended all service conditions available to the railway employees. While allowing the writ petition and the appeals of the employees of the statutory canteens and of the non-statutory recognised canteens, this Court held as follows :

"Since in terms of the Rules made by the State Governments under Section 46 of the Factories Act, it is obligatory on the railway administration to provide a canteen, and the statutory canteens have been established pursuant to the said provision, it must be held that the canteens are incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provision of the canteens is deemed by the statute as a necessary concomitant of the manufacturing activity. Even where the employees are appointed by the Staff committee/cooperative society, their appointment is made by the department through the agency of the committee/society as the case may be. The statutory canteens have been in existence at their respective places continuously for a number of years. The premises as well as the entire paraphernalia for the canteens is provided by the railway administration and belong to it. The employees engaged in the canteens have also been in service uninterruptedly for many years. Their wages are reimbursed in full by the railway administration. The entire running of the canteens including the work of the employees is subject to the supervision and control of the agency of the railway administration whether the agency is the staff committee or the society. In the Establishment Manual the legal responsibility for running the canteen ultimately rests with the

railways, whatever the agency that may intervene. The number and the category of the staff engaged in the canteen is strictly controlled by the administration.

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No distinction can be made between the employees of statutory canteens and those of non-statutory canteens. The only difference is that the statutory canteens are established wherever the railway establishments employ more than 250 persons as is mandatory under the provisions of Section 46 of the Factories Act while non-statutory canteens are required to be established under paragraph 2831 of the Railway Establishment Manual where the strength of the staff is 100 or more. The employees who otherwise do the same work and work under the same conditions and under a similar management cannot be treated differently merely because the canteen happens to run at an establishment which employs 250 or less than 250 members of the staff. The smaller strength of the staff may justify a smaller number of the canteen workers to serve them. But that does not make any difference to the working conditions of such workers. A classification made between the employees of the two types of canteens would be unreasonable and will have no rational nexus with the purpose of the classification. The "Administrative Instructions on Departmental Canteens in Offices and Industrial Establishments of the Government" are applicable to both statutory and non-statutory recognised canteens. The Instructions do not make any difference between the two so far as their applicability is concerned.

However the employees of the non-statutory non- recognised canteens are not entitled to claim the status of the railway servants. These 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."

Accordingly, this Court held that the workers engaged by the statutory canteens as well as those engaged in non-statutory recognised canteens in the railway establishment were railway employees and they

A were entitled to be treated as such.

In *All India Institute Employees' Association* v. *Union of India*, JT (1990) 1 S.C. 319 the writ petition was filed in this Court by an Association of about 2000 employees working in 500 different Railway institutes and clubs in various parts of the country. Their grievance was that they were not treated as railway employees. It was their case that although the institutes and clubs in which they worked were not statutory, they were on par with the employees in the statutory canteens run in the railway establishments proper. It was further their case that the institutes and clubs were set up to provide recreational facilities to the railway employees and they were managed by committees consisting of representatives of all the members of the institutes/clubs elected periodically. The institutes/clubs had about 10 categories of employees. The employees were appointed by the committees and the salaries were paid out of the contributions received from the members of the respective institute/club and the grants-in-aid given by the Railway Board to them. The committee of management was presided over by the President who was the concerned Railway Divisional Manager or his nominee. The railway administration had the right to dissolve or to form the *ad hoc* committees for running the institutes/clubs. It was also the case of the workmen that the Railway Board had always treated the institutes/clubs as an integral part of the railways since not only they received grants-in-aid but also other facilities from the Railways. The Railway Establishment Manual made a special provision for the institutes and clubs and it stated that a railway institute should be looked upon as a club provided by the railway, rent-free for the benefit of its employees and, therefore, the railways should provide everything which a landlord ordinarily would, and the institute should pay for all that a tenant should usually be liable to pay. The Manual stated that the railway administration will bear (a) the first cost of the building including the cost of electric installations, necessary furniture, roads, fancies, tennis court and other playgrounds and wherever possible, the garden was also to be provided and (b) the cost of maintenance and alterations. This Court distinguished the canteens run in the railway establishments and the railway institutes and clubs by pointing out the material difference between the two. Firstly, the canteens were invariably a part of the establishment concerned and they were run to render services during the hours of work since the services by their very nature were expected directly to assist the staff in discharging their duties efficiently. The lack of canteen facilities is ordinarily bound to

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hamper and interfere with the normal working of the staff and effect their efficiency. The Court also held that the canteen services are today regarded as a part and parcel of every establishment so much so that they have been made statutorily mandatory under the Factories Act in establishments governed by the said Act where more than 250 workers are employed. The canteen services are thus no longer looked upon as a mere welfare activity but as an essential requirement where sizable number of employed work and that is why the Railway Establishment Manual made a provision for canteens even where the Factories Act did not apply. However, the same cannot be said of the institutes and clubs. Although the Railway Establishment Manual makes provisions for them, the provisions are of the materially different nature and pattern. There is no provision either for subsidy or loan directly from the funds of the railway administration. They have to run on the membership fees and fixed grants received from the Staff Benefit Fund which consists of receipts from the forfeited provided fund and bonus and of fine. The grant further is made to each institute/club at the rate of Rs. 14 per capita of the non- gazetted staff employed at the relevant railway establishment. Out of this contribution, only Rs. 4 per capita are spent on activities of the institutes/clubs, the rest of the amount being spent on education etc. The wages and allowances of the staff of the institutes/clubs are paid by the institutes/clubs themselves and they are not subsidised by the railway administration as in the case of the statutory and non-statutory recognised canteens. Further, by their very nature the services of the institutes/clubs are availed of beyond working hours only and not all the members of the railway staff avail of them. One had to be a member by paying fees to do so. The membership was further optional. That is why most of the staff employed in the institutes/clubs was part-time. Out of about 1741 employees engaged in 449 institutes and 332 clubs, nearly half were part- time employees. The services rendered by the employees were also not of a uniform nature. They were engaged for different services with service conditions according to the requirement. The institutes/clubs also do not engage in any uniform activities, the activities conducted by them varying depending upon the infrastructure and the facilities available at the respective places. What is more important is that the provision of the institutes/clubs is not mandatory. They are established as a part of the welfare measure for the railway staff and the kind of activities they conduct depend, among other things, on the fund available to them, the activities having been tailored to the budgets. If the cost of

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A activities goes beyond the means, they have to be curtailed. On these facts, this Court held that the staff members employed by the railway institutes/clubs are not the employees of the Railways.

In *Surendra Prasad Khugsal* v. *Chairman, MMT Corporation of India Ltd.*, JT (1993) 5 SC 80, the workers employed in non-statutory recognised
B canteens in the respondent- Corporation had approached this Court by a writ petition under Article 32 of the Constitution, relying upon the decision of this Court in *M.M.R. Khan* case (supra). The Court found that the said decision which had decided the claim of the non- statutory recognised canteens was decided on the facts of the case including the provisions of
C the Railway Establishment Manual, the notifications and circulars issued by the Railway Board from time to time and other documents. On the other hand, there were disputed facts in the case in hand which could not be resolved in a writ petition under Article 32. The Court , therefore, referred the matter to the Industrial Tribunal for adjudication.

D 9. What emerges from the statute law and the judicial decisions is as follows:

(i) Where, as under the provisions of the Factories Act, it is statutory obligatory on the employer to provide and maintain canteen for the use of
E his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen,
F the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

G (iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the
H 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. A

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management. B

(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, C 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. D

10. We may now examine the facts in the present case in the light of the above tests. E

There is no dispute that the respondent-Corporation has not explicitly undertaken to provide canteen services to its employees working in the offices in question. The only obligation that it had explicitly accepted was to provide to the employees facilities to run canteen such as premises, F furniture, electricity, water etc. However, the facts on record show that the corporation had implicitly accepted the obligation to provide canteen services and not merely the facilities to run the canteen. These facts are :

(a) In para 6 of the counter-affidavit filed on behalf of the Corporation before the learned Single Judge in the High Court, it is stated that at G the time the Corporation was established, i.e., 1st September, 1956, all the Insurers carrying on life insurance business in India both inland and foreign were merged and/or vested in the Corporation. Some of the merged offices of the erstwhile Insurers had canteens which were used to be run or managed by different employees union. After the establishment of the H

A Corporation, those canteens continued to be run and managed by the particular employees' unions. While being so run, there were complaints to the Corporation from the employees about the quality and nature of food supplied as is evident from the letters of several employees' unions written in or about 1972. Hence in or about 1973, the Corporation was obliged to appoint a committee to examine the alleged complaints and to B find out ways and means as to how best such canteens could be run and managed. The Committee made its recommendations and in pursuance of the recommendations, the responsibility to run and manage the canteens was entrusted to contractor obviously by the Corporation, though the counter has not stated the latter fact in so many words. The contractors C started managing the canteens and this practice continued till 1979. It is stated in the counter that one of the employees' unions was the Life Insurance Corporation Employees' Association (Calcutta Division) of which one Shri Sukumar Mukherjee was General Secretary and the said Mukherjee is also the President of the Employees' Unions of the appellants herein. Although it is also averred there that the said Mukherjee who D represented the appellants at all material times also did not come out with a case that the appellants were the employees of any departmental canteens run or managed by the Corporation and that it was for the first time that before this Court in the writ petition filed under Article 32 of the Constitution that the appellants had sought to make out the purported case that E they were the employees of the departmental canteens belonging to and/or run and/or managed by the Corporation, these facts are not relevant for the purpose of examining whether, in fact the relationship of employer and employee existed between the Corporation and the appellants.

F (b) The counter further goes on to say that in the meanwhile, the workers working in the canteens started agitating for higher emoluments and/or other benefits and as such, the contractors abandoned their entrustment and the facilities of canteen available to the employees suddenly came to a stop. Thereafter, a cooperative society of the employees of the Corporation known as LIC Employees Cooperative Society Ltd., was formed G and it started managing canteens at different offices of the Corporation in Calcutta w.e.f. 1st September, 1979. While such management was continuing, the workers in the canteens in or about 1981 started agitation for enhancement of their salary and other benefits and submitted a charter of demands both to the said cooperative society and to the Corporation. The H dispute was referred to the Assistant Labour Commissioner (Central) and

in pursuance of a notice dated 15th April, 1982 issued by the Assistant Labour Commissioner, a meeting was held at his behest on 10th May, 1982 with a representative each of the canteen workers' union and of the Corporation. The employees' cooperative society, however, did not participate in the conciliation proceedings. By a notice dated 14th August, 1982 the canteen workers notified that they would go on strike if the demands were not met. Thereafter, the Assistant Labour Commissioner called the Zonal Manager of the Eastern Zonal Office of the Corporation at Calcutta and others concerned, (or a discussion on 10th September, 1982). The canteen workers went on strike w.e.f. 1st December, 1982 and the conciliation proceedings were held for the last time on 15th December, 1982. As a result of the said strike, the canteen facilities available to the employees of the corporation were again stopped. Thereupon, the LIC Employees' Association complained against the stoppage of the said facilities. Pursuant to the said complaint, the Labour Commissioner (Central) took up the matter and issued notice to the respective parties while of course included the respondent- Corporation, for discussion. The central office of the Corporation was also to make some alternative arrangement for running the said canteen. The discussions were held at the conciliation level and the Conciliation Officer submitted his failure report. On 26th March, 1983, the Corporation addressed a letter to the then Zonal Labour Commissioner explaining the entire position. The canteen workers continued their strike and the Corporation had to find out some other alternative arrangement with a view to continue the canteen service rendered to the employees. The Corporation, therefore, by a notice dated 14th March, 1983 called for appointment of contractors to run the canteens and in pursuance thereof, contractors were appointed who in turn took over the responsibility of the canteen workers who were till that time working in the canteens.

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It is, however, the case of the Corporation in the counter that in spite of the failure report submitted by the Regional Labour Commissioner (Calcutta) the dispute was not referred for adjudication and the Central Government accepted that the canteen workers were not the employees of the Corporation but were the employees of the contractors as is evidence from letter dated 6th February, 1984 addressed by the Central Government to the Zonal Manager, Eastern Zonal Office of the Corporation.

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It is also the case of the Corporation in the said counter that the

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A Corporation at no point of time exercised any control over the contractors except those covered by the contracts in writing between the contractors and the Corporation.

From the aforesaid averments in the counter, the following facts emerge. Even from times much prior to the coming into existence of the B respondent-Corporation, canteen services were available to the employees of the insurance companies which were later merged with the Corporation in 1956. Between 1956 and 1978, the canteens were being managed by the canteen committees. Between 1973 and 1979, they were managed by the contractors appointed by the Corporation. In 1979, the management was C taken over by the cooperative society of the employees. In 1981, there was an industrial dispute raised by the canteen workers both with the cooperative society and the corporation. In the conciliation proceedings it is only the Corporation which participated. From 1983 onwards, the canteens were again managed by the contractors appointed by the Corporation with written agreements with them. The Central Government's letter dated 6th D February, 1984 refusing reference of the dispute for adjudication to the Industrial Tribunal makes it clear that the demand raised by the canteen workers was both for increase of wages and for their absorption in the Corporation. The parties to the dispute included the Zonal Manager, Eastern Zonal Office as well as Senior Divisional Manager of the Corpora- E tion at Calcutta. In the letter the Central Government while refusing to refer the dispute for adjudication gave the reason that the canteen employees were reported to have been employed by the cooperative society and not by the LIC and, therefore, there was no employer-employee relationship between the canteen employees and the LIC. In other words, F the Central Government had taken the stand that the employees concerned were not the employees of the contractors but of the employee's cooperative society. Although this cannot be taken as the conclusive finding on the issue, it has relevance of its own in the context of the facts which have emerged in the matter of the employment of the canteen workers.

G (c) We have then a copy of the agreement dated 15th June, 1983 entered into between the Corporation and the contractor, and the Corporation has admitted that similar agreements were entered into with the later contractors from time to time. The contents of the specimen of the agreement are revealing for our purpose. (i) The agreement is entered into H exclusively between the contractor and the Corporation and there is no

other party to the contract. The preamble of the agreement begins as follows : "Whereas the Life Insurance Corporation of India, Calcutta Divisional Office.... is desirous of running a canteen by a contractor on approved terms and conditions at ..... and whereas the said contractor has accepted the said terms as offered to him.... It is hereby declared and agreed as follows". It is, therefore, clear from the preamble itself that it is the Corporation and not the employees of the Corporation or their union or cooperative society which was desirous of running the canteen and which had engaged the contractors; (ii) The Corporation was desirous of running the canteen through a contractor on the terms offered to him by the Corporation. In other words, the contractor is only an agent of the Corporation; (iii) Clause (1) of the agreement shows that contract deals with quality of foodstuff, tea, coffee and other permissible drinks to the employees of the Corporation and the contract will remain operative for a period of one year only from the date of the contract; (iv) By clause (2), the Corporation undertakes to provide to the contractor free of cost, space, tables, chairs, fans, lights and water, although the cost of fuel or gas charges were not to be borne by the Corporation; (v) Clause (3) makes it clear that the foodstuff was to be cooked and prepared inside the premises of the canteen and no outside foodstuff except cold drinks would be sold in the canteen. Clause (4) makes it obligatory on the contractor to maintain regular supply of quality food while clause (5) provides that the existing price of the foodstuff, tea, coffee etc. should be continued for a period of about six months from the date of the contract and revision will be considered thereafter or even before by discussion with the canteen committee as well as well with the contractor; (vi) Clause (6) makes it clear that the fittings, furniture and fixtures of the canteen shall belong to the Corporation's concerned office and removal of the above in any circumstances was impermissible; (vii) Clause (8) states that the caution money is to be kept with the Corporation as interest free deposit and the question of revision or adjustment of such deposit will arise either at the time of the termination of the contract or at any time earlier should the Corporation decide in the event of any loss or damage; (viii) Clause (9) is important in that it states that it is the Divisional Office of the Corporation which reserves the right to add to, alter or rescind the terms and conditions of the contract and also to advise on any matter connected with the canteen; (ix) Clause (11) then stipulates that the canteen shall not be kept open for counter service but only floor service shall be allowed and no

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A employee shall be allowed to use the canteen except during the lunch hours.

The aforesaid terms of the contract further make it clear that the Corporation has the dominating say in dictating the terms and conditions of the contract and that apart from the fact that the Corporation alone is B a party to the contract and neither the Corporation's employees nor any cooperative society of the employees, it is the Corporation which has the right to continue or terminate the contract and also to modify and dictate the new terms of the contract. This is the state of affairs which has been continuing at least from 1983.

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(d) It is also apparent from the history of the management of the canteen that it was managed through different mechanisms such as the canteen committee, cooperative society and the contractor. During the major period from 1973 to 1979 and thereafter from 1983 onwards, the contractors have been on the scene. Although, we do not have the D specimen of the contract that was entered into with the contractors from 1973 to 1979, even if it is presumed that the contractors were appointed during that period by the Canteen committees, it is not disputed that even these canteen committees were controlled by the Corporation and were manned by the Corporation's officers.

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(e) What is further, in the rejoinder filed by the appellants before the Division Bench of the High Court it was specifically averred in Paragraph 6 thereof that the job done by the canteen employees was of perennial nature and was incidental to the running of the main business of the Corporation. It was being done by the Corporation through their F intermediaries - sometimes by contractors, sometimes by cooperative society and sometimes by canteen employees themselves. The intermediaries came and went but the employment of the workers under the Corporation remained constant. These averments have not been denied by the Corporation.

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(f) In the Writ petition filed by the appellants, further, it was averred that the employees of the Corporation at all its establishments, are provided with facilities of canteen by the Corporation for more than a few decades and as such the provision of canteen facilities was a condition of service of the employees of the Corporation and that by usage and custom H the benefits of canteen facilities had become the conditions of service and

that the running of the canteen was incidental to the running of the business of the Corporation. This is not controverted specifically by the Corporation in its reply filed before the Court. A

(g) In addition, there are certain other facts which indicate that it was the Corporation which was taking interest in not only managing the canteen but also in the constitution of the committees for management of the canteens. The appellants have produced a letter dated 14th March, 1983 addressed by the Additional Zonal Manager of the Corporation to the employees of the Corporation who were elected to the canteen committee to inform them that they had been so elected and hoping that their help and cooperation will strengthen the committee in the discharge of its duties. If the Corporation had nothing to do with the management and the constitution of the committees and their election, there was no reason for the said functionary to address such letter to the elected members of the Committee. The letter shows that even in organising and electing the canteen committees, the Corporation was playing its functional role. B C D

(h) There is further a letter dated 22nd August, 1983 addressed by the very same functionary to one M/s. S. Mistry in the matter of supply of three black-boards. The letter shows that the quotations for the black-boards for the canteen were invited by the Corporation and the order for the supply of the same was also placed by it and the bill was also to be paid by it. E

11. In the face of the aforesaid facts, it is difficult to support the findings of the Division Bench that (a) the canteen is being run by a committee or cooperative society of the staff members of the Corporation (b) the Corporation only agreed to provide space to house the canteen and certain chairs and tables for the use of its staff members, (c) an independent contractor has been appointed to run the canteen (d) and since no letter of appointment has ever been issued by the Corporation and no attendance register is maintained and the salary of the canteen workers is being paid by the independent contractor and not from the funds of the Corporation, there is no employer and employee relationship between the Corporation and the appellants. F G

12. The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been from H

A time to time, taking steps to provide the said services. The canteen committees, the cooperative society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation
B which has been appointing the contractors to run the canteens and entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made
C by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the record
D shows that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have
E remained constant. This is a part from the fact that the infrastructure for running the canteen, viz., the premises, furniture, electricity, water etc. is supplied by the corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor
F service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the Corporation, as
G pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them, only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service, on account
H of the agitation or of strike by the canteen workers, it is the Corporation

which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen has become a part of the establishment of the Corporation. The canteen committees, the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation.

13. The next question is as to what relief the appellants are entitled. As pointed out earlier, the appellants have prayed for the relief of their absorption by the Corporation as its regular employees and also for pay as is paid to the other employees of the Corporation. In view of our finding that the appellants who are the canteen workers in the four offices of the Corporation in Calcutta are entitled to be the employees of the Corporation, the appellants are certainly entitled to the first relief they have claimed. The question, however, is to what service conditions they would be entitled. They have prayed for the minimum salary paid to the employees of the Corporation which necessarily means the minimum salary of the lowest paid employees of the Corporation, i.e., of class IV employees. There would be no difficulty in directing the payment to them of the minimum of the salary paid to the Class IV employees of the Corporation. However, there is distinction between the present service conditions of the appellants and the other class IV employees of the Corporation. For example, the appellants get free food, and free tea. Their hours of service may also differ. There are also different categories of canteen workers such as General Manager, canteen Manager-cum-Salesman, Kitchen Clerk, Canteen Clerk, Halwai, Assistant Halwai, Cook, Bearer, Wash-boy, Sweeper etc. It is not possible for the Court to evaluate the work done by each of the categories. Hence different service conditions will have to be prescribed for the different appellants. The Corporation may have, therefore, to prescribe appropriate service conditions for the canteen workers.

Pending the prescription of such service conditions, the Corporation should pay to all the appellants the minimum of the salary presently paid to its Class IV employees taking into consideration and making allowance

A for the special facilities, if any, available to them and also their special working conditions. In addition, the Corporation should also give them the benefit of the other service conditions available to its Class IV employees.

14. The question further is from which date the appellants should be deemed to have become the employees of the Corporation and should, B therefore, be entitled to the minimum salary and the other benefits. Taking into consideration the relevant facts and circumstances on record, we are of the view that they should be deemed to have become the regular employees of the Corporation from the date of the filing of the writ petition before the High Court and should, therefore, be paid the arrears of salary C and other monetary benefits, if any, from the said date after adjusting the salary and monetary benefits that they may have received. The years of continuous service put in by them even prior to the aforesaid date as canteen workers should, however, be taken into account for the purpose of calculating their retiral benefits.

D We, however, make it clear that the above direction to treat the appellants as the regular employees of the Corporation will be subject to two conditions, viz., (a) that they were above the minimum and below the maximum age limit and medically fit as per the regulations of the Corporation on the date of the filing of the writ petition and (b) that on the date of the filing of the writ petition before the High Court and also during the E pendency of the proceedings, they had put in a minimum of three years continuous service as canteen workers in the canteens in question. For the purposes of calculating the said three years qualifying service and the retiral benefits, the service prior to the attainment of the minimum qualifying age under the Corporation's regulations shall be ignored.

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15. The appeal is allowed in the above terms with no order as to costs.

T.N.A. Appeal allowed.