CASE NO.:
Appeal (civil) 1587 of 2005

PETITIONER:
Canteen Mazdoor Sabha

RESPONDENT:
Metallurgical Engg. Consultants (I) Ltd. & Ors

DATE OF JUDGMENT: 21/08/2007

BENCH:
A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1587 OF 2005

A.K. MATHUR, J.

1. This Appeal is directed against the order passed by the High Court of Jharkhand at Ranchi in Letters Patent Appeal No. 382/1997 whereby the Division Bench by order dated 23rd December, 2003 set aside the order passed by the learned Single Judge as well as the Award of the Industrial Tribunal holding that the workers of the canteen of Metallurigical and Engineering Consultant (India) Ltd. (hereinafter referred to as the Mecon) run by Mecon Welfare Committee be treated at par with the employees working in the VIP Guest House and Tea Club of Mecon and granting them all the benefits given to those employees and to treat them as employees of Mecon. The writ petition was filed by the Canteen Mazdoor Sabha in the Apex Court and this Court by order dated 23rd February, 1987 directed to list the matter after the judgment was pronounced in writ petition Nos. 12143-12214 of 1984. On 19.10.1992, the writ petition came up for final disposal and it was stated in the order that the parties agreed that a joint reference under Section 10(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) be made to the Industrial Tribunal for adjudication of the disputes between Sabha and Mecon. Following are disputes set out in the order :

"1. Whether the employees of canteen engaged and employed by MECON Welfare Committee consisting of the representatives of MECON (Non-executive) Employees' Union, MECON Executive Association and nominees of MECON are entitled to the same service conditions as are applicable to the employees of the VIP Guest House and of the Tea Club who are employed and engaged by MECON?

2. If so, from what date?

3. In view of the nature of work performed by the Canteen employees engaged and employed by MECON Welfare Committee, are they justified in law in asking for parity with the employees of MECON working in the VIP Guest House and the Tea Club keeping in view that the total number of the canteen employees are only 25 and the said Canteen run by Mecon Welfare Committee is a non-statutory and non-recognised canteen?"

Thereafter, the State Government was directed to refer the disputes to the Industrial Tribunal under Section 10(2) of the Act for adjudication. The Tribunal raised the following points for consideration:

"(i) Whether the present reference is bad in law and on facts.?

(ii)Whether the relationship of employer and employees exists in between the management of Mecon or the management of Mecon (SAIL) Welfare Committee and the employees of Mecon Canteen, and

(iii) Whether the employees of Mecon Canteen are entitled to get pay scale and other benefits which pay scale and other benefits are made available to the employees of VIP Guest House as well as the employees of Tea Club of Mecon?

2. The Tribunal after recording necessary evidence and hearing both the parties held that neither the reference was bad in law nor on facts, relationship of employer and employees existed between the management of Mecon and the workmen of Mecon Canteen and that the workmen of Mecon Canteen are entitled to get pay scales and other benefits which were/are available to the workmen of Mecon VIP Guest House and Mecon Tea Club from the dates of appointments of the concerned workmen. This award was challenged by the MECON by filing writ petition in the High Court. and submitted that the Tribunal had misdirected itself in framing the question. It was said that the question referred as directed by the Supreme Court clearly implied that the workers of the canteen were employed by the Mecon Welfare Committee, distinct from MECON and the question was whether those persons were liable to be treated as employees of the MECON. Since the question was wrongly framed, therefore, the wrong answer has been given by the Tribunal. This was opposed by the Canteen Sabha and a preliminary objection was raised to the effect that the writ petition was not maintainable. Learned single judge dismissed the preliminary objection of the canteen Sabha and upheld the order of the Tribunal and declined to interfere under Article 226 of the Constitution of India. Aggrieved against this order the MECON approached the division bench by filing the appeal, and the division bench after properly construing the matter came to the conclusion that the canteen was run by the Canteen Welfare Committee for the welfare of the staff and workmen of Mecon. Therefore, there was no Master and servant relationship between the employees of the Canteen and Mecon, and as such they are not entitled to the same service benefits as are admissible to the employees of the MECON serving for the VIP Guest House or for the Tea Club. Consequently, the Division Bench set aside the order of the Tribunal as well as the order of the single Judge and dismissed the writ petition. Hence the present appeal by the Canteen Mazdoor Sabha.

3. We have heard learned counsel for the parties & perused the record.

4. The basic question before us is whether these canteen employees are part of Mecon or not. There is no two opinion in the matter that the canteen is not managed by the management of Mecon. The point which ought to have been addressed by the Tribunal as well as by the Single Judge of High Court was what is the co-relation between the management of the canteen with the management of Mecon. Therefore, in order to answer this question

whether the employees of the canteen are equated with the employees of Mecon the Tribunal and the Single Judge of High Court should have addressed the question whether there is master and servant relationship between the employees of the canteen with the management of Mecon. If that is not established, then there is no question of seeking any parity with the pay scale of the employees of Mecon. Simply because the canteen workers are discharging same duties as are being discharged by the employees of the V.I.P.Guest House or the Tea Club, that will not serve the purpose. On the evidence it appears that there is no such master and servant relationship between the two. In the present case, from the facts it is more than evident that the employees of canteen are appointed by the Canteen Welfare Committee and not by Mecon. Therefore, the canteen was not being run either under a statutory obligation or an obligation arising out of any standing order or other binding circulars of Mecon. It was also pointed out that there is no evidence to show that providing of canteen service was a part of the service conditions of the employees of Mecon. There is no contract between the Mecon with the employees in the canteen to this effect. Therefore, the learned Division Bench correctly approached the matter and rightly addressed whether there exists any relationship of master and servant between Mecon and the Canteen workers. The admitted facts are that the Management of Mecon had not recognized the Union of employees of the canteen. The day to day sales are deposited in the account of the Canteen Welfare Committee. The workmen of the canteen are never transferred either to the VIP Guest House or to the Tea Club or vice versa. The workmen at the VIP Guest House and Tea Club are appointed by the Mecon. There was no bank account given to the workmen employed in the canteen by the Management of Mecon and their salaries were not transferred to their respective bank accounts by Mecon unlike in the case of the employees of the VIP Guest House and the Tea Club. Since there is no relationship of master and servant between the employees of the canteen and Mecon, therefore, there is no question of giving them the salary at par with that of the employees of Mecon. These controversies have been put to rest long back and this Court has made a distinction between the statutory canteens and non-statutory canteens which are required to be established either by the statute, they stand on one footing and the other canteen which is run by the Welfare Committee stands on a different footing. This distinction has been maintained right from the beginning i.e. in M.M.R.Khan & Ors. V. Union of India & Ors. [1990 (Supp.) SCC 191]. In that case their Lordships have made a distinction that the canteens run by different railway establishments are classibiable into three categories i.e. (i) statutory canteens, (ii) non-statutory recognised canteens and (iii) non-statutory non-recognised canteens. Their Lordships said that the employees of the non-statutory non-recognised canteens stand on a different footing and are not entitled to claim the status of railway employees. It was observed as under:

" 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 work. 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."

However in this case, this Court gave relief on factual metrix. Similarly, in Employers in relation to the Management of Reserve Bank of India V. Workmen [(1996) 3 SCC 267], similar observation was made by a three Judge Bench of this Court wherein the issue involved was whether the workers engaged in the canteens of the

Reserve Bank of India can be treated as employees of the Reserve Bank of India and their services can be regularized or not. Their Lordships said that since these workers are not under the disciplinary control of the Reserve Bank of India and there existed no 'master and servant' relationship between them, therefore, they are not entitled to the same service conditions as are admissible to the employees of the Reserve Bank of India. In this connection, their Lordships observed that the Bank has a very limited role regarding the functioning of the Welfare Committee which is managing the canteen and it does not have any control whatsoever over the employees engaged by the Committee so far as taking any disciplinary action against any particular employee is concerned. The recruitment of the workers for the canteen is made by the Canteen Committee and the attendance record as well as the sanctioning of leave to the workers is done by the committee. The only role played by the Bank in the running of the canteen is the nomination of the three members to the Committee. It was also observed that there is common ground that the canteen run by the Implementation Committee (Canteen Committee) is not under any legal obligation. There is no right in the Bank to supervise and control the work done by the persons employed in the Committee nor has the Bank any right to direct the manner in which the work shall be done by various persons. The Bank only exercises a remote control. Therefore, their Lordships observed as follows :

" Therefore, in the absence of any obligation, statutory or otherwise, regarding the running of a canteen by the Bank and the details relating thereto similar to Factories Act or the Railway Establishment Manual, and in the absence of any effective or direct control in the Bank to supervise and control the work done by various persons, the workers in the canteen run by the Implementation Committee (Canteen Committee) cannot come within the ratio of M.M.R.Khan case."

The decision in M.M.R.Khan case (supra) was explained by this Court by a subsequent three Judge Bench.

5. Similarly, in State Bank of India & Ors. V. State Bank of India Canteen Employees' Union (Bengal Circle) & Ors. [(2000) 5 SCC 531], their Lordships observed that in order to provide canteen facilities by providing subsidy is altogether different from running the canteen. Their Lordships observed as follows :

" Presuming that the privilege of providing canteen facilities to the employees exists, yet it cannot be held that the Bank should provide the said facility by running a canteen by itself. To promote canteen facilities by providing subsidy or other facilities is altogether different from running the canteen. Running of a canteen in a small branch having staff strength less than a particular limit may not be economical, but may be a waste. There is a vast difference between "promotion" and "providing". Further, the appointment of the employees by the Bank has been regulated by the State Bank of India General Regulations, which are statutory Regulations framed by Reserve Bank of India with the previous sanction of the Central Government in exercise of powers conferred by Section 50(3) of the State Bank of India Act, 1955. In the case of employees of canteens run by LICs, the Bank does not have any control in their appointment and the aforesaid Recruitment Rules are not required to be observed."

Similarly, in State of Haryana & Ors. V. Charanjit Singh & Ors. [(2006) 9 SCC 321], another three Judge Bench of this Court had occasion to consider the matter with regard to Article 39(d) of the Constitution of India i.e. 'equal pay for equal work'. Their Lordships said that there must be everything identical and equal. The concept of 'equal pay for equal work' has undergone a sea of change in series of subsequent decisions. Their Lordships after reviewing all the case laws on the subject observed as follows :

" Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The finding in Devinder Singh case, (1998) 9 SCC 595, that for similar work the principle of equal pay applies, cannot be accepted. Equal pay can only be given for equal work of equal value. The principle of "equal pay for equal" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purpose of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The view that there cannot be discrimination in pay on the ground of differences in modes of selection taken in Bhagwan Dass case, (1987) 4 SCC 634, cannot be accepted. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a different. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on different in educational qualifications justifies a different in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a different. Thus normally the applicability of this principle must be lest to be evaluated and determined by an expert body. These

are not matters where a writ court can lightly interefere."

Therefore, their Lordships after reviewing all the judgments have considered all the facets of the principle of Article 39(d) of the Constitution of India.

6. Now, adverting to the facts of the present case, the question which was framed by this Court while remitting the matter for reference clearly stated, which has been reproduced above, whether the employees of the canteen engaged and employed by MECON Welfare Committee consisting of the representatives of MECON (Non-executive) Employees' Union, MECON Executive Association and nominees of MECON are entitled to the same service conditions as are applicable to the employees of the VIP Guest House and of the Tea Club who are employed and engaged by MECON? Therefore, in order to bring them at par with the employees of the V.I.P.Guest House and Tea Club of Mecon, one has to decide what is the relationship of the employees of the canteen with the management of Mecon. Learned counsel for the appellant submitted that the Division Bench has gone wrong and should not have gone into the question of relationship of employees of the canteen with that of the management of Mecon. In fact, without first crossing this hurdle it was not possible to come to any decision whether the employees who are recruited by the Mecon management at V.I.P.Guest House or Tea Club can be treated at par with the employees of the canteen of Mecon and they should be given the same pay scale as given to the employees of the V.I.P.Guest House or Tea Club. In fact this question was inherent in the questions framed by this Court and the Tribunal also framed question whether relationship of employer and employee existed between the management of Mecon and employees of the canteen managed by the welfare committee. Therefore, it is not correct on the part of learned counsel for the appellant to submit that this question should not have been gone into and if this question has been wrongly framed or wrongly referred before the Tribunal then the matter should have been directly approached by the Management of the Committee before this Court. The argument of learned counsel for the appellant is totally misconceived. In order to grant equal pay for equal work one has to first address the question whether there is any master and servant relationship between the canteen employees and Mecon. In fact, without going into this question, other questions could not have been answered. In this view of the matter, the Division Bench correctly approached the matter and found that since there is no master and servant relationship between the employees of the canteen and Mecon, the workers of the canteen are not entitled to claim the salary which is given to the employees serving in the V.I.P.Guest House or Tea Club.

7. As a result of our above discussion, we are of opinion that the view taken by the Division Bench of the High Court appears to be correct and there is no ground to interfere with the order of the High Court. Consequently, the appeal fails and is dismissed with no order as to costs.