

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8239 OF 2019

**Mahanagar Telephone Nigam Ltd.
Through General Manager (South)**

Sawla Chambers, 40, C. P. Street,
Fort, Mumbai 400 001.

... Petitioner

V/s.

**General Secretary,
Bombay Telephone Canteen Employees
Association, C/o Prabhadevi Telephone
Exchange Canteen, 1st Floor,
Dadar (West), Mumbai 400 028.**

... Respondent

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Ms. Disha Parekh a/w Ms. Apeksha Sharma i/b NDB
Law for the Petitioner.

Mr. Vaibhav Sugdare a/w Mr. Vishwabhusan Kamble,
Mr. Shaikh Yusuf Ali & Mr. Aniesh Jadhav, for
Respondents.

Mr. Adhate & Mr. Suryawanshi, Representatives of
MTNL are present.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 2, 2026

PRONOUNCED ON : APRIL 9, 2026

JUDGMENT:

1. By the present Petition instituted under Article 227 of the Constitution of India, the petitioner assails the Award dated 22 August 2017 rendered by the Central Government Industrial Tribunal No. 2, Mumbai in Reference No. CGIT-2/154 of 1998. By

the said Award, the Tribunal directed the management to regularize the services of Shri Narayan M. Sanil with effect from 1 May 1982 and Shri Harish N. Poojary with effect from 1 May 1986, and further directed payment of arrears of wages and allowances after due adjustment of amounts already disbursed.

2. The factual matrix giving rise to the present petition indicates that the industrial dispute was referred by the Central Government in exercise of powers under clause (d) of sub-section (1) read with sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, vide Order dated 30 November 1998 issued by the Ministry of Labour and Employment, Government of India. The terms of reference required adjudication on the question, as to whether the demand for regularization in service of Shri Narayan M. Sanil and Shri Harish N. Poojary, employed as Wash Boys, was legal and justified, and if not, the nature of relief to which the workmen were entitled.

3. Upon receipt of the reference, the Tribunal issued notices to the parties, who entered appearance through their respective representatives. The Bombay Telephone Canteen Employees Association, acting through its General Secretary, filed its Statement of Claim asserting that the concerned workmen were engaged as Wash Boys in the departmental canteen of Mahanagar Telephone Nigam Ltd. situated at Saawla Chambers, Mumbai. It was pleaded that Shri Narayan M. Sanil commenced service in January 1981 and Shri Harish N. Poojary in January 1986, and that both had rendered continuous service without interruption while working against regular and permanent vacancies. It was

further contended that despite long years of continuous service, their services were not regularized, notwithstanding several oral and written representations submitted to the management, which remained unaddressed.

4. The Association further averred that, pursuant to a judgment of the Supreme Court, a majority of canteen workers were accorded the status of departmental employees with effect from 1 October 1991. It was contended that although the concerned workmen were in service as on the said date, they were denied the benefit of departmentalization and continued to receive meagre wages without the advantages flowing from the recommendations of the 3rd and 4th Pay Commissions. It was also stated that a formal demand seeking regularization and grant of Pay Commission benefits was raised on 23 September 1996 before the General Manager (South), MTNL. In the absence of any response, the Association approached the Regional Labour Commissioner (Central), Mumbai by communication dated 24 July 1997, thereby raising an industrial dispute.

5. Upon failure of conciliation proceedings, the appropriate Government referred the dispute to the Tribunal for adjudication. It was the case of the workmen that they became entitled to regularization upon completion of 120 days of continuous service, namely with effect from 1 May 1982 and 1 May 1986 respectively, along with all consequential benefits. It is noted that initially the management failed to appear despite due service of notice and did not file its Written Statement, as a consequence of which an ex parte Award came to be passed holding the demand for

regularization to be legal and justified. Subsequently, however, the reference was restored pursuant to an order passed in Miscellaneous Application No. CGIT No. 2/1/2000. Thereafter, the management entered appearance and filed its Written Statement at Exhibit 13, contesting the claim in its entirety. It was contended that the concerned workmen were engaged by the departmental canteen committee on daily wage basis as Wash Boys, and therefore no right to seek regularization against the establishment of MTNL could arise. The management further contended that recruitment to posts under MTNL is governed by prescribed rules requiring sponsorship through the employment exchange and compliance with other procedural formalities, which were admittedly not followed in the present case. It was also asserted that the concerned workmen were not appointed pursuant to any formal work order issued by a competent authority of MTNL, and that their names did not figure either on the muster roll or on the payroll of the establishment. On these premises, it was contended that the claim for regularization as well as for extension of benefits under the 3rd and 4th Pay Commission recommendations was untenable and liable to be rejected. The management further denied the assertion that the concerned workmen were working against regular vacancies or that they acquired the status of departmental employees with effect from 1 October 1991 pursuant to any judgment of the Supreme Court. The plea of continuous service since 1981 and 1986 was also specifically disputed. On these grounds, the management sought dismissal of the reference with costs.

6. In rejoinder at Exhibit 14, the concerned workmen controverted the contentions of the management and asserted that they were in fact engaged by MTNL and not by any canteen committee. It was contended that in view of such engagement, the law laid down by the Supreme Court with respect to canteen employees squarely applied. It was further submitted that MTNL constitutes an “industry” within the meaning of the Industrial Disputes Act, 1947, and that the canteen employees are industrial workmen under the said Act. It was clarified that the workmen were neither employed in a Central Government office canteen nor were they holders of civil posts, and therefore the Tribunal possessed the requisite jurisdiction to adjudicate the dispute.

7. The Association further asserted that several similarly situated workmen had been granted regularization with effect from 1 October 1991 following the decision of the Supreme Court, notwithstanding the absence of formal appointment orders or recruitment through the employment exchange. Such workmen were also extended the benefits of the 3rd and 4th Pay Commission recommendations. It was, therefore, contended that the present workmen were similarly placed and entitled to identical reliefs, leading to the filing of the present petition.

8. Learned Advocate appearing for the petitioner submits that the Tribunal has erred both in law and on facts in recording a finding that there was an admission on the part of the management witnesses to the effect that salaries of the canteen employees were paid by MTNL. It is contended that no such admission is borne out from the evidence on record. On the

contrary, the testimony of the management witnesses, properly appreciated, indicates that the salaries of the canteen employees were not disbursed by MTNL. It is further contended that the Tribunal committed a serious error in holding that the concerned workmen were in continuous service without interruption since the years 1982 and 1986 respectively. It is submitted that although the dispute was raised on the premise that the workmen were employed in the departmental canteen at Saawla Chambers, Mumbai, the workmen themselves admitted in their cross-examination that they were not working in the said canteen, but were in fact engaged in another canteen at Cuffe Parade under a contractual arrangement. In light of such admissions, it is submitted that the finding recorded by the Tribunal regarding continuous service is perverse and contrary to the evidence available on record.

9. It is further submitted that the concerned workmen have admitted that, as on the date of the Award dated 22 August 2017, they were not working in any of the departmental canteens of MTNL. It is contended that despite such clear admissions, the Tribunal proceeded to grant relief in favour of the workmen, which renders the Award unsustainable. The petitioner further contends that the Tribunal erred in holding that since the canteen committee had engaged the workmen, and as the said committee formed part of MTNL, the workmen *ipso facto* became employees of MTNL. Such a finding, it is submitted, is contrary to settled legal principles. It is contended that the canteen committee had neither authority nor jurisdiction to create posts in MTNL or to effect

recruitment on its behalf. The mere fact that the canteen was permitted to function within the premises of MTNL as a welfare measure, and that the committee engaged certain persons for its operation, does not lead to the conclusion that such persons thereby acquired the status of employees of MTNL. On the aforesaid grounds, it is submitted that the impugned Award suffers from errors apparent on the face of the record and warrants interference in exercise of supervisory jurisdiction, and is therefore liable to be set aside.

10. Per contra, learned Advocate appearing for the respondents submits that the evidence on record clearly establishes that the canteen in question is a departmental canteen of MTNL. It is pointed out that the witnesses examined on behalf of MTNL have admitted that the canteen committee is constituted by officers of the Telephone Exchange and that funds for running the canteen are provided by the Welfare Department of MTNL. It is further submitted that the management witnesses have admitted that the canteen is run by the Department and that the salaries of the employees are paid by the Department. On the basis of these admissions, it is contended that the concerned canteen employees must be held to have been appointed by MTNL and are therefore employees of MTNL within the meaning of the Industrial Disputes Act, 1947. It is further submitted that in an earlier dispute of a similar nature raised by the Bombay Telephone Canteen Employees Association, the Tribunal had passed an Award which was subsequently upheld by the High Court as well as the Supreme Court. It is, therefore, contended that the Tribunal had the

requisite jurisdiction to entertain and adjudicate the present reference.

11. The respondents further submit that the Special Divisional Engineer (C.T.), MTNL, had furnished information to the Assistant General Manager regarding the concerned workmen, which demonstrates that they were employed in the canteen since the years 1981 and 1986 respectively. It is submitted that the attendance records maintained by MTNL on a month to month and year to year basis clearly establish that the workmen were in continuous employment during the relevant period. It is further contended that similarly situated canteen employees have already been granted regularization in pursuance of the judgment of the Supreme Court. It is also submitted that the information supplied by the Special Divisional Engineer (Administration), Mumbai to the Assistant General Manager (Administration), MTNL indicates that Shri Narayan M. Sanil was not regularized earlier on the ground that he was underage at the relevant time. It is contended that such a ground cannot operate as a valid impediment to deny him the benefit of regularization.

12. It is lastly submitted that the concerned workmen have been continuously employed in the departmental canteen of MTNL and there is no material on record to indicate that they were engaged by any independent or third-party agency. Reliance is placed on the judgment of the Supreme Court in *Mahanagar Telephone Nigam Ltd. vs. Bombay Telephone Canteen Employees Association* to contend that MTNL is under a legal obligation to regularize the services of such canteen employees. It is further submitted that

other similarly placed employees have already been granted such benefit. On these premises, it is contended that the claim for regularization along with consequential benefits is legal, justified, and calls for no interference.

REASONS AND ANALYSIS:

13. I have considered the rival submissions with care and I have gone through the material placed before the Tribunal. The petitioner says that the Tribunal has drawn wrong inferences from the evidence and has treated the workmen as employees of MTNL without proper basis. The respondents say that the record itself shows that these were not outside labour, but canteen workmen of MTNL, and that their long service could not have been ignored. The question, therefore, is whether the Award is supported by the evidence and the law, or whether it suffers from such grave error that this Court should interfere under Article 227.

14. The first submission on behalf of the petitioner is that the Tribunal wrongly recorded an admission that the salaries of the canteen employees were paid by MTNL. This submission cannot be accepted in a simple and broad manner, because the evidence has to be read as a whole and not by taking one line in isolation. It is true that the management disputes such payment and says that no witness admitted direct payment by MTNL in the sense of regular salary to all the workmen. But the respondents have pointed to the evidence of management witnesses showing that the canteen was treated as a departmental canteen, that the committee was formed by officers of the Telephone Exchange, and that the Welfare

Department provided funds for its running. If the canteen was run with departmental funds and under departmental control, the Tribunal was not wrong in treating that evidence as relevant for deciding the real employer. The form of the answer in cross-examination cannot be taken away from the rest of the record.

15. The next contention of the petitioner is that the Tribunal erred in holding that the concerned workmen were in continuous service since 1982 and 1986 respectively. On this aspect also, the Court must see whether the finding is perverse, or whether it is a possible finding on the evidence. The petitioner relies upon the cross-examination of the workmen, where it is said that they admitted that they were not working in the Saawla Chambers canteen, but were working in another canteen at Cuffe Parade under a contractual arrangement. Even if this answer is accepted, it does not by itself answer the whole issue. The real question is not only the place of work, but also the nature of the engagement and whether the workmen were in the canteen system of MTNL throughout. The respondents have produced the material said to have been furnished by MTNL officers themselves, including the attendance records maintained month-wise and year-wise, which indicate service from the years 1981 and 1986. If these records are part of the management record, they cannot be brushed aside lightly. A finding of continuous service based on such material cannot be called wholly unreasonable.

16. The petitioner has then argued that the workmen admitted that they were not working in any departmental canteen of MTNL when the Award was passed on 22 August 2017, and therefore no

relief could have been granted to them. This submission also needs a careful answer. A workman's present place of work, or even the fact that he was not in service on the date of Award, does not automatically destroy a claim which had already matured on the basis of earlier continuous service. The Tribunal was concerned with the legality of the denial of regularization from an earlier point of time. If the workmen had already completed the service required under the settled practice and the relevant law, later discontinuance or a change in the arrangement would not necessarily wipe out the claim. The relevant inquiry was whether the claim for regularization had substance on the facts proved before the Tribunal. That inquiry was answered in favour of the workmen.

17. Much was also said by the petitioner on the legal position that the canteen committee had no authority to create posts in MTNL or to appoint employees on its behalf. That proposition, stated generally, is correct. A committee which has no power to create sanctioned posts cannot, by itself, create a statutory right. The Tribunal did not appear to proceed only on the bare fact that the committee engaged the workmen. It proceeded on the larger factual picture, namely that the canteen was a departmental canteen, that it was run with departmental involvement, that funds were provided by the welfare side of MTNL, and that the management records themselves showed long service of the workmen. In such a situation, the Tribunal was entitled to look beyond the label of the committee and see the real nature of employment. Mere absence of a formal appointment letter does

not always conclude the issue where the entire service arrangement is otherwise shown by record and conduct. The law does not permit the employer to take benefit from an arrangement which it itself controlled, and then deny responsibility only because the paper of appointment was not issued in the usual form.

18. The respondents, on the other hand, rely strongly on the admissions of the management witnesses. They say that the canteen was admitted to be a departmental canteen, that the committee was appointed by officers of the Telephone Exchange, and that the Welfare Department supplied the funds. They further say that the management witnesses admitted that the canteen was run by the department and the salaries of the employees were paid by the department. If these admissions read together, they do support the conclusion that the canteen was not an outside independent canteen, but one functioning under the administrative umbrella of MTNL. The Tribunal was, therefore, justified in treating the workmen as linked to MTNL and not as strangers to it.

19. The respondents also rely upon the earlier award in a similar dispute raised by the Bombay Telephone Canteen Employees Association, which was confirmed by the High Court and the Supreme Court. Where a similar class of employees has already been recognized in earlier litigation, the Tribunal is not acting in vacuum if it follows the same legal approach, so long as the facts are comparable. The respondents say that similarly situated canteen employees were already regularized pursuant to the

judgment of the Supreme Court. That also strengthens the case of consistency and equal treatment. The law does not favour a result where some workers in the same establishment are given the benefit of regularization and others are denied the same benefit without a good reason.

20. The submission regarding Shri Narayan M. Sanil being earlier not regularized on the ground of being underage is also not of much help to the petitioner. If the only obstacle earlier was age, and that obstacle no longer existed or was not a legal bar to the claim when the question of regularization was examined, the Tribunal could not deny relief merely on that historical ground. The real issue was whether he had worked for the required period and whether his service was part of the canteen employment of MTNL. The answer given by the Tribunal was in the affirmative, and I do not find it to be without support.

21. The scope of interference under Article 227 is also limited. This Court does not sit as a regular appellate court to re-weigh every piece of evidence and substitute its own view just because another view is possible. Interference is justified only where the finding is perverse, wholly unsupported by evidence, or based on complete misreading of the record. Here, the Tribunal has considered the oral evidence, the admissions, the attendance records, the nature of the canteen, and the earlier legal position. Even if the petitioner has been able to raise some arguable points, that is not enough. The Award cannot be said to be so irrational or so contrary to the record that it must be set aside.

22. For these reasons, I am of the clear view that the workmen had placed material before the Tribunal to show long and continuous service in the departmental canteen system of MTNL, and the management failed to dislodge that case in a convincing manner. The Tribunal's conclusion that the demand for regularization was justified is supported by the evidence on record and by the legal position flowing from the earlier decision of the Supreme Court relied upon by the respondents. The Petition, therefore, fails. The Award dated 22 August 2017 does not call for interference.

23. In the result, the Petition is partly allowed.

(i) The impugned Award dated 22 August 2017 passed by the Central Government Industrial Tribunal No. 2, Mumbai in Reference No. CGIT-2/154 of 1998 is modified to the limited extent that the direction of regularization of services of Shri Narayan M. Sanil shall take effect from 1 April 1986 instead of 1 May 1982, having regard to the fact that the petitioner-establishment came into existence on 1 April 1982;

(ii) In all other respects, including the direction regarding regularization of Shri Harish N. Poojary with effect from 1 May 1986 and the grant of consequential benefits, the Award is upheld;

(iii) The petitioner shall comply with the modified Award within a period of twelve weeks from the date of this order;

(iv) Rule is made partly absolute in the aforesaid terms. No order as to costs.

(AMIT BORKAR, J.)