

Shabnoor

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

WRIT PETITION NO. 518 OF 2019

**The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, Prabhadevi,
Mumbai 400 028.**

Shri R. P. Yadav, Age 57 Years.

... 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 with Ms. Apeksha Sharma i/b NDB
Law for the petitioner.

Mr. Vaibhav Sugdare with Mr. Vishwabhusan Kamble,
Mr. Shaikh Yusuf Ali & Mr. Aniesh Jadhav, for
respondent.

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 writ petition instituted under Article 227 of
the Constitution of India, the petitioner calls in question the

legality and correctness of the Award dated 4 September 2017 rendered by the Central Government Industrial Tribunal No. 2 at Mumbai in Reference No.CGIT-2/18 of 1999, whereby the Tribunal has directed reinstatement of the concerned workmen with continuity of service along with full back wages.

2. The factual matrix giving rise to the present Petition indicates that the industrial dispute came to be referred by the Central Government in exercise of powers conferred under clause (d) of sub-section (1) read with sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, by Order No. L-40011/1/99/IR (DU) dated 5 April 1999 issued by the Ministry of Labour and Employment, Government of India, New Delhi.

3. The terms of reference, as formulated by the appropriate Government, are as follows: “Whether the action of the employer, Mahanagar Telephone Nigam Ltd., acting through its Chief General Manager at Prabhadevi, Mumbai, in retrenching the services of (1) P.S. Naik, (2) M.T. Masnaik, (3) S.K. Shetty, and (4) S. Kumar, who were employed at the Vile Parle Telephone Exchange, is legal and justified; and if not, to what reliefs are the said workmen entitled?”

4. Upon receipt of the aforesaid reference, the Tribunal issued notices to both parties, who entered appearance through their respective representatives. The Bombay Telephone Canteen Employees Association, acting through its General Secretary, filed its Statement of Claim at Exhibit 7, inter alia asserting that the concerned workmen were appointed as Bearers on 20 April 1983,

1 July 1983, 1 July 1983, and 21 December 1984 respectively, in the departmental canteen at Vile Parle Telephone Exchange of Mahanagar Telephone Nigam Ltd., Mumbai. It was contended that the workmen had rendered continuous and unblemished service without interruption, though no formal letters of appointment were issued to them. It was further averred that prior to 1988, approximately 900 employees were working at the said establishment, necessitating a B-category canteen with a sanctioned strength of 19 employees, although the canteen was being operated with only 14 employees. It was further stated that in February 1988, upon bifurcation of the Vile Parle Telephone Exchange and shifting of the office of the Area Manager to the Jeevan Seva Extension Building at Santacruz (West), Mumbai with effect from 3 February 1988, around 30 staff members were transferred, and the concerned workmen were also transferred to the canteen at the said premises.

5. It was further the case of the Association that in the year 1990, the management decided to operate the canteen at the Jeevan Seva Extension Building through a contractor, and consequently, the concerned workmen were transferred back to the Vile Parle Telephone Exchange canteen with effect from 1 April 1990. Thereafter, the services of the concerned workmen came to be retrenched with effect from 30 September 1990 without issuance of any notice and without payment of retrenchment compensation. It was contended that such action was in clear violation of the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947, as no compensation was paid at the

time of retrenchment. On this basis, it was asserted that the retrenchment was illegal, invalid, and void ab initio, and that the workmen are deemed to have continued in service with entitlement to full back wages and continuity of service. It was further contended that the management reduced the strength of the canteen workforce by retrenching the concerned workmen without issuing the requisite notice under Section 9A of the Industrial Disputes Act, 1947, thereby contravening the provisions contained in Chapter V of the said Act. On this ground as well, the retrenchment was alleged to be vitiated in law.

6. The Association additionally contended that vacancies in the post of Bearers were available at the Vile Parle Telephone Exchange canteen at the relevant time of retrenchment. It was further submitted that the decision of the management to run the canteen at the Jeevan Seva Extension Building through a contractor was contrary to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. On these premises, the retrenchment was impugned as illegal and unjustified, and a relief of reinstatement with full back wages, continuity of service, and all consequential benefits including those arising from the recommendations of the Fourth and Fifth Pay Commissions was sought.

7. The employer, Mahanagar Telephone Nigam Ltd., opposed the claim by filing its Written Statement at Exhibit 10, contending that the concerned workmen were merely casual workers who were neither issued formal appointment letters nor recruited through any recognised procedure such as the employment

exchange. It was further contended that no service rules of MTNL were applicable to them. It was also submitted that the canteen at Vile Parle Telephone Exchange was administered by a departmental canteen committee comprising the Divisional Engineer as Chairman, the Sub-Divisional Engineer as Secretary, and representatives of staff and unions as members. It was asserted that running the canteen was not a statutory obligation but only a welfare measure, and that space was provided within the premises for such purpose. It was further submitted that MTNL provided subsidy to the extent of 70 percent of wages of regular canteen employees having appointment orders from the Department of Telecommunications, while the remaining 30 percent was generated through canteen income. The existence of any employer employee relationship between MTNL and the concerned workmen was specifically denied. MTNL further contended that prior to 31 August 1990, the Vile Parle Telephone Exchange had an employee strength exceeding 500, thereby justifying a B-category canteen requiring 14 employees. However, upon transfer of approximately 230 administrative staff to another building at Santacruz, the strength fell below 500, resulting in reclassification of the canteen from B-category to C-category, which required only 10 employees. In view thereof, the services of the concerned workmen were terminated with effect from the close of working hours on 30 September 1990 by order dated 31 August 1990, following the principle of last come first go. It was contended that the provisions of the Industrial Disputes Act, 1947 were not applicable to such workers. The applicability of Sections

9A and 25F and the provisions contained in Chapter V-B of the Act were specifically denied. It was also denied that the canteen at the LIC Building, Santacruz, had been given on contract in violation of the Contract Labour Act, 1970. The employer therefore prayed for rejection of the reference with costs.

8. The concerned workmen filed their Rejoinder at Exhibit 12, contending that the issue of maintainability of the reference had already been adjudicated by the Tribunal in its earlier Award dated 1 April 1996 in Reference No. CGIT-2/38/1993 pertaining to the same canteen. It was further submitted that conciliation proceedings were undertaken before the Assistant Labour Commissioner, but the same failed due to non participation on the part of the management. It was further stated that upon failure of the Government to refer the dispute thereafter, the Association was constrained to approach the Bombay High Court by filing a writ petition in 1998, and by order dated 12 February 1999, the High Court directed the Government to make an appropriate reference to the Industrial Tribunal. Pursuant to the aforesaid directions, the reference came to be made on 5 April 1999. It was therefore contended that any delay in making the reference was attributable to the inaction on the part of the Government and the management, and not to the workmen, and that no delay or laches could be attributed to them.

9. The learned Advocate appearing on behalf of the petitioner submits that the learned Presiding Officer has failed to appreciate that no enforceable or legally protected right accrued in favour of the concerned workmen so as to claim continuity of service. It is

contended that the services of the workmen stood terminated as far back as 30 September 1990. According to the petitioner, the mere fact that the workmen had rendered intermittent service for a period of approximately six to seven years in a canteen situated within the MTNL Telephone Exchange premises would not, by itself, confer any legal right to claim continuity in service. It is further urged that while directing reinstatement, the learned Presiding Officer failed to consider the material fact that two of the workmen, namely S. Kumar, who expired on 20 May 2001, and Maruti Masnaik, who expired on 25 January 1997, were no longer alive, and therefore the question of reinstatement in their case did not arise. It is submitted that though applications were moved for bringing the legal heirs of the deceased workmen on record, the learned Presiding Officer has erroneously recorded in paragraph 27 of the Award that only one workman, namely Maruti Masnaik, had expired, which, according to the petitioner, reflects clear non application of mind.

10. It is further submitted that the learned Presiding Officer committed an error in holding that merely because a canteen is run as a welfare measure for employees, it would automatically constitute a part of an industrial establishment. It is contended that the employees working at the Vile Parle Telephone Exchange of MTNL were not industrial workmen, and the establishment itself does not qualify as an “industry” in that context.

11. It is urged that the canteen in question was primarily catering to administrative staff, and therefore, the conclusion drawn by the learned Presiding Officer that the said canteen falls

within the ambit of “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947 is wholly erroneous and unsustainable in law.

12. It is further submitted that the total number of employees working in MTNL cannot be taken into account for determining the applicability of Section 25K of the Industrial Disputes Act, 1947. It is contended that the concerned workmen were admittedly not employees of MTNL, but were engaged by the canteen committee. The relief sought pertains to reinstatement in the canteen. Hence, for the purposes of applicability of Chapter V-B of the Act, the relevant workforce would be the number of employees working in the canteen, which was only 19. In such circumstances, it is submitted that the provisions of Chapter V-B would have no application.

13. Per contra, the learned Advocate appearing on behalf of the respondents submits that upon submission of the failure report in the conciliation proceedings, the workmen had a legitimate expectation that the appropriate Government would refer the dispute to the Industrial Tribunal. However, as the Government failed to do so, the Association was constrained to invoke the writ jurisdiction of this Court by filing a petition in the year 1998. It is submitted that it was only pursuant to the order dated 12 February 1999 passed by the Bombay High Court that the appropriate Government made a reference to the Tribunal by order dated 5 April 1999. It is further contended that the Association had taken all necessary steps by raising an industrial dispute through its letter dated 18 September 1990, pursuant to which conciliation

proceedings were conducted by the Assistant Labour Commissioner.

14. It is further submitted that since the management failed to participate in the conciliation proceedings, the same resulted in failure, and accordingly a failure report came to be submitted to the Government in the year 1993. It is, therefore, contended that the delay in making the reference is attributable solely to the inaction on the part of the Government and the management, and not to the workmen. The respondents thus submit that the delay stands sufficiently explained and no laches can be attributed to them. The learned Advocate for the respondents has further placed reliance upon the decision rendered in Appeal No. 21 of 1989 in Writ Petition No. 3298 of 1998 in the case of Bombay Telephone Canteen Employees Association and M.C. Venkatraman and others, wherein the Court, while considering the submissions advanced, observed that the apprehension expressed on behalf of the appellant regarding lack of jurisdiction of the competent authority to adjudicate the dispute, on the ground that the canteen was run departmentally by a State entity, was without merit. The Court further observed that even if such an objection were to be raised, it would not sustain, and in order to dispel such apprehension, a statement was made on behalf of the respondent authorities that no such objection would be raised before the competent authority. In view of the aforesaid observations, it is submitted that the departmental canteen of MTNL would fall within the scope and ambit of “industry” as defined under Section 2(j) of the Industrial Disputes Act, 1947.

15. It is further submitted that the evidence on record clearly demonstrates that the concerned workmen were engaged in or about the years 1983 to 1984 in the canteen at Vile Parle Telephone Exchange, Mumbai, and continued in service without interruption until the date of their retrenchment. It is contended that it is not the case of the management that the concerned workmen had failed to complete 240 days of continuous service within a period of 12 months. The evidence of the Union witness establishes that the workmen were performing duties of a regular and perennial nature. It is also not in dispute that at the time of retrenchment, other employees continued to work at the establishment and were availing the canteen facilities. It is further submitted that the management witness has admitted that the concerned workmen had been working as Bearers since 1983, and has also admitted that at the relevant time, approximately 500 to 700 employees were working at the Vile Parle Telephone Exchange when the services of the concerned workmen came to be terminated on 30 September 1990. It is submitted that the concerned workmen were not given three months' notice as mandated under Section 25N of the Industrial Disputes Act, 1947. It is contended that Chapter V-B of the said Act governs the conditions precedent to retrenchment in certain establishments and mandates that where an establishment employs more than 100 workmen, retrenchment cannot be effected without issuing three months' notice or wages in lieu thereof and without obtaining prior permission from the appropriate Government.

16. It is further submitted that in the present case, no such prior permission was obtained. The management witness has also expressed lack of knowledge regarding compliance with Section 9A of the Act as well as the requirement of obtaining prior permission from the Government. In the absence of such compliance, it is submitted that there is a clear violation of the mandatory provisions of Sections 25N and 25F of the Industrial Disputes Act, 1947, rendering the retrenchment of the concerned workmen illegal and void in law.

REASONS AND ANALYSIS:

17. I have carefully gone through the rival submissions and the record which has been placed before this Court. The controversy is about the very nature of the work of the concerned employees, the character of the canteen where they were working, the effect of their long engagement, and the legality of the action by which their services were brought to an end. The petitioner says that no enforceable right of continuity ever arose in favour of the workmen. The respondents say that the workmen had in fact served for years together, that the dispute had been raised in time, and that the delay in reference was not their fault. On these facts, the first task of the Court is to see whether the Award suffers from any error so serious that it needs interference in supervisory jurisdiction.

18. The submission of the petitioner that the workmen were only casual and intermittent workers cannot be accepted in a mechanical manner. In labour matters, the Court does not look

only at the label put by the management. The real nature of the engagement matters. Here, the evidence placed by the Union and the admissions coming from the management side show that the concerned workmen were working as Bearers in the canteen from 1983 onwards and continued for a long period till their retrenchment on 30 September 1990. The management witness has also admitted that they had been so working since 1983. This is a case of workers who were connected with the canteen work for a substantial period and who were used for duties of regular nature. When such material is on record, it is not possible to say that they had no legal footing at all.

19. The argument of the petitioner that continuity of service could not have been granted merely because the workmen had worked for six to seven years is also not strong on the evidence. Length of service alone may not create a right in every case. But length of service, when read with the nature of duties and the admitted fact that the work was continuing, and the canteen was functioning for the benefit of employees, is an important circumstance. It shows that the workmen were not brought in for a one time or temporary task. They were part of the working arrangement of the canteen for many years. The Award, therefore, cannot be said to have gone wrong only because the workmen were not issued formal appointment letters. In industrial adjudication, absence of a letter is not always the end of the matter. The Court must see the substance and not merely the paper form.

20. The petitioner has placed emphasis on the fact that two of the workmen, namely S. Kumar and Maruti Masnaik, had died before the Award and, therefore, reinstatement could not have been ordered in their favour. That submission has weight so far as the form of relief is concerned. A dead person cannot be physically reinstated. But that fact by itself does not destroy the entire foundation of the claim. If proceedings were already pending and applications were made to bring legal heirs on record, then the claim does not simply vanish. The Tribunal ought to have been careful in recording the correct position regarding the death of the workmen. The petitioner is right that paragraph 27 of the Award appears to contain a mistake in stating that only one workman had expired, when the material placed before the Court shows that two had died. That does show some lack of care in narration. Yet, that factual error by itself does not answer the larger issue whether the retrenchment was legal. The main issue remains untouched by that mistake.

21. The challenge of the petitioner that the canteen was only a welfare measure and therefore could not be treated as part of an industrial establishment also does not carry the matter much further. A canteen run inside an establishment for the benefit of the employees is not some separate and detached activity in every case. Its character depends upon the facts. Here, the canteen was not a private outside unit. It was a departmental canteen within the premises of MTNL, and the evidence shows that it catered to the staff working there. The argument that the staff of MTNL were not industrial workers and that MTNL was not an industry in that

context cannot be accepted in a narrow way, because the canteen itself was an integral facility connected with the establishment. Once the canteen is so linked with the establishment and functions for the benefit of the employees, the conclusion of the Tribunal that it falls within the scope of Section 2(j) cannot be lightly disturbed unless it is shown to be wholly unreasonable. On the record before me, that conclusion is not shown to be perverse.

22. The petitioner has also argued that for the purpose of Chapter V-B, the relevant strength is not the total strength of MTNL, but only the strength of the canteen. This is a more substantial submission and must be noticed carefully. If the canteen alone is treated as the unit, then the number of workers may be small. But the respondents have pointed out that the canteen was part of the departmental set-up of MTNL and that the strength of the establishment at the relevant time was much above the threshold. The management witness has admitted that at the time of retrenchment there were about 500 to 700 employees working at Vile Parle Telephone Exchange. That is a significant fact. It shows that the canteen was not running in isolation from the larger establishment. The canteen was there because the larger establishment required it. The very justification for the canteen depended upon the strength of the employees in the establishment. The reclassification theory put forward by the management may have some surface appeal, but the record does not show that the work of the canteen had become truly independent or that the workers were outside the protection of the Act.

23. The respondents are also right in saying that the workmen had raised the dispute as early as 18 September 1990 and that conciliation was thereafter initiated. The management did not participate in those proceedings. A failure report was sent to the Government in 1993. The workmen could not be blamed for the Government not making an immediate reference. The record further shows that the respondents had to approach this Court in 1998 and only after the order dated 12 February 1999 did the Government make the reference on 5 April 1999. This sequence matters. Where the workmen have acted, and the process has moved at a slow pace because of the Government and the management, it is not proper to fasten laches on the workmen. The delay has been explained by the material on record. I do not find any reason to say that the respondents slept over their rights.

24. Much was said by the petitioner that the concerned workmen were engaged by the canteen committee and not by MTNL directly. That fact, even if accepted in the manner suggested, does not end the matter. In labour law, the absence of a direct formal appointment is not always decisive where the work is done in the premises of the establishment, for its benefit, under a structure controlled by the establishment, and where the canteen forms part of the working arrangement of that establishment. The evidence, as placed before the Tribunal, shows that the workmen were functioning as Bearers in the canteen for years. The management cannot, on one hand, use their labour for long years and, on the other hand, deny all responsibility merely by saying that the canteen committee engaged them. The Tribunal was therefore

justified in looking beyond this form and in examining the real relationship.

25. The contention based on Section 9A and Section 25N also has to be dealt with in the light of the admitted facts. The petitioner says that Chapter V-B does not apply because only the canteen strength should be counted. The respondents say that the establishment strength was much above the statutory threshold and that no prior permission was taken. On the record, the management witness has not been able to clearly show compliance with the mandatory statutory requirements. He has even expressed ignorance on the question of compliance with Section 9A and prior governmental permission. When a statute requires notice, wages in lieu of notice, compensation, and prior permission in a proper case, these are not empty formalities. They are conditions precedent. If those steps are not shown to have been taken, the retrenchment cannot stand.

26. The petitioner has also tried to place the canteen outside the definition of industry by saying that it served administrative staff and not industrial workers. The use of the expression “industrial workers” in that submission is too narrow and artificial for the facts of this case. The evidence shows that the canteen was running inside the telephone exchange premises for the benefit of the employees. The function of the canteen was directly linked to the establishment. The decision relied upon by the respondents also supports the view that a departmental canteen of this nature can fall within the statutory meaning of industry. The Court is not required to give a strained or restrictive meaning when the

surrounding facts show an organised activity connected with the establishment and supported by it.

27. For all these reasons, the Award does not suffer from such an error as would justify interference under Article 227 of the Constitution. The Tribunal has taken note of the essential facts. It has considered the long service of the workmen, the nature of the canteen, the absence of proper statutory compliance before retrenchment, and the conduct of the parties during conciliation and reference. There may be one factual mistake in the Award regarding the death of the workmen, but that mistake does not destroy the reasoning on the core issue. The real question is whether the retrenchment was legal and justified. On the material before the Tribunal, and on the material shown before this Court, the answer is no. The retrenchment was not backed by the mandatory safeguards of law. The Award directing reinstatement with continuity of service and back wages, therefore, cannot be said to be illegal, arbitrary, or without evidence.

28. Accordingly, I find no merit in the writ petition. The same deserves to be rejected.

29. In view of the foregoing discussion, the following order is passed:

- (i) The writ petition stands dismissed;
- (ii) The Award dated 4 September 2017 passed by the Central Government Industrial Tribunal No. 2, Mumbai in Reference No. CGIT-2/18 of 1999 is upheld;

(iii) However, it is noted that out of the four concerned workmen, three workmen, namely S. Kumar, Maruti Masnaik, and S.K. Shetty, have expired during the pendency of the proceedings. Insofar as the said deceased workmen are concerned, the direction of reinstatement shall not survive. Their legal heirs shall, however, be entitled to receive monetary benefits flowing from the Award, in accordance with law;

(iv) Insofar as the surviving workman, P.S. Naik, is concerned, the respondent employer is directed to reinstate him in service with continuity of service. He shall also be entitled to full back wages and all consequential benefits, in terms of the Award;

(iv) The aforesaid directions shall be complied with within a period of twelve weeks from the date of this order;

(v) Pending interim applications, if any, stand disposed of.

(AMIT BORKAR, J.)