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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

J.B. PARDIWALA; J., SANDEEP MEHTA; J.

Civil Appeal No.2974/2016; 11 SEPTEMBER, 2025

GENERAL MANAGER, U.P. COOPERATIVE BANK LTD. *versus* ACHCHEY LAL & ANR.

Industrial Disputes Act, 1947 — Section 2(s) — Master and Servant Relationship — Canteen Employees — Non-Statutory Canteen Run by a Co-operative Society — Test to Determine Employer-Employee Relationship – Held, the employees working in a non-statutory canteen, run by a Co-operative Society on the Bank's premises with the Bank providing significant financial subsidy (75% of wages) and infrastructure, cannot be deemed to be the employees of the Bank (principal employer) - The mere act of a Bank playing a pivotal role in setting up the canteen, or providing necessary infrastructure, finance, subsidies, and controlling the working hours/days, is an "obligation to provide facilities to run canteen," which is distinct from a statutory or implicit "obligation to provide a canteen." - This does not make the canteen a part of the establishment - Appellant-Bank lacked the right to supervise and control the work done by the canteen employees, or to take any disciplinary action against them, the relationship of master and servant did not exist - **Appeal allowed. [*Relied on Parimal Chandra Raha v. LIC of India*, 1995 Supp (2) SCC 611; *Balwant Rai Saluja v. Air India Ltd.* (2014) 9 SCC 407; *Paras* 36-40, 46-48]**

Supreme Court laid down tests to determine employer employee relationship to be kept in mind while deciding matters arising from legislations like industrial disputes act, 1947, the factories act, 1948 etc - Factors to be considered include - (1) Control Test- (a) who appoints workers; (b) who pays the salaries/remuneration; (2) who has the authority to dismiss; (3) Organisation Test- who can take disciplinary action; (4) whether there is continuity of service; and (5) extent of control and supervision, i.e., whether there exists complete control and supervision. [*Relied on Shivanandan Sharma v. Punjab National Bank Ltd.* (AIR 1955 SC 404; *Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments* (1974) 3 SCC 498; *Workmen of Nilgiri Coop. Marketing Society Ltd. v. State of T.N.* (2004) 5 SCC 514; *Paras* 37, 74-76].

WITH C.A. No. 3011/2016, C.A. No. 3012/2016 & C.A. No. 3013/2016

For Appellant(s): Ms. Garima Prasad, Sr. A.A.G. Mr. Pradeep Misra, AOR Mr. Daleep Dhyani, Adv. Mr. Suraj Singh, Adv.

For Respondent(s): Mr. Pradeep Kant, Sr. Adv. Mr. Himanshu Munshi, AOR Mr. Anitesh Choudhary, Adv. Mr. Siddhant Munshi, Adv. Mr. Sunil Kumar Jain, AOR Ms. Rashika Swarup, Adv. Mr. Naman Jain, Adv.

ORDER

1. Since the issues raised in all the captioned appeals are same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. These appeals are at the instance of a Cooperative Bank and are directed against the common Judgment and Order passed by the High Court of Judicature at Allahabad, Lucknow Bench dated 8-10-2012 in the Writ Petition Nos.3932/2000, 3935/2000, 3933/2000, 3937/2000 and 2413/2006 respectively, by which all the Writ Petitions preferred by the appellant Society came to be dismissed, thereby affirming the Award passed by the Labour Court dated 14-9-1999 in favour of the four respondents (workmen) before us.

3. It appears from the materials on record that the appellant before us is a Cooperative Bank registered under the provisions of the Cooperative Societies Act, 1912 (for short, “the Act 1912”) sometime in 1959. The employees of the Bank formed a Society registered under the provisions of the Act, 1912 named as the “U.P. Cooperative Bank Employees Society Limited.”

4. The object behind the formation of the Society was to provide canteen facility to its members.

5. It appears that the Bank took a policy decision to permit the Society to run a canteen.

6. The necessary modalities were worked out in so far as the grant of subsidies etc. is concerned by the Bank in consultation with the Society including the infrastructure.

7. The respondents before us were appointed by the Society as employees to run the Canteen. There are no formal orders of appointment etc. on record. There is also nothing to indicate anything about their terms of employment.

8. Sometime in 1995, the Society requested the Bank to enhance the subsidies for the purpose of running of the canteen. The request was declined by the Bank.

9. In such circumstances, the Society decided not to run the canteen and closed the same.

10. Since the Canteen came to be closed, the four respondents – working were terminated from service. This led to an industrial dispute.

11. The State Government referred the following dispute to the Labour Court for adjudication:

“Whether the termination of services of Shri Achche Lal, Satya Prakash Srivastava, Vijay Kumar and Shri Leela Dhar with effect from 31-5-1995 could be termed as illegal and invalid? If yes, then what compensation the workmen are entitled to receive? And with what other details?”

12. The Bank appeared before the Labour Court and filed its written statement taking the stance that the Bank had nothing to do with the workmen. They were never employed by the Bank at any point of time. There was no relationship of master and servant between them. Their services were not terminated by the Bank. As the Society decided to close the canteen, automatically they had to be relieved.

13. The Labour Court adjudicated the dispute and ultimately *vide* the Award dated 14.09.1999 held that all the four workmen were in employment of the Bank and their services were illegally terminated.

14. In such circumstances, the Labour Court directed by way of an Award that they all be reinstated in service with back wages.

15. The operative part of the award passed by the Labour Court reads thus:-

“On the basis of above discussions, I have reached to the conclusion that as per the aforesaid legal decisions Petitioner Workmen Sarva Sri Achchey Lal, Satya Prakash Srivastava, Vijay Kumar and Shri Leela Dhar were in the employment of Respondent No. 2, U.P. Cooperative Bank Ltd., Lucknow and termination of their services w.e.f. 31.05.1995 is illegal and invalid. They are entitled for reinstatement in service and to get arrears of salary from Respondent No. 2, U.P. Cooperative Bank Ltd., Lucknow. Since out of Petitioner Workmen Sarvshri Vijay Kumar, Lal Dhar and Satya Prakash Srivastava have been reemployed in the canteen, hence in these circumstances they are entitled to get the arrears of salary from 31.05.1995 till they are reemployed in the canteen whereas Petitioner Workmen Achchey Lal has not been reemployed, hence he is entitled for reinstatement in canteen service alongwith salary for the period of unemployment.”

16. The Bank, being dissatisfied with the award passed by the Labour Court, challenged the same before the High Court.

17. The High Court by a common judgment and order dismissed all the four Writ Petitions filed by the Bank taking the view that no error could be said to have been committed by the Labour Court in passing the Award.

18. The High Court in its impugned Judgment observed thus:-

"It was initially decided to set up a canteen and the Bank requested the Society to discuss the matter with D.K. Pandey, Assistant Manager, who was to intimate the Managing Director of the Bank about the running of the canteen on the pattern of the Reserve Bank of India and the facilities provided by it to the customers for running the canteen. The Bank also released subsidy of Rs.1500/- for purchase of crockery, utensils etc to run the canteen. Free space was also provided by the Bank to the Society for running the canteen. Electricity charges to the tune of Rs.100/- per month were decided to be borne by the Bank. The society started to run the canteen from August 1982 onwards. Later on, in the meeting dated 14.9.1982 the Bank, Society and the Employees Union resolved that 75% wages of the persons engaged in the canteen would be borne by the Bank and the remaining wages would be borne by the Society. On 28.6.1989 the subsidy payable to the canteen was enhanced by 30% by the Bank. The employees of the canteen were to be appointed by the Society. Achchey Lal was appointed as In-charge on a monthly salary and Rs. 950/- per month from 22.12.1992, Lal Dhar, was appointed as Tea-maker w.e.f. 29.12.1990 on a monthly salary of Rs.550/- per month, Satya Prakash Srivastava was appointed as Cashier w.e.f. 1.1.1991 on a monthly salary of Rs. 750/- per month and Vijay Kumar was appointed as Confectioner (Halwai) on a monthly salary of Rs.895/- per month w.e.f. 12.1.1988. These persons continued to work in the canteen under the supervision of the Society. It is to be noted that a three member committee was constituted to supervise and monitor the affairs of the canteen and the canteen was running under the supervision of the said committee continuously up till 1995. On 31.5.1995 the Society resolved not to run the canteen. Thereafter tenders were floated to engage the contractor to run the canteen. One M/s S.M. & Sons was given the contract for a period of three months and thereafter it declined to run the canteen. Thereafter, efforts were made to engage fresh contractor in the year 1997 by issuing tenders, but the Bank could not find any private contractor to run the canteen and thereafter the Bank gave contract to Vijay Kumar, one of the workmen to run the canteen with all facilities. Satya Prakash Srivastava was engaged by the Bank as Cashier. It has been stated that Satya Prakash Srivastava was never engaged by the Bank. The question is of not engagement, but the question is as to what is the control and supervision of the Bank over the workers working in the canteen. The argument of the counsel for the petitioner that it is not a statutory canteen and there is no statutory obligation upon the Bank to engage the workmen could have been a forceful argument, but looking to the fact that counsel for the petitioner has laid much emphasis upon the case of Employers in Relation to the Management of Reserve Bank of India (supra) and the said case has been distinguished in the case of Indian Overseas Bank (Supra), this Court has to consider as to what test is to be applied in considering the appointment of the workmen, who were working in the canteen for such a long period. In the Indian Overseas Bank (supra) the canteen was being run for one and a half decade and the infrastructure was also provided by the Bank. The financial assistance was also given by the Bank and the working hours and working days of the canteen were also as per Bank's working and so in those very circumstances, it was held that the employees working in the canteen shall be deemed to be employees of the Bank. In the said case the staff required were employed by the promoters, who have been administering the canteen. The amount of contribution of funds and the subsidy was being increased from time-to time depending upon the escalation of the costs of maintenance on the representation of the persons in-charge of the running of the co-operative canteen. In the said case, despite the fact that the subsidy was increased from time to time having regard to the subsidies and concessional rate of supply of the edibles as also the beverage supplied to the staff employees both ends could not be economically met resulting in the persons in-charge of the canteen declaring their inability to continue the canteen in the

absence of further increase in the subsidy and grant to make up the vast difference. Similar is the case in hand and the subsidy was increased by 30% on 28.6.1989 and in spite of that committee was unable to run the canteen. In the year 1995 the Society resolved not to run the canteen and thereafter though efforts were made to engage a contractor, but nobody came forward to run the canteen. Thereafter contract was given to Vijay Kumar, one of the workmen. Therefore, in these circumstances, the reliance placed by the counsel for the petitioner on the case of State Bank of India (supra), which was based on the judgment rendered in the case of Employers in Relation to the Management of Reserve Bank of India (supra) and the said case being distinguished in the case of Indian Overseas Bank (supra), it cannot be said that the petitioner has positive case for interference by this Court."

(emphasis supplied)

19. Thus, the following aspects weighed with the High Court in reaching the conclusion that there was master servant relationship between the Bank and the respondents who were working in the Canteen:

- a. In the meeting dated 14.09.1982, all the three, the Bank, Society and the Employees Union resolved that 75% wages of the persons engaged in the Canteen would be borne by the Bank and the remaining wages would be borne by the Society.
- b. On 28.06.1989, the subsidy payable to the Canteen was enhanced by the Bank by 30%.
- c. The employees of the Canteen were to be appointed by the Society.
- d. The respondents continued to work in the Canteen under the supervision of the Society.
- e. A three Member Committee was constituted to supervise and monitor the affairs of the Canteen, and the Canteen was running under the supervision of the said Committee.
- f. On 31.05.1995, the Society resolved not to run the Canteen. Thereafter, tenders were floated to engage the contractor to run the Canteen. One M/s. S.M. and Sons was given the contract for a period of three months but later the contractor declined to run the Canteen.
- g. As no one was ready to run the Canteen, one of the respondents herein, namely, Vijay Kumar was given the contract to run the Canteen with all facilities.
- h. Satyaprakash Shrivastava, one of the respondents, was engaged by the Bank as cashier.
- i. The Bank had the control and supervision over the workers working in the Canteen. It hardly matters whether the Canteen could be termed as statutory canteen.
- j. The financial assistance was given by the Bank and the working hours and working days of the Canteen were also as per the Bank's regulations.

20. The High Court relied upon the decision of this Court in the *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another* reported in (2000) 4 SCC 245 for the purpose of reaching the conclusion that there was master servant relationship between the employees of the canteen and the Bank.

21. As a result, the award passed by the Labour Court came to be affirmed and the Writ Petitions filed by the Bank were ordered to be dismissed.

22. In such circumstances, referred to above, the Bank is here before us with the present appeals.

23. Ms. Garima Prashad, the learned Senior counsel appearing for the appellant - Bank would vehemently submit that the High Court committed an error in dismissing the Writ Petitions, thereby affirming the award passed by the Labour Court in favour of the respondents – herein.

24. She would submit that the Bank had nothing to do with the employees who were working in the Canteen. The Canteen was set up by the Society and the only role the Bank played at the relevant point of time when the Canteen was set up is to provide the necessary infrastructure and subsidies on food items etc. Neither the Bank issued any appointment letters to the respondents nor any service conditions were fixed at any point of time. Their salary was also being paid by the Society from their own funds.

25. According to Ms. Garima Prashad, by any stretch of imagination, it could not be said that there was any master servant relationship between the Bank and the Respondents – herein.

26. With a view to fortify her aforesaid submissions, the learned Senior counsel placed reliance on three decisions of this Court i.e.:

- (i) *Balwant Rai Saluja and Another v. Air India Ltd. and Others*, (2014) 9 SCC 407,
- (ii) *Employers in relation to the Management of Reserve Bank of India v. Workmen*, (1996) 3 SCC 267,
- (iii) *State Bank of India and Others v. State Bank of India Canteen Employees' Union (Bengal Circle) and Others*, (2000) 5 SCC 531.

27. In such circumstances, referred to above, the learned counsel prayed that there being merit in all her Appeals, those may be allowed and the impugned Judgment and order passed by the High Court may be set aside.

28. On the other hand, Mr. Pradeep Kant, the learned Senior counsel appearing for the respondents would submit that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned Judgment and Order.

29. According to him, there are concurrent findings recorded by the Labour Court and the High Court in so far as the master servant relationship is concerned.

30. He would submit that in no uncertain terms, both the Labour Court and the High Court have said that the respondents could be said to be the employees of the Bank.

31. He would submit that there was a direct control and supervision of the Bank over the employees working in the Canteen. He laid much emphasis on the fact that the financial assistance was being provided by the Bank to the Society and from the said financial assistance, salaries etc used to be paid to the employees working in the Canteen.

32. The working hours and the working days of the Canteen were also in accordance with the Bank's rules and regulations.

33. In such circumstances, according to the learned counsel, it is not appropriate for the Bank to say or disown them saying that they are not the employees of the Bank.

34. The learned counsel in support of his submissions placed strong reliance on the decision of this Court in the case of *Indian Overseas Bank* (supra).

35. In such circumstances, referred to above, the learned counsel prayed that there being no merit in these appeals, those may be dismissed.

ANALYSIS

36. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned Judgment and Order or not?

37. It is by now well settled that to ascertain or rather the relevant factors to be taken into consideration to establish employer/employee relationship would include, *inter alia* i.e. (a) who appoints the workers; (b) who pays the salaries/remuneration; (3) who has the authority to dismiss; (4) who can take disciplinary action; (5) whether there is continuity of service; and (6) extent of control and supervision i.e. whether there exists complete control and supervision?

38. Here is a case in which the Respondents were engaged by the Society for the purpose of running the canteen. The Society had its own Committee of office bearers.

39. We are informed that the Society had almost 1000 employees. Since the Society wanted to avail the facilities of canteen, it constituted a Committee and the Committee took up the issue with the Bank and that is how the modalities were worked out.

40. The Bank might have played a pivotal role in setting up of the Canteen by providing the necessary infrastructure, finance, subsidies etc. but there is nothing to indicate that the Bank had a direct role to play in managing the affairs of the Canteen.

41. It was left absolutely to the Society. The Society hired the respondents for running the Canteen.

42. We also take notice of the fact that 75% of the expenses were borne by the Bank by way of subsidies whereas 25% were to be contributed by the Society.

43. It was argued before us that in the present case, there is no Contractor involved. In other words, it is not the case that the Society entered into a contract with an individual and that individual hired or engaged the respondents – herein to work in the Canteen. But that would hardly make any difference.

44. As held by this Court in *Balwant Saluja* (supra) to ascertain whether the workers can be treated as the employees of the factory or company on whose premises the statutory canteen was being run, the Court must apply the test of complete administrative control.

45. It would be necessary to show that there exists an employer/ employee relationship between the factory and the workmen working in the Canteen.

46. The very same principles of law as discernible from *Balwant Rai Saluja* (supra) have been reiterated in the *Employers in relation to the Management of Reserve Bank of India* (supra).

47. We may refer to and rely upon some of the observations made by this Court in *State Bank of India* (supra).

“27. Further, as there was no statutory, legal or contractual obligation of the Bank to run the canteen or provide for canteens in its branches, the Tribunal was right in relying upon the decision in RBI case [(1996) 3 SCC 267 : 1996 SCC (L&S) 691].

In that case, three different categories of canteens (canteens run by the Implementation Committee, cooperative societies and contractors) were being run and Reserve Bank of India was making grant by way of subsidy @ 95 per cent of the cost incurred by the canteens for payment of salary, PF contribution, gratuity, uniform etc. besides providing fuel, water, fixtures,

utensils, furniture, electricity, premises, etc. free of charge. In the canteen run by the Implementation Committee (Canteen Committee), out of the 12 representatives, 3 of them were from the Bank — the Currency Officer, Personnel Officer and the officer from the Personal Policy Department. The Currency Officer is to be appointed as the Chairman of the Canteen Committee. The Bank relieved four employees who were in the Committee, two for full day and two for half day to supervise the day-to-day affairs of the canteen. Further, the Committee could not increase the strength of the canteen employees without the permission of the Bank. The rates of eatables also could not be revised without the consent of the Manager. They could not effect any wage revision without the approval of the Bank. The Bank was also reimbursing the expenses incurred over the periodical medical check-up of the employees attached to the kitchen and counters. In the background of the said facts and after considering the earlier decisions and the contentions, the Court held that:

(a) 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 has absolutely no right to take any disciplinary action or to direct any canteen employee to do a particular work.

(b) 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 laid down by this Court in *M.M.R. Khan* case [1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541].

(c) As per the agreement the Bank has detailed the subsidy and other facilities afforded by it to run the canteen and has also stipulated certain conditions necessary for conducting the canteen in a good, hygienic and efficient manner like insistence on the quality of food, supply of food, engagement of experienced persons etc. Such conduct cannot in any manner point out any obligation in the Bank to provide “canteen” as wrongly assumed by the Tribunal.

(d) On the facts of this case, in the absence of any statutory or other legal obligation and in the absence of any right in the Bank to supervise and control the work or the details thereof in any manner regarding the canteen workers employed in the three types of canteens, it cannot be said that the relationship of master and servant existed between the Bank and the various persons employed in three types of canteens.

28. In the present case also, the facts are similar. There is no obligation statutory or otherwise to run the canteens by the Bank. The scheme as stated above only provides for grant of subsidy, for promoting running of a canteen and if some more cost is incurred in running the canteen, the members of the staff working in that particular branch are required to bear it. The Bank is not employing the canteen workers. The Bank is not supervising or controlling the work or the details regarding the canteen or its employees appointed by the Local Implementation Committee. Auditing the work of the Local Implementation Committee — whether subsidy given by it is properly utilised or not, also would not be a ground for holding that the Bank is having any control in running the canteen. The Bank is not taking any disciplinary action or directing any canteen employee to do a particular work or for that purpose no scheme is laid down by the Bank. Not only this, the other most important aspect is “the recruitment” by the Bank is to be made as per the statutory rules framed by it after giving proper advertisement, test and/or interview. As against this, for appointing a canteen employee there are no rules framed by the Bank.”

48. In *Parimal Chandra Raha v. LIC of India* reported in 1995 Supp (2) SCC 611, this Court after relying upon a large number of decisions of this Court including *M.M.R. Khan v. Union of India* reported in 1990 Supp SCC 191, held in the peculiar facts and circumstances that the canteen which was being run by a cooperative society became a part of the establishment of the Corporation. The said decision was arrived at upon lifting the corporate veil of the cooperative society. In that case, although there was no statutory

liability on the part of the respondent therein to maintain a canteen for their employees, yet this Court observed:

“25. What emerges from the statute law and the judicial decisions is as follows:

(i) Whereas 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 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, 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.

(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 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. 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.

(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, 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.”

(emphasis supplied)

49. In *Parimal Chandra Raha* (supra), the Life Insurance Corpn. of India had questioned the status of workmen in the various canteens run by it in its premises in Calcutta. The question was, whether the canteen workers were regular employees of the Corporation and if so, what should be the pay-scale and their service conditions. While considering that question, the Court took into consideration the conduct of the Corporation to the outside world. From the various documents produced before the court, it was proved that the canteen staff were directly under the control of the Life Insurance Corporation. Even the contractor under whom the employees worked had to execute an agreement with the Corporation wherein various conditions of service were also incorporated. The terms of contract provided directions to the contractor about the manner in which the canteen should be run and how service should be rendered to the employees. Even the prices for the items served, the place where they should be kept, the handling of food grains, place where they should be kept, were all dictated by the Corporation. The Corporation had the right to modify the terms and conditions unilaterally and the Contractor had no say in the matter. Workers in the canteens were supervised by the Corporation. The appellants in that case and other canteen workers had been working continuously for a long time. Whenever there was any complaint about the service of the staff, the complaint was made to the Corporation and it used to give directions for rectifying the same. In such

circumstances, after declaring the law this Court held that the canteen staff of the Life Insurance Corporation were part of the establishment.

50. The Court explained what meant by control. In paras, it was held thus:

“...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 a workman even 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, L.J., in Cassidy v. Ministry of Health, 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. Heath Landry Co., 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 service 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.”

(emphasis supplied)

51. 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 latter agrees to get other persons to work. A person who himself agrees to work and does work and is therefore, a workman, does not cease 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.

52. However, *Parimal Chandra Raha* (supra) referred to above was distinguished by a three-Judge Bench of this Court in *Employers in relation to the Management of Reserve Bank of India* (supra), stating that *M.M.R. Khan* (supra) was decided on the facts of that case. Although, a question was raised therein that propositions 3 and 4 respectively laid down in *Parimal Chandra Raha* (supra) are very wide and require reconsideration and appropriate modification, yet this Court refused to go therein holding that it was not required to do so therein as the Tribunal had proceeded to follow *M.M.R. Khan* (supra) only, holding:

“On the facts of this case, in the absence of any statutory or other legal obligation and in the absence of any right in the Bank to supervise and control the work or the details thereof in any manner regarding the canteen workers employed in the three types of canteens, it cannot be said that the relationship of master and servant existed between the Bank and the various persons employed in three types of canteens. 166 persons mentioned in the list attached to the reference are not workmen of the Reserve Bank of India and that they are not comparable employees employed in the officers' lounge. Therefore, the demand for regularisation is unsustainable and

they are not entitled to any relief. We hold that the award passed by the Tribunal is factually and legally unsustainable.”

(emphasis supplied)

53. A new dimension to the question, however, was given by this Court in *Indian Petrochemicals Corpn. Ltd. v. Shramik Sena* reported in (1999) 6 SCC 439. This Court following the judgments of *M.M.R. Khan* (supra) and *Employers in relation to the Management of Reserve Bank of India* (supra) opined that the ratio sought to be laid down in *Parimal Chandra Raha* (supra) that “the workers employed in such canteen are the employees of the management” is not correct and further opined that the “workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes”.

(emphasis supplied)

54. A Constitution Bench of this Court, in *Steel Authority of India Ltd. v. National Union Waterfront Workers*, reported in (2001) 7 SCC 1 noticed the following circumstances under which contract labour could be held to be the workmen of the principal employer:

“107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.”

Such observation, however, was made in the light of the provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970.

55. In *Barat Fritz Werner Ltd. v. State of Karnataka* reported in (2001) 4 SCC 498, this Court observed:

“Of course, in Indian Petrochemicals Corpn. Ltd. v. Shramik Sena [(1999) 6 SCC 439 : 1999 SCC (L&S) 1138] a new gloss was given to this decision by stating that the presumption arising under the Factories Act in relation to such workers is available only for the purpose of the Act and no further. However, in Employers, Reserve Bank of India v. Workmen [(1996) 3 SCC 267 : 1996 SCC (L&S) 691] this Court struck a different note. Again this Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union [(2000) 4 SCC 245 : 2000 SCC (L&S) 471] considered the effect of the decisions in M.M.R. Khan [1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541] , Parimal Chandra Raha [1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282] , Reserve Bank of India [(1996) 3 SCC 267 : 1996 SCC (L&S) 691] and Indian Petrochemicals Corpn. Ltd. v. Shramik Sena [(1999) 6 SCC 439 : 1999 SCC (L&S) 1138] and it was made clear that the workers of a particular canteen statutorily obligated to be run render no more than to deem them to be workers for limited purpose of the Factories Act and not for all purposes and in cases where it is a non-statutory recognised canteen the court should find out whether the obligation to run was implicit or explicit on the facts proved in that case and the ordinary test of control, supervision and the nature of facilities provided were taken note of to find out whether the employees therein are those of the main establishment.”

However, in that case, the Court was only concerned with a notification abolishing contract labour under the Contract Labour (Regulation and Abolition) Act.

56. Yet again in *Hari Shankar Sharma v. Artificial Limbs Mfg. Corpn.* reported in (2002) 1 SCC 337 this Court, following *Barat Fritz Werner Ltd.* (supra) opined:

"5. The submission of the appellants that because the canteen had been set up pursuant to a statutory obligation under Section 46 of the Factories Act therefore the employees in the canteen were the employees of Respondent 1, is unacceptable. First, Respondent 1 has disputed that Section 46 of the Factories Act at all applies to it. Indeed, the High Court has noted that this was never the case of the appellants either before the Labour Court or the High Court. Second, assuming that Section 46 of the Factories Act was applicable to Respondent 1, it cannot be said as an absolute proposition of law that whenever in discharge of a statutory mandate, a canteen is set up or other facility is provided by an establishment, the employees of the canteen or such other facility become the employees of that establishment. It would depend on how the obligation is discharged by the establishment. It may be carried out wholly or substantially by the establishment itself or the burden may be delegated to an independent contractor. There is nothing in Section 46 of the Factories Act, nor has any provision of any other statute been pointed out to us by the appellants, which provides for the mode in which the specified establishment must set up a canteen. Where it is left to the discretion of the establishment concerned to discharge its obligation of setting up a canteen either by way of direct recruitment or by employment of a contractor, it cannot be postulated that in the latter event, the persons working in the canteen would be the employees of the establishment. Therefore, even assuming that Respondent 1 is a specified industry within the meaning of Section 46 of the Factories Act, 1948, this by itself would not lead to the inevitable conclusion that the employees in the canteen are the employees of Respondent 1."

(emphasis supplied)

57. In *National Thermal Power Corpn. Ltd. v. Karri Pothuraju* reported in (2003) 7 SCC 384, this Court held that in view of a catena of decisions of this Court it is aptly clear that where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the contract labour would indeed be the employees of the principal employer.

58. This Court in *Mishra Dhatu Nigam Ltd. v. M. Venkataiah* reported in (2003) 7 SCC 488 having regard to the provisions contained in Rules 65 and 71 respectively of the Andhra Pradesh Factories Rules, 1950, reiterated the same view.

59. In *Haldia Refinery Canteen Employees Union v. Indian Oil Corpn. Ltd.* reported in (2005) 5 SCC 51, the Court distinguished *Indian Petrochemicals Corpn. Ltd.* (supra) opining: (*Haldia Refinery case*),

"The management unlike in Indian Petrochemicals Corpn. Ltd. case [(1999) 6 SCC 439 : 1999 SCC (L&S) 1138] is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance with any statutory provisions/obligations is concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages, etc. and also for depositing the provident fund contributions with the authorities concerned. The contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned under the contract brought by the employees of the contractor, third party or by the Central or State Government authorities."

60. We may now look into the decision of this Court in *Indian Overseas Bank*(supra) on which strong reliance is placed by the learned counsel appearing for the respondents.

61. In *Indian Overseas Bank* (supra), this Court in the peculiar facts and circumstances of the said case, relied on *M.M.R. Khan* (supra) and *Parimal Chandra Raha* (supra) and distinguished *Indian Petrochemicals Corpn. Ltd.*(supra) holding:

“A cumulative consideration of a few or more of them, by themselves or in combination with any other relevant aspects, may also serve to be a safe and effective method to ultimately decide this often agitated question. Expecting similarity or identity of facts in all such variety or class of cases involving different types of establishments and in dealing with different employers would mean seeking for things, which are only impossible to find.

The decision in *Indian Petrochemicals* case [(1999) 6 SCC 439 : 1999 SCC (L&S) 1138] does not, in our view, lay down any different criteria than those declared in the other decisions for adjudging the issue, except that it had also considered specifically the further question as to the effect of a declaration, that the workers of a particular canteen, statutorily obligated to be run render no more than to deem them to be workers for the limited purpose of the *Factories Act* and not for all purposes. In the case before us, the claim is not that there was any such statutory obligation and the entire consideration proceeded only on the footing that it is a nonstatutory recognised canteen falling within the second of the three categories envisaged in the earlier decisions and the Tribunal as well as the Division Bench of the High Court endeavoured to find out whether the obligation to run was explicit or implicit, on the facts proved in this case.”

(emphasis supplied)

62. This decision, in our view, is of no avail to the respondents – herein because the findings recorded in the said decision were based on its own facts. In the said case, this Court noticed at the outset, that there was no controversy or dispute over the fact that the canteen was being run only with the funds provided by the central office and the amount realized from day to day receipts and neither the promoter nor any of the employees using the canteen otherwise had either contributed any capital or was obliged to make any such contribution to make the canteen economically viable or keep going on at any cost.

63. In the said case, it was found on evidence that the canteen workers were enlisted in the welfare fund scheme of the Bank besides making them eligible for periodical medical check-up by the doctors of the Bank and admitting them to the benefits of the provident fund scheme.

64. The cumulative effect of all such and further facts that this Court noticed led this Court to record a finding that there was master servant relationship between the Bank and the canteen workers. These are the distinguishing features that make all the difference.

65. In *M.M.R. Khan* (supra), this Court considered a case of employees in the statutory and non-statutory recognised Railway canteens and the employees in non-statutory, non-recognised canteens. In so far as the Statutory canteens are concerned, the Court took the analogy of Section 46 of the *Factories Act* and said that it was a statutory obligation on the part of the Railways to provide a canteen. Being a statutory obligation, wherever there is a canteen run by a contractor or a cooperative or other intermediary, that would not make any difference. This Court said that the employees of the Statutory canteens run by the Railways form part of the establishment. In so far as the non-statutory recognised Railway canteens are concerned, this Court said that the Rules of the Railway Manual were similar to the running of statutory canteens, except for the number of the employees in the rolls and, therefore, all the employees of that canteen also form part of the establishment. While considering the non-statutory nonrecognised canteens, the Court said that they cannot form part of the establishment. While considering the statutory as

well as non-statutory recognised canteens, the Court gave importance to the control of the Railway Administration over the staff. It was held in that case that the entire running of the canteens, including the work of the employees is subject to the administrative control of the agency of the Railway administration, whether the agency is a staff committee or society. The Court said that the legal responsibility for running the canteen ultimately rests with it, whatever be the agency that may intervene. The number and category of the staff engaged in the canteen were strictly controlled by the administration. It further held that in respect of nonstatutory recognised canteens, even Recruitment Rules were framed by the Railway administration, as regards the minimum qualification, age, superannuation, and the Managing Committee of the Railway Administration was the appointing authority. In respect of wages there were revisions from time to time by the Railway administration. Even though the same had got something to do with the subsidy, the importance was that even regarding payment, the Railway administration had something to do with it. In paragraph 28 of the judgment, it was further pointed out that the Managing Committee was appointing the employees and was supervising and controlling the canteen. There also, the Court took into consideration the aspect of management and control over the employees. But, while considering the case of non-statutory, non-recognised canteens, the Court said that there was no obligation on the part of the Railways to provide any such canteen, and they were not governed by any Rules, and even the local officers of the Railway Administration had no control over the canteen or its staff, as the canteen was run, more or less, on an *ad hoc* basis. The Court gave importance to the fact that since there was no obligation on the part of the Railways to run such canteen, the staff employed therein could not have claimed that they were part of the establishment.

66. We find no merit in the submission canvassed on behalf of the respondents that canteen employees of every establishment have to be considered as part of the establishment and they must be treated as other employees of the same.

67. In *the Employees in relation to Punjab National Bank v. Ghulam Dastagir*, reported in (1978-1-LLJ-312) (SC), in paragraph 4 of the judgment, a similar argument was put forward and the same was rejected. This Court observed thus:

".... It is quite conceivable that the facts in the case of employment of other drivers may be different." If other materials are available regarding the terms and conditions of service, regarding the direction and control of the drivers and regarding other indicia of employment, the conclusion may be different. We cannot, therefore, dogmatise generally as to the nature of employment of the other drivers under this Bank or other industry even where features of allowance may be present. We mention this, because, as Lord Macmillan pointed out in the case we have already referred to, facts vary from case to case. Evidence is shaped in each case and conclusions are reached on the basis of the facts and evidence of each case. There is no invariable proposition where fluid facts are involved".

(emphasis supplied)

68. Thus, this Court pointed out that everything would depend upon the facts that are involved in the particular case.

69. In the *Employees in relation to Punjab National Bank* (supra), V. R. Krishna Iyer, J., speaking for the Bench, considered a similar question. To be a workman, certain guidelines were stated therein. This Court accepted the principle enunciated in *Mersey Docks & Harbour Board v. Coggins & Griffith (Liverpool) Ltd.*, reported in 1947 A.C.1, wherein it was held thus:

"Many factors have a bearing on the result. Who is paymaster, who can dismiss, how long the alternative service lasts, what machinery is employed, have all to be kept in mind. The

expressions used in any individual case must always be considered in regard to the subject matter under discussion but amongst the many tests suggested I think that the most satisfactory, by which to ascertain who is the employer at any particular time, is to ask who is entitled to tell the employee the way in which he is to do the work upon which is engaged".

(emphasis supplied)

70. In the aforesaid decision, Ghulam Dastgir was appointed as Area Manager of the Bank and was authorised to appoint a driver. The Bank provided petrol, oil, maintenance, etc., and it also gave a personal allowance to the Manager to enable him to employ a personal driver. The question was, whether the driver was a driver of the Bank or the Manager? While considering the same, it was held thus:

"... On the other hand, the evidence adduced before the Tribunal, oral and documentary, leads only to one conclusion that the Bank made available a certain allowance to facilitate the Area Manager, Shri Sharma privately to engage a driver. Of course, the jeep which he was to drive, its petrol and oil requirements and maintenance, all fell within the financial responsibility of the Bank. So far as the driver was concerned, his salary was paid by Shri Sharma as his employer who drew the same granted to him by way of allowance from the Bank. There is nothing on record to make out a nexus between the Bank and the driver. There is nothing on record to indicate that the control and direction of the driver vested in the Bank".

(emphasis supplied)

71. In the *Management of Puri Urban Co-operative Bank v. Madhusudan Sahu* reported in (1992-II-LLJ-6)(SC), a gold appraiser was engaged by the Bank to weigh the ornaments brought for the purpose of pledge and to appraise the quality, purity and value. The Bank maintained a list of approved appraisers and the appraisers were paid commission depending upon the loan amount subject to a minimum of Rs. 2 per appraisal. The Bank was also not obliged to give work to the appraisers and the Bank had no control over the manner in which the appraiser's work had to be done. The question was whether the appraiser was an employee of the Bank. While considering the same in paragraph 5 of the judgment, this Court said thus:

"... It stands established that Industrial Law revolves on the axis of master and servant relationship and by a catena of precedents it stands established that the prima facie test of relationship of master and servant is the existence of the right in the master to supervise and control the work done by the servant (the measure of supervision and control apart) not only in the matter of directing what work the servant is to do, but also the manner in which he shall do his work ..."

(emphasis supplied)

72. Considering the control of the employer, this Court said that appraiser was not an employee of the Bank.

73. In *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. v. Ram Tahel Ramanand* reported in (1972-II-LLJ-165)(SC), the question that arose for consideration was, whether a gardener employed in a textile mill could be treated as an employee and considered as part of the establishment. This Court relied on the decision reported in *J. K. Cotton Spg. and Wvg. Mills Co. Ltd. v. Labour Appellate Tribunal of India* reported in (1963-II-LLJ-436)(SC), wherein this Court said that while considering industrial adjudication cases, the approach, should not be narrow or onesided or pedantic. It was held thus:

"... The concept of social justice is not narrow, or one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic

approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good relationship. The ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair play and justice. That is the reason why on several occasions, industrial adjudication has thought it fit to make reasonable provision for leave in respect of the workmen who may not strictly fall within the purview of the Factories Act or the Shops and Commercial Establishments Act ..."

74. On that basis, the Court in *Ahmedabad Manufacturing and Calico* (supra), remanded the matter for fresh consideration without setting out any precedent.

75. As held in *Parimal Chandra Raha* (supra), if there is a mere obligation to provide facilities to run a canteen, the canteen would not form part of the establishment. If the Bank is discharging the same as a mere obligation, it permits to run a canteen and at the same time, it is not having any control or right of supervision over the staff, the canteen will not form part of the establishment. Likewise, the nature and character of management, and the interest shown by the Management in having control and supervision over the running of the canteen also has to be taken into consideration. The material on record would indicate that the Bank had nothing to do with the working of the canteen. The only contribution made by the Management was to provide infrastructure and subsidy to the Society. If there is total lack of evidence on this point and what the Bank discharged was only an obligation to provide a facility, under no stretch of imagination can it be said that the canteen staff is also part of the establishment, i.e., the Bank.

FEW TESTS TO DETERMINE EMPLOYER EMPLOYEE RELATIONSHIP TO BE KEPT IN MIND WHILE DECIDING MATTERS ARISING FROM LEGISLATIONS LIKE INDUSTRIAL DISPUTES ACT, 1947, THE FACTORIES ACT, 1948 ETC:

1. Control Test

(i) The control test postulates that when the hirer has control over the work assigned and the manner in which it is to be done, an employer-employee relationship is established. The control test is derived from common law application in vicarious liability claims.

(ii) The earliest instance of applying the control test in India is in *Shivanandan Sharma v. Punjab National Bank Ltd.* reported in AIR 1955 SC 404. Here, a claim under the Industrial Disputes Act arose as to whether a head cashier was the bank's employee. The bank had an agreement with a contracted treasurer who nominated people to work for discharging function of the bank under the agreement, including the cashier in question. The court held that although the treasurer chose the nominees who discharged the functions, yet the bank had complete control over the nominee's disciplinary matters, leave of absence, how the nominees discharged their functions, and, importantly, their salaries were paid by the treasurer from the funds provided by the bank. It was held that the bank manager had the same degree of control over the nominees as he did over numerous other employees, and thus an employer-employee relationship existed. The bank also had the right to select bank personnel who would have the authority to supervise how the cash department conducted its work. The court concluded that the cashier was an employee of the bank. The scope of indirect employment was expounded as under:

"If a master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master."

(emphasis supplied)

(iii) While *Shivanandan Sharma* (supra) was the first instance of the control test being applied, an important step in the test's evolution was in *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* reported in (1957) 1 LLJ 477. The dispute was whether agarias (salt workers)

were employees and whether the claim under the Industrial Disputes Act 1947 was maintainable. To establish that the hirer had control over the hired person, it was ruled that control must exist in two aspects. First, control over the nature of the work performed and, secondly, the manner in which the work is conducted. It was argued that since agarias assisted several persons in performing work, they were independent contractors.

(iv) For the court, the true difference between the workers and independent contractors was whether the work was being committed for oneself or a third party. The existence of external help would not rule out an employer-employee relationship. The court opined that the greater the degree of control, the more likely the hired person would be an employee. Accordingly, the agarias were held as employees and eligible for benefits under the Industrial Disputes Act 1947.

(v) The court enunciates the manner to make this distinction as under:

“The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer”

(emphasis added)

(vi) Thus, the control test was expanded to mean *due control* and *supervision*. In numerous cases, the control test adopted in *Dharangadhara* (supra) remained the sole factor determining employer-employee relationship. The degree and level of control required would depend on the facts and circumstances of each case.

2. Organisation/Integration Test

(i) The first instance of the shift from the control test as a sole determinative factor was in *Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments* reported in (1974) 3 SCC 498. This Court observed that the earlier reliance on the control test was attributed to the agrarian economy, where masters often exercised control over workers. This occurred due to masters having more knowledge, skill and experience. The shift to a multifactor test is due to modern work being conducted by professionals where masters lack the technical expertise to direct the manner in which the work is undertaken. The court arrived at these conclusions relying on judgements in the *Market Investigations Ltd. v Minister of Social Security* reported in (1969) 2 WLR 1, *Cassidy v Ministry of Health* reported in (1951) 2KB 343, *Montreal v Montreal Locomotive Works Ltd* reported in 1947 1 DLR 161 (Privy council). In *Silver Jubilee* (supra) reliance was placed on a combination of the organisation test (also known as the integration test) as interpreted in the *Market Investigations Ltd.* (supra), *Cassidy* (supra), *Montreal Locomotive Works* (supra) and the control test used in India.

(ii) The organisation test looks at the degree of integration in the work committed in the hirer's primary business with the understanding that the higher the level of integration, the more likely the worker is to be an employee. A combination of control and integration tests allows the professional workers to be classified as employees, notwithstanding a lack of control over the manner of work. Furthermore, the existence and potential use of factors beyond the control and integration in future cases was also recognised. This opened the path for the multifactor test.

3. Multiple Factor test

(i) The multifactor test includes:

- a) Control
- b) Ownership of the tools
- c) Integration/Organisation
- d) Chance of profit
- e) Risk of loss
- f) the master's power of selecting his servant
- g) the payment of wages or other remuneration

- h) The master's right to control the method of doing the work, and
- i) The master's right of suspension or dismissal.

(ii) In *Steel Authority of India Limited v. National Union Waterfront Workers*, reported in 2017 NLS Bus L. Rev. 20, it was opined that where sham arrangements exist, the Contract Labour (Regulation and Abolition) Act, 1970 would not apply, and workers would be deemed employees and have the right to raise an industrial dispute in the same manner as an employee.

(iii) To identify whether sham arrangements exist, this Court in *Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N.* reported in (2004) 5 SCC 514 ruled that piercing the veil was necessary. Whether the arrangement was a sham was not considered as a question of law. Such a determination must be adjudicated based on the evidence adduced in the court by either party and not merely by referring to the provisions. The relevance of factors other than the control and integration to determine whether the workers are employees or independent contractors was brought out. The court examined the following factors:

- a) who is the appointing authority?
- b) who is the paymaster?
- c) who can dismiss?
- d) the duration of an "alternative service";
- e) the extent of control and supervision;
- f) the nature of the job, e.g. whether it is professional or skilled work;
- g) nature of establishment;
- h) the right to reject.

(iv) This Court in *Bengal Nagpur Cotton Mills v. Bharat Lal* reported in (2011) 1 SCC 635 laid down two factors to be considered to determine the true nature of the hiring entity, i.e., whether it is the principal employer or contractor:

- (i) Whether the principal employer pays the salary instead of the contractor; and
- (ii) Whether the principal employer controls and supervises the work of the employee?

4. Refinement of the multifactor test

(i) The courts, over the years, have refined the scope of the multifactor test by adding various factors based on the facts and circumstances. This Court, in many cases, has applied the refinement of the multifactor test.

(ii) In *Sushilaben Indravadan Gandhi v The New India Assurance Company Limited*, reported in (2021) 7 SCC 151, this Court revisited the distinction between a *contract of service* and a *contract for service*. After analysing *Market Investigations Ltd.* (supra), *Cassidy* (supra) and *Montreal Locomotive Works* (supra), the multifactor test was reiterated, consisting of the following factors:

- a) Control over the work and manner in which it is conducted
- b) Level of integration into employers' business
- c) Manner in which remuneration is disbursed to workers
- d) Economic control over workers
- e) Whether work being conducted is for oneself or a third party

(iii) In *Sushilaben* (supra) priority was given to factors of control and mode of remuneration, noting these would ordinarily suffice to identify the true nature of the relationship unless other contractual terms indicated otherwise.

(iv) In *Sushilaben* (supra) the articulation of the control test has been given importance as it varies from that in *Balwant Rai Saluja v Air India Ltd.* reported in 2014 9 SCC 407. This was elucidated as under:

"The three-tier test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases."

(emphasis added)

(v) The use of the term "sufficient degree of control" is in stark contrast to the "effective and absolute control" ruling in *Balwant Rai Saluja* (supra). However, no reference to *Balwant Rai Saluja* (supra) was made while discussing the evolution of the various tests. (Referral: *IIMA, Working Paper by M.P. Ram Mohan and Sai Muralidhar K.*)

76. In the overall view of the matter, we are convinced that the Labour Court as well as the High Court committed an egregious error in taking the view that the respondents could be termed as employees of the Bank and since their services came to be terminated with the closure of the Canteen, they are entitled to be reinstated with full back wages in accordance with the provisions of the Industrial Disputes Act.

77. We need not say anything further.

78. In the result, these appeals succeed and are hereby allowed.

79. The impugned judgments and orders passed by the High Court are set aside. Consequently, the Award passed by the Labour Court also stands set aside.

80. Pending applications, if any, also stand disposed of.

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