

**Layak Ram Vs. Quarter Master General and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/684250](http://sooperkanoon.com/684250)

**Court :** Delhi

**Decided On :** Jul-30-1999

**Reported in :** 1999VAD(Delhi)246; 81(1999)DLT395; 1999(50)DRJ777; ILR1999Delhi165

**Judge :** A.K. Sikri, J.

**Acts :** [Constitution of India, 1950](#) - Articles 12 and 226

**Appeal No. :** C.W. No. 4220/97

**Appellant :** Layak Ram

**Respondent :** Quarter Master General and ors.

**Advocate for Def. :** Mr. G.K. Shari Adv.

**Advocate for Pet/Ap. :** Mr. P.K. Arya Adv

**Judgement :**  
ORDER

**A.K. Sikri, J.**

1. This petition has been filed by the petitioner Shri Layak Ram who was working as 4th class employee on daily wages with respondent No. 2 namely Canteen Manager, Army Head Quarter, Block Q, Saina Bhawan, New Delhi. It is the case

of the petitioner that he was appointed in March, 19.1994 as 4th class employee on daily wages basis, after his retirement as army employee from where he is getting monthly pension of Rs. 950. In January 19, 1997 he requested for permanent appointment. The petitioner further alleges that there were three regular vacancies with respondent No. 2 and on the request of respondent No. 1, respondent No. 3 recommended three names for regularisation which included the name of the petitioner as well. However, respondent No. 2 wanted to accomodate two of his kins. This move of respondent No. 2 was opposed by the employees of the canteen who were working there since long. On this respondent No. 2 become annoyed and on 9.9.1997 he refused to take the services of the petitioner which amounts to his termination. The petitioner contends that refusal on the part of respondent No. 2 not to take the services of the petitioner from 9-9-1997 and not regularising the service of the petitioner is bad, illegal, unjust unfair and against the principles of law and is vocative of Articles 14,16 and 21 of the Consti-tution of India. On the basis of these averments the petitioner has prayed for issuance of appropriate writ, order or direction thereby declaring the termination of the petitioner service from 9.9.1997 bad in law and further directing the respondent to re-instate and regularise the services of the petitioner as 4th class employee with all service benefits from the back date.

2. Counter affidavit has been filed on behalf of respondents 1 and 2 wherein a preliminary objection has been taken that the Army Head quarter Canteen, hereinafter called 'the Canteen' does not form part of regular army or any other Government establishment under Ministry of Home Affairs or Ministry of defense or even the canteen stores, department of Quarter Master General's Branch Army Headquarter. It is further avered that it is a unit run canteen of Army Headquarter, a private establishment to provide grocery items on cheaper rates as a welfare measure to armed forces person-nel and ex-servicemen. Nominal profit is charged on sales to meet overhead expenses, including salaries and other payments made to the canteen employees. The funds of the canteen are non-government funds. The employees of the canteen are paid out of nominal profit charged by the canteen on sale of grocery items as per memorandum of settlement between the canteen and its employees dated 8th November, 1993 and casual labourers are also paid out of the same nominal profits. On the basis of these averments a

preliminary objection is raised that the canteen is not a 'state' or any other authority within the meaning of Article 12 of the Constitution of India and therefore not maintainable to the writ Jurisdiction of this Court.

3. On merit respondent contends that the petitioner was employed as casual labour in the Army Headquarter canteen from time to time depending upon the availability of work. In the first week of September, 1997 the petitioner was found indulging in the sale of canteen store to the unauthorised persons and, therefore, from 9th September, 1997 he was not employed. It is stated that in view of the fact that he was ex-army personnel the matter was not reported to the police for initiation of any action as in such action his pension could be effected which he is getting from the army because payment of such pension is subject to future good conduct and therefore lenient view was taken.

4. It is further stated that before 9th September, 1997 he could not be regularized because there was no vacancy in the canteen for appointment on regular basis. Canteen being welfare organization cannot afford to keep such employees who indulge in such activities. The initial date of appointment is also disputed and it is stated that the petitioner was employed as casual labour in June 19, 1995 for the first time and not in March 19, 1994 as per the record available in the canteen.

5. In the rejoinder affidavit the petitioner has contended that the writ is maintainable and reliance is placed on the Judgment of the Madras High Court in the case of Babian and others v. Lt. Col. and others reported in 1994 Lab. I.C. 245. The allegations made in the counter affidavit are refuted and the petitioner has reaffirmed the averments made in the writ petition.

6. The principal question to be decided in this case is whether the present writ petition is maintainable against the respondents.

7. It can safely be inferred that the canteen is not a 'state' or other 'authority' within the meaning of Article 12 of the Constitution of India. The averments made by the respondent in the counter affidavit in this respect are not refuted by the petitioner in the counter affidavit. Admittedly the canteen is not the creation of any Statute Act, or Legislation. The Ministry of defense or Quarter Master General has nothing

to do with the canteen or its employees. There is nothing on record to show that any funds are provided by the Government. There is no evidence of any control such as deep pervasive control of the Government in the running of the canteen. As stated by the respondent in the counter affidavit canteen is private establishment to provide grocery items on cheaper rates as a welfare measure to armed forces personnel and ex-servicemen. Nominal profits are charged on sales and salaries etc. to employees employed by the canteen and are paid out of these nominal profits.

8. Counsel for the respondent has relied upon the following Judgments in support of his contention that the canteen in question is not 'state' under Article 12 or its employees are not civil servants.

(1) Sarasamma v. Union of India and others Civil Writ No. 12654/93 decided on 31st October, 1995 by Punjab & Haryana High Court.

(2) Ramala Dutta (Ms.) v. The Union of India & Ors. reported in 1998 (5) S.L.R. 683, Calcutta.

(3) Dambar Singh Rathore and others v. Officer Commanding (details) and others (1997 36 ATC 440. It is the Full Bench Judgment of Central Administrative Tribunal Allahabad.

(4) Mani Ram v. Union of India O.A. No. 1564/98 decided on 5th April, 1999 by the Central Administrative Tribunal Principal Bench, New Delhi.

(5) Om Parkash v. Union of India 1997 (1) AISLJ 486 Judgment of Central Administrative Tribunal Allah bad.

(6) Union of India Vs . Chhotey Lal and others : AIR 1999 SC376 .

9. The Judgment of Punjab & Haryana High Court referred to above deals with the case of employees of the same job of Army canteen and the High Court has held that this canteen is not instrumentality of the State of almost identical facts. therefore, this Judgment is squarely applicable to the facts of this case. The cases which are decided by the Central Administrative Tribunal as noted above

again deal with the cases of canteen workers of Army Headquarter canteens and in all these cases, it is held that employees of such canteens are not Central Government servants and, therefore, the Tribunal has no jurisdiction to deal with these cases. However, these may not have direct bearing on the question involved in this case namely; whether the canteen is 'state' or 'other authority' within the meaning of Article 12 of the Constitution of India. It is well established law that employees of a particular body may not be civil servants under Article 311 of the Constitution of India but body may still be 'another authority' within the meaning of Article 12 of the Constitution. The case of Union of India v. Chhotey Lal A.I.R. 1999 SC 396 also deals with the jurisdiction of Central Administrative Tribunal and it is held in the case of Dhobis (washermen) to wash clothes of cadets in National defense Academy are not holders of civil post and therefore, the Central Administrative Tribunal has no jurisdiction to go into the conditions of service of such Dhobies.

10. It may be mentioned that Judgment of Madras High Court in the case of Babian and others v. Lt. Col. and other 1994 Lab. I.C. 245 on which petitioner relied also holds that such canteens are not covered by Article 12 of the Constitution. therefore, I held that the respondent canteen is not 'state' or 'other authority' within the meaning of Article 12 of the Constitution.

11. However, learned counsel for the petitioner relying upon Babian case (supra) has argued that even if the canteen is not 'state' within the meaning of Article 12 of the Constitution of India, the present writ is still maintainable as under Article 226 of the Constitution, there is a power vested in the Court to issue writ against 'any person or authority'. The Madras High Court's aforesaid Judgment relying upon various Judgments of the Supreme Court has held that the words 'any person or authority' used in Article 226 are to receive liberal meaning. However, it is to be further borne in mind that such person or authority should be one which is perform-ing the public duty and unless it is shown that the authority is performing public duty writ cannot be issued against such person or authority. With respect to the Judgment of Madras High Court, I may point out that it is not at all discussed in the said Judgment as to whether such canteens are performing public duties.

12. Be as it may there is another reason because of which it is not a fit case where present petition be entertained. In the aforesaid case decided by the Madras High Court, the petitioner had been working for a long period and it was not a case where they were working on casual basis. In the instant case the petitioner was working on casual basis. He has filed the present writ for quashing of termination and is seeking regularisation. Otherwise also the petition involves disputed questions of facts. Thus in the facts and circumstances of this case the petitioner has alternative remedy provided under the Provisions of Industrial Disputes Act and it would be appropriate if the petitioner takes recourse to the said machinery provided under the said Act.

In *Ramala Dutta v. Union of India* 1998(5) S.L.R. 683 Calcutta cited by the respondent while holding that duty free shop in the departure lounge of Calcutta Airport under the control of the India Tourism Development Corporation, New Delhi was not 'state within the meaning of Article 12 of the Constitution, the Calcutta High Court further held that it would be more appropriate for the petitioner who is a workman to take recourse to the Provisions under the Industrial Disputes Act. The Calcutta High Court has relied upon various other Judgments of different High Courts as well as that of Hon'ble Supreme Court of India.

13. Our High Court also has in various cases particularly relating to casual labourers taken the view that appropriate course for such persons would be to raise industrial dispute under the Provisions of Industrial Disputes Act. It would be sufficient to quote recent Judgment of this Court ( delivered by K. Ramamoorthy J.) in CW 5066/99 entitled *Modern Food Industrial employees v. Modern Food Industry* decided on 1st May, 1999. In the said case after considering the entire case law on the issue the Hon'ble Judge held that writ petition was not maintainable and the petitioner was given liberty to raise industrial dispute. It may be sufficient to state that in the following cases this Court has taken the same view.

(1) *Shri D.P. Singh v. Engineering Project India Ltd.* 1995 A.D. Delhi 478.

(2) *Chet Ram Vs . Union of India* : 1998IVAD(Delhi)816 .

14. In view of my aforesaid discussion I held that the present writ petition is not maintainable and the same is accordingly dismissed. However, liberty is granted to the petitioner to raise industrial dispute, if so advised. No order as to costs.

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