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UNION OF INDIA AND ORS.

v.

KAMLA DEVI

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JULY 22, 2005

[MRS. RUMA PAL AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

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Pension—Cut-off date—Railways—Non-statutory canteen employees—Cut-off date classifying them as such—Grant of pension to those who retired after 1.10.1991—By order dated 10.8.1993 passed by Supreme Court—Employee retiring prior to 1.10.1991 claiming pension—Held, as far as cut off date of classification of non-statutory canteen employees is concerned, it must be taken to have been concluded by order dated 10.8.1993—It was not open to the employees concerned to seek variation of the same.

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M.M.R. Khan and Ors. v. Union of India and Ors., [1990] Supp. SCC 191, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4502 of 2005.

From the Judgment and Order dated 3.8.2004 of the Delhi High Court in W.P. (C) No. 12903 of 2004.

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Harish Chandra, Ms. Pareena Swarup, Praveen Swarup, Amit Singh and V.K. Verma with him for the Appellants.

Mrs. Rekha Palli for the Respondent.

The following Order of the Court was delivered :

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ORDER

Leave granted.

The respondent's husband was a canteen employee. He was appointed on 1st December 1979. On 12.7.1990 he retired on medical grounds. In the meanwhile, the Government had issued a Notification on 11.12.1979 by which

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with effect from 1.10.1979 the Government would treat all posts in canteen and tiffin rooms run departmentally by the Government of India as civil posts. It was made clear by Notification dated 11.12.1979 that all present and future incumbents of the posts would qualify as holders of Civil posts under the Central Government and that necessary rules governing their conditions of service would be framed under proviso to Art.309 of the Constitution of India to have retrospective effect from first day of October, 1979.

The workers of the canteen then filed proceedings under Art.32 before this Court for enforcement of their rights claiming *inter alia* parity with Railway employees. The workers of three classes of canteens were the claimants viz. (i) Statutory canteens (ii) Non-statutory recognized canteens and (iii) non-statutory non-recognized canteens.

The issue as to whether all the canteen employees should be treated as Railway employees and whether all service conditions be extended to them which are available to Railway employees was decided by this Court in *M.M.R. Khan and Ors. v. Union of India and Ors.* reported in [1990] Supp. SCC 191. This Court held that the relationship of employer and employee has been created between the Railway Administration and the canteen employees from the very inception and that it would not be gainsaid that for the purposes of the Factories Act, the employees in the statutory canteen were the employees of the Railway. It was noted that the Railway Board had already treated the employees of all statutory and eleven daily basis non-statutory recognised canteens as Railway employees with effect from October 27, 1980. However, the Court went on to say that the employees of the other non-statutory recognised canteens would, however, be treated as Railway employees with effect from 1st April 1990, and that they would be extended all the benefits as such Railway employees with effect from that date, according to the service conditions prescribed for them under the relevant rules and orders. The claim of the non-statutory non-recognized canteen workers was negated.

The husband of the respondent together with other employees of non-statutory recognized canteens filed writ petitions in which similar reliefs as were considered and granted in *M.M.R. Khan's* case were prayed for. The Court disposed of the writ petition by the following order on 11.10.1991:

“We are of the view that the facts before us in these cases squarely attract the decision in the reported case to be applied to them. In that view of the matter, we allow the Writ Petitions for the

A reasons indicated in the said Judgement and direct the benefits to be given to the Petitioners in the following way.

By an *interim* order dated 26.9.1983 certain reliefs had been granted. In respect of the reliefs already granted this order shall be deemed to be operative from that date. In case any further benefits are admissible, those will be admissible from 1.10.1991.

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For the purpose of calculation of pension service from the date of the interlocutory order shall be counted.

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By the *interim* order dated 22.9.1983 referred to in the body of the quotation above, a direction was given to the effect that pending hearing and disposal of the writ petitions, including the petition wherein the respondent's husband was a party, all employees of non-statutory recognized canteens would be paid at the same rate and on the same basis on which employees of statutory canteens were being paid.

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On the application of the Union of India for clarification of the order dated 11.10.1991, quoted earlier, on 10th August 1993 this Court passed the following order:

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“The learned Additional Solicitor General appearing for Union of India states that the pension will be given to all those who retired after 1.10.1991. However, for the purpose calculating the pension their services on and from 26.9.83 be taken into consideration. In case of those whose service falls short of the qualifying period, the service rendered them prior to 26.9.83 will be taken into consideration to extent of the short fall. On these clarifications we find that there is nothing further to be done in the matter. It is disposed of accordingly.”

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Admittedly, the respondent's husband had retired before 11.10.1991. Indeed, he had died on 28.3.1991. In 1994, the Federation of All India Central Government Canteens Employees Association filed another writ petition in which it appears that the petitioners had asked for a change of the cut off date as fixed by the order dated 10.8.1993. The writ petition was dismissed but this Court said that the dismissal would not preclude the Federation from approaching the High Court or the Central Administrative Tribunal whichever had the jurisdiction. In other words, the order dated 10th August 1993 was not interfered with.

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Taking a cue from this order, the canteen workers sought to reopen the

issue of the cut off date before the Central Administrative Tribunal. The respondent's husband filed an independent application before the Central Administrative Tribunal. The CAT directed the Union of India to grant the benefits of the entire period of service prior to the applicants having been declared as Government Servants for counting towards pensionary benefits. The respondent's husband sought to contend that the benefits of the Tribunal's order should also be made available in respect of persons when they retired prior to the cut off date i.e. prior to 11.10.1991. This was allowed by the Tribunal. The Union of India preferred a writ petition. The writ petition was dismissed. Challenging this order the appellants have approached this Court.

We are of the view that the issue as far as cut-off date of classification of non-statutory canteen employees is concerned, it must be taken to have been concluded by the order dated 10.8.1993 passed by this Court. It was not open to the respondent to seek variation of the same either before the CAT or the High Court. The order dated 10th August 1993 has attained finality and there can be no dispute as to the language of the order. The respondent could not reopen the issue. In this view of the matter, the decisions of the courts below are set aside and the appeal is allowed. We are making it clear that this decision will not affect the proceedings said to be pending before the CAT on the application of the Federation dated 3.12.1999 in any manner.

RP.

Appeal allowed.