

(2013) 11 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5599 of 2012

Commissioner, Municipal Corporation, Katni

APPELLANT

Vs

Ajay Prakash Mishra

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 MP CK 0020

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Hitendra Singh, for the Appellant; S. Verma, learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—This order shall govern final disposal of W.P. No. 5600/2012-Commissioner Municipal Corporation v. Virendra Kumar Bajpai, W.P. No. 5601/2012 - The Commissioner, Municipal Corporation v. Kishan Gopal, W.P. No. 5602/2012 - The Commissioner, Municipal Corporation v. Pramod Jain, W.P. No. 5603/2012 - Commissioner, Municipal Corporation Katni v. Dinesh Chandra Pandey, W.P. No. 5604/2012 - Commissioner, Municipal Corporation v. Santosh Kumar Shukla, W.P. No. 5606/2012 - Commissioner, Municipal Corporation Katni v. Vijay Kumar Garg, W.P. No. 5607/2012 - Commissioner, Municipal Corporation v. Vidya Jain, W.P. No. 5609/2012 - Commissioner, Municipal Corporation v. Ramesh Badgaiya, W.P. No. 5610/2012 - Commissioner, Municipal Corporation Katni v. Ajay Singh, W.P. No. 5611/2012 - Commissioner, Katni Municipal Corporation v. Vishnu Datt, W.P. No. 5618/2012 - Commissioner, Municipal Corporation Katni v. Tarun Neware, W.P. No. 5625/2012 - Commissioner, Municipal Corporation Katni v. Smt. Savita Yadav, W.P. No. 7721/2012 - Commissioner, Municipal Corporation Katni v. Smt. Geeta Soni and W.P. No. 7723/2012 - Commissioner, Municipal Corporation Katni v. Mahesh Kumar Tiwari. Respective petitions are directed against the orders passed by the Labour Court in a reference under Industrial Disputes Act, 1947 as to whether the termination

of service of respective employees are just and valid and if not to what relief they are entitled to?

2. The Labour Court while answering the reference in favour of the respective workmen have directed the petitioner employer to reinstate them without back-wages. It is these orders passed by the Labour Court in Reference Case Nos. 24/2005/IDR, 32/03/IDR, 2/2009/IDR, 216/2009/IDR, 245/2009/IDR, 247/2009/IDR, 248/2009/IDR, 249/2009/IDR, 250/2009/IDR, 251/2009/IDR, 254/2009/IDR, 263/2009/IDR, 278/2009/IDR, 262/2009/IDR and 260/2009/IDR respectively which are being questioned in this Batch of Petitions.

3. It is not disputed by learned counsel for the parties that issued raised here in this petition have been decided in Division Bench of this Court in batch of W.P. No. 1391/2011 - The Commissioner, Municipal Corporation Katni v. Mahendra Shivhare and another, W.P. No. 15364/2010 - Municipal Corporation Katni v. Vijay Kumar Sahu and another, W.P. No. 17439/2010 - The Commissioner, Municipal Corporation Katni v. Sunil Kumar Jar and another, and W.P. No. 2495/2011 - The Commissioner, Municipal Corporation Katni v. Arvind Shukla and another wherein while negating the averment put forth on behalf of petitioner employer that Labour Court had erred in terminating for reinstatement without setting the aspect of res judicata the award passed by the Labour Court of reinstatement of respondent Workman has been upheld.

4. In Commissioner, Municipal Corporation Katni v. Mahendra Shivhare and another, W.P. No. 1391/2011) it has been held: 13. In the case at hand the facts are totally different. With the rejection of representation preferred by the respective workmen there was accrual of fresh cause of action in their favour and they were thus justified in raising dispute under the Industrial Disputes Act, 1947. In our considered opinion, therefore, the contention put-forth by learned counsel for the petitioner that the proceeding before the Labour Court under the Industrial Disputes Act, 1947 were hit by principle of res judicata has no legs to stand and are accordingly rejected.

14. Further, submission put-forth by learned counsel for the petitioner is that since the appointment of respective workmen had no sanction of law, the exercise of power by Labour Court u/s 11A of Industrial Disputes Act, 1947 directing reinstatement suffers from vice of perversity. In support, learned counsel for the petitioner has placed reliance on judgment rendered by Supreme Court in the case of Municipal Council, Sujapur Vs. Surinder Kumar, . Learned counsel for the petitioner, however, when was confronted with the fact as to whether before Labour Court or even in this petition whether any Rule has been brought on record to substantiate the plea that a specific procedure has been laid down for engaging daily-wage employee, learned counsel for the petitioner is at loss to bring to our notice any such Rule, Byelaws or Statutory provisions as would govern the recruitment of daily-wage workers. In the absence whereof, we are of the considered opinion that the principle of law as laid down in Surinder Kumar (supra) does not render any support to the contentions put-forth on

behalf of petitioners that Labour Court exceeded its jurisdiction while granting relief of reinstatement.

15. Admittedly, the respective workmen have rendered their service for more than 240 days and no procedure as is prescribed u/s 25F of the Act of 1947 was adhered to before dispensing them from service. The Labour Court having returned a finding to said effect was justified in directing the reinstatement without back-wages. In this context reference can be had of judgment in *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana)*, wherein it is observed:

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as *ab initio* void, sometimes as *illegal per se*, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

16. In view of above, we do not find any substance in the challenge put-forth to the award passed by Labour Court.

In view of above, whereof since the issue raised in these petition have already been settled at rest, the present petitions deserves to be and are dismissed. There shall be no costs.