
(2016) 12 MP CK 0037
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7395 of 2013

Executive Engineer

APPELLANT

Vs

Rajeshwari Prashad Dixit

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Industrial Relations Act, 1960 — Section 108, Section 31, Section 61

Citation : (2017) 1 LLJ 754

Hon'ble Judges : Mr. Sanjay Yadav, J.

Bench : Single Bench

Advocate : Shri Sanjeev Kumar Singh, Panel Lawyer, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Sanjay Yadav, J.— Heard on admission.

2. This petition under Article 226/227 of the Constitution of India is directed against the order dated 19.09.1998 passed by the Labour Court, Sidhi and order dated 31.08.2000, passed by the Industrial Court, Rewa.

3. Petitioners also assail the orders dated 15.11.2011 and 28.08.2012. Whereas, by order dated 19.09.1998 Labour Court allowed respondent workman's application under Section 108 of MPIR Act, 1960 seeking execution of order dated 31.08.2000. By order dated 28.08.2012 miscellaneous appeal preferred by the petitioners herein against said order has been dismissed.

4. By order dated 19.09.1998 Labour Court allowed the application under Section 31 read with Section 61 M.P. Industrial Relation Act, 1960, filed by respondent, seeking classification as permanent employee, whereas, by order dated 31.08.2000, an appeal preferred by the petitioner herein against the order of permanent classification, has been dismissed.

5. Grievance put forth by the petitioner is that, the Labour Court as well as the

Industrial Court failed to appreciate that respondent Rajeshwari Prasad Dixit was engaged as Time Keeper and the same was not against any vacant post nor any recruitment process known to law, has been resorted to, while engaging him. It is contended that, respondent/workmen was never employed as a Time Keeper. It is urged that, this fact that workmen was engaged on daily wages and there were no sanctioned post against which he was engaged was duly admitted by the workmen before the Labour Court and yet the Labour Court while shifting the burden on the petitioner employer passed an award in favour of the respondent/workmen classifying him as a permanent employee. It is urged that, even the Industrial Court committed the same folly in affirming the order passed by Labour Court. It is contended that, interpretation by Labour Court as well as the Industrial Court of Clause 2 (i) of Standard Standing Orders to the extent that, immediately after completion of six months, a workman acquires a right to be classified as an permanent employee, suffers from vice of perversity in absence of cogent proof regarding the fact that such appointment was against clear vacancy and that workmen has satisfactorily discharged his duties on such posts.

6. In support of his contention learned counsel for the petitioner relies upon the judgments of the Supreme Court in *Mahendra L. Jain and others v. Indore Development Authority and others*; (2005) 1 SCC 639, *M.P. Housing Board and another v. Manoj Shrivastava*; (2006) 2 SCC 702 and judgment of this Court in *M.P.S.R.T. Corporation, Bhopal and others v. Awadesh Pratap Singh and others*; 1979 MPLJ 325 : LNIND 1979 MP 18.

7. There can be no doubt about the proposition of law laid down by the cases referred to by learned counsel for the petitioner that a person with a view to obtain the status of a permanent employee, is under obligation to establish that the appointment was against the vacant post.

8. In the instant case, however, the facts as borne out from record would not warrant any interference. The record reveals that against the order dated 19.09.1998 passed by the Labour Court, petitioners preferred an appeal under Section 65 of M.P.I.R. Act, 1960. The said appeal was dismissed on 31.08.2000.

9. The petitioners did not challenge these orders nor in furtherance thereto they classified the respondent as permanent Time Keeper which led the respondent to file an application under Section 108 of M.P. Industrial Relations Act, 1960 for issuance of Revenue Recovery Certificate. It is only when the application under section 108 has been decided that, the petitioner has woken from the slumber and has filed this petition after a lapse of fifteen years of passing of order on 19.09.1998 and its affirmation in appeal dismissed on 31.08.2000. With non challenge of the order passed by Labour Court and Industrial Court a right crystallized in favour of respondent workman.

10. Trite it is that delay and laches which lead to crystallization of right in favour of a person, disentitles the other to seek remedy in the Court of Law. Division Bench of this Court in *Focus Energy Ltd. (M/s) v. Government of India, (DB)*

I.L.R. (2011) M.P. 53; relying upon judgments of the Apex Court observed -

"10- Thus, facts stated supra leads to irresistible conclusion that appellant is guilty of delay and laches. Its conduct disentitles it to any relief. In *New Delhi Municipal Council v. Pan Singh and Others*, AIR 2007 SC 1365 the Supreme Court has held that delay and laches are relevant factors for exercise of equitable jurisdiction. In *Municipal Council, Ahmednagar v. Shah Hyder Beig*, (2000) 2 SCC 48 the Supreme Court has observed that discretionary relief can be provided to one who has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant. In *the State of Haryana v. Aravali Khanij Udyog*, (2008) 1 SCC 663 it has been held that where third party rights are created, the High Court should not interfere. Similarly, in *Shiba Shankar Mohapatra* (supra) it has been held that the Court exercising public law jurisdiction does not encourage agitation of state claims where the right of third parties crystallizes in the interregnum."

11. In view of above, while not disputing the proposition of law laid down in the cases of *Mahendra L. Jain* (supra), *M. P. Housing Board* (supra) and *M.P.S.R.T. Corporation* (supra), the petition is dismissed on the ground of delay and laches, however, no costs.