
(2013) 10 MP CK 0257

In the Madhya Pradesh High Court

Case No : Writ Petition No. (S) 2654 of 2004

Govind Dass

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0257

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : B.P. Singh, for the Appellant; Nidhi Patankar, Govt. Advocate for Respondents/State, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the respondents to classify him as a permanent Choukidar or on any other Class-IV post with difference of wages. Shri B.P. Singh, learned counsel for the petitioner submits that the petitioner was appointed as Choukidar on daily rated basis w.e.f. 1.6.1979. Thereafter, he has continuously worked with utmost honesty and sincerity. His service record is satisfactory. By relying on Clause 2(iv) of Standard Standing order, it is contended that since the petitioner has worked continuously for more than six months, he became a permanent employee. He relied on Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, . In addition, he relied on unreported judgments delivered in W.P. No. 4361/07 (Water Resources Department & Others Vs. Vinod Kumar Shrivastava), W.P. No. 4211/06 (State of M.P. through Secretary, Water Resources Department & Others Vs. Dipty Singh & Others), W.P. No. 1925/99 (Lokendra Singh Bhadoriya Vs. Madhya Pradesh Rajya Beez Evam Farm Vikas Nigam and others)) and judgment of Supreme Court in Civil Appeal No. 2451/03 (Engineer-in-Chief, P.H.E.D. & Others Vs. Budha Rao Magarde). On the strength of these judgments, it is contended that the petitioner has acquired the status of classified permanent

employee and a direction in this regard be issued.

2. The prayer is opposed by the other side. Mrs. Patankar, learned G.A. relied on various Supreme Court judgments on this point and contended that the petitioner is not entitled for classification.

3. I have heard the learned counsel for the parties and perused the record.

4. No doubt, earlier view of this Court was that if an employee has worked for more than six months, he shall be deemed to be a permanent employee by operation of fiction created in Clause 2(vi) of the Standard Standing Order. This view was expressed by this Court in (2012) 95 FLR 581 (P.W.D. And another Vs. M.P. Industrial Court, Bhopal and others). In Budha Rao (supra), said view of this Court was affirmed. However, the Supreme Court has taken a different view in catena of judgments. In Mahendra L. Jain and Others Vs. Indore Development Authority and Others, , the Apex Court opined as under:-

28. the 1961 Act provides for classification of employees in five categories. The 1973 Act, as noticed herein before, clearly mandates that all posts should be sanctioned by the State Government and all appointments to the said cadre must be made by the State Government alone. Even the appointments to the local cadre must be made by the Authority. The said provisions were not complied with. It is accepted that no appointment letter was issued in favour of the appellants. Had the appointments of the appellants been made in terms of the provisions of the Adhiniyam and the rules framed thereunder, the respondent Authority was statutorily enjoined to make an offer of appointment in writing which was to be accepted by the appellants herein. Who made the appointments of the appellants to the project or other works carried on by the Authority is not known. Whether the person making an appointment had the requisite jurisdiction or not is also not clear. We have noticed herein before that in the case of Om Prakash Mondloi, the CEO made an endorsement to the effect that he may be tried in daily wages and should be entrusted with the work of progress collection of ODA work. The said order is not an "offer of appointment" by any sense of the term.

31. The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the *suprema lex*, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail.

5. The same view was taken by the Supreme Court in M.P. Housing Board and

Another Vs. Manoj Shrivastava, . The interpretation of Clause 2(vi) of the Standard Standing Order came for consideration again before the Supreme Court in State of M.P. and Others Vs. Lalit Kumar Verma, . The Apex Court opined as under:-

Under clause 2 of the Standard Standing Orders contained in the Annexure to the M.P. Industrial Employment (Standing Orders) Rules, 1963 a workman would be entitled to classification as a permanent or temporary employee, if the conditions precedent therefore are satisfied. The respondent was appointed on daily wages. His recruitment was not made in terms of the statutory rules. No offer of appointment was also issued. The respondent was not appointed against a clear vacancy. He was not appointed in a permanent post or placed on probation. He had also not been given a ticket of permanent employee. Working continuously for a period of more than six months on daily wages alone would not entitle him to the status of a permanent employee.

The case of Lalit Kumar Verma (supra) was considered by the Apex Court in State of M.P. and another Vs. Mohd. Ibrahim (2009) 15 SCC 214. The Apex Court again opined that merely because the employee has completed six months service as a daily wager, his appointment cannot be treated in terms of statutory rules. No offer of appointment was issued. The award passed by the Labour Court on the premise that he has worked continuously for six months and, therefore, deserves classification as a permanent employee was set aside.

6. In the light of aforesaid judgments of Supreme Court, the judgments of this Court are of no assistance to the petitioner. On the basis of aforesaid judgments, it is clear that when no appointment order is issued to the petitioner, his appointment was not in accordance with rules, ticket of permanency is not issued, no advertisement for recruitment in consonance with public policy was issued, the petitioner has not fulfilled the requirements of the law for classification as laid down by the Supreme Court in Mahendra L. Jain and Lalit Kumar Verma (supra). In view of aforesaid, I am unable to hold that petitioner is entitled to be classified as permanent employee. Petition is merit-less and is hereby dismissed. No cost.