
(2002) 12 MP CK 0013
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2034 of 1996

Hari Singh

APPELLANT

Vs

Central India Machinery Manufacturing Company Ltd.,
Gwalior

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3), 61, 62

Citation : (2003) 1 MPJR 232 : (2003) 2 MPLJ 21

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Sushil Chaturvedi, for the Appellant; Prashant Sharma, for the Respondent

Judgement

Rajendra Menon, J.

The petitioner employee has challenged the order dated 2-8-1996 Annexure P/V, passed by the Industrial Court, Gwalior, whereby, the orders of the Labour Court as contained in Annexure P/III, dated 8-4-1994, has been modified to the extent that the direction contained in the aforesaid order of the Labour Court, directing classification of the petitioner has been set aside by the Industrial Court.

It is the case of the petitioner that he was employed in the respondent's establishment since 1979 and in the year 1981 vide Annexure P/I an application was filed under the provisions of section 31(3) read with sections 61 and 62 of the M.P. Industrial Relations Act, 1960, (hereinafter referred to as the Act) claiming classification in the post of helper. It was the case of the petitioner that even though he was working as helper from the date of his initial appointment on daily wages, the benefit of permanent employee has not been extended to him that being so classification as a permanent employee has been sought for in accordance with the provisions of Clause 2 of the Standard Standing Orders framed under the M.P. Standing Orders Rules. The aforesaid application for classification was pending before the Labour Court when on 23-1-1987 the

petitioner's services were terminated. He, therefore, moved an application for amendment and challenged the action of termination also in the same proceedings.

Respondent-employer opposed the aforesaid prayer for amendment but the Labour Court allowed the same. Thereafter, by impugned order Annexure P/III, dated 8-4-1994, the termination of services of the petitioner was held to be illegal and therefore directed for reinstatement with payment of backwages. After holding the termination to be illegal and directing for reinstatement in service the Labour Court proceeded to consider the claim of the petitioner for classification and directed for his classification also by the impugned order.

Being aggrieved by the order of the Labour Court the respondent-employer preferred an appeal before the Industrial Court under the provisions of section 65 of the Act. The Industrial Court by the impugned order Annexure PV, dated 2-8-1996 has dismissed the appeal of the employer so far it relates to grant of reinstatement and backwages but interfered with the order granting classification to the petitioner employee.

Petitioner feeling aggrieved by the order of the Industrial Court interfering with the direction of classification has filed the present petition.

Shri Chaturvedi, learned counsel appearing for the petitioner submits that the Industrial Court has interfered with the order of classification and in doing so it has simply recorded the finding in para 3 of the order that direction for classification under the circumstances being contrary to the provisions, is quashed but no reasons have been assigned for quashing of the aforesaid direction of classification. It is submitted by him that without any justification and without recording any finding as to why the order of classification is illegal, interference by the Industrial Court is unsustainable.

Shri Prashant Sharma, learned counsel appearing for respondent-employer points out that an "employee" is defined under the provisions of section 2(13) of the Act and once an employee is dismissed, discharged and retrenched from employment, he does not remain an employee within the meaning of the aforesaid section for the purpose of applicability of the M.P.I.R. Act except for the purpose of challenging the order of dismissal, discharge or retrenchment. Referring to the explanation appended to the aforesaid section, it is submitted by the learned counsel for the respondent that once the petitioner was removed from service in the year 1987, his right for classification, by filing application before the Labour Court was taken away as he was not an employee in accordance with the definition, except for the purpose of challenging the order of dismissal, discharge or retrenchment and not for any other purpose. In that view of the matter, the application was not permissible and the claim for classification has been interfered by the Industrial Court on this count.

However, Shri Sushil Chaturvedi, learned counsel for the petitioner-employee points out that similar arguments were advanced in Writ Petition No. 1830/96,

decided by this Court on 18-1-2000 and referring to the observations in this regard made in paras 5, 6 and 7 of the said order. It is submitted by Shri Chaturvedi that similar arguments were considered and rejected by this Court in the aforesaid case. It is also pointed out by Shri Prashant Sharma, Advocate, appearing for respondent, that the aforesaid order is pending adjudication in L.P.A. before this Court in LPA No. 119/2000, wherein the direction for classification has been stayed.

I have heard the learned counsel for the parties.

Admittedly, the petitioner in the year 1981 was an employee within the meaning of section 2(13) of the Act and he had right to claim classification as a permanent employee. On 23-1-1987 when his services were terminated he had amended his claim petition before the Labour Court and challenged the order of termination also and simultaneously prosecuted his case claiming classification. On the basis of material that have come on record the Labour Court has recorded the finding rejecting the objection of the respondent-employer, and had directed for his reinstatement with full backwages. From the record, it is seen that the aforesaid order was challenged by respondent-employer before this Court in W.P. No. 946/97 and the same has been dismissed on 15-7-1997 for want of complying with the order of this Court. That being so, the petition challenging an order of the Labour Court directing reinstatement as upheld by the Industrial Court by the employer has attained finality. The only question remains is as to whether the direction for classification issued by the Labour Court has been rightly interfered with by the Industrial Court?

If the matter is scrutinized in a hyper technical way, there may be some force in the submission made by Shri Prashant Sharma, learned counsel for the respondent, but this Court has to interpret the provisions of the M.P. Industrial Relations Act, 1960 in the manner so that the cause for which the aforesaid enactment has been made is advanced. The definition has to be interpreted keeping in view the fact that the Madhya Pradesh Industrial Relations Act is a welfare legislation for giving some benefit to the employees. Even though it may be right in contending that after termination an employee cannot claim classification in a permanent post but the fact remains that in the present case, during pendency of his claim for classification, the employee was terminated, he challenged his termination also, the amendment was allowed, and on the basis of material that came on record, the Labour Court held that the termination was illegal. Once it is held that the termination is illegal the petitioner is entitled to reinstatement and consequential benefit. His status as an employee is restored by the order passed by the Labour Court and if considered in the light of the aforesaid the petitioner's status as an employee as defined in Clause 2(13) of the Act, would be a continuous status, even though, in fact, there is some break, while he was out of employment, but restored because of order passed by the Labour Court. The question is as to whether merely on the basis of the above, the direction for classification issued by the Labour Court requires interference?

As already indicated, hereinabove, this Court is required to advance the cause of justice without being influenced by the technicalities that come in the way when interpreting welfare legislations like the M.P.I.R. Act. Admittedly, apart from challenging the order of the Industrial Court, on this technical ground, there is nothing on record to indicate that the direction for classification is otherwise contrary to the statutory provision or illegal being in violation of any rule or regulation. Respondent-employer has not demonstrated as to how the classification granted by the Labour Court on merits, is not sustainable. They have only assailed the order of the Labour Court which was interfered by the Industrial Court on the ground that the petitioner is not an employee within the meaning of section 2(13) of the Act. As indicated hereinabove, once the Labour Court quashed the order of termination the status of the petitioner as an employee is restored and he has the right to seek classification for which his claim was already pending, prior to his termination.

Accepting the arguments of the respondent, would lead only to multiplicity of the proceedings inasmuch as while the petitioner will have a right to again claim classification before the Labour Court and as the order of classification has not been challenged on merits, no case is made out by the respondent on merit. The approach to be adopted in such cases by the High Court has been considered by the Supreme Court in case of *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation*, and subsequently in case of *Essen Deinki Vs. Rajiv Kumar*, in para 14 it has been laid down as under:

14. Whilst it is true that the law seems to be rather well settled as regards the "bread-and-butter" statutes and the welfare legislation introduced in the statute-book for the purposes of eradication of social malady, it is a duty incumbent on the law courts to offer a much broader interpretation since the legislation is otherwise designed to prevent perpetration of any arbitrary action and no contra-view thus is plausible. *American Express (supra)* affirms such a view.

The Supreme Court in the case of *Roshan Deen Vs. Preeti Lal*, has considered the scope and jurisdiction of exercising power under Articles 226 and 227 of the Constitution by this Court, and in para 12 has observed as under:

Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. (*Vide State of U.P. Vs. District Judge, Unnao and Others*,). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

(Emphasis Supplied)

Considering the case in hand in the light of the aforesaid observation it has to be held that as the respondents have not made out any case on merit to interfere with the order of classification, their objection will have no effect on the ultimate decision that was passed by the Labour Court. Labour Court has directed for classification and held that the termination of the petitioner was illegal, which cannot be said to be beyond jurisdiction. That being so, the Industrial Court has interfered in the matter without considering the totality of the facts and circumstances of the case and the fact that the classification has not been challenged on any other ground. Interference of the Industrial Court only on the ground that it is contrary to law, in the opinion of this Court, is unsustainable. Accordingly as on merits no case is made out for challenging the order of classification. I am not inclined to dismiss this petition only on the ground that the Labour Court has no jurisdiction to deal with the matter but considering the case in the light of the observations made by the Supreme Court in the cases referred to hereinabove and the decision rendered by this court in case of Sukhendra Pal Singh vs. Gwalior Sugar Com. Ltd., WP No. 1830/96 decided on 18-1-2000, the petition is allowed. The order of the Industrial Court, quashing classification of the petitioner, as ordered by the Labour Court, is set aside. It is directed that the petitioner shall be entitled to classification in accordance with the direction of the Labour Court as contained in Annexure P/3, order dated 8-4-1994. The petition is accordingly allowed.