
(2015) 01 MP CK 0018
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8054/2014

Hem Singh Kushwah

APPELLANT

Vs

Govt. of India

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 227
Industrial Disputes Act, 1947 — Section 10, 2(j)

Citation : (2015) 2 LLN 171

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : M.S. Rana, for the Appellant

Final Decision : Dismissed

Judgement

Rohit Arya, J.—By this writ petition under Article 227 of the Constitution of India challenge is made to the award passed by the Central Government Industrial Tribunal Cum Labour Court dated 19/6/2014.

2. Following reference was made to the Tribunal by the Central Government in exercise of power under Section 10 of the Industrial Disputes Act, 1947:-

Whether the action of the management of Navodaya Vidhyalaya Samiti in terminating the services of Shri Hem Singh Kushwah w.e.f. October, 98 is legal and justified? If not, to what relief the workman is entitled? 3. The Tribunal after allowing the workman to file statement of claim and to non-applicant the written statement, framed three issues:

(i) Whether the second party is a industry within the meaning of Section 2(j) of the Act?

(ii) Whether the action of respondent-management terminating the services of petitioner w.e.f. October, 1998 was legal?

(iii) If not, to what relief the workman is entitled to?

4. The Tribunal has held that respondent- management falls within the definition of an industry under Section 2(j) of the Act. The action of respondent-management terminating the services of the petitioner was found to be illegal as he was terminated without notice and without payment of retrenchment compensation, for which he was held entitled to, as the petitioner worked from 1994 to 1998. However, the Tribunal has not found petitioner entitled for reinstatement with back wages as petitioner's appointment was not found to be in accordance with the rules and/or by the selection process by the committee empowered in that behalf. There was no order of appointment as such and, therefore, the Tribunal found it justified to award compensation of Rs.75,000/- in lieu of reinstatement with further direction, if the amount so awarded is not paid within thirty days from the date of publication of the award, the same shall carry interest at the rate of 9% per annum from the date of award till realization.

5. Learned counsel for the petitioner has assailed the impugned order on the premise that having found the petitioner worked from 1994 to 1998 termination was illegal. There was no justification not to award reinstatement with back wages, which is the normal rule. Counsel also refers to the judgment of the Hon"ble Supreme Court in the case of Hari Nandan Prasad and Another Vs. Employer I/R to Management of FCI and Another, .

6. Heard the counsel.

7. There was no order of appointment issued to the petitioner after selection. Merely because petitioner is found to have worked from 1994 to 1998 by itself cannot justify his appointment as legal. In the aforesaid judgment the Hon"ble Supreme Court critically evaluated the judgment passed in the cases of UP Power Corpn.

8. U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others, and Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, and in para 39 has held as under:-

39. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art. 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules.

However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in

question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.

9. In the opinion of this Court, the aforesaid principles of law enunciated by the Apex Court in the backdrop of the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , petitioner's appointment not being in accordance with the rules is found to be in violation of Article 14 of the Constitution of India and the Tribunal was fully justified having granted the relief of monetary benefit in lieu of reinstatement. No illegality or jurisdictional error is found in the impugned award. The writ petition sans merits and is hereby dismissed.