

(2000) 04 MP CK 0033
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1188/97

Indore Development Authority, Indore	APPELLANT
Vs	
Indore Development Authority Daily Wages Sub-Engineers' Union, Indore and others	RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10
Madhya Pradesh Development Authority Service (Officers and Servants) Recruitment Rules, 1987 — Rule 4
Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 — Section 2, 2(2)
Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 76

Citation : (2000) 87 FLR 57 : (2000) 2 JLJ 190 : (2001) 1 MPHT 367

Hon'ble Judges : Mr. Deepak Verma, J

Bench : Single Bench

Advocate : Shri P.K. Saxena and Mr. S.S. Kemkar, for the Appellant; Shri D.M. Kulkarni, Shri Pankaj Bagadiya, Shri O.D. Sharma, Shri S.J. Dhanji and Ms. Meena Chaphekar, Shri Shekhar Bhargava and Shri S.C. Bagadiya, Sr. Advs., for the Respondent

Final Decision : Allowed

Judgement

Deepak Verma, J.—In this petition, filed under Art. 227 of the Constitution, petitioner is challenging legality, propriety, correctness and validity of the Award dated 19-6-1997, passed by Labour Court, Indore, whereby, petitioner has been directed to classify respondent Nos. 2 to 33 on regular posts, on which, they were appointed and to pay them the deferential salary.

2. Factual matrix is as under :--

Indore Habitat Project was to be implemented through the agency of petitioner/ Indore Development Authority (for short "IDA"), which was to be financed by Overseas Development Authority (for short "ODA"), a project floated by British

Government. This was as per the directions of the Central Government. For implementation of ODA project, IDA, which, was to manage the affairs as per the directions of the Central Government, appointed Sub-Engineers/respondent Nos. 2 to 33, herein, temporarily on daily wages on muster-roll. The said project has finally come to an end on 30-6-1997. Petitioner contended, that since in IDA, there were neither sanctioned posts, nor funds, the respondent Nos. 2 to 33 could not have been classified for regular appointments on the posts of Sub-Engineers. For implementation of ODA project, the petitioner was required to engage Sub-Engineers for completion of the said project. Under these circumstances, respondent Nos. 2 to 33 were appointed between the years 1991-1994. They were appointed as Daily Rated Sub-Engineers and were being paid wages per day, which was fixed by Collector/Commissioner of the Division.

3. Respondent No. 1 is a registered Union under the provisions of Trade Unions Act, representing respondent Nos. 2 to 33. It has been registered on 18-10-1997. Respondents on inkling that their services are likely to be terminated on completion of ODA project, filed an application through respondent No. 1/Union before Asstt. Labour Commissioner, Indore on 20-6-1996. In nut-shell, they prayed for the following reliefs :

- (i) Petitioner be injuncted from terminating the services of respondent Nos. 2 to 33;
- (ii) Daily Rated Sub-Engineers be directed to be regularised;
- (iii) Order of Regularisation be passed;
- (iv) Against the sanctioned posts, lying vacant, these respondents be accommodated and if any of the respondent is not accommodated, then, post be created.

4. On notice being issued to the petitioner, it submitted its reply, opposing the reliefs, as claimed by the respondents. On account of failure of talk, so recorded by the Asstt. Labour Commissioner, Indore, matter was referred to the State Government u/s 10(1) of the Industrial Disputes Act, 1947. The State Government on consideration of the matter, referred it for adjudication of the disputes to the Labour Court.

5. The disputes referred to the Labour Court by the State Government, are reproduced hereinbelow:

^^?1? D;k ?layXu lwph vuqlkj? mi vfHk;arkvksa dks fu;fer ugha fd;k tkuk oS/k ,oa mfpr gS\\ ;fn ugha rks os fdl lgk;rk ds ik= gS ,oa bl laca/k esa fu;ksDrk dks D;k funsZ"k fn;s tkuk pkfg,\\

??? D;k bu 31 mi vfHk;arkvksa dks vU; mi vfHk;arkvksa ds leku dk;Z ds vuqlkj osru ugha fn;k tkuk oS/k ,oa mfpr gS\\ ;fn ugha rks izkFkhZ fdl lgk;rk ds ik= gSa ,oa bl laca/k esa fu;ksDrk dks D;k funsZ"k fn, tkuk pkfg,**

6. On reference being made to Labour Court, notices were issued to both parties.

Statement of claim was preferred by respondents Nos. 2 to 33. They specifically mentioned therein, that they were not appointed under ODA project, but, were appointed by IDA against sanctioned posts. Thus, they had become entitled to be classified on the regular posts on which they were appointed and were entitled to be paid deferential salary of regular employees of IDA working as Sub-Engineer.

7. Petitioner, herein, filed its reply denying the claim of the respondents and raised preliminary objection. It contended that the services of respondent Nos. 2 to 33 were taken only on account of ODA project, which, was directed to be implemented through agency of the petitioner. These Sub-Engineers were not appointed against any sanctioned posts. They contended that there was no fund with the IDA to meet the extra burden of salary and other ancillary monetary benefits of these respondents. Thus, it denied the reliefs claimed by the respondents and contended that reference be answered against the employees i.e. respondents No. 2 to 33.

8. To substantiate the grounds as projected by respondents, and opposed by petitioner, they examined witnesses. Petitioner examined Manish Naik on its behalf and respondents examined Sanjay Tiwari and O.P. Mandloi on their behalf. On appreciation of evidence, both documentary and oral, the Labour Court passed an award in favour of respondent Nos. 2 to 33, as mentioned above. Hence, this petition by IDA under Art. 227 of the Constitution.

9. Respondents submitted their return in opposition. They denied that respondent Nos. 2 to 33 were appointed only to execute the work of ODA project. They were appointed as Sub-Engineers by IDA. IDA had taken their interviews and it was never stated to them that these posts were being filled up for implementation of ODA project. With the passage of time and on account of their work with the petitioner, they have become over age, thus, cannot be taken in service anywhere else. Even, if, ODA project has come to an end, these respondents can still be adjusted in many other project/schemes of the petitioner, which, are still going on within the city, To some what identical are the returns of other respondents.

10. Four respondents i.e., Ashok Deepchand, Mahendra Kumar, Omprakash and Sunil claimed that they have nothing to do with ODA project, as they were appointed independently by IDA.

11. It may be pertinent to mention here, that against interlocutory orders passed in the matter, from time to time, in this case, the petitioner had preferred SLP in the Supreme Court. The said SLP came to be finally decided by giving directions to the petitioner, not to retrench (the respondents and to treat them in service and continue to pay them wages/salary as on the date of the award. High Court was also requested to hear and dispose of the writ petition expeditiously. On account of aforesaid order, the respondents are continuing in service and are getting their wages/salary.

12. In the light of aforesaid controversy, involved in the matter, I have heard the

learned counsel for parties at length and perused the record.

13. At the out-set, it is pertinent to mention here that it is nobody's case that ODA project is still under progress or the same has not come to an end w.e.f. 30-6-1997.

14. Now the core question to be considered by this Court is, whether the appointments of respondent Nos. 2 to 33 were made to implement ODA project to be executed through IDA or they were appointed separately and independently by IDA, de hors ODA project.

15. It is further not in dispute that no appointment letters were, at all issued to respondent Nos. 2 to 33, as they were kept as Daily Rated Employees on muster-roll.

16. Apparently, it appears that question with regard to continuance of the employment of the employees engaged for a particular project, has now been set at rest by latest judgment of the Apex Court in the matter of *Rajendra and Others Vs. State of Rajasthan and Others*, . In the said case employment was given to the petitioners under various schemes framed by State of Rajasthan and entrusted to District Rural Development Authority (DRDA).

17. The Supreme Court, while dealing with the matter, has held, that when a post is temporarily created for fulfilling the needs of a particular project/scheme limited in its duration, comes to an end and on account of the need for project itself having come to an end, either because the project was fulfilled or had to be abandoned wholly or partially, for want of funds, the employer by a writ of mandamus cannot be directed to continue employing the employees who were employed for completion of the project. It further held, that to discontinue the services of such employees, would not be termed as mala fide, as the decision was based on administrative and financial consideration.

18. Similar is the view expressed by Supreme Court in its earlier judgment in the matter of *Municipal Corporation, Bilaspur and Another Vs. Veer Singh Rajput and Others*, Supreme Court, after having considered its previous judgments, held that Daily Rated muster-roll casual labours, mostly appointed under political consideration, cannot be directed to be regularised, as it was not warranted by the High Court for issuing direction for regularisation of such employee.

19. In the matter of *Executive Engineer (State of Karnataka) Vs. K. Somasetty and others*, it has been held that if the project has been closed, the respondent/employee has no right to the post, since he had been appointed on daily wages.

20. In the matter of *Ghaziabad Development Authority and others Vs. Sri Vikram Chaudhary and others*, it has been held by the Apex Court that for temporary Daily Wage employees, as long as there is no regular posts available for appointment, the question of making pay at par with regular employees does not arise.

21. In view of plethora of judgments of the Supreme Court, deciding the question with regard to Daily Rated Employees, appointed on a particular project, I have no hesitation to hold that once a project has come to an end and. there existed no sanctioned posts and necessary fund in IDA, where, respondents could be absorbed, the services of respondent/employees, appointed for completion of project, shall automatically come to an end, on completion of project.

22. However, the Labour Court passed the impugned award against the petitioner, taking recourse to the provisions of M.P. Industrial Employment (Standing Orders) Act, 1961 (for short referred to as "Act of 1961") and the Rules framed thereunder, known as "M.P. Industrial Employment (Standing Orders) Rules, 1963" (for short referred to as "Rules of 1963"). Labour Court has held that in view of Rule 2 (vii) of Rules of 1963, the respondents having worked for more than six months satisfactorily had become entitled to be classified as regular employees of the petitioner. Even, though, there was no specific pleading by the respondents, in this regard, nor any question was referred to the Labour Court by State Government, touching the said issue, yet on its own motion, it. made out this new ground to grant relief-to the respondents. To lend support to its findings so recorded, it has taken recourse to a judgment of the Supreme Court in the matter of U.P. Electricity Board and others Vs. Harishankar Jain and others (AIR 1979 SC 65). Perusal of the judgment of the Apex Court shows that it has itself held that these provisions shall have no application, where, the conditions of services of the employees are governed by statute.

23. IDA has been constituted under the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short referred to as "Adhiniyam"). Section 76-B of the said Adhiniyam deals with constitution of Development Authority's service.

24. In exercise of the powers conferred by Section 76-B (2) read with Section 85 of the Adhiniyam, 1973, State Government has made Rules known as "M.P. Development Authority Service (Officers and Servants) Recruitment Rules, 1987" (in short to be referred as "Recruitment Rules of 1987"). Rule 4 of the aforesaid Rules, deals with methods of recruitment. Perusal of the said Rule, makes it clear that there are only three modes for filling up of the posts (i) by direct recruitment, (ii) by promotion of a permanent employee in the authority, and (iii) by transfer of deputation of a person serving in connection with the affairs of any Local Authority or of the State Government with the previous approval of the State Government, in case of Class III post. These Rules, deal with all sorts of contingencies that may arise with regard to service condition of an employee of IDA.

25. Act of 1961, has been promulgated to provide for Rules defining with sufficient precision in certain matters the conditions of employment of employees in undertakings in the State of Madhya Pradesh. Section 2 deals with application of the Act to the undertakings, situated within the State. However, sub-section (2) of Section 2 of the Act of 1961 i.e., non-obstante clause, makes it clear that

the said Act shall not apply to the employees in an undertaking where any other Rules or Regulation have been notified in this behalf by the State Government in the Official Gazette. Since the services of the employees of IDA would be governed by Recruitment Rules of 1987, recourse to Standing Orders of 1961, as has been taken by the Labour Court was not justified. Apart from the fact, that such a plea was never raised by either of the parties, the same does not even appear to be sustainable in law for the aforesaid reason. The said legal position shall further be classified, while dealing with the opinion of the Full Bench of this Court in the matter of Superintending Engineer, reported in 1999 (1) M.P. Judicial Reporter-1.

26. Judgment in this regard may be pressed into service usefully, pronounced by Supreme Court in the matter of N.S. Giri Vs. The Corporation of City of Mangalore (AIR 1999 SC 1958), wherein, it has been held that an award under the Industrial Disputes Act, cannot be inconsistent with a law laid down by legislature or by the Supreme Court, and, if, it does so, it is illegal and cannot be enforced. In the said matter the age of superannuation of the employees of Corporation was enhanced to 58 years by the Labour Court. The said enhancement was held to be inconsistent with the service conditions of the employees of the Corporation. Consequently, the award was struck down.

27. Opinion of the Full Bench, referred to above, in the matter of Superintending Engineer (supra), which had the occasion to deal with the provisions of Section 2 (2) of Act, 1961, has held that unless Government notifies that particular rules which are applicable to that department will exempt the application of the provisions of the Act, 1961, till that time, the provisions of the Act, Rules and Orders, issued thereunder will govern that department. However, after discussing the case law on that point, in the last of para 4, the Full Bench has held as under:--

"Class 2 (1) clearly says that permanent employee is one who has completed six months satisfactory service in a clear vacancy in one or more post, whether as a probationer, or otherwise, or a person whose name has been entered in the muster- roll and who is given a ticket of permanent employee what it conveys is, that a person would be entitled to be declared under this standing order as permanent employee subject to the condition that he has put in six months satisfactory service against the clear vacancy. Therefore one of the precondition is the existence of a clear vacancy, second is that he should have worked against the clear vacancy for a minimum period of six months and third is that his service should be satisfactory. It is relevant that man might have worked for 10-15 years and, if, there is no permanent vacancy available and his service record is not satisfactory, then, he cannot be classified as permanent employee."

28. In the case in hand, the sheet anchor of the argument of the petitioner is, that the present respondents were not appointed against the clear vacancies. On the other hand, they were appointed temporarily, till completion of ODA project and there were no funds available with IDA to absorb these respondents on their

regular cadre would go to show that no benefit could have been given to them, even, if, they had worked for more than six months. The respondents have not been able to show to this Court satisfactorily or convincingly that they were appointed against clear vacancies and IDA had requisite funds for meeting the expenses of these employees. It is also crystal clear that these respondents had been employed on account of ODA project, which was fully funded by British Government. Once the project has come to an end, the respondents have no right to continue to hold the posts which they were occupying. Respondents have also not brought any material before this Court to show that there existed clear vacancies in IDA, entitling them for their absorption or, that IDA is possessed of requisite funds to meet the extra burden of these respondents/employees. In absence of all this requisite material, it is not possible under law to direct absorption of these respondents with IDA. Thus, the finding of Labour Court recorded in this regard is erroneous and perverse.

29. Thus, the ratio of Full Bench judgment in the matter of Superintending Engineer (supra) is against the respondent. Thus, respondents cannot be extended any benefit on account of opinion, as expressed by Full Bench of this Court.

30. I was given to understand by learned counsel for parties, that no SLP was preferred by the State Government against the said opinion, meaning thereby, that the opinion expressed by Full Bench has attained finality.

31. Thus, in the considered opinion of this Court, the reasoning of the Labour Court, that the employees/respondents had worked with petitioner for more than six months, thus, would be entitled for their classification on regular posts, was not warranted. The Labour Court has certainly transgressed its powers and jurisdiction in granting such a status to the respondent Nos. 2 to 33.

32. Some of the respondents alongwith their return have filed certain documents to show the nature of their appointments. However, it was admitted during the course of arguments that all these documents on which, they were trying to place reliance now, were not filed before the Labour Court. Needless to say that these respondents had also not led any evidence to show the type and nature of their employment before the Labour Court, on the basis of the documents, which, were filed for the first time in this petition.

33. I am afraid, these documents cannot be taken into consideration for the first time, filed in this petition. Respondents were granted ample time and opportunity to file documents and to lead evidence, but, not availing of the opportunity at an appropriate time, would not clothe these respondents rely on the same at this stage. It would, indeed, be improper and against the settled procedural law to take into consideration the said documents now.

34. Learned counsel for respondents have, then, placed reliance on a judgment of the Supreme Court in the matter of Mohd. Yunus Vs. Mohd. Mustaqim and Others, to demonstrate the scope of interference in a petition under Art. 227 of

the Constitution.

35. There is no dispute with regard to the ratio of the Apex Court, but, the aforesaid judgment would show that the petition filed under Art. 227 of the Constitution, was held to be wholly misconceived, as it was held that an appeal lay from an order under Order 21 Rule 92 of the CPC, setting aside or refusing to set aside the sale. In view of aforesaid position, Apex Court held that petition under Art. 227 was wholly misconceived.

36. It has further been held that the supervisory jurisdiction conferred on the High Court under Art. 227 of the Constitution is limited, "to seeing that an inferior Court or Tribunal function within the limits of its authority". In the case in hand, it could not be pointed out to me that the Labour Court had acted within its jurisdiction in entertaining a reference made to it u/s 10(1) of the Industrial Disputes Act or in passing the impugned award in favour of respondent Nos. 2 to 33. Rather from the above discussion, it is clear that Labour Court had not acted within the four corners of law and had wrongly interpreted the law.

37. Another judgment of the Supreme Court in the matter of Chandrabhushan Vs. Baniprasad and others [(1999) 1 SCC 70] on the same question of jurisdiction and competence, is, also of no help to the respondents.

38. In the case of Chandrabhushan (supra) High Court had interfered with concluded findings of facts arrived at by consolidation authority. In this view of the matter, Apex Court has elegantly decided that High Court had over stepped under the supervisory jurisdiction. But, in the instant case, it could not be successfully demonstrated before me, that this Court would be overstepping its jurisdiction in disturbing the findings recorded by the Labour Court.

39. The other judgments cited by learned counsel for respondents on the doctrine of-"equal pay for equal work" also do not have any bearing to the facts of the present case, as it has been held by this Court that respondent Nos. 2 to 33 are not entitled for their absorption or classification.

40. If the respondents have been held, not to be entitled to be classified on regular posts as Sub-Engineer, the question of "equal pay for equal work" does not arise.

41. Thus, considering the matter from all angles and after critically examining, it, I am of the considered opinion, that the award of the Labour Court cannot be sustained in law. The same deserves to be quashed and, is, hereby quashed. It is, accordingly, held that respondent Nos. 2 to 33 were not entitled to be classified on regular posts of Sub-Engineer in IDA.

42. In view of the discussion, held in preceding paras, the petition is allowed. Parties to bear their own costs. Security amount, if, deposited, be refunded back to the petitioner, after its due verification.

43 .Writ Petition allowed.