
(1992) 06 MP CK 0015
In the Madhya Pradesh High Court
Case No : M.P. No. 955 of 1990

K.K. Krishnan

APPELLANT

Vs

Industrial Court

RESPONDENT

Date of Decision : 18-06-1992

Acts Referred:

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

Citation : (1993) 1 LLJ 385 : (1992) 37 MPLJ 570 : (1992) MPLJ 570

Hon'ble Judges : V.S. Kokje, J;V.D. Gyani, J

Bench : Division Bench

Advocate : K.L. Sethi, for the Appellant; S.M. Jhawar, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Kokje, J.

The petitioner is an employee of Madhya Pradesh State Road Transport Corporation (for short the M.P.S.R.T.C). He was appointed w.e.f. August 13, 1969 as a Book Checker. Thereafter, he was promoted to the post of Upper Division Clerk on June 7, 1976, He was further promoted to the post of Bills Assistant "on February 24, 1977. The next promotional post is that of the Head Clerk. The petitioner was ordered to work as Head Clerk by an order dated June 20, 1987. According to the petitioner he was working against the vacant post. He worked on the post up to January 20, 1988. However, when the learnt of the intention of the employer to revert him back to the post of Bills Assistant, he filed an application u/s 31(3) of the M.P. Industrial Relations Act, 1960 (for short the Act"). The petitioner contended that he had become permanent Head Clerk after having completed 6 months" satisfactory service as Head Clerk. The claim is based on the provisions contained in the Standard Standing Order 2(vi), where while defining "temporary employee" it has been provided that if an employee has been required to work continuously for more than 6 months, he shall be deemed to be permanent. The Labour Court allowed the application and directed the respondent M.P.S.R.T.C. to classify the petitioner as, Head Clerk and pay him

salary of the post of Head Clerk w.e.f. January 20, 1988. On an appeal the Industrial Court set aside the order of the Labour Court and against that order this petition has been filed by the employee.

Shri K.L. Sethi, learned counsel for the petitioner, has pressed on the point of the petitioner having become a permanent Head Clerk by virtue of Standard Standing Order 2(vi). He also relied on the Judgment of this Court in 1978 MPU 846; 1990 MPLJ 97 and M.P. No. 919/88 decided on May 4, 1989 M.P. State Road Transport Corpn. Vs. Bhagiram Yadav and Others, , Shri Sethi also brought to our notice a Judgment of this Court in Divisional Manager, M.P.S.R.T.C. v. Rajendrakumar Joshi M.P. No. 18/87 decided on February 5, 1990. Our attention has also been drawn to Judgment of a Division Bench of this Court in M.P. No 3538/87 decided on January 5, 1990 wherein decision in 1978 MPLJ 664 and M.I. No. 991/88 have been distinguished.

According to us the straight question which falls for our consideration in this case is whether permanency in a particular post could be claimed by an employee by virtue of his having worked in that post for a continuous period of 6 months as provided by Standard Standing Order 2(vi) of the Act. It would be essential to reproduce Standard Standing Order 2(i) and 2(vi), for a clear understanding of the provision. They are as follows:-

2. Classification of employees.- Employees shall be classified as (i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) bad-lis, (v) apprentices and (vi) temporary :-

(i) A "permanent employee is one who has completed six months" satisfactory service in a clear vacancy in one or more posts 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.

(vi) "temporary employee" means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature provided that in case such employee is required to work continuously- for more than six months he shall be deemed to be a permanent employee, with the meaning of clause (i) above.

Obviously the provision is as to classification of employees and not as regards their promotional rights. A permanent employee has been defined to be an employee who has completed 6 months" satisfactory service in a clear vacancy. A temporary employee has been defined to be an employee who has been employed for work which is essentially of a temporary nature or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature. A provision has also been added to the definition of temporary employee providing that in case such employee is required to work continuously for more than 6 months, he shall be deemed to be a permanent employee within the meaning of Clause (i) defining a

permanent employee. The words "such employee" used in the proviso clearly refer to a temporary employee i.e an employee who has been employed for work which is essentially of a temporary character or who is temporarily employed as an, additional employee in connection with temporary increase in the work of a permanent nature. As already pointed out Standing Order 2, relates to classification of employees and not to their promotions. The Standing Order 2, therefore, relates to employment of such and not to category of posts in which a person is employed. There is clear difference between the nature of employment and the hierarchy of the post in which the person is employed. The Standing Order 2 classifies the nature of employment and it does not classify the employees in different posts according to the hierarchy created in the Department. Thus employees have to be classified according to the nature of their employment as (i) permanent, (ii) permanent seasonal, (iii) probationer, (iv) badlis, (v) apprentices and (vi) temporary. Standing Order 2 does not divide the employees into Class I, II, III, IV or according to the hierarchy of the posts created in a particular employment.

In the light of aforesaid discussion let us now examine the case of the petitioner. He was admittedly a permanent employee of the substantive post of Bills Assistant. He was asked to work on the post of Head Clerk by order dated June 20, 1987. It has been found by the Courts below that the petitioner was given additional charge of the post of Head Clerk and he was discharging the functions of Bills Assistant as well as Head Clerk side by side. He was being paid 10% charge allowance. It cannot, therefore, be said that he was a full time Head Clerk. Even otherwise for the purposes of Standard Standing Order 2(vi) it cannot be said, and it is nobody's case, that he was temporary employee. He was a permanent employee of the M.P.S.R.T.C. on the substantive post of Bills Assistant. If he was asked to discharge the function of a higher post i.e. of the post of Head Clerk, it cannot be said that he was either employed for work which was essentially of a temporary character or he was temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature. If he was not a temporary employee within the meaning of Standard Standing Order 2(vi) there was no question of his claiming permanency by virtue of having worked for more than 6 months continuously under the proviso to Standard Standing Order 2(vi). In our opinion the proviso to Standing Order 2(vi) does not apply to promotions or regularisation in higher posts. It applies only to temporary employees as defined in Standard Standing Order 2(vi) and on fulfilling the requirement of the proviso such temporary employees get the status of a permanent employee. If the proviso is applied to promotions, it will play havoc with the future of several employees because promotions have to be made on some criteria of selection laid down for uniform application. If the permanent promotions are granted to officiating employees without following any uniform criteria only on the ground that such employees were required to work for 6 months in officiating capacity, obviously as a stop gap arrangement, without following the procedure laid down for regular promotions, it would be

totally unfair and would be putting a stamp of legality on back-door entries of a chosen few in the promotional post without considering the claims of other equally situated employees.

Shri K.L. Sethi, learned counsel for the petitioner, heavily relied on some decided cases by different Benches of this Court and submitted that a different view cannot be taken by a Coordinate Bench. We have gone through the Judgments, which have been referred to above. In those cases the classification of employees according to Standard Standing Orders was only involved. It does not appear to have been argued in those cases that the classification in Standard Standing Orders has no relation to promotion to higher posts. It appears that the cases turned on the facts and arguments advanced in those cases; we do not find that a view contrary to the view we are taking has been taken in those cases. It has not been held in any of those cases that proviso to Standard Standing Order 2(vi) applies even to promotional posts. We find that no case has been made out for interference with the order of the Industrial Court. The petition has no force and is accordingly dismissed. In the circumstances of the case the parties shall bear their own costs.