
(1988) 05 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.P. No. 919 of 1988

M.P. State Road Transport Corpn.

APPELLANT

Vs

Bhagiram Yadav and Others

RESPONDENT

Date of Decision : 04-05-1988

Acts Referred:

Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 — Rule 2
Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3)

Citation : (1993) 3 LLJ 821 : (1990) MPLJ 328

Hon'ble Judges : S.K. Dube, J; A.G. Qureshi, J

Bench : Division Bench

Advocate : M.L. Dhupar, for the Appellant; P. Wasif, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

The petitioner Corporation has preferred this petition under Articles 226 and 227 of the Constitution of India for quashing the orders passed by the Labour Court and the Industrial Court (Annexures C and E respectively), whereby respondent No. 1 was declared to be classified as permanent Junior Booking Clerk.

The brief facts leading to this petition are that the respondent No. 1 was initially employed by the petitioner Corporation as a Security Guard and was posted at Neemuch Depot. In compliance of the order dated 10.6.1980 of the Divisional Manager, M.P. State road Transport Corporation, respondent No. 1 was deputed to work as such from 13.6.1980 and posted to the Rampura Bus Stand for point to point booking. Respondent No. 1 was called back to his parent Department vide order dated 28.5.1982. Being aggrieved by that order, the respondent No. 1 filed an application u/s 61(1)(a)(c) read with Section 31 of the M.P. Industrial Relations Act, 1960 (hereinafter referred to as "the Act") before the Labour Court, Ratlam, contending therein that he worked satisfactorily as a Junior Booking Clerk continuously for more than 6 months. As such, he is entitled to be

classified as a permanent Junior Booking Agent/Clerk under Rule 2 of the Standard Standing Orders framed under the M.P. Industrial Employment (Standing Orders) Act, 1961, as he acquired the status of a permanent employee by working satisfactorily and continuously for a period of more than six months. This application was contested by the Corporation, where it was contended that petitioner was never promoted to the post of a Junior Booking Clerk and there is no channel for promotion of Security Guard to the post of a Junior Booking Clerk in the organisational set up of the petitioner Corporation, and that the Labour Court had no jurisdiction in the matter unless it is shown that the promotion was mala fide. After recording evidence of the parties, the Labour Court, vide order (Annexure C) dated 24.3.1987, held that the petitioner was working as a Junior Booking Agent/Clerk as per order of the Divisional Manager of the petitioner Corporation dated 10.6.1980 and Circular No. 53 dated 23.4.1980 issued by the Chairman of the petitioner Corporation. From the evidence adduced by the parties on record, the Labour Court also found that from the date of assuming the work of a Junior Booking Agent/Clerk, the respondent No. 1 was continuously working as a Junior Booking Clerk/Agent in pursuance of the order passed by the Divisional Manager of the petitioner Corporation. As respondent No. 1 was working continuously on a vacant post for more than 6 months satisfactorily, he became entitled to be classified as a permanent Junior Booking Clerk and the petitioner was declared as such. Aggrieved by this order, the petitioner Corporation preferred an appeal before the Industrial court. But the findings of fact arrived at by the Labour court were confirmed and the order passed by the Labour Court was affirmed. Hence, the petitioner Corporation has filed this petition.

Shri M.L. Dhupar, learned counsel for the petitioner Corporation, contended before this Court that as there is no post of Junior Booking Clerk/Agent in the organisational set-up of the Corporation and the petitioner was sent on deputation, the petitioner was not entitled to promotion or to be classified as a permanent Junior Booking Clerk/Agent according to Rule 2 of the Standard Standing Orders as there was no vacant post of Junior Booking Clerk/Agent. Shri Dhupar placed reliance on a Division Bench decision of this Court in *Mahendralal v. General Manager, Hindustan Steel Limited* 1968 MPLJ 597. Shri Dhupar also contended that a temporary promotion or sending a person on deputation to a post of higher cadre in an officiating capacity does not confer any right on the respondent No. 1 to such post.

Shri. P. Wasif, learned counsel for respondent No. 1 contended before this Court that respondent 1 did not approach the Court for promotion, which is the function of the management but he filed an application before the Labour Court for a declaration and classification of his status as a Junior Booking clerk and both the Labour Court and the Industrial Court, after appreciation of rival contentions of the parties and evidence on record, came to a finding that by virtue of the provisions of Rule 2 of the Standard Standing Orders, as the respondent No. 1 worked continuously for more than six months, he was entitled

to the status of a Junior Booking Clerk and was declared and classified as such. The findings arrived at are findings of fact, which cannot be interfered in the supervisory jurisdiction of this Court under Article 227 of the Constitution. Learned counsel placed reliance on a Division Bench decision of this Court in V.K. Jain and Anr. v. Kama-Isingh 1978 MPLJ 664 and also on the provisions of Article 39(d) of the Constitution of India on the doctrine of "equal pay for equal work" and the decision of the Apex Court in Jaipal and Others Vs. State of Haryana and Others,

After hearing the counsel and perusing the record, we are of the opinion that this petition has no merit and deserves to be dismissed. It has now been finally settled by this Court that it is the Standard Standing Orders and not the regulations that govern the employees of the petitioner Corporation (see the Full bench decisions of this court in M.P. State Road Transport Corporation v. Heeralal and Ors. 1980 MPLJ 8 : 1980 LLJ 16). Therefore, the case of the parties has to be judged in the light of the provisions contained in the Standard Standing Orders. If an employee, who was employed in a lower cadre, works on a higher post continuously and satisfactorily for a period of more than six months, such an employee, in view of the provisions of Rule 2 of the Standard Standing Orders can make a demand for classification and not for promotion. Such a demand can be made u/s 31(3) of the Act. That being so, the authority relied upon for showing that the promotion is a managerial function is not relevant. This contention and the provisions of Rule 2 of the Standard Standing Orders and the fact of working satisfactorily and continuously for more than six months on a clear vacant post, have been considered by a Division Bench of this Court in 1978 MPLJ 664 (supra). After considering Rule 2 of the Standard Standing Orders, which deals with classification of employee, this Court observed that there can be no quarrel with the proposition that Rule 2 relates to the status of an employee and does not speak of post and that it does not provide for fixing a person from one post to another post. It only casts a statutory duty on the employer to properly classify an employee having regard to the nature of his work.

In Factory Manager, Jiwajirao Cotton Mills v. Harischandra Kaushik and Ors. 1278 M.P. ILC 549, a Division Bench of this Court, while considering the case of an employee, who was working as a clerk, held that when an employee approaches the Labour Court u/s 31(3) of the Act for classification of his status, it is not a claim for promotion to a higher post but it is an act of the employer for wrongly treating an employee and depriving him of pay and other emoluments attached to the said status. It was also held that such a dispute is covered by Item Nos. 1 and 6 of Schedule-II of the Act and the Labour Court has power to adjudicate upon. In both the cases, this Court held that if an employer takes work other than for which the employee was appointed, for a sufficiently long time and does not recognise the status of such an employee and treats him to be an employee in initial status such an employer is guilty of unfair labour practice.

A Division Bench of this Court in Abdul Khalil v. M.P. State Road Transport Corporation and 2 Ors. (Misc. Petition No. 1273 of 1975 decided on 31.10.1979 at Jabalpur) in a similar matter, wherein the petitioner was appointed as a Bus Conductor and thereafter he was asked to work as a Booking Agent, from 1.3.1970 and he worked satisfactorily and continuously for more than 6 months because of the temporary increase in the working of the Booking Agent, which was one of permanent nature. After considering Sub-clause (vi) of Clause(2) of the Standard standing Orders, this Court held that "there is no substance in the argument advanced on behalf of the Corporation that the employment for the purpose of Sub-clause (vi) of Clause (2) of the Standard Standing Orders relates only to the initial employment. The employment there means an employment to the post. On the evidence on record, the employee, who has worked continuously for a period of six months, though temporarily, is a Booking Agent. He was clearly entitled to this status." Therefore, the contention of the petitioner Corporation that as there was no post of Junior Booking Agent/Clerk in the organisational set up of the Corporation, the Respondent No. 1 was not entitled for promotion or to be classified as such as respondent No. 1 was working in officiating capacity in a higher cadre, cannot be upheld. It is not disputed that respondent No. 1 was not entitled to be promoted on a higher post. The contention is self-contradictory. If there was no post, then why respondent No. 1 was allowed to work as a Junior Booking Clerk since 13th June 1980. Thus the contention has no force and has been raised with a view to debar the rightful claim of respondent No. 1, which in our opinion, amounts to unfair labour practices, i.e. to take work of a higher post or cadre and not to classify him under Rule 2 of the Standard Standing Orders in the status of a Junior booking clerk.

In the result, this petition has no force and is dismissed with costs. Counsel's fees Rs. 250/- (Rupees Two Hundred and Fifty), if already certified.