
(1994) 08 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.P. No. 527 of 1990

M.P.S.R.T.C. and Another

APPELLANT

Vs

Narain Singh Rathore and Others

RESPONDENT

Date of Decision : 17-08-1994

Acts Referred:

Madhya Pradesh Employment (Standing Order) Act, 1961 — Section 7
Madhya Pradesh Industrial Relations Act, 1960 — Section 31(3)

Citation : (1994) JLJ 648 : (1995) 1 LLJ 899 : (1994) 2 MPJR 234 : (1994) 39 MPLJ 959 : (1994) MPLJ 959

Hon'ble Judges : U.L. Bhat, C.J;T.S. Doabia, J;A.S. Tripathi, J

Bench : Full Bench

Advocate : R.D. Jain, A.K. Shrivastava and Sameer Kumar Jain, for the Appellant; H.N. Upadhyaya, for the Respondent

Judgement

U.L. Bhat, C.J.

This is a petition under Articles 227 of the Constitution of India praying for a writ of certiorari quashing Annexure-P1 order passed by the Industrial Court and Annexure-P2 appellate order passed by the Labour Court.

First respondent was initially appointed Conductor under the first petitioner M.P. State Road Transport Corporation and later on, promoted to the post of Booking Agent. According to Annexure- P3 order of the General Manager of the Corporation, the promotion channel is from the post of Booking Agent to that of Ticket Examiner and thereafter to the post of Traffic Supervisor Gr. II and finally to the post of Traffic Supervisor Gr. I.

While first respondent was working as Booking Agent in the Bus Station, Dabra, Nathilal Jain who was then Traffic Supervisor Gr. II and working as Incharge of the Bus Station, retired on superannuation. The Sub-Depot Manager passed order Annexure-P8 dated April 9, 1986 the English version of which is as quoted herebelow:

"Sub: Appointment of Narain Singh Rathore, Booking Agent as Incharge Bus Station, Dabra.

The post of Stand Incharge Dabra is lying vacant after the retirement of Nathilal Jain, Traffic Supervisory Second, Stand Incharge, is necessary as it is Sub-Depot for looking after the work of Booking Offices and for seeing the work of stand being performed properly.

Hence, after discussion with the Divisional Manager and with the consent of Depot Manager, Gwalior Shri Narain Singh Rathore is appointed as Stand Incharge till such time as a Traffic Supervisor (IIInd) is appointed.

Shri Narain Singh will be responsible for all works, he will see the stands falling under Dabra Stand - Sugar Gate, Antri Bilowa, Bi-tarwar and Magroni Stand and will prepare and present the Standing Booking Statement etc. so that they may be sent to Depot Office within time.

The order will come into effect immediately."

Thus first respondent was required to work as Incharge. Ex. P9 to P11 certificates show that work and conduct of the first respondent as in-charge satisfactory.

4, The first respondent having been unsuccessful in persuading his employer to classify him as "permanent incharge" of the bus- Station filed an application u/s 31(3) of the M.P. Industrial Relations Act 1960 before the Industrial Court, Madhya Pradesh, Indore, praying for such classification, contending that he is entitled to such classification under earlier part of Sub-clause (i) of Clause 2 of the annexure to the M.P. Industrial Employment (Standing Orders) Rules 1963 (for short the Rules) which defines a "permanent employee" as 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 has been given a ticket of permanent employee. The petitioners resisted the claim before the Industrial Court contending that the post of Traffic Supervisor Gr. II is a promotional post, that the General Manager has prescribed the promotional channel according to which the first respondent could look to promotion in the first instance as Ticket Examiner and only thereafter to the post of Traffic Supervisor Gr. II that the classification sought amounts to back-door promotion which would be contrary to the rules of the Corporation and would affect a large number of employees, and that the order passed by the Sub-Depot Manager was only a charge arrangement and did not amount to allowing the first respondent to work in the grade of Traffic Supervisor Gr. II. The Industrial Court and the Labour Court, however, allowed the claim of the first appellant. These orders are now challenged in this petition.

The earlier decisions of this Court held that Clause 2 of the Rules does not relate to promotion but only to classification, any employee who has completed six

months satisfactory service on a clear vacancy or post is entitled to be classified as permanent employee and therefore, the person occupying a lower post who has worked on a higher post satisfactorily for a period of six months would be entitled to be classified to that status (see V.K. Jain and Anr. v. Kamal Singh Thausingh and Anr. 1978 MPLJ 664 and M.P. State Road Transport Corporation, Bhopal and Ors. v. Bhagiram Yadav and Ors. 1990 MPLJ 328 . A later decision in K.K. Krishnan Vs. Industrial Court, took the view that since Clause (2) of the Rules does not relate to promotion, classification cannot be made to a higher post which can be filled up only by promotion. The Division Bench which heard this case initially noticed the difference in approach in the latter decision and referred the case to a larger Bench.

Learned counsel for the petitioners submitted that the first respondent being a Booking Agent, according to line of promotions prescribed by the General Manager under the rules of the Corporation, he can aspire for promotion initially to the post of Ticket Examiner and thereafter to the post of Traffic Supervisor Gr. II, that he cannot be allowed to secure a double promotion indirectly by way of a classification contrary to the channel of promotions, that the Sub-Depot Manager was not the competent authority to grant promotion or to direct the first respondent to work on higher post, that Clause 2 of the Annexure to the rules prescribing classification applies only to posts at the entry level and not to promotional posts, that the arrangement made by the Sub- Depot Manager was only a temporary arrangement till a competent person could be posted as Traffic Supervisor Gr. II at Dabra Bus Station and the first respondent was put only in an additional charge.

The Industrial Court and the Labour Court have, on a consideration of the documentary and oral evidence, come to a conclusion that while the first respondent was working as a Booking Agent at Dabra Bus Stand, was made incharge Dabra Bus Stand till an appointment is made to the post of Traffic Supervisor Gr. II and he was required to look after and supervise the entire work of the stand and other stands under the Dabra Bus Stand and this was done in consultation with the Regional Manager and with approval of Divisional Manager. This factual finding is consistent with the terms of Ex. P8 order of the sub-Depot Manager and cannot be assailed in this petition. The contentions now raised that the first respondent was put only in additional charge and the Sub- Depot Manager was not competent to make first respondent Incharge Bus Stand were not raised before the Industrial Court and cannot be permitted to be raised in this petition.

The Rules have been framed under the provisions of the M.P. Industrial Employment (Standing Order) Act, 1961 (for short, the Act). Section 7 of the Act enables the State Government to apply Standard Standing Orders to such class of undertaking and from such date as may be specified therein. The Standing Orders in force on the date of such notification shall continue in force as if made under the Act. The Standard Standing Orders shall provide for matters set out in

the Schedule. It is an admitted case the Standard Standing Orders have been made applicable to the Corporation. Annexure to the rules contains the Standard Standing Orders applicable to the Corporation. Clause (2)(i) and (vi) of the Standard Standing Orders read thus:

"2. Classification of Employees:

Employees shall be classified as:

(i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) badlies, (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.

Explanation - In computing the period of six months the days on which employee was absent due to authorised leave, sickness, maternity leave accident, lock out and strike (which are not illegal) or closure of the undertaking shall be included;

(vi) "temporary employee" means an employee who has been employed for work which is essentially of atemporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of 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, within the meaning of Clause (i) above."

Clauses (ii) to (v) define permanent seasoned employee, probationer, badli and apprentice.

In the M.P.S.R.T.C. v. Heeralal Ochelal and Ors. 1980 MPLJ 8 a Full Bench of this Court held that the regulations framed by the M.P.S.R.T.C. Corporation do not prevail over the Standard Standing Orders and the latter will govern the employees in relation to matters covered by Schedule to the Act.

The decision in V.K. Jain and another v. Kamal Singh Thausing and Anr. (supra) dealt with the case of an employee who was treated as Supervisor from 1957 in a post which was not of a temporary nature and for which no particular qualification was prescribed. The work was of a permanent nature and he was working on a clear vacancy. He was treated as a Jobber and not as a Supervisor. He approached the Labour Court with the plea that he should be confirmed as a Supervisor. It was held that he was entitled to approach the Labour Court u/s 31 (3) of the M.P. Industrial Relations Act 1960. The Court held:

"He did not ask for promotion. All that he demanded is that he should be properly classified against post in which he was working."

The Court also indicated that:

"In determining whether an employee is of a particular category or not, it is the

nature of the work done and not a particular category in which he belongs is decisive."

The Court further held:

"..... it is clear that the demand was for classification and not for promotion.On the findings reached by the Tribunals, there is no manner of doubt that the management is guilty of unfair labour practice. The non-petitioner No. 1 does not claim that he should be promoted to higher post. He already stands promoted to the higher post of a Supervisor and is already working in that post since 1957, i.e. for nearly 14 years now but the management has been wrongly treating him as a Jobber and thereby not only depriving him of the pay and other emoluments attached to the post of Supervisor but also denying to him the status of a Supervisor. This amounts to nothing but exploitation of labour. It is futile to contend that the Labour Court, in a case like this, had no jurisdiction to interfere.....

Under the terms of Rule 2 of the Standard Standing Orders, the management had the statutory duty to properly classify the non- petitioner No. I as a Supervisor when it was taking the work of a Supervisor from him for all these years, but it was committed a breach thereof by showing him as a Jobber, thereby depriving him of his legitimate rights and privileges."

After reading Rule 2 of the Annexure the Court held that:

"There can be no doubt that the non-petitioner No. 1 fulfils all the requirements under this clause and he was, therefore, a permanent employee within the meaning of Rule 2(i). He was working on a clear vacancy for more than 12 years as a Supervisor and was, therefore, entitled to be classified as such. There can be no quarrel with the proposition that Rule 2 relates to the Status for 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 a regard to the nature of his work."

In *MPSRTC, Bhopal and Ors. v. Bhagiram Yadav and Ors.* (supra), the first respondent was initially employed by the Corporation as Security Guard and posted in Neemuch Depot. By order dated June 10, 1980 of the Divisional Manager, he was deputed to work as such from June 13, 1980 and posted to Rampura Bus Stand for point to point booking. He was called back to his parent Department by order date May 25, 1982. He approached the Labour Court contending that having worked satisfactorily as a Junior Booking Clerk continuously for more than six months he was entitled to be classified as a permanent Junior Booking Clerk or Agent under Rule 2 of Annexure to the Rules. It was contended that there was no post of Junior Booking Clerk in the organisational set up on the Corporation and the employee was not entitled for promotion to be classified as such as there was no vacant post. The Court held:

"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 provision of Rule (2) of the 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."

The Court further held:

"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 working as a Junior Booking Clerk since June 13, 1980 continuously. Therefore, it is too late in the day to say that there is no post and it being a case of promotion, respondent No. 1 was not entitled to be promoted on a higher post."

In *K.K. Krishnan v. Industrial Court of M.P. Indore* (supra), petitioner was appointed in 1969 as a Book Checker, promoted to the post of U.D.C. as to the post of Bills Assistant in 1977. The next promotional post is that of Head Clerk. By order dated June 20, 1987 he was ordered to work as Head Clerk. He so worked till January 20, 1988. When there was move to revert him to the post of Bills Assistant, he filed an application before the Labour Court u/s 31(2) of the Act claiming classification as a permanent Head Clerk. This Court after referring to Clause (2) of the Schedule to the rules observed:

"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. 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 a 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 a 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.

The Court, examining the facts of the case, indicated that the petitioner was given only additional charge of Head Clerk and he was discharging the functions of Bills Assistant as also of the post of Head Clerk side by side and he was being paid 10% charge allowance, that he was not a full-time Head Clerk, that it was nobody's case that he was a temporary employee, and that he was a permanent

employee of the M.P.S.R.T.C. on the substantive posts of Bills Assistant, that he does not satisfy the definition of temporary employee in Standing Order 2(vi) and therefore there is no question of his claiming status of permanent employee by virtue of having worked for more than six months. The Court held:

"In our opinion, the proviso to Standing Order 2(vi) does not apply to promotions or regularisations 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 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 six 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 stamp of legality on back door entries of a chosen few in the promotional post without considering the claim of other equally situated employees."

The Court distinguished the earlier decisions.

We will refer to a few other decisions having a bearing on the controversy in this case. In *Abdul Khalil v. M.P.S.R.T.C. and Ors.* (M.P. No. 1273 of 1975) a person appointed Bus Conductor worked as Booking Agent for over six months on account of temporary increase in the work of the Booking Agent which work was one of permanent nature. The Court held that the employee is governed by Standing Orders and not by Regulations, that he is a temporary employee since he was temporarily appointed as temporary employee in connection with the temporary increase in the work of temporary nature, and since he had worked for more than six months, he shall be deemed to be a permanent employee. The Bench rejected the contention that the expression "employment" for the purpose of Clause 2 relates only to initial employment, taking the view that the employment means the employment to the post. In *Ram Shiromani Pandey v. State Industrial Court and Anr.* M.P. No. 3530 of 1987, the Court considered the case of a person who held the substantive post of booking Agent in the Corporation and assigned the duties of Ticket Examiner in addition to his duties as Booking Clerk. He claimed the status of Ticket Examiner. The Court held that he was not working as Ticket Examiner on a clear vacancy, that he was merely directed to perform duties of Ticket Examiner while discharging his duties of the substantive post of Booking Agent and that he cannot get the status of Ticket Examiner. Though the Court was inclined to agree that the claim of the petitioner was not one for promotion but only for classification, his claim was rejected.

In *The Factory Manager, Jiwajirao Cotton Mills v. Harish Chandra Kaitshik and Ors.* 1978 M.P.I.L.C. 549, it was held that the claim for classification of status is not a claim for promotion to a higher post. If an employer takes work other than for which the employee is appointed, for a sufficiently long time and does not

recognise his status and treats him to be an employee in initial status, the employer is guilty of unfair labour practice. Our attention has been invited to order in *Onkar Prasad Sharma v. M.P.S.R.T.C. and Ors.* M.P. No. 306 of 1988 in which the petitioner had worked for more than six months as Incharge, Seat Checker and it was held that he was entitled to be classified as such.

Service conditions are essentially matters of agreement between employer and the employee. Where the employer frames regulations or rules relating to conditions of service, they are treated as part of the conditions of service of the employee. M.P. Industrial Employment (Standing Orders) Act, 1961 was enacted to provide for rules defining with sufficient precision in certain matters the conditions of service of employees in certain undertaking in the State. It contemplates statutory interventions in service conditions of employees in certain under-takings. Rules have been framed under the Act. There is no doubt that the intention is to improve the service conditions of the employees and ensure that they are not adversely affected by unilateral action of the employer. But the contours of intervention cannot be extended beyond the statutory frame-work. Standard Standing Orders according to Section 3(b) of the Act means rules framed u/s 21 relating to matters set out in the Schedule. Section 6(3) of the Act states that Standard Standing Orders made are amendment certified under the Act for matters set out under the Rules. The Schedule contains a list under the Act for matters set out under the Rules. The Schedule contains a list of 15 subjects. Item No. 1 is "classification of employees i.e. whether a permanent, temporary, apprentice, probationer, Badli and whether seasonal or otherwise. "Item 3 is recruitment". Rules can deal only with "classification" and other subjects enumerated in the schedule to the Act.

Clause 2 of the Standing Orders in the Annexure to the rules deals with classification of employees. This is in relation to item.No. (1) of the Schedule to the Act. It says that the employees should be classified into six categories, i.e permanent, permanent seasonal employee, probationer, Badli, apprentice, temporary employee. It defines each of these six categories. A permanent employee is one who has completed six months" satisfactory service in a clear vacancy in one or more posts whether 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. The definitions have to be construed in the light of the fact that is part of the effort directed at classification of employees. The definition of permanent employee. Temporary employee has been defined as 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 of the work of permanent nature. Where he is required to work continuously for six months, he shall be deemed to be a permanent employee refers to an employee employed in a clear vacancy while the definition of temporary employee. The definitions have to be construed in the fight of the fact that it is point of the effort directed at classification of employees. The definition of Permanent employee does not refer to clear vacancy. Clause (3)

deals with "ticket" and allied matters. Employees other than those belonging to clerical, supervisory or technical personnel shall be provided tickets which will bear the name of the Department, date of entry in service, his number, the record of daily attendance etc. Badli employee shall be provided Badli Card. Temporary employee shall be provided temporary card. Apprentice shall be provided with apprentice card ship.

All the decisions of this court referred to earlier are unanimous in regard to one aspect, namely, what is dealt with in Clause (2) of the Annexure to the Rules is classification and not promotion. An employee can claim classification but not promotion by virtue of this clause. A probationer may be confirmed, a Badli may be absorbed and an apprentice may be regularly employed. He may become permanent employee. Once an employee becomes eligible or entitled for status as permanent employee, he is entitled to the consequential classification. When the employee acquires the status of a permanent employee, so far as he is concerned, Clause (2) of Annexure to the rules would have worked itself out. There is no question of such permanent employee acquiring permanent status again under Clause (2). Once he acquires the status of permanent employee, he is protected to the extent contemplated by law and the regulations or rules relating to service conditions. If the conditions of service provide for a channel of promotion, he is entitled to look forward to be considered of such promotion and if he is denied promotion, it may be open to him to ventilate his grievance in an appropriate forum. In otherwords, the classification contemplated in Item-I of Schedule to the Act and Clause (2) of the Annexure to the Rule is classification at a stage which could be spelled out from the classification contemplated namely, permanent, permanent seasonal, probationer, Badli, Apprentice and temporary. The stage is only the entry stage, i.e., the stage at which the person enters employment. The classification cannot relate to the stage of promotion or the promotion post which can be governed only by the service conditions applicable to the employees. Rules or Regulations framed by the Corporation providing for channel or promotion do not in any way detract from the Standing Orders and Clause (2) of the Annexure to the Rules does not detract in any way from the scheme of promotion provided by the rules or regulations. To say that an employee who was asked to work on a higher post for a period on account of exigencies of situation is not asking for promotion and he is asking only for appropriate classification on the post on which he is working is to ignore both the scheme underlying the rules relating to classification and the promotion rules. An employee may be asked to work in a higher post for some time on account of administrative exigencies. He does not thereby acquire a right to the higher post, as long as he has not been promoted by the Competent Authority in accordance with the regulations or rules and on a consideration of all employees in the feeder categories who are in the field of choice. An employee who is not entitled to be considered for promotion or who is yet to be considered for promotion and therefore, cannot be deemed to have been promoted, cannot secure the same end by stating that what he is seeking is classification and not promotion. What

cannot be achieved directly cannot be permitted to be achieved in an indirect manner. It is one thing to say that an employee who has been asked to work in a higher post temporarily must get the emoluments attached to the higher post; it is quite a different thing to say that he must be regarded as a permanent incumbent of the higher post by being classified as such. The question of exploitation and unfair labour practice does not arise since it will be the duty of the employer to pay him the emoluments attached to the higher post as long as he discharges the duties attached to the higher post and on the failure of the employer, it will be open to the employee to enforce his claim. In a large organisation like the Corporation with officers and bus-stations spread over the vast expanse of the State, it may not always be possible, though it may be desirable, for the competent authority to keep a watchful vigil and take prompt action for filling up the promotional post on occurring of the vacancy. Officers in far off places may have to make temporary arrangements for discharge of the duties attached to the higher post which fall vacant. They can only entrust the duties to an employee available locally who may not have the requisite seniority or even the eligibility for being considered for promotion. It is not in the scheme of Clause (2) of the Annexure to the Rules to convert such temporary arrangement into a permanent one. The scheme of classification spells out clearly the underlying intention that it is intended to apply to the entry stage and not to promotional post.

For the reasons indicated above we agree, with the view taken in K.K. Krishna's case (*supra*) and hold that the decisions which take a contrary view do not lay down good law.

We, therefore, dispose of the writ petition in the following manner:

- (i) The impugned orders directing classification of the first respondent herein as permanent Traffic Supervisor Gr. II or permanent Incharge, Bus Station, are set aside;
- (ii) However, for the period during which first respondent discharged and discharges the duties attached to the higher post, he shall be paid emoluments attached to the higher post.

Parties to bear their own costs. Security if any, deposited shall be refunded.