

(2000) 02 MP CK 0078
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1004/97

Municipal Council

APPELLANT

Vs

Istayak Ahmad and Another

RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 — Section 13, 2(2)

Citation : (2000) 4 MPHT 166 : (2000) 2 MPJR 34

Hon'ble Judges : S.P. Shrivastava, J

Bench : Single Bench

Advocate : Vivek Gour, for the Appellant; Arun Upadhyaya, for the Respondent

Judgement

S.P. Shrivastava, J.

Feeling aggrieved by an order passed by the Labour Court whereunder while allowing in part the application filed by the respondent workman u/s 13 of the M.P. Industrial Employment (Standing Orders) Act, 1961, holding that the undertaking of the petitioner wherein he was employed fell within the purview of the Industrial Standing Orders Act, 1961, a direction had issued requiring the employer to comply with the standing order in the case of the within 90 days, the employer has now approached this Court seeking redress praying for the setting aside of the said order including the directions.

I have heard the learned counsel for the petitioner as well as the learned counsel, representing the respondent-workman and have carefully perused the record.

The facts, in brief, shorn of details and necessary for the disposal of this Writ Petition, lie in a narrow compass : The respondent-workman had filed an application u/s 13 of the M.P. Industrial Employment (Standing Orders) Act, 1961 praying that it be declared that the undertaking of the employee fell within the purview of the Standing Orders and he was entitled to be declared as a

permanent employee and was further entitled to be declared as a permanent employee and was further entitled to salary and wages including the arrears admissible to an employee holding the post of Time Keeper.

The Labour Court came to the conclusion that the Standard Standing Orders contained in the Annexure to the M.P. Industrial Employment (Standing Orders) Rules, 1963 framed under the Industrial Employment (Standing Orders) Act, 1961 were applicable to the undertaking of the employer wherein the respondent-workman was employed. The Labour Court further held that in the proceedings initiated by the respondent-workman u/s 13 of the Act, it has no jurisdiction to go into the question as to whether the respondent-workman was entitled to classify a person a permanent employee and therefore the said question was being left open. However, in the operative portion of the order, the Labour Court indicating that the application was being allowed in part directed the employer to comply with the Standing Orders within a period of 90 days.

The learned counsel for the petitioner has strenuously urges that M.P. Municipal Employees (Recruitment and Conditions of Service) Rules have been framed under the M.P. Municipalities Act, 1961. The Labour Court had manifestly erred in holding that the service conditions of the respondent-workman stood governed by the Standing Orders referred to in the Rules of 1963. The submission is that service conditions are essentially matters of agreement between employees and employer and where the employer frames regulations relating to conditions of service, they are treated as part of the conditions of service of the employees and as such in view of the provisions contained in Section 2 (2) of the Standing Orders Act, 1961 in the presence of the statutory rules having been framed the standing order in question could not be held to have been applicable to the undertaking in question. It is asserted that Section 2 (2) of the aforesaid Act provides that nothing in the said Act shall apply to the employees in an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the Official Gazette apply.

The learned counsel for the answering respondent has urged that the mere fact that the M.P. Municipal Employees (Recruitment & Conditions of Service) Rules having been framed is of no consequence as these rules have not been notified as required u/s 2 (2) of the M.P. Industrial Employment (Standing Orders) Act, 1961. The contention is that so long as they are not notified as statutorily required, the standing orders containing the service conditions, which stand statutorily imposed and made binding on the employee, continued to remain effective. The order of the Labour Court, it is urged, in the circumstances does not require any interference.

In the aforesaid connection, the learned counsel for the respondent No. 1 has placed reliance upon a decision of this Court rendered by a Full Bench in the case

of Superintending Engineer, P.W.D. and Another Vs. Dev Prakash Shrivastava and Others, wherein it has been clearly indicated that unless the Government notified that particular rules which are applicable to that Department will exempt the application of the provisions of the M.P. Industrial Employment (Standing Orders) Act, 1961, till that time the provisions of the Act, Rules and Orders issued thereunder will govern that Department.

The ratio of the aforesaid decision clearly stands attracted in the facts and circumstances of the present case and the contention of the petitioner is clearly devoid of the merit and is not at all acceptable.

The learned counsel for the petitioner has next urged that the Labour Court having come to the conclusion that it has no jurisdiction to go into the question in regard to the determination of the status of the respondent-workman and to issue any direction in regard to the payment of wages, etc. as prayed for, there could be no justification for issuing the direction to which a reference has been made hereinabove. The contention is that on the findings recorded by the Labour Court on issue No. 2, there could be no occasion to issue the direction in question prescribing a time limit therefor. It is further urged that in case of any grievance, the respondent-workman could raise an industrial dispute in accordance with the law under the provisions of the M.P. Industrial Relations Act, 1960.

Taking into consideration the fact and circumstances as brought on record and the findings returned by the Labour Court, I am of the considered opinion that the submission of the petitioner indicated above has merit and there was absolutely no justification for issuing the impugned direction which was wholly uncalled for.

In view of the aforesaid conclusions, this writ petition succeeds in part. The impugned direction issued by the Labour Court is quashed leaving it open to the respondent-workman to get his grievances, if any, redressed in the appropriate proceedings before the competent forum in accordance with the law.

There shall however be no order as to costs.