

(2018) 04 MP CK 0027

In the Madhya Pradesh High Court

Case No : W.P.No.3146 OF 06 & WP No.91 OF 12

Nanhi Bai

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 02-04-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)(2)

Citation : (2018) 04 MP CK 0027

Hon'ble Judges : SUJOY PAUL, J

Bench : Single Bench

Advocate : Manish Kholiya, Anshuman Singh, Rahul Mishra

Final Decision : Allowed

Judgement

This order will dispose of W.P.No.3146/06 and W.P.No.91/12. W.P.No.3146/2006 :

In this petition, petitioner has prayed for following reliefs :-

(i) A writ, order or direction in the nature of Mandamus thereby directing the respondents to pay monthly salary to the petitioner at the rate admissible

to a regular peon. They may also be directed to work out the difference of salary from 06.04.1999 and to pay the arrears to the petitioner alongwith

interest at the rate of 18% per annum.

(ii) Any other appropriate writ, order or direction which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.

2. Briefly stated, the case of the petitioner is that the petitioner was appointed as labourer on 1.10.1980.Â The petitioner was terminated on

3.7.1995.Â The petitioner assailed the said termination in an industrial dispute which was decided by Labour Court in Case No.1/97 IDR.Â The

award of Labour Court dated 6.4.1999 (Annexure P/1) was unsuccessfully

challenged by the employer before this court in W.P.No.2646/02. The petitioner submitted her joining and thereafter filed an application under section 33(C)(2) of the Industrial Disputes Act, 1947 before the Labour Court. The Labour Court by order dated 10.07.2001 (Annexure P/3) directed to pay regular salary to the petitioner between 25.04.1999 to October, 2000 and give the status of regular employee.

W.P.No.91/2012:

3. In this petition, petitioner has prayed for following reliefs :-

(i) A writ, order or direction in the nature of mandamus thereby directing the respondents to regularize the service of the petitioner from the date when her juniors have been regularized with all consequential benefits such as arrears of salary and seniority etc.

(ii) Any other appropriate writ, order or direction which the Hon'ble court may deem just and proper in the nature and circumstances of the case.

4. Briefly history of both the cases is same. The petitioner's entire claim is founded upon the earlier round of litigation and direction of the Labour Court.

5. Shri Manish Kholiya, learned counsel for the petitioner placed heavy reliance on both the orders passed by the Labour court. In the first

order/award dated 6.4.1999, the termination order was set aside with a finding that the petitioner is entitled to be reinstated with further direction that

she is entitled to get financial benefits of regular employee. Petitioner was also directed to be regularized. Shri Kholiya submits that second

petition is connected with the first petition and, therefore, necessary directions may be issued to treat the petitioner as regularized w.e.f the date of

order of Labour court with all consequential benefits.

6. Per contra, Shri Anshuman Singh, learned counsel for the Municipal Council contended that during pendency of this petition, the petitioner has

attained the age of superannuation and retired on 31.10.2017. However, during the course of arguments, he did not dispute the aforesaid factual

background narrated by Shri Kholiya. He further submits that in the second petition, the claim of the petitioner is for grant of benefit of

regularization and not for conferring the status of regular employee with retrospective effect.

7. No other point is pressed by learned counsel for the parties.

8. I have heard the parties at length and perused the record.

9. The Labour court in its award dated 06.04.1999 held as under :-

vr% ekuuh; mPp U;k;ky; ds U;k;kfuxZ; 1989 ts0,y0ts0 ist 253 ij izdkf'kr U;k;fu.kZ; ds izdk'k esa izFke i{k f}rh; i{k laLFkku esa LFkbbZ deZpkjh

ds LoRo HkhÂ Â izkIr djus dh vf/kdkjh.kh gSA bl izdkj ls izFke i{k dh Isok lekIr voS/k vuqf/kr ,oa voS/kfud NVuhLo:i ?kksf'kr dh tkrh gSA izFke

i{k f}rh; i{k laLFkku us iqu% inLFk gksus dh vf/kdkjh.kh gS ,oa f}rh; i{k laLFkku dks izFke i{k ds laca/k esa fu;ehrdj.k djus ds vkns'k Hkh fn;s tk

jgs gS vr% izFke i{k f}rh; i{k ls fiNyK osru ikus dh vf/kdkfj.kh jgsxhA ;gh funsZ'k f}rh; i{k laLFkku eq[; uxjikfydk laLFkku dks fn;k tkuk mfpr gSA

Â f}rh; i{k laLFkku okn O;; ds :i esa izFke i{k dks 300@& :0 vnk djsaxsA

(emphasis supplied)

This award was assailed by the employer before this court and this court by a detailed order dated 10.2.2004 (Annexure P/2) dismissed the said

petition.Â In absence of any further challenge to the order of Labour Court, the said order has attained finality.Â The same is the case with the

second order of Labour Court dated 10.07.2001.Â The Labour court in view of earlier adjudication, as per award dated 6.4.1999 passed the order

dated 10.7.2001.Â The relevant portion reads as under :-

mlds fgr esa fuEu vkns'k ?kksf'kr fd;k tkrk gS&

Â¼vÂ½ izkFkZuh dk 25-04-99 ls vDVwcj 2000 rd dk 'kkS?; osru 65066@& :i;s Â¼mUgRrj gtkj N;kIB :i;sÂ½ vukosnd fu;ksDrk ij cdk;k gksuk ?

kskf'kr fd;k tkrk gSA ;g jkf'k izkFkZuh fu;ksDrk ij cdk;k gksuk ?kksf'kr fd;k tkrk gSA ;g jkf'k izkFkZuh fu;ksDrk ls olwy djus dh vf/kdkjh ?kksf'kr dh

tkrh gSA lKE; fl}kUr ds vk/kkj ij izkFkZuh nkok fnukad ls jkf= olwyh fnukad rd 126 izfr'kr lk/kkj.k C;kt Hkh 'kkS?; cdk;k jkf'k ij ikus dh vf/kdkjh ?

kksf'kr dh tkrh gSA vukosnd rhu fnol esa jkf'k U;k;ky; esa tek djsa ftlds tek u djus ij ,oa vukosnd }kjk bl vkns'k ds fo:) ofj' B U;k;ky; dk dksbZ layXu

vkns'k ;k vU; vkns'k tks bl vkns'k dks izHkko'kwU; djs izLqr u djus dh n'kk esa fu;ksDrk ds fo:) vkj0vkj0lh0 tkjh dh tkdj olwyh mijkar izkFkZuh dks

Hkqxrku dh tk;saA bl izdj.k dk okn O;; :i;s 300@& fu;ksDrk izkFkZuh dks Hkqxrku djsaA

(Emphasis supplied)

10. A conjoint reading of the basic award and the order passed in the execution proceedings dated 10.7.2001 shows that petitioner was directed to be regularized in the year 1999. A specific direction was issued to grant her the financial benefits which were available to a regular employee. The petitioner's claim for the period between 25.4.1999 to October, 2000 was decided by the second order and the court below directed to pay an amount of Rs.65066/-which is the difference of pay of regular employee and a daily rated employee. This second order of execution has also attained finality. In the light of specific order of Labour court directing regularization of the petitioner and not consideration for regularization, the argument of Shri Anshuman Singh that regularization with retrospective effect is not permissible, pales into insignificance. Thus, the petitioner is entitled to get the regular pay scale from 25.4.1999 to October, 2000 as per the order of the Labour Court. Once the status of petitioner granted by the Labour Court remains intact, there is no justification in depriving her from the financial benefits of regular pay scale beyond October, 2000.

11. Resultantly, I am inclined to hold that inevitable consequence of affirming the award of the Labour court by this court is that the petitioner will get the regular pay scale till the date of her retirement.

12. So far the question of regularization is concerned, the respondents contended that no direction for regularization can be issued because the petitioner has already retired. This is unfortunate that the Labour Court issued a direction for her regularization way back in the year 1999. The employer unsuccessfully challenged this award but did not implement the award in its letter and spirit. The Labour court categorically directed for regularization of the petitioner. Interestingly, a minute reading of the award of Labour court shows that in the peculiar facts and circumstances of the case, the Labour Court has not directed the respondent to consider the case of the petitioner for regularization. Indeed, the Labour court itself issued directions to regularize the petitioner and give her same pay scale which is attached to the similar post occupied by a regular employee. At the cost of repetition, it is noteworthy that this order was affirmed by this Court. The employer has not implemented the order of Labour court in both the cases in correct perspective. Hence, these avoidable piece of litigation is generated.

13. Resultantly, the petitioner shall be treated to be regularized w.e.f 1999 with all consequential benefits.Â As a result, the respondents shall treat the petitioner as a regular employee from the date of Labour Court's award and grant her all consequential benefits.Â The said benefits shall be calculated within ninety days and necessary payments shall be made to the petitioner within aforesaid time failing which it will carry 12% per annum interest till the date of realization.

14. Petitions are allowed.