
(2003) 09 MP CK 0042

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3744 of 2000

Narayan Prasad Kori

APPELLANT

Vs

M.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2003) 4 MPHT 385 : (2004) 2 MPLJ 70

Hon'ble Judges : Saraswati Prasad Khare, J

Bench : Single Bench

Advocate : R.N. Shukla and R.B. Tiwari, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a writ petition under Article 227 of the Constitution of India for quashing order dated 28-6-1997 (Annexure P-1) of the Labour Court and order dated 3-2-2000 (Annexure P-2) of the Industrial Court.

The petitioner was employed as a conductor in Central Provinces Transport Services in the year 1953, This undertaking was taken over by the State of Madhya Pradesh in 1955 but the conditions of his service were protected. After formation of the M.P. State Road Transport Corporation, the services of the petitioner were transferred to this Corporation. In the CPTS the retirement age of the employees was 60 years. The petitioner was retired on 2-8-1986 on attaining the age of 58 years. The petitioner's case is that he was entitled to continue in service upto the age of 60 years. The Labour Court and the Industrial Court accepted his plea relying upon the decision of the Supreme Court in S.P. Dubey v. M.P. State Road Transport Corporation 1991 MPLJ 1. However, the petitioner's claim for salary for the two years has been rejected by both the Courts.

Arguments of the learned Counsel for both the sides were heard. The ground for

rejecting the prayer of the petitioner for salary for two years is that he has not proved that he was not employed during this period. There were no pleadings before the Labour Court on this point. There was no issue. There was no evidence on this point. It can not be presumed that the petitioner was employed elsewhere after attaining the age of 58 years. Normally, no one gets an alternative employment after attaining that age. The view taken by the two Courts is highly perverse. In S.P. Dubey's case, the Supreme Court in Para 12 has held : "he is only entitled to two years" emoluments. The respondents are directed to pay the same to the appellant". Thus, this decision of the Supreme Court is also an authority for the proposition that in such a case the emoluments for two years should generally be allowed to the employee unless there is evidence to the contrary. In the present case, the respondents did not plead that the petitioner was gainfully employed elsewhere after his retirement at the age of 58 years. Therefore, the two Courts have wrongly declined to award the salary for this period.

The petition is allowed. It is directed that the respondent No. 1 will pay salary of the petitioner for two years from 2-8-1986 to 2-8-1988 as if was continuing in service for this period.