

(2000) 03 MP CK 0016

In the Madhya Pradesh High Court

Case No : L.P.A. No. 12, 19, 49 and 95 of 1998

Prakash Dravid and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-03-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2000) 86 FLR 472 : (2000) 2 LLJ 1511

Hon'ble Judges : N.G. Karambelkar, J;Fakhruddin, J

Bench : Division Bench

Advocate : M.C. Jain and R.P. Gupta, for the Appellant; K.B. Chaturvedi, S. Gajendragadkar and Vijay Sundaram, for the Respondent

Judgement

Fakhruddev and N.G. Karambelkar, JJ.—These four Letters Patent Appeals have been filed against a common order dated November 2, 1997 passed by a learned single Judge of this Court in Writ Petition Nos. 1364/1997, 1360/1997, 1270/1997 and 1267/1997, out of which these appeals arise, and shall be disposed of by this common order.

2. The appellants/petitioners who were workmen filed the aforesaid petitions for a direction that the respondents shall continue them in service and shall regularise them in service on the ground that their termination from service is illegal. It is contended that they are entitled to the benefit of Section 25F of the Industrial Disputes Act, 1947 (for short, the Act). Return was filed in W.P. No. 1358/1997 and it was adopted by the counsel for the respondents in other cases also. The learned writ Court considered the entire material on record in great detail in paras 5 to 11. In para 9 the learned single Judge while dealing with the provisions of Section 25F of the Act relied on the decisions in Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, , Mohan Lal Vs. Management of Bharat Electronics Ltd., , and Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, . The case of Himanshu Kumar Vidyarthi and Others Vs.

State of Bihar and Others, , was also considered, and in para 112 the writ Court directed that:

"In view of the above, the respondent-employers are directed to pass a speaking order which should indicate the period for which the petitioners have worked. If they had worked for more than 240 days, then they be afforded the benefits of Section 25F of the Act. If no vacancy is available then the petitioners would not be entitled to reinstatement."

In spite of this direction in favour of the petitioners, they have filed these Letters Patent Appeals.

3. In these appeals learned counsel for the appellants advanced the same contentions which were raised before the writ Court. Shri Gajendragadkar, learned counsel appearing for respondent Shivpuri Development Authority, Shivpuri, relied on a Full Bench decision of this Court in case of Superintending Engineer, P.W.D. and Another Vs. Dev Prakash Shrivastava and Others, to contend that existence of permanent vacancy is a must for reinstatement.

4. In *Supdt. Engineer, PWD and Anr. v. Dev Prakash Shrivastava* (supra), attention of the Full Bench was drawn to a Division Bench decision of this Court in *Vandana Singh v. Steel Authority of India*, where the question was with regard to Articles 14, 16 and 39(d) of the Constitution of India. There was a difference of opinion between the members of the Division Bench. One of them held that the incumbent was entitled for equal pay for equal work and for regularisation. The difference was whether the incumbent is entitled for equal pay for equal work when there was no permanent vacancy available. Another member of the Division Bench held that in absence of permanent vacancy, no relief with regard to equal pay for equal work could be given. The Full Bench upheld the latter view expressed by another member of the Division Bench as it was in accordance with clause 2 of the Standard Standing Order which says that existence of vacancy is a must.

5. After hearing the learned counsel for the parties, we have asked the learned counsel for the appellants/petitioners to specify as to whether they want to raise the dispute that they had worked for more than 240 days in a year and, as such, they are entitled to the benefit of Section 25F of the Act, before the respondents or before the Labour Court. Learned counsel for the appellants stated that it would be just and proper to direct that the respondents themselves shall decide the matter in dispute.

6. In view of this, in the opinion of this Court, it would be just and proper if a direction is given to the respondents to decide the question as to whether the appellants/ petitioners had worked for more than 240 days in a year. If it is found that they had worked for more than 240 days, then the benefit of Section 25F of the Act shall be granted to them in accordance with law. The respondents shall hear the appellants/petitioners and pass a speaking order as early as possible, preferably, within two months from the date of production of a certified copy of

this order by the appellants before them. The appellants, if aggrieved by the order that would be passed by the respondents, will be entitled to challenge it before the appropriate forum in accordance with law.

7. With the aforesaid observation and direction these appeals have been disposed of. No order as to costs. A copy of this order be placed on the record of LPA Nos. 19/1998, 49/1998 and 95/1998 also.