

(2003) 02 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1464 of 2001, 3460 of 1994, 1554, 1464, 1624, 2496, 2954, 4520 and 5292 of 1997

Ramadhar Kushwaha

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Citation : (2003) 3 MPLJ 474

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Prashant Singh, for the Appellant; Mukesh Agarwal, Panel Lawyer for respondent No. 1 and Sanjay K. Agarwal for respondent Nos. 2 and 3, for the Respondent

Judgement

K.K. Lahoti, J.—This order will decide all writ petitions list of which is enclosed along with the order.

2. All the petitioners are working in Municipal Corporation, Jabalpur. They are working on daily wages. Some of them are working prior to 31-12-1988 and some of them are working after 1-1-1989. In some of the cases. Corporation has challenged the order passed by the Labour Court by which the Labour Court has directed for regularisation of the employee ignoring seniority of similarly situated employees who are working prior to the employee in whose favour Labour Court has passed the order. In some of the cases, employee who is aggrieved by the order of Labour Court has filed petition challenging the order of Labour Court on the ground that he was senior to the respondent in whose favour the Labour Court has passed the order and he is aggrieved by the order passed by the Labour Court or consequential order passed by the Municipal Corporation.

3. Learned counsel appearing for Corporation submits that looking to the aforesaid anomaly, Corporation has taken a policy decision on 31-3-1997 by which the Corporation has decided to consider cases of all the daily rated employees who are working prior to 31st December, 1988. The aforesaid policy

decision in Annexure R-4 in W. P. No. 105 of 1998. As per the aforesaid policy, Corporation has prepared list of all the employees who are working in the Corporation and the Corporation is regularising the services of all the employees who are working prior to 31st December, 1988 according to availability of post in the Corporation. So far as employees who are working after 1-1-1989, no such policy decision has been taken. It is submitted before me that nearabout 700 employees are working on daily rate basis, awaiting their turn for regularisation. But some of employees filed their cases and sought orders in their favour. In that situation Corporation is bound by that order and has to regularise that person, ignoring the seniority of other senior person who has not filed any case and is waiting for his turn as per policy.

4. As the Corporation itself has decided to regularise the services of employees who are working prior to 31st December, 1988, by which every employee will get his right according to his seniority on availability of post and on fulfilling the eligibility. In the circumstances, contention of the learned counsel appearing for the Corporation, that the Corporation is regularising the services of employees as per policy decision which is the uniform policy, is accepted and in respect of those employees who are working prior to 31st December, 1988, following directions are issued:

(a) Respondent Corporation who has already prepared the seniority list of daily rated employees who are working prior to 31st December, 1988 will regularise the services of daily rated employees strictly as per their seniority and eligibility subject to availability of post.

(b) The respondent Corporation has prepared aforesaid seniority list in two heads, technical and non-technical, will be at liberty to fill up the technical post on availability of technical post from daily rated worker who possesses requisite qualification. If the technical post is not available and the employee comes in the seniority criteria then respondent Corporation will be at liberty to regularise that person even on non-technical post, if such employee so chooses or opts such regularisation.

(c) So far as non-technical persons are concerned, all the daily rated workmen will get their regularisation as soon as the posts become available as per his seniority and eligibility.

(d) This order will not affect those employees who have already been regularised because of the order passed by the High Court or by Labour Court and the aforesaid order has reached its finality. But so far as the other employees are concerned, their services will be regularised as per the direction issued today including those whose regularisation are under challenge before this Court.

(e) As the employees are to be regularised or classified on particular post on the availability of vacant post, as has been held in Full Bench decision by this Court in *Superintending Engineer vs. State of M.P. and others* 1999(1) MPLJ (FB) 466 : 1999 (1) MPJR 1, in the circumstances, if any litigation in respect of employee

who is working prior to 31-12-1988 or after 1-1-1989 respondent Corporation will place this order before the Labour Court in that case and labour Courts will strictly follow the decision of Full Bench judgment and directions issued today in this case.

(f) In respect of those cases in which any junior person has been regularised ignoring seniority of other daily rated employees and if presently the order is under challenge before this Court, the aforesaid order of regularisation by the labour Court would stand modified, as per this order.

(g) Those employees who are not satisfied with their seniority in the seniority list will file fresh representation before respondent Municipal Corporation within a period of sixty days from today and Municipal Corporation will decide the seniority of those unsatisfied employees within a period of ninety days thereafter.

(h) So far as the regularisation of the employees working prior to 31-12-1988 are concerned, the respondent will consider the cases for regularisation as and when the posts are available strictly according to their seniority.

5. In respect of employees who are engaged after 1-1-1989 is concerned, following directions are issued:-

(a) Respondent will prepare a fresh seniority list of all those employees who are continuously working in the Corporation and have achieved the status of permanent workman. This shall be done within 90 days from today.

(b) The aforesaid list will be duly published by the Corporation and after considering objections of the employees, the aforesaid seniority list will be finalised.

(c) The respondent Corporation on availability of post, after exhausting the list of employees working prior to 31-12-1988 will regularise the services of all those employees strictly in accordance with their seniority and as per policy Annexure R-4.

(d) The policy Annexure R-4 will also be applicable in respect of employees who are working after 1-1-1989 and have achieved a permanent status as per provisions of Standing Order.

(e) For regularising the services of workmen working after 1-1-1989, respondent Corporation will also observe the reservation as has been mentioned in the Policy Annexure R-4 and in case daily rated employees are available of reserved quota then respondent will fill up the aforesaid quota by regularising the services of those employees who belongs to reserved category on priority basis and if any such post remains vacant then they will follow the provisions of reservation by the State of M.P.

With the aforesaid directions, the petitions are finally disposed of.

Certified copy as per rules.