

(2001) 08 MP CK 0040

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2432 of 2001

Rampal Singh

APPELLANT

Vs

M.P.S.R.T. Corporation and Another

RESPONDENT

Date of Decision : 20-08-2001

Acts Referred:

Citation : (2002) 2 MPHT 55

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

C.K. Prasad, J.—By this writ petition, filed under Articles 226 and 227 of the Constitution of India, prayer made by the petitioner is to quash the order dated 5-2-2001 passed by the Industrial Court in appeal whereby, it had set aside the order of the Labour Court, dated 30-9-1991, directing for classifying the petitioner as booking agent.

2. Facts lie in a narrow compass. Petitioner was appointed as Conductor by order dated 5-2-1982. Asserting that he had worked as Booking Agent from 17-5-1983 for more than six months, he filed application u/s 31 of the M.P. Industrial Relations Act before the Labour Court inter alia praying that he be classified as such. Labour Court on consideration of the material placed before it held that petitioner worked as Booking Agent from 17-5-1983 to 11-11-1985 and as such, directed for his classification as such from 17-5-1983. Aggrieved by the same M.P. State Road Transport Corporation Le. employer filed appeal before the Industrial Court. The Industrial Court found that the petitioner has claimed classification on a promotional post and in view of the law laid down by a Full Bench of this Court in the case of Madhya Pradesh State Road Transport Corporation and another v. Narain Singh Rathore and others (1994 MPLJ 959), the direction given by the Labour Court for his classification on the promoted

post is illegal. Hence, it allowed the appeal and set aside the order of the Labour Court.

3. Mr. R.N. Shukla appears on behalf of the petitioner. In spite of service of notice on the respondents, nobody has chosen to appear on their behalf.

4. Fate of this case shall depend upon the answer to the question as to whether Clause 2 of the Standard Standing Order operate at the stage, where the person enters employment or operates at the stage of promotion or the promotional post. Section 31 (3) of the M.P. Industrial Relations Act, 1960 (hereinafter referred to as the MPIR Act) provides that a representative of employees or an employee desiring a change in respect of industrial matter specified in Schedule II or any other matters arising out of such change may make an application to Labour Court. Items (1) and (6) of Schedule II of the MPIR Act read as under:-

(1) The propriety or legality of an order passed or action taken by an employer acting or purporting to act under the Standing Orders or any Rules or Regulations governing the conditions of service of the employees.

*** ** (6) Employment including-

(i) reinstatement and recruitment;

(ii) unemployment of persons previously employed in the industry concerned.

In exercise of the powers conferred u/s 21 of the M.P. Employment (Standing Orders) Act, 1961 the State Government framed the M.P. Industrial Employment (Standing Orders) Rules, 1963. Rule 7 of the said Rules provides that subject to the provisions of Section 6 of the Act, the Standard Standing Orders for all undertakings to which the Act applies shall be those set out in the Annexure. It is common ground that the Standard Standing Orders as set out in the Annexure of the Rules applies to the M.P. State Road Transport Corporation (hereinafter referred to as M.P.S.R.T.C.).

5. Clause 2 of the Standard Standing Orders provides for classification of employees. Clauses 2 (i) and (vi) of the Standard Standing Orders which are relevant for the purpose read as follows:-

"2. Classification of Employees.- Employees shall be classified as- (i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) Badlies, (v) apprentices, and (vi) temporary:

(i) A "permanent" employee is one who has completed six months satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;

*** ** (vi) "temporary employee" means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the

temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of Clause (i) above."

6. The point projected is not a point of first impression and had come for consideration before this Court in a large number of cases. In the case of V.K. Jain and another v. Kamal Singh Thausing and another (1978 MPLJ 664); a Division Bench of this Court held as follows:-

"Having heard the parties. We have formed the opinion that the decision of the Industrial Court is unassailable. On a plain construction of the approach notice. Annexure A-1 and the application u/s 31 (3). Annexure A-2, it is clear that the demand was for classification and not for promotion. That being so, the authorities relied upon for showing that promotion is a managerial function are not relevant. On the finding reached by the Tribunals, there is no manner of doubt that the management is guilty of unfair labour practice. The non-petitioner No. 1 does not claim that he should be promoted to a higher post. He already stands promoted to the higher post of a Supervisor and is already working in that post since 1957, i.e., for nearly 14 years now but the management has been wrongly treating him as a Jobber and thereby not only depriving him of the pay and other emoluments attached to the post of Supervisor. This amounts to nothing but exploitation of labour. It is futile to contend that the Labour Court, in a case like this, had no jurisdiction to interfere. The matter could be covered not merely by item 1, but also by item 6 of Schedule II of the Madhya Pradesh Industrial Relations Act, 1960 and, therefore it had jurisdiction to adjudicate upon the dispute. Under the terms of Rule 2 of the Standard Standing Orders, the management had the statutory duty to properly classify the non-petitioner No. 1 as a Supervisor, when it was taking the work of Supervisor from him for all these years but it has committed a breach thereof by showing him as a Jobber, thereby depriving him of his legitimate rights and privileges. In a case like this, the employee is entitled to complain against the action taken by the management. The matter, therefore, falls within the purview of item 1, Schedule II of the M.P. Industrial Relations Act. Alternatively, he is also entitled to ask for a change in the terms of employment and, therefore, the matter would come within the ambit of item 6 of that Schedule. The adjudication by the Industrial Court, therefore, pertained to the matter which was within its jurisdiction. On merits, the Industrial Court was perfectly right in directing the petitioners to classify the non-petitioner No. 1 as a Supervisor and to grant a further declaration that he should be treated as such since 1957."

(Underlining mine)

7. A close reading of the aforesaid passage of judgment shows that in the aforesaid case the Division Bench did not say that Rule 2 of the Standard Standing Order operates in the field of promotion, but it proceeded on the assumption that the demand of the workman was for the classification. It further

found that asking a workman to work on a post for nearly 14 years, as Supervisor and thereafter treating him to be in a lower post of Jobber was nothing but exploitation of labour and on the background of the aforesaid fact this Court found that the matter is covered not merely by item 1, but also by item 6 of Schedule II of the M.P.I.R. Act and, therefore, it has jurisdiction to adjudicate upon the dispute. Division Bench in V.K. Jain (supra) further held as follows:-

"The non-petitioner No. 1, therefore, had the right to approach the Labour Court, regarding proper classification of his post, u/s 31 (3) of the M.P. Industrial Relations Act, 1960.

14. Rule 2 of the Annexure to the Standard Standing Orders reads as follows:-

"2. Classification of Employees.- Employees shall be classified as- (i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) badlies, (v) apprentices, and (vi) temporary;

*** ** Admittedly, the non-petitioner No. 1 did not fall within the categories (ii) to (vi). He, therefore, came within category (i). The expression "permanent" employee is defined in Clause (i) as follows :-

"A "permanent" employee is one who has completed six months satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee:

Explanation:- In computing the period of six months the days on which employees was absent due to authorised leave, sickness, maternity leave, accident, lock out and strike (which are not illegal) or closure of the undertaking shall be included."

"There can be no doubt that the non-petitioner No. 1 fulfils all the requirements under this clause and he was therefore, a permanent employee within the meaning of Rule 2 (i). He was working in a clear vacancy of more than 12 years as a Supervisor and was, therefore, entitled to be classified as such. There can be no quarrel with the proposition that Rule 2 relates to the status of an employee and does not speak of post and that it does not provide for fixing a person from one post to another post. It only casts a statutory duty on the employer to properly classify an employee having regard to the nature of his work."

Reading the aforesaid passage shows that an employee working in a clear vacancy for more than 12 years is entitled to be classified as such and an employee has right to approach the Labour Court regarding proper classification, but not for promotion. Much distinction was made on the ground that the demand was for classification and not for promotion. With deepest respect to the learned Judges constituting the Bench it lost sight of the fact that the consequence of classification was the same as that of promotion and what cannot

be achieved directly cannot be permitted to be achieved in an indirect manner.

8. In the case of *M.P. State Road Transport Corporation v. Bhagiram Yadav* (1990 MPLJ 328), on a consideration of other authority of this Court, the Division Bench held as follows:-

"After hearing the counsel and perusing the record, we are of the opinion that this petition has no merit and deserves to be dismissed. It has now been finally settled by this Court that it is the Standard Standing Orders and not the regulation that govern the employees of the petitioner Corporation (see the Full Bench decisions of this Court in *M.P. State Road Transport Corporation v. Heeralal and others* 1980 MPLJ 8 : 1980 JLJ 16). Therefore, the case of the parties has to be judged in the light of the provisions contained in the Standard Standing Orders. If an employee, who was employed in a lower cadre, works on a higher post continuously and satisfactorily for a period of more than six months, such an employee, in view of the provisions of Rule 2 of the Standard Standing Orders can make a demand for classification and not for promotion. Such a demand can be made u/s 31 (3) of the Act. That being so, the authority relied upon for showing that the promotion is a managerial function is not relevant. This contention and the provisions of Rule 2 of the Standard Standing Orders and the fact of working satisfactorily and continuously for more than six months on a clear vacant post, have been considered by a Division Bench of this Court in 1978 MPLJ 664 (supra). After considering Rule 2 of the Standard Standing Orders, which deals with classification of employee, this Court observed that there can be no quarrel with the proposition that Rule 2 relates to the status of an employee and does not speak of post and that it does not provide for fixing a person from the post to another post. It only casts a statutory duty on the employer to properly classify an employee having regard to the nature of his work."

(Underlining mine)

To me, it appears to be plain from a reading of the aforesaid passage of the Judgment that Clause 2 of the Standard Standing Orders does not entitle an employee to make a demand for promotion, but entitles him to demand for classification. As in the case of *V.K. Jain* (supra), in the case of *Bhagiram* (supra) also the Division Bench was swayed with the reasoning that asking for classification on the higher post and asking for promotion on the said post is not one and the same. In *V.K. Jain's* case (supra), employees working on a higher post for 14 years was taken into consideration whereas in *Bhagiram's* case (supra), it has been categorically held that an employee working on higher post continuously and satisfactorily for a period of six months can make demand for classification and not promotion.

9. In the case of *K.K. Krishnan v. Industrial Court of M.P., Indore*, 1992 MPLJ 570, a Division Bench of this Court found that Clauses 2 (i) and (vi) of the Standard Standing Orders operate in the field of classification of employee and

not to their promotional right. In the words of the Division Bench:-

"Obviously the provision is as to classification of employees and not as regards their promotional rights. A permanent employee has been defined to be an employee who has completed six months" satisfactory service in a clear vacancy. A temporary employee has been defined to be an employee who has been employed for work which is essentially of a temporary nature or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature. A proviso has also been added to the definition of temporary employee providing that in case such employee is required to work continuously for more than 6 months, he shall be deemed to be a permanent employee within the meaning of Clause (i) defining a permanent employee. The words "such employee" used in the proviso clearly refer to a temporary employee i.e., an employee who has been employed for work which is essentially of a temporary character or who is temporarily employed as an additional employee in connection with temporary increase in the work of a permanent nature. As already pointed out Standing Order 2 relates to classification of employees and not to their promotion. The Standing Order 2, therefore, relates to employment of such and not to category of posts in which a person is employed. There is clear difference between the nature of employment and the hierarchy of the post in which the person is employed. The Standard Order classifies the nature of employment and it does not classify the employees in different post according to the hierarchy created in a department. The employees have to be classified according to the nature of their employment as (i) permanent, (ii) permanent seasonal, (iii) probationer, (iv) badlies, (v) apprentices and (vi) temporary. Standing Order 2 does not divide the employees into Class I, II, III, IV or according to the hierarchy of the post created in a particular employment."

(Underlining Mine)

Learned Judges in the said case were confronted with the earlier decision of this Court in the case of V.K. Jain (supra) and Bhagiram Yadav (supra) and the learned Judges held as follows :-

"Shri K.L. Sethi, learned counsel for the petitioner heavily relied on some decided cases by different Benches of this Court and submitted that a different view cannot be taken by a Co-ordinate Bench. We have gone through the judgments, which have been referred to above. In those cases the classification of employees according to Standard Standing Orders was only involved. It does not appear to have been argued in those cases that the classification in Standard Standing Orders has no relation to promotion to high posts. It appears that the cases turned on the facts and arguments advanced in those cases, we do not find that a view contrary to the view we are taking has been taken in those cases. It has not been held in any of those cases that proviso to Standard Standing Order 2 (vi) applies even to promotional posts."

(Underlining Mine)

10. Finding difference in approach in the case of K.K. Krishnan (supra) in one hand, and V.K. Jain (supra) and Bhagiram Yadav (supra) on the other hand, the matter was referred to a Full Bench of three Judges, which answered the question in the following words in the case of M.P.S.R.T.C, v. Narain Singh(1994 MPLJ 959):

"All the decisions of this Court referred to earlier are unanimous in regard to one aspect, namely, what is dealt with in Clause (2) of the Annexure to the Rules is classification and not promotion. An employee can claim classification but not promotion by virtue of this clause. A probationer may be confirmed, a Badli may be absorbed . and an apprentice may be regularly employed. He may become permanent employee. Once an employee becomes eligible or entitled for status as permanent employee he is entitled to the consequential classification. When the employee acquires the status of a permanent employee, so far as he is concerned, Clause (2) of Annexure to the rules would have worked itself out. There is no question of such permanent employee acquiring permanent status again under Clause (2). Once he acquires the status of permanent employee, he is protected to the extent contemplated by law and the regulations or rules relating to service conditions. If the conditions of service provide for a channel of promotion, he is entitled to look forward to be considered for such promotion and if he is denied promotion, it may be open to him to ventilate his grievance in an appropriate forum. In other words, the classification contemplated in Item I of Schedule to the Act and Clause (2) of the Annexure to the rule is classification at a stage which could be spelled out from the classification contemplated, namely, permanent, permanent seasonal, probationer, Badli, Apprentice and temporary. The stage is only the entry stage, i.e., the stage at which the person enters employment. The classification cannot relate to the stage of promotion or the promotion post which can be governed by the service conditions applicable to the employees. Rules or Regulations framed by the Corporation providing for channel or promotion do not in any way detract from the Standing Order and Clause (2) of the Annexure to the Rules does not detract in any way from the scheme of promotion provided by the rules or regulations. To say that an employee who was asked to work on a higher post for a period on account of exigencies of situation is not asking for promotion and he is asking only for appropriate classification on the post on which he is working is to ignore both the scheme underlying the rules relating to classification and the promotion rules. An employee may be asked to work in a higher post for some time on account of administrative exigencies. He does not thereby acquire a right to the higher post, as long as he has not been promoted by the Competent Authority in accordance with the regulations or rules and on a consideration of all employees in the feeder categories who are in the field of choice. An employee who is not entitled to be considered for promotion or who is yet to be considered for promotion and therefore, cannot be deemed to have been promoted, cannot secure the same end by stating that what he is seeking is classification and not promotion. What

cannot be achieved directly cannot be permitted to be achieved in an indirect manner. It is one thing to say that an employee who has been asked to work in a higher post temporarily must get the emoluments attached to the higher post; it is quite a different thing to say that he must be regarded as a permanent incumbent of the higher post by being classified as such. The question of exploitation and unfair labour practice does not arise since it will be the duty of the employer to pay him the emoluments attached to the higher post as long as he discharges the duties attached to the higher post and on the failure of the employer, it will be open to the employee to enforce his claim. In a large organisation like the Corporation with officers and bus stations spread over the vast expanse of the State, it may not always be possible, though it may be desirable, for the Competent Authority to keep a watchful vigil and taken prompt action for filling up the promotional post on occurring of the vacancy. Officers in far off places may have to make temporary arrangements for discharge of the duties attached to higher posts which fall vacant. They can only entrust the duties to an employee available locally who may not have the requisite seniority or even the eligibility for being considered for promotion. It is not in the scheme of Clause (2) of the Annexure to the rules to convert such temporary arrangement into a permanent one. The scheme of classification spells out clearly the underlying intention that it is intended to apply to the entry stage and not to promotional post."

After laying down the law in the aforesaid words the Full Bench proceeded to say as follows :-

"For the reasons indicated above, we agree with the view taken in K.K. Krishnan's case 1992 MPLJ 570 and hold that the decisions which take a contrary view do not lay down good law."

11. Thereafter the matter has been considered by a learned Single Judge of this Court in M.P. No. 3973 of 1993 (Rajendra Singh v. M.P.S.R. T.C.) and after combined reading of the opinion expressed by the Division Benches and Full Bench Narain Singh (supra) the learned Single Judge by its judgment dated 8-9-1994 has held as follows :-

(i) An instance of unfair practice brought before the Labour Court may warrant grant of relief to an employee in exercise of jurisdiction conferred on the Labour Court either under item 1 of Schedule II of the M.P.I.R. Act on finding that Standing Orders have been violated or under item 6 of that Schedule on the ground that there is dispute about the condition of employment of the employee to justify redressal (see the opinion of the Division Bench case decided by Justice A.P. Sen, J. in V.K. Jain's case (supra), which does not appear to have been overruled by the Full Bench in the case of Narain Singh Rathore (supra).

(ii) Classification under Standard Standing Order No. 2 can be claimed on a post only at the stage of entry into service. Classification cannot relate to the stage of promotion or the promotion post which can be governed by the service

conditions applicable to the employee (see the decision of the Full Bench in the case of Narain Singh Rathore).

(iii) If an employee is asked to work on a higher post even for a period exceeding six months because of an administrative exigency, he does not thereby acquire a right to claim classification on the higher post to become permanent as long as he is not promoted to that post by a competent authority in accordance with the rules or regulations and on consideration of all employees in the feeder category. In the name of securing classification under Standard Standing Order No. 2, an employee cannot indirectly claim promotion. Such an employee who has been asked to work on a higher post temporarily must get emoluments attached to the higher post and he can claim those emoluments of the higher post; but no classification (see para 17 of the Full Bench decision in Narain Singh Rathore's case - supra).

(iv) If an employee is continued outside his channel of promotion or within his channel of promotion on higher post for an unduly long period of time so as to raise an inference of adoption of unfair labour practice by the employer, the same can be redressed and relief can be granted to the employees by the Labour Court by invoking its jurisdiction under item 6 of Schedule II of M.P.I.R. Act, 1960. The Labour Court in such cases of unduly long officiation may grant relief of consideration for promotion or treating him as duly appointed to that post or granting him other monetary relief attached to such higher post. (This view is supported by the Division Bench in the case of V.K. Jain (supra) which still holds the field.)"

(Underlining mine)

12. A reading of the aforesaid passage of the judgment of the learned Single Judge shows that he is of the view that "the Labour Court's jurisdiction can be invoked when an employee is continued outside or within his channel or promotion on higher post for an unduly long period of time complaining adoption of unfair labour practice, and the Labour Court can grant relief of consideration for promotion or treating him duly appointed to that post". This according to the learned Judge flows from V.K. Jain's case (supra) and in his opinion same still holds the field. The learned Judge has also held that in the name of securing classification under Standard Standing Order No. 2 an employee cannot indirectly claim promotion. Such an employee who has been asked to work on a higher post temporarily must get emoluments attached to the higher post and he can claim emoluments of the higher post; but no classification. Learned Single Judge categorically held that classification cannot relate to the stage of promotion or the promotional post which can i.e. governed only by the service conditions applicable to the employees. Learned Judge is further of the view that the law laid down by the Division Bench in V.K. Jain's case (supra) has not been overruled by the Full Bench in Narain Singh's case (supra).

13. It is worth mentioning that in Narain Singh's (supra) case the Full Bench

approved the view taken in K.K. Krishnan's case and held that the decisions which take contrary view do not lay down good law. Although the Full Bench did not indicate the decisions in which contrary view, was taken, but nonetheless it is stated that view contrary to K.K. Krishnan 's case (supra) does not lay down good law.

14. As stated earlier, neither in V.K. Jain's case (supra) nor in Bhagiram Yadav (supra), the Division Bench held that Clause 2 of the Standard Standing Orders operate in the field of promotion. However, it was clearly stated that what was sought for, by the employee was classification and not promotion and although promotion cannot be sought for but claim for classification on higher post can be made. Much distinction was found by the Division Bench in V.K. Jain and Bhagiram Yadav's cases (supra) between the claim for classification and promotion and it was held that the claim of classification can be made but not for promotion. What is the effect of classification of an employee as permanent on higher post ? To me, the answer seems to be simple, and that is, he is promoted to a higher post although what is sought to be done is to classify him as permanent on the said post. In view of the categorical enunciation of law by the Full Bench in the case of Narain Singh (supra), this point need not detain me much. The Full Bench in Narain Singh (supra) has categorically said that an employee "cannot secure the same end by stating that what he is seeking is classification and not promotion.

15. In view of the categorical pronouncement of law by Full Bench the theory of classification and promotion has been exploded and it has to be held that in the garb of seeking classification, an employee cannot be permitted to ask for promotion and as often said what cannot be achieved directly cannot be permitted to be achieved in an indirect manner.

16. Now one has to advert to the question as to what would happen in the case in which an employee is continued outside the channel of promotion or within his channel of promotion on higher post for an unduly long period so as to raise an inference of adoption of unfair labour practice by the employer. Learned Single Judge in the case of Rajendra Singh (supra) held that in such cases of unduly long officiation. Labour Court may grant relief of consideration for promotion or treating him as duly appointed to that post or granting him any monetary relief attached to that post. In the opinion of the learned Judge the said view finds support from the judgment of V.K, Jain (supra) and the same holds the field. What the learned Single Judge meant by saving so, is that Narain Singh's case (supra) did not overrule the aforesaid proposition laid down in V.K. Jain's case (supra).

17. At this stage a question comes as to whether the pronouncement of law by the learned Single Judge flows from V.K. Jain's case (supra) and if so, whether the same holds the field in view of the judgment of Full Bench in Narain Singh's case (supra) and in case, I take a view in tune with the Full Bench i.e., the Full Bench did not find any distinction between an employee who was worked for a

long period for the purpose of classification, should I refer the matter to a larger Bench ? For the reasons hereinafter mentioned, I am of the considered view that the exception carved out by the learned Single Judge, in view of the judgment of V.K. Jain's case (supra) is not in conformity with the judgment of the Full Bench in Narain Singh's case (supra) and as I am bound by the precedent of the Full Bench. I do not find it necessary to refer the matter to a larger Bench.

18. As stated earlier, in V.K. Jain's case (supra) much distinction was made between the relief of classification and that of promotion and the Full Bench as stated earlier has exploded this theory. It is to be borne in mind that the Full Bench in Narain Singh's case (supra) has in categorical terms stated that they agree with the view taken in K.K. Krishnan 's case (supra) and decision which take contrary view do not lay down good law. The Full Bench did not find any distinction between the claim of classification and promotion and has held that what cannot be achieved directly cannot be allowed to be achieved indirectly. Thus, the ratio of V.K. Jain's case (supra) which permits an employee to claim classification on the promotion post stands over-ruled by the Full Bench in Narain Singh's case (supra).

19. Learned Single Judge while deciding Rajendra Singh 's case (supra) at one stage holds that "in the name of securing classification" under the Standard Standing Order No. 2, an employee cannot indirectly claim promotion. Such an employee who has been asked to work temporarily must be paid emoluments attached to the higher post but not classification. However, at another place he held that the "Labour Court in such cases of unduly long officiation may grant relief of consideration for promotion treating him as duly appointed to that post granting him monetary relief attached to that post".

20. With deepest respect to the learned Judge both the views cannot stand together. At one hand, it has been held that an employee indirectly cannot claim promotion in the name of classification and on the other hand, it has been held that the Labour Court may grant relief of treating the person as duly appointed. He is right when he says that the view he has taken that the Labour Court can grant the relief of treating the employees to have been appointed on promotional post flows from V.K. Jain's case (supra). But the question is as to whether the same view holds the field in view of the judgment of the Full Bench in Narain Singh's case (supra). Having given my most anxious consideration to this aspect of the matter, I am of the opinion that the Full Bench in Narain Singh's case (supra) did not carve out any exception in relation to an employee who has officiated on a higher post for an unduly long period. The Full Bench in categorical terms has stated that the scheme of classification spells out clearly that it is intended to apply to the entry stage and not to promotional post. No exception has been contemplated in the Full Bench judgment and accordingly. I am of the considered opinion that the view taken by the learned Single Judge that the Labour Court in cases of unduly long officiation may grant relief of treating the employee as duly appointed to that post, runs counter to the Full

Bench decision.

21. Division Bench in the case of V.K. Jain (supra) was greatly swayed by the fact that asking an employee to function on a higher post for 14 years and not classifying him as such is unfair labour practice. In my opinion, asking an employee to work on a higher post for sufficiently long time without paying him the emoluments for the higher responsibility he has shared, may be exploitation and amount to unfair labour practice, but asking an employee to work on a higher post with additional emoluments, in case of administrative exigencies in my opinion, cannot be said to be exploitation of employee or unfair labour practice. As pointed out by the Full Bench in Narain Singh's case (supra) "it is one thing to say that an employees who has been asked to work on higher post temporarily must get emoluments of the higher post; it is quite different thing to say that he must be regarded as permanent incumbent of the higher post by being classified as such. The question of exploitation and unfair practice does not arise since it is the duty of the employer to pay him the emoluments attached to the higher post as long as he discharges the duties attached to the higher post and on the failure of the employer it will be open to the employee to enforce his claim". Therefore, non- classification of an employee was not considered as unfair labour practice, but non payment of the emoluments. In my opinion, no exception can be carved out in a case when an employee has been asked to work on higher post for a sufficiently long period for the purpose of classification. Viewed from other angle, classification of employee as permanent on the promotional post merely on the ground that he worked on the higher post satisfactorily for six months or long period will lead to exploitation of the labour more. May be an unscrupulous management without considering the case of seniors and eligible employees, chooses a favourite who gets the promotional post, continues for six months and gets classified as such. This will lead to exploitation of a large number of silent work force. Viewed from this angle it will cause more harm than it tends to subserve.

22. Mr. R.N. Shukla submits that the judgment of the Full Bench of this Court in the case of Narain Singh that the classification cannot relate to the stage of promotion or the promotion post is erroneous and the attention of the Court was not drawn to a decision of the Supreme Court in the case of Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited, which according to the learned counsel clearly provides for classification on the promotional post. My attention has been drawn to the following passage from Paragraph 8 of the judgment, which reads as follows:-

"Let it be recalled that the demand of the workmen was for confirmation of employees promoted to the higher grade and acting in the higher grade for more than 3 months. In other words, the demand was for classification of the workmen officiating in the higher grades either as permanent or temporary and they should not be continued indefinitely as temporary by making them permanent or rendering of continuous service in the higher grade for a period of

three months. The demand involves both the classification of employees and classification by grade. Unfortunately, the Industrial Tribunal overlooked this obvious fact situation by misinterpreting the demand and reached a wholly untenable conclusion that the demand was for promotion which appeared to the Tribunal to be a managerial function and beyond the reach of adjudication."

(Underlining mine)

23. I do not find any substance in this submission of Sri Shukla. In the case referred to above. Supreme Court came to the conclusion that the view of the Tribunal that demand was for promotion is erroneous. The Supreme Court in this has nowhere held that classification can be on promotional post. Hence this authority in no way supports the case of the petitioner.

24. Shri Shukla also contends that the ratio of the judgment of Narain Singh's case (supra) is not binding and still open in view of the order dated 30-4-1996 passed by the Supreme Court. It is relevant here to state SLP was filed against the judgment of the Full Bench of this Court in Narain Singh case (supra) and while dismissing the special leave petition, the Supreme Court held as follows :-

"Special Leave Petition is dismissed on the ground of delay as well as on merit, but we leave the question open relating to the interpretation of Clause 2 (1) of the M.P. Industrial Employment (Standing Orders)."

Placing heavy reliance on the expression that the question of interpretation of Clause 2 (1) of the M.P. Industrial Employment (Standing Orders) being left open by the Supreme Court, the Full Bench judgment is not binding on me. The submission of Shri Shukla is absolutely misconceived. The purport and effect of the aforesaid order of the Supreme Court is that the said question is left open so far as the Supreme Court is concerned, but that in no way dilutes the binding effect of the Full Bench judgment, so far as this Court is concerned.

25. Shri Shukla further contends that notwithstanding the judgment of the Full Bench in Narain Singh's case (supra) in view of the judgment of the Supreme Court in Civil Appeal No. 6794/94 dated 18-4-1995 which holds that an employee who has worked as a Supervisor/Junior Engineer can be classified as a permanent Supervisor, the judgment of the Full Bench has been diluted. The Labour Court in the said case found that the employee who had worked as a Supervisor/Junior Engineer from the very beginning was entitled to be classified as a permanent Supervisor. The aforesaid award of the Labour Court was affirmed by the Industrial Court in appeal and the finding of the Labour Court was upheld. However, this Court exercising powers under Article 227 of the Constitution of India set aside the judgment of the two Courts below. In appeal, the Supreme Court found that the High Court was not justified in reversing the finding of fact reached by the two Courts below in its jurisdiction under Article 227 of the Constitution of India. The Supreme Court however cautioned that the grant of supervisory status to the employee by itself would not entitle the employee to claim promotion to the higher post. Therefore, the question before

the Supreme Court was the reversal of the finding of fact by the two Courts below by the High Court and its jurisdiction under Article 227 of the Constitution. The aforesaid judgment in no way lays down the law that there can be classification of an employee on the higher post in a case where he has worked on the higher post. Thus, the judgment relied on by the learned counsel is clearly distinguishable.

26. In the result, I do not find any merit in the writ petition and it is dismissed accordingly. However, in the facts of the case, there shall be no order as to cost.