
(2018) 01 MP CK 0095
In the Madhya Pradesh High Court
Case No : 154 of 2017

Satish Prajapati

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 12, 14

Madhya Pradesh Industrial Relations Act, 1960 — Section 31, 61, 65

Citation : (2018) 1 MPWN 51

Hon'ble Judges : Hemant Gupta, Vijay Kumar Shukla

Bench : Division Bench

Advocate : Atul Choudhary, B.D.Singh

Final Decision : Dismissed

Judgement

1. In the instant Intra Court appeal, a challenge has been made to the order dated 20-12-2016, passed by the learned Single Judge, whereby the writ petition challenging the order dated 13-02-2007, passed by the Industrial Court has been dismissed.

2. The Industrial Court vide order dated 13-02-2007 has allowed the appeal filed by the respondent/Municipal Council and set aside the award passed by the Labour Court classifying the petitioner as permanent Lower Division Clerk or Assistant Revenue Inspector in Municipal Council service.

3. Succinctly the facts are that the petitioner was engaged on daily wages in the year 1988. He filed an application under Section 31 read with

Section 61 of the Madhya Pradesh Industrial Relation Act, 1960 (hereinafter referred to as "the Act") for permanent classification. It was

contended by him that he was engaged on daily wages but he was assigned the

work of Lower Division Clerk in the Revenue branch of the

Municipal Council w.e.f. 04-12-1988. The said post is Class-III post. It is also submitted that his performance has always been satisfactory. He

submitted an application for regularization of his service on 28-11-19960, but despite the circular of the State Government, his services were not

regularized and therefore, he filed a case for classification of his service.

4. The Municipal Council/ the employer denied his claim and submitted that there is no post vacant in the Municipal Council. It is also contended

that the services of Class-III and Class-IV posts in the Municipal Council are governed by the services called Madhya Pradesh Municipal

Employees Recruitment and Conditions of Service Rules, 1968 (hereinafter referred to as "the Rules"). The Labour Court passed an award

allowing the claim of the petitioner and directing for permanent classification on the post of Assistant Revenue Inspector or Lower Division Clerk.

5. Being aggrieved with the said award, appeal was filed under Section 65 of the Act. The Industrial Court in appeal found that the employee

cannot be classified as permanent unless there is a finding of clear vacant post, whereas in the present case the employer has specifically stated that

there is no post vacant of Lower Division Clerk or Assistant Revenue Inspector. Therefore, under the provisions of Standard Standing Order, the

employee cannot be directed to be classified as permanent.

6. The issue as to whether a workman being not appointed against the vacant post can claim permanent classification on a post on the basis of

having served for a considerable period is no more res-integra in view of following judgments:

In M.P. Housing Board v. Manoj Shrivastava (2006) 2 SCC 702, it has been held -

8. A person with a view to obtain the status of a "permanent employee" must be appointed in terms of the statutory rules. It is not the case of the

Respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon

following the statutory law operating in the field.

9. The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the Respondent had

worked for more than six months satisfactorily; in terms of clause 2(i) of the Standard Standing Order, he acquired the right of becoming

permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the Respondent.

10. It is one thing to say that a person was appointed on an ad hoc basis or as a daily wager but it is another thing to say that he is appointed in a sanctioned post which was lying vacant upon following the due procedure freedom prescribed therefor.

11. It has not been found by the Labour Court that the Respondent was appointed by the Appellant herein, which is a "State" within the meaning of Article 12 of the Constitution of India, upon compliance of the constitutional requirements as also the provisions of the 1972 Act or the rules and regulations framed thereunder.

In Mahendra L. Jain v. Indore Development Authority (2005) 1 SCC 639, it has been held -

29. The 1961 Act itself shows that the employees are to be classified in six categories, namely, permanent, permanent seasonal, probationers, badlies, apprentices and temporary. The recruitments of the Appellants do not fall in any of the said categories. With a view to become eligible to be considered as a permanent employee or a temporary employee, one must be appointed in terms thereof. Permanent employee has been divided in two categories (i) who had been appointed against a clear vacancy in one or more posts as probationers and otherwise, and (ii) whose name had been registered at.

7. In the case of M.P.State Agro Industries Development Corpn.Ltd. and another Vs. S.C.Pandey (2006)2 SCC 716, it is held that a daily wager

does not hold a post as he is not appointed in terms of the provisions of the Act and Rules framed thereunder and therefore he does not derive any

legal right. While interpreting the provisions of the M.P. Industrial Employment (Standing Orders) Rules, 1963, the Apex Court has held that if the

services are governed by the provisions of the Service Rules then any appointment contrary to the service Rules would not be considered for the regularization or permanence.

8. In the case of Secretary, State of Karnataka and others Vs. Umadevi and others, (2006) 4 SCC-1, the Constitution Bench has held that the

daily wagers, casual labours and temporary employees do not have any right to regular or permanent public employment. It has been further held

that the regularization or conferral of permanency to temporary, contractual , casual, daily wage or ad hoc employees appointed/ recruited dehors

the Constitutional scheme of public employment is contrary to the provisions of Article 14 of the Constitution of India.

9. In view of the aforesaid enunciation of law, we do not find any error in the order passed by the learned Single Judge. Therefore, the intra-court appeal does not warrant any interference and is dismissed.