
(1972) 10 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. No. 216 of 1970

Sital Kumar Hemrajani

APPELLANT

Vs

J.B. Mangharam and Co. and another

RESPONDENT

Date of Decision : 31-10-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2(s)
Madhya Pradesh Industrial Relations Act, 1960 — Section 2, 2(13), 2(13)(b)(iv)

Citation : (1973) J LJ 155 : (1973) 18 MPLJ 324

Hon'ble Judges : S.M.N. Raina, J; N.C. Dwivedi, J

Bench : Division Bench

Advocate : H.N. Upadhyaya, for the Appellant; P.L. Dube, for the Respondent

Final Decision : Dismissed

Judgement

S.M.N. Raina, J.

This is a petition under articles 226 and 227 of the constitution of India.

The petitioner was appointed by the respondent No. 1 as welfare officer in the Factory belonging to the respondent No. 1 at Gwalior on probation for a period of six months vide letter dated 8-5-1962 (Annexure 1). The petitioner joined his duties on 6-6-1962 in pursuance of the said letter. By letter dated 6-12-1962 the period of probation of the petitioner was extended for a further period of six months with effect from 6-12-62 vide Annexure A 2. Before the expiry of the period of probation the appointment of the petitioner was terminated with effect from 28-2-1963 vide Annexure A. 3. This order of termination was subsequently cancelled by the respondent No. 1 on a representation made by the petitioner as he was under E.S.I. medical treatment at that time vide Annexure A. 5. Respondent No. 1, however, suspended the petitioner for misconduct and called upon him to submit his explanation vide letter dated 9-3-1963 (Annexure A. 6.). Subsequently respondent No. 1 called upon the petitioner to show cause why he

should not be dismissed vide letter dated 14-3-1963 (Annexure A. 7). In the meantime Standard Standing orders under the Madhya Pradesh Industrial Employment standing Order Rules 1963 came into force with effect from 22-3-1963 and became applicable to the Factory of respondent No. 1.

Respondent No. 1 by letter dated 28-3-1963 sought prior concurrence of the State Government as required by Rule 91 of the Madhya Pradesh Factory Rules for terminating the services of the petitioner. The State Government however, by letter dated 27-5-1963 directed that the services of the petitioner may be continued vide annexure A. 8. The petitioner was, therefore, directed by the respondent No. 1--vide letter dated 6-6-1963 --to continue as welfare officer, vide Annexure A. 11. The petitioner continued to act as welfare officer till 11-6-1963 when his services were terminated by telegram annexure A. 12. The telegram stated that the concurrence of the State Government to terminate his services has been obtained. The petitioner, thereafter submitted an approach notice u/s 31 of the Madhya Pradesh Industrial Relations Act (hereinafter referred to as "the Act") to the respondent No. 1 vide Annexure A. 13, and thereafter submitted an application before the Labour Court Gwalior u/s 31 (3) read with section 61 of the Act vide Annexure A. 16. The Labour Court held that the services were wrongly terminated and, therefore, set aside the order of termination and directed the respondent No. 1 to pay the applicant full back wages (Annexure A. 18). The respondent No. 1 thereupon filed a revision petition before the Industrial Court which was allowed and the application of the petitioner was dismissed, vide Annexure A. 19. Being aggrieved thereby the petitioner has filed this petition praying that the order of the Industrial Court may be quashed and the order of the Labour Court may be restored.

The petition has been opposed by the respondent No. 1 and it has been submitted in the return filed by it that the order of termination was perfectly legal and could not be challenged by the petitioner.

The first point for consideration in this petition is whether the petitioner was an employee within the meaning of Clause (13) of section 2 of the Act. Clause (13) reads as under:

(13) "Employee" means any person employed in an industry to do any skilled, unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied and includes--

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause 14; and

(b) an apprentice other than an apprentice under sub-clause (v); but does not include any person--

(i) who is subject to the Army Act, 1950 (XLVI of 1950) or the Air Force Act, 1950 (XLV of 1950) or the Navy Discipline Act, 1957 (62 of 1957), or

(ii) who is employed in the Police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial capacity; or

(iv) who being employed in a supervisory or technical capacity draws wages exceeding five hundred rupees per mensem ; or

(v) who is a craftsman or an apprentice working under a scheme approved to the State Government on the condition that such craftsman or apprentice shall not be deemed to be an employee under this Act.

The Labour Court held that the petitioner was an employee u/s 2(13)(b)(iv) of the Act as he was engaged in supervisory capacity and his wages did not exceed Rs. 500/- p. m. The Industrial Court upheld this finding of the Labour Court, holding that his duties were supervisory in nature.

Learned counsel for the non petitioner relied on the decision of the Allahabad High Court in Hazarilal Shrivastava v. Tulsipur Sugar Company 1967 in respect of his contention that he is not an employee within the meaning of the Act. In that case the Allahabad High Court considered the definition of workman as given in Cl. (2) of section 2 of the Uttar Pradesh Industrial Disputes Act, 1947 and observed as under :

His (welfare officer's) duties are mainly of a liaison officer between the management and the labour, and, in that capacity he has to put forward the grievances of labour to have them redressed by the management. On the other side, he has to explain the management's point of view to the labour. The relations between the management and labour are matters of administration in the factory.

The High Court further observed : --

A welfare officer is thus only concerned with the managerial or administrative work in a factory though he himself does not possess any powers which he can exercise as such in those matters. All he does is to assist the management and labour in exercise of their rights vis-a-vis each other, and thus he functions as one of the participants in the administrative and managerial machinery of a factory.

This decision was distinguished by Industrial Court on the ground that the definition in the U.P. Act excluded from its fold persons working in managerial and administrative capacity. So far as the definition given in section 2(13) of the Act is concerned it has to be borne in mind that it excludes persons who are employed mainly in a managerial capacity. Merely because an employee may be performing some of the managerial or administrative functions, he would not stand excluded under the definition.

The duties of welfare officer are given in Rule 89 of the Madhya Pradesh Factories Rules 1962. It would appear therefrom that the main duty of the welfare officer

is to establish contacts and hold consultations with a view to maintaining harmonious relations between the management and the workers. It is also his duty to help the factory management in determining its labour policies and to take measures which will serve to raise the standard of living of workers and in general promote their well-being. He thus functions as Liaison Officer between the management and labour and it is his duty to promote goodwill and harmony between the employer and the employees by giving suitable guidance to the management in its labour policies and advice to the employees. Thus in a way a welfare Officer is a person tendering technical advice to the management regarding employment problems. He is not in strict sense a manager because he does not perform any managerial functions himself. He is not also a supervisor inasmuch as it is not a part of his duty to supervise the working of the employees engaged in the factory. He is, however, concerned with proper administration and may be said to be closely associated with the managerial functions, inasmuch as it is his responsibility to tender proper advice to the management regarding the welfare of the employees so as to maintain harmonious relations between the employers and the employees.

It is, therefore, clear that a labour Welfare Officer cannot be said to be employed mainly in managerial capacity within the meaning of paragraph (iii) of sub-clause (b) of clause (13) of section 2 of the Act and is as such not excluded under the definition. He is in a sense a technical worker and since his wages did not exceed Rs. 500/- per mensem he was an employee as defined in section 2(13) of the Act.

Shri P.L. Dube, learned counsel for the respondent No. 1 urged that a technical employee as contemplated by clause (13) of section 2 of the Act is one who does some technical work in connection with the work of the Factory itself. We do not, however, consider it proper to construe the word "technical" in the said clause in such a limited and restricted sense. The work of a Welfare Officer is also of a highly technical nature inasmuch as he has to advise the management on various intricate problems for maintaining a proper relationship between the management and the labour. It would here be pertinent to mention that while construing section 2(s) of the Industrial Disputes Act a Division Bench of the Assam High Court in *The Bengal United Tea Co. Ltd. v. Ram Lubhava*. Presiding Officer Industrial Tribunal and others AIR 1961 Ass 30 held a Medical Officer to be a workman, his work being technical in nature.

We, therefore, agree with the finding of the Labour Court and Industrial Court that the petitioner was an employee within the meaning of section 2(13) of the Act, though for different reasons.

The next point for consideration is whether the petitioner was a permanent employee of respondent No. 1. It is not disputed that the petitioner was initially appointed on probation for a period of six months vide letter dated 8-5-1962 Annexure A-1) and he joined on 6-12-62. The probationary period was thereafter extended for a further period of six months with effect from 6-12-62 vide (Annexure A-2). The services of the petitioner were terminated with effect from

28-2-63 vide Annexure A-3, but this order was subsequently revoked by respondent No. 1 and ultimately his services were terminated with effect from 11-7-63 vide Annexure A-12. By a telegram dated 3-6-63 the petitioner was informed by respondent No. 1 that although his period of probation expired on 5-6-63 he was not being confirmed and he could continue on a temporary basis until instructions of the Government were received vide Annexures A-9 and A-10. It is, therefore, clear that the petitioner was not confirmed at any stage and continued to remain on probation until his services were terminated.

In *Sukhbans Singh Vs. State of Punjab*, it was held that a probationer does not automatically acquire the status of a permanent member of a service on the expiry of the probationary period unless the Rules under which he is appointed expressly provide for such a result.

In *The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another*, it was held that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period his services are neither terminated nor he is confirmed. In the instant case the period of probation was expressly extended for a further period of six months and, therefore, it is obvious that the petitioner continued to remain on probation. It is needless to refer to other authorities on this point, because this position was not challenged by the learned counsel for the petitioner. His main contention was that the petitioner acquired the status of a permanent employee even though he was a probationer on completion of six months service under Standard Standing Order 2(1) which defines a permanent employee as under :

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.

It is clear from the aforesaid definition that a person acquired the status of a permanent employee on completing six months satisfactory service in a clear vacancy. The question, therefore, for consideration is whether the petitioner had completed six months satisfactory service. The expression "satisfactory service" has not been defined in the standing orders but looking to the context in which this expression is used it is obvious that it means service to the satisfaction of the employer. It is not disputed that the Standard Standing Orders became applicable to the Factory of the respondent No. 1 with effect from 22-3-1963. The object of this provision is apparently to confer on a probationer the status of a permanent employee as soon as he has completed six months satisfactory service. The question, therefore, for consideration is whether the petitioner had completed six months of satisfactory service and thus acquired the status of a permanent employee.

The Industrial Court after an elaborate consideration of the material on record

arrived at the conclusion that the petitioner had not completed six months of satisfactory service and as such had not acquired the status of a permanent employee within the meaning of standing orders vide paragraph 19 of the order Annexure A. This finding of the Industrial Court being essentially a finding of fact, this Court would not interfere with it in proceedings under article 226 of the Constitution of India because the law is almost settled that a petition for writ of certiorari can be entertained only when there is an error of law apparent on the face of the record. It cannot be entertained on the ground that there is an error of fact. In *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, it was held that the High Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution was not competent to set aside a finding of fact recorded by an Industrial Tribunal.

The learned counsel for the petitioner, however, urged that the Labour Court having come to a finding that the petitioner had completed six months satisfactory service, the Industrial Court was in error in interfering with this finding of fact in exercise of its revisional jurisdiction u/s 66 of the Industrial Relations Act and thus there is an error of law apparent on the face of record.

The language of section 66 of the Act being similar to that of section 115 of the Code of Civil Procedure, the scope of interference in revision under the two sections is almost identical. Under proviso (c) to sub-section (1) of section 66 of the Act it is open to the Industrial Court to interfere where the labour Court acts illegally or with material irregularity in the exercise of its jurisdiction. It is no doubt true that in *M/s. Mishrilal Parasmal v. H.P. Sadasiviah* and another AIR 1965 SC 558 their Lordships held that there can be no interference in revision u/s 115 of the CPC unless there is an error pertaining to jurisdiction. But the Court has to exercise its jurisdiction in the manner provided by law. The Court must act in accordance with the settled principles of law and the procedure laid down by law and not arbitrarily. Where the Court acts arbitrarily in contravention of the settled principles of law or the rules of procedure resulting in gross miscarriage of justice it acts illegally or with material irregularity in the exercise of its jurisdiction within the meaning of proviso (c) to sub-section (1) of section 66 of the Act. Such an error certainly pertains to jurisdiction and can be rectified in exercise of the revisional powers. We have noted that the learned Member of the Industrial Court was fully alive to the limits of the revisional jurisdiction and after carefully examining the scope thereof interfered with the finding of the Labour Court on the ground that it was vitiated by an erroneous and illegal approach and was manifestly unreasonable.

The Labour Court arrived at the conclusion that the petitioner had completed six months satisfactory service on the ground that the burden of proof lay on the respondent No. 1 and as this burden has not been discharged the petitioner was entitled to a finding in his favour. This was a wholly erroneous approach. It was in fact for the petitioner to establish that he had put in six months of satisfactory service and as such acquired the status of a permanent employee. Apart from

this the question of burden of proof becomes immaterial because both the parties had opportunity to adduce evidence on this point. It would appear that Shri Khanchand [(Witness No. 5) vide Annexure A-25] had stated in the witness box that the petitioner's service was not satisfactory. His evidence was not, however, accepted on the ground that he did not explain why he considered his service to be unsatisfactory. It would appear from the record that the petitioner was behaving in a manner which was offensive to the management. This is borne out by the letter dated 7-3-1963 (Annexure A-5) and another letter dated 14-3-1963 vide Annexure A-7.

It has to be borne in mind that the service of the petitioner was protected under Rule 91 of the Factories Rules and he could not be discharged or dismissed from the service without the Government's prior concurrence. When the respondent No. 1 first approached the Government for concurrence, the Government directed that he should continue as a Welfare Officer but at the same time made the following observations:

At the same time however Government would like Shri Hemrajani being told that his behaviour with the management should be polite and courteous worthy of an employee of the undertaking in the interest of maintenance of discipline in the factory.

This show that there was material before the Government to come to the conclusion that the behaviour of the petitioner towards the management was not polite and courteous as expected of an employee (Vide Annexure A-8).

It is also clear that on a further reference by the respondent No. 1, the Government did not give its concurrence to terminate his services. In these circumstances we find no material on record to come to the conclusion that the petitioner had rendered satisfactory service for six months. The mere fact that his probationary period was extended from time to time would by itself go to show that his services were not found to be satisfactory and that is why he was being given further opportunity by extending his period of probation to justify his claim for confirmation.

We, therefore, hold that the finding of the Industrial Court that the petitioner had not acquired the status of a permanent employee is reasonable and there is no justification for interference with it in this petition.

It was also urged on behalf of the petitioner that his services were terminated by way of victimization as he was sponsoring the cause of the employees which was apart of his duties. On this point too the Industrial Court has recorded a finding in favour of the Management after duly considering the material on record, and setting aside the finding of the Labour Court for good reasons. No doubt it is part of duty of the Labour Welfare Officer to take measures to promote wellbeing of the workers in the factories but this does not mean that he could be rude, impolite and discourteous to the management in the discharge of his duties. He has a difficult and delicate role to play but all the same he is an employee of the

management and must behave in an extremely polite and courteous manner so as to maintain discipline.

In view of the findings of the Industrial Court that there was no victimization and that the petitioner had not acquired the status of a permanent employee, his services could be terminated under Standing Order No. 11. We do not, therefore, find any good reason to interfere with the order of the Industrial Court upholding the order of termination of the petitioner.

The petition, therefore, fails and is hereby dismissed. We do not, however, make any order as to costs, in the circumstances of the case. The outstanding security deposit shall be refunded to the petitioner.