

(1988) 10 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 521 of 1988

State of Madhya Pradesh and Others

APPELLANT

Vs

Ram Prakash Sharma and Others

RESPONDENT

Date of Decision : 07-10-1988

Acts Referred:

Constitution of India, 1950 — Article 26

Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 — Section 2

Madhya Pradesh Industrial Relations Act, 1960 — Section 62

Citation : (1989) J LJ 36 : (1990) 1 LLJ 551

Hon'ble Judges : T.N. Singh, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : Arvind Dudawat, for the Appellant; H.N. Upadhyaya, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Singh, J.—The employers are the petitioners who came to this Court on 22nd April, 1988 challenging validity of order passed in appeal by the Industrial Tribunal (Court) and also the order passed by Labour Court No.3, Gwalior which was challenged in appeal unsuccessfully. Before the petition could be listed for hearing on admission, on behalf of the employee/respondent, an application I.A.III was filed praying for dismissal of the writ petition in limine. Subsequently, respondent also filed a full and complete return and therein he answered the several pleas agitated in the writ petition and he has also brought on record the entire case-history. The averments made in the return have remained uncontroverted.

2. During the course of hearing, it was fairly submitted by respondent's counsel Shri Upadhyaya that two courses are open to us in disposing of this petition. He submitted that the question of applicability or otherwise of M.P.Industrial Relations Act, 1960, for short, "M.P.I.R. Act", agitated in the writ petition need not even be considered because doing so would entail discussion and disposal of

the petition on a "hypertechnical objection" to the validity of the award passed by the Labour Court. In support of that submission, counsel placed reliance on a decision of their Lordships of the Supreme Court rendered on 3rd September 1987 in the case of Dhari Gram Panchayat Vs. Saurashtra Mazdoor Mahajan Sangh and Another, . We were furnished by learned counsel with the copy of the said decision printed in the "Daily" Supreme Views & Law Reporter. That is placed on record. Their Lordships upheld decision of the High Court taking the view that the order of the High Court, though rendered in a lis arising under the Industrial Disputes Act, 1947, could be otherwise upheld on the footing that "the High Court could have directly interfered with the retrenchment of the workmen under Article 226 of the Constitution if the workmen had straightway approached the Court without raising an industrial dispute". It was held by their Lordships that the relief granted by the High Court by quashing the order of retrenchment was not liable to interference even if the question of applicability of Industrial Disputes Act, 1947 to the workmen was doubtful.

3. We have considered it appropriate, therefore, to follow the course charted out in the Dhari Gram Panchayat's case (supra) and we propose to dispose of this petition without expressing any opinion on the merits of the contention raised by the employer petitioners on the question of applicability of M.P.I.R. Act to the lis litigated.

4. Let first a brief outline of the case-history be drawn. The respondent/employee had moved the Labour Court under the M.P.I.R. Act for twin reliefs. He claimed that he was not being paid the same wages/salary as paid to others doing the same work in the same Department. His case was that he was doing the work of Lower Division Clerk/Typist and was being paid only Rs.669/- per month on daily wages, while others borne on the permanent establishment, doing the same work were being paid a gross salary of Rs. 1,100/- per month. He also claimed that he was entitled to be regularised as a "permanent employee" as he had completed six months" satisfactory service "as a probationer or otherwise" and could invoke the provisions of para 2(i) of the Standard Standing Orders, the "Annexure" of M.P. Industrial Employment (Standing Orders) Rules, 1963.

5. We quote first para 2(i) of the Standard Standing Orders, namely, the "Annexure", above-referred:

(1) 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".

M.P. Industrial Employment (Standing Orders) Rules, 1963 of which "Annexure" aforesaid is a part, are framed under M.P. Industrial Employment (Standing Orders) Act, 1961. Section 2(a) of the said Act outlines the ambit of application of the Act of which we quote relevant portions:

"2. Application of the Act.- (1) This Act shall apply to-

(a) every undertaking wherein the number of employees on any day during the twelve months preceding or on the day this Act comes into force or on any day thereafter was or is more than twenty; and

(2) Nothing in this Act shall apply to the employees in an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the official Gazette apply."

6. In the course of hearing of his application (Annexure P/I of the instant petition) the employee/respondent examined himself in the Labour Court to prove his claim. The instant petitioners who figured as opposite parties in the proceedings before the Labour Court, filed written statement and also cross-examined the respondent. However, the opposite party/employer not having taken steps to prove his case, the matter proceeded ex parte after the applicant's evidence was closed. Be it, however, mentioned that though in the written statement it was contended, while admitting that respondent had to work as a Typist, albeit on daily basis, that the provisions of M.P.I.R. Act not being applicable, respondent's application u/s 62 of the Act was not maintainable. Still, nothing was stated to make out the case as to why the provisions of the M.P. Industrial Employment (Standing Orders) Act, 1961 or of the Rules framed thereunder or of the "Annexure" thereto could not be invoked by the applicant, herein respondent. It was not the case of the opposite party (herein the petitioners) in the proceedings in the Labour Court that the said 1961 Act could not be invoked because of the provisions of Sub-section (2) of Section 2 of that Act. Reliefs claimed were granted against which an appeal was taken to the Industrial Tribunal(Court), but the appeal having been filed out of time, it was dismissed in limine.

7. The question of applicability of M.P.I.R. Act is germane evidently only to the question of maintainability of employee/respondent's application before the Labour Court inasmuch as that Court was approached by the employee/respondent u/s 62 of the said Act. It is conceded that only under that provision the employee / respondent could have moved the Labour Court for the reliefs claimed. Accordingly, if we are able to deal and dispose of petitioners' claim agitated before the Labour Court in exercise of our jurisdiction under Article 226 of the Constitution, we would be fully justified to do so on the holding of Dhari Gram Panchayat (supra).

8. We propose, therefore, to examine the twin claims on their intrinsic merit. In so far as the claim founded on pay differential is concerned, that claim is directly relatable to the constitutional doctrine "equal pay for equal work". We would have no difficulty, therefore, to deal with that claim. As the doctrine has been expounded, explained and implied by the Apex Court over the years in a large number of cases, this Court had an occasion to examine those decisions in many cases, lately in the case of Surendra Kumar Saxena 1988 MPLJ 519 wherein all

latest decisions of the Apex Court were considered. One of us (Dr.T.N.Singh, J.) speaking for the Court, observed in that case that "the principle underlying the decisions indeed is that no employee under the State would be denied the minimum wage (to which a regularly appointed employee is entitled) on the footing that same employee is not similarly appointed and is recruited differently and he does not possess the same or similar qualifications for the job". However, to the facts of the instant case, relevance of the decision of the same Division Bench in the case of Brij Kishore Sharma 1988 MPLJ 363 is more pronounced. As in the instant case, the petitioners thereof were also employed on daily wages, but were given the work of Lower Division Clerk/Typist and their service was continued giving them a day's break. It was held that the petitioners were entitled to be paid the same salary as paid to the "regularly appointed" Lower Division Clerk/Typist, but without increments envisaged under the pay scale applicable to the latter class of employees.

9. In the instant case, not only has the Labour Court found on facts discrimination in the matter of payment of salary to the employee/respondent duly established, in this Court, the averment made in return in that regard has not been controverted. That being the position, we have no doubt that in so far as the question of pay-differential is concerned, the petitioners have no case and the claim of the respondent must be upheld.

10. Another question to be decided in the instant case is whether Public Health Engineering Department of the State Government was an "undertaking" within the meaning of the term employed in Section 2(a). Indeed, as to the other requisite conditions of applicability contemplated u/s 2(a), namely, of the number of persons (20), to be employed in the undertaking during the preceding 12 months, there is no dispute. The word "undertaking" is used also in Industrial Disputes Act, 1947 and the connotation of that term was considered by the Apex Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . Their Lordships referred with approval to the definition of the word in Webster's Dictionary - "anything undertaken; any business, work or project which one engages in or attempts an enterprise". The hospital was managed by the State Government and the cause of the workers of that hospital who had been retrenched was espoused by the Hospital Union. State's contention was that Industrial Disputes Act did not apply to the hospital as it was not "industry" because it was not even an "undertaking". Repelling the contention, their Lordships held that State was carrying on an "undertaking" while running the hospital. Although the term "undertaking" is not defined in the concerned Act, in the instant case, it has to bear, according to us, the same meaning as is attributed to the term in the Industrial Disputes Act, construed by their Lordships in the *Hospital Mazdoor Sabhas*" case (supra), because, Public Health Engineering Department of the State Government can be "work or project" and it can also be "an enterprise" of the State Government.

11. In the premises aforesaid, the claim of the employee/respondent being

founded on the statutory entitlement contemplated under the aforequoted provisions of the statutory "Annexure", he could have directly come to this Court to enforce his right contemplated under the said "Annexure". Therefore, even today, that entitlement of his not being denied in any manner, by any averment of employers/petitioners in the instant case, made in the petition, or even otherwise, he is entitled to a mandamus in regard to that claim. The Labour Court has found on facts the entitlement of the employee/respondent duly established and in this Court, the employers/petitioners have not disputed that. Indeed, the only question mooted in the instant petition by the employers/petitioners is that the respondent could not have gone to the Labour Court invoking jurisdiction of that Court u/s 62 of M.P.I.R. Act because the Act did not apply to the "undertaking" of the petitioners in terms of the provisions of the M.P.I.R. Act and of the 1961 Act, nothing stated.

12. For all the foregoing reasons, we have no hesitation to hold that our interference with the order or award passed by the Labour Court on 25th June 1987 (Annexure P/3) is not warranted, the claim of the respondent being legally as also constitutionally justified. However, we would like to make it clear that the holding of this Court, whether in Surendra Kumar Saxena (supra) or Brij Kishore Sharma (supra) would not, in terms, apply to respondent's case for that reason. His entitlement would also be so determined (under the "Annexure" of 1963 Rules) in respect of his claim for being treated as permanent employee. Therefore, he would be entitled to be paid not only the minimum of salary in the pay scale applicable to Lower Division Clerks/Typists appointed on regular basis, he would rather be entitled to be paid salary in the pay scale applicable to them. In other words, he would also be entitled to increments envisaged under that pay scale because we have held that he is entitled to be endowed with the status of a "permanent employee" in terms of the statutory provisions aforesaid.

13. In so far as the order passed by the Industrial Tribunal (Court) is concerned, grievance against that order is even more flimsy and frivolous. A belated appeal was filed and yet "sufficient cause" was not made out for condonation of the delay and indeed, proper application even for condonation of delay was not filed. This Court had an occasion to consider recently this matter in Nav Bharat and M.P. Chronicle Group of Newspapers Vs. Krishna Sharan Shrivastava and Another, . The view taken was that although the Labour Court could set aside an ex parte award, "sufficient cause" for the default had still to be made out to the satisfaction of that Court. In the impugned order, (Annexure P/5), passed in appeal on 10th February 1988, there is a clear and categorical finding recorded that cause shown for the delay in filing the appeal was not "bona fide" which could be regarded as "sufficient cause".

14. In the result, the petition fails for the several reasons aforesaid. It is dismissed accordingly, but without any order as to costs.