
(2008) 02 MP CK 0055
In the Madhya Pradesh High Court

State of Madhya Pradesh

APPELLANT

Vs

Gangaram Porwal

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) ILR (MP) 775

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.—By filing this petition under Article 227 of the Constitution of India the petitioners have challenged the order dated 11.5.2001 passed by the Member Judge, Industrial Court, Madhya Pradesh, Indore in Appeal No. 153/MPJR/2001 setting aside the order dated 28.3.2001 passed by the Labour Court, Ujjain in Case No. 121/92/Labour.

2. Briefly stated, as per the first respondent he was appointed by the petitioners in the year 1972 on the post of Chowkidar. According to him in the year 1975 he was asked to perform the work of time keeper for about 3 to 4 months. Thereafter again in the year 1983 and in 1991 he was asked to work as Time-Keeper. He alleged that inspite of taking work of Time-Keeper and paying salary of the said post the petitioners did not classify him on the post of Time-Keeper. In the circumstances he had to approach the Labour Court by filing an application u/s 31(3) read with Sections 61 and 62 of the M.P. Industrial Relations Act, 1960 ("Act" for short) seeking classification on the post of Time Keeper in view of Clause 2 (vi) of the M.P. Industrial Employment (Standard Standing Orders) Rules, 1963 ("S.S.O." for short).

3. The aforesaid application filed by the first respondent was contested by the petitioners stating therein that the first respondent was merely asked to work as Time-Keeper from time to time as per the need of the work. He was posted as

Time-Keeper for some period to meet the additional burden of work due to "Sinhasth Festival". It was also stated that the minimum qualification for the post of Time-Keeper is passing of Higher Secondary with "mathematics" subject whereas the first respondent has not passed Higher Secondary with the subject "mathematics". It is further stated that the first respondent is holding the permanent post of Chowkidar and as such cannot be classified to a higher post of Time Keeper.

4. The Labour Court after recording the evidence led by both the sides dismissed the petitioners' application vide order dated 28.3.2001 holding therein that the first respondent cannot claim classification to higher and/or promotional post of Time Keeper as he had been already classified as Chowkidar.

5. The first respondent challenged the aforesaid order passed by the Labour Court in an appeal filed u/s 65 of the Act before the Industrial Court of M.P., Indore. The Industrial Court vide order dated 11.5.2001 (Annexure P-7) allowed the appeal and set aside the order of the Labour Court and ordered for the first respondent's classification on the post of Time-Keeper holding that he has worked for more than six months satisfactorily on the post of Time Keeper and as such he is entitled for classification under Clause 2 (vi) of the S.S.O. Feeling aggrieved the petitioners have filed this petition.

6. Shri Arvind Gokhale, learned Govt. Advocate has contended that initially the first respondent was appointed on the post of Chowkidar. On account of the exigencies of the work due to "Sinhastha" Festival he was posted to work as Time-Keeper from time to time. He submitted that the post of Time Keeper is a higher and promotional post for which qualifications are that the person should hold higher secondary certificate with mathematics subject. The first respondent having not passed the higher secondary examination with mathematics subject he could not have been ordered to be classified on the said post by the Industrial Court. He submitted that the Industrial Court though has placed reliance on the judgment passed by this Court in case of M.P. State Road Transport Corporation and Anr. v. Narayan Singh Rathore and two Ors. 1994 MPLSR 523 but has misconstrued the said judgment and has committed gross illegality in ordering classification of the first respondent on the post of Time Keeper.

7. On the other hand the case of the first respondent is that he being asked to perform the work of Time Keeper for more than six months and his work being satisfactory he is entitled to be classified in terms of

8. Admittedly, the post of Time Keeper is a higher post and the pay scale is also higher than that of the post of Chowkidar. From the perusal of the impugned order and the annexures, I find that though the first respondent was holding the post of Chowkidar but in order to meet the emergent requirement of additional work he was asked to perform the duties of higher post of Time Keeper on ad hoc basis. On the basis of such orders one cannot claim classification to such higher post.

9. A Full Bench of this Court in case of M.P. State Road Transport Corporation and Anr. v. Narayan Singh Rathore and two Ors. (supra) in a similar set of facts has held:

In other words, the classification contemplated in Item 1 of Schedule to the Acts and Clause (2) of the Annexure to the Rules 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 only by the service conditions applicable to the employees. Rules or Regulations framed by the Corporation providing for channel of promotion do not in any way detract from the Standing Orders and Clause (2) of the Annexure to the Rules 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 and 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 employees 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 take prompt action for filling up the promotional post on occurring of the vacancy. Officers in fact off places may have to make temporary arrangements for discharge of the duties attached to the 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 avert 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.

10. Thus, the first respondent having been appointed on the post of Chowkidar cannot be ordered to be classified on the higher post of Time- Keeper merely on the basis of assignment of duties of Time-Keeper to him to meet the administrative exigencies. The order passed by the Industrial Court is contrary to the provisions contained in the S.S.O. as also the law laid down by the Full Bench of this Court in case of M.P. State Road Transport Corporation and Anr. v. Narayan Singh Rathore and two Ors. (supra). In the circumstances the order of the Industrial Court cannot be sustained and is hereby quashed.

11. In view of the aforesaid, the petition is allowed. The impugned order passed by the Industrial Court is quashed. The order of the Labour Court stands restored. No orders as to cost.