

(2001) 03 MP CK 0028
In the Madhya Pradesh High Court
Case No : Writ Petition No. 237/98

State of Madhya Pradesh

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 19-03-2001

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2
Minimum Wages Act, 1948 — Section 4

Citation : (2002) 95 FLR 582 : (2001) 4 MPHT 384 : (2001) 3 MPLJ 628

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : M. Chaphekar, Dy. G.A, for the Appellant; S.H. Moyal, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.

Smt. Chaphekar submitted that the Labour Court committed the error in coming to a conclusion that the members of respondent No. 2 are permanent employees. She further pointed out that the Labour Court committed the error of law in directing that the petitioners should give wages to them in view of Minimum Wages Act. In this context she made reference to the evidence of witnesses examined on behalf of respondent No. 2 as well as the evidence of Shri Shrivastava and Shri Saxena, the witnesses examined by the petitioner. She further submitted that there are only four permanent posts of Chowkidars and, therefore, it was necessary for the Labour Court to keep this aspect in mind while passing the judgment and award which has been assailed by this petition.

Shri Moyal counsel appearing for respondent No. 2 submitted that the judgment and award passed by the Labour Court is correct, legal and proper. Shri Moyal submitted that the petitioners are serving since 1980 and that has also been admitted by Shri Shrivastava, the witness examined by the petitioner. I find force

in the submission advanced by Shri Moyal, in this behalf.

It has been categorically stated by Shri Saxena, witness examined on behalf of petitioners in cross-examination that "Suraksha Karmi" Karam-charies are temporary employees. However, "Chowkidars" are permanent. He also stated in cross-examination that the work which is being done by Suraksha Karmis and Chowkidars is the same. It has further come in his evidence that the concerned employees sign on Muster Roll which is kept for marking their presence. Apart from that, a Circular dated 9-1-90 is on record giving guidance to the officers as to what is to be done in respect of such employees.

In addition to that, respondent No. 2 has examined Jagannath Dave, Babulal s/o Chamanlal. The evidence of these witnesses make out a good case in favour of respondent No. 2. The learned Labour Court has appreciated the evidence on record by an appropriate discussion. Therefore, this Court would not find any ground for interfering in it when this Court is exercising its supervisory power in view of Art. 227 of the Indian Constitution.

The next point which has been urged by the petitioner is that the Labour Court committed the error of law in treating the Forest Department as "Industry", Shri Moyal contradicted it and placed reliance on the judgment of the Supreme Court in the matter of Chief Conservator of Forest v. Jagan-nath Maruti Kondhare, reported in 1996 (2) SCT164 (SC), wherein Supreme Court has held that Sovereign functions of the State include more activities of the State which can be said to be other than those explained in Bangalore Water Supply's case. It pointed out that it depends on the nature of powers and manner of exercise thereof. Since the functions of the State have been extended in almost every sphere, the demarcating line between sovereign and non-sovereign powers has largely disappeared. Even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as industry if substantially severable. Forest Department of State for creation of a park under bio-aesthetic development for the benefit of urban population intended to fulfil bio-aesthetic, recreational and educational aspirations of the people indirectly benefitting producing enlightened generation of conservationists of the nation inclusive of forests and wild life for future, cannot be regarded as a part of inalienable or inescapable function of the State. Such function of the State fall within the ambit of definition of "Industry" under the Industrial Disputes Act. In the same judgment Supreme Court further held that Regularisation of services of the casual workers who are working in the State departments for 5 to 6 years are entitled to be regularised. Failure to regularise them for such a long time and to deny them equal pay for equal work at par with their regular counterparts amounts to unfair labour practice. Financial burden on the State is no ground to deny the relief of regularisation of services.

This is the observation of the Supreme Court in the matter of Chief Conservator of Forest v. Jagannath Maniti Kondhare (supra). In the present matter there is admission given by the witnesses of the petitioner that the Chowkidars are

permanent. However, Suraksha Karmi are temporary. The evidence on record is showing that all these persons have been directed to be given the wages in view of provisions of Minimum Wages Act by the Labour Court.

When the Forest Department falls within the four corners of the criterion settled by the Supreme Court for deciding whether a particular Government Department is an Industry or not, the employees who are permanent have to be given minimum wages. The persons who are doing equal work, as stated by witness Shri Shrivaslava, have to be given equal pay like those Chowkidars who are treated to be permanent employees, as indicated by evidence on record.

The Labour Court has committed no error which invites an interference from this Court in view of Article 227 of the Indian Constitution, in view of the discussion made above. Shri Moyal submitted that respondent No. 2 is conceding the payment of back-wages for a period of two years prior to the date of judgment and award passed by the Labour Court. When that is so, the petitioner will have to give the wages to the workers who have been embodied and have been kept in the sweep of judgment and award passed by the Labour Court which has been assailed by this petition. They have to be given minimum wages from the date of the said judgment and award.

Thus, this petition stands dismissed with no order as to cost.

Writ Petition dismissed.