

(2015) 07 MP CK 0084

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10908 of 2015

State of Madhya Pradesh

APPELLANT

Vs

Ramcharan

RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Industrial Relations Act, 1960 — Section 108, 31, 61, 65

Citation : (2016) 148 FLR 1052 : (2015) 3 LLJ 610

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Dipak Awasthy, Government Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Sanjay Yadav, J—Heard on admission. This petition under Article 226/227 of the Constitution of India is directed against the order dated 16.10.2012, passed by the Labour Court, Rewa and order dated 30.01.2013, passed by the Industrial Court, Rewa.

2. Petitioners also assail the orders dated 15.12.2000 and 31.07.2003. Whereas, by order dated 15.12.2000 Labour Court allowed respondent workman's application under Section 108 of M.P. Industrial Relation Act, 1960 seeking execution of order dated 16.10.2012. By order dated 31.07.2003 miscellaneous appeal preferred by the petitioners herein against said order has been dismissed.

3. By order dated 16.10.2012 Labour Court allowed the application under Section 31 read with Section 61 M.P. Industrial Relation Act, 1960, filed by respondent, seeking classification as permanent employee, whereas, by order dated 30.01.2013, an appeal preferred by the petitioners herein against the order of permanent classification, has been dismissed.

4. Grievance put forth by the petitioners is that, the Labour Court as well as the Industrial Court failed to appreciate that respondent Ramcharan was engaged as

daily wages labourer and the same was not against any vacant post nor any recruitment process known to law, has been resorted to, while engaging him. It is urged that, this fact that workmen was engaged on daily wages and there were no sanctioned post against which he was engaged was duly admitted by the workmen before the Labour Court and yet the Labour Court while shifting the burden on the petitioners employer passed an award in favour of the respondent/workmen classifying him as a permanent employee. It is urged that, even the Industrial Court committed the same folly in affirming the order passed by Labour Court. It is contended that, interpretation by Labour Court as well as the Industrial Court of Clause 2(i) of Standard Standing Orders to the extent that, immediately after completion of six months, a workman acquires a right to be classified as an permanent employee, suffers from vice of perversity in absence of cogent proof regarding the fact that such appointment was against clear vacancy and that workmen has satisfactorily discharged his duties on such posts.

5. In support of his contention learned counsel for the petitioners rely upon the judgments of the Supreme Court in Mahendra L. Jain and Others Vs. Indore Development Authority and Others, (2005) 1 ESC 1 : (2005) 104 FLR 53 : (2005) 1 LLJ 578 : (2004) 9 SCALE 579 : (2005) 1 SCC 639 : (2005) SCC(L&S) 154 : (2005) 3 SLJ 71 , M.P. Housing Board and Another Vs. Manoj Shrivastava, AIR 2006 SC 3499 : (2006) 101 CLT 580 : (2006) 109 FLR 194 : (2006) 3 JT 73 : (2006) 2 LLJ 119 : (2006) 2 SCALE 572 : (2006) 2 SCC 702 : (2006) SCC(L&S) 422 : (2006) 2 SLJ 464 : (2006) AIRSCW 1235 : (2006) 2 Supreme 354 , and judgment of this Court in M.P.S.R.T. Corporation, Bhopal and others Vs. Awdesh Pratap Singh and others, (1979) MPLJ 325 .

6. There can be no doubt about the proposition of law laid down by the cases referred to by learned counsel for the petitioners that a person with a view to obtain the status of a permanent employee, is under obligation to establish that the appointment was against the vacant post.

7. In the instant case, however, the facts as borne out from record would not warrant any interference. The record reveals that against the order dated 16.10.2012 passed by the Labour Court, petitioners preferred an appeal under Section 65 of M.P.I.R. Act, 1960. The said appeal was dismissed on 30.01.2013.

8. The petitioners did not challenge these orders nor in furtherance thereto they classified the respondent as permanent Labourer which led the respondent to file an application under Section 108 of M.P. Industrial Relations Act, 1960 for issuance of Revenue Recovery Certificate. It is only when the application under section 108 has been decided that, the petitioners have woken from the slumber and has filed this petition after a lapse of two years of passing of order on 16.10.2012 and its affirmation in appeal dismissed on 31.01.2013. With non challenge of the order passed by Labour Court and Industrial Court a right crystallized in favour of respondent workman.

9. Trite it is that delay and laches which lead to crystallization of right in favour

of a person, disentitles the other to seek remedy in the Court of Law. Division Bench of this Court in *Focus Energy Ltd. Vs. Government of India and Others*, AIR 2011 MP 112 : (2011) ILR (MP) 53 : (2011) 1 MPLJ 361 ; relying upon judgments of the Apex Court observed-

"10. Thus, facts stated supra leads to irresistible conclusion that appellant is guilty of delay and laches. Its conduct disentitles it to any relief. In *New Delhi Municipal Council Vs. Pan Singh and Others*, AIR 2007 SC 1365 : (2007) 113 FLR 338 : (2007) 4 JT 253 : (2007) 4 SCALE 204 : (2007) 9 SCC 278 : (2007) 2 SCC(L&S) 398 : (2007) 3 SCR 711 : (2008) 3 SLJ 130 : (2007) AIRSCW 1705 : (2007) 3 Supreme 743 the Supreme Court has held that delay and laches are relevant factors for exercise of equitable jurisdiction. In *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, AIR 2000 SC 671 : (1999) 10 JT 336 : (2000) 1 SCALE 124 : (2000) 2 SCC 48 : (1999) 5 SCR 197 Supp : (2000) AIRSCW 197 : (2000) 1 Supreme 146 the Supreme Court has observed that discretionary relief can be provided to one who has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant. In *State of Haryana and Another Vs. Aravali Khanij Udyog and Another*, AIR 2008 SC 273 : (2008) 2 CLT 607 : (2007) 2 CTLJ 241 : (2008) 1 SCC 663 : (2007) 11 SCR 180 : (2007) AIRSCW 6730 : (2007) 8 Supreme 45 it has been held that where third party rights are created, the High Court should not interfere. Similarly, in *Shiba Shankar Mohapatra (supra)* it has been held that the Court exercising public law jurisdiction does not encourage agitation of state claims where the right of third parties crystallizes in the interregnum."

In view of above, while not disputing the proposition of law laid down in the cases of *Mahendra L. Jain and Others v. Indore Development Authority and Others (supra)*, *M.P. Housing Board and Another v. Manoj Shrivastava (supra)* and *M.P.S.R.T. Corporation, Bhopal and Others v. Awadesh Pratap Singh and Others (supra)*, the petition is dismissed on the ground of delay and laches, however, no costs.