

(2011) 11 MP CK 0094
In the Madhya Pradesh High Court
Case No : W.A. No. 228 of 2011

State of M.P. and Others

APPELLANT

Vs

Madan Singh Kushwah

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Citation : (2011) 4 MPJR 157

Hon'ble Judges : Sushil Harkoli, Acting C.J.; Alok Aradhe, J

Bench : Division Bench

Advocate : Renu Kochar, for the Appellant; M.P.S. Bhatia, Dy. G.A. for State/ respondents, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard the learned counsel for the appellant-State, and the learned counsel for the respondent-employees in this bunch writ appeals. This bunch of writ, appeals involve the same issue. In some of the cases employees were classified as permanent employees against particular posts by the Labour Court and in some of the cases they were so classified by the employer itself.
2. In cases where the employees were classified by the Labour Court, the State Government, which is the employer, did not challenge the classification by preferring any writ petition. And, in cases where they were classified by the employer itself obviously, there was no question of challenge to the classification.
3. The respondent-workmen were classified as permanent employees in accordance with the Rule 2 of the M.P. Industrial Employment (Standing Orders) Rules, 1963 [hereinafter referred to as "the Standing Orders"]. Since the orders of Classification were not challenged by the employer - State, therefore, the classification of the employees as permanent employees has attained finality, and is no longer open to challenge in these appeals.
4. The employees approached this Court by way of writ petitions claiming regular pay scales attached to the posts on which they had been classified as permanent

employees. By the impugned orders the learned Single Judge allowed the writ petitions and directed the employer - State to grant regular pay scales to the employees as applicable to the post on which they had been classified as permanent employees in accordance with the provision of the Standing Orders.

5. The issue involved before the learned Single Judge was only about the consequences of the classification of an employee. The classification of the employee itself was beyond the purview of the writ petition, because it had not been challenged by the employer.

6. In these appeals the employer- State has relied upon certain decisions of the Supreme Court of which the decisions rendered in *Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey*, and *Gangadhar Pillai Vs. Siemens Ltd.*, are the main cases.

7. We find that the consideration of the consequences flowing from the unchallenged orders of classification in the impugned order passed by the learned Single Judge is based upon a decision of the learned Single Judge of this Court in the case of *State of Madhya Pradesh and Others Vs. Hariram and Others*, Although in that decision the case reported in *Gangadhar Pillai vs. Siemens Ltd.*, (supra) has not been considered, but the case of *M.P. State Agro Industries Development Corporation* (supra) has not been considered. We do not find any such difference in the aforesaid two Supreme Court decisions which would call for a departure from the view taken by the learned Single Judge in the case of *Hariram and others* (supra).

8. Normally if an employee is classified as a permanent employee against a particular post, he should be entitled to all the benefits of the that post unless, as held by the Supreme Court, such benefits are excluded either by contract between the employer and employee or by operation of some law. We have gone through the provisions of *M.P. Industrial Employment (Standing Orders) Rules, 1963*. Rule 2, deals with the classification of the Employees. Rule 11 inter alia provides that when the employment of a permanent employee is to be terminated he shall be given one month's notice or shall be paid wages for one month in lieu of notice.

9. The aforesaid rules do not contain any express prohibition that that an employee, who has been classified as permanent employee under the Rules would not be entitled to benefits of the post held by him. No restriction contained under the contract of employment has been brought to our notice.

10. Whether an employee comes by way of normal recruitment process or through the process of classification, the fact remains that both i.e., the normally recruited employee and a classified employee work on the same post and perform the same duties. It cannot be held that the classification has any less effect or force as compared to the normal process of appointment, because the classification is also based upon the law in the form of Standing Orders and as such both employees who have been brought into service through either of the

two processes permitted by law, as permanent employees against a particular post, should be entitled to the same benefits. Taking a contrary view would mean that the employees inducted through classification process would be saddled with an undesirable disability throughout their service, as compared to other employees which may tantamount to violation of the principle of "equal pay for equal work". Our view finds support from another Division Bench decision of this Court reported in the case of State of M.P. Vs. Ram Prakash (1998) 11 J 36. For the aforementioned reasons, we do not find any good ground to interfere with the order passed by the learned Single Judge. Accordingly, the writ appeals are dismissed.