

(2002) 05 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 415 of 1998

State of M.P. and others

APPELLANT

Vs

Vinod Singh Rathaur and others

RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F

Citation : (2002) 3 MPLJ 550

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; H.N. Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—The present petition has been filed by the State Government for quashing the orders Annexure P-1 and P-2 passed by the Labour Court and Industrial Court respectively whereby Respondent employee has been reinstated with full backwages. Series of cases filed by the State Government challenging the similar orders have been disposed of by this Court and in one such petition W.P. No. 419/1998 decided on 28-3-2002. The grounds raised in the present petition were considered and rejected. However, during the course of hearing, Learned Counsel appearing for the State Government invited my attention to the judgment of the Supreme Court in the case of Executive Engineer (State of Karnataka) Vs. K. Somasetty and others, has argued that as the Respondents were daily wages employees and they were appointed as per need and after the work was over their services were terminated. It is submitted by the Learned Counsel for the Petitioner that in view of the said judgment and many other judgments on the same question, as the Respondents were daily wages employees and they were recruited as per requirement of work, they are not entitled to any benefit. There is no difficulty in accepting the aforesaid proposition. However, the fact remains as to whether in the facts and circumstances of the present case the State Government has established the fact

of the Respondent employee being appointed as per requirement of work and are terminated after the work was over.

2. A perusal of the order passed by the Labour Court and the Industrial Court indicates that the witness produced by the Department has not stated these facts. On the contrary, the records indicate that the witness had only stated that the Respondents were muster roll employees and according to the muster they had completed 240 days of service in a calendar year. The Department has not led any evidence to show as to for what specific work the employees were engaged, how long the work was in existence and when the work was over and how the termination was brought about. In such matters when adjudication takes place before the Labour Court and when the Management or the employer avails of an opportunity to lead evidence, specific averment has to be made with regard to the work for which the employee is engaged, details of the work have to be given, period of working has to be indicated and by evidence it has to be proved that the employee was engaged for a particular work and the work has been completed as a result of which the services of the employees came to an end. Except for making averments, the record does not indicate that there is specific pleading in this regard. Not only is there any specific pleadings on this aspect of the matter, no evidence was also led to prove these facts before the Labour Court. Even the nature of work for which the Respondent employee was engaged has not been indicated. Under these circumstances the concurrent finding of the fact given by the two Courts cannot be entertained by this Court, in the absence of cogent and substantial evidence. Accordingly the arguments in this regard made by the Learned Counsel for the Petitioner cannot be accepted. The Petitioner State having failed to lead proper evidence at the time of trial and having failed to prove the aforesaid facts cannot now contend that termination of services of an employee appointed for specific project or work does not amount of retrenchment. Even before this Court in the instant petition it is nowhere indicated as to for which project the Respondent employee was engaged, when the project was over and other factors are not pleaded. Considering the aforesaid submissions made by the Learned Counsel for the Petitioner in this regard cannot be accepted.

3. As far as the remaining grounds are concerned, the same has been dealt with in detail by this Court in W.P. No. 419/1998 decided on 28-3-2002. For the reasons and grounds indicated by this Court in the said order, there is no merit in the statement made by the Petitioner. The muster roll were on record before the Labour Court and on the basis of the muster roll, a finding has been recorded that the employee concerned has rendered more than 240 days service in a calendar year. Accordingly, it is to be held that employees are completed one year continuous service as provided for u/s 25-B of the Industrial Disputes Act, 1947, the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 were required to be complied with. There being non compliance with the aforesaid mandatory provisions, the termination is illegal.

Considering the totality of the facts and circumstances of the case so also the legal position which has been dealt with by this Court in W.P. No. 419/1998 decided on 28-3-2002, this Court does not consider it to be a fit case to interfere in the matter. The orders passed by the Labour Court and the Industrial Court in the facts and circumstances of the case cannot be said to be contrary to the provisions of law, therefore upheld. Petition is being devoid of substance is dismissed.

Parties to bear their own costs.