
(1997) 04 MP CK 0064

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3703 of 1993 (J)

State of M.P.

APPELLANT

Vs

State Industrial Court and Another

RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1999) 2 MPJR 183

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : R.K. Thakur, Dy. A.G., For State, for the Appellant; P.S. Nair with R.N. Shukla, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.

In all these writ petitions, petitioner is the State of M.P. (hereinafter referred to as the employer) and by these writ petitions filed under Article 227 of the Constitution of India, it prays for issuance of an appropriate writ, order or direction for quashing the orders of the Labour Court, as affirmed in appeal by the Industrial Court, whereby employer has been directed to classify the employees on various posts.

In all these cases, respondent i.e. the employees are either time-keepers, Chaukidars, Lower Division Clerks, Helper or Plumber helpers and they were appointed on daily wages in the Hasdeo Bango Project of the Irrigation Department of the State Government. They filed applications before the Labour Court stating therein that they have completed six months of satisfactory service and they are still paid salary on daily wages basis. In the aforesaid premises, prayer was made to classify them as permanent employees. The Labour Court on consideration of the case found that the employees have worked for more than six months satisfactorily and, therefore, entitled to be classified as permanent

employees, and he directed accordingly. It is relevant here to state that the aforesaid order was passed by the Labour Court expert as the employer did not chose to appear before it.

However, aggrieved by the order of the Labour Court, employer preferred appeals before the Industrial Court against, the individual employee and the Industrial Court by its common order dated 20.3.1993 dismissed the appeal. Ground urged before the appellate Court was that the employer is not an Industry and, therefore, the provisions of the MP. Industrial Relations Act does not apply and the Labour Court passed the order without considering the written statement filed by the employer. Both the contentions were rejected by the appellate Court.

Shri R.K. Thakur, Deputy Advocate General, does not press the aforesaid two points urged before the appellate Court but submits that before directing for classification of employees, courts below were under an obligation to give a finding that the clear vacancy exists. Learned counsel has taken me through the Judgment of the Labour Court as also the Industrial Court to show that no such finding was recorded by either of the Court.

Clause 2 (i) and (vi) of the Standard Standing Order reads as follows -

2. Classification of employees -Employees shall be classified as -(i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) Bad lies, (v) apprentices, and (vi) temporary -

(i) A "permanent" employee is one who has completed six months" satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;

....

(vi) "temporary employee" means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i) above.

A plain reading of the aforesaid provision makes it clear that for classifying an employee as a permanent employee, three requirements are to be fulfilled, i.e. he must have completed six months service, service must be satisfactory and the vacancy on which he is working must be a clear vacancy. In the present case, there is no finding that the employees who were directed to be classified were working on clear vacancies.

Shri P.S. Nair, however, appearing on behalf of the employees, submits that the aforesaid point was not raised before the appellate Court and in that view of the

matter the employer cannot be permitted to raise the same for the first time in the present writ petitions. Questions which require investigation of fact cannot be raised for the first time before this Court, but the same principle does not apply in a case when the question flows from the pleadings of parties itself. Question of law which does not require any additional pleading, in my opinion, can be raised before this Court for the first time also. Here in the present case condition precedent for exercise of the power by the Labour Court for classification is existence of a clear vacancy. Shri Nair could not point out that there is any finding on the said question by either the Labour Court or the Industrial Court.

Accordingly condition precedent for exercise of jurisdiction by the Labour Court did not exist. This renders the impugned Judgment of the Labour Court as affirmed by the Industrial Court vitiated in the eye of law and the matter needs to be remitted back to the Labour Court for consideration afresh.

Mr. P.S. Nair appearing on behalf of the employees further submits that the employees having worked for such a long period raises a presumption that they were working on a clear vacancy. Shri R.K. Thakur however submits that such a presumption cannot be raised and in any view of the matter, the presumption of existence of clear vacancy in no case can be applied in case of employee working in a project. I am inclined to agree with the submission of Shri R.K. Thakur. No such presumption can be raised and employees were under an obligation to prove the existence of clear vacancy.

In the result, all the writ petitions are allowed, the order of the Labour Court as also the Industrial Court impugned in these writ petitions are quashed and the case is remanded back to the Labour Court who after giving opportunity to the employer as also the employees shall decide the matter in accordance with law. In the facts and circumstances of the case, there shall be no order as to cost. Security amount, if deposited be refunded to the petitioner.