

(1998) 12 MP CK 0009
In the Madhya Pradesh High Court
Case No : Writ Petition No. 350 of 1997

Superintending Engineer, P.W.D. and Another	APPELLANT
Vs	
Dev Prakash Shrivastava and Others	RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 — Section 2(2)
Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 — Rule 7

Citation : (1999) 1 JLJ 391 : (1999) 2 LLJ 663 : (1999) 1 MPJR 1 : (1999) 1 MPLJ 466

Hon'ble Judges : A.K. Mathur, C.J.; Shacheendra Dwivedi, J.; S.S. Jha, J

Bench : Full Bench

Advocate : J.D. Suryavanshi, for the Appellant; H.N. Upadhyaya and B.P. Singh, for the Respondent

Judgement

Mathur, C.J.

Both the references are similar in nature and therefore they are disposed by this common order.

Both these references have been made by the learned single Judge expressing his grave doubt about the ratio laid down in the case of State of Madhya Pradesh and Others Vs. Ram Prakash Sharma and Others, . The learned single Judge directed the matter to be placed before the Hon. Chief Justice for constituting a larger Bench to answer the following question of law:

"Whether the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 will be applicable to the services which are governed by the Rules mentioned in Section 2(2) and also to those employees where Recruitment Rules have been framed?

Hence, the present larger Bench was constituted to answer the aforesaid question of law.

In order to dispose of this reference facts given in W.P. No. 350 of 1997 are taken into consideration. The present petition filed by Superintending Engineer, Public Works Department, Chambal Ayacut, Circle Gwalior and Anr. challenging the order passed by the Labour Court dated March 30, 1995 Annex. P4 and order dated October 11, 1996 (Annex. p5) passed by the Industrial Court. The respondent Dev Prakash Shrivastava was working on daily wages as a casual labour from time to time subject to availability of the work. He filed a petition under Sections 31, 61 and 62 of the M.P. Industrial Relations Act before the Labour Court for declaration that he has acquired status of permanent employee on the post of Peon, therefore, a direction be given to the respondent State for classifying him as a permanent employee on the post of Peon with effect from March 20, 1987 with a further direction to make payment of arrears of difference of salary flowing therefrom with effect from March 20, 1987. The learned Labour Court, by its order dated March 30, 1995 Annex. P4 directed that the respondent No. 1 may be classified as a permanent employee and the difference of salary shall also be paid to him. Aggrieved by this order, the Chief Engineer (North) Circle, PWD, Thatipur, Gwalior and Superintending Engineer, PWD, Chambal Ayacut Circle, Gwalior filed an appeal before the Industrial Court and the Industrial Court affirmed the order passed by the Labour Court by order dated October 11, 1996. Hence the present writ petition was filed.

The matter came up before the learned single Judge. The learned single Judge had strong reservation about the ratio laid down in the case of State of M.P. v. Ram Prakash Sharma and Ors. (supra), in view of the judgments of Apex Court in the cases of State of U.P. and Others Vs. Ajay Kumar, and Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, . We have heard learned counsel for the parties and perused the record.

The State of M.P. promulgated M.P. Industrial Employment (Standing Orders) Act, 1961 (for short the Act of 1961).

Section 2(2) of the Act of 1961 lays down the application of the Act as to whom the Act shall apply and to whom it does not. Section 2 of the Act of 1961 reads as under:

2. Application of the Act -- (1) This Act shall apply to --

(a) every undertaking wherein the number of employees on any day during the twelve months preceding or on the day this Act comes into force or on any day thereafter was or is more than twenty; and

(b) such other class or classes of undertaking as the State Government may, from time to time, by notification specify in this behalf:

Provided that it shall not apply to an undertaking carried on by or under the authority of the Central Government or railway administration or a mine or an oil field.

(2) Nothing in this Act shall apply to the employees in an undertaking to whom

the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the Official Gazette apply.

Sub-section (2) of Section 2 is an exception to Section 2(1) of the Act and it says that nothing in this Act shall apply to the employees in an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services Regulations apply or any other rule or regulations that may be notified in this behalf by the State Government in the Official Gazette apply. By virtue of Sub-section (2) of Section 2, exception has been carved out that undertaking to whom aforesaid Rules apply to their service conditions then provision of this Act and Rules framed thereunder shall not apply. The second part further lays down that if Government wants that provision of this Act should not apply to other department or undertaking of Government, then it can further so notify by issuing necessary notification. So long as such a notification is not issued in this behalf by the State in the Official Gazette, till that time only those employees to whom the aforesaid rules govern will be exempted from the provisions of this Act. Under the Act, 1961 Standing Orders were also framed. They are known as M.P. Industrial Employment (Standing Orders) Rules, 1963 (for short the Rules of 1963) Rule 7 talks about framing of Standing Orders. Rule 7 reads as under:

"7. Framing of Standing Orders - Subject to the provisions of Section 6 of the Act, the Standard Standing Orders for all undertakings to which the Act applies shall be those set out in the Annexure."

The Annexure appended to these Rules of 1963 has been framed known as Standard Standing Orders for All the Undertakings in the State; Clause 2 of the Standard Standing Orders which is relevant for our purposes reads as under:

"2. Classification of Employees Employees shall be classified as (i) permanent (ii) permanent seasonal (iii) probationers (iv) Badlies (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:

(ii) A "permanent seasonal employee" is one who has completed service for a period equal to 2/3 of the duration or a season or the months whichever is less in a clear vacancy and shall be deemed to be a permanent employee for the purposes of these orders:

(iii) a "probationer" means an employee who is provisionally employed to fill a clear vacancy and who has not completed six months satisfactory service in the aggregate;

(iv) A "Badli" employee means an employee who is employed on the post of a permanent employee or a probationer or a permanent seasonal employee who is temporarily absent;

(v) An "apprentice" means a learner: provided that no employee shall be classified as an apprentice if he has had training for an aggregate period of one year, provided further that a longer period of apprenticeship shall be required if prescribed by a law or an award or by agreement with the representative of employees;

(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."

There is no gainsaying that the present Department is an undertaking of the State as defined in the definition u/s 2(33) of the M.P. Industrial Relations Act, 1960. "Undertaking" has been defined as under:

"undertaking" means a concern in any industry.

"Industry" has been defined in Section 2(19) of the Act of 1960 as under:

"Industry" means -- (a) any business, trade, manufacture, undertaking or calling of employers;

(b) any calling, service, employment, handicraft, or industrial occupation or a vocation of employees; and includes --

(i) Agriculture and agricultural operations;

(ii) any branch of an industry or group of industries which the State Government may, by notification, declare to be an industry for the purposes of this Act.

On a reading of these provisions and the ratio laid down in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, there is no gainsaying that the present Department is an undertaking of the State. Therefore, Clause 2 of the standard Standing Orders for All the Undertakings in the State is applicable and according to the said clause, employees shall be classified as permanent, permanent seasonal, probationers, badlies, apprentices and temporary. Clause 2(1) clearly says that 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. What it conveys is that a person would be entitled to be declared under this Standing Order as a permanent employee subject to the condition that he has put in six months" satisfactory service against a clear vacancy. Therefore, one of the pre-conditions is the existence of a clear vacancy, second is that he should

have worked against the clear vacancy for a minimum period of six months and third is that his service should be satisfactory. It is irrelevant that a man might have worked for 10-15 years and if there is no permanent vacancy available and his service record is not satisfactory, then he cannot be classified as a permanent employee.

In the scheme of the Rules, if we go back to Sub-section (2) of Section 2 of the Act of 1961, question is whether the present Department is governed by any service rules, as notified under Sub-section (2) of Section 2 or not. Learned Counsel for the State has not been able to point out whether the Rules mentioned in Sub-section (2) of Section 2 of the Act govern the present undertaking or not nor has been able to bring to our notice any exemption notification issued under this Act. Since the present Department has not been exempted by issuing a notification in accordance with Sub-section (2) of Section 2 of the Act of 1961, the Act of 1961, read with Rules of 1963, the Standard Standing Orders shall govern the Department.

In the case of State of M.P. and Ors. v. Ram Prakash Sharma and Ors. (supra), this Court examined the provisions of the Industrial Employment (Standing Orders) Act, 1961, read with the rules of 1963 and held that the service conditions which have been incorporated as Annexure shall apply. Though another aspect was also considered whether a direct petition is maintainable or not without going to the Industrial Court, that aspect was discussed in greater detail. Specifically the applicability of Sub-section (2) of Section 2 did not arise in that case. Be that as it may, the fact remains that in view of our present opinion that Annexure which is Standard Standing Order will definitely govern the present Department also till a proper notification is issued under Sub-section (2) of Section 2 of the Act of 1961.

Our attention was also invited to the decision of this Court in the case of Vandana Singh v. Steel Authority of India 1993 J.L.J. 55 where the question was with regard to Articles 14, 16 and 39(d) of the Constitution of India. There was a difference of opinion between members of the Division Bench. One learned Judge held that the incumbent was entitled for regularisation and equal pay for equal work. The difference was whether he is entitled for equal pay for equal work when there was no permanent vacancy available. Another Hon. Judge held that in absence of permanent vacancy, no relief with regard to equal pay for equal work could be given. The view expressed by another learned Judge in that case appears to be well founded. This view appears to be in accordance with Clause 2 of Standard Standing Order which says that existence of vacancy is a must.

Hon. referring Judge made reference of two decisions of Apex Court in H.D. Singh Vs. Reserve Bank of India and Others, and Grih Kalyan Kendra Workers' Union Vs. Union of India and others, . Both these cases were with regard to regularisation of daily wage employees who were working for long in the Department. In that, the Apex Court observed that such daily wagers cannot as a matter of right claim regularisation as they were not regularly recruited

according to the rules. Both these decisions of the Apex Court were with regard to general principles for regularisation of daily wagers who had put in long service and there were no statutory provisions like Standard Standing Orders involved in both these decisions. The present case is governed by the Act of 1961, Rules of 1963 and the statutory Standing Orders framed under the provisions of the Act. Therefore, general ratio laid down by the Apex Court will not govern the present case.

As a result of above discussion, we hold that by virtue of Sub-section (2) of Section 2, unless Government notifies that particular rules which are applicable to that Department will exempt the application of the provisions of the M.P. Industrial Employment (Standing Orders) Act, 1961, till that time the provisions of the Act, Rules and Orders issued thereunder will govern that Department. The references are accordingly answered.