

(2014) 09 MP CK 0091
In the Madhya Pradesh High Court
Case No : Writ Petition No. 15756/2007

The Executive Engineer

APPELLANT

Vs

Abdul Rashid

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Citation : (2014) 09 MP CK 0091

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Brmhaddutta Singh, Learned Counsel, Advocate for the Appellant

Judgement

Sanjay Yadav, J.—Heard on admission.

2. Petition is directed against the award dated 13.2.2006 passed by Labour Court, Bhopal in I.D. Reference Case No. 247/2008; whereby, the reference as to whether the dispensation of service of workman, respondent No. 1 was just and proper has been answered in favour of workman.

3. That, respondent workman while engaged as permanent gangman was retired on completion of 30 years of service while he was 48 years by order dated 30.6.2003. The Labour Court on a finding that the workman was a permanent gangman whose age of retirement on superannuation is 60 years, set aside the retirement order and directed for reinstatement with full back-wages.

4. Though a cavil is raised on behalf of the petitioner employer that the Labour Court erred in directing the reinstatement with back-wages on wrong premises; however, the issue whether the permanent gang-men are to be treated at par with Class IV employees of the Government has come to take rest with the decision by a full Bench in Vishnu and Others Vs. State of Madhya Pradesh and Others, ; wherein, it is held:

12. It is true that gangman is not included in the schedule of 1976 Rules but from perusal of the schedule attached to 1977 Rules it is clear that the post of

gangman is included in the schedule of the said Rules. In such circumstances Rules of 1977 and 1976 will have to be read together. After reading both the Rules together it becomes clear that a gangman is fully governed by the said Rules. Non-mentioning of the post of "Gangman" in the Schedule to the 1976 Rules is a mere omission in amending the Rules after coming into force of "1977 Rules". As per Rule 8 of the 1976 Rules a Gangman shall be governed by the same policy for superannuation as is applicable to the Class IV Government employees because they are in comparable category. The said Rules reads as under:-

8. Age, Physical fitness of new entrants and age of superannuation.- In the matter of age, and physical fitness for recruitment and superannuation, the same rules and policies shall apply to the new entrants into the service as are applicable to the Government servants of comparable categories in the regular employment."

13. While deciding the Gulabsingh's case (supra), the 1977 Rules and Pension Rules of 1979 were not brought to the notice of the Court. Under Rule 6 of 1976 Rules the employees who were in service for at least fifteen years on 1-1-1974 were eligible for the status of permanent work charged or contingency paid employees. This has been made more liberal by the 1979 Rules. Rule 2 (c) of the 1979 Rules lays down that a contingency paid employee or a work-charge employee becomes permanent employee whenever he completes fifteen years of his service though it may be after 1-1-1974.

14. It is well known principle of law that when two different Rules contain different provisions the one which is more beneficial to the employees has to be accepted in the welfare state. Considering this fact we find that the law laid down by this Court in the case of Bharosi (supra) and Bhajanlal (supra) lay down the correct law while the law laid down by the Gulabsingh (supra) is not correct as the view taken in the said case was taken without considering the 1977 Rules and 1979 Rules. In such circumstances we hold that the services of gangmen are governed by the Rules applicable to work charged and contingency paid employees even though the gangman is not included in the schedule of 1976 Rules and the age of superannuation is 62 years as other Class IV employees of the State Government because they are in comparable category.

15. The preference is accordingly answered. The matter may be placed before the Single Bench for deciding the petition in accordance with law.

5. In view whereof conclusion arrived at by the Labour Court as to the entitlement of the workman to work up to 60 years cannot be faulted with.

6. Considering thus, no indulgence is caused. Consequently petition fails and is dismissed. No costs.