

(2013) 11 MP CK 0056

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7286 of 2013

The State of Madhya Pradesh

APPELLANT

Vs

Devendra Kumar Mishra

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2013) 11 MP CK 0056

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Devashish Sakalkar, for the Appellant;

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—This petition under Article 226/227 of the Constitution of India is directed against the order dated 12.12.2000, passed by the Labour Court, Rewa and order dated 21.11.2006, passed by the Industrial Court, Rewa. Petitioners also assail the orders dated 20.08.2009 and 09.12.2009. Whereas, by order dated 20.08.2009 Labour Court allowed respondent workman's application u/s 108 of MPIR Act, 1960 seeking execution of order dated 12.12.2000. By order dated 09.12.2009 miscellaneous appeal preferred by the petitioners herein against said order has been dismissed.

2. By order dated 12.12.2000 Labour Court allowed the application u/s 31 read with Section 61 M.P. Industrial Relation Act, 1960, filed by respondent, seeking classification as permanent employee, whereas, by order dated 21.11.2006, an appeal preferred by the petitioner herein against the order of permanent classification, has been dismissed.

3. Grievance put forth by the petitioner is that, the Labour Court as well as the Industrial Court failed to appreciate that respondent Devendra Kumar Mishra was engaged as daily wages labourer and the same was not against any vacant post nor any recruitment process known to law, has been resorted to, while engaging him. It is contended that, respondent/workmen was never employed as a

Chowkidar. It is urged that, this fact that workmen was engaged on daily wages and there were no sanctioned post against which he was engaged was duly admitted by the workmen before the Labour Court and yet the Labour Court while shifting the burden on the petitioner employer passed an award in favour of the respondent/workmen classifying him as a permanent employee. It is urged that, even the Industrial Court committed the same folly in affirming the order passed by Labour Court. It is contended that, interpretation by Labour Court as well as the Industrial Court of Clause 2(i) of Standard Standing Orders to the extent that, immediately after completion of six months, a workman acquires a right to be classified as an permanent employee, suffers from vice of perversity in absence of cogent proof regarding the fact that such appointment was against clear vacancy and that workmen has satisfactorily discharged his duties on such posts.

4. In support of his contention learned counsel for the petitioner relies upon the judgments of the Supreme Court in Mahendra L. Jain and Others Vs. Indore Development Authority and Others, , M.P. Housing Board and Another Vs. Manoj Shrivastava, and judgment of this Court in M.P.S.R.T. Corporation, Bhopal and others Vs. Awdesb Pratap Singh and others, .

5. There can be no doubt about the proposition of law laid down by the cases referred to by learned counsel for the petitioner that a person with a view to obtain the status of a permanent employee, is under obligation to establish that the appointment was against the vacant post.

6. In the instant case, however, the facts as borne out from record would not warrant any interference. The record reveals that against the order dated 12.12.2000 passed by the Labour Court, petitioners preferred an appeal u/s 65 of M.P.I.R. Act, 1960. The said appeal was dismissed on 21.11.2006.

7. The petitioners did not challenge these orders nor in furtherance thereto they classified the respondent as permanent Chowkidar which led the respondent to file an application u/s 108 of M.P. Industrial Relations Act, 1960 for issuance of Revenue Recovery Certificate. It is only when the application u/s 108 has been decided that, the petitioner has woken from the slumber and has filed this petition after a lapse of twelve years of passing of order on 12.12.2000 and its affirmation in appeal dismissed on 21.11.2006. With non challenge of the order passed by Labour Court and Industrial Court a right crystallized in favour of respondent workman.

8. Trite it is that delay and laches which lead to crystallization of right in favour of a person, disentitles the other to seek remedy in the Court of Law. Division Bench of this Court in Focus Energy Ltd. Vs. Government of India and Others, ; relying upon judgments of the Apex Court observed- 10- Thus, facts stated supra leads to irresistible conclusion that appellant is guilty of delay and laches. Its conduct disentitles it to any relief. In New Delhi Municipal Council Vs. Pan Singh and Others, the Supreme Court has held that delay and laches are relevant

factors for exercise of equitable jurisdiction. In *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, the Supreme Court has observed that discretionary relief can be provided to one who has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant. In *the State of Haryana and Another Vs. Aravali Khanij Udyog and Another*, it has been held that where third party rights are created, the High Court should not interfere. Similarly, in *Shiba Shankar Mohapatra (supra)* it has been held that the Court exercising public law jurisdiction does not encourage agitation of state claims where the right of third parties crystallizes in the interregnum.

In view of above, while not disputing the proposition of law laid down in the cases of *Mahendra L. Jain (supra)*, *M.P. Housing Board (supra)* and *M.P.S.R.T. Corporation (supra)*, the petition is dismissed on the ground of delay and laches, however, no costs.