

(2023) 12 CHH CK 0058

In the Chhattisgarh High Court

Case No : Writ Petition (L) No. 74 Of 2021

Unit Head, Ferro Scrap Nigam Ltd

APPELLANT

Vs

Sanjay Bangade Helper-Cum-Greaser (Traine)

RESPONDENT

Date of Decision : 11-12-2023

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Industrial Employment (Standing Orders), Act 1946 — Section 7

Citation : (2023) 12 CHH CK 0058

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Amrito Das, Shashank Thakur

Final Decision : Partly Allowed

Judgement

1. The petitioner has filed writ petition challenging the legality, validity and propriety of the award dated 16.07.2021 passed by the learned Central Government Industrial Tribunal -cum-Labour Court, Jabalpur in case No. CGIT/LC/R/45/2016 in case of Shri Sanjay Bangde and 10 Others vs. the Unit Head, Ferro Scrap Nigam Ltd. whereby learned Tribunal has answered the reference in favour of the respondents No. 1 to 11 and the held that the action of the petitioner in not giving status of permanency to the respondents workmen is not justified and held that the respondents No. 1 to 11 are entitled to be absorbed on permanent basis after expiry of initial one year and extended two year terms and are entitled to be regularized.

2. The brief facts as reflected from the record are that the respondents workmen who were working with the petitioner raised industrial dispute before the Assistant Labour Commissioner Central who has initiated conciliation proceeding which became failure, therefore, the Conciliation Officer sent the failure report to the Central Government. The Central Government in turn has sent the reference to the learned Central Government Industrial Tribunal -cum- Labour Court, Jabalpur on 12.04.2010 on the following terms of reference:-

1. Whether the action of the management Ferro Scrap Nigam Ltd. Bhilai in not giving the status of permanency to 11 workmen namely Sarvshri Sanjay Bagade, Puna Ram Sahu, Ravi Nayak, Ishwar Lal, Umesh, Jaideep Kumar, Dinesh Kumar Dewangan, Arjun Singh Sahu, Madhusudan Sahu, Jitendra Kumar and Ram Singh and regularizing their services is legal and justified? If not, what relief the workmen are entitled to?

2. Ferro Scrap Nigam Ltd., a Central Public Sector undertaking Company, the Government of India is appropriate Government."

3. The workmen respondents No. 1 to 11 filed their statement of claim mainly contending that the workmen are initially appointed for one year from the date of joining to the duties and pursuant to the appointment order they joined in August, 2012. It has been further contended that they were appointed after interview and trade test conducted by the petitioner. It has been further contended that as per the appointment order appointment can be extended for further period of 2 years subject to the availability of the vacancy, requirement prevailing at that time and job performance, accordingly, the temporary appointment of the workmen were extended for 2 years. It has been further contended that the appointment order provides for permanency of the post which reads as under :-

"However in the long term requirement and availability of permanent vacancy for the post, your case can be considered for permanent employment, subject to your satisfactory performance during your temporary remployment with us, and on fulfilling other criteria's, in in the pay scale of Rs. 8630-3%-12080/ - as 'Helper-Cum-Geaser - III' for which an offer of appointment with detailed terms and conditions will be issued separately."

4. Thus, if the workmen fulfill requirement of the posts they deserve to be regularised. Clause 3(a) of the Standing order which has been framed as per provisions of Section 7 of the Industrial Employment (Standing Orders), Act 1946, provides classification of workmen. The performance of respondents was satisfactory to the management and extension of tenure period is conclusive prove that there is requirement of the workmen and post of Helper-Cum-Greaser is available for regularization of the workman. Thus, they have prayed for answering the reference in affirmative in favour of the respondents.

5. The petitioner has filed its reply to the statement of claim denying the allegation made in the statement of claim filed by the workmen. It has been specifically contended that as per the order of appointment issued to the workmen in the year 2012 it was clearly mentioned that the engagement is purely temporary for period of 1 year and upon exigency the terms of service may be extended for a further period of 2 years. It has been further contended that it has been specifically mentioned in the appointment order that only in the event of long term requirement and availability of the vacancy, the case of the respondents may be considered for permanent employment subject to

satisfactory performance. It has been further contended that continuation of 240 days service will not entitle them to claim permanency. It has been further contended that the job work is not available with the company, as such, absorption of the respondents will create financial burden to the company, therefore regarding that the reference may be answered in negative against the women.

6. The learned Central Government Industrial Tribunal framed 2 issues which are as per the terms of reference. Respondents examined Sanjay Bangade and the management examined Sourabh Radhesham Tharewal working as Manager (Law) with the FSNL. The workmen filed evidence by way of the affidavit reiterating the same taken in the Statement of Claim and stated that on the satisfactory performance of the workmen and availability of the vacancy the workmen are entitled to be regularised on the post of Helper-Cum-Greaser. The witness was cross-examined but nothing was brought on record. The management has examined Sanjay Radhesham Tharewal who has stated on affidavit in paragraph 7 that the appointment can be extended for further period of two years, subject to availability of vacancy, requirements prevailing at that time and job performance subject to approval of the competent authority. He has further stated that in the appointment order it has been specifically mentioned that they will not claim permanent absorption therefore, the claim of the first party for regularization is not sustainable.

7. Learned Central Government Industrial Tribunal vide its award dated 16.07.2023 has answered the reference in favour of the workmen and directed the petitioner management to regularise service of the respondents on permanent basis. This award has been challenged before this Court by the petitioner.

8. Learned counsel for the petitioner would submit that learned Central Government Industrial Tribunal should have seen that the workmen were appointed purely on temporary basis. Their engagement with the company was only for one year which was extended for further period of two years depending upon the availability of work and satisfactory service rendered by the respondents. It has been further contended that even in the appointment order it has been specifically mentioned that the respondents will not be entitled for permanency, as such, they have no right to be absorbed. It has been further contended that since year 2007-08 they have not appointed any employee in non-executive cadre and to the posts in which the respondents are seeking regularisation, as such, the award passed by the learned Central Government Industrial Tribunal is bad in law. He would further submit that the petitioner company is under 100% disinvestment as per the decision taken by the Cabinet Committee and Economical Affairs, Government of India on 27.04.2016 and the process of disinvestment is at advance stage. He would further submit that learned Central Government Industrial Tribunal misconceived the provisions of Clause 3(a) of the Standing Order which does not create any right for absorption

of the employee but it merely provides classification of the employees engaged in the establishment so as to avoid any dispute. The said classification does not in any manner provide permanency. He would further submit that the Central Government Industrial Tribunal has misconstrued the said provision of law while passing the award and therefore, would pray for quashing the award.

9. Learned counsel for the respondents would submit that the Central Government Industrial Tribunal has rightly passed the award which is per the Clause 3(a) of the Standing order which provides classification of workmen and permanent employee which is applicable in the present facts of the case with full force therefore, the award passed by the learned Central Government Industrial Tribunal does not suffer with illegality and perversity which warrants interference by this Court. It has been further contended that the management has filed affidavit before the learned Central Government Industrial Tribunal wherein it has been categorically stated that the workman who has completed 12 months of continuous service then within the meaning of the Industrial Dispute Act he will be treated as permanent employee and would submit that the award passed by the learned Central Government Industrial Tribunal does not suffer from illegality and perversity which warrants interference by this Court, as such, the writ petition may be dismissed.

10. This Court has also called for records of the learned Central Government Industrial Tribunal.

11. I have heard learned counsel for the parties and perused the record.

12. Looking to the pleadings and materials placed on record the following points are to be determined by this Court :-

(I) Whether the workmen fulfill the conditions required for regularization as per the standing order of the company? (ii) Whether the findings recorded by the learned Central Government Industrial Tribunal is perverse and contrary to the law?

13. Before advertng to the point to be determined by this Court, it is expedient for this Court to extract Clause 3 of the Standing order which provides classification of workmen and permanent employee which is extracted below:-

3. Classification of workmen -

(a) Permanent Employee – The permanent employee means employees on the sanctioned standard force of the company and who have successfully completed the probationary period, if any prescribes for them and includes those who have completed 12 months continuous service within the meaning of Industrial Disputes Act, 1947 in one or more posts in connection with temporary increase in permanent work.

(b) Temporary Employee :

Temporary Employees means employees who are employed for work which is

essentially of a temporary nature or who are employed in connection with a temporary increase in permanent work for a period not exceeding 12 months, provided that in case a temporary employee is placed on probation, the period of his temporary service shall count towards the probationary period.

(c) Casual Employee :

Casual employee means employees who are engaged for work of a casual nature.

14. From bare perusal of the provisions contained in Clause 3(a) of certified Standing Order of the company it is quite vivid that the workmen who have completed the probationary period if any and workmen who have completed 12 months continue service on the sanctioned standard force of the company can be classified as permanent employee. The workman who was examined before the learned C.G.I.T. in his affidavit has stated as under :-

15. The witness examined by the respondents has nowhere stated that what is the sanctioned strength on the post on which they are working, whether they are working against the sanctioned strength of the posts. These two vital ingredients for becoming permanent workmen is not brought on record by the workman. Whereas the witness examined by the petitioner has stated in affidavit in paragraph No. 10 that in the event of long term requirement and availability of permanent vacancy of the post, their case can be considered for permanent employment subject to their satisfactory performance during their temporary employment. As such, the availability of the permanent vacancy is very much necessary for classification of workman as permanent workman. The workmen have nowhere stated what is the permanent vacancy available with the company for regularization and the petitioner has clearly brought on record that if vacancy is available, then only their case can be considered. Learned Central Government Industrial Tribunal while passing the order has nowhere dealt with the issue whether permanent vacancy is available with the Management or not. The learned Central Government Industrial Tribunal has taken into consideration other provisions of standing order of the company particularly Clause 3(b) and Clause 3(e) which define temporary employee and probationer but has not taken into consideration the conditions enumerated in Clause 3(a) of the Standing Order which deals with the Classification of Workman as permanent workman. The learned C.G.I.T. has nowhere recorded its finding with regard to availability of permanent vacancy which is sine-quo-non for grant of permanency. In absence of any finding recorded by the learned Tribunal, the impugned award suffers from perversity and illegality.

16. The record of the case would demonstrate that the learned Central Government Industrial Tribunal in its award has recorded its finding that the permanent vacancy is available without any pleading or proof in this regard, which is essential for claiming permanency, thus, award passed by the learned Central Government Industrial Tribunal is contrary to the law laid down by the Hon'ble Supreme Court in case of M.P. Housing Board and Another vs Manoj

Shrivastava {(2006) 2 SCC 702} wherein the Hon'ble Surpreme Court has held in paragraph Nos. 6 to 9, 11, 19, 21 as under :-

6. The Appellant Board was constituted under M.P. Grih Nirman Mandal Adhiniyam, 1972 ('1972 Act'). Indisputably, the terms and conditions of employment of its employees are governed by a statute. The State of Madhya Pradesh enacted the M.P. Industrial Relations Act, 1960 with a view to regulate the relations of employers and employees in certain matters, to make provisions for settlement of industrial disputes and to provide for matters connected therewith. In the year 1961, the State of Madhya Pradesh also enacted the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (for short "the 1961 Act") to provide for rules defining with sufficient precision certain matters relating to the conditions of employment of employees in the State of Madhya Pradesh.

7. 'Permanent employee' and 'temporary employee' have been defined in Clauses 2(i) and (vi) of Standard Standing Order made under 1961 Act which read as under:

"(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."

8. A person with a view to obtain the status of a 'permanent employee' must be appointed in terms of the statutory rules. It is not the case of the Respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field.

9. The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the Respondent had worked for more than six months satisfactorily; in terms of clause 2(i) of the Standard Standing Order, he acquired the right of becoming permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the Respondent.

11. It has not been found by the Labour Court that the Respondent was appointed by the Appellant herein, which is a 'State' within the meaning of Article 12 of the Constitution of India, upon compliance of the constitutional requirements as also the provisions of the 1972 Act or the rules and regulations

framed thereunder.

19. The appointment made by a person who has no authority therefor would be void. A fortiori an appointment made in violation of the mandatory provisions of the statute or constitutional obligation shall also be void. If no appointment could be made in terms of the statute, such appointment being not within the purview of the provisions of the Act would be void; he cannot be brought within the cadre of permanent employees. The definitions of 'permanent employee' and 'temporary employee' as contained in the rules must, thus, be construed having regard to the object and purport sought to be achieved by the Act.

21. In Onkar Prasad Patel (supra), whereupon Mr. Nair placed strong reliance, it was categorically held that an employee would not come within the purview of definition of 'permanent employee' only because he has completed six months' satisfactory service. The other requirement was that the service must be rendered in a clear vacancy in one or more posts which was established. The conditions were held to be cumulative and not independent of each other. The said decision, therefore, runs counter to the submission of the learned counsel.

17. The Hon'ble Supreme Court in case of Ram Naresh Rawat vs Ashwini Ray and Others {(2017) 3 SCC 436} has held in paragraph Nos. 21 to 23 as under :-

21. This Court has already examine the issue in the context of these very standing orders of Madhya Pradesh. In the case of Mahendra L. Jain & Ors. v. Indore Development Authority & Ors.[5], this Court analyzed the Standard Standing Order in question and held that permanent classification does not amount to regularization, inasmuch as it was noted that the matter relating to the recruitment is governed by a separate statute, as can be seen from the following discussion therein:

"28. The 1961 Act provides for classification of employees in five categories. The 1973 Act, as noticed hereinbefore, clearly mandates that all posts should be sanctioned by the State Government and all appointments to the said cadre must be made by the State Government alone. Even the appointments to the local cadre must be made by the Authority. The said provisions were not complied with. It is accepted that no appointment letter was issued in favour of the appellants. Had the appointments of the appellants been made in terms of the provisions of the Adhiniyam and the Rules framed thereunder, the respondent Authority was statutorily enjoined to make an offer of appointment in writing which was to be accepted by the appellants herein. Who made the appointments of the appellants to the project or other works carried on by the Authority is not known. Whether the person making an appointment had the requisite jurisdiction or not is also not clear. We have noticed hereinbefore that in the case of Om Prakash Mondloi, the CEO made an endorsement to the effect that he may be tried in daily wages and should be entrusted with the work of progress collection of ODA work. The said order is not an "offer of appointment" by any sense of the term.

31. The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the *suprema lex*, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail.” The issue came up again in the case of *M.P. State Agro Industries Development Corporation Ltd. & Anr. v. S.C. Pandey*[6] wherein this Court held that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularized in service. The Court also reiterated that the Standing Orders categorize the nature of employment and do not classify individual employees in different post according to the hierarchy created in the Department and thus proviso to Rule 2 does not apply to promotions or regularization in higher grade. We would like to reproduce following paras from the said judgment:

“17. The question raised in this appeal is now covered by a decision of this Court in *M.P. Housing Board v. Manoj Shrivastava* [(2006) 2 SCC 702] wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes; (2) a daily-wager does not hold a post as he is not appointed in terms of the provisions of the Act and the Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularised in service; (4) if an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.

18. The said decision applies on all fours to the facts of this case. In *Mahendra L. Jain* [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] this Court has categorically held that the Standing Orders governing the terms and conditions of service must be read subject to the constitutional and statutory limitations for the purpose of appointment both as a permanent employee or as a temporary employee. An appointment to the post of a temporary employee can be made where the work is essentially of temporary nature. In a case where there existed a vacancy, the same was required to be filled up by resorting to the procedures known to law i.e. upon fulfilling the constitutional requirements as also the provisions contained in the 1976 Regulations. No finding of fact has been arrived at that

before the respondent was appointed, the constitutional and statutory requirements were complied with.

xx xx xx

22. Such appointments, in our opinion, having regard to the decisions in Mahendra L. Jain [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] and Manoj Shrivastava [(2006) 2 SCC 702] must be made in accordance with extant rules and regulations. It is also a well-settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularised in service. Otherwise also the legal position in this behalf is clear as would appear from the decision of this Court in Dhampur Sugar Mills Ltd. v. Bhola Singh [(2005) 2 SCC 470 : 2005 SCC (L&S) 292] apart from Mahendra L. Jain [(2005) 1 SCC 639 : 2005 SCC (L&S) 154].” A direct judgment on the subject is State of M.P. & Ors. v. Lalit Kumar Verma[7] wherein it was held that a workman would be entitled to classification as permanent or temporary employee if the conditions precedent are satisfied. It was held that the respondent was not appointed against the clear vacancy, he was not appointed in a permanent post or placed on probation. This Court, thus, held that working on daily wages alone would not entitle him to the status of permanent employee. Para 7 of this judgment needs to be looked into.

“7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. The respondent was not appointed against a clear vacancy. He was not appointed in a permanent post or placed on probation. He had also not been given a ticket of permanent employee. Working on daily wages alone would not entitle him to the status of a permanent employee.” It is, thus, somewhat puzzling as to whether the employee, on getting the designation of 'permanent employee' can be treated as 'regular' employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, a person who is known as 'permanent employee' would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as 'permanent employee'. Moreover, this Court has, as would be noticed now, drawn a distinction between 'permanent employee' and 'regular employee'.

18. The Hon'ble Supreme Court in case of State of Madhya Pradesh and others vs Amit Shrivastava {(2020) 10 SCC 496} has held in paragraph No. 19 as under :-

“19. We are not required to labour much on the aforesaid issue and really speaking this issue is no more res integra in view of the judgment of this Court in Ram Naresh Rawat v. Ashwini Ray & Ors.,³ which opined that a 'permanent' classification does not amount to regularisation. The case dealt with the aforesaid Standing Orders and it has been observed in paras 24, 26 & 27 as under:-

“24. It is, thus, somewhat puzzling as to whether the employee, on getting the

designation of "permanent employee" can be treated as "regular" employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, a person who is known as "permanent employee" would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as "permanent employee". Moreover, this Court has, as would be noticed now, drawn a distinction between "permanent employee" and "regular employee".

XXXX XXXX XXXX XXXX XXXX

26. From the aforesaid, it follows that though a "permanent employee" has right to receive pay in the graded pay-scale, at the same time, he would be getting only minimum of the said pay- scale with no increments. It is only the regularisation in service which would entail grant of increments etc. in the pay-scale.

27. In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms."

19. In the light of the above stated legal position and also considering the standing orders applicable to the workmen, also considering the evidence and materials on record, I am of the view that the learned Central Government Industrial Tribunal while passing the impugned award has not recorded its finding that permanent vacancy is available or what is the sanctioned strength, has passed the award directing the petitioner to regularise the workmen which is nothing but amounting to creation of posts which is beyond the jurisdiction of the learned C.G.I.T. as such the award dated 16.07.2021 is contrary to the law on perverse finding, therefore it deserves to be interfered by this Court.

20. Accordingly the award dated 16.07.2021 is set aside. The matter is remanded back to the learned Central Government Industrial Tribunal for deciding the case afresh after ascertaining what is the sanctioned strength, whether posts of Helper-Cum-Greaser are available with the petitioner for regularizing the workmen? If the vacancy is available with the petitioner whether the performance of the respondents is satisfactory or not? Then only the reference could be answered by the learned Tribunal. The petitioner and respondents are free to amend their pleading and are also free to bring on record fresh evidence, materials to substantiate their respective contentions.

21. With the aforesaid observation and direction, the writ petition is partly allowed. The record of the learned Tribunal be sent back.