

(2005) 12 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1693 of 2005

Vishnu and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 02-12-2005

Acts Referred:

Constitution of India, 1950 — Article 309
Madhya Pradesh Irrigation Department Work Charged and Contingency Paid
Employees Recruitment and Conditions of Service Rules, 1977 — Rule 2, 4, 4(1), 6, 8
Madhya Pradesh/Chhattisgarh (Work Charged and Contingency Paid Employees)
Pension Rules, 1977 — Rule 2(c)

Citation : (2006) ILR (MP) 312 : (2006) 3 JCR 495 : (2006) 1 JLJ 14 : (2006) 2 LLJ 1135 : (2006) 1 MPHT 374 : (2006) 1 MPJR 269 : (2006) 1 MPLJ 23

Hon'ble Judges : Subhash Samvatsar, J;Rajendra Menon, J;P.K. Jaiswal, J

Bench : Full Bench

Advocate : Neeraj Shrivastava, for the Appellant; S.B. Mishra, A.A.G. and Vivek Khedkar, Government Advocate, for the Respondent

Judgement

Subhash Samvatsar, J.

This matter is referred to the Full Bench as a Single Judge of this Court found that there are conflicting judgments of two Division Benches of this Court on the question- Whether a Gangman can be retired before attaining the age of 62 years. The Division Bench of this Court in the order passed in Letters Patent Appeal No. 51 of 2004, State of Madhya Pradesh v. Bharosi, decided on 27-10-2004 has laid down that a Gangman can not be retired before attaining the age of 62 years. A similar view is taken by another Division Bench of this Court in the case of State of M.P. Vs. Bhajanlal and Others, , while in another case, i.e., Writ Petition No. 5484 of 2002, Gulab Singh v. State of M.P. and Ors., delivered on 10-2-2005 a Division Bench of this Court at the Main Seat at Jabalpur has laid down Gangman can be retired before completion of 62 years of his age. As there is a conflict of judgments on the aforesaid question the matter is referred to this Full Bench for opinion as to which of those judgments lays the

correct law.

From perusal of the judgments in the cases of State of Madhya Pradesh v. Bharosi (supra) and State of M.P. v. Bhajanlal and Ors. (supra), it appears that these judgments lay down that the services of gangmen are governed by the Rules, namely, Madhya Pradesh Public Works Department Workcharged and Contingency Paid Employees Recruitment and Conditions of Service Rules, 1976, hereinafter referred to as "1976 Rules" and hence they can not be retired before attaining the age of 62 years, while in the case of Gulab Singh's case (supra) the Division Bench has laid down that the services of a gangman are not covered by the said Rules and, therefore, the State Government by framing a policy can retire them even before attaining the age of 62 years.

The petitioners before this Court are working as Gangmen for a large number of years though they are appointed as daily rated employees. It is an admitted position that these petitioners are getting monthly salary. Annexure P-I (I) filed in Writ Petition No.1963/05 shows that the petitioner in the petition was appointed as Gangman on 1-1-75 and he was retired by the said order w.e.f. 30-6-05, i.e, he has worked for nearly thirty years on the said post.

Shri S.B. Mishra, learned Additional Advocate General, could not dispute before this Court that all these employees- petitioners were paid salary on monthly basis. Rule 2 of the 1976 Rules deals with the definitions. Rule 2 (b) defines the words "Contingency-paid Employees" which reads as under :-

2. (b) Contingency-paid Employee "means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to "office Contingencies", excluding the employees who are employed for certain periods only in the year;

As per the aforesaid definition contingency paid employees means a person employed for the full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies. However, the employees who are employed for certain limited period only in the year and are excluded from the said definition.

From a bare reading of Annexure P-I (I) it is clear that the petitioners in the present petitions are not employed for a limited period in a year, but they have continuously worked for nearly thirty years.

Another definition which is important in the present case is the definition of the words "Workcharged Employee". Rule 2 (h) of the aforesaid Rules defines the words "Workcharged Employee", which read as under :-

2. (h) "Workcharged Employee" means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily-paid labour and muster roll employed on the work.

As per the said definition Workcharged employee means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster roll employed on the work. Thus, as per the said definition the person who is appointed for specified work in the department is governed by the definition of "workcharged employee". After considering both these definitions it is clear that the present petitioners are governed by the definition of the words "Contingency paid Employee" and not by the definition of the words "Workcharged Employee".

Shri S.B. Mishra, learned Additional Advocate General, appearing for the State has relied upon Rule 4 of the said Rules of 1976 to show that the present petitioners, who are gangmen, are not governed by the Rules. For this purpose he referred to Rule 4 (1) of the 1976 Rules. This rule is relied upon by the Division Bench of this Court in the case of State of Madhya Pradesh v. Bharosi (supra) and also in State of Madhya Pradesh v. Bhajanlal and Ors. (supra), to hold that services of the gangmen are governed by the Rules. In Gulabsingh 's case (supra) also the aforesaid Rule is relied upon by the Division Bench at the Main Seat. As per the said Rule 4 (1) a person who on 1st January, 1974 had completed atleast one year's service as Workcharged employees or contingency-paid employees, and who on that date were holding the posts specified in the schedule and who on that date had not completed the age of superannuation prescribed for employees holding comparable class of posts in the regular employment of the State Government. Learned Counsel for the State has emphasised on the words "posts specified in the schedule". Shri Mishra, learned Addl. Advocate General appearing for the State invited attention of this Court to the schedule attached to sub-rules and pointed out that gangman is not included in the said schedule and, therefore, the gangman is not governed by the said Rules.

Considering this aspect this Court in Gulabsingh's case (supra) has laid down that as Gangman is not governed in the schedule the Rules are not applicable to the case of Gangman and his services are not governed by the said Rules, and, therefore, in absence of Rules, the State Government has discretion to retire a gangman prior to attaining the age of 62 years by framing a policy and such policy decision can not be interfered with by this Court.

After perusing both the judgments we find that while taking the aforesaid view in the case of Gulabsingh (supra) the Division Bench at the Main Seat has failed to notice the Rules namely, M.P. Work Charged & Contingency Paid Employee Revision of Pay Rules, 1977, hereinafter referred to as the "1977 Rules". These Rules are also framed under Article 309 of the Constitution like "1976 Rules" and Schedule attached to the said Rules provides the post of Gangmen.

Rule 2 (c) of the M.P. (Workcharged and Contingency Paid Employees) Pension Rules, 1979, hereinafter referred to as the "1979 Rules" which are also framed

under Article 309 of the Constitution, defines the word "Permanent Employee" reads as follows :-

Permanent employee" means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1st January, 1974.

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.

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.

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.

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