
(1971) 03 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 71 of 1969

V.K. Jain and Another

APPELLANT

Vs

Kamal Singh Thau Singh and Another

RESPONDENT

Date of Decision : 29-03-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 — Section 13

Citation : (1979) ILR (MP) 970

Hon'ble Judges : K.K. Dube, J;A.P. Sen, J

Bench : Division Bench

Advocate : S.K. Dube, for the Appellant; N.P. Mhial, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, J.—This is a Petition under Article 226 of the Constitution filed by M/s. Jiyajeerao Cotton Mills Ltd., a company incorporated under the Indian Companies Act and its Factory Manager for the issue of a writ of certicrari for quashing an order of the Industrial Court, Madhya Pradesh, dated 12th May 1969, directing that the non-Petitioner No. 1 Kamal Singh should be classified as a Supervisor and not as a Jobber and should be treated as such and that he shall be entitled to all the privileges attached to that post.

2. Shortly stated, the facts are that the non-Petitioner No. 1 has bean working as a Supervisor in the Reeling Department of the Mills since the year 1957 but he had not been given the post and pay of a Supervisor. After serving an approach notice on the management, he made an application before the Labour Court, Gwalior, u/s 31(3) of the M.P. Industrial Relations Act, 1960, seeking a declaration that he should be properly classified as a Supervisor and not as a Jobber. Though the Labour Court held that he had, in fact, been working as a Supervisor since the year 1957, it had no jurisdiction to adjudicate upon the question as regards the classification of the post. That decision proceeded on the view, firstly that the demand, in essence, was in regard to promotion, which was

a management function, and not in respect of classification post, falling within the purview of Rule 2 of the Standard Standing Orders which form an Annexure to the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 and, therefore, it had no jurisdiction to pass any orders in respect to it; and secondly, that copies of the approach notice were not served on the Labour Commissioner and the Government Labour Officer as required under Rule 34 of the M.P. Industrial Relations Rules, 1961.

3. Being aggrieved, the non-Petitioner No. 1 preferred a revision before the Industrial Court, Madhya Pradesh. The Industrial Court held that the case of the non-Petitioner No. 1 was not that he wanted promotion to the post of a Supervisor but he wanted that he should be classified as a Supervisor and not as a Jobber since he has been working as a Supervisor for several years. On a true construction of the application u/s 31(3), it was not a case of promotion but it was a case of classification and, therefore, was a matter within the jurisdiction of the Labour Court. In its view, the Labour Court had to test the propriety and legality of the action taken by the management in regard to the classification of the employee. Following the view in *Chalchitra Karmachari Sangh v. Proprietor, Regal Talkies Gwalior* 1963 MPLJ 721 the Industrial Court remanded the case to the Labour Court for a fresh adjudication on the ground that when it came to the conclusion that it had no jurisdiction to adjudicate upon the dispute before it, the opinion expressed by it on the merits of the dispute was, in law, totally ineffective and could not, in any sense, be regarded as an adjudication of the dispute.

4. With regard to the second point, the Industrial Court held that the Petitioners never raised the plea, at any stage of the proceedings before the Labour Court that copies of the approach notice were not given to the Labour Commissioner and the Government Labour Officer not was there any issue framed on it. Should the Labour Court regard this question, even in the absence of a plea, to be of importance, it should frame an issue and allow the parties to lead evidence thereon. The revision was accordingly allowed and the case was sent back to the Labour Court for deciding the case afresh.

5. On remand, the Labour Court found, as a fact, that the non-Petitioner No. 1 has been working on the vacant post of a Supervisor in the Reeling Department since 1957 but has not been given the pay and the grade of that post. Nevertheless, it held that it had no jurisdiction in the matter. The relevant observations in regard to this question are quoted below:

The applicant has prayed that as he has been working on the vacant post of a Supervisor he should be correctly classified as a Supervisor under the Standard Standing Orders, The claim of the Applicant is based on Clause 2 of these Standard Standing Orders. It is an admitted fact that the Applicant is already classified as a permanent worker, but he wants to be classified as a permanent Supervisor because he has been working there for more than 6 months. Now, Clause 2 of the Standing Orders does not refer to post but only to status. Once, a

worker is initially classified permanent, this clause ceases to have further effect. It will not apply for becoming permanent on other higher posts. This view is supported by the decision of the Industrial Court in Revision No. 2 MPIR 1965, Rameshwar v. General Manager, M.P. Road Transport Corporation (Case No. 154 of Digest of Decisions Under M.P.I.R. Act). Under the circumstances, the claim of the Applicant for being classified as a permanent Supervisor under Clause 2 of the Standard Standing Orders cannot be upheld.

6. On the second question, the Labour Court framed an issue as to whether the non-Petitioner No. 1 had sent copies of his letter of approach to the Government Labour Officer and the Labour Commissioner. In regard to that issue, the Labour Court found that the non-Petitioner No. 1 had duly complied with the provisions of the proviso to Section 31(3) and Rule 34 of the M.P. Industrial Relations Rules, 1961 and the application u/s 31(3) of the M.P. Industrial Relations Act, 1960 was, therefore, maintainable.

7. In view of its finding that the claim of the non-Petitioner No. 1 did not fall within the purview of Clause 2 of the Standard Standing Orders, the Labour Court held that he was not entitled to any relief and hence dismissed the application. Against that order, the non-Petitioner No. 1 preferred a revision to the Industrial Court, Madhya Pradesh.

8. In revision, the Industrial Court held that its previous decision in Rameshwar v. General Manager M.P. Road Transport Corporation (*supra*) was not applicable to the facts of the present case. There, the question of classification was based upon reversion whereas in the present case, the Labour Court having held that the non-Petitioner No. 1 had already been working as a Supervisor since 1957, there was no question of promotion and all that he wanted was that he should be classified as a Supervisor and be entitled to all the privileges attached to that post. It also distinguished the decision in Mahendralal Vs. Hindustan Steel Ltd., Bhilai Steel Project (by General Manager) and Another, to the effect that the temporary promotion of a person to a post of higher grade in an officiating capacity is not tantamount to his appointment in a particular capacity or cadre, on the ground that it was nobody's case that the non-Petitioner No. 1 had been temporarily promoted to the post of a Supervisor and as such, the decision in that case was not relevant. Having regard to the fact that the non-Petitioner No. 1 had been working as a Supervisor for more than 12 years, the Industrial Court directed that he should be classified as such and be entitled to all the privileges attached to that post. It accordingly granted a declaration that he was a Supervisor in the Reeling Department of the Mills for the last 12 years and must be treated so.

9. The decision of the Industrial Court has been assailed on three grounds:

(1) The demand was for classification under Rule 2 of the Standard Standing Orders and, therefore, one of promotion;

(2) The Industrial Court has made out a new case for the employee for which

there is no basis; and

(3) It has awarded to him all the privileges and benefits attached to the post of a Supervisor for which there was no approach notice. There was no claim in the application u/s 31(3).

10. On the basis of the approach notice, Annexure A-1 and the application u/s 31(3), Annexure A-II, it is urged that the non-Petitioner No. 1 was claiming to be classified as a Supervisor under Rule 2 of the Standard Standing Orders and, therefore, his claim was one for promotion. It is further urged that classification under Rule 2 of the Standard Standing Order relates to status and not to post, and the only classification provided for was to classify workmen into different categories enumerated therein. The case for promotion is not provided for therein. Reliance is placed on the decision of the Industrial Court in *Rameshwar v. General Manager, M.P. Road Transport Corporation* (supra) in support of this contention, and it is urged that the decision was binding on the learned Chairman and if he disagreed with the view expressed therein, he should have referred the case to a larger Bench. It is further urged that the Standard Standing Orders govern the relation of the parties and they cannot be altered. The remedy of the non-Petitioner No. 1 lay elsewhere to get the Standard Standing Orders modified but he could not approach the Labour Court. Fixing of a person from one post to another is not provided for in Standard Standing Orders and the Labour Court has no jurisdiction to reclassify a workman under Rule 2 of the Standard Standing Orders. A number of decisions were relied upon in support of these contentions broadly laying down that promotion is a managerial function and not within the powers of the Tribunal. It is urged that the Petitioners would not have come against the remand order and, therefore, the finding recorded by the Industrial Court earlier cannot be *res judicata*. Lastly it is urged that there was no warrant for the direction given by the Industrial Court to reclassify the non-Petitioner No. 1 as a Supervisor as he did not possess the requisite classifications.

11. In reply, the contention on behalf of the non-Petitioner No. 1 was that the Petitioners were disentitled by conduct to get any relief, they having acquiesced in the remand of the case and having subjected themselves to the jurisdiction of the Labour Court. The remand may be wrong, but it is binding on the parties as it was not challenged, and the finality of that order cannot now be assailed. The jurisdiction of the Labour Court depended on the terms of the remand order, and therefore it had no jurisdiction to disregard the finding of the Industrial Court in the remand order that this, in reality, was a demand for classification. Even, on merits, the decision of the Industrial Court was correct. There was no order of appointment of the non-Petitioner No. 1 in any capacity and, therefore, his status had to be determined from the nature of his work. There was no evidence led by the management that he was placed in any capacity. He has been treated by the Petitioners to be a Supervisor throughout. He has appeared as a witness on their behalf in that capacity. He has been shown in the job card and other documents pertaining to employment as a Supervisor. The post was not of a temporary

nature and he was not officiating in that post. There were no qualifications prescribed for the post of a Supervisor. There was no suggestion in the written statement that any basic or technical qualification was needed. He has been working in the post since 1957. The vacant post cannot be kept in abeyance. The work was of a permanent nature and the finding is that he was working in a clear vacancy. In the circumstances, he was justified in approaching the Labour Court u/s 31(3) for a change in the terms of employment. He did not ask for promotion. All that he demanded was that he should be properly classified against the post in which he was working. Under item (1) Schedule II of the M.P. Industrial Relations Act, 1960, the Labour Court had jurisdiction to determine the legality and propriety of the action taken, or purporting to be taken by the management. Alternatively, the matter fell within item 6, Schedule II which confers jurisdiction to adjudicate upon any matter relating to employment.

12. Having heard the parties, we have formed the opinion that the decision of the Industrial Court is unassailable. On a plain construction of the approach notice, Annexure A-1 and the application u/s 31(3), Annexure A-2, it is clear that the demand was for classification and not for promotion. That being so, the authorities relied upon for showing that promotion is a managerial function are not relevant. On the findings reached by the Tribunals, there is no manner of doubt that the management is guilty of unfair Labour practice. The non-Petitioner No. 1 does not claim that he should be promoted to a higher post. He already stands promoted to the higher post of a Supervisor and is already working in that post since 1957, i.e., for nearly 14 years now but the management has been wrongly treating him as a Jobber and thereby not only depriving him of the pay and other emoluments attached to the post of Supervisor but also denying to him the status of a Supervisor. This amounts to nothing but exploitation of labour. It is futile to contend that the Labour Court, in a case like this, had no jurisdiction to interfere. The matter could be covered not merely by item 1, but also by item 6 of Schedule II of the Madhya Pradesh Industrial Relations Act, 1960 and, therefore, it had jurisdiction to adjudicate upon the dispute. Under the terms of Rule 2 of the Standard Standing Orders, the management had the statutory duty to properly classify the non-Petitioner No. 1 as a Supervisor, when it was taking the work of a Supervisor from him for all these years but it has committed a breach thereof by showing him as a Jobber, thereby depriving him of his legitimate rights and privileges. In a case like this, the employee is entitled to complain against the action taken by the management. The matter, therefore, falls within the purview of Item 1, Schedule II of the M.P. Industrial Relations Act. Alternatively, he is also entitled to ask for a change in the terms of employment and, therefore, the matter would come within the ambit of item 6 of that schedule. The adjudication by the Industrial Court, therefore, pertained to the matter which was within its jurisdiction. On merits, the Industrial Court was perfectly right in directing the Petitioners to classify the non-Petitioner No. 1 as a Supervisor and to grant a further declaration that he should be treated as such since 1957.

13. The Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 were framed for defining with sufficient precision the conditions of employment of employees in undertakings in the State of Madhya Pradesh. Admittedly, the Standard Standing Orders have been made applicable to the undertaking. The Petitioners were, therefore, bound to comply with the Standard Standing Orders. u/s 13 of the M.P. Industrial Employment (Standing Orders) Act, 1961, if any question arises as to the application or interpretation of a Standing Order, an employer, an employee or a representative of employees may refer the question to Labour Court having jurisdiction and the Court shall, after giving the parties an opportunity of being heard, decide the question and his decision shall be final and binding on the parties. The non-Petitioner No. 1, therefore, had the right to approach the Labour Court, regarding proper classification of his post, u/s 31(3) of the M.P. Industrial Relations Act, 1960.

14. Rule 2 of the Annexure to the Standard Standing Orders reads as follows:

2. Classification of Employees-Employees shall be classified as-(i) permanent (ii) permanent seasonal, (iii) probationers, (iv) bad lies, (v) apprentices, and (vi) temporary:

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Admittedly, the non-Petitioner No. 1 did not fall within the categories (ii) to (vi). He, therefore, came within category (i). The expression "permanent" employee is defined in Clause (i) as follows:

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:

Explanation-In computing the period of six months the days on which employee was absent due to authorised leave, sickness, maternity leave, accident, lock out and strike (which are not illegal) or closure of the undertaking shall be included;

There can be no doubt that the non-Petitioner No. 1 fulfils all the requirements under this clause and he was, therefore, a permanent employee within the meaning of Rule 2(i). He was working in a clear vacancy for more than 12 years as a Supervisor and was, therefore, entitled to be classified as such. There can be no quarrel with the proposition that Rule 2 relates to the status of an employee and does not speak of post and that it does not provide for fixing a person from one post to another post. It only casts a statutory duty on the employer to properly classify an employee having regard to the nature of his work.

15. The Standard Orders have been certified under the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 to have become part of the statutory terms and conditions of service between the Industrial employer and his employees and they govern the relations between the parties. See, Workmen

of Buckingham and Carnatic Mills v. Buckingham and Carnatic Mills (1970) 38 FJR 353 (SC) , The Bagalkot Cement Co. Ltd. Vs. R.K. Pathan and Others, Buckingham and Carnatic Co. Ltd. v. Venkatiah (1963 64 25 FJR 25 (SC), Workmen of Dewan Tea Estates v. Their Management (1963 25 FJR 386 (SC) , Jagat Singh Choudhury Vs. M.P. Electricity Board and Others, and Jagdish Mitra Sharma Vs. Jiyajee Rao Cotton Mills Ltd. and Others, . These authorities lay down that the object of the Act was to require the employers to make the conditions of employment precise and definite and the Act ultimately intended to prescribe these conditions in the form of Standing Orders so that what used to be governed by a contract heretofore would now be governed by the statutory Standing Orders which, after they are certified, constitute the statutory terms of employment between the Industrial establishment in question and its employees. The certified Standing Orders, therefore, represent the relevant terms and conditions of service in a statutory form and they are binding on the parties. The decision in Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd. (1970) 38 FJR 342 (SC) has no relevance because admittedly the Standing Orders which have been framed are confined to matters mentioned in the Schedule to the Act and matters which have been added to the Schedule by the Rules.

16. There is no merit in the contention that the Industrial Court has made out a new case. The case of the non-Petitioner No. 1 throughout has been that he is working as a Supervisor and should be classified as such. We, therefore, need not refer to the authorities relied on for the proposition that adjudication should be confined to the case before the Tribunal and it cannot make out a new case for the parties. We have been referred to the evidence on record for the purpose of showing that there were certain qualifications for the post of a Supervisor. There is no averment in the written statement that any basic or technical qualification is needed for the post of a Supervisor. If that were so, the Management would not have employed the non-Petitioner No. 1 as a Supervisor for all these years and treated him as such. The Petitioners have been unable to point out any provision which prescribes any particular qualification for the post. There is no dispute that he was working in a vacant post of a Supervisor. The Industrial Court rightly points out that that post cannot be kept in abeyance. There was no order appointing the non-Petitioner No. 1 as a Jobber. On the contrary, the job card, Ex. P-1 and the other documents show that he has been throughout treated as a Supervisor.

17. The matters which are of particular interest to individual employee are enumerated in Schedule II of the Madhya Pradesh Industrial Relations Act, 1960 and if a change in respect of any such matters is desired by an employee then he can approach the Labour Court for that purpose after complying with the requirement of the proviso to Section 31(3). There can be no doubt that that requirement and also the one under Rule 34 framed under the Act have been complied with. Item 1 of Schedule II refers to "the propriety or legality of an order passed or action taken by an employer acting or purporting to act under

the Standing Orders". The legality and propriety of the action taken by the Management in showing the non-Petitioner No. 1 as a Jobber when, in reality, he was working as a Supervisor clearly came within the jurisdiction of the Labour Court u/s 31. Apart from this, item No. 6 of Schedule II Speaks of "Employment including-(i) reinstatement and recruitment; (ii) unemployment of persons previously employed in the industry concerned". The definition of "Employment" is an inclusive one, and it relates to any matter relating to employment, such as the post to which the employee is entitled, his status, etc. In Sheo Narayan Choudhari v. A.W. Kanwadikar 1966 MPLJ 1105 Dixit C.J. Speaking for the Division Bench staled as follows:

The term "employment" as used in item No. 6 in Schedule It is wide enough to include any matter reining to wages of an individual employee. It is not confined only to matters relating to bare stale of employment. Section 31(3) no doubt gives to a representative of employees also the right to move the Labour Court for a change in respect of an industrial matter specified in Schedule II. But there may be cases in which the representative may not be sufficiently interested to ventilate the grievance of an individual employee, and, therefore, the Legislature has expressly conferred a right upon the employee who has a grievance in regard to matters contained in Schedule II to move the Labour Court for redress.

So also, in Harris Mineral Supply Co. and Others Vs. Salim M. Merchant and Others, , Dixit C.J. speaking for another Division Bench stated that in determining whether an employee is of a particular category or not, not his designation but the nature of the work done by him, is decisive. There are all matters which fall within the ambit of item No. 6 of Schedule II.

18. On the view we have taken, it is not necessary for us to digress on the other matters agitated before us, such as, whether the Petitioners are disentitled by their conduct from getting any relief; whether they had acquiesced in the remand order or had subjected themselves to the jurisdiction of the Labour Court; whether the jurisdiction of the Labour Court flowed from the terms of the remand order and whether the finality of the remand order can be affected. Nor is it necessary for us to refer to the authorities cited for the proposition that unless the requirements of the proviso to Section 31(3) and Rule 34 are complied with, the employee concerned is not entitled to any relief. We have already stated that the requirements had been complied with in the instant case.

19. In the result, the petition fails and is dismissed with costs. Counsel's fee Rs. 150/-, if certified. The balance of the outstanding amount of security deposit, if any, shall be refunded to the Petitioners.