

(2001) 08 MP CK 0038

Madhya Pradesh High Court (Gwalior Bench)

Case No: Letters Patent Appeal No. 31 of 2000

Chhaya Bhopatkar

APPELLANT

Vs

State of Madhya Pradesh and
Others

RESPONDENT

Date of Decision: Aug. 28, 2001

Acts Referred:

- Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 - Section 2(2)
- Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 - Rule 2

Citation: (2001) 4 MPHT 238 : (2001) 3 MPLJ 585

Hon'ble Judges: S.P. Shrivastava, J; N.G. Karamdelkar, J

Bench: Division Bench

Advocate: A.K. Upadhyaya, for the Appellant; K.B. Chaturvedi, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.P. Srivastava, J.

Heard the learned counsel for the appellant as well as the learned Govt. Advocate representing the contesting respondents.

Perused the record.

This Letters Patent Appeal is directed against an order passed by the learned Single Judge of this Court whereunder while quashing the order passed by the Labour Court affirmed by the Industrial Court, the case has been remanded back to the Labour Court for adjudication as to whether the appellant-workman had worked satisfactorily for a period of six months against a clear vacancy with a direction that for the purpose of a clear vacancy the Labour Court was to examine the recruitment rules and consider whether posts are available providing further that if the posts are

not available then also the question regarding the post on which the appellant could be declared as permanent be considered.

The facts in brief, shorn of details, and necessary for disposal of this appeal lie in a narrow compass : The appellant-workman claimed that she had been working on the post of a Reference Clerk in the Lok Swasthya Yantrikiya Vibhag, Khand Shivpuri on daily wage basis since 13-8-1985 but she had not been classified as a permanent employee and was being paid salary on daily wage basis. It was asserted that under the provisions of the Standing Orders which were applicable to the Lok Swasthya Yantrikiya Vibhag she had matured the rights admissible to permanent appointee on the permanent post of a Reference Clerk. It was also claimed that a permanent clerk was placed in running time scale of pay the basic of which was Rs. 950/- but she was being paid @ Rs. 32.40 per day only. It was also claimed that though she was engaged as a Reference Clerk, she was required to discharge the duties attached to the post of Lower Division Clerk. However, she was not being paid salary as admissible to permanent Lower Division Clerk.

The employer, contesting the claim of the appellant workman asserted that she was appointed on a purely temporary basis on the post of a Reference Clerk and on daily wage basis in a Project in a work-charged establishment in the absence of a permanent vacancy. It was clearly asserted that in the work-charged establishment no clear vacancy was available and the workman was not entitled to get the benefits admissible to a permanent employee. However, in case the proceedings for regularisation are undertaken the workman who stood in the seniority list of such workman at serial No. 202 her claim will be considered.

The Labour Court came to the conclusion that the workman had to her credit satisfactory service for 11 years and she was entitled to be classified as a permanent employee as envisaged under the provisions contained in Clause 2 (vi) of the Standard Standing Orders. Accordingly, it was declared that the workman was a permanent employee from 2-3-1991 i.e., from two years before the date of filing of her application with a further direction that she be paid wages treating her to be a permanent Reference Clerk.

The aforesaid order passed by the Labour Court was challenged in appeal before the Industrial Court without any success.

It may be noticed that in Writ Petition No. 349/97 (The Superintending Engineer, Public Works Department Vs. Raj Kumar Prajapati and others), a learned Single Judge of this Court vide the order dated 10-9-1997 had made a reference for determination of the question of law reproduced below by a Larger Bench :

"Whether the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 will be applicable to the services which are governed by the Rules mentioned in Section 2 (2) and also to those employees where Recruitment Rules have been framed ?"

The aforesaid reference was answered by the Full Bench of this Court in its decision in the case of [Superintending Engineer, P.W.D. and Another Vs. Dev Prakash Shrivastava and Others](#), The Full Bench held that "by virtue of sub-section (2) of Section 2 unless Government notifies that particular rules which are applicable to that Department will exempt the application of the provisions of the M.P. Industrial Employment (Standing Orders) Act, 1961, till that time the provisions of the Act, Rules and Orders issued thereunder will govern that Department".

In the aforesaid decision rendered by a Full Bench of this Court it was also indicated that a person would be entitled to be declared under the Standing Orders as a permanent employee subject to the condition that he has put in six months' satisfactory service against a clear vacancy. Observing further that one of the pre-conditions is the existence of a clear vacancy, the second is that he should have worked against the clear vacancy for a minimum period of six months and the third is that his service should be satisfactory. It was also clarified that it is irrelevant that a man might have worked for 10-15 years and if there is no permanent vacancy available and his service record is not satisfactory, then he cannot be classified as a permanent employee.

The learned counsel for the appellant has strenuously urged that on the facts and circumstances of the present case, the workman concerned was entitled to the status of a permanent employee in view of the ratio of the decision of this Court in the case of *Madhya Pradesh State Road Transport Corporation and another Vs. Narain Singh Rathore and others*, reported in 1994 MPLJ 959, rendered by a Full Bench which decision had not been brought to the notice of the later Full Bench in the case of [Superintending Engineer, P.W.D. and Another Vs. Dev Prakash Shrivastava and Others](#),

As pointed out by the Full Bench in its decision in the case of *Superintending Engineer, PWD and another (supra)*, the expression clear vacancy as used in Clause 2 (i) of the Standard Standing Orders necessarily implied that for getting the benefit secured under that provision, the precondition of the existence of a clear vacancy had to be satisfied. The second precondition which was pointed out was that the concerned workman should have worked against such a vacancy for a minimum period of 6 months and that his service should have been satisfactory.

The provision contained in Clause 2 (vi) of the Standard Standing Orders, however provides as follows :

" "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."

A perusal of the aforesaid provision indicates that in case such a temporary employee as envisaged under the aforesaid provision 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 but this benefit is extendable only to a temporary employee appointed as an additional employee in connection with the temporary increase in the work of a permanent nature.

In the present case, the stand of the employer as has already been noticed hereinabove, consistently had been that the petitioner had been employed as a purely temporary measure on daily wage basis in work charged temporary project in the absence of a vacancy in a sanctioned post.

The Full Bench in its decision in the case of Madhya Pradesh State Road Transport Corporation and another (supra) had indicated that the definitions contained in Clause 2 of the Standard Standing Orders have to be construed in the light of the fact that it is part of the effort directed at classification of employees. It had also been indicated that the definition of permanent employee refers to an employee employed in a clear vacancy while the definition of temporary employee does not refer to clear vacancy.

However, it cannot be lost sight of that while defining the expression "temporary employee" in Clause 2 (vi) of the Standing Orders, the emphasis has been laid on the fact that the work against which the employee is employed on a temporary basis should be of a permanent nature before the employee can be held entitled to the benefits admissible to a "permanent employee" as contemplated under Clause 2 (i) of the Standing Orders and further he should have worked for a period of more than six months as such a temporary employee.

The aforesaid view of the Full Bench of this Court does not militate against the view expressed by the later Full Bench in the case at Superintending Engineer, PWD and another (supra).

In the facts and circumstances of the present case, the decision of the Full Bench in the case of Madhya Pradesh State Road Transport Corporation and another (supra) cannot come to the rescue of the workman appellant.

In view of what has been indicated hereinabove the course adopted by the learned Single Judge cannot be faulted.

Taking into account the facts and circumstances brought on record and the ultimate order passed by the learned Single Judge, we are clearly of the opinion that the order cannot be said to be suffering from any such legal infirmity which may justify any interference therein.

Consequently, this appeal fails and is accordingly dismissed.

There shall, however, be no order as to cost.

L.P.A. dismissed.