

(2012) 01 MP CK 0056

Madhya Pradesh High Court

Case No: Writ Petition No"s. 2513 of 2004 and 3157 of 2003

M.P. Police Housing Corporation

APPELLANT

Vs

Sher Singh and another

RESPONDENT

Date of Decision: Jan. 18, 2012

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2, 25, 25B, 25F

Citation: (2012) 133 FLR 66 : (2012) 4 LLJ 146 : (2013) 1 SCT 78

Hon'ble Judges: Tarun Kumar Kaushal, J; Rajendra Menon, J

Bench: Division Bench

Advocate: K.S. Wadhwa, for the Appellant; Anoop Shrivastava, for the Respondent

Final Decision: Dismissed

Judgement

Rajendra Menon and T.K. Kaushal, JJ.

In W.P. (s) No. 3157/2003 Shri K.S. Wadhwa, learned Counsel for the petitioner.

Shri Anoop Shrivastava, learned Counsel for respondent No. 1.

In W.P. (s) No. 2513/2004 Shri Anoop Shrivastava, learned Counsel for the petitioner.

Shri K.S. wadhwa, learned Counsel for respondent No. 2.

As challenge in both these petitions is made to an award passed by the Labour Court, Bhopal dated 19.9.2003 passed in ID reference case No. 8/97, both these petitions are being disposed of by this common order.

2. For the sake of convenience, the pleadings and material available in the record of W.P. (s) No. 2513/04 is being referred to in this order.

3. Petitioner Shri Sher Singh was working as a daily wages employee in the M.P. Police Housing Corporation. He was initially engaged as a driver on 26.9.1988 and continued to work continuously upto 24.1.1991 when his services are said to be

orally terminated.

4. Inter alia contending that termination amounts to retrenchment and the same is brought about without complying with the mandatory provisions of section 25F and an industrial dispute was raised and on failure of the dispute, the matter was referred for adjudication to the Labour Court.

5. On the basis of the material and evidence available on record, the Labour Court found that the termination to be retrenchment and as the condition precedent contemplated u/s 25F was not being complied with, a direction for reinstatement of the petitioner Sher Singh without back wages was given.

6. W.P. (s) No. 2513/04 is filed by Shri Sher Singh challenging the award denying back wages to him and W.P. (s) No. 3157/2003 is filed by M.P. Police Housing Corporation challenging the direction for reinstatement.

7. Shri K.S. Wadhwa appeared on behalf of respondent No. 2 in W.P. (s) No. 2513/2004 argued that Shri Sher Singh was only a daily wages employee and as a daily wages employee has no right to continue on the post and his services have been terminated due to non-availability of work, it is stated that the order passed by the Labour Court holding the same to be retrenchment as illegal is not proper. That apart, it is stated by him that the Industrial Dispute Act, 1947 does not apply to the police Corporation and, therefore, the reference was illegal. On the aforesaid ground, the award is challenged by the Madhya Pradesh Police Housing Corporation in W.P. (s) No. 3157/2003.

8. As far as the petition filed by Shri Sher Singh is concerned, Shri Anoop Shrivastava argued that once the retrenchment is found to be illegal due to noncompliance of the mandatory provisions of section 25F full pay and back wages should be paid and in not doing so, the Labour Court has committed an error.

9. It is pointed out that the award has been passed in the year 2003 and it is submitted on behalf of the workman Shri Sher Singh that till date, he is neither reinstated nor the benefits have been granted. To the aforesaid contention, Shri Wadhwa points out that the order was passed on 6.4.2004 in which respondent Shri Sher Singh was directed to join duties at Indore but as he refused to join, therefore, he should not make any grievance.

10. Shri Anoop Shrivastava submits that petitioner is working at Bhopal. His services were brought to an end at Bhopal and he was directed to join at Indore, it is stated that the employer has committed an error in so doing.

11. Having heard learned Counsel for the parties and on a perusal of the records, it is seen that the workman Shri Sher Singh Was in continuous employment with the establishment of Madhya Pradesh Police Housing Corporation from 26.9.1988 upto 24.1.1991. During this period, he had completed 240 days of service in the current year and, therefore, finding him to be in continuous employment for one year and

further finding the benefit of section 25F is not granted, the award is passed by the Labour Court.

12. In doing so, we are of the considered view that the labour Court has not committed any error. Once, the petitioner has been in continuous employment for one continuous year as per the provisions of Section 25B of the Industrial Dispute Act. and if the termination does not fall in any of the exempted clause as contemplated in section 2 (oo)(bb), the termination would amount to retrenchment and in the present case as the termination is not covered by any of the exempted clause, the termination was retrenchment and as the same was brought about without complying with the provisions of section 25 (f), it is illegal. Accordingly, in holding the termination to be retrenchment and the same to be illegal, the Labour Court has not committed any error.

13. As far as the contention of the Madhya Pradesh Police Housing Corporation to the effect that it is not an industry is considered, the same is misconceived. The activities of the Madhya Pradesh Police Housing Corporation pertain to construction of houses and various other activities connected with Civil Engineering aspect of the matter and in view of the principles laid down by the Supreme Court in the case of [Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others](#), the activities of the corporation come within the purview of industry as defined u/s 2(j) of the Industrial Dispute Act and the argument of Shri K.S. Wadhwa to the effect that the establishment is not an industry cannot be accepted.

14. Accordingly, in the facts and circumstances of the case, we do not find any error in the award passed by the Labour Court. As far as denial of back wages to the employee is concerned, the employee is only a daily wages employee and, therefore, the employee cannot be granted back wages even if his retrenchment is found to be "illegal. In this regard, the Supreme Court has considered the matter in the case of M.P. State Electricity Board v. Smt. Farina Bee, 2003 (98) FLR 595 (SC) and it has been held that a daily wages employee cannot be granted back wages.

15. In view of the above, we do not find any error in the award passed by the Labour Court so far as it denies back wages to the employee Shri Sher Singh.

16. Accordingly, it is a case where the award passed by the Labour Court seems to be in accordance with law and does not warrant any interference.

17. As far as the action of the Madhya Pradesh Police Housing Corporation in denying posting of the petitioner at Bhopal and directing him to join at Indore is concerned, it is a common ground that Shri Sher Singh is a daily wages employee and once it is found that he is a daily wages employee, he cannot be transferred from the original place of posting in view of the law laid down in the case of Ashok Tiwari v. M.P. Text Book Corporation, decided on 20th April, 2010.

18. Accordingly, in the facts and circumstances of the case, we find no ground to interfere with the award passed by the Labour Court. Accordingly, both the petitions are dismissed. The award passed by the Labour Court is upheld and it is directed that on the petitioner reporting to the competent authority i.e. the Madhya Pradesh Police Housing Corporation at Bhopal, the said authority shall reinstate the petitioner at Bhopal and permit him to work at Bhopal in accordance with law.

With the aforesaid, both the petitions stand dismissed.