

Mathura Pd. Yadav Vs State of Madhya Pradesh

Court: Madhya Pradesh High Court

Date of Decision: July 9, 2010

Citation: (2010) ILR (MP) 1950 : (2010) 4 LLJ 660 : (2010) 4 MPHT 177 : (2010) 3 MPLJ 323

Hon'ble Judges: Ravi Shankar Jha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Jha, J.

The petitioner has filed this petition being aggrieved by communication dated 5-12-2008 by which the petitioner, who is a daily wage employee

working in the establishment of the respondents, has been disengaged on attaining the age of 60 years with effect from 31-12-2008.

It is submitted by the learned Counsel for the petitioner that the petitioner is entitled to continue in service up to the age of 62 years as the age of

superannuation prescribed for the employees of the Forest Department is 62 years.

The respondents have filed their return stating therein that the petitioner is a daily wage employee who was not engaged on a vacant sanctioned

post by following the prescribed procedure and his services are also not governed by the Work Charged and Contingency Paid Employees

(Recruitment and Conditions of Service) Rules, 1976 and in such circumstances the claim made by the petitioner for being continued in service up

to the age of 62 years is misconceived as the age of superannuation prescribed for regular employees of the service by the rules is not applicable to

daily wage employees.

From a perusal of the documents filed along with the petition, it is apparent that the petitioner is a daily wage employee and his engagement is on

day-to-day basis. The learned Counsel for the petitioner has not filed any statutory Rule on record which prescribes 62 years as the age of

superannuation for daily wage employees on the basis of which he can claim to continue in service as of right up to the age of 62 years. It is

pertinent to note here that it has been held by a Full Bench of this Court in the case of H.S. Tripathi (Dr.) Vs. State of M.P. and Others, that the

services of such daily wage employees are not governed by rules and they are not part of any service as their engagement is on day-to-day basis.

The petitioner in his support, has filed a circular of the General Administration Department dated 21-1-2004 wherein in Para 6 it is stated that

those daily wagers who have attained the age of 62 years may not be re-engaged. From a perusal of the said circular, it is apparent that it relates to

taking back of the daily wage employees who had been removed on the ground that they had been engaged after 31-12-1988 and in that context

the aforesaid has been stated by the Department in Para 6. Apparently, the aforesaid circular has no applicability to the petitioner's case nor does

it prescribe any age of superannuation for daily wage employee engaged in the department.

The reliance and assistance sought by the learned Counsel for the petitioner on the Full Bench judgment of this Court in the case of Vishnu and

Others Vs. State of Madhya Pradesh and Others,), is also misconceived as in that case the petitioners who were working on the post of gang men

and whose services were governed by the provisions of the Work Charged and Contingency Paid Employees (Recruitment and Conditions of

Service) Rules, 1976, were held to be entitled to benefit of the rules which prescribed the age of superannuation as 62 years.

In the instant case, as the petitioner's services are not governed by any rules, which prescribe an age of superannuation and as his appointment is

on daily wages on day-to-day basis, he cannot claim continuance in service as of right up to the age of 62 years as a daily wager stands on a totally

different footing from an employee who is appointed on a sanctioned and vacant post in accordance with the provisions of the rules and is part of

the service under the rules.

In the circumstances, no fault can be found with the impugned communication disengaging the petitioner. The petition filed by the petitioner being

misconceived is accordingly dismissed.