(1995) 07 MP CK 0035

Madhya Pradesh High Court

Case No: Writ Petition No. 528 of 1995

M.P. State Road Transport Corporation		APPELLANT
	Vs	
Tiwari V.D. and Others		RESPONDENT

Date of Decision: July 3, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Road Transport Corporations Act, 1950 - Section 34(1)
- Road Transport Corporations Regulations - Regulation 59

Citation: (1997) 3 LLJ 364 : (1996) 1 MPJR 304 : (1995) 40 MPLJ 1012 : (1995) MPLJ 1012

Hon'ble Judges: T.S. Doabia, J

Bench: Single Bench

Advocate: R.D. Jain, for the Appellant; S.B. Mishra, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.S. Doabia, J.

The brief facts for the purposes of this petition be noticed as under:-

The Respondent No. 1 was initially working with the Madhya Bharat Road ways. The concern was later on taken over by the M.P. State Road Transport Corporation (hereinafter referred to as the petitioner-Corporation). The further fact is that the services of the Respondent No. 1 were sought to be brought to an end on his attaining the age of 58 years. He accordingly approached the Labour Court. The Labour Court took congnizance of the matter and while the proceedings were pending, it directed the the petitioner Corporation not to terminate the Services of the petitioner. Later on, decision on mertis was given on October 31, 1994. The copy of this decision is Annexure P/2. The relevant facts which are discernible from the

order of the Labour Court are as under:-

(i) that the Respondent No. 1 was appointed as cleaner with the Madhya Bharat Road Ways on October 20, 1956.

(ii) his salary was Rs. 30/- Per month.

(iii) On the merger of Madhya Bharat Road Ways into the petitioner Corporation, the Respondent No. 1 became an employee of the Corporation on the same terms and conditions on which he was working in Madhya Bharat Road Ways.

(iv) at the time when the Respondent No. 1 attained the age of superannuation he was working as Works Supervisor.

(v) If need arose, he himself would do all those works which ordinarily mechanics were supposed to do. He would make use of the tools as well.

After recording the above findings, the Labour Court came to the conclusion that Respondent No. 1 was a workman and his age of retirement was 60 years.

An appeal was preferred. This appeal was dismissed. One of the reasons which led to the dismissal of the appeal was that in the case of one K.P. Sinha a petition was dismissed by a Division Bench of this Court holding that the case of the respondent therein was covered by the ratio of the decision given by the Supreme Court in the case of S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another, . Copy of this order is Annexure P/1. It is against the above orders, the present petition has been filed.

The learned counsel for the petitioner has argued that Respondent No. 1 being a "Works Supervisor", would not answer the description of the term "workman" and therefore, his case would not be covered by the ratio of the judgment given by the Supreme Court in the case of S.P. Dubey (supra). According to him S.P. Dubey''s case dealt with those employees who were working with Central Provinces Transport Services. In that case, a specific order was passed by the Board of Directors that the age of superannuation would be sixty years. According to him, in the present case, the petitioner is governed by the fundamental rules and unless he is able to show that he is a workman, he cannot claim to continue his services upto the age of sixty years. He has also stated that reliance placed on K.P. Sinha''s case (supra) is totally misplaced as the above decision does not disclose any reasoning and it can have as to what should be the age of superannuation, the present status of the employee should be determined. For this reliance has been placed on Life Insurance Corporation of India and Others Vs. S.S. Srivastava and Others, and a decision of this Court reported as Shafiullah Vs. The M.P. State Road Transport Corpn.,

The counsel also argues that as no finding has been recorded by the Industrial Court that the Respondent No. 1 is a workman or an artisan, therefore, no finding can be recorded by this Court under Articles 226 and 227 of the Constitution of India. According to him Industrial Court has not recorded any finding. It has not

appreciated the legal and factual position and was wrongly persuaded to rely upon Sinha''s case (supra). It is thus argued that even if some relief has to be given in favour of Respondent No. 1, then the matter should be remanded back to the Industrial Court for proper adjudication.

I have considered the matter. Before dealing with the various questions Fundamental Rule be also noticed. Rule 56 reads as under:-

"F.R. 56 (a) Except as otherwise provided, the date of compulsory retirement of a Government servant in superior service, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds, which must be recorded in writing; but he must not be retained after the age of 60 years except in very special circumstances:

"Provided that a workman who is governed by these rules shall ordinarily be retained in service upto the age of 60 years. He may, however, be required to retire at any time after attaining the age of 55 years after being given a month''s notice, or a month''s pay in lieu thereof, on the ground of impaired health or of being negligent or inefficient in the discharge of his duties. He may also be retired at any time after attaining the age of 55 years, by giving one month''s notice in writing".

"For this purpose a ''workman'' means a highly skilled or semi- skilled and unskilled artisan employed on a monthly rate of pay in industrial and work charged establishment".

(b) a Government servant in inferior service should be required to retire at the age of 60. He may not be retained in service after that age except with the sanction of the Government".

The matter was considered by the Supreme Court in S.P. Dubey v. Madhya Pradesh State Road Transport Corporation (supra). One S.P. Dubey was employed with the Corporation. He was made to retire at the age of 58 years. His claim was that the age of superannuation was 60 years. The aforementioned employee was working in Central Provinces Transport Services, The age of retirement in the above Corporation was 60 years. This Corporation was taken over by the petitioner-Corporation. When the petitioner Corporation sought to fix the age of retirement at 58 years he preferred a writ petition in this Court. This was dismissed. An appeal was preferred. The Supreme Court concluded that the age of retirement would be 60 years. The decision given in the case of General Manager, Mysore Road Transport v. Dev Raj Urs, AIR 1965 SC 1027 was taken note of with a view to hold that the instructions issued by the State Government u/s 34 of the Road Transport Corporation Act, 1950 would be binding on it. The matter was dealt with in paras 9 and 10. These read as under:--

"The appellant was in service of the company from 1947 to August 30, 1995. Admittedly, the age of superannuation of the company employees was 60 years. The Government of Madhya Pradesh took over the company with effect from August 31, 1955 by a notification of the same date. The notification specifically stated that the existing staff of the company would not be adversely affected with regard to their conditions of service. It is no doubt correct that on August 31, 1955 rules were operating in respect of the State Government employees according to which the age of superannuation was 58 years but the persons who were serving with the company were taken into Government services with a specific assurance that their conditions of service were not to be adversely affected. When the State Government takes over a private company and gives an assurance of the type it is but fair that the State Government should honour the same. Thus, the State service rules which fixed the age of superannuation at 58 years could not be made applicable to the appellant and other employees of the taken over company. We therefore, do not agree with the reasoning of the High Court. 10. It was then urged that on the transfer of appellant''s services to the Corporation he was governed by Regulations framed by the Corporation under the Act and Regulation 59 provided 58 years as the age of superannuation. We do not agree with the contention. The State Government issued directions u/s 34 of the Act which we have reproduced above. The said directions are binding oh the Corporation. This Court in The General Manager, Mysore State Road Transport Corporation Vs. Devraj Urs and Another, interpreting Section 34 of the Act held us under:

Directions given by the State Government are binding on the Corporation and it cannot depart from any general instructions issued under Sub-section (1) by the State Government. Such instructions have the force of law.... Therefore, breach of the directions given by State Government in the matter of disciplinary action against the respondents was a breach of the statutory duty and made the action of the Corporation amenable to the jurisdiction of the High Court under Article 226 of the Constitution".

In view of the above the argument that the age of retirement should still be 58 years cannot be accepted.

Fundamental Rule 56 was also interpreted in the case of Prithipal Singh Vs. Union of India, . It was held that a person who answers the description of the term ''workman'' is to remain in service till he attains the age of 60 years. It was held that the workman had to satisfy the twin test of being an artisan and also a person who is employed in an Industrial or work charged establishment. Prithipal Singh who was a driver of a staff car was held to be a workman. The Supreme Court was of the view that he has to use his whole body specially his hand and feet to drive the vehicle. He was accordingly treated as a skilled or a semi- skilled person.

Similar view was expressed in Chandigarh Administration through the Chief Engineer v. Mehar Singh 1992 Suppl. 2 SCC 43.

The Shorter Oxford English Dictionary (3rd Ed.) Vol. 1 Page 103 defines the term artisan. According to it, it means:

"1. One who practices and cultivates art, an artist,

One occupied in any industrial act, a mechanic handicraftsman;

Artist has been defined to mean ''one who pursues some practical science, a follower of manual art."

Webster''s Third New International Dictionary Volume I, defines artisan as under:

"1. One who practices an art,

One trained to manual dexterity or skill in a trade.

The Black''s Law Dictionary defines artisan as under:

"One skilled in some kind of trade, craft, or art requiring manual dexterity e.g. a carpenter, plumber, tailor, mechanic".

The word workman and artisan therefore has to be understood in common parlance in a wider sense as engaged in an art or who is an artist. Again any one employed in any of the industrial art or who produces an article of commercial value or utility with dexterity, either by manual labour or with the help of tools or machine and brings into existence a product for the sale or service would be an artisan. An element or an effort not only would be applied to bring into existence an article of commercial goods with dexterity employing manual or technical labour or with the aid of tools. In the present case the Respondent No. 1 has been found to be using not only his experience in guiding his subordinates but does not shirk resorting to the actual use of the tools if the need arises. Such is a finding recorded by the Labour Court. In any case he cannot be placed at a position worse than a driver of a car who was found to be a workman in Prithipal''s case (supra). The respondent would thus be an artisan and a workman.

This petition is without merit. It is dismissed accordingly.