

(2016) 06 MP CK 0027

MADHYA PRADESH HIGH COURT

Case No: W.P. No. 8739 of 2015

M.P. Bijali Meter  
Readers Karmachari  
Sangh

APPELLANT

Vs

The State of Advisory  
Contract Labour  
Board

RESPONDENT

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Date of Decision: June 17, 2016

Citation: (2016) 151 FLR 683 : (2016) LabLR 1026 : (2016) 3 MPLJ 426 : (2017) 1 SCT 58

Hon'ble Judges: Shri R.S. Jha, J.

Bench: Single Bench

Advocate: Shri K.N. Pethia, Learned Counsel, for the Appellant; Shri Mukesh Agarwal,  
learned counsel, for the Respondent

Final Decision: Dismissed

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### Judgement

#### @JUDGMENTTAG-ORDER

Shri R.S. Jha, J.—The petitioners are an association of meter readers who have been engaged pursuant to an agreement entered into by them for the purposes of meter reading on contract basis. It is stated that the petitioners were initially engaged for a period of three years which period was subsequently been extended further by three years but no extension thereafter has been made and the respondents/authorities have now issued the impugned advertisements dated 21.11.2014 and 24.2.2015 seeking to make fresh engagement of meter readers on contractual basis by entering into an agreement with them. In the present petitions the petitioners have stated that they have also filed an application before the State Advisory Contract Labour Board constituted under Section 4 of the Contract Labour (Regularization and Abolition) Act 1970 against the respondents but no decision thereon has been taken. On the basis of the aforesaid contentions, the petitioners have filed the present petitions praying for quashing of the impugned

advertisements; to prohibit the respondents from out sourcing the work of meter readers through service providers; to declare the members of the petitioner/union who have completed more than 240 days of service as permanent and regular employees entitled to all benefits of permanent/regular employee and to declare the action on the part of the respondents authorities to engage meter readers on contract basis as illegal.

2. The issue raised by the petitioners have a checkered history inasmuch as similar issues have been raised before this Court since 2006 and various orders in that regard have already been passed and in one of the cases which has been referred to by the petitioners, W.P. No. 1110/2009 this Court has relegated the petitioners to take up remedies before the Labour Court, pursuant to which the petitioners have taken the issue before the Labour Court which is pending adjudication.

3. The learned counsel for the petitioner when confronted with the aforesaid aspect of pendency of the litigation before the Labour Court and the Board has insisted upon perusing the present petitions regardless of consequences of the decision of the present petitions on the issue pending before the labour court as it is stated that the respondents/authorities are engaging persons on contract basis afresh and are also out sourcing the work of meter readers and therefore, in any case they should be prohibited from doing so till the decision by the Labour Court.

4. At this stage it is noteworthy that the learned counsel appearing for both the parties do not dispute the fact that similar and identical petition raising similar and identical issues, W.P.No. 14090/2015 has been dismissed by this Court relying on the decision of the Supreme Court rendered in the case of Punjab State Electricity Board and another v. Sudesh Kumar Puri (2007) 2 SCC 428 and W.P. No. 20549/2015 has been dismissed by this Court relying on the decision of the Supreme Court rendered in the case of Surinder Singh v. Union of India (2007) 11 SCC 599 as well as orders passed by this Court in W.P. No 15550/2006(s), W.A. No. 1154/2006 decided on 15.11.2006 as modified in MCC No. 1014/2007.

W.P. No. 14090/2015 was decided by this Court on 15.9.2015 in the following terms :-

"Shri Ranjan Benerjee, learned counsel for the petitioner.

Shri Vikram Johri, Learned Panel Lawyer for the respondents/State. Petitioner has filed this petition for the following reliefs:-

1. That this Hon"ble Court may be pleased to quash the advertisement (ANNEXUREP/1) dated 14/05/2015. In alternate, if by virtue of ANNEXURE P/1 further appointments are made, then in such event, the working of the petitioner should not be terminated by the respondents as their working is satisfactory till date.

2. If fresh appointments are to be made by virtue of the advertisement ANNEXURE P/1 then it should only be for the vacant posts and not by terminating the petitioner

and filling up his vacancy.

3. Any other relief which this Hon"ble Court may deem fit and proper in the facts and circumstances, may also kindly be granted in favour of the petitioner together with cost of litigation.

There is a checkered history of litigation as mentioned by the petitioners in this petition. The main contention of the petitioner is that he is an employee of respondent company and is eligible for regularization.

The Electricity Company outsourced the work of meter reading to the private contractors. However, the meter readers are eligible to get regularization. In the petition it is admitted that in the year 2011 the Electricity Company decided to give the work of meter reading on contract basis to the private contractors and through those contractors, the meter readers were performing the job and they were getting fixed amount. On the basis of direction of this Court a reference was referred for adjudication to the Industrial Court and it is pending. The Industrial Court vide order dated 20/11/2014 directed that the conditions of service be not changed during the pendency of the dispute.

The petitioner filed an advertisement Annexure P/1. By the aforesaid advertisement Eskom Media India Pvt. Ltd invited applications for engagement of Computer Operator, Revenue Assistant and Skilled Workers.

Learned counsel appearing on behalf of the Electricity Company has contended that meter readers were not engaged by the Electricity Company. The company had decided to outsource the work of meter reading and thereafter the work was given to private contractors and they engaged the meter readers.

The Supreme Court in the case of Punjab State Electricity Board and another v. Sudesh Kumar Puri (2007) 2 SCC 428 has considered the status of meter readers and observed that the meter readers were not employees of Electricity Board because they were engaged on contract basis and they were paid wages on the basis of meter reading at a fixed rate. The observations of the Supreme Court are as under:-

"The present case is not one of contract labour. On the contrary, there was an agreement governing the engagement. The payment was made per meter reading at a fixed rate and there was no regular employment ever offered to any of the respondents. The provisions of Section 2(oo)(bb) of the Act clearly apply to the facts of the present case. The material on record clearly established that the engagement of the respondent was for specific period and conditional. On the appointment of regular Meter Readers, the engagement was dispensed with. The contracts clearly governed the terms of engagement. Therefore, the orders passed by the Labour Court and the High Court are clearly untenable."

In such circumstances, in my opinion, no relief can be granted to the meter readers in this petition. The reference is already pending before the Industrial Court for

adjudication, if the concerned authority has violated the order passed by the Industrial court, the appropriate remedy is available under law.

With the aforesaid observations the writ petition is disposed off. No order as to costs."

5. From the aforesaid order passed by this Court it is apparent that this Court relying on the decision of the Supreme Court rendered in the case of Punjab State Electricity Board (Supra) has held that the meter readers are not the employees of the electricity board and therefore, no relief can be granted to them.

6. Similar issue was considered by this Court in W.P. No. 20549/2015, which has been decided by this Court on 7.1.2016 in the following terms :

"Shri Chandrahas Dubey, learned counsel for petitioner. Heard on admission.

1. Petitioner, a contract meter reader (presently the contract is extended upto 14.1.2016 vide contract work order dated 14.1.2015-Annexure P/4), calls in question the legality of advertisement dated 20.11.2015 (Annexure P/1); whereby the respondent-Madhya Pradesh Poorva Kshetra Vidyut Vitaran Company Ltd. has invited application for eligible candidates for appointment of meter reader on contract basis.

2. Precise grievance of the petitioner is against eligibility criteria laid down for the appointment and that instead of seeking fresh engagement through open market, the respondent ought to have regularised the services of the petitioner, who has been working on contract basis since 2013.

3. The eligibility prescribed which irks the petitioner is :

**1- "kS{kf.kd ;ksX;rk**

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**(v) & bysfDV~dy@bysfDV~dy ,oe~ bysDV~kfuDI vfHk;kaf=dh fo"k; esa fMxzh]**

**(c) bysfDV~dy@bysfDV~dy ,oe~ bysDV~kfuDI vfHk;kaf=dh fo"k; esa fMlyksek]**

**(l) gk;j lsds.Mjh@ (10+2) iz.kkyh ds vUrxZr d{kk&12 oha mRrhZ.k lfgr nks o"khZ; vkbZ0Vh0vkbZ0 bysfDV~f"k;u@ ok;jesu@ykbuesu mRrh.kZ ,oe~]**

**(n) gk;j lsds.Mjh mRrhZ.k@ (10+2) iz.kkyh ds vUrxZr d{kk&12oha ijh{kk mRrhZ.k@vfHk;kaf=dh ds vfrfjDr vU; fo"k; esa LukrdsRrj@LurkdA**

4. Trite it is that it is the prerogative of the employer to lay down the eligibility. For an authority, reference can be had of the decision in *Surinder Singh v. Union of India* (2007) 11 SCC 599 wherein it has been held -

15. ... It is the prerogative and authority of the employer to lay down suitable service conditions to the respective posts. 16. In our view, in service jurisprudence the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities, which are entrusted to the candidates after their selection to a particular post. All the more, it is important for efficient and effective administration. The basic object of prescribing a minimum qualification is to put a cut off level for a particular job in accordance with the minimum competency required for the performance of that job. The object of prescribing preferential qualification is to select the best amongst the better candidates who possess more competence than the others. Sub-clause (iv) of Clause 2 puts a limit with respect to preferential qualification by way of a clear stipulation that no preference should be given to the qualification above Matriculation. Hence, the preferential qualification was considered to be more effective and efficient and also it was a clear assumption that a candidate possessing the same is best suited for the post in question.

5. Therefore, the grievance raised by the petitioner that because of eligibility prescribed, she will not be able to participate in selection and therefore, the advertisement is bad, cannot be entertained, nor the recruitment taken recourse to vide impugned advertisement, can be interfered with.

6. As regard to claim for regularization, the issue is no more *res integra* and has been decided in *Manoj Kumar Paroha v. Presiding Officer*, Writ Petition No.15550/2006(s), wherein it has been held -

"4. Under the similar circumstances, this Court in W.P. No. 15498/2006(s) decided on 1.11.2006 has dismissed the petition on the ground that after the expiry of the contract an employee has no right to claim any reinstatement or to continue in service. The judgment so passed by this Court in W.P. No. 15498/2006(s) (*supra*) shall have the full application in the present case also.

5. It may also be seen that the Apex Court under the similar circumstances has also deprecated the practise of passing the interim orders by the High Court and the judgment as such is reported in 2005 (3) SCC 79 (*India Literacy Board and Others v. Veena Chaturvedi and Others*). In the said case also, an argument to justify the interim order was submitted by the employee that by issuing periodical appointment orders, unfair treatment and exploitation of labour was taken to be a ground to justify the interim injunction. The Apex Court thereafter deprecated such a practise of granting interim orders, by the High Court, after the expiry of the period of contract. The Apex Court further held that the High Court as an interim measure cannot issue a writ of mandamus for continuing an employee in service.

The relevant extract of paras 14, 15, 16 and 17 of the judgment passed in India Literacy Board (supra) is as under :-

14. Concluding her arguments, learned senior counsel for the respondents submitted that the appellant cannot legally be permitted to proceed with the impugned action pursuant to the impugned advertisement against the posts held by the respondents nor can the appellant discontinue or dis-engage the respondents from service. By issuing periodical appointment orders under the conditions of payment of consolidated monthly amount, the respondents had been subjected to an unfair treatment and to exploitation of labour which is specifically forbidden under the constitutional scheme.

15. We have carefully considered the rival submissions made by respective counsel appearing on either side. We have also perused the orders passed by the learned Single Judge and of the orders passed by the Division Bench.

16. A perusal of the order passed by the High Court would clearly show that the High Court as an interim measure directed issue of appointment order which was not even the main relief claimed in the writ petition. The question is whether the reliefs which are not prayed for or which are not claimed in the petition could have been awarded by the High Court even before the disposal of the main case. Another question would also arise as to whether the writ petition is maintainable against the appellant-Board which according to the appellant is neither an instrumentality of the State nor a State within the meaning of Article 12 of the Constitution of India. A further question would also arise as to whether the appellant is under an obligation to select the respondents as teachers when the contract entered into by them ceased on 30.6.2001.

17. Leave to appeal was sought for by the appellant on the above grounds, among others. It has been consistently held by this Court in various cases that in a case of contractual appointment for a fixed term, no mandamus can be issued for continuing them in service but in the present case as an interim measure a direction has been given by the High Court to issue appointment orders which was not even the main relief claimed in the writ petition."

7. The aforesaid order was upheld in Writ Appeal No.1154/2006 decided on 15.11.2006, wherein it was held -

"3. Mr. K.N. Pethia, learned counsel for the appellant vehemently submitted that the Labour Court should have continued the interim order earlier passed in favour of the appellant. He submitted that in other cases the learned single Judge has passed orders directing continuance of the similar employees engaged on contract in service till the Labour Court decides the matter within a stipulated time and therefore similar directions should have been granted by the learned Single Judge in the writ petition filed by appellant.

4. We are afraid that we cannot accede to the aforesaid prayer made on behalf of the appellant. Admittedly, the appellant was engaged on contract basis as a Meter Reader and the period of contract was extended time to time and the last extension was granted up to 9.2.2006. After 9.2.06, the appellant could not possibly be continued in service until the Labour Court adjudicated the matter and decided that the appellant was entitled to continue in service ever after 9.2.2006. The only protection that is possible to be given to the appellant at this stage is that in case the authorities want to engage any person on contract basis as a Meter Reader in place of the appellant, till a regular appointment of Meter Reader is made, the authorities of the M.P. State Electricity Board will make the offer for such engagement on contract basis to the appellant."

8. In a Review Petition preferred by M.P. State Electricity Board : MCC No.1014/2007, the order-dated 15.11.2006 in Writ Appeal No.1154/2006 was modified in the following terms:

"... Being aggrieved by the order vacating the interim relief, the appellant initially filed W.P. No. 15550/2006(s) which was dismissed by order dated 3-11-2006 holding that no case was made out for interfering in the interim order passed by the Labour Court specifically in view of the fact that the contract period had expired on 9-2-06. This Court by order dated 15-11-2006 passed in the writ appeal concluded that there was no ground to interfere with the order passed by the learned Single Judge, however, while disposing of the petition observed as follows :

"The only protection that is possible to be given to the appellant at this stage is that in case the authorities want to engage any person on contract basis as a Meter Reader in place of the appellant, till a regular appointment of Meter Reader is made, the authorities of the M.P. State Electricity Board will make the offer for such engagement on contract basis to the appellant."

The present applicants who were respondents in the writ appeal have filed the present application for modification/review of the order passed by this Court in the aforesaid writ appeal on the ground that the contractual period of the appellants/Meter Readers in the writ appeal having expired the protection granted by this court deserves to be recalled.

This Court on 13-4-2007 while issuing notice in the present M.C.C. Passed an interim order directing that during pendency of this review the authorities would not be debarred to consider other persons who apply for engagement on contract basis as Meter Readers along with the original appellant/non-applicant No.1.

Learned counsel appearing for the contesting parties agree that the order passed by this Court in the writ appeal be modified in terms of the interim orders passed by this Court wherein it has been provided that the concerned authority may consider other persons along with the non-applicant No.1 for appointment as Meter Readers on contract basis.

In view of the aforesaid agreement expressed by the contesting parties the order dated 15-11-2006 passed in Writ Appeal No.1154/2006 as far as it provided protection to the non-applicant No. 1 only to be engaged as Meter Reader on contract basis is modified to the extent that it shall now be open to the applicant/Board to consider the claim of the appellant along with all other persons who apply for engagement on contract basis, on merits and take a decision thereon in accordance with law.

Shri Nair, the learned senior counsel appearing for the applicants submits that it has been decided by the Board not to make regular appointments of the Meter Readers, however, this aspect has been disputed by the learned counsel appearing for the non-applicant, however, in view of the aforesaid, without entering into the controversy it is further provided that in the event the Board advertises the post of Meter Readers for appointment on regular basis, it would be open to the appellants to apply for the same provided they are eligible for the same, in accordance with law.

The learned counsel appearing for the non-applicant No. 1 submits that the applications under the provisions of M.P. Industrial Employment (Standing Orders) Act, 1961 is pending before the Labour Court. As we have not made any comments on the merits therefore, it is clarified that the same may be decided by the Labour Court on merits in accordance with law. The MCC filed by the applicants is accordingly allowed to the extent indicated above and the order passed in writ appeal stands modified accordingly."

9. It is further contended in similar matters, notices have been issued on admission and interim protection is granted. In the considered opinion of this Court, since notice on admission is not a precedent, nor facts of the cases wherein notices are issued are made known, the petitioner is not benefited from said order; moreso, when no case is found worth admitting.

10. In view whereof, since no relief can be granted to the petitioner, the petition fails and is dismissed. No costs."

7. From a perusal of the aforesaid order passed by this Court in W.P. No. 20549/2015 it is clear that this Court relying on the decision of the Supreme Court rendered in the case of Surinder Singh (Supra) has rejected the challenge to the eligibility qualification prescribed by the authorities by holding that it is the sole prerogative of the employer to prescribe eligibility qualification.

8. As far as the other issues regarding regularisation and continuance in service are concerned, this Court in the aforesaid case has relied on the order passed in W.P. No. 15550/2006(s) wherein this Court had held that once the contract period of an employee has expired, he has no right to claim reinstatement or continuance in service and that in such circumstances no interim order should be passed by the High Court in this regard by relying on the decision of the Supreme Court rendered

in the case of Supreme Court in the case of India Literacy Board and others v. Veena Chaturvedi and others 2005 (3) SCC 79.

9. This Court in W.P. No. 15550/2006(s) has also relied upon the law laid down by the Supreme Court in the case of India Literacy Board (Supra) regarding unfair treatment and exploitation of labour and the obligation if any of the employer to select the respondents for further contractual appointment and continuing them as such and has rejected the same in terms of the law laid down therein. It is also apparent that the order passed by this Court in W.P. No. 15550/2006(s) was assailed by the petitioners in W.A. No. 1154/2006 which was also dismissed on 15.11.2006. The Division Bench by modifying the order passed in MCC No. 1014/2007 has rejected the claim of the petitioners and has denied the relief claimed by the petitioners to continue on contractual appointment or to extend the same. It is also apparent that the Division Bench while rejecting the aforesaid claim had permitted the petitioners along with others to participate in the proceedings held pursuant to the fresh advertisement issued by the respondents.

10. In the instant petitions also, the petitioners' contractual period of engagement is over and it is not disputed that the issues raised and decided by this Court in W.P. Nos. 14090/2015, 20549/2015, 15550/2006(s) and W.A. No. 1154/2006 are similar and identical to the issues raised by the petitioners in the present petitions.

11. The reliance placed by the petitioners on the decision of the Supreme Court in the case of Sudarshan Rajpoot v. Uttar Pradesh Road Transport Corporation (2015) 2 SCC 317 in support of his submission is misconceived inasmuch as the said decision of the Supreme Court did not deal with meter readers whereas the issue raised by the petitioners was directly and substantially in issue before the Division Bench as well as single Bench of this Court in the above referred petitions and has been conclusively decided against them. Needless to state that I am respectfully bound in the decision of the division bench in this regard. As I am respectfully bound by the orders passed by the Division Bench as well as the orders of the Coordinate Bench, I do not find any reason to differ from the view taken by this Court in the aforesaid decisions as there is no ground or fresh issue raised by the petitioners in the present petitions compelling this Court to do so.

12. The present petitions filed by the petitioners being identical to the above mentioned cases are also dismissed in similar terms and on similar and identical grounds.

13. A copy of this order be placed in the record of W.P. No. 14855/2015.