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Court : Madhya Pradesh

Decided On : Jul-13-2015

Judge : Sujoy Paul

Appeal No. : Writ Petition Nos. 7540 of 2013, 7541, 8746 & 8747 of 2013

Appellant : Rajesh Kumar Jain and Others

Respondent : State of M.P. and Others

Advocate for Def. : Shri. Praveen Newaskar

Advocate for Pet/Ap. : Shri. Tapendra Sharma

Judgement :

1. In view of commonality of issues involved, with the consent of parties, matters were finally heard and decided by this common order.

Facts are taken from W.P.No.7540/13.

2. The petitioner was initially appointed on 29.4.1989 as daily wager Sub Engineer in the respondent department. He possess the qualification of diploma in Civil Engineering. The petitioner filed an application under Section 31(3) of M.P. Industrial Relations Act, 1996 before the Labour Court seeking declaration that he be declared as permanently classified employee on the post of Sub Engineering. He also prayed for difference of pay. This case was registered as Case

No.113/96/MPIR. The Labour Court decided this matter on 19.7.1999. The Labour Court gave a finding that the petitioner is entitled to be declared as permanent employee. Resultantly, from 02 years before the date of filing of application before the Labour Court (i.e., w.e.f. 1994) the petitioners were declared as permanent employees. They were directed to be paid arrears of salary of the permanent post also. The State Government preferred appeal before the Industrial Court which was registered as Appeal No. 493/MPIR/99. The appeal was dismissed by order dated 28.9.2001. The order of Labour Court and Industrial Court aforesaid was then put to test before this Court by filing W.P.No. 220/2002. The said W.P. was dismissed on 17.12.2002. Thereafter, the Labour Court issued RRC for recovery of Rs.7,15,000/-. The respondents issued a cheque and paid the said amount.

3. Shri Tapendra Sharma, learned counsel for the petitioner submits that once order of Labour Court classifying the petitioner as permanent employee (Sub Engineer) is upheld till this Court, it was no more open for the respondents to treat the petitioner as a daily wager. He submits that the respondents have committed an error in inserting clause 7 and 8 in order dated 5.11.2009 (Annexure P-1). It is submitted that seniority of the petitioner must be counted from the date of his classification as permanent employee. Clause 8 is assailed on the ground that petitioner cannot be treated as appointed after 1.1.2005. Thus, the pension rules which were applicable before the said date should be made applicable. The impugned order is challenged on the ground of discrimination also. In para 5.9. of petition, it is contended that one Shri Praveen Namdev was also classified as permanent employee. Like petitioner, order in his favour was upheld till this Court. The respondents have passed orders whereby granted him seniority from the date of classification as permanent employee whereas petitioner is given step motherly treatment. Another example of Shri Vijay Kumar Kesarwani is given in para 5.10.

4. Shri Praveen Newaskar, learned counsel for the respondents supported the order Annexure P-1. He submits that pursuant to judgment of Supreme Court in State of Karnataka and others Vs. Uma Devi and others [(2006) 4 SCC 1], a scheme of regularization was prepared. According to this scheme, the employees were directed to appear in the examination. The petitioners appeared in the examination with open eyes and, therefore, they were regularized as per their own

merit. It is submitted that the petitioner cannot claim parity with Praveen Namdev and Vijay Kumar Kesarwani because that will amount to seeking negative equality. In nutshell, the stand of the Government is that once petitioner has appeared in examination and regularized from such date, he cannot claim permanency from the earlier date.

5. No other point is pressed by learned counsel for the parties.

6. I have heard the learned counsel for the parties and perused the record.

7. In the opinion of this Court, this is settled in law that once an employee is classified as permanent employee, as per provisions of Standard Standing Order, he for all practical purposes shall be treated as permanent employee. This aspect is dealt with by this Court in W.P.No. 5813/2010 (Devendra Singh Kansana Vs. State of M.P. and Others). This Court opined as under:-

11. The Standard Standing Orders are made under the provisions of M.P. Standard Standing Order Employment Act, 1961. The provisions of standing order are statutory in nature. This cannot be compared with any executive instructions. If any mode of induction in the standing orders is prescribed, it has to be treated as statutory mode of induction under the law. Considering the aforesaid, the order of the Labour Court was not disturbed and accordingly, the petitioner got the status of permanent employee.

12. In the aforesaid facts and circumstances, in the considered opinion of this Court, the judgment of Umadevi (supra) cannot be pressed into service in the present case. The judgment in Umadevi dealt with case of regularization under the executive instructions and does not deal with specific provisions of Standard Standing Order which are statutory in nature. In the present case, where under the statutory provision, the petitioner's rights are adjudicated and affirmed till this Court, it is no more open for the department to reopen it under the garb of judgment of Umadevi (supra). In other words, the petitioner's right and entitlement regarding classification is settled after the dismissal of the writ appeal and, therefore, that issue cannot be permitted to be reopened by the respondents in any manner. Accordingly, the petitioner became a permanent Sub Engineer on

classification pursuant to the order of the Labour Court. Apart from this, in the facts and circumstances of the petitioner's case filed before the Labour Court and as per the law prevailing he succeeded and got the benefit of classification on permanent post. This judgment has attained finality between parties inter se. This is trite that subsequent change in law will have no adverse impact on a matter which has attained finality. The earlier decision between the parties operates as *res judicata*. In other words, the subsequent legal position even if altered will not have the effect of reopening issue between the parties and the judgment would operate as *res judicata* regardless of subsequent change in the eye of law. This view is taken by Supreme court in 2013 (5) SCC 252 (*Kalinga Mining Corporation v. Union of India*).

14. It is gathered that the respondents had directed various daily wagger employees to undergo written examination/selection for the purpose of their regularization. This mode may be permissible under the executive instructions or as per the policy decision taken by the respondents. The pivotal question before this Court is whether this course was available for the respondents qua the petitioner, who stood classified as a permanent employee pursuant to the Court order, which got a stamp of approval till the Division Bench of this Court.

15. In the considered opinion of this Court, the said course was not permissible qua the petitioner because he stood classified as a permanent employee and once he became permanent employee under the law, there was no question of considering his case for regularization by directing him to undergo the written examination. The petitioner has a valuable legal right to enjoy the status of permanent employee from the date of his classification. (Emphasis supplied)

8. A plain reading of aforesaid portion makes it clear that once petitioner is classified as permanent employee, his said status cannot be taken away on the basis of any executive instruction/policy. The permanent status is much superior than the status of regularization. Once petitioner is classified as permanent employee, question of his regularization does not arise. In W.A. No. 110/2011, this Court (DB) opined as under:

whether an employee comes by way of normal recruitment process or through the process of classification, the fact remains that both i.e. the normally recruited employee and a classified employee work on the same post and perform the same duties. It cannot be held that the classification has any less effect or force as compared to the normal process of appointment, because the classification is also based upon the law in the form of Standing Orders and as such both employees who have been brought into through either of the two processes permitted by law, as permanent employees against a particular post, should be entitled to the same benefits. Taking a contrary view would mean that the employees inducted through classification process would be saddled with an undesirable disability throughout their service, as compared to other employees which may tantamount to violation of the principle of equal pay for equal work . Our view finds support from another Division Bench decision of this Court report in the case of State of M.P. Vs. Ram Prakash (1989 JLJ 36).

For the aforementioned reasons, we do not find any good ground to interfere with the order passed by the learned Single Judge. Accordingly, the writ appeals are dismissed.

9. In view of aforesaid, it is clear that once petitioner is classified as permanent employee, he is entitled to be treated as permanent employee for all purposes. Thus, his seniority has to be counted from the date of acquiring the status of classified/permanent employee. Thus, the respondents have clearly erred in inserting clause 7 in the impugned order dated 5.11.2009. The petitioner cannot be deprived from the fruits of seniority from the date he became member of service as permanent employee pursuant to order of Labour Court. Thus, clause 7 is set aside. The petitioner's seniority shall be counted from the date of classification as permanent employee.

10. Clause 8 shows that it is applicable to such employees who were appointed after 1.1.2005 and aforesaid finding shows that petitioner was classified much before the said date. Hence, clause 8 has been wrongly applied in the case of petitioner. This clause in relation to petitioner is also set aside. Petitioner shall be entitled to get the benefit of pension rules which were applicable before

commencement of the rules mentioned in clause 8 aforesaid.

11. Petitions are allowed. The respondents shall provide all consequential benefits to the petitioners. No cost.

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