SUPREME COURT OF INDIA

State of M.P.

Vs.

Onkar Prasad Patel

C.A.No.6678 of 2004

(Arijit Pasayat and Tarun Chatterjee JJ.)

07.12.2005

JUDGMENT

Arijit Pasayat, J.

1. Challenge in this appeal is to a judgment of the learned Single Judge of the High Court of Madhya Pradesh at Jabalpur dismissing the writ petition filed by the State of Madhya Pradesh and its functionaries; thereby putting its seal of approval on the orders of the Labour Court, Jabalpur (in short, 'the Labour Court') and the Industrial Court, Jabalpur Bench (in short, 'the Industrial Court'). The respondent (hereinafter referred to as the workman) filed a petition under Section 31(3) read with Section 61 of the *Madhya Pradesh Industrial Relations Act, 1960* (in short, 'the M.P.Act'). His stand in the essence was that he was in the services of the Public Health Engineering Department and was working at Jabalpur Sub-Division since 17.11.1991 as a Helper. He prayed for regularization of his services on the ground that he had rendered services for more than six months in a permanent vacant post and, therefore, entitled to be classified as a permanent employee and was also entitled to the difference of salary and consequential benefits. The claim was resisted by the State and its functionaries on the ground that the respondent was not working in respect of a permanent post and his services cannot, therefore, be regularized. Evidence was led by the parties. The Labour Court came to a positive finding that the applicant/workman had not been appointed to any permanent and vacant post by an appointment order and he was not as such entitled to get the benefits of differences in wages, as he was a daily wager. But it directed that from the date of order, he was entitled to get the regular wage rate. This, apparently, was done because the Labour Court felt that he had worked continuously and, therefore, was entitled to be classified the permanent category. It held that the applicant was entitled to be classified in permanent category on the post of worker from 24.05.1994 i.e. two years prior to 24.05.1996 (the date of application) and was to be granted wage rate of regular category from the date of the order of the Labour Court i.e. 26.08.2000. An appeal was filed before the Industrial Court, which was dismissed. The Industrial Court was of the view that since the applicant/workman had worked for more than six months from the date of appointment, he was entitled to the benefit extended by the Labour Court. A writ application was filed before the High Court, which, as noted above, was dismissed. The High Court came to hold that

enough opportunity was granted to the employer to place its case and the employer only exhibited Ex.D-1 and did not want to lead any further evidence. Therefore, the view expressed by the Labour Court and the Industrial Court did not warrant interference.

2. Learned counsel for the appellant-State and its functionaries submitted that in order to be entitled to a declaration for permanency, certain criteria are fixed in terms of the Standard Standing Order framed under the Act. The requirements are (a) the employee must have completed six months satisfactory service (b) the service must have been rendered in a clear vacancy in one or more posts. In the instant case, no evidence was adduced by the claimant/workman to show that there was any clear vacancy. The assertions made in that regard in the petition was denied specifically by the present appellant. In fact, the Labour Court recorded a positive finding that there was no clear vacancy and, therefore, there was no question of his being classified in the permanent category. A specific issue was framed in this regard which reads as follows:

> "Whether the applicant is entitled to be on the post classified in the permanent category on the post of helper from 17.11.1991?"

3. After having held that the applicant/workman had not been appointed to any permanent and vacant post, the directions given do not stand to reason. Unfortunately, the Labour Court, Industrial Court and the High Court did not focus attention on this vital issue.

4. In response, learned counsel for the respondent/workman submitted that Ex.D-1 clearly indicated that the respondent was working continuously and what was the nature of work. Therefore, the views expressed by the Labour Court, the Industrial Court and the High Court do not suffer from any infirmity.

5. The Standing Order in terms of Rule 2 (i) of the *Madhya Pradesh Industrial Employment Standing Orders Rules, 1963* (in short 'Rules') which admittedly was applicable provided, inter-alia, as follows:

> "Rule 2 Classification of Employees –
>
> x x x
>
> (i) A 'Permanent" employee is one who has completed six months satisfactory service in a clear vacancy in one or more posts whether as Probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employees."

6. In view of the clear definition of a "permanent employee", as given in the Standard Standing Order, the applicant/workman cannot be categorized as a permanent employee even though he may have completed six months satisfactory service. The other requirement that the service was rendered in a clear vacancy in one or more posts was not established. The conditions are cumulative and are not independent of each other. That being the position, the

Labour Court, the Industrial Court and the High Court were not justified in directing that the respondent/workman was to be categorized as a permanent employee. That part of the direction is set aside.

7. The appeal is allowed to the aforesaid extent. No costs.