SUPREME COURT OF INDIA

Branch Manager, Madhya Pradesh State Agro Industries Development Corporation

Limited and Another
Vs

S.C. Pandey

Appeal (Civil) 1270 of 2006; Arising Out of Slp (C) No. 24842 of 2004

(S. B. Sinha and P. K. Balasubramanyan, JJ)

24.02.2006

JUDGMENT

S. B. SINHA, J.

Leave granted.

The appellant herein is a statutory corporation and, thus, a 'State' within the meaning of Article 12 of the Constitution of India. The respondent herein was temporarily appointed as a Typist. He was appointed by the Branch Manager, Morena Branch of the appellant whereafter intimation thereto was given to the Regional Manager, stating:

"Shri Vinod Bharga has left the services from this Office and now Shri S.C. Pandey has been temporarily appointed as a Typist w.e.f. 16th September, 1985. The original application of Shri Pandey is enclosed herewith. Please issue necessary orders."

He appears to have been appointed an daily wages. His services were terminated by an order dated 18.7.1987 with immediate effect by the Regional Manager on the ground that his services were no longer required.

On or about 23.8.1987, assailing the said order of termination, he filed an application before the Presiding Officer, Labour Court No. 2, Gwalior wherein an interim order was passed not to remove him from services. Although, the order had been given effect to, but in view of the said interim order, he was allowed to continue in service. Before the Labour Court the appellant inter alia raised a contention that the respondent had been illegally appointed by the then Branch Manager and, thus, he derived no legal right to continue in service. It was categorically stated that the employees of the said undertaking are governed by the Rules and Regulations framed by the Corporation known as Service Recruitment Selections Regulations, 1976 (hereinafter referred to as '1976 Regulations') in terms whereof only the Managing Director was designated as the appointing authority.

The issues which inter alia arose for consideration before the Labour Court were:

"(4) Whether the petitioner was appointed on contingency and due to which he is not entitled to be regularized?

(6) Whether the order of termination of petitioner is legal and valid, because his appointment itself was illegal?"

The Labour Court held that the M.P. Industrial Employment (Standing Orders) Rules, 1963 framed under M.P. Industrial Employment (Standing Order) Act, 1961 are applicable to the Corporation. On a finding that the respondent was appointed against a vacant post, it was held that he had acquired a right to be appointed as a regular/permanent employee in the post of typist purported to be in terms of the proviso appended to Rule 2 (4) of the Standing Orders. The order of termination was also held to be bad in law, although, no reason therefor was assigned. The Labour Court without considering the contentions raised by the appellant - Corporation held:

"Since the petitioner is in continuous service of the respondents in compliance of the interim orders of this Court and it has already been decided that the petitioner is entitled to be regularized on the post of Typist, therefore, the respondents are hereby directed to regularize/classify the petitioner on the post of typist within a period of 30 days of this order with effect from 6 months after 16.9.1985 and will also pay to the petitioner the difference between regular pay scale of permanent post and pay scale given to him, from the date of his regularization along with other consequential benefits."

An appeal preferred by the appellant herein against the said order before the Tribunal was dismissed inter alia on the ground that the respondent was accepted as a working staff in the Morena Office and he had been transferred to Gwalior by an order of the Regional Manager himself. Before the

Tribunal reliance was placed on behalf of the appellant- Corporation upon a decision of a Full Bench of the Madhya Pradesh High Court in M.P.S.R.T.C v. Narayan Singh Rathor and Ors. [1994 MPLJ 959]. The said decision was distinguished by the Tribunal stating that as therein the employee was claiming the benefit of the Standard Standing Order in the promotional post, it had no application to the fact of the case. Despite the fact that before the Labour Court the respondent made a prayer that his services may not be terminated, although it stood terminated, the Tribunal opined that the law of pleadings should not be strictly applied to the labour cases on the purported ground that the services of the respondent were not terminated legally or properly.

The writ petition filed by the appellant-Corporation herein before the High Court of Madhya Pradesh at Gwalior was also dismissed. The High Court applied the principles contained in Section 25B of the Industrial Disputes Act and opined that the termination of services of the respondent was illegal. A Letters Patent Appeal thereagainst was summarily dismissed by a Division Bench of the High Court. Ms. Hetu Arora, the learned counsel appearing on behalf of the appellant-Corporation in assailing the judgment of the High Court, would contend that as the respondent herein had not been able to establish that he was appointed in the services of the appellant-Corporation in terms of the provisions of the regulations governing selection and appointment, the impugned order cannot be sustained. Reliance, in this behalf, has been placed on Mahendra Lal Jain & Ors. v. Indore Development Authority & Ors. . Mr. Ashok Mathur, the learned counsel appearing on behalf of the respondent, on the other hand, submitted that as a finding of fact has been arrived at that there was a clear vacancy, and as he has satisfactorily worked for a period of more than six months, he was rightly held entitled to be classified as a permanent employee in terms of the provisions of the Standing Orders. It was furthermore contended that in view of the fact that the provisions of the Standing Orders relating to classification were rightly invoked at the entry point being a case of appointment and not promotion. Strong reliance has been placed on Dwarika Prasad Tiwari v. M.P. State Road Transport Corporation & Anr. 69.

The Industrial Courts and High Court inter alia proceeded on the basis that the respondent having completed 240 days of service during the preceding 12 months, he should have been regularized in service. Section 25-B of the Industrial Disputes Act was also invoked on that premise. The Labour Court, however, wrongly equated classification with regularization. The term 'regularization' does not connote permanence. The question raised in this appeal is now covered by a decision of this Court in M.P. Housing Board & Anr. v. Manoj Srivastava [Civil Appeal arising out of SLP (Civil) No. 27360/04 disposed of this date] wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes; (2) A daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) Only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularized in service; (4) If an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.

The said decision applies on all fours to the facts of this case. In Mahendra Lal Jain (supra) this Court has categorically held that the Standing Orders governing the terms and conditions of service must be read subject to the constitutional and statutory limitations for purpose of appointment both as a permanent employee or as a temporary employee. An appointment to the post of a temporary employee can be made where the work is essentially of temporary nature. In a case where there existed a vacancy, the same was required to be filled up by resorting to the procedures known to law i.e. upon fulfilling the constitutional requirements as also the provisions contained in the 1976 Regulations. No finding of fact has been arrived at that before the respondent was appointed, the constitutional and statutory requirements were complied with.

A Constitution Bench of this Court in State of Punjab v. Jagdip Singh & Ors. has categorically held that if an order of confirmation is passed when no post was available and that too by a person who was not authorized therefor, the appointment would be void. We have noticed hereinbefore that the Branch Manager in his letter dated 27.9.1985 addressed to the Regional Manager stated that the respondent had already been appointed w.e.f. 16.9.1985. Before the Labour Court, the offer of appointment had not been produced. It had not, therefore, been disclosed as to on what terms and conditions he was appointed.

A Full Bench of the Madhya Pradesh High Court in Narayan Singh Rathor (supra) held:

"Service conditions are essentially matters of agreement between employer and the employee. Where the employer frames regulations or rules relating to conditions of service, they are treated as part of the conditions of service of the employee. M.P. Industrial Employment (Standing Orders) Act, 1961 was enacted to provide for rules defining with sufficient precision in certain matters the conditions of service of employees in certain undertakings in the State. It contemplates statutory interventions in service conditions of employees in certain undertakings. Rules have been framed under the Act. There is no doubt that the intention is to improve the service conditions of the employees and ensure that they are not adversely affected by unilateral action of the employers. But the contours of intervention cannot be extended beyond the statutory frame work."

In Dwarika Prasad Tiwari (supra), whereupon Mr. Mathur placed reliance, a Division Bench of this Court accepted the views of the Full Bench in Narayan Singh Rathor (supra). However, it was held that the Standing Order categorizes the nature of employment and it does not classify individual employees in different posts according to the hierarchy created in a department and thus the proviso to Rule 2 does not apply to promotions or regularizations in higher grade. Such appointments, in our opinion, having regarding to the decisions in Mahendra Lal Jain (supra) and Manoj Srivastava (supra) must be made in accordance with extant rules and regulations. It is also a well settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularized in service. Otherwise also the legal position in this behalf is clear as would appear from the decision of this Court in Dhampur Sugar Mills Ltd. v. Bhola Singh apart from Mahendra Lal Jain (supra).

The Industrial Court as also the High Court applied the principles of estoppel on the finding that the respondent was transferred from Morena to Gwalior. If his appointment was void, being contrary to regulations, in our opinion, the procedural provisions like estoppel or waiver were not applicable. If an appointment made by the Branch Manager was wholly without jurisdiction, the order of appointment itself was void. Furthermore, the contention of the appellant had been that in terms of Regulation 16 of 1976 Regulations only the Managing Director of the Corporation could issue an offer of appointment. It has not been found by the Industrial Courts or the High Court that the Branch Manager and the Regional Manager were authorized to make such appointments. The appointment of the respondent, thus, must be held to have been made only to meet the exigencies of services and not in terms of the service regulations. The appointment of the Respondent, thus, could not have been made for filling up a regular vacancy for the purpose of invoking Rule 2 of the Standing Orders.

However, it has not been contended that the services of the respondent were not governed by the provisions of the Industrial Disputes Act. He worked from 16.9.1985 to 19.5.1987. He must have, thus, completed 240 days of service. The termination of his services without complying with the provisions of Section 25F of the Industrial Disputes Act was, thus, illegal. He, however, had unjustly been directed to continue in service by reason of an interim order. He has been continuing in service pursuant thereto.

The appellant, in our opinion, cannot be made to suffer owing to a mistake on the part of the court. The respondent also cannot take advantage of a wrong order. In the peculiar facts and circumstances of the case, we, therefore, of the opinion that interest of justice would be sub-served if, in place of directing reinstatement of the services of the respondent, the appellant is directed to pay a sum of Rs. 10, 000/- by way of compensation to him. It is directed accordingly. The orders under challenge are set aside. The appeal is allowed with the aforementioned directions and observations.

There shall be no order as to costs.