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DWARKA PRASAD TIWARI

v.

M.P. STATE ROAD TRANSPORT CORPORATION AND ANR.

SEPTEMBER 13, 2001

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[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Labour Laws:

M.P. Industrial Employment (Standing Order) Rules, 1963.

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Appellants/Workmen approached Labour Court for classification of higher posts and for payment of Salaries on higher posts in which they were working—Clause 2(i) and (vi) of Annexure to the Rules—Scope of classification—It deals with classification and not promotion—Classification means nature of employment viz. permanent, seasonal, probationer, badlis, apprentices and temporary—Labour Court allowed the claim—On appeal High Court held—Proviso to standing order does not apply to promotion or regularisation in higher post—On appeal held: No interference with the views expressed by High Court—However, employees should be paid emoluments as attached to higher post for the period served/or serving.

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The appellants were workmen holding different Posts but had been discharging duties on higher Post. They approached the Labour Court for classification in terms of clause 2 of Annexure to M.P. Industrial Employment (Standing Order) Rules, 1963 as regards the posts served and also for payment attached to higher posts for the periods served.

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The Labour Court allowed the claim of the petitioners/appellants. Writ Petitions were preferred against the order of Labour Court. Single Judge of High Court allowed the writ petitions. Against the order of Single Judge, appeals were preferred which were dismissed. Hence these appeals.

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Dismissing the appeals, the Court

HELD : 1. It is not necessary to set out the law on the matter nor is it necessary to remand the case after setting aside the order. However, the matter is examined on merit. [78-G-H]

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Lokmat News Paper Pvt. Ltd. v. Shankar Parshad, [1999] 6 SCC 275;

Umaji Keshao Meshram v. Radhikabai, [1986] Supp. SCC 401; *Ratnagiri Distt. Central Co-op. Bank Ltd. v. Dinkar Kashinath Water & Ors.*, [1993] Supp. 1 SCC 9 and *Sushilabai Laxminarayan Mudliyar & Ors. v. Nihalchand Waghjibai & Ors.*, [1993] Supp. 1 SCC 11, relied on.

2. Clause 2 of Annexure to the M.P. Industrial Employment (Standing Order) Rules, 1963 pertains only to classification at entry stage and not to promotion. Employees posted temporarily on higher promotional post cannot claim status of permanent employee under this clause. [79-D]

M.P. State Road Transport Corporation v. Narayan Singh Rathore & Ors., (1994) M.P.J. 1959 and *K.K. Krishnan v. Industrial Court of M.P. Indore*, (1992) M.L.J. 570, approved.

3. Under the relevant statutory orders employees have been classified as permanent, seasonal, probationer, badlis, apprentices and temporary. A permanent employee is an employee who served satisfactorily on a post against clear vacancy and therefore relates to employment as such and not to the category of the post in which a person is employed. There is a clear distinction between the nature of employment and hierarchy of the post in which a person is employed. The relevant standing order categorises the nature of employment and it does not classify the individual employees in different posts according to heirarchy created in a department. Proviso to standing order does not apply to promotions or regularisations in higher posts. It applies only to temporary employees as defined in standing order. If the proviso is applied to promotions, it will affect the future of several other employees because promotions are dependant upon conditions of service laid down for uniform application. If the permanent status is granted to officiating employees without following the due procedure for promotion, such a conclusion would be wholly unfair and would allow those in fortuitous circumstances to be put incharge of higher posts, ignoring the claims of other eligible employees and would lead to disastrous consequences. Thus, the High Court was right in its view. It is also clarified that appellants should be paid emoluments as attached to higher post for the period they had discharged their duties or are discharging their duties.

[81-H; 82-A-B; C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 636 of 1998.

From the Judgment and Order dated 20.3.97 of the Madhya Pradesh High Court in W.P. No. 957 of 1995.

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C.A. Nos. 2372-2373 and 2375-2378 of 1999.

Dr. T.N. Singh, L.S. Chauhan, N.R. Choudhary, Somnath Mukherjee, J.S. Pandey, Shiv Sagar Tiwari and Rajesh Singh for the Appellant.

B. A.K. Chitale, Niraj Sharma, A.K. Srivastava, Ms. J.S. Wad, Ashish Wad, Ms. Niharika Bahl and Manoj Wad for the Respondents.

The Judgment of the Court was delivered by

C **RAJENDRA BABU, J.** The appellants before us are workmen on the establishment of the M.P. State Road Transport Corporation. In these appeals the workmen had approached the labour court for classification as Booking Agents and for payment of wages for different periods for which they had worked as such on the establishment of the first respondent. The appellant in Civil Appeal No. 636 of 1998 sought to be classified as Traffic Supervisor- II on the ground that though he was holding the post of Booking Agent but was directed to discharge the duties of Sub-Depot Incharge which is equivalent to the post of Traffic Supervisor-II. The appellants in the other appeals also claimed a similar benefit. The labour court allowed the claim of the appellant. Writ petitions were preferred against the same. The learned Single Judge, following the decision of the Madhya Pradesh High Court in *Madhya Pradesh State Road Transport Corporation v. Narain Singh Rathore & Ors.*, (1994) MPLJ 959, allowed the writ petitions and set aside the orders made by the labour court. Letters Patent Appeals were preferred against the order made by the learned Single Judge in each of these cases either by a common or by a separate order quashing the order made by the labour court.

F In this Court the principal contention urged on behalf of the appellants is that the writ appeal was maintainable on the Letters Patent side.

G This Court in *Lokmat Newspapers Pvt. Ltd. v. Shankarprasad*, [1999] 6 SCC 275, has explained the legal position in this respect after adverting to the decisions of this Court in *Umaji Keshao Meshram v. Radhikabai*, [1986] Supp. SCC 401; *Ratnagiri District Central Co-operative Bank Ltd. v. Dinkar Kashinath Watve & Ors.*, [1993] Supp 1 SCC 9; and *Sushilabai Laxminarayan Mudliyar & Ors. v. Nihalchand Waghjibhai Shaha & Ors.*, [1993] Supp 1 SCC 11. Therefore, it is no longer necessary for us to set out the law on the matter nor is it necessary to remand the case after setting aside the order made in the writ appeal to examine the case in the light of the decision of this Court.

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However, we propose to consider these matters on merits as is done by the learned Single Judge.

The learned Single Judge followed the decision of the Full Bench in *Narain Singh Rathore* (supra) and, therefore, what is necessary to be considered in these cases is the correctness of the view expressed by the Full Bench therein.

The Full Bench held that under the Madhya Pradesh Industrial Employment (Standing Order) Rules, 1963, clause 2(i) and (vi) of the Annexure to the said Rules pertains only to classification of employee which relates to classification at entry stage, that is, on the stage at which person enters employment and not to promotion stage. Employee posted temporarily on higher promotional post cannot claim status of permanent employee in the said post under clause 2 on the plea that what he is seeking is classification and not promotion. This decision accepted the correctness of the decision in *K.K. Krishnan v. Industrial Court of M.P., Indore*, [1992] MLJP 570.

After advertng to the decision in *K.K. Krishnan's* case in detail, this is what the Full Bench of the High Court in *Narain Singh Rathore* (supra) stated:

"Clause 2 of the Standing Orders in the Annexure to the rules deals with classification of employees. This is in relation to item No. (1) of the Schedule to the Act. It says that the employees should be classified into six categories, i.e., permanent, permanent seasonal employee, probationer, Badli, apprentice, temporary employee. It defines each of these six categories. A permanent employee is one who has completed six months' satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise or a person whose name has been entered in the muster-roll and who is given a ticket of permanent employee. Temporary employee has been defined as an employee who has been employed for work which is essentially of a temporary character or who is temporarily employed as an additional employee in connection with temporary increase of the work of permanent nature. Where he is required to work continuously for six months, he shall be deemed to be a permanent employee. The definitions have to be construed in the light of the fact that it is part of the effort directed at classification of employees. Definition of permanent employee refers to an employee employed in a clear vacancy while the definition of temporary employee does not prefer to clear vacancy. Clause (3) deals with 'ticket' and allied matters. Employees other than those belonging to clerical, supervisory or technical personnel shall be

- A provided tickets which will bear the name of the Department, date of entry in service, his number, the record of daily attendance etc. Badli employee shall be provided Badli Card. Temporary employee shall be provided temporary card. Apprentice shall be provided with apprentice card." [pp. 967, 968]
- B "All the decisions of this Court referred to earlier are unanimous in regard to one aspect, namely, what is dealt with in clause (2) of the Annexure to the Rules is classification and not promotion. An employee can claim classification but not promotion by virtue of this clause. A probationer may be confirmed, a Badli may be absorbed and an apprentice may be regularly employed. He may become permanent employee. Once an employee becomes eligible or entitled for status as permanent employee he is entitled to the consequential classification. When the employee acquires the status of a permanent employee, so far as he is concerned, Clause (2) of Annexure to the rules would have worked itself out. There is no question of such permanent employee acquiring permanent status again under clause (2). Once he acquires the status of permanent employee, he is protected to the extent contemplated by law and the regulations or rules relating to service conditions. If the conditions of service provide for a channel of promotion, he is entitled to look forward to be considered for such promotion and if he is denied promotion, it may be open to him to ventilate his grievance in an appropriate forum. In other words, the classification contemplated in Item-I of Schedule to the Act and Clause (2) of the Annexure to the Rule is classification at a stage which could be spelled out from the classification contemplated namely, permanent, permanent seasonal, probationer, Badli, Apprentice and temporary.
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- F The stage is only the entry stage, i.e., the stage at which the person enters employment. The classification cannot relate to the stage of promotion or the promotion post which can be governed only by the service conditions applicable to the employees. Rules or Regulations framed by the Corporation providing for channel or promotion do not in any way detract from the Standing Orders and Clause (2) of the Annexure to the rules does not detract in any way from the scheme of promotion provided by the rules or regulations. To say that an employee who was asked to work on a higher post for a period on account of exigencies of situation is not asking for promotion and he is asking only for appropriate classification on the post on which he is working is to ignore both the scheme underlying the rules relating to classification
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and the promotion rules. An employee may be asked to work in a higher post for some time on account of administrative exigencies. He does not thereby acquire a right to the higher post, as long as he has not been promoted by the Competent Authority in accordance with the regulations or rules and on a consideration of all employees in the feeder categories who are in the field of choice. An employee who is not entitled to be considered for promotion or who is yet to be considered for promotion and therefore, cannot be deemed to have been promoted, cannot secure the same end by stating that what he is seeking is classification and not promotion. What cannot be achieved directly cannot be permitted to be achieved in an indirect manner. It is one thing to say that an employee who has been asked to work in a higher post temporarily must get the emoluments attached to the higher post; it is quite a different thing to say that he must be regarded as a permanent incumbent of the higher post by being classified as such. The question of exploitation and unfair labour practice does not arise since it will be the duty of the employer to pay him the emoluments attached to the higher post as long as he discharges the duties attached to the higher post and on the failure of the employer, it will be open to the employee to enforce his claim. In a large organisation like the Corporation with offices and bus-stations spread over the vast expanse of the State, it may not always be possible, though it may be desirable, for the competent authority to keep a watchful vigil and take prompt action for filling up the promotional post on occurring of the vacancy. Officers in far off places may have to make temporary arrangements for discharge of the duties attached to the higher posts which fall vacant. They can only entrust the duties to an employee available locally who may not have the requisite seniority or even the eligibility for being considered for promotion. It is not in the scheme of clause (2) of the Annexure to the rules to convert such temporary arrangement into a permanent one. The scheme of classification spells out clearly the underlying intention that it is intended to apply to the entry stage and not to promotional post." [pp. 968, 969]

Under the relevant Standing Orders employees have been classified as permanent, permanent seasonal, probationer, *Ba illis*, apprentices and temporary. A permanent employee has been defined to be an employee who has completed six months satisfactory service in a clear vacancy. Standing Order, therefore, relates to employment as such and not to category of posts in which a person

A is employed. There is a clear distinction between the nature of employment and the hierarchy of the post in which the person is employed. The relevant Standing Order categorises the nature of employment and it does not classify the individual employees in different posts according to the hierarchy created in a department. Thus, the employees have been classified according to the nature of their employment as permanent, permanent seasonal, probationer, *Badlis*, apprentices and temporary. Proviso to Standing Order does not apply to promotions or regularisations in higher posts. It applies only to temporary employees as defined in Standard Standing Order and on fulfilling the requirement of the proviso such employees get the status of a permanent employee. If the proviso is applied to promotions, it will affect the future of several other employees because promotions are dependant upon conditions of service laid down for uniform application. If the permanent status is granted to officiating employees without applying the conditions of service only on the basis that such employees were required to work for six months or over in officiating capacity which is only a stop gap arrangement made without following the due procedure for promotions, such a conclusion would be wholly unfair and would allow those who were in a fortuitous circumstance of being available at a station or depot to be put in charge of a higher post without considering the claims of other eligible employees. Hence, if any other conclusion is reached, it would lead to disastrous consequences. Therefore, the line of reasoning adopted by the High Court is perfectly in order.

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However, Dr. T.N. Singh, learned Senior Advocate appearing for the appellants, drew our attention to the decision of the High Court in *V.K. Jain & Anr. v. Kamal Singh Thausingh & Anr.*, (1978) MPLJ 664. In that case the workman concerned was working as Supervisor for nearly 14 years but the Management had not given him either the post or pay of Supervisor. Therefore, the workman approached the labour court for directing the employer to classify him as Supervisor and grant him pay accordingly. It was contended on behalf of the Management that the workman was claiming promotion and, therefore, the labour court had no jurisdiction, the function being within the jurisdiction of the Management. It was held in that case that what the workman was asking for was not promotion but for appropriate classification under Rule 2 of the Standing Orders and that case was covered by Item Nos. (i) and (vi), Schedule II of the M.P. Industrial Employment (Standing Orders) Rules and the labour court had jurisdiction. In that case, there was no detailed consideration of the nature of the Standing Order 2 as has been done as closely as in *K.K. Krishnan's* case (supra) and *Narain Singh Rathore's* case (supra) wherein the entire scheme

of the provision was considered. We have applied our mind to relevant provisions and the view of the High Court and we have also analysed the provisions *vis-a-vis* the arguments of the learned counsel for the appellants. We think, the view expressed by the High Court in this respect appears to be correct and calls for no interference as on all aspects on which the learned counsel for the appellants argued are covered by the passages quoted by us above. We think that the basis upon which the conclusions have been reached is sound. We further make it clear that for the periods for which the appellants had discharged their duties or are discharging their duties attached to the higher post, they should be paid emoluments as attached to that higher post.

Subject to what is stated above, these appeals deserve to be and are dismissed. No costs.

S.K.S.

Appeals dismissed.

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