

संजय कुमार अंधवान
प्रमुख अभियंता



लोक स्वास्थ्य यांत्रिकी विभाग
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भोपाल, दिनांक 23/2/23

डियर सिडि,

संदर्भ

1 कार्यपालन यंत्री
बड़वानी का पत्र क्र.
5287 दि.17.02.2023

2 माननीय श्रम
न्यायालय खंडवा के
प्रकरण क्रमांक 18/
आईडीएक्ट/2016
एवं 04,05,06,07
आईडीएक्ट/2022

कृपया संदर्भित प्रकरणों का अवलोकन करने का कष्ट करें। इन सभी प्रकरणों में माननीय श्रम न्यायालय खंडवा द्वारा ट्रायसेम मैकेनिकों को स्थायी वर्गीकृत करने एवं उन्हें नियमित वेतनमान (बिना वेतन वृद्धि के) देने के आदेश दिये गये हैं। प्रकरण क्र.18/आय.डी.एक्ट/2016 (कान्हा पिता कालूराम भालसे एवं 12 अन्य विरुद्ध म.प्र. शासन एवं अन्य) में माननीय उच्च न्यायालय खंडपीठ इंदौर के समक्ष रिट पिटीशन दायर करने की अनुमति दी जा चुकी है, जबकि प्रकरण क्रमांक 04,05,06,07/आय.डी.एक्ट/2022 में रिट याचिका की अनुमति हेतु प्रकरण शासन की ओर प्रेषित किये गये हैं।

उक्त सभी प्रकरणों में विभाग की ओर से प्रभावी प्रतिरक्षण करने के लिये इस कार्यालय की विधि शाखा द्वारा सभी संगत न्यायदृष्टांतों सहित एक नोट तैयार किया गया है, जो आपकी ओर आवश्यक कार्यवाही हेतु प्रेषित है।

कार्यपालन यंत्री, लोक स्वास्थ्य यांत्रिकी खण्ड बड़वानी एवं खरगौन के साथ ही अन्य खण्डों से उत्पन्न होने वाले समान प्रकृति के प्रकरणों में उक्त नोट में दिये गये तथ्यों का समावेश अनिवार्य रूप से रिट याचिका रिट अपील में करवाने का कष्ट करें।

यदि आपके परिक्षेत्र के अंतर्गत अन्य खण्डों में भी इस प्रकृति के प्रकरण माननीय श्रम न्यायालयों के समक्ष लंबित हो, तो उनमें माननीय श्रम न्यायालय के समक्ष भी शासकीय अधिवक्ता के माध्यम से इन तथ्यों और न्याय दृष्टांतों को आवश्यक रूप से प्रस्तुत करवाना सुनिश्चित करें।

“शुभकामनाओं सहित।”

संलग्न : नोट (पेज क्र.01से 75 तक)

प्रति,

श्री विजय सिंह सोलंकी
मुख्य अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
इंदौर, परिक्षेत्र इंदौर।

भवदीय,
(एस.के. अधिवान)

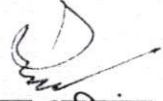
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पृ० क्रमांक 2611 / विधि / प्र.अ. / 2023
प्रतिलिपि :

भोपाल, दिनांक 23 फरवरी 2023

मुख्य अभियंता, लोक स्वास्थ्य यांत्रिकी विभाग, परिक्षेत्र भोपाल / इंदौर / ग्वालियर / जबलपुर / एवं (वि. / यां.) परिक्षेत्र भोपाल की ओर आवश्यक कार्यवाही हेतु प्रेषित कर निर्देशित किया जाता है कि आपके परिक्षेत्र के अधीनस्थ भी समान प्रकृति के प्रकरणों में इसी अनुसार कार्यवाही तत्काल कराने का कष्ट करें।

संलग्न : नोट (पेज क्र.01 से 75 तक)


प्रमुख अभियंता



ट्रायसेम मैकेनिकों को विभाग में सूक्ष्म कार्यों जैसे हैंडपंप के चेन की आयलिंग ग्रीसिंग एवं अन्य देखभाल हेतु अंशकालिक तौर पर प्रतिदिन अधिकतम 1/2 से 1 घंटे के कार्य हेतु, हैंडपंप रक्षक के रूप में मानदेय के आधार पर नियोजित किया गया था तथा उन्हें अपने इस काम के साथ अन्य कार्य करने की पूर्ण स्वतंत्रता है। इन मैकेनिकों को विभाग द्वारा दिये जा रहे मानदेय से शिकायत है तथा विस्तृत लाभ प्राप्त करने के उद्देश्य से इनके द्वारा माननीय श्रम न्यायालय के समक्ष प्रकरण दायर किये गये थे। प्रकरणों में इनके द्वारा दैनिक वेतन भोगी श्रमिक के समान स्थायी वर्गीकृत करने एवं न्यूनतम नियमित वेतनमान का लाभ प्रदान करने की मांग की गई है, जिसे श्रम न्यायालयों द्वारा त्रुटिपूर्ण रूप से मान्य किया गया है।

यद्यपि विभाग ट्रायसेम मैकेनिकों को पूर्णकालिक श्रमिक नहीं मानता है तथापि माननीय श्रम न्यायालय खंडवा द्वारा विभिन्न प्रकरणों में उन्हें स्थाई श्रमिक के रूप में वर्गीकृत करते हुये उन्हें न्यूनतम वेतन के लाभ का पात्र निर्धारित किया गया है। यदि ट्रायसेम मैकेनिकों को स्थाई श्रमिक मान भी लिया जावे तो भी वे रिक्त पद के विरुद्ध कार्यरत नहीं होने के कारण स्थायी वर्गीकृत किये जाने तथा उससे संबंधित लाभ को प्राप्त करने के पात्र नहीं है क्योंकि माननीय उच्चतम न्यायालय एवं माननीय उच्च न्यायालय द्वारा किसी श्रमिक के रिक्त पद के विरुद्ध कार्य नहीं करने पर मान श्रम न्यायालय द्वारा जारी किये गये स्थायी वर्गीकृत करने संबंधी आदेश को निम्न प्रकरणों में निरस्त किया गया है :-

1. माननीय उच्चतम न्यायालय की सिविल अपील क. 6678/2004, म.प्र.शासन एवं अन्य विरुद्ध ओमकार प्रसाद पटेल निर्णय दिनांक 7.12.05
2. माननीय उच्चतम न्यायालय की सिविल अपील क. 5185/2006, म.प्र.शासन एवं अन्य विरुद्ध ललित कुमार वर्मा निर्णय दिनांक 7.12.05
3. माननीय उच्चतम न्यायालय की सिविल अपील क. 7006-7008/2009, रमेश चन्द्र श्रीवास्तव विरुद्ध म.प्र.शासन एवं अन्य निर्णय दिनांक 17.09.2015
4. माननीय उच्चतम न्यायालय की सिविल अपील क. 1265/2006, म.प्र. हाउसिंग बोर्ड विरुद्ध मनोज श्रीवास्तव निर्णय दिनांक 24.02.2015
5. माननीय उच्चतम न्यायालय की सिविल अपील क. 337/2002, महेन्द्र एल. जैन एवं अन्य विरुद्ध इंदौर डेवलपमेंट अथारिटी निर्णय दि 22.11.2004
6. माननीय उच्च न्यायालय ग्वालियर की रिट पिटीशन क. 1992/2006, म.प्र. शासन एवं अन्य विरुद्ध साहब सिंह, निर्णय दिनांक 05.05.2011
7. माननीय उच्च न्यायालय जबलपुर की रिट पिटीशन कं. 4148/2000, 4149/2000 4151/2000 एवं 4152/2000 निर्णय दिनांक 02.02.2017

विभाग में कुछ जिलों में ट्रायसेम मैकेनिकों को स्थायी वर्गीकृत कर्मचारी के समान लाभ दे दिया गया है। इस आधार पर कुछ अन्य ट्रायसेम मैकेनिक इस लाभ का दावा पेश कर सकते हैं। ऐसे प्रकरणों में माननीय सर्वोच्च न्यायालय द्वारा निर्धारित प्रकरण "इंडियन काउंसिल ऑफ एग्रीकल्चरल रिसर्च एवं अन्य" विरुद्ध टी.के.सूर्यनारायणन एवं अन्य [(1997) एस.सी.सी.766] का उल्लेख किया जाना उचित होगा जिसमें यह कहा गया है कि यदि कुछ लोगों को गलत लाभ दिया

गया है तो वह अन्य लोगों के लिये उस लाभ को प्राप्त करने का आधार नहीं बन सकता क्योंकि अनुच्छेद 14 के अंतर्गत दिया गया समानता के अधिकार को नकारात्मक रूप में इस्तेमाल नहीं किया जा सकता है ।

मध्यप्रदेश शासन,
लोक स्वास्थ्य यांत्रिकी विभाग.

(अनुसूची - एक)

विषय :- ट्रायसेम योजना के अन्तर्गत हैण्डपम्पों के सुधार हेतु प्रशिक्षण और ग्रामीण नवयुवकों को स्वरोजगार के अवसर देना ।

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प्रस्तावना :-

पानी एक बुनियादी मानवीय आवश्यकता है । स्वच्छ पेयजल व्यवस्था के वगैर अच्छी स्वास्थ्य संवाएँ भी प्रभावकारी सिद्ध नहीं हो सकती है । अतः आश्चर्य नहीं कि विकास की प्राथमिकताओं में स्वच्छ पेयजल के प्रदाय को ऊँचा स्थान दिया गया है ।

20 सूत्रीय कार्यक्रम के अन्तर्गत प्रत्येक समस्यामूलक गाँव में वर्ष 1985 तक पेयजल का एक विश्वसनीय स्रोत स्थापित करना प्रस्तावित है । राज्य के कुल 71429 आबाद ग्रामों में (1981 की जनगणना के अनुसार) में से 01.04.83 तक 52036 ग्राम समस्या मूलक घोषित किये जा चुके हैं और उनमें से 40207 ग्रामों में पेयजल की कुछ न कुछ व्यवस्था की जा चुकी है । यह उल्लेखनीय है कि अधिकांश गाँवों में अभी एक-एक हैण्डपम्प ही लगाये गये हैं । बहुत थोड़े ही गाँव ऐसे हैं जिनमें दो या उससे अधिक हैण्डपम्प लगे हैं य जिनके लिए नल योजना बनाई गई है । हालांकि आदर्श स्थिति तो यह होती है कि 250 से 300 की आबादी के पीछे एक हैण्डपम्प लगाया जाता और प्रत्येक बड़े (200 से अधिक आबादी वाले) गाँवों में नल-योजना कियान्वित की जाती । परन्तु वित्तीय साधन सीमित होने के कारण ऐसा करना संभव नहीं है । शासन का प्रयास यह है कि प्रथम चरण में, हर समस्यामूलक गाँव में कम से कम एक हैण्डपम्प लग जाए । सुविधा का विस्तार द्वितीय चरण में अर्थात् अगली पंचवर्षीय योजनाकाल में किया जायेगा । तद मौजूदा नीति जो कि 1000 जनसंख्या तक के गाँव में केवल एक हैण्डपम्प और उससे अधिक आबादी पर दो लगाने तथा हैण्डपम्प पृथक्शः 250 से अधिक आबादी के टोलो/आदिवासी मजरा में एक और हैण्डपम्प लगाने की है (को और उदार बनाया जाएगा) । आशा है कि तक सामान्य गाँवों में 300 आबादी के पीछे एक हैण्डपम्प और आदिवासी टोलों/पारों में 100 की आबादी के प्रत्येक टोले में एक हैण्डपम्प लगाना संभव हो सकेगा ।

(2) अभी तक सिर्फ 40207 गाँवों में हैण्डपम्प की कुछ न कुछ व्यवस्था की गई है उनमें कुल मिलाकर करीब 63000 हैण्डपम्प लागये गये हैं । इन हैण्डपम्पों में से करीब 25000 हैण्डपम्प पुराने "मेक" (जैसे कि महासागर) है और अक्सर बिगड़ते रहते हैं । गत 3 वर्षों से लोक स्वास्थ्य यांत्रिकी विभाग केवल यूनिसेफ द्वारा विकसित

TRUE COPY

E.E.

On AGAR MAIL

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"इंडिया मार्क-2" मैक के ही हैण्डपम्प लगा रहा है क्योंकि ये पम्प आसानी से खराब नहीं होते और संधारण की दृष्टि से बहुत मुफीद सिद्ध हुए हैं। परन्तु पुराने मैक के सभी हैण्डपम्प को "इंडिया मार्क-2" मैक के हैण्डपम्पों से तुरन्त बदलना संभव नहीं है। इन्हें बदलने का विभाग सतत प्रयास कर रहा है और इसके लिये "यूनिसेफ" तथा डैनिडा की सहायता भी प्राप्त की जा रही है। तथादि इन्हें पूरी तौर पर बदलने के लिए करीब 5 वर्ष का समय लगना सम्भावित है। अतः तब तक संधारण सेवा को और चुरस्त और सर्तक रखना लाजमी है। आगामी 5 वर्ष की अवधि में पेयजल के लिए अभी प्राप्त प्राथमिकता बनी रहने की स्थिति में ऐसा अनुमान है कि हर गाँव और टीलों में हैण्डपम्पों की स्थापना कर दी जाएगी। तब तक कुल मिलाकर 1.40 लाख हैण्डपम्पों की स्थापना हो जाएगी। अर्थात् विद्यमान संख्या के करीब $2\frac{1}{2}$ गुने (इस गणना में जनसंख्या में होने वाली वृद्धि सम्मिलित नहीं है।) पृथक्शः ऐसे गाँवों में, जहाँ भूजल उपलब्ध न होने के कारण हैण्डपम्प लगाना संभव न हो उनमें तथा अर्द्धशहरी स्वरूप के बहुत बड़े गाँवों में नल योजनाएँ बनाना जरूरी होगा। ऐसे योजनाओं की संख्या 5,000 तक हो सकती है। इन ग्रामीण योजनाओं और हैण्डपम्पों के ठीक से चलाते रहने के लिए कुशल और अर्द्धकुशल कर्मियों का एक भारी दल आवश्यक होगा।

(3) अभी हैण्डपम्पों के संधारण के लिए विभाग में 1657 मेकेनिक नियुक्त हैं। इस प्रकार एक मेकेनिक के जिम्मे करीब 40 पम्पस के संधारण का दायित्व रहता है। घनीआबादी वाले क्षेत्रों में, जहाँ गाँव बहुत आस-पास हैं या ऐसे क्षेत्रों में जहाँ अधिकांश हैण्डपम्प इंडिया मार्क-2 के हैं, एक मेकेनिक सामान्यतः 40 हैण्डपम्पों की देखभाल ठीक से कर लेता है, परन्तु ऐसे क्षेत्रों में जहाँ गाँव दूर-दूर बिखरे हुए हैं या जिनमें पुराने मैक के हैण्डपम्प अभी भी काफी संख्या में हैं, एक मेकेनिक इतने सारे पम्पों का संधारण कार्य ठीक से नहीं कर पाता। परिणाम स्वरूप बिगड़े हैण्डपम्पों की दुरुस्ती समय पर नहीं होती है और इससे न केवल लोगों को कष्ट होता है वरन् शासन की बदनामी भी होती है। प्रतिवर्ष लगाए जा रहे करीब 10000 नए हैण्डपम्पों के कारण, संधारण सेवा पर और जोर पड़ता जा रहा है। हैण्डपम्पों की वृद्धि के अनुपात में संधारण व्यवस्था के लिए कर्मचारियों की संख्या बढ़ाते जाना संभव नहीं है। कारण यह है कि ऐसा करने पर बहुत बड़ा वित्तीय बोझ शासन के ऊपर आ जाता

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शासकीय कर्मचारियों को वेतन भत्तों के अतिरिक्त अन्य विविध प्रकार की जो सुविधाएँ दी जाती हैं उनका वित्तीय भार काफी रहता है। यदि पद बढ़ाए भी जाए तो ग्रामीण क्षेत्रों में रहकर काम करने के इच्छुक लोग कम ही मिल पाते हैं और इस लिये संधारण सेवाओं का स्तर वही नहीं हो पाता जो होना चाहिए। इन सब बातों को ध्यान में रखते हुए यह उपयुक्त प्रतीत होता है कि ग्रामीण क्षेत्रों में लगाये गये हैण्डपम्पों के संधारण की व्यवस्था में शासकीय अभले के फैलाव के बजाय अन्य विकल्प खोजा जाए। सौभाग्य से ट्रायसेम योजना तथा एकीकृत ग्रामीण विकास कार्यक्रमों का लाभ उठाते हुए इस कार्य में ग्रामीण नवयुवकों को आसानी से लगाया जा सकता है। 4-5 पंचायतों के बीच में, उसी क्षेत्र के किसी उपयुक्त नवयुवक को ट्रायसेम योजना के अन्तर्गत प्रशिक्षण देकर यदि उस क्षेत्र में 25-30 हैण्डपम्प के संधारण का दायित्व सौंप दिया गया तो इससे न केवल संधारण व्यवस्था में सुधार परिलक्षित होगा वरन् स्थानीय नवयुवकों को स्व-रोजगार का एक अच्छा अवसर प्राप्त हो जायेगा।

(2) नए हैण्डपम्प "सुधारक" उनका प्रशिक्षण और नियोजन :-

राज्य के 71429 आबाद गाँवों के बीच में करीब 18000 पंचायतें हैं। इस प्रकार एक पंचायत में औसतन 4 गाँवों आते हैं। 4 पंचायतों के बीच करीब 16 गाँव आयेगें हैण्डपम्पों की संख्या करीब 25 रहेगी। आगे चलकर अर्थात् करीब 5 वर्ष बाद हैण्डपम्पों की यह संख्या 45-50 तक पहुँच जाएगी। मोटे तौर पर यह कहा जा सकता है कि 3 से 5 पंचायतों के बीच एक पम्प सुधार करने वाला व्यक्ति रखना वांछनीय होगा। यह व्यक्ति ट्रायसेम योजना के अन्तर्गत चयनित और प्रशिक्षण प्राप्त व्यक्ति होगा जिसे लोक स्वास्थ्य यांत्रिकी विभाग "कान्ट्रैक्ट बैसिस" पर (एक से तीन वर्ष की अवधि के लिये) हैण्डपम्प संधारण का कार्य सौंपेगा। लोक स्वास्थ्य यांत्रिकी विभाग के मौजूदा मेकेनिक, जल योजनाओं के संधारण और हैण्डपम्पों में पेचीदा किस्म की खराबियों (मेजर डिफेक्ट्स) को ठीक करने के काम में लाए जायेंगे। उनकी छटनी करने का प्रश्न ही नहीं है। ट्रायसेम के माध्यम से जिन नवयुवकों को संधारण कार्य सौंपा जाएगा उनमें तथा विभाग के मेकेनिकों की भिन्न स्थिति के बारे में कोई भ्रम निर्मित न हो, इसलिए ट्रायसेम प्रशिक्षित नवयुवकों को, जो लोक स्वास्थ्य यांत्रिकी विभाग में हैण्डपम्पों का संधारण कार्य ठेके पर लेना चाहेंगे, "हैण्डपम्प सुधारक कहकर संबोधित किया जाएगा अगला प्रश्न यह उठता है कि इन नवयुवकों का प्रशिक्षण एक ही वर्ष के अन्दर इसी विभाग के लिए आवंटित किया जाए या दोर-दोर 2-3 वर्षों के अन्दर विद्यमान व्यवस्था में कोई झटका या व्यवधान महसूस न हो इसके लिए

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यह बेहतर होगा कि यह काम धीरे-धीरे किया जाए। प्रथमशः इस वर्ष प्रत्येक जिले के केवल एक विकास खण्ड में यह योजना चलाई जाये और अनुभव के आधार पर आगे इसका विस्तार किया जाए। एक विकास खण्ड में औसतन 40 पंचायतें आती हैं। 4 पंचायतों (16 गाँवों) के बीच एक पम्प सुधारक की आवश्यकता होगी। परन्तु प्रशिक्षण के लिये 12 नवयुवकों को चुना जा सकता है। क्योंकि प्रशिक्षण के दौरान और तत्पश्चात् दो एक नवयुवकों को चुना जा सकता है। क्योंकि प्रशिक्षण के दौरान और तत्पश्चात् दो एक नवयुवकों को छोड़कर इधर-उधर चले जाने की सम्भावना है।

(2) ब :- इस योजना के अन्तर्गत ऐसे नवयुवकों का चयन किया जाएगा जो 18 से 35 वर्ष की आयु के हों, उसी क्षेत्र के निवासी हों जहाँ प्रशिक्षणोपरान्त उन्हें काम देना प्रस्तावित है, साईकिल चलाना जानते हों तथा हिन्दी पढ़ना, लिखना जानते हों। आदिवासी तथा हरिजन उम्मीदवारों को प्राथमिकता दी जायेगी। चयन का काम विकास खण्ड अधिकारी के माध्यम से जिला ग्रामीण विकास अभिकरण द्वारा (ट्रायसेम के लिए निर्धारित नीति के अन्तर्गत) किया जाएगा। प्रशिक्षण की व्यवस्था जिले के औद्योगिक प्रशिक्षण संस्था (आई.टी.टी) में अथवा लोक स्वास्थ्य यांत्रिकी विभाग के कार्यापालन यंत्री के नियंत्रण में स्थिति स्टोर/वर्कशाप में की जाएगी। जिला विकास अभिकरण द्वारा प्रत्येक प्रशिक्षार्थी को रुपये 125/- प्रतिमाह की छात्रवृत्ति भी दी जाएगी। प्रशिक्षण देने के लिए संबंधित औद्योगिक प्रशिक्षण संस्था या विभागीय स्टोर/वर्कशाप में विभाग का एक यंत्री (सिविल) एक उपयंत्री (मेकेनिकल) तथा एक दक्ष और अनुभवी हैण्डपम्प मेकेनिक सम्बद्ध किया जायेगा। इन कर्मचारियों को भी ट्रायसेम योजना के अन्तर्गत निर्धारित पारिश्रमिक ग्रामीण विकास अभिकरण द्वारा दिया जाएगा। यदि प्रशिक्षण की व्यवस्था औद्योगिक प्रशिक्षण संस्था में की गई हो तो वहाँ के अनुदेशकों को भी जो कि प्रशिक्षण कार्य में जुड़े हों, पारिश्रमिक प्राप्त होगा। प्रशिक्षण 3 माह की अवधि का होगा जिसका विस्तृत विवरण लोक स्वास्थ्य यांत्रिकी विभाग के मुख्य अभियंता (प्रशिक्षण) द्वारा क्रमशः तैयार किया जा रहा है। प्रशिक्षण में मुख्य जोर "फील्ड ट्रेनिंग" पर रहेगा ताकि पुस्तकीय ज्ञान कम होते हुए भी प्रशिक्षणार्थियों में ऐसा कौशल और आत्मविश्वास विकसित हो जाए कि वे बिगड़े हैण्डपम्पों को तत्परता से सुधार सकें। समीपस्थ ग्रामों के हैण्डपम्प बिगड़े होने की सूचना प्राप्त होने पर प्रशिक्षणार्थियों को सुधार कार्य हेतु स्थल पर भेजा जाएगा।

प्रशिक्षण राशा समया संभव अनौपचारिक वातावरण में दिया जायेगा और प्रशिक्षण की

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समाप्ति पर प्रत्येक प्रशिक्षार्थी को एक प्रमाण पत्र दिया जायेगा । प्रशिक्षण केन्द्र पर आवश्यक सामग्री जैसे कि स्लाइड्स, प्रोजेक्टर, पारदर्शी फिल्मों का एक सेट, एक हैण्ड पम्प, कुछ चित्र और चार्ट उपलब्ध कराये जायेंगे । प्रयोगिक प्रशिक्षण के लिए इंडिया मार्क-2 तथा अन्य मेको के एक-एक पम्पों के माडल भी रखे जायेंगे ।

(3) प्रशिक्षित उम्मीदवारों को काम सौंपा जाना :-

प्रशिक्षणोपरान्त प्रत्येक प्रशिक्षित नवयुवक को एकीकृत ग्रामीण विकास योजना के अन्तर्गत अपना धंधा प्रारम्भ करने के लिए जिला ग्रामीण विकास अभिकरण द्वारा ऋण उपलब्ध कराया जायेगा । सामान्यतः ऋण करीब रुपये 3000/- का रहेगा जिसमें साईकिल की खरीदी तथा हैण्डपम्प सुधार कार्य के लिए आवश्यक औजार तथा टूल कीट के साथ-साथ प्रशिक्षार्थी के घर पर एक छोटी कार्यशाला की स्थापना के लिए आवश्यक मशीन और उपकरणों की खरीदी की जा सके । यह उल्लेखनीय है कि एकीकृत ग्रामीण विकास योजना के अन्तर्गत अनुसूचित जाति एवं अनुसूचित जन जाति के उम्मीदवारों को आवश्यक राशि का 50 प्रतिशत भाग तथा छोटे और सीमांत कृषक परिवारों के नवयुवकों को 25 प्रतिशत से 30 प्रतिशत भाग तक का अनुदान जिला ग्रामीण विकास अभिकरण द्वारा दिया जाता है । शेष राशि ऋण के रूप में राष्ट्रीयकृत बैंक उपलब्ध कराते हैं । टूल कीट औजार और अन्य सामग्री उम्मीदवारों को लोक स्वास्थ्य यांत्रिकी विभाग द्वारा उपलब्ध कराए जायेंगे और उनका मूल्य ऋण तथा अनुदान की राशि में से ग्रामीण विकास अभिकरण या बैंक से प्राप्त कर वसूल कर लिया जाएगा ।

2. प्रशिक्षित नवयुवक को लोक स्वास्थ्य यांत्रिकी विभाग के कार्यपालन यंत्री "कान्ट्रेक्ट बेसिस" पर 1 से 3 वर्ष की अवधि के लिए हैण्डपम्पसुधारने का कार्य एक निश्चित हल्के के लिए सौंपेगे । ठेका दिये जाने के लिए इकरारनामों के स्वरूप का निर्धारण लोक स्वास्थ्य यांत्रिकी विभाग द्वारा प्रथमतः किया जायेगा । उसमें "पम्प सुधारक" के कर्तव्यों का विस्तृत उल्लेख भी रहेगा । प्रत्येक पम्प सुधार के हल्के में सामान्यतः 25 से 30 हैण्डपम्प रहेंगे । ऐसे प्रत्येक हैण्डपम्प के लिए, जो माह भर ठीक से चलता रहे, सुधारक को 10 रुपए प्रतिमाह की दर से पारिश्रमिक दिया जाएगा । पारिश्रमिक का भुगतान उसे लोक स्वास्थ्य यांत्रिकी विभाग के अनुविभागीय अधिकारी के कार्यालय से हर माह, पूर्व निश्चित सप्ताह में, प्राप्त करना होगा । सुधारक को

अपनी सेवा की मूल्य का प्रमाण पत्र के रूप में उपलब्ध होने के लिए निर्धारित प्रमाण पत्र में

प्रमाण पत्र प्रस्तुत करना होगा कि कितने हैण्डपम्प ठीक से चलते रहें हैं । यदि कोई



हैण्डपम्प महीने में तीन दिन से अधिक अवधि तक लगातार खराब रहा हो तो उसके लिए भुगतान नहीं किया जाएगा। हैण्डपम्पों के सुधार के लिए लगने वाले विभिन्न स्पेयर पार्ट्स, पूर्जे, आईल, ग्रीस आदि सामग्री सुधारक को अनुविभागीय अधिकारी के कार्यालय से माह भर की आवश्यकता को ध्यान में रखते हुए, तब दे दी जाएगी जब वह अपना पारिश्रमिक लेने आयेगा। प्रत्येक गाँव में उसके भ्रमण के लिए एक कार्ड भी बनाया जायेगा। ईश्यू की गई सामग्री के उपयोग के संबंध में सुधारक एक रजिस्टर रखेगा और मौके पर उपयोग की जाँच विभाग के उपयंत्री/अनुविभागीय अधिकारी करते रहेंगे। ईश्यू किये गये सामग्री के दुरुपयोग की स्थिति में, ठेके की शर्तों के अन्तर्गत मूल्य की दुगुनी राशि सुधारक के पारिश्रमिक से काट ली जायेगी या उससे अन्य प्रकार से वसूल की जा सकेगी।

(3) जिन हैण्डपम्पों में भारी सुधार (मेजर रिपेयर) आवश्यक हो उनका कार्य विभाग के उपयंत्रीगण विभाग के मेकेनिकों के माध्यम से करायेंगे। इस प्रकार के हैण्डपम्पों की जानकारी पम्प सुधारक द्वारा यथाशीघ्र विकास खण्ड कार्यालय में तथा विभाग के अनुविभागीय अधिकारी को भिजवाई जायेगी। ऐसे विकासखण्डों में जहाँ सुधार कार्य इस योजना के अन्तर्गत स्थानीय नवयुवकों को सौंप दिया गया हो, विभाग की ओर से विकास खण्ड मुख्यालय में केवल दो मेकेनिक रखे जायेगे। ये मेकेनिक ऐसे हैण्डपम्पों को सुधारेंगे जो कि (ट्रायसेम) पम्प सुधारकों से ठीक नहीं हो पाये। साथ ही अपने भ्रमण के दौरान यह भी देखते रहेंगे कि हैण्डपम्पों का संधारण पम्प सुधारकों द्वारा ठीक से किया जा रहा है या नहीं। किसी सुधारक की लम्बी अनुपस्थिति या काम छोड़ देने आदि कारणों के उसके हल्के में होने वाली रिक्ति की स्थिति में वहाँ का कार्य विभागीय मेकेनिक द्वारा देखा जाएगा।

(4) पम्प सुधारक से, पारिश्रमिक की या मासिक राशि का 10 प्रतिशत भाग उस ऋण की अदायगी के लिए काटा जा सकेगा। (अनुबंध की शर्त के अनुसार) जो उसने बैंक से लिया हो। ऐसी राशि का भुगतान अनुविभागीय अधिकारी द्वारा सीधे बैंक की राखा को किया जा सकेगा। इस प्रकार का प्रावधान रहने से बैंक इस योजना के अन्तर्गत प्रशिक्षित नवयुवकों को मशीन, औजार, किट, साईकिल आदि की खरीदी के लिए उत्साहपूर्ण ऋण देंगे।

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OFFICE OF AGGR. MALWA

(4) उपसंहार :-

अभी लोक स्वास्थ्य यांत्रिकी विभाग को हैण्डपम्पों के संधारण में लगभग 350/- रुपये का वार्षिक व्यय प्रति हैण्डपम्प के पीछे करना पड़ता है । इस योजना के लागू होने पर पम्प सुधारक 10 रुपये प्रति माह के हिसाब से वर्ष भर में 120/- रुपये का भुगतान किया जाना होगा और इसके अतिरिक्त प्रत्येक हैण्डपम्प के पीछे 30 रुपये तक का व्यय स्पेयर, पार्ट्स, पूर्ज, सामग्री आदि में होगा । इस प्रकार औसत संधारण खर्च करीब 150 रुपये प्रति हैण्डपम्प सीमित रहेगा । इसके अतिरिक्त कुछ व्यय पृथक्शः विभाग को उन पम्पों को ठीक करने में करना होगा जो सुधारक से ठीक न हो पाये । तथापि, फिर भी इस व्यवस्था से काफी बचत सम्भावित है । सूक्ष्म में इस व्यवस्था से जहाँ एक और संधारण कार्य में, विभाग द्वारा किये जाने वाले व्यय में बचत होगी, वही स्थानीय लोगों को रोजगार उपलब्ध हो सकेगा और हैण्डपम्पों की तत्पारता से तथा बेहतर देखभाली सम्भव हो सकेगी । चूँकि ग्राम पंचायतों के प्रमाण पत्र के आधार पर ही सुधारक को पारिश्रमिक का भुगतान किया जाएगा, अतः उनका भी संधारण व्यवस्था में जुड़ाव रहेगा । निरन्तर आईलिंग-ग्रीसिंग और सर्विसिंग होने पर हैण्डपम्पों का जीवनकाल भी बहुत बढ़ जाएगा ।

(2) एक प्रश्न यह उठेगा कि यदि कोई सुधारक लम्बे अवकाश पर चला जाए या अस्वस्थ हो जाए या काम करना बंद करे तो उसके क्षेत्र के हैण्डपम्पों की देखभाली की क्या व्यवस्था होगी । ऐसी स्थिति में विकास खण्ड मुख्यालय पर उपलब्ध विभाग के मेकेनिक को तुरन्त संबंधित क्षेत्र का प्रभार सौंप दिया जायेगा और संधारण के दायित्व का निर्वाह वह करने लगेगा । सुधारक की अनुपस्थिति की अवधि दो माह से अधिक होने की स्थिति में उसके साथ हुआ अनुबंध समाप्त हो जाएगा और संबंधित क्षेत्र के लिए किसी एक नये उम्मीदवार को प्रशिक्षित करने की कार्यवाही की जाएगी । प्रत्येक अनुबंधित सुधारक को यह छूट होगी कि वह लोक स्वास्थ्य यांत्रिकी विभाग द्वारा सौंपे गये कार्य के साथ-साथ अपने क्षेत्र के निजी नलकूपों आदि का संधारण कार्य भी करें । वस्तुतः इस कार्य के साथ-साथ सुधारक एक प्राईवेट मिस्त्री के रूप में जो अन्य कार्य वह करना चाहे, उन सबके लिए उसे स्वतंत्रता रहेगी, बशर्ते कि हैण्डपम्पों के सुधार के लिए अनुबंध में वर्णित कर्तव्यों की उपेक्षा न हो ।

भोपाल
दिनांक 30 जुलाई, 1983

(न.व. लोहनी)
सचिव,
मध्यप्रदेश शासन,
लोक स्वास्थ्य यांत्रिकी विभाग

कमंक एफं 8-16/96/2/चौतिस

भोपाल, दिनांक 6 मई- 1998

प्रति,

- (1) समस्त मुख्य अभियंता,
लोक स्वास्थ्य यांत्रिकी विभाग,
मध्यप्रदेश
- (2) समस्त अधीक्षण यंत्री,
लोक स्वास्थ्य यांत्रिकी विभाग,
मध्यप्रदेश
- (3) समस्त कार्यपालन यंत्री,
लोक स्वास्थ्य यांत्रिकी विभाग,
मध्यप्रदेश

विषय - पंचायत राज व्यवस्था क तहत लोक स्वास्थ्य यांत्रिकी विभाग से संबंधित
उत्तरदायित्वों और प्रशासकीय प्रबंधन का अंतरण ।

सन्दर्भ - इस कोर्टालय का पत्र क एफ 8-16/96/2/चौतिस, दि. 27.04.98

—00—

उपरोक्त विषय में माननी मंत्री लोक स्वास्थ्य यांत्रिकी विभाग के द्वारा
समस्त मुख्य अभियंता/अधीक्षण यंत्री/कार्यपालन यंत्रियों को दिनांक 27.04.98 की
समीक्षा बैठक में लिये गये निर्णयों के कम में निम्नानुसार निर्देश प्रसारित किये
जाते हैं :-

- (1) इस वर्ष ग्रीष्म काल में प्रभावी हैण्डपंप संचारण के लिये 15 जुलाई 1998 तक
की अवधि के लिए कार्यपालन यंत्री, परिक्षेत्रीय मुख्य अभियंता से पूर्व स्वीकृति
लेकर जिला/विकास खण्डों में वाहन नहीं है/चालू नहीं है कलेक्टर दर पर
वाहन लेने के लिए प्राधिकृत रहेंगे ।
- (2) नल योजनाओं के संचारण हेतु आवश्यक मात्रा में मोटर पम्प कय करने हेतु
अधीक्षण यंत्रों अधिकृत रहेंगे । वे आपने मण्डल की आवश्यकता का पूर्ण
आंकलन कर एकजाई आदेश लघु उद्योग निगम को देगे । इस पर होने वाला
व्यय नलजल योजना हेतु मोटर पंप खरीदने हेतु दी गई राशि में समायोजित
किया जायेगा ।

T.C.
कार्यपालन यंत्री,
लोक स्वास्थ्य यांत्रिकी खण्ड शाजापुर

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- (3) सभी कार्यपालन यंत्री अपने क्षेत्र में विभागीय अधिकारी/कर्मचारियों एवं हैण्डपम्प मैकेनिक तकनीकी बैठक बुलाकर संधारण कार्य का कार्य विभाजन कर सुधार योग्य हैण्डपम्पों को सुधारने की कार्यवाही दिनांक 15.05.98 के पूर्व सम्पन्न करना सुनिश्चित करेंगे।
- (4) सभी अधीक्षण यंत्री/मुख्य अभियंता मुख्य मार्ग से दूरस्थ स्थित ग्रामों में 15 मई 98 के पश्चात् आकस्मिक भ्रमण कर हैण्डपम्पों का परीक्षण करेंगे। वे निरीक्षण हेतु कोई भी ग्राम पूर्व निश्चित न कर ब्लाक बार निश्चित करेंगे।
- (5) प्रमुख अभियंता एवं मंत्रालय में पदस्थ विभाग के अधिकारी संधारण व्यवस्था के अनुश्रवण हेतु मई-98 में भ्रमण करेंगे।
- (6) ट्रायसेम योजना के अन्तर्गत प्रशिक्षितों को संधारण कार्य के प्रति आकृष्ट करने हेतु प्रति माह प्रति हैण्डपम्प रुपये 20/- का पारिश्रमिक दिया जावे।
- (7) लघु उद्योग निगम को आदेशित संधारण सामग्री यथाशीघ्र प्रदायित हो वह सुनिश्चित करने हेतु मुख्य अभियंता लघु उद्योग निगम को निवेदन करेंगे।

सचिव,
मध्यप्रदेश शासन,
लोक स्वास्थ्य यांत्रिकी विभाग
भोपाल, दिनांक 6 मई- 1998

कमांक एफ 8-16/96/2/चौतिस

प्रतिलिपि :- प्रमुख अभियंता लोक स्वास्थ्य यांत्रिकी विभाग भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित।

सचिव,
मध्यप्रदेश शासन,
लोक स्वास्थ्य यांत्रिकी विभाग

T-C
कार्यपालन यंत्री
लोक स्वास्थ्य यांत्रिकी खण्ड राजापुर

CASE NO.:
Appeal (civil) 6678 of 2004

PETITIONER:
State of M.P. and Ors.

RESPONDENT:
Onkar Prasad Patel

DATE OF JUDGMENT: 07/12/2005

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

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 benefits of difference in wages, as he was a daily wage. 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 in 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.

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 Act. The requirements are (a) the employee must have completed six months satisfactory service (b) the service must have been rendered in a permanent vacancy (c) the employee must have been appointed to a permanent post. The learned counsel for the respondent submitted that the evidence was sufficient to establish that the respondent was in the services of the State for more than six months and was entitled to be classified as a permanent employee.

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 appellants. 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?"

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.

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.

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."

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 requirements 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 permanent employee. That part of the direction is set aside.

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

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State Of M.P. & Ors vs Lalit Kumar Verma on 24 November, 2006

Supreme Court of India

State Of M.P. & Ors vs Lalit Kumar Verma on 24 November, 2006

Author: S Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Appeal (civil) 5185 of 2006

PETITIONER:

State of M.P. & Ors.

RESPONDENT:

Lalit Kumar Verma

DATE OF JUDGMENT: 24/11/2006

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

JUDGMENT S.B. SINHA, J.

Leave granted.

Respondent herein was appointed on daily wages. Indisputably, his recruitment was not made in terms of the statutory rules. No offer of appointment was also issued. He filed an application before the Labour Court purported to be for his classification in permanent category of workman. An Award was made on the premise that he having worked continuously for a period of more than six months, acquired a right for classification in the category of permanent clerk and in that view of the matter, his services could not have been terminated without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947. He was directed to be classified on the permanent basis as clerk from two years prior to the date of his filing the application, i.e., 11th November, 1991. He was also held to be entitled to prescribed wages and thus, the amount of difference in wages of the said post and other benefits was directed to be paid. A writ petition was preferred thereagainst by the appellants before the High Court, which was also dismissed by a learned Single Judge, opining that no case had been made out to interfere therewith.

Shri S.K. Dubey, learned Senior Counsel appearing on behalf of the appellants would contend that the impugned judgment cannot be sustained in view of the fact that the respondent, in law, was not entitled to be classified as a permanent employee under the provisions of Madhya Pradesh Industrial Relations Act, 1960. Strong reliance in this behalf was placed on State of Madhya Pradesh & Ors. vs. Yogesh Chandra Dubey & Ors. [(2006) 9 SCALE 73 : (2006) 8 SCC 67]. It was urged that in any event the respondent should not have been directed to be held entitled to back wages from 1992.

Mr. Ashok Mathur, learned counsel appearing on behalf of the respondent, on the other hand, would submit :-

(i) that the Special Leave Petition being barred by limitation, the delay in filing the same should not be condoned;

(ii) as the certificates issued in favour of the respondent had been examined by three Courts, this Court should not interfere therewith.

The application was filed by the respondent before the Labour Court on the premise that the order of termination dated 10.10.1991 was illegal and he should have been declared permanent on 1st April, 1987 after classification in the category of Supervisor and Clerk. Clause 2 of the Standard Standing Orders reads as under: "2. Classification of employees. Employees shall be classified as (i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) badlies, (v) apprentices, and (vi) temporary:

(i) 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;

(vi) temporary employee means 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 the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i) above."

A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. Respondent was not appointed against a clear vacancy. He was not appointed in a permanent post or placed on probation. He had also not been given a ticket of permanent employee. Working on daily wages alone would not entitle him to the status of a permanent employee. In Mahendra L. Jain & Ors. vs. Indore Development Authority & Ors. [(2005) 1 SCC 639], this Court opined :

"The 1961 Act provides for classification of employees in five categories. The 1973 Act, as noticed hereinbefore, clearly mandates that all posts should be sanctioned by the State Government and all appointments to the said cadre must be made by the State Government alone. Even the appointments to the local cadre must be made by the Authority. The said provisions were not complied with. It is accepted that no appointment letter was issued in favour of the appellants. Had the appointments of the appellants been made in terms of the provisions of the Adhiniyam and the Rules framed thereunder, the respondent Authority was statutorily enjoined to make an offer of appointment in writing which was to be accepted by the appellants herein. Who made the appointments of the appellants to the project or other works carried on by the Authority is not known. Whether the person making an appointment had the requisite jurisdiction or not is also not clear. We have noticed hereinbefore that in the case of Om Prakash Mondloi, the CEO made an endorsement to the effect that he may be tried in daily wages and should be entrusted with the work

of progress collection of ODA work. The said order is not an offer of appointment by any sense of the term."

It was further opined :

"The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the suprema lex, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail.

*** For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute vis-à-vis the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularisation. For the purpose of regularisation which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularisation itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules."

The said decision shall apply in all fours to the facts of the present case. {See also M.P. Housing Board & Anr. vs. Manoj Shrivastava [(2006) 2 SCC 702], Municipal Council, Sujampur vs. Surinder Kumar, (2006) 5 SCC 173 and Indian Drugs and Pharmaceuticals Limited vs. Workman, Indian Drugs and Pharmaceuticals Limited, Civil Appeal No. 4996 of 2006 decided on 16.11.2006} The respondent was also not appointed in terms of the statutory rules. He was furthermore not entitled to any regular scale of pay attached to any post. Ordinarily, therefore, he could not have been directed to be regularized in service having regard to the Constitution Bench decision of this Court in Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors. [(2006) 4 SCC 1]. Reliance, however, has been placed by Mr. Mathur on paragraph 53 of the judgment which reads as under :

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should

(155)

(15)

(417)

State Of M.P. & Ors vs Lalit Kumar Verma on 24 November, 2006

further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

Strong reliance has also been placed by Mr. Mathur upon a Division Bench decision of this Court in Mineral Exploration Corpn. Employees' Union vs. Mineral Exploration Corpn. Ltd. & Anr. [(2006) 6 SCC 310], wherein, this Court, while following the case of Uma Devi & Ors. (supra), invoked paragraph 53 of the said decision to opine : "We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance with all the directions given in the judgment by the Constitution Bench in Secy., State of Karnataka v. Umadevi (3) and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union. The Tribunal is directed to dispose of the matter afresh within 9 months from the date of receipt of this judgment without being influenced by any of the observations made by us in this judgment. Both the parties are at liberty to submit and furnish the details in regard to the names of the workmen, nature of the work, pay scales and the wages drawn by them from time to time and the transfers of the workmen made from time to time, from place to place and other necessary and requisite details. The above details shall be submitted within two months from the date of the receipt of this judgment before the Tribunal."

The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to. In National Fertilizers Ltd. vs. Somvir Singh [(2006) 5 SCC 493], it has been held :

"The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in State of Mysore v. S.V. Narayanappa, R.N. Nanjundappa v. T. Thimmiah and B.N. Nagarajan v. State of Karnataka wherein this Court observed: [Umadevi (3) case 1, SCC p.24, para 16] "16 . In B.N. Nagarajan v. State of Karnataka this Court clearly held that the words 'regular' or 'regularisation' do not connote permanence and cannot

be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments."

Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service."

In R.S. Garg vs. State of U.P. & Ors. [2006 (7) SCALE 405], it has been held by this Court :

"The original appointment of 3rd respondent being illegal and not irregular, the case would not come within the exception carved out by the Constitution Bench. Furthermore, relaxation, if any, could have been accorded only in terms of Rule 28 of the Rules, Rule 28 would be attracted when thereby undue hardship in any particular case is caused. Such relaxation of Rules shall be permissible only in consultation with the Commission. It is not a case where an undue hardship suffered by the 3rd respondent could legitimately been raised being belonging to a particular class of employee. No such case, in law could have been made out. It, in fact, caused hardship to other employees belonging to the same category, who were senior to him; and thus, there was absolutely no reason why an exception should have been made in his case."

{See also State of Gujarat & Anr. vs. Karshanbhai K. Rabari & Ors. [(2006) 6 SCC 21].} Yet, recently in Principal, Mehar Chand Polytechnic & Anr. vs. Anu Lamba & Ors. [(2006) 7 SCC 161], it was held : "The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The Project undertaken by the Union of India although continued for some time was initially intended to be a time-bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturists. In the absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus."

We may, however, notice that in Mineral Exploration (supra), the attention of this Court was not drawn to the earlier precedents including a Three Judge Bench of this Court in B.N. Nagarajan & Ors. vs. State of Karnataka & Ors. [(1979) 4 SCC 507].

The Labour Court, Industrial Tribunal as also the High Court, therefore, was not correct in directing regularisation of service of the respondent.

Our attention has been further drawn to the fact that by reason of an Office Order dated 26.4.2004, the Award of the Labour Court as also the High Court had been implemented by classifying the respondent as permanent on the basis of daily wages clerk.

Yet again, by another Office Order dated 17.12.2004, the provisions of Madhya Pradesh Revised Pay Rules, 1998 had been applied in his case.

The decision to implement the judgment was evidently subject to the decision of this Court. But, the Special Leave Petition is barred by limitation. The question, inter alia, which arises for consideration before us is as to whether we should condone the delay or allow the respondent to continue to occupy the permanent post.

The legal position somehow was uncertain before the decision rendered by the Constitution Bench of this Court in Uma Devi (supra). It has categorically been stated before us that there was no vacant post in the department in which the respondent could be reinstated. The State had also adopted a policy decision regarding regularisation. The said policy decision has also no application in the case of the respondent. Even otherwise, it would be unconstitutional being hit by Article 16 of the Constitution of India.

Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice would be sub-served if we direct that any benefit which has already been given to the respondent shall not be recovered. He is also directed to be paid a sum of Rs.1,50,000/- (One lakh fifty thousand) towards compensation and costs for condoning the massive delay in filing the Special Leave Petition.

The impugned judgments are set aside, subject to the directions mentioned hereinbefore. This appeal is allowed. No costs.

(158) (18) (37) (44) (24) (251)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7006-7008 OF 2009

Ramesh Chandra Shrivastava

... Appellant

VERSUS

State of M.P. Thr. Ch. Eng.,
PHE Deptt. & Ors.

... Respondents

O R D E R

The appellant, a Time Keeper on daily wage basis, working in the Public Health Department in the State of Madhya Pradesh filed an application before the Labour Court No.2, Gwalior, Madhya Pradesh seeking classification under the Madhya Pradesh Industrial Relations Act, 1960 (for brevity, 'the Act'). The Labour Court considering the stand put forth by the workman and the contra-stand advanced by the State, allowed the application and directed for classification on the post of Time Keeper. The State of Madhya Pradesh, being dissatisfied with the order passed by the Labour Court, preferred an appeal before the Industrial Court which is the appellate authority under the Act but the appeal was dismissed for default.

Being aggrieved, the State and its functionaries preferred

Small Court No.1388 of 2008 assailing all the orders. The High Court

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Gurpreet Singh
Date: 20/10/2011
17/10/2011

produced clause (2) of the Madhya Pradesh Employment Standard

Orders Rules 1963 and the pronouncement of this Court in the

State of M.P. & Ors vs. Baljit Kumar Verma ((2007) 1 SCR 101)

(159) (19) (74) (38) (15) 258

came to hold as follows :

"A workman," therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefore are satisfied. Respondent was not appointed against a clear vacancy. He was not appointed in a permanent post or place on probation. He had also not been given a ticket of permanent employee. Working on daily wages alone would not entitle him to the status of a permanent employee.

In view of the aforesaid facts, in my opinion, the order of classification of the Respondent/workman passed by the Labour Court is contrary to law. Hence, the Respondent/workman is not entitled to be classified. In such circumstances, further proceedings of the Labour Court and Industrial Court for grant of Revenue Recovery Certificates are also liable to be quashed because those orders have been passed in consequence to the initial order of the Labour Court classifying the Respondent/workman as time keeper."

Be it noted, the High Court has quashed the RRC Certificate in pursuance of the order passed by the Labour Court. We have been apprised at the Bar that certain sum has been paid to the employee. Regard being had to the facts of the case, it is directed that if any amount has been paid to the workman on the basis of the order passed by the Labour Court, the same shall not be recovered.

Presently, we shall refer to the further directions as contained in the order of the High Court after holding that the workman is not entitled to be classified. The High Court has directed as follows :

"(a) That the impugned orders Annexure P/1 dated 30.10.2007, Annexure P/2 dated 25.07.2007, Annexure P/3 dated 15.03.1999, Annexure P/4 dated

15.11.2000, Annexure P/5 dated 13.11.2002,
Annexure P/6 & also Annexure P/7 are hereby
quashed.

(b) It is ordered that the Respondent will be
entitled the cost of Rs.1,50,000/- from the
Petitioners and the amount which was paid by the
Petitioners on account of difference of regular
pay scale to the Respondent/workman in pursuance
to the order of Labour Court be adjusted against
the aforesaid cost.

(c) The Petitioners are free to consider the
case of the Respondent/workman for regularization
in view of the fact that he was engaged in the
year 1984 and there was a circular of the
Government dated 09.01.1990 with regard to
regularization of daily wager employees who were
engaged prior to 21.12.1988."

If the amount of cost has not been paid, as directed by the
High Court, the same shall be paid to the workman by the State
within eight weeks hence. As far as the direction in clause (c)
is concerned, we would direct the competent authority of the State
to take a decision on the said aspect within a period of three
months from today, keeping in view the fact that the appellant
workman has rendered more than 30 years of service as a Time
Keeper.

The appeals are accordingly disposed of. There shall be no
order as to costs.

....., J.
(Dipak Misra)

....., J.
(Prafulla C. Pant)

New Delhi,
September 17, 2015

Supreme Court of India

M.P. Housing Board & Anr vs Manoj Shrivastava on 24 February, 2006

Bench: S.B. Sinha, P.K. Balasubramanyan

CASE NO.:

Appeal (civil) 1265 of 2006

PETITIONER:

M.P. Housing Board & Anr

RESPONDENT:

Manoj Shrivastava

DATE OF JUDGMENT: 24/02/2006

BENCH:

S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T [Arising out of SLP(C) No. 27360 of 2004] S.B. SINHA, J : .

Leave granted.

The Respondent was appointed on daily wages as a Sub-Engineer (Civil) on or about 7.4.1995. On the premise that his services may be terminated, he filed a writ petition whereupon by an order dated 25.4.2000, the High Court directed the Appellant Board to consider his case in the light of the purported circulars issued by the State Government for scrutiny of the daily rated employees. Upon the said direction, a scrutiny committee was appointed which found that there had been no vacancy nor there existed any sanctioned post. The Committee prior to coming to the aforementioned opinion gave an opportunity of hearing to the Respondent. He thereafter filed an application before the Labour Court purported to be in terms of Section 31(3) read with Section 64-A of the Madhya Pradesh Industrial Relations Act, 1960 (for short "the 1960 Act") praying that he be classified in the permanent category on the ground that he had satisfactorily worked for more than six months and, thus, became eligible therefor as provided under Clause 2(i) of the Standard Standing Orders. The Labour Court by an order dated 22.1.2002 allowed the said application holding:

"According to the discussion of issue No. 1 and 2 it has been decided that the applicant is entitled to be categorized in the permanent category on the post of Sub- Engineer (Civil). Hence the non-applicant is ordered from the date of submitting the application of applicant in this Court from 10.5.2005 2 years prior from it the applicant be categorized in permanent category.

Because the applicant had been appointed in daily wages hence in the circumstances of the case and I do not consider it proper to give benefit of salary of a permanent category to the applicant. But, the applicant is entitled to claim pay scale of permanent category from 10.5.2000 the date of submitting application before this Court."

An appeal was preferred thereagainst by the Appellants before the Industrial Court, Jabalpur and by an order dated 16.10.2003, the same was dismissed. A writ petition filed by the Appellant was also dismissed. By reason of the impugned judgment, the Letters Patent Appeal filed by the Appellant has also been dismissed.

Mr. B.S. Banthia, learned counsel appearing on behalf of the Appellants submitted that the Respondent having been appointed as a daily wager, he could not have been declared as a permanent employee as there existed no clear vacancy. It was further submitted that only because the Respondent had worked for more than 240 days by itself could not have been a ground for issuance of a direction for the regularization in the service.

Mr. T.G. Narayanan Nair, learned senior counsel appearing on behalf of the Respondent, on the other hand would draw our attention to a recent decision of a Division Bench of this Court in State of Madhya Pradesh and Ors. v. Onkar Prasad Patel [2005 (10) SCALE 153] and on the basis thereof submitted that, in view of the definition of 'permanent employee' as also 'temporary employee', the appointment of the Respondent would come within the purview thereof and, thus, on his completion of six months satisfactory service, he would be entitled to either a temporary status or a permanent status.

The Appellant Board was constituted under M.P. Grih Nirman Mandal Adhiniyam, 1972 ('1972 Act'). Indisputably, the terms and conditions of employment of its employees are governed by a statute. The State of Madhya Pradesh enacted the M.P. Industrial Relations Act, 1960 with a view to regulate the relations of employers and employees in certain matters, to make provisions for settlement of industrial disputes and to provide for matters connected therewith. In the year 1961, the State of Madhya Pradesh also enacted the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (for short "the 1961 Act") to provide for rules defining with sufficient precision certain matters relating to the conditions of employment of employees in the State of Madhya Pradesh.

'Permanent employee' and 'temporary employee' have been defined in Clauses 2(i) and (vi) of Standard Standing Order made under 1961 Act which read as under:

"(i) 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;

(vi) 'temporary employee' means 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 the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of Clause (i) above."

A person with a view to obtain the status of a 'permanent employee' must be appointed in terms of the statutory rules. It is not the case of the Respondent that he was appointed against a vacant post

which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field.

The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the Respondent had worked for more than six months satisfactorily; in terms of clause 2(i) of the Standard Standing Order, he acquired the right of becoming permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the Respondent.

It is one thing to say that a person was appointed on an ad-hoc basis or as a daily wager but it is another thing to say that he is appointed in a sanctioned post which was lying vacant upon following the due procedure freedom prescribed therefor.

It has not been found by the Labour Court that the Respondent was appointed by the Appellant herein, which is a 'State' within the meaning of Article 12 of the Constitution of India, upon compliance of the constitutional requirements as also the provisions of the 1972 Act or the rules and regulations framed thereunder.

In Mahendra L. Jain and Others v. Indore Development Authority and Others [(2005) 1 SCC 639], this Court followed an earlier decision of this Court in M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board [(2004) 9 SCC 755] wherein it was clearly held that when two statutory rules operate in the field unless the rules and regulations framed by the statutory authority are inconsistent with the provisions of the 1960 Act and the Rules framed thereunder, provisions of both the statute are required to be followed, holding :

" The 1973 Act or the Rules framed thereunder do not provide for appointments on ad hoc basis or on daily wages. The 1961 Act itself shows that the employees are to be classified in six categories, namely, permanent, permanent seasonal, probationers, badlies, apprentices and temporary. The recruitments of the appellants do not fall in any of the said categories. With a view to become eligible to be considered as a permanent employee or a temporary employee, one must be appointed in terms thereof. Permanent employee has been divided in two categories (i) who had been appointed against a clear vacancy in one or more posts as probationers and otherwise; and (ii) whose name had been registered both at muster roll and who has been given a ticket of permanent employee. A "ticket of permanent employee" was, thus, required to be issued in terms of Order 3 of the Standard Standing Orders. Grant of such ticket was imperative before permanency could be so claimed. The appellants have not produced any such ticket."

It was further held:

"The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the *suprema lex*, shall prevail over all other statutes. The only provision as regards recruitment of the employees is contained in Order 4 which merely provides that the manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders

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M.P. Housing Board & Anr vs Manoj Shrivastava on 24 February, 2006

are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In the absence of any specific directions contained in the Schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the respondent shall prevail."

It was furthermore held:

"For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute vis-à-vis the 1973 Act and the Rules framed thereunder. But in the absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularisation. For the purpose of regularisation which would confer on the employee concerned a permanent status, there must exist a post. However, we may hasten to add that regularisation itself does not imply permanency. We have used the term keeping in view the provisions of the 1963 Rules."

A daily wager does not hold a post unless he is appointed in terms of the Act and the rules framed thereunder. He does not derive any legal right in relation thereto.

The effect of such an appointment recently came up for consideration in *State of U.P. v. Neeraj Awasthi and Others* [2006 (1) SCC 667] wherein this Court clearly held that such appointments are illegal and void. It was further held:

"The fact that all appointments have been made without following the procedure or services of some persons appointed have been regularised in past, in our opinion, cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution of India will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now well-settled. [See *State of A.P. v. S.B.P.V. Chalapathi Rao and Others*, (1995) 1 SCC 724, para 8, *Jalandhar Improvement Trust v. Sampuran Singh* (1999) 3 SCC 494, para 13 and *State of Bihar and Others v. Kameshwar Prasad Singh and Another* (2000) 9 SCC 94, para 30].

In the instant case, furthermore, no post was sanctioned. It is now well-settled when a post is not sanctioned, normally, directions for reinstatement should not be issued. Even if some posts were available, it is for the Board or the Market Committee to fill-up the same in terms of the existing rules. They, having regard to the provisions of the regulations, may not fill up all the posts."

It is now well-settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. [See *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Others*, [(2005) 5 SCC 122], *Executive Engineer, ZP Engg. Divn. And Another v. Digambara Rao and others*, [(2004) 8 SCC 262], *Dhampur Sugar Mills Ltd. v. Bhola Singh*, [(2005) 2 SCC 470], *Manager, Reserve Bank of India, Bangalore v. S. Mani and Others*,

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It was furthermore held:

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[(2005) 5 SCC 100] and Neeraj Awasthi (supra)] In State of Karnataka & Ors. v. KGSD Canteen Employees Welfare Association & Ors. [(2006) 1 SCALE 85] it was held:

"The question which now arises for consideration is as to whether the High Court was justified in directing regularization of the services of the Respondents. It was evidently not. In a large number of decisions, this Court has categorically held that it is not open to a High Court to exercise its discretion under Article 226 of the Constitution of India either to frame a scheme by itself or to direct the State to frame a scheme for regularising the services of ad hoc employees or daily wages employees who had not been appointed in terms of the extant service rules framed either under a statute or under the proviso to Article 309 of the Constitution of India. Such a scheme, even if framed by the State, would not meet the requirements of law as the executive order made under Article 162 of the Constitution of India cannot prevail over a statute or statutory rules framed under proviso to Article 309 thereof. The State is obligated to make appointments only in fulfilment of its constitutional obligation as laid down in Articles 14, 15 and 16 of the Constitution of India and not by way of any regularization scheme. In our constitutional schemes, all eligible persons similarly situated must be given opportunity to apply for and receive considerations for appointments at the hands of the authorities of the State. Denial of such a claim by some officers of the State times and again had been deprecated by this Court. In any view, in our democratic polity, an authority howsoever high it may be cannot act in breach of an existing statute or the rules which hold the field."

The appointment made by a person who has no authority therefor would be void. A fortiori an appointment made in violation of the mandatory provisions of the statute or constitutional obligation shall also be void. If no appointment could be made in terms of the statute, such appointment being not within the purview of the provisions of the Act would be void; he cannot be brought within the cadre of permanent employees. The definitions of 'permanent employee' and 'temporary employee' as contained in the rules must, thus, be construed having regard to the object and purport sought to be achieved by the Act.

In State of Punjab v. Jagdip Singh & Ors. [1964 (4) SCR 964], a Constitution Bench of this Court held that if no post was available at the time when the respondent therein could be confirmed, such appointment would be void. The effect of such void appointment has been held to be conferring no legal right stating :

" When an order is void on the ground that the authority which made it had no power to make it cannot give rise to any legal rights, and as suggested by the learned Advocate-General, any person could have challenged the status of the respondents as Tahsildars by instituting proceedings for the issue of a writ of quo warranto under Article 226 of the Constitution. Had such proceedings been taken it would not have been possible for the respondents to justify their status as permanent Tahsildars and the High Court would have issued a writ of quo warranto depriving the respondents of their status as permanent Tahsildars "

[See also Union Public Service Commission v. Girish Jayanti Lal Vaghela & Others, 2006 (2) SCALE 115].

In Onkar Prasad Patel (supra), whereupon Mr. Nair placed strong reliance, it was categorically held that an employee would not come within the purview of definition of 'permanent employee' only because he has completed six months' satisfactory service. The other requirement was that the service must be rendered in a clear vacancy in one or more posts which was established. The conditions were held to be cumulative and not independent of each other. The said decision, therefore, runs counter to the submission of the learned counsel.

For the foregoing reasons, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. The order of the Labour Court will stand set aside. However, in the facts and circumstance of the case, there shall be no order as to costs.

Supreme Court of India

Mahendra L. Jain & Ors vs Indore Development Authority & ... on 22 November, 2004

Author: S.B. Sinha

Bench: N. Santosh Hegde, S.B. Sinha

CASE NO.:

Appeal (civil) 337 of 2002

PETITIONER:

Mahendra L. Jain & Ors.

RESPONDENT:

Indore Development Authority & Ors.

DATE OF JUDGMENT: 22/11/2004

BENCH:

N. Santosh Hegde & S.B. Sinha

JUDGMENT:

J U D G M E N T W I T H C I V I L A P P E A L N O S . 3 3 4 & 3 3 5 O F 2 0 0 2 S . B . S I N H A , J :

These appeals arising out of a judgment and order dated 26.4.2000 passed in Writ Petition No.1188 of 1997 by the High Court of Madhya Pradesh, Indore Bench, involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

BACKGROUND FACTS :

The Appellant Nos.1 and 2 are Degree holders in Civil Engineering and Appellant Nos. 3 and 4 are Diploma holders in Civil Engineering. They having come to learn that certain vacancies exist in the Respondent- Authority, applied therefor although no advertisement in that behalf was issued. The Respondent-Authority appointed the Appellants and posted them to an overseas project known as 'Indore Habitat Project' which was implemented through the agency of 'Overseas Development Authority' (hereinafter referred to as 'the ODA'), on daily wages @ Rs.63/- per day for the Degree holders and Rs.52.50 per day for the Diploma holders. On or about 17.3.1997, however, they began receiving a salary of Rs.1500/- per month. Allegedly, from their salary, provident fund was being deducted. They were also being granted the benefit of leave.

A dispute arose as to whether all the Appellants were employed for the purpose of the said project or the Appellants in Civil Appeal No.337 of 2002 were appointed in the year 1991 by the Authority for its own job. An industrial dispute was raised by the Appellants herein as their services were not being regularized by the Respondent. The said dispute was referred for adjudication of the Labour Court, Indore, by the State of Madhya Pradesh on the following questions :

"(1) Whether non-regularisation of the Sub-Engineers (as per the listed enclosed) is valid and proper? If no, then to which relief they are entitled and what directions should be given to the employer?

(2) Whether it is valid and proper for not giving equal salary to these Sub Engineers like other Sub Engineers in accordance with the equal work? If no, then to which relief they are entitled and what directions should be given to the employer?"

PROCEEDINGS BEFORE THE TRIBUNAL :

The parties filed their respective pleadings before the Labour Court and also adduced their respective evidences. The Labour Court on the basis of the materials produced before it arrived at the following findings :

1. The Appellants were appointed by the Indore Development Authority.
2. All the employees have been working in the establishment of the Respondents for last 5-6 years.
3. Their work was satisfactory.
4. Work has been taken by the Respondent from all the Appellants except four.
5. Respondents had also mentioned in their claim that there was a proposal to hand over the colony of ODA Project to Indore Municipal Corporation.
6. The salary fixed by the Commissioner was earlier given to all Engineers and later on they were given the salary fixed by the Collector.
7. There is no difference in their work and the work of the employees of Indore Development Authority.

Aggrieved by and dissatisfied with the said Award, the Respondent- Authority herein filed a writ petition before the Madhya Pradesh High Court, Indore Bench, which was marked as Writ Petition No.1188 of 1997. By reason of the impugned judgment dated 26.4.2000, the said writ petition was allowed.

HIGH COURT JUDGMENT :

The High Court accepted the contention of the Respondent-Authority that the Appellants were not appointed against the sanctioned posts and their services were taken on account of the said ODA Project which was implemented through the agency of the Respondent-Authority. The ODA Project is said to have been completed and only the maintenance thereof was to be looked after by the Indore Municipal Corporation. It was held that the services of the Appellants cannot be directed to be regularized in services. As regard the application of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (for short, 'the 1961 Act') and the Rules framed thereunder known as 'M.P. Industrial Employment (Standing Order) Rules, 1963 (for short, 'the 1963 Rules'), it was observed that although there was no specific pleadings raised in this behalf by the Respondents therein nor any question having been referred to the Labour Court by the State Government

touching the said issue, it committed an error in granting relief to them on the basis thereof on its own motion. Despite the same the High Court went into the question of applicability of the said Act and held that the 1961 Act and the 1963 Rules had no application. Before the High Court various documents were produced by the Appellants herein to show the nature of their employment, but the same had not been taken on records by the High Court. As regard application of the doctrine of 'equal pay for equal work', it was held to be not applicable as the Appellants were not entitled to 'absorption' or 'classification' in terms of the 1961 Act and the 1963 Rules.

SUBMISSIONS :

Dr. Rajiv Dhawan, learned Senior Counsel, appearing on behalf of the Appellants in Civil Appeal No.337 of 2002 and Mr. M.N. Rao, learned Senior Counsel, appearing on behalf of the Appellants in Civil Appeal No.335 of 2002, took us through materials on records and contended that the Appellants herein became 'permanent employees' of the Respondents having regard to the provisions contained in Section 2 of the 1961 Act and Order 2(i) and 2(vi) of the Standard Standing Orders as set out in the Annexure appended to the 1963 Rules defining 'permanent employees' and the 'temporary employees'.

Placing reliance on several documents which have come into existence at a subsequent stage, Dr. Dhawan would contend that vacancies in fact had arisen after passing of the judgment of the High Court and, thus the services of the Appellants should be regularized thereagainst. The vacancies, according to the learned counsel, need not be permanent ones. It was urged that the expression 'clear vacancies' has to be read in the context of period for which the concerned workman was required to work, namely, six months. The learned counsel would argue that the job was required to be performed for six months for which somebody else could have been appointed so as to attract the provisions of the 1961 Act and the 1963 Rules. Dr. Dhawan would furthermore contend that the findings of fact had been arrived at by the Labour Court that the Appellants of Civil Appeal No.337 of 2002 were appointed by the Authority and not only their work was being taken in the Project but also in other works, and, thus, mere posting of the Appellants to the said Project would not disentitle them from the benefit of the said Act.

The learned counsel would urge that a seniority list was also drawn up and an employment code was assigned to each one of the Appellants from which fact the nature of their employment should be judged.

The learned counsel would submit that the sufficient materials were brought on records to show that vacancies were available and as the Appellants worked for a period of more than six months, they became permanent employees in terms of the Act. It was further contended that as the Respondents despite direction to produce documents including the offers for appointment did not produce the same, an adverse inference should have been drawn against them by the High Court. As regard the claim of 'equal pay for equal work', the learned counsel would urge that the High Court has failed to consider the same in its true perspective. Mr. V.R. Reddy, learned Senior Counsel appearing on behalf of the Respondents, on the other hand, would contend that indisputably the Appellants were engaged by the Respondent-Authority but such appointments were made for the purpose of the

Project financed by ODA. The learned counsel would submit that in fact no appointment letter was issued to the Appellants. Our attention was also drawn to the application dated 22.10.1991 filed by one O.P. Mandloi before the Chairman of the Indore Development Authority disclosing his educational qualifications and enclosing therewith the mark-sheets and degrees obtained by him in Civil Engineering and also Secondary School Examination Certificate to show his date of birth whereupon the Chief Executive Officer on the body of the said application itself, made the following endorsement :

"He may be tried in daily wages and should be entrusted with the work of progress collection of ODA work put with (Illegible).

Sd/-

C.E.O.

23.10.91"

The learned counsel would submit that in the aforementioned premise the question of regularization of the services of the Appellants does not arise. Drawing our attention also to the pleadings as also the reliefs claimed for by the Appellants before the Labour Court, the learned counsel would contend that no contention was raised therein by the Appellants as regard their entitlement of permanency in terms of the provisions of the 1961 Act and the 1963 Rules. Furthermore, from the reliefs claimed, it would appear that the Appellants had, inter alia, prayed for continuance of their services by the Indore Municipal Corporation which knocks off the very basis of their claim. It was urged that there does not exist any controversy that ODA was to continue before 30.6.1997 and as such the Appellants could not have been absorbed by the Respondent authority.

STATUTORY PROVISIONS :

Section 2(2) of the 1961 Act reads as follows :

"Nothing in this Act shall apply to the employees in an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the official Gazette apply."

Clause 2 of the Standard Standing Order reads as under :

"2. Classification of employees. Employees shall be classified as (i) permanent , (ii) permanent seasonal, (iii) Probationers, (iv) Badlies, (v) Apprentices, and (vi) temporary.

(i) 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;

(vi) 'Temporary employee' means 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 the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i) above."

DETERMINATION :

The Respondent-Authority is a State within the meaning of Article 12 of the Constitution of India. It is, therefore, constitutionally obliged to strictly comply with the requirements of Articles 14 and 16 thereof before making any appointment. It is also not in dispute that the Respondent- Authority has been constituted under Madhya Pradesh Nagar Tatha Gram Nibesh Adhiniyam, 1973 (Adhiniyam); Section 47 whereof mandates that all appointments to the posts of officers and servants included in the State cadre mentioned in Section 76-B of the Development Authority Services must be made by the State Government and the appointments to the posts of officers and servants included in the local cadre in the said services by the concerned Town and Country Development Authority. The proviso appended to Section 47 of the Adhiniyam further mandates that no post shall be created in any authority without the prior sanction of the State Government. Section 76B provides for constitution of development authorities service.

It is also not in dispute that the State Government in exercise of its rule making power conferred upon it under Section 85 of the Adhiniyam has made rules known as 'M.P. Development Authority Services (Officers and Servants) Recruitment Rules, 1987.

The posts of Sub Engineers in which the Appellants were appointed, it is nobody's case, were sanctioned ones. Concededly, the Respondent Authority before making any appointment neither intimated the Employment Exchange about the existing vacancies, if any, nor issued any advertisement in relation thereto. Indisputably, the conditions precedent for appointment of the officers and servants of the Authority, as contained in the Service Rules had not been complied with. The appointments of the Appellants were, therefore, void ab initio being opposed to public policy as also violative of Articles 14 and 16 of the Constitution of India.

The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularization of their services. The answer thereto must be rendered in negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalized by taking recourse to regularization. What can be regularized is an irregularity and not an illegality. The Constitutional Scheme which the country has adopted does not contemplate any backdoor appointment. A State before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements. A daily wage in absence of a statutory provision in this behalf would not be entitled to regularization. [See State of U.P. & Others Vs. Ajay Kumar, (1997) 4 SCC 88, Jawaharlal Nehru Krishi Viswa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others (1997) 5 SCC 86] In

Hindustan Shipyard Ltd. and Others vs. Dr. P. Sambasiva Rao and Others [(1996) 7 SCC 499], a Division Bench of this Court observed :

"10. The process of regularization involves regular appointment which can be done only in accordance with the prescribed procedure. Having regard to the rules which have been made by the appellant-Corporation, regular appointment on the post of medical officer can only be made after the duly constituted Selection Committee has found the person suitable for such appointment ."

In A. Umarani vs. Registrar, Cooperative Societies and Ors. [JT 2004 (6) SC 110], a three-Judge Bench of this Court of which we were members upon taking into consideration a large number of decisions held :

"Although we do not intend to express any opinion as to whether the cooperative society is a "State" within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the Nodal Centre functions and supervision of the cooperative society, the State has no administrative control over its day to day affairs. The State has not created any post nor they could do so on their own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularization of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time.

Yet recently in Pankaj Gupta & Ors., etc. vs. state of Jammu & Kshmir & Ors. [JT 2004 (8) SC 531], a Division Bench of this Court opined :

"No person illegally appointed or appointed without following the procedure prescribed under the law, is entitled to claim that he should be continued in service. In this situation, we see no reason to interfere with the impugned order. The appointees have no right for regularization in the service because of the erroneous procedure adopted by the concerned authority in appointing such persons "

CASE LAW RELIED UPON BY THE APPELLANT :

In Dr. A.K. Jain and Others etc. vs. Union of India and Others [1987 (Supp.) SCC 497], this Court did not lay down any law. It was, in fact, held that as the Petitioners therein were not regularized in accordance with the prescribed rules and regulations for regular appointments, their services had to be terminated and as such there had been neither any arbitrary nor illegal action on the part of the respondents nor any violation of the Fundamental Rights guaranteed under Articles 14 and 16. However, having regard to the facts and circumstances of the said case, some directions were issued presumably in terms of Article 142 of the Constitution.

In Hindustan Shipyard Ltd. (supra) this Court also distinguished the said decision.

In *Niadar and Another vs. Delhi Administration and Another* [(1992) 4 SCC 112], again no law has been laid down. It appears that there existed a scheme for regularization and some directions were issued in terms thereof. The said decisions, thus, are of no assistance in this case.

APPLICATION OF THE ACT AND THE RULES :

The 1961 Act was enacted to provide for rules defining with sufficient precision in certain matters the conditions of employment of employees in undertakings in the State of Madhya Pradesh. By reason of the provisions of the said Act, application of Standard Standing Orders to undertakings has been provided in terms whereof the matters to be provided in the Standard Standing Orders have been specified. Under sub-section (1) of Section 6, the State Government may, by notification, apply Standard Standing Orders to such class of undertakings and from such date as may be specified therein. Sub-section (2) of Section 6 reads as under :

"Where immediately before the commencement of this Act standing order are in force in respect of any undertaking, such standing orders shall, until standard standing orders are applied to such undertaking under sub-section (1) continue in force as if they were made under this Act."

No notification has been brought to our notice that the Standard Standing Orders had been made applicable to the Appellants. It is furthermore not in dispute that Adhiniyam came into force in 1973. The statute, rules and regulations formed by the State govern the terms and conditions of service of the employees of the Respondent. The terms of conditions of service contained in the 1973 Act and the 1987 Rules are not in derogation of the provisions contained in schedule appended to the 1961 Act.

The 1961 Act provides for classification of employees in five categories. The 1973 Act, as noticed hereinbefore, clearly mandates that all posts should be sanctioned by the State Government and all appointments to the said cadre must be made by the State Government alone. Even the appointments to the local cadre must be made by the Authority. The said provisions were not complied with. It is accepted that no appointment letter was issued in favour of the Appellants. Had the appointments of the Appellants been made in terms of the provisions of the Adhiniyam and Rules framed thereunder, the Respondent-Authority was statutorily enjoined to make an offer of appointment in writing which was to be accepted by the Appellants herein. Who made the appointments of the Appellants to the Project or other works carried on by the Authority is not known. Whether the person making an appointment had the requisite jurisdiction or not is also not clear. We have noticed hereinbefore that in the case of Om Prakash Mondloi, the CEO made an endorsement to the effect that he may be tried in daily wages and should be entrusted with the work of progress collection of ODA work. The said order is not an 'offer of appointment' by any sense of term.

It may be true that the Appellants had been later on put on a monthly salary but there is nothing on record to show as to how the same was done. They might have been subjected to the provisions of the employees provident fund and might have been granted the benefit of leave or given some employment code and their names might have found place in the seniority list amongst others, but

thereby they cannot be said to have been given a permanent ticket. The so-called seniority list which is contained in Annexure P-27, whereupon strong reliance has been placed by Dr. Dhawan merely itself goes to show that it was prepared in respect of office muster employees. The said seniority list was not prepared in terms of the classification of employees within the meaning of the 1961 Act and the rules framed thereunder but was based on the date of joining probably for the purpose of maintenance of records. The 1973 Act or the rules framed thereunder do not provide for appointments on ad hoc basis or on daily wages. The 1961 Act itself shows that the employees are to be classified in six categories, namely, permanent, permanent seasonal, probationers, badlies, apprentices and temporary. The recruitments of the Appellants do not fall in any of the said categories. With a view to become eligible to be considered as a permanent employee or a temporary employee, one must be appointed in terms thereof. Permanent employee has been divided in two categories (i) who had been appointed against a clear vacancy in one or more posts as probationers and otherwise; and (ii) whose name had been registered at muster roll and who has been given a ticket of permanent employee. A 'ticket of permanent employee' was, thus, required to be issued in terms of Order 3 of the Standard Standing Orders. Grant of such ticket was imperative before permanency could be so claimed. The Appellants have not produced any such ticket.

It is not the case of the Appellants that they had been working as Technical Supervisors and Clerks in respect of which service book may be maintained instead of issuance of a ticket. It is also not the case of the Appellants that their names had appeared in the service book maintained for the said purpose.

The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the *suprema lex*, shall prevail over all other statutes. The only provision as regard recruitment of the employees is contained in Order 4 which merely provides that the Manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In absence of any specific directions contained in the schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the Respondent shall prevail.

In *M.P. Vidyut Karamchari Sangh vs. M.P. Electricity Board* [(2004) 9 SCC 755], a three-Judge Bench of this Court held that a regulation which is not inconsistent with the provisions of the 1961 Act and the Rules, can be issued by a statutory authority.

For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute: vis-à-vis the 1973 Act and the rules framed thereunder. But in absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularization. For the purpose of regularization which would confer on the concerned employee a permanent status, there must exist a post. However, we may hasten to add that regularization itself does not imply permanency. We have used the term keeping in view the provisions of 1963 Rules.

We have noticed the provisions of the Act and the Rules. No case was made out by the Appellants herein in their statements of claim that they became permanent employees in terms thereof. There is also nothing on records to show that such a claim was put forward even in the demand raising the industrial dispute. Presumably, the Appellants were aware of the statutory limitations in this behalf. Furthermore, the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four-corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom. A demand which was not raised at the time of raising the dispute could not have been gone into by the Labour Court being not the subject-matter thereof.

The questions which have been raised before us by Dr. Dhawan had not been raised before the Labour Court. The Labour Court in absence of any pleadings or any proof as regard application of the 1961 Act and the 1963 Rules had proceeded on the basis that they would become permanent employees in terms of Order 2(ii) and 2(vi) of the Annexure appended thereto. The Appellants did not adduce any evidence as regard nature of their employment or the classification under which they were appointed. They have also not been able to show that they had been issued any permanent ticket. Dr. Dhawan is not correct in his submission that a separate ticket need not be issued and what was necessary was merely to show that the Appellants had been recognized by the State as its employees having been provided with employment code. We have seen that their names had been appearing in the muster rolls maintained by the Respondent. The Scheme of the employees provident fund or the leave rules would not alter the nature and character of their appointments. The nature of their employment continues save and except a case where a statute interdicts which in turn would be subject to the constitutional limitations. For the purpose of obtaining a permanent status, constitutional and statutory conditions precedent therefor must be fulfilled.

The submission of Mr. M.N. Rao to the effect that the principle of equity should be invoked in their case is stated to be rejected. Such a plea had expressly been rejected by this Court in A. Umarani (supra).

PROJECT WORK :

This case involves 31 employees. A distinction is sought to be made by Dr. Dhawan that out of them 27 had been appointed to a project and not in a project. The distinction although appears to be attractive at the first blush but does not stand a moment's scrutiny. As noticed hereinbefore, the High Court's observation remained unchallenged, that the project was to be financed by ODA. The project was indisputably to be executed by the Indore Development Authority; and for the implementation thereof, the appointments had to be made by it. If the Appellants were appointed for the purpose of the project, they would be deemed to have been appointed therefor and only because such appointments had been made by the Respondent would by itself not entitle them to claim permanency. The life of the project came to an end on 30.6.1997. The maintenance job upon completion thereof had been taken over by Indore Municipal Corporation. The Appellants were aware of the said fact and, thus, raised an alternative plea in their statements of claims. The Labour Court could not have granted any relief to them as prayed for, as Indore Municipal Corporation is a separate juristic person having been created under a statute. Such a relief would have been beyond the scope and purport of the reference made to the Labour Court by the State Government.

Furthermore, the Indore Municipal Corporation was not a party and, thus, no employee could be thrust upon it without its consent.

In *A Umarani* (supra), this Court held that once the employees are employed for the purpose of the scheme, they do not acquire any vested right to continue after the project is over [See paras 41 and 43]. [See also *Karnataka State Coop. Apex Bank Ltd. Vs. Y.S. Shetty and Others*, (2000) 10 SCC 179 and *M.D. U.P. Land Development Corporation and Another Vs. Amar Singh and Others*, (2003) 5 SCC 388] It is furthermore evident that the persons appointed as daily wagers held no posts. The appointments, thus, had been made for the purpose of the project which, as indicated hereinbefore, came to an end. The plea of Dr. Dhawan to the effect that the Appellants in Civil Appeal No. 337 of 2002 were asked to perform other duties also may not be of much significance having regard to our foregoing findings. However, it has been seen that even services of one of them had been requisitioned only for the project work. The High Court, in our opinion, was right in arriving at the conclusion that the Appellants were not entitled to be regularized in service.

ADVERSE INFERENCE :

Some documents were said to have been called for from the Respondents which are said to have been not produced. One of such documents was offers of appointment. The witness examined on behalf of the Respondents, although at one stage stated that the appointment letters had been issued to them, upon going through the records brought with him, however, asserted that no such appointment letter was issued. Had the letters of appointment been issued, the Appellants themselves could have produced the same. They did not do so. It is accepted at the Bar, when the endorsement on the application filed by Om Prakash Mondloi was shown that the appointment letters were not issued. We do not know the relevance of other documents called for for determining the issue. If a document was called for in absence of any pleadings, the same was not relevant. In absence of any pleadings, the Appellants could not have called for any document to show that the provisions of the 1961 Act and 1963 Rules would apply. Before the High Court as also before us, the Appellants have produced a large number of documents which were not filed before the Labour Court. Such additional documents had been kept out of consideration by the High Court as also by us. We have referred to the said fact only for the purpose of showing that it would not be correct to contend that the Appellants had no access to the said documents. An adverse inference need not necessarily be drawn only because it would be lawful to do so. The Labour Court did not draw any adverse inference. Such a plea was not even raised before the High Court.

Recently in *M.P. Electricity Board vs. Hariram etc.* [2004 AIR SCW 5476], this Court observed :

"" In such a factual background, in our opinion, the Industrial Court or the High Court could not have drawn an adverse inference for the non-production of the Muster Rolls for the year 1990 to 1992 in the absence of specific pleading by the respondents-applicants that at least during that period they had worked for 240 days continuously in a given year. The application calling for the production of the documents was for the years 1987 to 1992. As stated above, between the period 1987 to 1990, as a matter of fact, till end of the year 1990 the respondents have not been able to establish the case of continuous work for 240 days. Considering these facts in our view drawing of

an adverse inference for the non- production of the Muster Rolls for the years 1991-92, is wholly erroneous on the part of the Industrial Court and the High Court. We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the applicants-respondents.

The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of re-instatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Muncipal Corporation, Faridabad vs. Siri Niwas (JT 2004 (7) SC

248) wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard..

A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld.

Presumption as to adverse inference for non-

production of evidence is always optional and one of the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-

production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the Appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the Respondent.""

In any event, in this case, we have proceeded on the basis that the assertions of the Appellants as regard nature of their employment, their continuance in the job for a long time are correct and as such the question as to whether any adverse inference should be drawn for alleged production of documents called for would take a back seat.

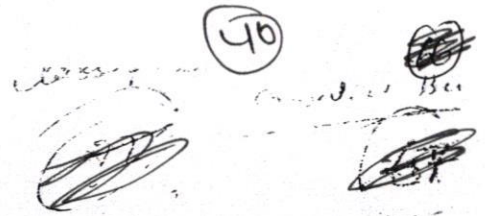
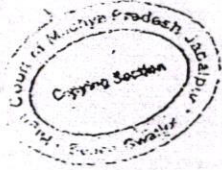
EQUAL PAY FOR EQUAL WORK :

The Appellants having been employed on daily wages did not hold any post. No post was sanctioned by the State Government. They were not appointed in terms of the provisions of the statute. They were not, therefore, entitled to take the recourse of the doctrine of 'equal pay for equal work' as adumbrated in Articles 14 and 39(d) of the Constitution of India. The burden was on the Appellants to establish that they had a right to invoke the said doctrine in terms of Article 14 of the Constitution of India. For the purpose of invoking the said doctrine, the nature of the work and responsibility attached to the post are some of the factors which were bound to be taken into consideration.

Furthermore, when their services had not been regularized and they had continued on a consolidated pay on ad hoc basis having not undergone the process of regular appointments, no direction to give regular pay scale could have been issued by the Labour Court. [See Orissa University of Agriculture & Technology and Another vs. Manoj K. Mohanty (2003) 5 SCC 188]., In State of Haryana and Another vs. Tilak Raj and Others [(2003) 6 SCC 123], it was held :

"A scale of pay is attached to a definite post and in case of a daily-wager, he hold no posts. The respondent workers cannot be held to hold any posts to claim even comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one."

The said decision has been noticed in A. Umarani (supra) CONCLUSION For the reasons aforementioned, we do not find any merit in these appeals, which are dismissed accordingly. There shall, however, be no order as to costs.

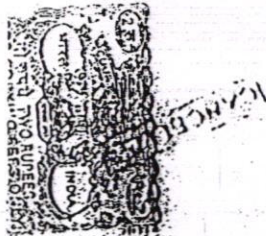


IN THE HIGH COURT OF MADHYA PRADESH
JUDICATURE AT JABALPUR, BENCH AT GWALIOR

WRIT PETITION NO

1997
/2006 (S)

1. State of Madhya Pradesh through
Secretary, Public Health Engineering
Department, Vallabh Bhawan, Bhopal.
2. The Chief Engineer, Public Health
Engineering Department, Satpuda
Bhawan, Bhopal.
3. The Superintendent Engineer, Office of
the Public Health Engineering
Department, Mechanical, Division
Gwalior, Samswati Nagar, Koti
No.110, Thatipuri, Gwalior (M.P.)
4. The Executive Engineer, Public Health
Engineering Department, Mechanical
Division Gwalior, Sagar Tal Gwalior
5. The Assistant Engineer Public Health
Engineering Depart



Sub Division Morena, Dholpur Road,
Morena, M.P.,

Petitioners

Versus

1. Sahab Singh son of Shri Shudhar
Barsena, resident of Gol Pahadiya,
Lashkar, Gwalior (M.P.)

2. Labour Court No.2, Gwalior.

3. Industrial Court, M.P., Bench

Gwalior

Respondents

Writ Petition under Article 227 of the Constitution of
India for issuance of writ of Mandamus, Certiorari and/or
any other suitable writ, order or direction in the matter of
quashing the orders passed by the Industrial Court and
Labour Court No.2, Gwalior by which ordered to classify
the respondent / employee, a daily wage employee as
Assistant Drilling in the establishment of the petitioners.

(42)
(24) 133 138

ANNEXURE-C
HIGH COURT OF MADHYA PRADESH

CASE NO. OF 20

ORDER SHEET (CONTINUATION)

Date & S. No.
of the order

Order

Writ Petition No. 1992/2006

Writ Petition No. 1992/2006 (S.

05/5/2011 /

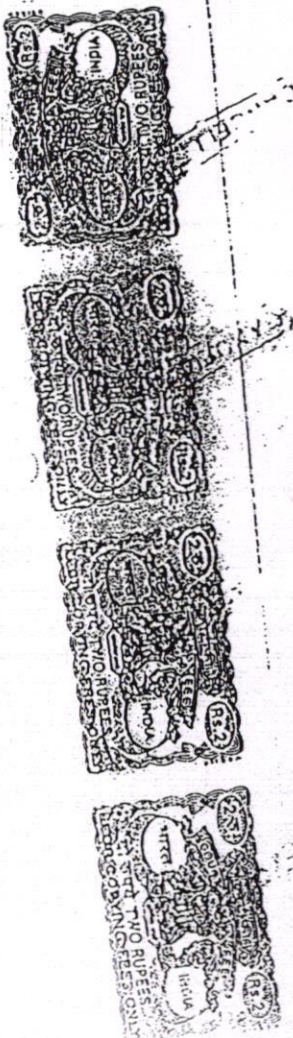
Petitioners / State by Shri C.S. Dixit, Dy.
Advocate General.

Respondent by Shri Devendra Sharma
Advocate

This petition has been filed against the
orders Annexures P/1 & P/2.

By the order Annexure P/1, the Labour Court
has classified the respondent / workman on the
post of Assistant Drilling Helper under the
provisions of the Madhya Pradesh Industrial
Standard Standing Order and the Labour Court
has assigned the reasoning that the respondent
workman has completed six months satisfactory
service. As per judgment of the Hon'ble Supreme
Court in the case of State of Madhya Pradesh
and others Vs. Lalit Kumar Verma (2007) 1
SCC 575 the classification could not be ordered.
Hence the order passed by the Labour Court and
Industrial Court are bad in law.

However, as per the reasoning of the
Hon'ble Supreme Court in the
case of Lalit Kumar Verma (2007) 1
SCC 575, the classification was not bad in law.



ANNEXURE-C

HIGH COURT OF MADHYA PRADESH

CASE NO OF 20

ORDER SHEET (CONTINUATION)

Date & S. No.,
of the order

Order

Writ Petition No. 1991/2000

as daily wage.

In this view of the matter, this petition is disposed of with a direction to the State to consider the case of the respondent workman in accordance with circular issued for regularization from time to time.

Petition stands disposed of

(S K. Gangele)

(Brij Kishore Dubey)

JUDGE

JUDGE

dos

Noted & signed

WP-4148-2000, WP-4149-2000, WP-4151-2000 &
WP-4152-2000

2.2.2017.

Shri Ajay Pratap Singh, learned Govt. Advocate for the petitioners.

Shri T.K. Modh, learned counsel for respondents-workmen.

Heard.

This common order shall lead to final disposal of all the aforesaid writ petitions as the issue involved in these case are similar and therefore, are analogously heard.

These writ petitions at the instance of State of Madhya Pradesh and its functionaries are directed against the orders passed by Industrial Court in an appeal, affirming the orders passed by Labour Court, classifying the respondents-workmen as permanent on various posts.

In all these cases, the respondents-workmen were engaged on daily wages and have been working as Assistant Helper Hand Pump Mechanic and Driver respectively.

The applications were filed by these respondents-workmen under Sections 31(3) read with Section 61 and 62 of the Madhya Pradesh Industrial Relations Act, 1960 seeking permanent classification on the ground of having completed six months' satisfactory service.

The Industrial Court on a finding that respective workmen have satisfactorily worked for six months from the initial date of engagement, directed for permanent classification by respective orders, which are being challenged in these batch of writ petitions resulting in impugned order, affirming the findings arrived at by the Labour Court.

The challenge is on the ground that respondents-workmen being not appointed against clear vacant post, were not entitled for being directed to be classified as permanent and the same is contrary to the provisions as is contemplated in clause 2(i) of the Annexure to Standard Standing Orders under the M.P. Industrial Employment (Standing Orders) Rules, 1963.

Though learned counsel for the respondents-workmen contradicted the stand taken by petitioners; however, on a perusal of Labour Court record, it is found that there is no material evidence on record to substantiate the claim made by the respondents-workmen on being appointed against clear vacant post and that a permanent ticket was issued in their favour. On the contrary, it is borne out from the cogent material on record that respective workmen were engaged on daily wages and have continued to discharge their duties on daily wage basis

Question which arises for consideration is as to whether when a workman engaged on daily wages is unable to establish through cogent evidence that he was engaged against vacant post and that recruitment was adhered to while appointing him on daily wages whether he would be entitled for being classified as permanent employee, is no more *res integra* and has been settled at rest by the Supreme Court.

In M.P. Housing Board vs Manoj Shrivastava (2006) 2 SCC 702, it has been held –

“8. A person with a view to obtain the status of a 'permanent employee' must be appointed in terms of the statutory rules. It is not the case of the Respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field.

9. The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the Respondent had worked for more than six months satisfactorily; in terms of clause 2(i) of the Standard Standing Order, he acquired the right of becoming permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the Respondent.

10. It is one thing to say that a person was appointed on an ad hoc basis or as a daily wiger but it is another thing to say that he is appointed

in a sanctioned post which was lying vacant upon following the due procedure freedom prescribed therefor.

11. It has not been found by the Labour Court that the Respondent was appointed by the Appellant herein, which is a 'State' within the meaning of Article 12 of the Constitution of India, upon compliance of the constitutional requirements as also the provisions of the 1972 Act or the rules and regulations framed thereunder."

In Mahendra L. Jain v. Indore Development Authority (2005) 1 SCC 639, it has been held –

29. ... The 1961 Act itself shows that the employees are to be classified in six categories, namely, permanent, permanent seasonal, probationers, badlies, apprentices and temporary. The recruitments of the Appellants do not fall in any of the said categories. With a view to become eligible to be considered as a permanent employee or a temporary employee, one must be appointed in terms thereof. Permanent employee has been divided in two categories (i) who had been appointed against a clear vacancy in one or more posts as probationers and otherwise, and (ii) whose name had been registered at muster roll and who has been given a ticket of permanent employee. A 'ticket of permanent employee' was, thus, required to be issued in terms of Order 3 of the Standard Standing Orders. Grant of such ticket was imperative before

permanency could be so claimed. The Appellants have not produced any such ticket.

31. The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the suprema lex, shall prevail over all other statutes. The only provision as regard recruitment of the employees is contained in Order 4 which merely provides that the Manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner. The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In absence of any specific directions contained in the schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the Respondent shall prevail."

It is further observed in Manoj Shrivastava (supra) that -

15. A daily wager does not hold a post unless he is appointed in terms of the Act and the rules framed thereunder. He does not derive any legal right in relation thereto.

17. It is now well-settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. [See Madhyamik Shiksha

Parishad, U.P. v. Anil Kumar Mishra and Others, [(2005) 5 SCC 122], Executive Engineer, ZP Engg. Divn. And Another v. Digambara Rao and others, [(2004) 8 SCC 262], Dhampur Sugar Mills Ltd. v. Bhola Singh, [(2005) 2 SCC 470], Manager, Reserve Bank of India, Bangalore v. S. Mani and Others, [(2005) 5 SCC 100] and State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667]].

When the principle laid down by the Apex Court in the cases referred to *supra*, is applied to the facts of the present case wherein the respondents-workmen have failed to establish that they were appointed in accordance with statutory provisions against vacant post. The Labour Court and the Industrial Court, therefore, committed a grave folly in directing that respondents-workmen be classified as permanent as Assistant Helper Hand Pump Mechanic and Driver respectively.

In view whereof, the impugned orders are hereby set aside.

Petitions are allowed to the extent above. There shall be no costs.

(SANJAY YADAV)
JUDGE

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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

MP No. 578 of 2023

(THE STATE OF MADHYA PRADESH LOK SWASTH YANTRIKI VIBHAG AND OTHERS Vs KANHA AND OTHERS)

Dated : 14-07-2023

Shri Mukesh Parwal, learned counsel for the petitioner/state.

Shri Prakhar Karpe, learned counsel with Shri Yash Agrawal, learned counsel for the respondents on advance notice.

Learned counsel for the petitioner submits that by the impugned awarded, the labour court has directed to classify the respondents as permanent labour and to grant them minimum of the pay scale.

It is argued that the impugned order is contrary to the provisions of MP Standing Orders because the respondents have not continuously served for 240 days on a clear vacant post.

It is submitted that the respondents were engaged on contract basis under Trisame Scheme for Rural Educated Unemployment Rules. It is also stated that the respondents have instituted the proceedings for prosecution under section 29 of the Act, therefore, the proceedings may be stayed.

After hearing learned counsel for the parties, issue notice to the respondents.

The notice is accepted by the learned counsel for the respondents, therefore, no formal notice is required to be issued.

One copy of the petition with annexures be supplied to the learned counsel for the respondents within the period of seven working days.

Learned counsel for the respondent prays for and is granted four weeks time to file reply.

Till the next date of hearing, as an interim measure, it is directed that the

prosecution proceedings in pursuant to the impugned award shall remain stayed.

(VIJAY KUMAR SHUKLA)
JUDGE

Sourabh

