

क्र०	दस्तावेज	पृ०क्रमांक
1	अवमानना याचिका क्रमांक 771/2015 (रामनरेश रावत विरुद्ध श्री अश्विनी राय एवं अन्य में पारित निर्णय दिनांक 15.12.16)	1-30
2	श्री अर्जुन गर्ग स्थायी अधिवक्ता का पत्र दिनांक 02.12.16 जिसमें दिनांक 02.12.16 को माननीय उच्चतम न्यायालय द्वारा स्थायी वर्गीकृत एवं नियमित कर्मचारियों के बीच भेद के संबंध में स्पष्टीकरण चाहा गया था।	31-32
3	श्रम आयुक्त कार्यालय इंदौर का पत्र दिनांक 07.12.16 जिसमें स्थायी वर्गीकृत कर्मचारी को प्राप्त होने वाले लाभों का उल्लेख है।	33-35
4	लोक स्वास्थ्य यांत्रिकी विभाग द्वारा स्थायी अधिवक्ता को प्रेषित जानकारी दिनांक 07.12.16	36-51
5	श्री अर्जुन गर्ग स्थायी अधिवक्ता द्वारा दिनांक 12.12.16 को माननीय उच्चतम न्यायालय के समक्ष फाइल किया गया जवाबदावा सभी एनेक्चर सहित।	52-62
	(I) M.P Industrial employment (standing orders) Act, 1961 & Rules 1963 (एनेक्चर-A)	63-136
	(II) माननीय श्रम न्यायालय क्र.2 इंदौर का निर्णय (म.प्र. कर्मचारी कांग्रेस विरुद्ध लो.स्वा.यां.विभाग एवं अन्य) (एनेक्चर- B)	137-149
	(III) माननीय श्रम न्यायालय क्र.2 ग्वालियर का निर्णय (मदन कुमार श्रीवास्तव विरुद्ध लो.स्वा.यां.विभाग एवं अन्य) (एनेक्चर- C)	150-159
	(IV) माननीय श्रम न्यायालय रीवा का निर्णय (राजकुमार मिश्रा विरुद्ध म0प्र0 शासन एवं अन्य) (एनेक्चर- D)	160-166
	(V) माननीय उच्चतम न्यायालय का निर्णय (महेन्द्र एल जैन एवं अन्य विरुद्ध इंदौर विकास प्राधिकरण एवं अन्य) (एनेक्चर- E)	167-175
	(VI) माननीय उच्चतम न्यायालय का निर्णय (ब्रांच मैनेजर, एम.पी.स्टेट एग्री इंड्रीस्ट्रीस डेक्कलपमेंट कारपोरेशन लिमिटेड विरुद्ध एस.बी.पान्डे) (एनेक्चर- F)	176-181
	(VII) माननीय उच्चतम न्यायालय का निर्णय (गंगाधर पिल्लई विरुद्ध मेसर्स सीमन्स लिमिटेड) (एनेक्चर- G)	182-189
	(VIII) माननीय उच्चतम न्यायालय का निर्णय (म.प्र. शासन एवं अन्य विरुद्ध ललित कुमार वर्मा) (एनेक्चर- H)	190-197
	(IX) माननीय उच्चतम न्यायालय का निर्णय (हिन्दुस्तान एरोनॉटिक्स लिमिटेड विरुद्ध पान बहादुर सिंह एवं अन्य) (एनेक्चर- I)	198-203
	(X) माननीय उच्चतम न्यायालय का निर्णय (हिन्दुस्तान पेट्रोलियम कारपोरेशन विरुद्ध अशोक आंबरे) (एनेक्चर- J)	204-208
	(XI) म0प्र0इंड्रस्ट्रीयल ट्रिब्यूनल इंदौर का निर्णय (पश्चिमी म.प्र. इजीनियरिंग उद्योग श्रमिक संघ विरुद्ध कार्यपालन यंत्री लोक निर्माण विभाग शाजापुर) (एनेक्चर- K)	209-218
	(XII) माननीय उच्चतम न्यायालय का निर्णय (हरीनंदन प्रसाद एवं एक अन्य विरुद्ध भारतीय खाद्य निगम एवं अन्य) (एनेक्चर- L)	219-232

	(XIII) माननीय श्रम न्यायालय से प्रारंभ कर माननीय उच्चतम न्यायालय का निर्णय (म0प्र0 शासन एवं अन्य विरुद्ध रमेश चन्द्र श्रीवास्तव) (अतिरिक्त निर्णय)	233—245
	(XVIII) माननीय उच्चतम न्यायालय निर्णय (म0प्र0 शासन एवं अन्य विरुद्ध दिलीप सिंह पटेल) (अतिरिक्त निर्णय)	246—248
6	माननीय उच्च न्यायालय खंडपीठ ग्वालियर का निर्णय (कालूराम नरवरिया विरुद्ध म0प्र0शासन एवं अन्य)	249—255
7	कारण बताओ सूचना पत्र (अभ्यावेदन के निराकरण के पूर्व जारी किये जाने हेतु)	256—262
8	अभ्यावेदनों का निराकरण (एक नमूना)	263—280
9	माननीय उच्च न्यायालय खंडपीठ ग्वालियर एवं माननीय उच्चतम न्यायालय के एस.एल.पी.कं. 20025/2011 एवं रिट्यू एस.एल.पी. कं. 859/2015 में पारित निर्णय (सुल्तान सिंह नरवरिया) माननीय उच्चतम न्यायालय का निर्णय दिनांक 21.01.2015	281—304
10	सामान्य प्रशासन विभाग का परिपत्र दिनांक 07.10.2016	305—312
11	माननीय श्रम न्यायालय एवं उच्च न्यायालय द्वारा दैनिक वेतन भोगी कर्मचारियों के संबंध में दिये गये विभिन्न प्रकार के निर्णय प्रमुख अभियंता का पत्र कं. 6880 दिनांक 13.08.2015	313—315
12	अवमानना याचिका कं. 771/2015 (रामनरेश रावत एवं अन्य बनाम श्री अश्विनी राय एवं अन्य) में पारित निर्णय दिनांक 15.12.2016। निर्णय की कड़िका 13 से 17 तक में यह अभिनिर्धारित किया गया है कि स्थायी वर्गीकृत दैनिक वेतन भोगी कर्मचारियों के मामले में "समान कार्य समान वेतन" का सिद्धांत लागू नहीं होगा क्योंकि उनकी नियुक्ति अवैधानिक है। स्थायी घोषित कर्मचारी सभी उद्देश्यों के लिये स्थायी नहीं हो जाता है। वह नियमित कर्मचारी नहीं है तथा उसे मात्र म0प्र0 औद्योगिक नियोजन (स्थायी आज्ञायें) अधिनियम 1961 नियम 1963 एवं अन्य श्रम अधिनियमों के अंतर्गत मिलने वाली सुविधायें प्राप्त होती हैं।	316—344
13	माननीय उच्चतम न्यायालय द्वारा एस.एल.पी. (सिविल) कं. 10519/2020 (विभूति शंकर पांडेय बनाम म0प्र0शासन एवं अन्य) में पारित निर्णय दिनांक 08.02.2023 एवं रिट अपील कं. 20/2020 तथा रिट पिटीशन कं. 17517/2018 में पारित निर्णय, जिनके माध्यम से यह अभिनिर्धारित किया गया है कि दैनिक वेतन भोगी कर्मचारी जिन्हें सक्षम प्राधिकारी द्वारा जारी नियुक्ति आदेश के बिना एवं रिक्त पद के बिना नियोजित किया गया है, उनका नियमितीकरण नहीं किया जाना चाहिये।	345—362

HIGH COURT OF MADHYA PRADESH : BENCH GWALIOR

No. SCS/GWL/17/

Gwalior, dated

To,

The State of Madhya Pradesh,
Through-the Principal Secretary,
Public Health & Engineering Department,
Mantralaya, Vallabh Bhawan,
BHOPAL (M.P.)

Subject :- Supreme Court Contempt Petition(C) No. 771/15 in Special
Leave to Appeal (C) No. 25284/12 (Ram Naresh Rawat Vs. Sri
Ashwini Ray & Ors.), from the Judgment and Order dated
18.05.11, of the High Court of M.P., Bench-Gwalior in W.P.
No.6588/10(S).

I am to enclose herewith a copy of certified copy of the Hon'ble
Supreme Court's Judgment dated 15.12.16, passed in the aforementioned
matter, for your information and necessary action.

Encl. :- As above.

Sd/-
ASSISTANT REGISTRAR

HIGH COURT OF MADHYA PRADESH : BENCH GWALIOR

SCS/GWL/17/Endt. No. 96

Gwalior, dated 17-1-17

Copy forwarded to :-

- i. The Engineer-in-Chief, Public Health & Engineering Department,
Satpuda Bhawan, Bhopal (M.P.);
ii. The Chief Engineer, Public Health and Engineering Department, Near
Water Tank, Morar, Gwalior (M.P.) for information and necessary
action.

Encl. :- As above.

ASSISTANT REGISTRAR

2
REPORTABLE

R-572/16

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

417202

CONTEMPT PETITION (CIVIL) NO. 771 OF 2015

IN

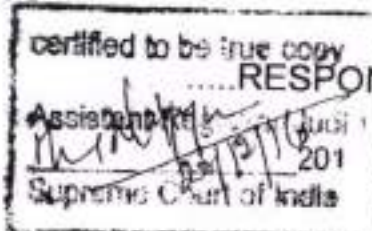
SPECIAL LEAVE PETITION (C) NO. 25284 OF 2012

RAM NARESH RAWAT

.....PETITIONER(S)

VERSUS

SRI ASHWINI RAY & ORS.



WITH

CONTEMPT PETITION (CIVIL) NO. 838 OF 2015

IN

SPECIAL LEAVE PETITION (C) NO. 9635 OF 2013

CONTEMPT PETITION (CIVIL) NO. 858 OF 2015

IN

SPECIAL LEAVE PETITION (C) NO. 23985 OF 2012

CONTEMPT PETITION (CIVIL) NO. 62 OF 2016

IN

SPECIAL LEAVE PETITION (C) NO. 31343 OF 2011

CONTEMPT PETITION (CIVIL) NOS. 82-85 OF 2016

IN

SPECIAL LEAVE PETITION (C) NOS. 18245 OF 2014, 18246, 18247
& 18249 OF 2014

CONMT.PET.(C) NO. 101/2016 IN SLP(C) NO. 19220/2014

CONMT.PET.(C) NO. 787/2015 IN SLP(C) NO. 19224/2014

CONMT.PET.(C) NO. 788/2015 IN SLP(C) NO. 19286/2014

CONMT.PET.(C) NO. 819/2015 IN SLP(C) NO. 19217/2014

CONMT.PET.(C) NO. 823/2015 IN SLP(C) NO. 19218/2014

CONMT.PET.(C) NO. 856/2015 IN SLP(C) NO. 19230/2014

CONMT.PET.(C) NO. 121-131/2016 IN SLP(C) NO. 8473/2012, 19394/2012, 23980/2012, 23981/2012, 23986/2012, 34868/2012, 38228/2012, 38231/2012, 38235/2012, 38236/2012, 19236/2014. ✓

CONMT.PET.(C) NO. 735/2015 IN SLP(C) NO. 19278/2014

CONMT.PET.(C) NO. 793-817/2015 IN SLP(C) NO. 20025/2011 AND 19396/12, SLP(C) NO. 30275/2012, SLP(C) NO. 30276/2012, SLP(C) NO. 1577/2013, SLP(C) NO. 5597/2013, SLP(C) NO. 29683/2013, SLP(C) NO. 19095/2014, SLP(C) NO. 19282/2014, SLP(C) NO. 19251/2014, SLP(C) NO. 25279/2012, SLP(C) NO. 12438/2013, SLP(C) NO. 12433/2013, SLP(C) NO. 5350/2013, SLP(C) NO. 19221/2014, SLP(C) NO. 19260/2014, SLP(C) NO. 19257/2014, SLP(C) NO. 19206/2014, SLP(C) NO. 25277/2012, SLP(C) NO. 19094/2014, SLP(C) NO. 19205/2014, SLP(C) NO. 19219/2014, SLP(C) NO. 19237/2014, SLP(C) NO. 19246/2014 AND SLP(C) NO. 19255/2014

CONMT.PET.(C) NO. 215/2016 IN SLP(C) NO. 21830/2012

WITH

CONMT.PET.(C) NO. 216/2016 IN SLP(C) NO. 21835/2012

CONMT.PET.(C) NO. 512/2016 IN SLP(C) NO. 18413/2014

CONMT.PET.(C) NO. 475/2016 IN SLP(C) NO. 8203/2012

9224/2014
2014

CONMT.PET.(C) NO. 536/2016 IN SLP(C) NO. 19393/2012

AND

CONMT. PET. (C) NO. 106/2016 IN SLP(C) NO. 19292/2012

J U D G M E N T

A.K. SIKRI, J.

All the petitioners who have filed these contempt petitions were engaged by the State of Madhya Pradesh on different dates on different posts but all of them were engaged as daily wagers. They continued as daily wagers for long spell of time. According to the petitioners, in terms of Madhya Pradesh Industrial Environment (Standing Order) Rules, 1963, they became entitled to be classified as 'permanent employees'. However, their demand for classification as permanent employees was not acceded to by the State, which inaction of the State Government provoked some of these employees to raise the industrial dispute for their classification which resulted into award(s) of the labour court directing their classification as 'permanent'. The labour court also held that on their classification as permanent, they would be entitled to the pay-scale of permanent post from dates specified in the award. Appeals were filed by the State against

5 27

those orders which were dismissed by the industrial court and writ petitions also came to be dismissed by the High Court. This resulted in passing of the orders by the concerned authorities in the State Government classifying these petitioners as permanent employees. It was also ordered that they shall be entitled to minimum pay as fixed by the Labour Commission. This led to another round of litigation as the petitioners claimed that on their classification as 'permanent' to their respective posts they were entitled to receive the pay-scale attached to the said posts. These reliefs were granted to them by the labour court against which appeal preferred before the industrial court and the writ petition before the High Court were also dismissed. In all these cases, thereafter, special leave petitions were filed which were dismissed by this Court by common order dated 21st January, 2015. This order reads as under:

"Delay condoned.

Dismissed.

We direct the State Government to implement the order(s) passed by the High Court within eight months' time from today.

If for any reason, the petitioner-State does not implement the order(s) passed by the High Court, the respondents are at liberty to approach this Court by way of filing contempt petition(s)."

- 6
- 2) The State Government has passed the orders fixing the pay of these petitioners at the minimum of the regular pay-scale attached to the respective posts. To demonstrate, by way of example, in the case of Ram Naresh Rawat, who was engaged as a daily wager, the pay is fixed at Rs. 15330/- in the pay-scale of Rs. 5200/- attached to the said post. Break up of the aforesaid salary fixing is as under:

Sl. No.	Particulars	Amount (Rs.)
2(i)	Minimum in the Regular pay scale granted vide order dated 11.03.2016 (per month)	5200/-
2(ii)	Grade pay (per month)	1800/-
2(iii)	D.A. (per month)	8330/-
2(iv)	Total salary and other benefits in hand (i+ii+iii) per month	15330/-

At the time of passing the order, he was getting monthly wage of Rs. 11,300/- as the daily wager. His salary, therefore, stands enhanced of Rs. 4030/-. In addition, he is given arrears in the sum of Rs. 5,93,887/-. In similar manner, pay of all the petitioners has been fixed.

- 3) The petitioners are, however, not satisfied with the aforesaid fixation and contended that the pay fixation has not been done as

7

per the orders of this Court. The precise submission is that on, they are conferred the status of permanent employee **by the court** and it is also categorically held that they are entitled to **regular** pay attached to the said post, not only the pay should be fixed in the regular pay-scale, the petitioners would also be entitled to the increments and other emoluments attached to the said post. **In** other words, they pleaded that fixation of pay at the **minimum of** the pay-scale is uncalled for and does not amount to complying with the directions of the Court in full measure. It is also submitted that in some other cases where the High Court has given similar directions, which are followed in their cases, the State Government has not only fixed pay in the regular pay-scale but has also been granting increments etc. as well.

- 4) The case set up by the respondents, on the other hand, is that the petitioners are daily wage employees. They have not been 'regularised' in their respective posts for want of adequate number of regular vacancies. They are granted 'permanency' in terms of standing orders which, at the most, entitles them to get the pay which is given to employees appointed on regular basis but such an entitlement is to the minimum of the said pay-scale. It is also argued that even the direction of the High Court was to grant pay

8

in the regular pay-scale with effect from the date of classification orders and there is no direction given by the High Court to give them increments etc. which is admissible only when a person is appointed on regular basis or whose services are regularised, which has not happened in the case of the petitioners.

- 5) Learned counsel who appeared for these petitioners have drawn our attention to the relevant provisions of the standing orders on the basis of which they were classified as permanent. It is standing order No. 2 which deals with classification of the employees and 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;

(ii) A 'permanent seasonal employee' is one who has completed service for a period equal to 2/3rd of the duration of a season or three months whichever is less in a clear vacancy and shall be deemed to be a permanent employee for the purpose of these order;

(iii) A 'probationer' means an employee who is provisionally employed to fill a clear vacancy, and who has not completed six months' satisfactory service in the aggregate;

(iv) A 'badli' employee means an employee who is employed on the post of a permanent seasonal employee, or a probationer or a permanent seasonal employee who is temporarily absent.

(v) An 'apprentice' means a learner, provided that no employee shall be classified as an apprentice if he has had training for an aggregate period of one year, provided further that a longer period of apprenticeship shall be required if prescribed by a law or an award, or by agreement with the representative of employees,

(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."

- 6) Once the labour court classified them as permanent, which classification had attained finality, it necessarily follows that they are entitled to all benefits which are to be given to regularly appointed employees.
- 7) It is further submitted that the High Court specifically went into the question as to whether, on attaining permanency, these petitioners were entitled to the pay-scale attached to the post which is given to the regularly recruited employee and answered the said question in the affirmative. Our attention was drawn to

10

one such order dated 8th May, 2008 passed by the High Court in Writ Petition No. 1306 of 2008 where this issue is specifically dealt with in detail and decided in favour of the petitioners, after taking note of various judgments. It was further pointed out that in some other cases, increments are also given while fixing pay in the regular pay-scale. Example of one such case given by the petitioner is **State of Madhya Pradesh & Ors. Vs. Bhasker Sharma**¹ wherein the Writ Appeal was also dismissed. It was submitted that after the dismissal of the appeal, *Bhasker Sharma* was not only granted regular pay-scale but is getting increments and other benefits attached to the said post as well. It was also argued that many such employees have been given similar benefits and the State Government has now taken a 'U' turn and is not willing to extend such benefits to the petitioners herein. Copies of many such orders passed by the High Court are filed by the petitioners as additional documents in support of their submissions.

- 8) Mr. Mukul Rohatgi, learned Attorney General, who appeared on behalf of the State Government and the Contemnors emphasised that the only direction of the High Court, which has been upheld by this Court, is that these petitioners are entitled to pay in a

¹ Writ Appeal No. 322/2009; Order dated 30.11.2009; By High Court of M.P., Gwalior Bench
Conmt. Petition (C) No. 771 of 2015 In SLP(C) No. 25284/2012 (Batch)

regular scale. It is argued that they have been **classified** as "permanent" because of the aforesaid standing orders which means that their services would not be terminated. However, that does not mean that the petitioners are regularised against any posts. It was also argued that each of these petitioners have been given substantial amount as arrears of pay in terms of the orders passed by the High Court and there is significant enhancement in the monthly emoluments now drawn by these petitioners. The learned Attorney General further submitted that there are 520 such employees who have gained entry into the service through backdoor as they were not appointed on regular basis against regular vacancy after following required selection procedure. Such employees, like the petitioners, cannot seek regularisation and benefits emanating from such regularisation in view of the law laid down by the Constitution Bench of this Court in ***State of Karnataka Vs. Uma Devi***². It was also argued that instant proceedings are in the contempt cases where scope of jurisdiction was limited. The State had complied with the directions in a *bona fide* manner on its understanding about the orders of the High Court against which SLPs have been dismissed and in case the grievance of the petitioners is that they

² (2006) 4 SCC 1

are entitled to something more than what is granted by the State Government, they can challenge the order passed by the Government fixing their pay, by taking recourse to substantive proceedings but not in the form of contempt petition.

- 9) Mr. Rohatgi also brought to the notice of this Court a subsequent event which has been brought on record by filing additional affidavit. It was pointed out that on 7th October, 2016, the State Government has promulgated a one-time scheme for regularisation of all daily wage employees in the State. Copy of the said scheme is annexed, salient features whereof are as under:

"(I) The Daily wage employees will now be classified as "Sthayee Karmi".

(II) They are classified in three categories, i.e., Unskilled, Semi-skilled, and Skilled. Their pay scale is also determined accordingly. Pay Scale of a skilled employee is Rs. 5000-100-8000.

(III) They will be given the benefit of seniority and their actual pay on September 1, 2016 in their pay scale will be determined based on the years of service put in by them.

(IV) They will be entitled to Dearness Allows. (Presently at 125%)

(V) The pay fixation in the pay scale will be applicable from 1.9.2016. Next increment in salary will be given in September 2017.

(VI) On attaining the age of superannuation, they will be entitled to Gratuity based on 15 days

salary per year during the period of service. Maximum limit of this amount will be Rs. 1,25,000/- for unskilled, Rs. 1,50,000/- for semi-skilled, and Rs. 1,75,000/- for skilled workers.

(VII) Such daily wage employees who were working on 16.5.2007, and have also been in service as on 1.9.2016 will be entitled to the pay scale mentioned above and other benefits.

6. In view of the aforesaid scheme, the MP Daily Wages Employee (Conditions of Service), Rules, 2013 now stands repealed.

7. The scheme also prescribes the steps to be taken for filling up the vacant Regular posts. For this purpose the vacant Class IV posts available in the regular setup under various departments at the district level would be filled up on priority from the existing *sthayee karmis*. The workers working with various Construction Departments (Nirman Vibhag) will be treated as Industrial Workers for the purposes of Standing Order Act, 1961 and Rules, 1963 and the permanent classified employees of such Departments are also entitled to be regularised accordingly.

8. In view of the aforesaid, it is submitted that the daily wage employees are also entitled to the aforesaid benefits at the time of superannuation as mentioned in the Scheme."

He, thus, submitted that if the petitioners opt for the said scheme, they would get the benefits thereof after their retirement.

10) Before we consider the respective submissions, we want to make two observations which are crucial to the issue involved. These are:

(i) The matter is being examined in the contempt jurisdiction of

this Court. From the chronology of events given, it would be clear that initially these petitioners had claimed their classification as 'permanent' to the respective posts. They succeeded in this attempt and the orders passed therein in their favour was that they would be classified as 'permanent' and that they would also be entitled to pay-scale of permanent posts from the dates specified in the award given by the labour court.

In the second round of litigation, out of which present contempt petitions arise, direction of the High Court is to grant them pay-scales attached to the posts to which they are working.

This order has been upheld by this Court as well inasmuch as Special Leave Petitions filed by the State Government have been dismissed by common orders dated 21st January, 2015. However, there is no specific direction for grant of increments.

- (ii) In order to implement the directions of High Court, against which special Leave Petitions have been dismissed, the State Government has passed order dated 11th March, 2016 vide which the pay-scale of the petitioners has been fixed in the pay-scale attached to these posts. This has also been given from the dates to which these petitioners are held entitled to and on that basis arrears of pay have also been paid. However, the pay is fixed at the minimum of the said pay-scales and there is also stipulation in

the said orders dated 11th March, 2016 that these employees would not be entitled to increment of salary.

- 11) It is clear from the above that the petitioners have been given pay in the regular pay-scale. Petitioners, however, have joined issue by contending that orders dated 11th March, 2016 do not carry out the complete compliance of the directions given by the High court that on fixation of pay in the regular pay-scale the petitioners are also entitled to increments of salary, as is given to the regular employees, on annual basis.

Therefore, the question that arise for consideration is as to whether the petitioners are also entitled to the increments.

- 12) It is not in dispute that the petitioners were initially engaged on daily wage basis. Their engagement was also done without following any selection procedure. It also does not emerge from record that the initial engagement of these petitioners was against regular vacancies. Normally, in such a situation even if these persons, because of their long service and also on the assumption that they are discharging the same duties as discharged by regular employees, such employees can claim the salary which is being paid to regular employees holding similar

posts on the principles of 'equal pay for equal work'. This aspect has exhaustively and authoritatively being dealt with by this Court in a recent judgment dated 26th October, 2016 in Civil Appeal No. 213 of 2013, titled **State of Punjab and Ors. vs. Jagjit Singh and Ors.**³ and other connected appeals, though, there is one distinguished factor, viz. the petitioners herein have been conferred the status of 'permanent' employees. However, an important question which arises is as to whether such 'permanent' employees are same as employees appointed on 'regular' basis or their services stand regularized. This aspect shall be touched upon and dealt with a little later. At this stage, reference is made to the aforesaid judgment in the case of **Jagjit Singh**³ for the purpose that even if principle of 'equal pay for equal work' is applicable and the pay in the regular pay-scale is admissible to such employees, these employees would be entitled to minimum of the regular pay-scale and not the increments. This case is taken note of and discussed in **Jagjit Singh**³ in the following manner:

"36. Secretary, State of Karnataka v. Umadevi [(2006) 4 SCC 1], decided by a five-Judge Constitution Bench: Needless to mention, that the main proposition canvassed in the instant judgment, pertained to regularization of government servants, based on the employees having rendered long years of service, as

³ Civil Appeal No. 213 of 2013; 26th October, 2016
 Commt. Petition (C) No. 771 of 2015 In SLP(C) No. 25284/2013 (Matah)

temporary, contractual, casual, daily-wage or on ad-hoc basis. It is, however relevant to mention, that the Constitution Bench did examine the question of wages, which such employees were entitled to draw. In paragraph 8 of the judgment, a reference was made to civil appeal nos. 3595-612 of 1999, wherein, the respondent-employees were temporarily engaged on daily-wages in the Commercial Taxes Department. As they had rendered service for more than 10 years, they claimed permanent employment in the department. They also claimed benefits as were extended to regular employees of their cadre, including wages (equal to their salary and allowances) with effect from the dates from which they were appointed. Even though the administrative tribunal had rejected their claim, by returning a finding, that they had not made out a case for payment of wages, equal to those engaged on regular basis, the High Court held that they were entitled to wages, equal to the salary of regular employees of their cadre, with effect from the date from which they were appointed. The direction issued by the High Court resulted in payment of higher wages retrospectively, for a period of 10 and more years. It would also be relevant to mention, that in passing the above direction, the High Court had relied on the decision rendered by a three-Judge bench of this Court in Dharwad District PWD Literate Daily-Wage Employees Association v. State of Karnataka[(1990) 2 SCC 396]. The Constitution Bench, having noticed the contentions of the rival parties, on the subject of wages payable to daily-wagers, recorded its conclusions as under:-

"55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be

18

paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. Nos. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete.

19
waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

We have extracted the aforesaid paragraph, so as not to make any inference on our own, but to project the determination rendered by the Constitution Bench, as was expressed by the Bench. We have no hesitation in concluding, that the Constitution Bench consciously distinguished the issue of pay parity, from the issue of absorption/regularization in service. It was held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary at the lowest grade of their cadre. The Constitution Bench expressed the view, that the concept of equality would not be applicable to the issue of absorption/regularization in service. And conversely, on the subject of pay parity, it was unambiguously held, that daily-wage earners should be paid wages equal to the salary at the lowest grade (without any allowances). "

- 13) Another significant reason for referring to the judgment of **Jagjit Singh³** is that the Court culled out the principles of 'equal pay for equal work' from the earlier judgments on the subject and collated them at one place. Further, the Court also drew an important distinction between the grant of benefit of 'equal pay for equal work' to temporary employees on the one hand and the status of regular employees on the other hand. Insofar as parameters of principles of 'equal pay for equal work' deduced by the Court are concerned (para 42), our purpose of deduction stated in sub-para

vi thereof is important, which is reproduced below:

"(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – *Orissa University of Agriculture & Technology Vs. Manoj K. Mohanty*⁴)."

- 14) Insofar as distinction between pay parity and regularisation of service is concerned, referring to the Constitution Bench judgment in *Uma Devi*², the Court made the following observations:

"We are of the considered view, that in paragraph 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity, and regularization in service. It was held, that on the issue of pay parity, the concept of 'equality' would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of 'equality' could not be invoked for absorbing temporary employees in Government service, or for making temporary employees regular/permanent. All the observations made in the above extracted paragraphs, relate to the subject of regularization/permanence, and not, to the principle of 'equal pay for equal work'. As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good, by making such a direction."

Thus, it follows that even if principle of 'equal pay for equal work' is applicable, temporary employee shall be entitled to

⁴ (2003) 5 SCC 188

Conmt. Petition (C) No. 771 of 2015 In SLP(C) No. 25284/2012 (Batch)

minimum of the pay-scale which is attached to the post, but without any increments.

15) Insofar as petitioners before us are concerned they have been classified as 'permanent'. For this reason, we advert to the core issue, which would determine the fate of these cases, viz., whether these employees can be treated as 'regular' employees in view of the aforesaid classification? In other words, with their classification as 'permanent', do they stand regularized in service?

16) For this purpose, we would first like to refer to the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and the Rules made thereunder known as the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963. Section 3(c) of the Act defines "Standing Orders" and as per 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. Section 21 empowers the State Government to make rules to carry out the purposes of the said Act which are required to be notified. It empowers the State Government to frame Standard Standing Orders as well. It is in exercise of powers under Section 21(1) of the Act that the State

Government has framed Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 (hereinafter referred to as the 'Rules'). Annexure to these Rules contains standard Standing Orders for all undertakings in the State. Standing Order No. 2 of this Order enumerates classification of employees which has already been reproduced above. As per this classification, an employee would be known as 'permanent employee' who has completed six months' satisfactory service in a clear vacancy in one or more posts whether on probation or otherwise or a person whose name has been entered in the muster roll and who is given a ticket of 'permanent employee'. It follows from the above that merely by putting in six months' satisfactory service, an employee can be treated as 'permanent employee'. Rights which would flow to different categories of employees including 'permanent employee' are not stipulated in these Rules or even in the parent Act. It can be gathered from Rule 11 of the said Rules, which relates to termination of employment, that in case of a 'permanent employee' one month's notice or wages for one month in lieu of notice is required when the employment of a 'permanent employee' is to be terminated. On the other hand, no such notice or wages in lieu thereof is needed to be given to any other category of employees. Additional obligation casts on the

employer is to record reasons for termination of service in writing and communicate the same to the employee.

17) With this, we advert to the question posed above. In the first blush, this question appears to be somewhat puzzling, as to how such a question can arise because normally an employee who is given the designation of 'permanent employee' should be treated as 'regular employee' as well. However, this puzzle vanishes when we examine the standing orders, acts and rules in question under which designation of 'permanent employee' is acquired. Fortunately for us, we are not trading on a virgin territory.

18) This Court has already examine the issue in the context of these very standing orders of Madhya Pradesh. In the case of ***Mahendra L. Jain & Ors. v. Indore Development Authority & Ors.***⁵, this Court analyzed the Standard Standing Order in question and held that permanent classification does not amount to regularization, inasmuch as it was noted that the matter relating to the recruitment is governed by a separate statute, as can be seen from the following discussion therein:

"28. 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

⁵ (2005) 1 SCC 639

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.

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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 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."

19) The issue came up again in the case of **M.P. State Agro**

*Industries Development Corporation Ltd. & Anr. v. S.C. Pandey*⁶ wherein this Court held that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularized in service. The Court also reiterated that the Standing Orders categorize the nature of employment and do not classify individual employees in different post according to the hierarchy created in the Department and thus proviso to Rule 2 does not apply to promotions or regularization in higher grade. We would like to reproduce following paras from the said judgment:

"17. The question raised in this appeal is now covered by a decision of this Court in *M.P. Housing Board v. Manoj Shrivastava* [(2006) 2 SCC 702] wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes; (2) a daily-wager does not hold a post as he is not appointed in terms of the provisions of the Act and the Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularised in service; (4) if an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.

18. The said decision applies on all fours to the facts of this case. In *Mahendra L. Jain* [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] this Court has

⁶ (2006) 2 SCC 716

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

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22. Such appointments, in our opinion, having regard to the decisions in *Mahendra L. Jain* [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] and *Manoj Shrivastava* [(2006) 2 SCC 702] must be made in accordance with extant rules and regulations. It is also a well-settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularised in service. Otherwise also the legal position in this behalf is clear as would appear from the decision of this Court in *Dhampur Sugar Mills Ltd. v. Bhola Singh* [(2005) 2 SCC 470 : 2005 SCC (L&S) 292] apart from *Mahendra L. Jain* [(2005) 1 SCC 639 : 2005 SCC (L&S) 154].*

- 20) A direct judgment on the subject is *State of M.P. & Ors. v. Lalit Kumar Verma*⁷ wherein it was held that a workman would be entitled to classification as permanent or temporary employee if the conditions precedent are satisfied. It was held that the respondent was not appointed against the clear vacancy, he was

⁷ (2007) 1 SCC 575

not appointed in a permanent post or placed on probation. This Court, thus, held that working on daily wages alone would not entitle him to the status of permanent employee. Para 7 of this judgment needs to be looked into.

"7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. The 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."

- 21) It is, thus, somewhat puzzling as to whether the employee, on getting the designation of 'permanent employee' can be treated as 'regular' employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, a person who is known as 'permanent employee' would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as 'permanent employee'. Moreover, this Court has, as would be noticed now, drawn a distinction between 'permanent employee' and 'regular employee'.
- 22) We may mention, at this stage that this aspect has come up for

consideration, in another context, in ***State of Madhya Pradesh and Others vs. Dilip Singh Patel and Others***⁸. That was a case where similarly situated employees, who were classified as 'permanent employees' under the Standing Orders Act, were given minimum of the pay-scale attached to their posts. However, after the implementation of Sixth Pay Commission, benefits thereof were not extended to these employees. High Court held that they would be entitled to have their pay fixed as per the revised scales in accordance with the recommendations of Sixth Pay Commission which were accepted *qua* regular employees. This Court, though, upheld the orders of the High Court giving them the benefit of revision of pay-scale pertained to Sixth Pay Commission, but at the same time made it clear that they would be entitled to minimum salary and allowances as per the said revised scales and would not be entitled to any increments. It was further held that such increments would be admissible only after regularisation of their services which regularisation was to take place as per the seniority list with due procedure. Following passage from the said judgment, which captures the aforesaid directions, is quoted hereunder:

"We have heard learned counsel for the parties and perused the records. It appears that the respondents earlier moved before the

⁸ Civil Appeal Nos. 8431-8432 of 2014; decided on August 27, 2014.
 Conmt. Petition (C) No. 771 of 2015 In SLP(C) No. 25284/2012 (Batch)

Administrative Tribunal, Gwalior by filing original applications such as O.A. No. 648 of 1995, O.A. No. 293 of 1991 etc. In compliance of the orders passed in such original applications, the Chief Engineer, Yamuna Kachhar, Water Resources Department, Gwalior (M.P.) by orders issued in between April, 2004 and June, 2004 provided the minimum wages and allowances to the respondents without increment as per the Schedule of the pay scale from the date of the order of the Tribunal. It was further ordered that the regularization of the daily wages employees shall be made as per the seniority list with due procedure and the benefit of increment and other benefits can only be granted after the regularisation as per the Rules. It was ordered that the order of the Court for benefit of minimum wages and allowances shall be

From the aforesaid facts, it is clear that the respondents are entitled for minimum wages and allowance as per the fixed Schedule of the pay scale but without any increment. In such case, if the pay scale is revised from time to time including the pay-scale as revised pursuant to Sixth Pay Commission, the respondents will be entitled to minimum wages and allowance as per the said revised scale without increment. Only after regularisation of their service, as per seniority and rules, they can claim the benefit of increment and other benefits."

- 23) From the aforesaid, it follows that though a 'permanent employee' has right to receive pay in the graded pay-scale, at the same time, he would be getting only minimum of the said pay-scale with no increments. It is only the regularisation in service which would entail grant of increments etc. in the pay-scale.

- 24) In view of the aforesaid, we do not find any substance in the

contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms (See *Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors.*⁹).

25) These contempt petitions are, accordingly, dismissed.

.....J.
 (A.K. SIKRI)

.....J.
 (N.V. RAMANA)

NEW DELHI;
 DECEMBER 15, 2016.

⁹ (1997) 6 SCC 766

**ARJUN GARG
ADVOCATE- ON-RECORD
SUPREME COURT OF INDIA**

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MP/383/2016

BY SPEED POST / EMAIL

02.12.2016

To,

Principal Secretary,
Public Health Engineering Department,
State of Madhya Pradesh,
Vallabh Bhawan,
Bhopal, M.P.

Sub: Contempt Petition (C) No. 771 of 2015 – Ram naresh Rawat Vs Shri Ashwini Rai & Ors. (and other connected matters)

Sirs,

1. The captioned Contempt Petitions were listed today in Court 9 as item 301 before Hon'ble Mr. Justice A K Sikri and Hon'ble Mr. Justice N V Ramana.
2. The matters were concluded and judgment was reserved on 18.10.2016, and today the matters were listed only for some clarification required by the Court. When the matter was called out, Mr. Purushaindra Kaurav, Additional Advocate General alongwith undersigned appeared for the State / Respondents. Counsels for Petitioners were also present.
3. The Court has sought the following explanations / documents. The Court observed that if under the Standard Standing Order issued under the Industrial Law, a 'Permanent' employee is one who has been working for 6 months against a "Clear Vacancy", how is it different from Regularization. The Court further asked as to what benefits does a Permanent Classified employee gets and why should he not be considered as a Regular Employee.

Ram naresh Rawat

4. The Court has asked us to produce / file some orders of Labour Courts by which some of the Petitioners were permanently classified so as to see what benefits were actually awarded, if any, by the Labour Courts. The Court has also asked us to file some judgments of the High Court / Supreme Court explaining the difference between a Permanent classified employee and a Regular Employee, and as to why has this concept of "Permanent" been introduced in the Industrial Laws of M.P., when the same is not intended to be equated with a Regular employee.

5. We need to file these documents / judgments within a week's time. I would suggest that the same be filed with a Note explaining the factual situation. Kindly arrange for sending the Classification orders passed by Labour Courts and any judgment of the High Court which may be relevant for the aforesaid purposes. We will also do necessary research and share with you the relevant judgments.

Thanking You,

Yours Sincerely

Arjun Garg

(Arjun Garg)
Standing Counsel
for the State of M.P.

CC: The Superintending Engineer,
PHE Department,
Gwalior Circle,
Gwalior, M.P.

*K. Sharma has perused the
same and is satisfied*



श्रम आयुक्त कार्यालय, मध्यप्रदेश

518, न्यू मोती बंगला, एम.जी. रोड, इंदौर-452 007

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क्रमांक खफा / तीन / 2016 / 1611(2)

इन्दौर, दिनांक 7.12.2016

प्रति,
प्रमुख सचिव,
मध्यप्रदेश शासन,
श्रम विभाग, भोपाल

विषय:-अवमानना प्रकरण क्र. 771/2015 (रामनरेश रावत विरुद्ध श्री अश्विनी राय एवं अन्य) (तथा अन्य कनेक्टेड प्रकरण)

संदर्भ:-श्री अर्जुन गर्ग, स्थायी अधिवक्ता, म.प्र. शासन, माननीय सर्वोच्च न्यायालय, नई दिल्ली का पत्र क्र. एम.पी./383/2016, दि. 2.12.2016

इस संबंध में वैधानिक स्थिति यह है कि यद्यपि म.प्र. औद्योगिक (स्थायी आज़ाए) अधिनियम, 1961 के अन्तर्गत यह प्रावधान है कि यदि किसी संस्थान के कर्मचारियों पर राज्य शासन द्वारा अधिसूचित मूलभूत, पूरक, सेवा शर्तें, अवकाश आदि को विनियमन करने संबंध प्रावधान लागू होते हैं तो उन पर म.प्र. औद्योगिक (स्थायी आज़ाए) अधिनियम, 1961 के प्रावधान लागू नहीं होंगे, तथापि अधिनियम की धारा 5 (1) में यह भी प्रावधान है कि राज्य शासन द्वारा अधिसूचना जारी कर किसी संस्थान अथवा संस्थानों के वर्ग को इस अधिनियम के प्रावधानों से छूट प्रदान की जा सकती है।

इस संबंध में माननीय उच्च न्यायालय मध्यप्रदेश को सन्दर्भित प्रकरण में याचिका क्रमांक 350/1997 में दिनांक 9.12.1998 को आदेश पारित किया गया जिसका पैरा क्रमांक 8 में निम्नानुसार निर्णित किया गया था -

As a result of above discussion, we hold that by virtue of sub section 2 of section 2, unless Government notifies that particular rules which applicable to that Department will exempt the application of the provisions of the M.P. Industrial Employment (Standing Orders) Act, 1961: till that time the provisions of the Act, Rules and Orders issued there under will govern the Department. The references are accordingly answered.

उपर्युक्त प्रावधानों के अनुसार राज्य शासन के कर्मचारियों जिन पर राज्य शासन के उपर्यक्तानुसार प्रावधान लागू होते हैं उनके अतिरिक्त राज्य शासन के संबंधित विभागों द्वारा कार्य की आवश्यकतानुसार दैनिक वेतन पर कुछ श्रमिकों का

नियोजन करते हैं। इन श्रमिकों हेतु कोई पद स्वीकृत नहीं होता है और उस पद की कोई योग्यता निर्धारित नहीं होती है, ऐसे दैनिक वेतन भोगी कर्मचारी बिना किसी भरती नियम के अथवा किसी भरती प्रक्रिया के संबंधित विभागों द्वारा नियोजित कर लिये जाते हैं। उन दैनिक वेतन भोगी श्रमिकों पर राज्य शासन के नियम लागू नहीं होते हैं इसलिए उन पर म.प्र. औद्योगिक नियोजन (स्थायी आज़ाए) अधिनियम, 1961 लागू होने से अधिनियम के अन्तर्गत निर्मित मानक स्थाई आदेश लागू होते हैं। उक्त स्थाई आदेश क्रमांक 2 में कर्मचारियों का वर्गीकरण परिभाषित किया गया है जिसके अनुसार -

2. Classification of Employees.- Employees shall be classified as- (i) permanent, (ii) permanent season, (iii) probationers, (iv) Badlies, (v) apprentices, (vi) temporary, [and (vii) fixed term employment's employee:]

(i) A 'permanent' employee is one who has completed six months' satisfactory service in a clear vacance 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;

इस तरह स्थाई आदेश क्रमांक 2(i) के अन्तर्गत कोई दैनिक वेतन भोगी श्रमिक शर्तें पूरी करता है तो वह स्थाई रूप में वर्गीकृत होता है। उक्त दैनिक वेतन भोगी श्रमिक को निम्नानुसार सुविधाएं विभिन्न श्रम अधिनियमों के अन्तर्गत प्राप्त होती हैं -

1. दैनिक वेतन भोगी श्रमिक को स्थाई आज़ाओं के अन्तर्गत वर्ष में 3 राष्ट्रीय अवकाश, 2 अक्टूबर, 26 जनवरी एवं 15 अगस्त एवं 5 सवैतनिक अवकाश एवं 17 सितम्बर विश्वकर्मा जयंती के अवकाश प्राप्त होते हैं।
2. दैनिक वेतन भोगी श्रमिक को 7 दिन का आकस्मिक अवकाश प्राप्त होता है।
3. दैनिक वेतन भोगी श्रमिक जहाँ काम करते हैं यदि वहाँ कारखाना अधिनियम, 1948 के प्रावधान लागू होते हैं तो उक्त श्रमिक को 20 दिन कार्य पर एक दिन का सवैतनिक अवकाश एवं अधिसमय कार्य करने पर अधिसमय कार्य हेतु दुगुनी दर से भुगतान एवं अधिनियम के अन्तर्गत अन्य सुविधाएं प्राप्त होती हैं।
4. यदि दैनिक वेतन भोगी श्रमिक की सेवाए सेवा निवृत्ति के पूर्व समाप्त/छंटनी की जाती है तो औद्योगिक विवाद अधिनियम, 1947 के अन्तर्गत छंटनी किये गये ऐसे दैनिक वेतन भोगी श्रमिक को औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ के अन्तर्गत सम्पूर्ण सेवा काल हेतु प्रत्येक वर्ष की सेवा पर भुगतान किये गये अंतिम वेतन अनुसार 15 दिन का छंटनी मुआवजे का भुगतान किया जावेगा।

5. ऐसे दैनिक वेतन भोगी कर्मचारी जिनकी सेवाएं 5 वर्ष अथवा उससे अधिक हैं उन्हें उपदान भुगतान अधिनियम, 1972 के अन्तर्गत उपदान देय है।

म.प्र. औद्योगिक नियोजन (स्थायी आज़ाए) अधिनियम, 1961 के अन्तर्गत निर्मित मानक स्थाई आदेश में दैनिक वेतन भोगी श्रमिक को स्थाई वर्गीकृत किये जाने पर उसे क्या वेतन देय होगा, यह उक्त अधिनियम में प्रावधानित नहीं है।

दैनिक वेतन भोगी श्रमिक को वेतन का भुगतान न्यूनतम वेतन अधिनियम, 1948 के अन्तर्गत किया जाता है। अधिनियम में न्यूनतम वेतन का भुगतान अधिनियम की धारा 27 के अन्तर्गत अधिसूचित नियोजनों में अधिनियम की धारा 5 के अन्तर्गत निर्धारित / पुनरीक्षित न्यूनतम वेतन अधिनियम की धारा 12 के अन्तर्गत देय है।

म.प्र. राज्य में अधिनियम की धारा 12 में 1961 में संशोधन किया गया जो निम्नानुसार है :-

12. Payment of minimum rates of wages.- (1) where in respect of any scheduled employment a notification under section 5 24[***] is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorize within such time and subject to such conditions as may be prescribed.

State Amendments - (Madhya Pradesh). In its application to the State of Madhya Pradesh, in S.12,-

(i) after sub-S. (1), insert the following sub-section, namely :-

"(1-A) where immediately before the issue of a notification under section 5 fixing or revising the minimum rates of wages in respect of any scheduled employment, wages at a rate higher than the rate so fixed or revised, were payable under this Act, or under any law or award or agreement or custom or usage for the time being in force, then, notwithstanding anything contained in this At, wages at such higher rate shall be payable to the employees in such scheduled employment and the wages so payable shall be deemed to be the minimum wages for the purposes of this Act. "-Madhya Pradesh Act 23 of 1961 S.6 (w.e.f. 23-6-1961)

उपर्युक्तानुसार दैनिक वेतन भोगी श्रमिक स्थाई वर्गीकृत होने पर शासकीय कर्मचारी की श्रेणी में नहीं आयेगा, उसे उपर्युक्तानुसार न्यूनतम वेतन एवं अन्य सुविधाएं प्राप्त होगी।

अभ्यायुक्त,
मध्यप्रदेश, इन्दौर

**Government of Madhya Pradesh
Public Health Engineering Department
Mantralya, Vallabh Bhawan, Bhopal-462004**

NO. @PS/PHED/2016 Bhopal/Date
To,

Shri Arjun Garg
Advocate-On-Record
Supreme Court Of India
H-35, Lower Ground Floor,
Jangpura Extension,
New Delhi- 14

Sub: Contempt Petition (C) No. 771 of 2015 - Ram Naresh Rawat Vs Shri Ashwini Rai &
Ors. (and other connected matters)

With reference to your letter No.-MP/383/2016 dated 02-12-2016 on the above subject the following points may please be noted:

Application of the Madhya Pradesh Industrial Employment (Standard Orders) Act 1961
The scheme of the Madhya Pradesh Industrial Employment (Standard Orders) Act, 1961 implicitly divides employees into two categories:

- Regular Government employees.
- Industrial employees.

The 1961 Act is not applicable for those employees of an undertaking where Fundamental Rules, Service Conditions, Leaves etc. are applicable. In this connection, section 2(2) of the Act reads as:

"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 Services Regulations or any other rules or regulations that may be notified in this behalf by the State

For the *regular* employees of State government, Fundamental Rules, Recruitment Rules, Disciplinary rules etc. framed by the government in exercise of its powers under the Constitution (Article 309) apply.

In addition to the regular employees, various departments of the State government have often engaged workers on daily wages based on temporary requirements. The rules applicable for regular employees do not apply to daily wage workers. For engaging such daily wage workers, typically there was no sanction order for creation of posts (whether permanent or temporary), no qualifications were prescribed, and no recruitment rules were laid down. The daily wages workers were engaged without any recruitment procedures. The statutory rules of the State government (framed under Article 309 of the Constitution) are not applicable for the daily wage workers, and therefore the 1961 Act and the standing orders framed thereunder are applicable to these workers. The Standing orders prescribe a separate set of benefits/facilities to be provided to such workers.

Therefore, an 'employee' under the 1961 Act – whether classified 'permanent' or not – is not in any way similar to a *regular* employee of the state government, but is in an entirely different category.

Classification of employees as per the standing orders framed under the 1961 Act

Under section 21 of the 1961 Act, state government has power to make rules, including for the following:

21(2)(b): frame standard standing orders for the purpose of this Act and different standard standing orders may be framed for-

- (i) Different classes of undertakings, and
- (ii) Different categories of employees;

In exercise of this power, the State government has framed the Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963. Rule 7 of these Rules states that the Standard Standing Orders (SSO henceforth) applicable for all undertakings for which the Act applies shall be as set out in the Annexure of these Rules.

Clause 2 of the SSO prescribes a classification for the employees. It reads as follows:

"2. Classification of Employees:- Employees shall be classified as-(i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) Badlies, (v) apprentices, (vi) temporary, (vii) fixed term

- (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.

..."

Is a permanent employee one who is appointed against a clear vacancy?

No. To be classified as a permanent employee, it is not essential that the employee should have completed six month satisfactory service, or has worked against a clear vacancy, or has been given a ticket of permanent employee. Courts have drawn this inference based on the proviso in Clause 2(vi) of the SSO.

As has been already stated before, the daily wage workers were **not** working against any clear vacancies, but happened to continue in daily wage employment for more than six months, and were therefore classified as permanent employees by Courts. For example, in the case of Raj Kumar Mishra, Rewa Vs State of Madhya Pradesh No. 294/MPiR Act/94 (see paragraphs 3 and 8), Madan Kumar Shrivastava Bhind Vs Engineer-in-Chief, P.H.E.D. case no. 13/99 MPiR (see paragraph 3 and line 15 on page 3), Madhya Pradesh Karmachari Congress (Mandleshwar) Vs P.H.E.D case No.312/97 (see paragraphs 3 and 6) it was specifically pleaded by the State government before the Labour Court that the applicants have not worked against any clear vacancies, but the Labour Courts decided to grant status of permanent employee to the applicants.

Is the 'appointment' of daily wage employees legal as per the provisions of SSO?

Clause 4 and 4-A of the SSO set out the method of recruitment of employees. These clauses are as follows:

- "4. Recruitment.- The manager may after consulting the Employment Exchange lay down

the procedure for recruitment of employees and notify it on the notice board on which standing orders are exhibited. 39

4-A. Letter of appointment.- Every employee shall be given a letter of appointment, in which among other things, his name, age, qualification, designation, classification, pay-scale, allowance, nature of job, name of department etc., shall be indicated."

These mandatory provisions are applicable for all industrial employees (including temporary and seasonal employees) to be employed under the SSO. These provisions were not followed, and as a result the engagement of daily wage employees for temporary work cannot be regarded as a legal 'appointment' made under the SSO. As stated earlier, sanction of the government was not obtained to appoint daily wage employees, nor was any rule followed in recruitment.

Benefits/Facilities granted to daily wage employees under the 1961 Act and other Labour Acts

An employee is eligible for following facilities/benefits under the 1961 Act and other Labour Acts.

1. Under the SSO, the employee is entitled for 3 National Holidays (namely 2nd October, 26th January and 15th August). In addition, he is also entitled for full pay leave for 5 days and for leave on 17th September (Vishwakarma Jayanti.)
2. The employee is entitled for casual leave for 7 days in a year.
3. The employees who work in undertakings where Factory Act 1948 is applicable are also entitled for one full day's paid leave for every 20 days of work. In addition, they are also entitled for double wage rate (as compared to the normal wage rate) for working extra time.
4. If the services of any employee are terminated/suspended before the normal retirement then as per the provision of Industrial Dispute Act 1947 such employees will be entitled for compensation equivalent to 15 days salary for every one year of service.
5. Such employees who have worked for 5 years or more are entitled for gratuity payment as per Gratuity Payment Act 1972.

It is clarified that under the SSO, there is no additional wage /new rate of wage to be given to permanent employees as compared to employees who are not classified as permanent. Orders of some labor courts/higher courts to provide a new scale/higher salary on classification of a daily wage employee as 'permanent employee' are therefore legally faulty; this amounts to 'regularization' of their daily wage employment to *regular* government service without any regard for recruitment rules and procedures and is therefore impermissible. Specifically, it has been held

by the Supreme Court in civil appeal No. 8431 - 8432 of 2014 (State of Madhya Pradesh and Others Vs Dilip Singh Patel And Others) that a regular pay scale cannot be given to employees classified as permanent, without regularization. 40

The wages of the employees appointed under the SSO are payable as per the Minimum Wages Act, 1948. There is no provision in the SSO that provides higher pay for employees classified as permanent employees. Therefore, the daily wage workers engaged by the State government who have later been classified as 'permanent employees' are not entitled to be paid the salary or salary scales payable to the regular employees of the government.

It is specifically pointed out that the disputes raised before the labour courts did not pertain to payment of minimum wage, but to classification as a permanent employee and subsequently raising wages to the level of a regular post under the establishment of State government. The orders of the labour courts/higher courts in raising the wages of employees classified as 'permanent employees' are thus legally not justifiable.

✓ *imp for union case*
In a recent judgment, Hari Nandan Prasad and others vs FCI and others (civil appeal nos. 2417-2418/2014 Justices K. S. Radhakrishnan and A. K. Sikri) went into the powers of labour courts under labour laws in view of the Umadevi judgement and inter-alia said:

"29. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corporation, this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Art.14 of the Constitution, on which judgment in Umadevi is primarily founded. On the other hand, in Bhonde case, the Court has recognized the principle that having regard to statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi's case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent post even when available and continuing to workers on temporary/daily wage basis and taking the same work from them and making them some purpose which were performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice as enumerated in Schedule IV of MRTP and PULP Act and it necessitates giving direction under Section 30 of the said Act,

that the Court would give such a direction.

41

- ✓ 34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."

Therefore, before the labour court issues a direction of payment of higher wages (than the statutory minimum wages) in the way of ordering regular payscale after a daily wage worker attains the status of 'permanent employee,' it must come to the conclusion that the employer has indulged in unfair labour practice by (i) not filling up the permanent post even when available, and (ii) continuing to employ workers on temporary/daily wage basis, and (iii) taking the same work from them which were performed by the regular workers but paying them much less wages.

In the present case, there was no such enquiry (For example, see the attached orders of the labour courts). There was no determination that there are vacant posts in the regular government scale which are not being filled up. There was no determination that the qualifications of the applicants are at least as high as the minimum required for employment in a *regular* government job. Therefore, a regular payscale, or any remuneration above the statutory minimum wages, could not have been ordered by the labour courts.

42

Can the daily wage workers be given the same wages as regular employees in terms of "equal pay for equal work" principle?

In our view, no. This is because many of them do not possess the necessary qualifications that would enable them to be considered for employment under regular government service. The recently decided case *State of Punjab and others vs. Jagjit Singh and others* (civil appeal no. 213 of 2013, Supreme Court) also makes the same point. See for example, para 42(viii):

"(viii) If the qualifications for recruitment to the subject post vis-a-vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see – the *Mewa Ram Kanojia* case⁵, and *Government of W.B. v. Tarun K. Roy*¹¹). In such a cause, the principle of 'equal pay for equal work', cannot be invoked."

Considering the case of temporary employees (including daily wage employees), the court said in Para 44(vii):

"(vii) In *State of Haryana v. Charanjit Singh*³⁰, a three-Judge bench of this Court held, that the decisions rendered by this Court in *State of Haryana v. Jasmer Singh*²⁵, *State of Haryana v. Tilak Raj*²⁷, the *Orissa University of Agriculture & Technology* case¹⁰, and *Government of W.B. v. Tarun K. Roy*¹¹, laid down the correct law. Thereupon, this Court declared, that if the concerned daily-wage employees could establish, *that they were performing equal work of equal quality, and all other relevant factors were fulfilled*, a direction by a Court to pay such employees equal wages (from the date of filing the writ petition), would be justified." (emphasis added)

Therefore, all relevant factors have to be fulfilled before a Court can order equal wages for equal work. Of course, one relevant factor is qualification. It is explicitly stated that many daily wage employees do not have the minimum qualification prescribed for the corresponding regular government employment. Therefore, equal wages cannot be ordered.

What is the additional benefit to an employee classified as 'permanent' under the SSO?

The status of an employee as a 'permanent employee' under the SSO does not provide any increase in wages, as compared to employees of any other status. However, under clause 11 of the SSO, protection is provided to the permanent employee in matters related to termination of employment. Further, under clause 6(f) of the SSO, a notice of 3 months is required to be given for retrenchment of permanent employees in some circumstances.

The Sthayee Karmi Scheme of the State Government

43

Recognizing that some daily wage employees have been working on minimum wages for a considerable period, the government has, as an ideal employer as a welfare state, decided to provide additional benefits to such employees. It has framed a special scheme, issued on Oct 7, 2016, whereby daily wage employees have been given the status of "Sthayee Karmi," with many benefits including the following:

- i. Sthayee Karmis have been classified under three categories, namely skilled, semiskilled, and unskilled.
- ii. Benefit of a separate regular pay-scale for each category & dearness allowance.
- iii. Benefit of increment.
- iv. At the time of superannuation they would be entitled for payment of gratuity for 15 days salary per year for the services rendered, subject to a maximum of Rs.1.25 lakhs for unskilled, Rs.1.50 lakhs for semi-skilled and Rs.1.75 lakhs for skilled karmis.

I am enclosing copies of some judgments of labor courts/higher courts in this regard.

(Dr. Manoj Govil)
Principal Secretary
Public Health Engineering Department

Section A

Important judgments noted in the order dated 01.07.2009 in WP 6090/2009 MP High Court

Jabalpur bench

Permanent classification does not amount to regularization

Mahendra L. Jain & Ors vs Indore Development Authority: (2005) 1 SCC 639 their lordship were pleased to observe:

28. 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.

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.

45

In MP State Agro-Industries Development Corporation Ltd. Vs. S.C.Pandey: (2006) 2 SCC 716 their lordship while observing that the standing order categories the nature of employment and it does not classified individual employees in different posts according to the hierarchy created in a department and thus standing order 2 in the Annexure to the 1963 Rules does not apply to promotions or regularization in higher grades, were pleased to hold:

16. The Industrial Courts and High Court inter alia proceeded on the basis that the respondent having completed 240 days of service during the preceding 12 months, he should have been regularized in service. Section 25-B of the Industrial Disputes Act was also invoked on that premise. The Labour Court, however, wrongly equated classification with regularization. The term 'regularization' does not connote permanence.

21. In Dwarika Prasad Tiwari (supra), whereupon Mr. Mathur placed reliance, a Division Bench of this Court accepted the views of the Full Bench in Narayan Singh Rathor (supra). However, it was held that the Standing Order categorizes the nature of employment and it does not classify individual employees in different posts according to the hierarchy created in a department and thus the proviso to Rule 2 does not apply to promotions or regularizations in higher grade.

22. Such appointments, in our opinion, having regarding to the decisions in Mahendra Lal Jain (supra) and Manoj Srivastava (supra) must be made in accordance with extant rules and regulations. It is also a well settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularized in service. Otherwise also the legal position in this behalf is clear as would appear from the decision of this Court in Dhampur Sugar Mills Ltd. v. Bholu Singh [(2005) 2 SCC 470] apart from Mahendra Lal Jain (supra).

In Oil & Natural Gas Corporation Limited Vs Engineering Mazdoor Sangh: (2007) 1 SCC 250 the Lordships were pleased to hold:

14. We have carefully considered the submissions made on behalf of the

46
respective parties and we are unable to agree with the reasoning both of the learned Single Judge as well as the Division Bench of the High Court in firstly directing that the concerned 153 workmen be treated at par with regular employees as far as all benefits are concerned, except for being given permanent status and the subsequent direction of the Division Bench directing that they be treated as having been notionally regularized with effect from 1st May, 1999. Having regard to the nature of employment and the period during which these field workers are employed, it would create various difficulties if the seasonal workmen were to be treated at par with regular employees as directed by the learned Single Judge. It would be even more difficult for the appellant to adjust the workmen in permanent employment when the need for them was only seasonal. Admittedly, these workmen who are employed for field survey work are employed for about six months in a year between November and May. If at all they are to be regularized, the appellant will have to find work for them during the months when their services would otherwise have not been required. As pointed out by Mr. Salve, previously the appellant had monopolistic control over geological survey work for oil and natural gas but today the scene had changed and it is just another competitor along with others, notwithstanding the fact that they are a government company. The appellant is now required to compete with others in securing exploration work and can only recruit field workers as and when required. Even then the learned Tribunal found a via media in directing that the 153 workmen who had admittedly completed 240 days and had acquired a temporary status be regularized against vacancies as and when such vacancies became available.

In Gangadhar Pillai Vs Siemens Limited: (2007) 1 SCC 533, their Lordships were pleased to observe:

28. It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularization of his services and/ or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation

of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularized. Direction to reinstate the workman would mean that he gets back the same status. 47

In the case of State of M.P. Vs Lalit Kumar Verma: (2007) 1 SCC 575, their Lordships were pleased to observe:

2. 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 there against 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.

7. 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 Hindustan Aeronautics Limited Vs Dan Bahadur Singh and others: (2007) 6 SCC 207 it is held,

13. In B.N. Nagarajan & Ors. v. State of Karnataka & Ors. (1979) 4 SCC 507, it was held that the words "regular" or "regularization" 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. Further, when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 thereof in contravention of the rules. This view has been approved by a Constitution Bench in *Secretary, State of Karnataka v. Uma Devi* (2006) 4 SCC 1 (para 16). It was emphasized here that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

14. The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim regularization in service. In *Madhyamik Shiksha Parishad v. Anil Kumar Mishra & Ors.* (2005) 5 SCC 122 it was held that the completion of 240 days' work does not confer the right to regularization under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the services. In *M.P. Housing Board & Anr. v. Manoj Shrivastava* (2006) 2 SCC 702 (paragraph 17) after referring to several earlier decisions it has been reiterated that it is 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. This view has been reiterated in *Gangadhar Pillai v. Siemens Ltd.* (2007) 1 SCC 533. The same question has been examined in considerable detail with reference to an employee working in a Government Company in *Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs & Pharmaceuticals Ltd.* 2007(1) SCC 408 and paragraphs 34 and 35 of the reports are being reproduced below:-

34. Thus, it is well settled that there is no right vested in any daily wager to seek regularization. Regularization can only be done in accordance with the rules and not de hors the rules. In the case of *E. Ramakrishnan and Ors. v. State of Kerala and Ors.* (1996) 10 SCC

565 this Court held that there can be no regularization de hors the rules. The same view was taken in *Dr. Kishore v. State of Maharashtra* (1997) 3 SCC 209 and *Union of India and Ors. v. Bishambar Dutt* (1996) 11 SCC 341. The direction issued by the Services Tribunal for regularizing the services of persons who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In *Dr. Surinder Singh Jamwal and Anr. v. State of Jammu & Kashmir and Ors.* AIR 1996 SC 2775, it was held that ad hoc appointment does not give any right for regularization as regularization is governed by the statutory rules.

**In Hindustan Petroleum Corporation Limited Vs
Ashok Ranghba Ambre and others: (2008) 2 SCC 717 it is held:**

14. To us, however, the learned counsel for the appellant-Corporation is right in submitting that setting aside an action of termination of services being violative of Section 25F of the Act does not necessarily follow that the workman must be held entitled to the benefits claimed by him in the writ petition, namely, status of permanency and claim of regular pay scales and other benefits based on permanency. In our judgment, two things are distinct, different and operate in different areas. In Reference proceedings, the question before the Industrial Tribunal as also before the High Court was whether termination of services of the workman was in consonance with law. Once it was held that there was breach of Section 25F of the Act, it necessarily followed that the order of termination was in violation of law and direction was required to be issued in the form of reinstatement of the workman. The said order was, therefore, confirmed by the High Court. But in our considered opinion, in the proceedings before the High Court under Article 226 of the Constitution as to permanency and other benefits on that basis, the writ petitioner could not contend that since the action of termination of his services was held to be illegal and he was ordered to be reinstated by Industrial Tribunal and the said Award was confirmed by the High Court, ipso facto, he ought to be treated as permanent employee of the Corporation and must be held entitled to the benefits claimed in

50

the writ petition. To that extent, therefore, the order passed by the High Court is not in consonance with law.

19. In our opinion, the High Court was in clear error in equating reinstatement of employee in service in earlier proceedings with confirmation and granting status of permanency. Continuation in or regularization of service of an employee and extending the benefit of confirmation or making him permanent are two different concepts. Before more than four decades, in *State of Mysore & Anr. v. S.V. Narayanappa*, (1967) 1 SCR 128, setting aside the order passed by the High Court of Mysore, this Court observed that the High Court erroneously proceeded on an assumption that regularization meant permanence. The Court stated that regularization would not mean that the appointment would have to be considered as permanent.

20. Again, in *B.N. Nagarajan & Ors. v. State of Karnataka & Ors.*, (1979) 4 SCC 507, orders were passed by the State Government promoting certain officers as Assistant Engineers on a regular basis. It was argued that the regularization of the promotion gave it the colour of permanence and the appointments of the promotees as Assistant Engineers must, therefore, be deemed to have been made substantively. The Court held that the words regular or regularization do not connote permanence. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments and cannot be construed so as to convey an idea of the nature of tenure of appointments.

Section B

Other important judgements

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**BEFORE THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

CONTEMPT PETITION (C) NO. 771 NO. 2015

IN THE MATTER OF-

Rama Naresh Rawat

.... Petitioner

Versus

Ashwini Kumar Rai & Ors

... Respondents

ADDITIONAL SUBMISSIONS ON BEHALF OF RESPONDENTS

It is most respectfully submitted as under:

1. That these additional submissions are being filed in furtherance of the Submission dated 25.11.2016, and pursuant to the order dated 2.12.2016 passed by this Hon'ble Court directing the Respondents to place on record the orders of Labour Courts by which the Petitioners are qualified as 'Permanent'.
2. It is submitted that by way of the present Note, the Respondents are placing before this Hon'ble Court the following:
 - a) MP Industrial Employment Standard Standing Order.
 - b) 3 orders of the Labour Court in different matters, classifying daily wages and as permanent.
 - c) Some judgments of this Hon'ble Court on the concept of classification.
 - d) Additional submissions

**(A) MADHYA PRADESH INDUSTRIAL EMPLOYMENT
(STANDARD STANDING ORDER).**

3. A copy of the Standard Standing Order under the MP Industrial Employment (Standing Orders) Rules, 1963 is annexed herewith and marked as **ANNEXURE-A.**
4. It would be relevant to note Clause 2(i) and Clause 2(vi) which provide 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;

Explanation - In computing the period of six months the days on - which employee was absent due to authorized leave, sickness, maternity leave, accident, lock out and strike (which are not illegal) or closure of the undertaking shall be included;"

(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."

5. It would appear from various orders of the Labour Courts as enclosed alongwith thesesubmissions that the classification as permanent was made by the Labour Courts not under Clause 2(i), but under Clause 2(vi).

6. The scheme of the Madhya Pradesh Industrial Employment (Standard Orders) Act, 1961 implicitly divides employees into two categories:

- Regular Government employees.
- Industrial employees.

7. The 1961 Act is not applicable for those employees of an undertaking where Fundamental Rules, Service Conditions, Leaves etc. are applicable. In this connection, section 2(2) of the Act reads as:

"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 Services Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the Official Gazette apply."

8. For the regular employees of State government, Fundamental Rules, Recruitment Rules, Disciplinary rules etc. framed by the government in exercise of its powers under the Constitution (Article 309) apply.

9. In addition to the regular employees, various departments of the State government have often engaged workers on daily wages based on temporary requirements. The rules applicable for regular employees do not apply to daily wage workers. For engaging such daily wage workers, typically there was no sanction order for creation of posts (whether permanent or temporary), no qualifications were prescribed, and no recruitment rules were laid down. The daily wages workers were engaged without any recruitment procedures. The statutory rules of the State government (framed under Article 309 of the Constitution) are not applicable for the daily wage workers, and therefore the 1961 Act and the standing orders framed thereunder are applicable to these workers. The Standing orders prescribe a separate set of benefits/facilities to be provided to such workers.

10. Therefore, an 'employee' under the 1961 Act – whether classified 'permanent' or not – is not in any way similar to a regular employee of the state government, but is in an entirely different category.

(B) JUDGMENTS OF THE LABOUR COURTS:

11. The following 3 Judgments are being annexed with the present Note:

- i) MP Karmachari Congress Vs. Department of Public Health Engineering 31.3.99, annexed herewith and marked as **ANNEXURE -B.**
- ii) Madan Kumar Shrivastav Vs. Engineering EIC Department of Public Health Engineering and Ors. dated 28.5.1999 annexed herewith and marked as **ANNEXURE-C.**
- iii) Raj Kumar Mishra Versus State of MP Order dated 2.3.2002 annexed herewith and marked as **ANNEXURE D.**

12. It is pertinent to note that daily wage workers were **not** working against any clear vacancies. They happened to continue in daily wage employment for more than six months, and were therefore classified as permanent employees by Courts. For example, in the case of Raj Kumar Mishra, Rewa Vs State of Madhya Pradesh No. 294/MPIR Act/94 (see paragraphs 3 and 8), Madan Kumar Shrivastava, Bhind Vs Engineer-in-Chief, P.H.E.D. case no. 13/99 MPIR (see paragraph 3), Madhya Pradesh Karmachari Congress (Mandleshwar) Vs P.H.E.D case No.312/97 (see paragraphs 3 and 6) it was specifically pleaded by the State government before the Labour Court that the applicants have not worked against any clear vacancies, but the Labour Courts decided to grant status of permanent employee to the applicants. It is pertinent to note that in these 3 cases, like the other cases the classification as Permanent has been made under Clause 2(vi) and not Clause 2(i).

18. In **Hindustan Petroleum Corporation Ltd. Versus Ashok Ambre (2008)(2)SCC 717 (Para 19 & 20)** this Hon'ble Court has again explained the difference between 'Regularisation' and 'Permanent'. A copy of the judgment is annexed and marked as

ANNEXURE-J.

D. ADDITIONAL SUBMISSIONS ON BEHALF OF THE RESPONDENTS ON THE CONCEPT OF PERMANENT CLASSIFICATION:

19. It is pertinent to note that in a subsequent decision of the MP Industrial Tribunal, the Hon'ble Tribunal has declined to classify various employees as permanent or to grant them the benefit of regular pay scale since these employees were not appointed against clear vacancies. A copy of the judgment of the Hon'ble MP Industrial Tribunal, Indore dated 10.9.2008 in the case of **Paschimi Madhya Pradesh Engineering Udyog Shramik Sangh, Mandsour Versus Executive Engineer, Public Works Department** is annexed herewith and marked as **ANNEXURE-K.**

20. Clause 4 and 4-A of the Standard Standing Order(hereinafter referred to as 'SSO')set out the method of recruitment of employees. These clauses are as follows:

"4. Recruitment.- The manager may after consulting the Employment Exchange lay down the procedure for recruitment of employees and notify it on the notice board on which standing orders are exhibited.

4-A. Letter of appointment.- Every employee shall be given a letter of appointment, in which among other things, his name, age, qualification, designation, classification, pay-scale, allowance, nature of job, name of department etc., shall be indicated."

introduced so as to fasten statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularised. Direction to reinstate the workman would mean that he gets back the same status. Copy of the judgment is annexed herewith and marked as **ANNEXURE-G.**

16. In the case of **State of MP Versus Lalit Kumar Verma (2007) (1) SCC 575 (Para 7)**, this Hon'ble Court has held a workman would be entitled to classification as Permanent or temporary employee if the conditions precedent are satisfied. It was held that the Respondent was not appointed against the clear vacancy, he was not appointed in a permanent post or placed on probation. This Hon'ble Court thus held that working on daily wages alone would not entitle him to the status of permanent employee. A copy of the judgment is annexed herewith and marked as **ANNEXURE-H.**

17. In the case of **Hindustan Aeronautics Ltd. Versus Danbahadur Singh 2007(6) SCC 2007 (Para 13 & 14)** this Hon'ble Court distinguished the concepts of 'Regularisation' and 'Permanent'. It was held that the word 'Regular' does not convey the idea of tenure of appointment but related to the methods followed in making the appointment. A copy of the judgment is annexed and marked as **ANNEXURE-I.**

(C) JUDGMENT OF THIS HON'BLE COURT ON THE CONCEPT OF CLASSIFICATION:

13. In the case of **Mahendra L. Jain and Ors. Vs. Indore Development Authorities & Ors (2005) 1SCC 639 (Para 28 &31)**, this Hon'ble Court analyzed the Standard Standing Order in question and it would appear from Para 28 and 31 that permanent classification does not amount to regularization, inasmuch as this Hon'ble Court notes that the matter relating to the recruitment is governed by a separate statute. A copy of the Judgments is annexed herewith and marked as **ANNEXURE-E.**

14. In the case of **MP State Agro Industries Development Corporation Versus S.C. Pandey (2006)2 SCC 716. (Page 18, 21 and 22)**, this Hon'ble Court held that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularized in service. This Hon'ble Court also reiterated that the Standing Order categorizes the nature of employment and it does not classify individual employees in different post according to the hierarchy created in the Department and thus proviso to Rule 2 does not apply to promotions or regularization in higher grade. A copy of this judgment is annexed herewith and marked as **ANNEXURE-F.**

15. In the case of **Gangadhar Pillai Vs. Siemens Ltd. (2007) 1 SCC 533 (Para 28)** this Hon'ble Court held that it is not the law that on completion of 240 days of continuous service in a year, the employee concerned becomes entitled to for regularisation of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was

21. These mandatory provisions are applicable for all industrial employees (including temporary and seasonal employees) to be employed under the SSO. These provisions were not followed, and as a result the engagement of daily wage employees for temporary work cannot be regarded as a legal 'appointment' made under the SSO. As stated earlier, sanction of the government was not obtained to appoint daily wage employees under the SSO, nor were any recruitment rules followed.

22. A Daily wage employee is eligible for following facilities/benefits under the 1961 Act and other Labour Acts.

(I) Under the SSO, the employee is entitled for 3 National Holidays (namely 2nd October, 26th January and 15th August). In addition, he is also entitled for full pay leave for 5 days and for leave on 17th September (Vishwakarma Jayanti.)

(II) The employee is entitled for casual leave for 7 days in a year.

(III) The employees who work in undertakings where Factory Act 1948 is applicable are also entitled for one full day's paid leave for every 20 days of work. In addition, they are also entitled for double wage rate (as compared to the normal wage rate) for working extra time.

(IV) If the services of any employee are terminated/suspended before the normal retirement then as per the provision of Industrial Dispute Act 1947 such employees will be entitled for compensation equivalent to 15 days salary for every one year of service.

(V) Such employees who have worked for 5 years or more are entitled for gratuity payment as per Gratuity Payment Act 1972.

Hon'ble Court in the case of **Harinadan Prasad and others Vs. SCC (2014) 7 SCC 190 (Para 34)** is pertinent to note. A copy of the aforesaid judgment is annexed and marked as **ANNEXURE-L**.

26. It is further submitted that the Petitioners in the present case cannot claim the benefit under the principle of "Equal Pay for Equal Work". As submitted earlier the doctrine of Equal Pay for Equal Work is subject to many factors such as necessary qualifications, and eligibility. In the recent judgment of this Hon'ble Court in the case of **State of Punjab and others vs. Jagjit Singh and others (civil appeal no. 213 of 2013)** it has been reiterated in para 42(vii) that If the qualifications for recruitment to the subject post vis-a-vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable. In such a cause, the principle of 'equal pay for equal work', cannot be invoked. It is submitted that many daily wage employees do not have the minimum qualification prescribed for the corresponding regular government employment. Another relevant factor is that none of the daily wagers were working against a sanctioned or vacant post or clear vacancy, and they have not been appointed by following the recruitment procedure prescribed for Regular Employee.

27. It would appear from the judgment of the Labour Courts as mentioned above, that there was no determination regarding a clear vacancy or a vacant post available in the Department. There was no determination regarding the qualification or eligibility of the daily wager to be appointed on a regular post of the government. The classification as permanent is made only because of completion of 240 days/180 days and thus, at best, it creates a deeming fiction.

28. It is, therefore, submitted that the daily wage workers despite their classification as permanent are not entitled to the same wages as a regular employee.

29. In view of the aforesaid it is submitted that the Respondents have complied with the direction of this Hon'ble Court and the Hon'ble High Court and the Contempt Petitions made accordingly be disposed off.

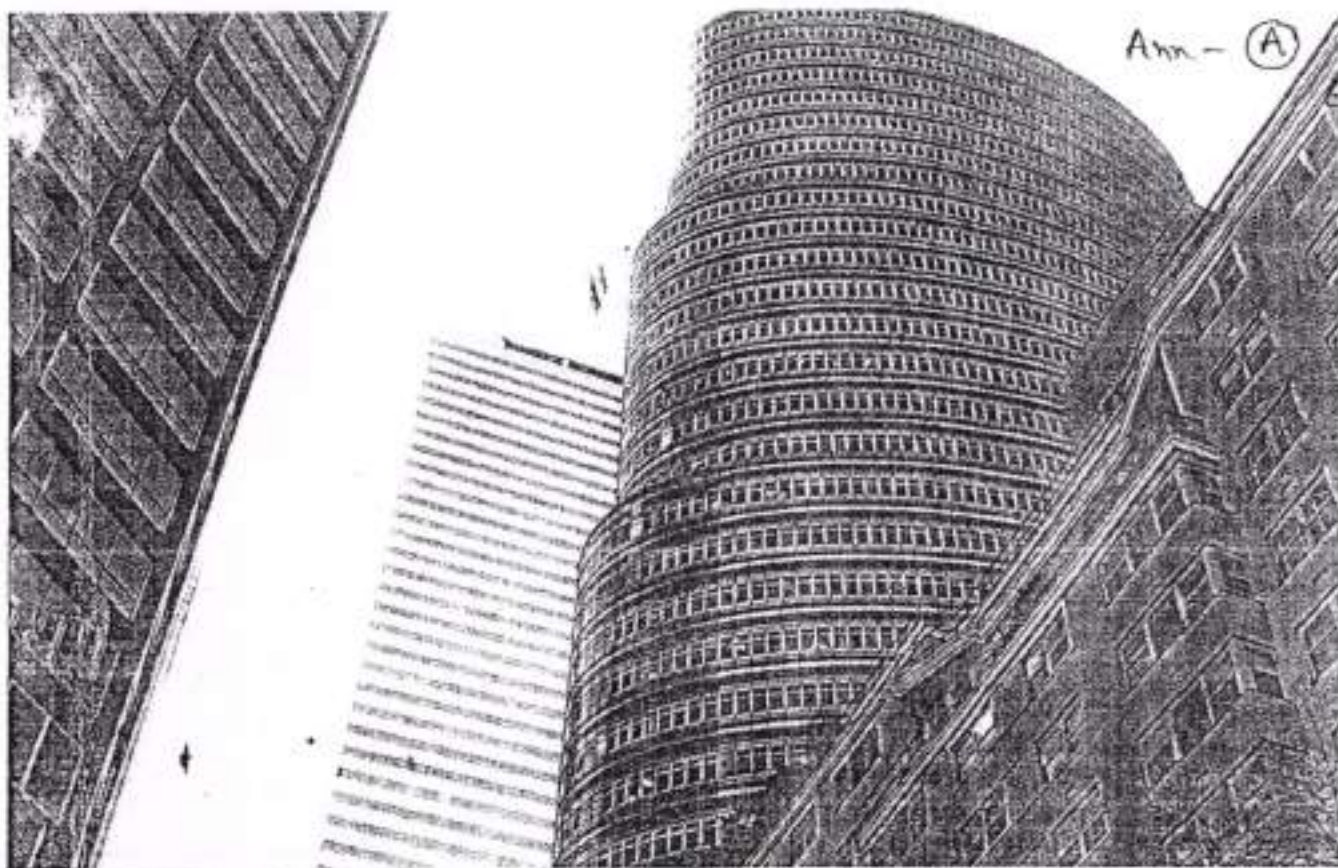
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Filed By

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THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

CONTENTS

	Page
<i>Introduction</i>	1
Sections	
1. Short title, extent and application	2
2. Interpretation	3
3. Submission of draft standing orders	6
4. Conditions for certification of standing orders	6
5. Certification of standing orders	7
6. Appeals	8
7. Date of operation of standing orders	8
8. Register of standing orders	9
9. Posting of standing orders	9
10. Duration and modification of standing orders	9
10A. Payment of subsistence allowance	11
11. Certifying Officers and appellate authorities to have powers of civil court	11
12. Oral evidence in contradiction of standing orders not admissible	11
12A. Temporary application of model standing orders	12
13. Penalties and procedure	12
13A. Interpretation, etc., of standing orders	13
13B. Act not to apply to certain industrial establishments	14
14. Power to exempt	14
14A. Delegation of powers	14
15. Power to make rules	14
THE SCHEDULE (Matters to be provided in Standing Order under this Act)	15

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) CENTRAL RULES, 1946	17-42
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THE MADHYA PRADESH INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1961

[No. 26 of 1961]

CONTENTS

Sections

1.	Short title, extent and commencement.	43
2.	Application of the Act.	43
3.	Definitions.	44
4.	Central Act XX of 1946 not to apply.	44
5.	Power to exempt.	44
6.	Application of Standard Standing Orders to undertakings.	45
7.	Submission of amendment.	45
8.	Certification of amendments.	45
9.	Appeals.	46
10.	Date of operation of amendments.	46
11.	Posting of Standing Orders.	46
12.	Register of standing orders.	46
13.	Disputes regarding application and interpretation of Standing Orders.	46
14.	Recovery of money due from an employer.	46
15.	Appointment of Inspectors and their powers and duties.	47
16.	Certain officers to be public servants.	47
17.	Penalties and procedure.	47
17-A.	Summary disposal of cases.	48
17-B.		73
18.	Certifying Officer, Labour Court and Industrial Court to have powers of Civil Courts.	48
19.	Oral evidence in contradiction of standing order, etc., not admissible.	49
20.	Procedure before Certifying Officer, Labour Court or Industrial Court.	49
21.	Power to make rules.	49
22.	Construction of references.	49
23.	Repeal and saving.	49
	Schedule.	50
	Notifications.	51

THE MADHYA PRADESH INDUSTRIAL EMPLOYMENT (STANDING ORDERS) RULES, 1963

AL
T, 1961

1.	Short title.	53
2.	Definitions.	53
3.	Procedure for submission of amendment.	53
4.	Certification of amendments.	54
5.	Methods of sending Standing Orders.	54
6.	Register of Standing Orders.	54
6-A.	Additional matter included in the Schedule.	54
7.	Framing of Standing Orders.	54
	Forms.	54
	Annexure.	56

.....43
.....43
.....44
.....44
.....44
.....45
.....45
.....45
.....46
.....46
.....46
.....46
.....46
.....46
.....46
.....47
.....47
.....47
.....48
.....78
Powers48
missible.49
ial Court.49
.....49
.....49
.....50
.....51

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

INTRODUCTION

Earlier the economic law of demand and supply in the labour market settled mutually beneficial bargain between the employer and the workman. It was taken as granted that such a bargain would secure fair terms and conditions of employment to the workmen. They had an abiding faith in the unity of this law. But the working of this law has belied their faith. Later workmen found that they did not possess adequate bargaining strength to secure fair terms and conditions of service, they organised themselves in trade unions and insisted on collective bargaining with the employer. The advent of trade unions and collective bargaining created new problems for maintaining industrial peace and production for the society. Workmen started putting forth their demands. Recognising the rough deal that was being given to the workers by employers who would not define their conditions of service and the inevitability of industrial strife in such a situation, the Legislature made an attempt to intervene by introducing the Industrial Employment (Standing Orders) Bill, 1946.

STATEMENT OF OBJECTS AND REASONS

Experience has shown that 'standing orders' defining the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimising friction between the management and workers in industrial undertakings. Discussion on the subject at the tripartite Indian Labour Conference revealed a consensus of opinion in favour of legislation. The Bill accordingly seeks to provide for the framing of 'standing orders' in all industrial establishments employing one hundred or more workers.

In the first instance, the Act will apply to the categories of industrial establishments specified in clause (2)(e), which include, besides factories and railways, mines, quarries and oil fields, tramway or motor, omnibus services, docks, wharves and jetties, inland steam vessels, plantations and workshops. Government will be competent to extend the Act to other classes of industrial establishments or to grant exemptions where necessary, by notification.

Within 6 months from the date on which the Act becomes applicable to an industrial establishment the employer is required to frame draft 'standing orders' and submit them to the Certifying Officer for certification. The draft should cover all the matters specified in the Schedule to the Act and any other matter that Government may prescribe by rules. The Certifying Officer will be empowered to modify or add to the draft standing orders so as to render them certifiable under the Act. It will not be his function (nor of the Appellate Authority) to adjudicate upon their fairness or reasonableness. There will be a right of appeal against the decisions of the Certifying Officers.

ACT 20 OF 1946

The Industrial Employment (Standing Orders) Bill, 1946 having been passed by the Legislature received its assent on 23rd April, 1946. It came on the Statute Book as THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946 (20 of 1946).

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

(20 of 1946)¹

[23rd April, 1946]

An Act to require employers in industrial establishments formally to define conditions of employment under them.

WHEREAS it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them;

STATE AMENDMENTS

Maharashtra : Gujarat.—(i) For the long title, substitute the following, namely :—

“An Act to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay”.

[*Vide* Bombay Act 21 of 1958, sec. 2 (w.e.f. 15-1-1959); Act 11 of 1960, sec. (w.e.f. 1-5-1960)].

(ii) In the Preamble, for the portion beginning with the words “to require” and ending with the words “by them”, substitute the words “to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Bombay, and for certain other matters.”

[*Vide* Bombay Act 21 of 1958, sec. 3 (w.e.f. 15-1-1959)].

(iii) Nothing in the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957 (Bombay Act 21 of 1958), shall be deemed to affect any industrial establishment in respect of which the appropriate Government is the Central Government.

[*Vide* Bombay Act 21 of 1958, sec. 21 (w.e.f. 15-1-1959)].

Madhya Pradesh.—“Nothing in the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), shall apply to any undertaking to which this Act applies*.”

[*Vide* Madhya Pradesh Act 26 of 1961, sec. 4 (w.e.f. 25-11-1961)].

* The Act applies to every undertaking in the State, wherein 20 or more persons are employed during the 12 months preceding or on the day the Act, i.e., Madhya Pradesh Act 26 of 1961, came into force or thereafter. Provision for extension of the said Act to any other class or classes of undertakings has been made in the Act by section 2.

It is hereby enacted as follows :—

1. Short title, extent and application.—(1) This Act may be called the Industrial Employment (Standing Orders) Act, 1946.

(2) It extends to ²[the whole of India ³[***]].

1. For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, pp. 179 and 180. The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, sec. 3 and Sch., to Pondicherry by Reg. 7 of 1963, sec. 3 and Sch. 1 (w.e.f. 1-10-1963), and to Laccadive Minicoy and Amin Divi Islands by Reg. 8 of 1965, sec. 3 and Sch. (w.e.f. 1-10-1967).

2. Subs. by the A.O. 1950, for “all the Provinces of India”.

3. The words “except the State of Jammu and Kashmir” omitted by Act 51 of 1970, sec. 2 and Sch. (w.e.f. 1-9-1971).

¹[(3) It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months :

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of persons less than one hundred as may be specified in the notification.

²[***]

³[(4) Nothing in this Act shall apply to—

- (i) any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 (Bombay Act 11 of 1947) apply; or
- (ii) any industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961) apply :

⁴Provided that notwithstanding anything contained in the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961), the provisions of this Act shall apply to all industrial establishments under the control of the Central Government.]

STATE AMENDMENTS

Maharashtra : Gujarat.—In section 1, in sub-section (3), for the words "one hundred" substitute "fifty".

[*Vide* Bombay Act 21 of 1958, sec. 4 (w.e.f. 15-1-1959) and Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

2. Interpretation.— In this Act, unless there is anything repugnant in the subject or context,—

⁴[(a) "**appellate authority**" means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act :

Provided that in relation to an appeal pending before an Industrial Court or other authority immediately before the commencement of the Industrial Employment (Standing Orders) Amendment Act, 1963 (39 of 1963), that court or authority shall be deemed to be the appellate authority;]

(b) "**appropriate Government**" means in respect of industrial establishments under the control of the Central Government or a ⁵[Railway administration] or in a major port, mine or oil-field, the Central

1. Subs. by Act 16 of 1961, sec. 2, for sub-section (3).

2. Second proviso omitted by Act 39 of 1963, sec. 2 (w.e.f. 23-12-1963).

3. Ins. by Act 39 of 1963, sec. 2 (w.e.f. 23-12-1963).

4. Subs. by Act 39 of 1963, sec. 3, for clause (a) (w.e.f. 23-12-1963).

5. Subs. by the A.O. 1950, for "Federal railway".

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Government, and in all other cases, the State Government :

¹[Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties;]

²[(c) "Certifying Officer" means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act;]

RELEVANT NOTES

Muthoot Pappachan Consultancy and Management Services. Vs. Labour Commissioner, 2008 (117) FLR 5 (Sum) (Ker.) 2008 (3) LLN 304 (Ker.)

(d) "employer" means the owner of an industrial establishment to which this Act for the time being applies, and includes—

- (i) in a factory, any person named under ³[clause (f) of subsection (1) of section 7, of the Factories Act, 1948 (63 of 1948)], as manager of the factory;
- (ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;
- (iii) in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment;

(e) "industrial establishment" means—

- (i) an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (4 of 1936), or
- ⁴[(ii) a factory as defined in clause (iii) of section 2 of the Factories Act, 1948 (63 of 1948), or]
- (iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890 (9 of 1890), or
- (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;

RELEVANT NOTES

Indraprastha Medical Corpn. Vs. Govt. of NCT of Delhi, 2001 (94) DLT 337; 2001 LLR 715; 2001(3) LLN 562; 2001 III CLR 390; 2001 LIC 3638; [2001] II LLJ 1274 (Del.).

1. Added by Act 18 of 1982, sec. 2 (w.e.f. 17-5-1982).
2. Subs. by Act 16 of 1961, sec. 3, for clause (c).
3. Subs. by Act 16 of 1961, sec. 3, for "clause (e) of sub-section (1) of section 9 of the Factories Act, 1934 (25 of 1934)".
4. Subs. by Act 16 of 1961, sec. 3, for sub-clause (ii).

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The Industrial Employment (Standing Orders) Act, 1946

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- (f) "prescribed" means prescribed by rules made by the appropriate Government under this Act;
- (g) "standing orders" means rules relating to matters set out in the Schedule;
- (h) "trade union" means a trade union for the time being registered under the Indian Trade Unions Act, 1926 (16 of 1926);
- [(i) "wages" and "workman" have the meanings respectively assigned to them in clauses (rr) and (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)].

STATE AMENDMENTS

Maharashtra.—In section 2,—

- (i) before clause (a), insert the following clause, namely :—
“(a) ‘amendments’ mean in relation to the model standing orders any amendments proposed to such orders under section 3 and includes any alterations, variations or additions proposed thereto;”
- (ii) in clause (d), for sub-clause (iii), substitute the following sub-clause, namely :—
“(iii) in any other industrial establishment—
(a) any person responsible to the owner for the supervisions and control of the industrial establishment;
(b) where a person who, for the purpose of fulfilling a contract with the owner of the industrial establishment, employs workmen on the premises of the establishment for the execution of the whole or any part of any work which is ordinarily part of such establishment then in relation to such workmen, the owner of the industrial establishment;
- (iii) in clause (e), delete sub-clause (iv);
- (iv) after clause (e), insert the following clauses, namely :—
“(ee) ‘model standing orders’ mean standing orders prescribed under section 15;
(ef) ‘modification’ includes in relation to a standing order, any alteration, variation, addition or deletion in, or to, such order;”

[Vide Bombay Act 21 of 1958, sec. 5 (15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

Section 2A

Maharashtra : Gujarat.—After section 2, insert the following section, namely :—

“2A. *Application of model standing orders to every industrial establishment.*—(1) Where this Act applies to an industrial establishment, the model standing orders for every matter set out in the Schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the Official Gazette appoint *in this behalf :

Provided that nothing in this section shall be deemed to affect any standing orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment (Standing Orders) Bombay Amendment) Act, 1957.”

[Vide Bombay Act 21 of 1958, sec. 6 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

* 15-1-1959 See Bom. Govt. Gaz. 1959 Pt. 1-1 page 333.

Maharashtra.—Section 2A renumbered as sub-section (1) of that section and after subsection (1) so renumbered, following new sub-section (2) shall be added :

1. Subs. by Act 18 of 1982, sec. 2, for clause (i) (w.e.f. 17-5-1982).

"(2) Notwithstanding anything contained in the proviso to sub-section (1) model standing orders made in respect of additional matters included in the Schedule after the coming into force of the Act referred to in that Proviso (being additional) matters relating to probationers or badlis or temporary or casual workmen shall unless such model standing orders are in the opinion of certifying officer less advantageous to them than the corresponding standing orders applicable to them under the said proviso also apply in relation to such workmen in the establishments referred to in the said proviso from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf.

[Vide Maharashtra Act 54 of 1974, sec. 2].

3. Submission of draft standing orders.—(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

STATE AMENDMENT

Maharashtra : Gujarat.—(i) In section 3, for sub-section (1), substitute the following sub-section, namely :—

"(1) Within six months from the date on which the model standing orders apply to any industrial establishment under section 2A, the employer or any workman employed therein may submit to the Certifying Officer five copies of the draft amendments for adoption in such industrial establishment :

Provided that no amendment which provides for the deletion or omission of any rule in the model standing orders relating to any matter set out in the Schedule shall be submitted under this section;"

(ii) delete sub-section (2).

(iii) in sub-section (3), for the words "draft standing orders, substitute "draft amendments".

(iv) in sub-section (4), for the words "draft of standing orders", substitute "draft of amendments".

(v) for the marginal note, substitute the following marginal note :—
"Submission of amendments."

[Vide Bombay Act 21 of 1958, sec. 7 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

4. Conditions for certification of standing orders.—Standing orders shall be certifiable under this Act if—

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

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S. 5] The Industrial Employment (Standing Orders) Act, 1946

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(b) the standing orders are otherwise in conformity with the provisions of this Act,

and it [shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

STATE AMENDMENT

Maharashtra : Gujarat.—Delete section 4.

[Vide Bombay Act 21 of 1958, sec. 8 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

5. Certification of standing orders.—(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed, an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

STATE AMENDMENT

Maharashtra : Gujarat.—(i) In section 5, in sub-section (1),—

(a) after the words "as may be prescribed", insert "or the employer, as the case may be", and after the word "workmen" where it occurs for the third time, insert "or employer";

(b) for the words "draft standing orders", substitute the words "draft amendments";

(ii) in sub-section (2),—

(a) after the words "giving the employer", insert "the workmen submitting the amendments";

(b) delete the words "or addition to";

(c) for the words "the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act", substitute "the draft submitted under sub-section (1) of section 3 is necessary";

(iii) in sub-section (3),—

(a) for the words "certify the draft standing orders", substitute "certify the draft amendments";

1. Subs. by Act 36 of 1956, sec. 32, for "shall not be the function" (w.e.f. 17-9-1956).

(b) for the words "certified standing orders", substitute "model standing orders together with copies of the certified amendments thereof".

(iv) in the marginal note, for the words "standing orders", substitute the word "amendments".

[Vide Bombay Act 21 of 1958, sec. 9 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

6. Appeals.—(1) [Any employer, workmen, trade union or other prescribed representatives of the workmen] aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within [thirty days] from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

(2) The appellate authority shall, within seven days of its order under subsection (1), send copies thereof of the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

RELEVANT NOTES

Gabriel Employees Union Vs. Gabriel India Ltd. and Others, 2008 (1) LLJ 618 (H.P.)

STATE AMENDMENT

Maharashtra : Gujarat.—In section 6,—

(i) in sub-section (1) for the portion beginning with "confirm the standing orders" and ending with "certifiable under this Act", substitute the following, namely :—
"confirm the amendments either in the form certified by the Certifying Officer or after further modifying the same as the appellate authority thinks necessary."

(ii) in sub-section (2),—

(a) for "unless it has confirmed without amendment the standing orders" substitute "unless it has confirmed without further modifications the amendments";

(b) for "by copies of the standing orders", substitute "by copies of the model standing orders together with the amendments".

[Vide Bombay Act 21 of 1958, sec. 10 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

7. Date of operation of standing orders.—Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under subsection (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6.

1. Subs. by Act 18 of 1982, sec. 3, for "Any person" (w.e.f. 17-5-1982).

2. Subs. by Act 16 of 1961, sec. 4, for "twenty-one days".

STATE AMENDMENT

Maharashtra : Gujarat.—In section 7 and in the marginal note thereto, after the words "standing orders", insert the words "or amendments".

[*Vide* Bombay Act 21 of 1958, sec. 11 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

Saurashtra Area (Gujarat).—In its application to the Saurashtra area of the State of Bombay, in section 7, sub-section (2) inserted by the Industrial Employment Standing Orders (Saurashtra Amendment) Act, 1953, shall be deleted; and section 7(1) shall be renumbered as section 7 of the said Act :

Provided that any model standing orders in respect of any industrial establishment referred to in the said sub-section (2) of section 7 deleted as aforesaid, and in operation on the date of the coming into force of this Act, shall be deemed to be the model standing orders prescribed under section 15 of the said Act and applied to the industrial establishment under section 2A, and the provisions of the said Act shall apply thereto as they apply to the model standing orders duly applied under the said section 2A.

Nothing in this Act shall be deemed to affect any industrial establishment in respect of which the appropriate Government is the Central Government.

[*Vide* Bombay Act 21 of 1958, sec. 12 and 21 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

8. Register of standing orders.—A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee.

STATE AMENDMENT

Maharashtra : Gujarat.—In section 8,—

(i) after the words "all standing orders", insert the words "or model standing orders together with all the amendments";

(ii) in the marginal note, after the words "standing orders", insert "and model standing orders together with all certified amendments".

[*Vide* Bombay Act 21 of 1958, sec. 13 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

9. Posting of standing orders.—The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

STATE AMENDMENT

Maharashtra : Gujarat.—In section 9,—

(i) after the words "standing orders", insert the words "or model standing orders together with all the amendments";

(ii) in the marginal note, after the words "standing orders", insert the words "and model standing orders together with all certified amendments".

[*Vide* Bombay Act 21 of 1958, sec. 13 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

10. Duration and modification of standing orders.—(1) Standing orders finally certified under this Act shall not, except on agreement between the employer

model standing orders
thereof".

substitute the word

11 of 1960, sec. 87

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8(1) LLJ 618 (H.P.)

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and the workmen, ¹[or a trade union or other representative body of the workmen] be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

²[(2) Subject to the provisions of sub-section (1), an employer or workman ¹[or a trade union or other representative body of the workmen] may apply to the Certifying Officer to have the standing orders modified and such application shall be accompanied by five copies of ³[***] the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen ¹[or a trade union or other representative body of the workmen] a certified copy of that agreement shall be filed along with the application.]

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

⁴[(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.]

RELEVANT NOTES

Suri Babu & Another Vs. Nuclear Fuel Complex and Others, 2009 (111) LLJ 477.

STATE AMENDMENTS

Maharashtra : Gujarat.—In section 10,—

(i) in sub-section (1),—

- (a) after the words “standing orders”, at both the places where they occur, insert the words “or the amendments”;
- (b) after the words “came into operation”, add the following :—
“and where model standing orders have not been amended as aforesaid, the model standing orders shall not be liable to such modification until the expiry of one year from the date on which they were applied under section 2A”.

* (ii) for sub-section (2), substitute the following sub-section, namely :—

“(2) Subject to the provisions of sub-section (1), an employer, workman or any prescribed representatives of workmen desiring to modify the standing orders or the model standing orders together with the amendments, as finally certified under this Act, or the model standing orders applied under section 2A, as the case may be, shall make an application to the Certifying Officer in that behalf, and such application shall be accompanied by five copies of the standing orders, or the model standing orders, together with all amendments thereto as certified under this Act or model standing orders in which shall be indicated the modifications proposed to be made and where such modifications are proposed to be made by agreement between the employer and workmen a certified copy of the agreement shall be filed along with the application”.

[*Vide* Bombay Act 21 of 1958, sec. 14 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

* See sub-section (4) now inserted by Act 39 of 1963, sec. 4.

Maharashtra.—In section 10, in sub-section (4), delete the words “or the Government of the State of Maharashtra”

[*Vide* Maharashtra Act 54 of 1974, sec. 3].

1. Ins. by Act 18 of 1982, sec. 4 (w.e.f. 17-5-1982).

2. Subs. by Act 36 of 1956, sec. 32, for sub-section (2) (w.e.f. 17-9-1956).

3. The words “the standing orders in which shall be indicated” omitted by Act 39 of 1963, sec. 4 (w.e.f. 23-12-1963).

4. Ins. by Act 39 of 1963, sec. 4 (w.e.f. 23-12-1963).

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S. 10A-12] The Industrial Employment (Standing Orders) Act, 1946

10A. Payment of subsistence allowance.—(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance—

- (a) at the rate of fifty per cent, of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and
- (b) at the rate of seventy-five per cent, of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1) the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.]

11. Certifying Officers and appellate authorities to have powers of civil court:—²[(1)] Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a civil court within the meaning of³[sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)].

⁴[(2) Clerical or arithmetical mistakes in any order passed by a Certifying Officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such Officer or authority, as the case may be.]

12. Oral evidence in contradiction of standing orders not admissible.—No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.

STATE AMENDMENT

Maharashtra : Gujarat.—(i) In section 12, for the words "standing orders as finally certified under this Act", substitute the words "standing orders or the model standing orders,

- 1. Ins. by Act 18 of 1982, sec. 5 (w.e.f. 17-5-1982).
- 2. Section 11 re-numbered as sub-section (1) thereof by Act 39 of 1963, sec. 5 (w.e.f. 23-12-1963).
- 3. Subs. by Act 18 of 1982, sec. 6, for "sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 17-5-1982).
- 4. Ins. by Act 39 of 1963, sec. 5 (w.e.f. 23-12-1963).

12 The Industrial Employment (Standing Orders) Act, 1946 [S. 12A-13
or model standing orders with all the amendments as finally certified under this Act, as the
case may be".

(ii) in the marginal note, for the words "standing orders" substitute "standing orders,
etc."

[Vide Bombay Act 21 of 1958, sec. 15 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87
(w.e.f. 1-5-1960)].

12A. Temporary application of model standing orders.—(1)
Notwithstanding anything contained in sections 3 to 12, for the period commencing
on the date on which this Act becomes applicable to an industrial establishment and
ending with the date on which the standing orders as finally certified under this Act
come into operation under section 7 in that establishment, the prescribed model
standing orders shall be deemed to be adopted in that establishment, and the
provisions of section 9, sub-section (2) of section 13 and section 13A shall apply to
such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in sub-section (1) shall apply to an industrial
establishment in respect of which the appropriate Government is the Government
of the State of Gujarat or the Government of the State of Maharashtra.]

13. Penalties and procedure.—(1) An employer who fails to submit draft
standing orders as required by section 3, or who modifies his standing orders
otherwise than in accordance with section 10, shall be punishable with fine which
may extend to five thousand rupees, and in the case of a continuing offence with a
further fine which may extend to two hundred rupees for every day after the first
during which the offence continues.

(2) An employer who does any act in contravention of the standing orders
finally certified under this Act or his industrial establishment shall be punishable
with fine which may extend to one hundred rupees, and in the case of a continuing
offence with a further fine which may extend to twenty-five rupees for every day
after the first during which the offence continues.

(3) No prosecution for an offence punishable under this section shall be
instituted except with the previous sanction of the appropriate Government.

(4) No Court inferior to that of ²[a Metropolitan Magistrate or Judicial
Magistrate of the second class] shall try any offence under this section.

STATE AMENDMENTS

Madhya Pradesh.—In section 13, after sub-section (4), insert the following
subsections, namely:—

"(5) A Court taking cognizance of an offence under sub-section (2) shall state upon
the summons to be served on the accused person that he—

(a) may appear by pleader and not in person; or

(b) may, by a specified date prior to the hearing of the charge, plead guilty to the
charge by registered letter acknowledgment due and remit to the Court such
sum as the Court may, subject to the maximum limit of fine prescribed for the
said offence, specify.

1. Ins. by Act 38 of 1963, sec. 6 (w.e.f. 23-12-1963).

2. Subs. by Act 18 of 1982, sec. 7, for "a Presidency Magistrate or Magistrate of the
second class" (w.e.f. 17-5-1982).

S. 13-A] The Industrial Employment (Standing Orders) Act, 1946

(6) Where an accused person pleads guilty and remits the sum in accordance with the provisions of sub-section (5), no further proceedings in respect of the offence shall be taken against him.

(7) Nothing contained in this section shall apply to the continuing offence referred to in sub-section (2)."

[Vide Madhya Pradesh Act 18 of 1967, sec. 2 (w.e.f. 1-6-1968)].

Maharashtra : Gujarat.—In section 13,—

(i) in sub-section (1),—

(a) for "who fails to submit draft standing orders as required by section 3, or who modifies his standing orders", substitute "who modifies the standing orders, model standing orders or amendments";

(b) for "section 10", substitute "the provisions of this Act";

(c) for "shall be punishable", substitute "shall on conviction, be punished",

(ii) in sub-section (2), for the words "the standing orders finally certified under this Act for his industrial establishment shall be punishable", substitute the words "the standing orders, model standing orders or the amendments as finally certified under this Act for his industrial establishment, as the case may be, shall, on conviction, be punished",

(iii) after sub-section (2), insert the following sub-sections, namely:—

"(2A) Whoever contravenes the provisions of this Act or of any rule made thereunder in cases other than those falling under sub-section (1) or sub-section (2), shall, on conviction, be punished with fine which may extend to one hundred rupees and in the event of such person being previously convicted of an offence under this Act, with fine which may extend to two hundred rupees and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(2B) The Court convicting an employer under sub-section (1) or subsection (2) may direct such employer to pay such compensation as it may determine to any workman directly and adversely affected by the modification or contravention of the standing orders, model standing orders or amendments, as the case may be.

(2C) The compensation awarded under sub-section (2B) may be recovered as if it were a fine and if it cannot be so recovered, the person by whom it is payable shall be sentenced to imprisonment of either description for a term not exceeding three months as the Court thinks fit".

[Vide Bombay Act 21 of 1958, sec. 16 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

[13A. Interpretation, etc., of standing orders.—If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman² [or a trade union or other representative body of the workmen] may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947 (14 of 1947), and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.]

1. Ins. by Act 36 of 1957, sec. 32 (w.e.f. 10-3-1957).

2. Ins. by Act 18 of 1982, sec. 8 (w.e.f. 17-5-1982).

46 [S. 12A-13

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STATE AMENDMENT

Maharashtra : Gujarat.—In section 13A, after the words "standing order" and in the marginal note thereto after the words "standing orders", insert the words "model standing order or amendments"; and after the word "workman", insert "or any prescribed representatives of workmen".

[*Vide* Bombay Act 21 of 1958, sec. 17 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

¹[13B. Act not to apply to certain industrial establishments.—Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations as may be notified in this behalf by the appropriate Government in the Official Gazette, apply.]

RELEVANT NOTES

Suri Babu & Another Vs. Nuclear Fuel Complex and Others, 2009 (111) LLJ 477.

14J Power to exempt.—The appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

RELEVANT NOTES

Suri Babu & Another Vs. Nuclear Fuel Complex and Others, 2009 (111) LLJ 477.

²[14A. Delegation of powers.—The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or any rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—

- (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification.
- (b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.]

15. Power to make rules.—(1) The appropriate Government may, after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition;

1. Ins. by Act 36 of 1957, sec. 32 (w.e.f. 10-3-1957).

2. Ins. by Act 16 of 1961, sec. 5 and Subs. by Act 39 of 1963, sec. 7, (w.e.f. 23-12-1963).

46 [S. 13B-15

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The Industrial Employment (Standing Orders) Act, 1946

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- (b) set out model standing orders for the purposes of this Act;
- (c) prescribe the procedure of Certifying Officers and appellate authorities;
- (d) prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders;
- (e) provide for any other matter which is to be or may be prescribed :

Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government.

[(3) Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

STATE AMENDMENT

Maharashtra : Gujarat.—In section 15, in sub-section (2),—

- (a) in clause (a), after the words "standing orders", insert, the words "or amendments";
- (b) in clause (d), for the words "copies of standing orders entered in the register of standing orders", substitute "copies of standing orders or model standing orders together with all the amendments filed in the register under section 8".

[Vide Bombay Act 21 of 1958, sec. 18 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

THE SCHEDULE

[See sections 2(g) and 3(2)]

MATTERS TO BE PROVIDED IN STANDING ORDER UNDER THIS ACT

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, [badlis].
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.

1. Ins. by Act 16 of 1961, sec. 6.

2. Subs. by Act 18 of 1982, sec. 9, for certain words (w.e.f. 17-5-1982).

3. Subs. by G.S.R. 655(E), dated 10th October, 2007 (w.e.f. 10-10-2007).

(w.e.f. 23-12-1963).

9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

STATE AMENDMENTS

Maharashtra : Gujarat.—In the Schedule,—

(i) in the heading—

(a) for "sections 2(g) and 3(2)", substitute "section 2A".

(b) after the words "Standing Orders", insert "model standing orders and amendments",

(ii) after item 10, insert the following item, namely :—

"10A. Age for retirement or superannuation."

[Vide Bombay Act 21 of 1958, sec. 19 (w.e.f. 15-1-1959); Act 11 of 1960, sec. 87 (w.e.f. 1-5-1960)].

Maharashtra.—After item 10B, insert the following item, namely :—

"10C. Employment or re-employment of probationers or badlis or temporary or casual workmen and their conditions of service."

[Vide Maharashtra Act 54 of 1974, sec. 4].

Uttar Pradesh.—Schedule amended by Uttar Pradesh Industrial Employment (Standing Orders) (First Amendment) Rules, 1978.

Rule 2 amending original Rule 6 whereby in addition to the matters set out in the Schedule, the following additional matters are included in the Schedule :—

1A. Recruitment.

8A. Issue of service certificate.

9A. Censure and warning notice.

10A. Condition for promotion of workmen.

11 A. Issue of wages slips.

11B. Introduction of welfare schemes such as provident fund, gratuities, etc.

11C. Age of Superannuation or retirement, rate of pension or any other facility, which the employers may like to extend or may be agreed upon by the parties.

[Vide Uttar Pradesh Gazette, Extra., Pt. 4, p. 2, dated 10th February, 1978.]

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) CENTRAL RULES, 1946¹

In exercise of the powers conferred by section 15, read with clause (b) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), the Central Government is pleased to make the following rules, the same having been previously published as required by sub-section (1) of the said section 15, namely:—

1. (1) These rules may be called the Industrial Employment (Standing Orders) Central Rules, 1946.

²[(2) They extend to all Union territories, and shall also apply in any State (other than a Union territory) to industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oil field.]

2. In these rules, unless there is anything repugnant in the subject or context,—

(a) 'Act' means the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946),

(b) 'Form' means a form set out in Schedule II appended to these Rules.

³[2A. In the Schedule to the Act, after item 10, the following additional matters shall be inserted, namely:—

*10A. Additional matters to be provided in Standing Orders relating to all industrial establishments in coal mines—

- (1) Medical aid in case of accident;
- (2) Railway travel facilities;
- (3) Method of filling vacancies;
- (4) Transfers;
- (5) Liability of manager of the establishment or mine;
- (6) Service certificate;
- (7) Exhibition and supply of Standing Orders.

*10B. Additional matters to be provided in the Standing Orders relating to all Industrial Establishments,—

- (1) Service Record—matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age;
- (2) Confirmation;
- (3) Age of retirement;
- (4) Transfer;
- (5) Medical aid in case of accidents;
- (6) Medical examination;
- (7) Secrecy;
- (8) Exclusive service.”]

1. Vide Notification No. LR 11(37), dated 18th December, 1946.

2. Subs. by G.S.R. 208, dated 31st January, 1964.

3. Subs. by G.S.R. 30(E), dated 17th January, 1983.

¹[3. (1) Save as otherwise provided in sub-rule (2), the Model Standing Orders for the purposes of the Act shall be those set out in Schedule I appended to these rules.]

(2) The Model Standing Orders for the purposes of the Act in respect of industrial establishments in coal mines shall be those set out in Schedule IA appended to these rules.]

4. An application for certification of Standing Orders shall be made in Form I.

5. The prescribed particulars of workmen for the purposes of sub-section (3) of section 3 of the Act shall be—

- (1) Total number employed;
- (2) Number of permanent workmen;
- (3) Number of temporary workmen;

²[(3A) Number of casual workmen;]

(4) Number of badlis or substitutes;

³[(4A) *****]

(5) Number of probationers;

(6) Number of apprentices;

(7) Name of the trade union, or trade unions, if any, to which the workmen belong;

(8) Remarks.

6. As soon as may be after he receives an application under rule 4 in respect of an industrial establishment, the Certifying Officer shall—

- (a) where there is a trade union of the workmen, forward a copy of the draft Standing Orders to the trade union together with a notice in Form II;
- (b) where there is no such trade union, call a meeting of the workmen to elect three representatives, to whom he shall, upon their election, forward a copy of the draft Standing Orders together with a notice in Form II.

7. Standing Orders certified in pursuance of sub-section (3) of section 5 or sub-section (2) of section 6 of the Act shall be authenticated by the signature and seal of office of the Certifying Officer or the appellate authority as the case may be and shall be forwarded by such officer or authority within a week of authentication by registered letter post to the employer and to the trade union, or, as the case may be, the representatives of the workmen elected in pursuance of rule 6.

⁴[7A. (1) Any person desiring to prefer an appeal in pursuance of subsection (1) of section 6 of the Act shall draw up a memorandum of appeal setting out the grounds of appeal and forward it in quintuplicate to the appellate authority accompanied by a certified copy of the Standing Orders, amendments or

1. Subs. by G.S.R. 732, dated 12th May, 1971.

2. Ins. by S.R.O. 556, dated 24th February, 1956.

3. Omitted by G.S.R. 655(E), dated 10 October, 2007.

4. Ins. by G.S.R. 1166, dated 28th June, 1963.

- 46 [R. 3-7A R. 8] The Industrial Employment (Central Rules, 1946 19
- Standing Orders modifications, as the case may be. ¹[The memorandum of appeal shall be in ²[Form appended to these [VA] set out in Schedule II to these rules.]
- Act in respect of being heard, confirm the Standing Orders, amendments or modifications as certified by the Certifying Officer unless it considers that there are reasons for giving the other parties to the proceedings a hearing before a final decision is made in the appeal.
- shall be made in (2) The appellate authority shall, after giving the appellant an opportunity of
- of sub-section (3) (3) Where the appellate authority does not confirm the Standing Orders, amendments or modifications, it shall fix a date for the hearing of the appeal and direct notice thereof to be given—
- (a) where the appeal is filed by the employer or a workman, to trade unions of the workmen of the industrial establishments, and where there are no such trade unions to the representatives of workmen elected under clause (b) of rule 6, or as the case may be, to the employer;
- (b) where the appeal is filed by a trade union, to the employer and all other trade unions of the workmen of the industrial establishment;
- (c) where the appeal is filed by the representatives of the workmen, to the employer and any other workman whom the appellate authority joins as a party to the appeal.
- which the workmen (4) The appellant shall furnish each of the respondents with a copy of the memorandum of appeal.
- rule 4 in respect (5) The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal.
- copy of the draft (6) On the date fixed under sub-rule (3) for the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or consider to be relevant.]
- the workmen to election, forward notice in Form II.
- section 5 or the signature and as the case may be of authentication, as the case may be.
- of subsection (6) 8. The register required to be maintained by section 8 of the Act shall be in Form III and shall be properly bound and the Certifying Officer shall furnish a copy of Standing Orders approved for an Industrial Establishment to any person applying therefor on payment of a fee ³[calculated at the following rates per copy —
- (i) for the first two hundred words or less seventy-five paise;
- (ii) for every additional one hundred words or fraction thereof thirty-seven paise :
- of subsection (6) Provided that, where the said Standing Order exceeds five pages, the approximate number of words per page shall be taken as the basis for calculating the total number of words to the nearest hundred, for the purpose of assessing the copying fee.]

1. Ins. by G.S.R. 732, dated 12th May, 1971.

2. Subs. by G.S.R. 910, dated 10th August, 1984.

3. Subs. by G.S.R. 1573, dated 10th October, 1967.

SCHEDULE I

¹[MODEL STANDING ORDERS IN RESPECT OF
INDUSTRIAL ESTABLISHMENT NOT BEING INDUSTRIAL
ESTABLISHMENTS IN COAL MINES]

1. These orders shall come into force on.....

2. Classification of workmen.—(a) Workman shall be classified as—

- (1) Permanent
- (2) probationers
- (3) *badli*

²[(3A) * * * * *]

- (4) temporary
- (5) casual
- (6) apprentices.

(b) A 'permanent' workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment including breaks due to sickness, accident, leave, lockout, strike (not being an illegal strike) or involuntary closure of the establishment.

(c) A 'probationer' is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his old permanent post.

(d) A '*badli*' is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.

(e) A 'temporary' workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.

(f) A 'casual' workman is a workman whose employment is of a casual nature.

(g) An 'apprentice' is a learner who is paid an allowance during the period of his training.

²[(h) * * * * *]

3. Tickets.—(1) Every workman shall be given a permanent ticket unless he is a probationer, *badli*, temporary worker or apprentice.

(2) Every permanent workman shall be provided with a departmental ticket showing his number, and shall, on being required to do so, show it to any person authorised by the manager to inspect it.

1. Subs. by G.S.R. 732, dated 12th May, 1971.
2. Omitted by G.S.R. 655(E), dated 10th October, 2007.

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✓(3) Every *buclli* shall be provided with a *badli* card, on which shall be entered the days on which he has worked in the establishment, and which shall be surrendered if he obtains permanent employment.

(4) Every temporary workman shall be provided with a 'temporary' ticket which he shall surrender on his discharge.

(5) Every casual worker shall be provided with a 'casual' card, on which shall be entered the days on which he has worked in the establishment.

(6) Every apprentice shall be provided with an 'apprentice' card, which shall be surrendered if he obtains permanent employment.

4. Publication of working time.—The periods and hours of work for all classes of workers in each shift shall be exhibited in English and in the principal languages of workmen employed in the establishment on notice boards maintained at or near the main entrance of the establishment and at time-keeper's office, if any.

5. Publication of holidays and pay days.—Notices specifying (a) the days observed by the establishment as holidays, and (b) pay days shall be posted on the said notice boards.

6. Publication of wage rates.—Notice specifying the rates of wages payable to all classes of workmen and for all classes of work shall be displayed on the said notice boards.

7. Shift working.—More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, the workmen shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance, provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workmen affected. If as a result of the discontinuance of the shift working, any workmen are to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Disputes Act, 1947 (14 of 1947), and the rules made thereunder. If shift working is re-started, the workmen shall be given notice and re-employed in accordance with the provisions of the said Act and the said rules.]

7A. Notice of change in shift working.—Any notice of discontinuance or of restarting of a shift working required by Standing Order 7 shall be in the ³[Form IVA] and shall be served in the following manner, namely :—

The notice shall be displayed conspicuously by the employer on a notice board at the main entrance to the establishment ⁴[***] :

Provided that where any registered trade union of workmen exists, a copy of the notice shall also be served by registered post to the secretary of such union.]

1. Subs. by G.S.R. 557, dated 30th April, 1959.

2. Ins. by G.S.R. 655, dated 3rd June, 1960.

3. Subs. by G.S.R. 910, dated 10th August, 1984.

4. Omitted by G.S.R. 824, dated 30th June, 1975.

8. Attendance and late coming.—A workman shall be at work at the establishment at the times fixed and notified under paragraph 4. Workmen attending late will be liable to the deductions provided for in the Payment of Wages Act, 1936.

9. Leave.—(1) Holidays with pay will be allowed as provided for in ¹[Chapter VIII of the Factories Act, 1948] and other holidays in accordance with law, contract, custom and usage.

(2) A workman who desires to obtain leave of absence shall apply to the ¹[employer or any other officer of the industrial establishment specified in this behalf by the employer], who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof, he shall apply to ²[employer or the officer specified in this behalf by the employer] who shall send a written reply either granting or refusing extension of leave to the workman if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.

(3) If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a) returns within 8 days of the expiry of the leave, and (b) explains to the satisfaction of the ¹[employer or the officer specified in this behalf by the employer] his inability to return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be kept on the *badli* list.

10. Casual leave.—A workman may be granted casual leave of absence with or without pay not exceeding 10 days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but when this is not possible, the head of the department shall, as soon as may be practicable, be informed in writing of the absence from and of the probable duration of such absence.

11. Payment of wages.—(1) Any wages, due to the workman but not paid on the usual pay day on account of their being unclaimed, shall be paid by the employer on an unclaimed wage pay day in each week, which shall be notified on the notice boards as aforesaid.

(2) All workmen will be paid wages on a working day before the expiry of the seventh or the tenth day after the last day of the wage period in respect of which the wages are payable, according as the total number of workmen employed in the establishment does not or does exceed one thousand.

1. Subs. by G.S.R. 732, dated 12th May, 1971.

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12. **Stoppage of work.**—(1) The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery or stoppage of power supply, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the establishment, wholly or partially for any period or periods without notice.

(2) In the event of such stoppage during working hours, the workmen affected shall be notified by notices put upon the notice board in the departments concerned [and at the office of the employer and at the time-keeper's office, if any], as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The workmen shall not ordinarily be required to remain for more than two hours after the commencement of the stoppage. If the period of detention does not exceeds one hour the workmen so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workmen so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the stoppage. In the case of piece-rate workers, the average daily earning for the previous month shall be taken to be the daily wage. No other compensation will be admissible in case of such stoppages. Wherever practicable, reasonable notice shall be given of resumption of normal work.

(3) In cases where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be. When, however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof.

(4) The employer may in the event of a strike affecting either wholly or partially any section or department of the establishment close down either wholly or partially such section or department and any other section or department affected by such closing down. The fact of such closure shall be notified by notices put on the notice board in the section or department concerned and in the time-keeper's office, if any, as soon as practicable. The workmen concerned shall also be notified by a general notice, prior resumption of work, as to when work will be resumed.

13. **Termination of employment.**—(1) For terminating employment of a permanent workman, notice in writing shall be given either by the employer or the workmen—one month's notice in the case of monthly-rated workmen and two weeks' notice in the case of other workmen one month's or two weeks' pay, as the case may be, may be paid in lieu of notice.

²[(2) No temporary workman whether monthly rated weekly rated or piece rate and no probationer or *badli* shall be entitled to any notice or pay in lieu thereof, in his services are terminated :

Provided that no temporary workman shall be terminated by way of punishment unless he has been given an opportunity of explaining the charges of misconduct "alleged against him in the manner prescribed in paragraph 14."]

1. Subs. by G.S.R. 824, dated 30th June, 1975.

2. Subs. by Notifn. G.S.R. 655(E), dated 10th October, 2007.

(3) Where the employment of any workman is terminated, the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

14. Disciplinary action for misconduct.—(1) A workman may be fined up to two per cent, of his wages in a month for any of the following acts and omissions, namely :—

Note.—Specify the acts and omissions which the employer may notify with the previous approval of the..... Government or of the prescribed authority in pursuance of section 8 of the Payment of Wages Act, 1936.

(2) A workman may be suspended for a period not exceeding four days at a time or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

(3) The following acts and omissions shall be treated as misconduct :—

- (a) wilful in-subordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;
- (b) theft, fraud, or dishonesty in connection with the employer's business or property;
- (c) wilful damage to or loss of employer's goods or property;
- (d) taking or giving bribes or any illegal gratification;
- (e) habitual absence without leave or absence without leave for more than 10 days;
- (f) habitual late attendance;
- (g) habitual breach of any law applicable to the establishment;
- (h) riotous or disorderly behaviour during working hours at the establishments or any act subversive of discipline;
- (i) habitual negligence or neglect of work;
- (j) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent, of the wages in a month;
- (k) striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.
- [(l) sexual harassment which includes such un-welcome sexual determined behaviour (whether directly or by implication) as—
 - (i) physical contact and advances; or
 - (ii) demand or request for sexual favours; or
 - (iii) sexually coloured remarks; or
 - (iv) showing pornography; or
 - (v) any other un-welcome physical, verbal or non-verbal conduct of sexual nature.]

¹[(4) (a) Where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing, suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from the date of suspension.]

²[(b) A workman who is placed under suspension shall be paid subsistence allowance in accordance with the provisions of section 10A of the Act.]

³[(ba) In the inquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a member.

(bb) The proceedings of the inquiry shall be recorded in Hindi or in English or the language of the State where the industrial establishment is located, whichever is preferred by the workman.

(bc) The proceedings of the inquiry shall be completed within a period of three months :

Provided that the period of three months may, for reasons to be recorded in writing, be extended for such further period as may be deemed necessary by the inquiry officer.]

(c) If on the conclusion of the inquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly :

Provided that when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period, and the subsistence allowance already paid to him shall not be recovered :

Provided further that where the period between the date on which (the workman was suspended from duty pending the inquiry or investigation or trial and the date on which an order of suspension was passed under this clause exceeds four days, the workman shall be deemed to have been suspended only for four days or for such shorter period as is specified in the said order of suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period :

Provided also that where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period :

1. Subs. by G.S.R. 1123, dated 18th July, 1967.

2. Subs. by G.S.R. 910, dated 10th August, 1984.

3. Ins. by G.S.R. 824, dated 30th June, 1975.

Provided also that in the case of a workman to whom the provisions of clause (2) of article 311 of the Constitution apply, the provisions of that article shall be complied with.

(d) If on the conclusion of the inquiry, or as the case may, of the criminal proceedings, the workman has been found to be not guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period.

(e) The payment of subsistence allowance under this standing order shall be subject to the workman concerned not taking up any employment during the period of suspension.

¹[(5)] In awarding punishment under this standing order, the ²[authority imposing the punishment] shall take into account the gravity of the misconduct, the previous record, if any, of the workmen and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the ²[authority imposing the punishment] shall be supplied to the workman concerned.

²[(6)(a)] A workman aggrieved by an order imposing punishment, may within twenty-one days from the date of receipt of the order, appeal to the appellate authority;

(b) the employer shall, for the purposes of clause (a), specify the appellate authority;

(c) the appellate authority, after giving an opportunity to the workman of being heard shall pass such order as he thinks proper on the appeal within fifteen days of its receipt and communicate the same to the workman in writing.]

15. Complaints.—All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or other person specified in this behalf with the right of appeal to the employer.

16. Certificate on termination of service.—Every permanent workman shall be entitled to a service certificate at the time of his dismissal, discharge or retirement from service.

17. Liability of ³[employer].—The ³[employer] of the establishment shall personally be held responsible for the proper and faithful observance of the standing orders.

⁴[17A. — (1) Any person desiring to prefer an appeal in pursuance of sub-section (1) of section 6 of the Act shall draw up a memorandum of appeal setting out the ground of appeal and forward it in quintuplicate to the appellate authority accompanied by a certified copy of the standing orders, amendments or modifications, as the case may be.

1. Clause (6) re-numbered as clause (5) by G.S.R. 1128, dated 18th July, 1967.

2. Subs. by G.S.R. 824, dated 30th June, 1975.

3. Subs. by G.S.R. 824, dated 30th June, 1975.

4. Ins. by G.S.R. 1166, dated 28th June, 1963.

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(2) The appellate authority shall, after giving the appellant an opportunity of being heard, confirm the standing orders, amendments or modifications as certified by the Certifying Officer unless it considers that there are reasons for giving the other parties to the proceedings a hearing before a final decision is made in the appeal.

(3) Where the appellate authority does not confirm the standing orders, amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given —

- (a) where the appeal is filed by the employer or a workman, to trade unions of the workmen of the industrial establishments, and where there are no such trade unions, to the representatives of the workmen elected under clause (b) of rule 6, or as the case may be, to the employer;
- (b) where the appeal is filed by a trade union to the employer and all other trade unions of the workmen of the industrial establishment;
- (c) where the appeal is filed by the representatives of the workmen, to the employer and any other workman whom the appellate authority joins as a party to the appeal.

(4) The appellant shall furnish each of the respondents with a copy of the memorandum of appeal.

(5) The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal.

(6) On the date fixed, under sub-rule (3) of the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or consider to be relevant.]

18. **Exhibition of standing orders** — A copy of these orders in English and in local language shall be posted ¹[* * *] and on a notice board maintained at or near the main entrance to the establishment and shall be kept in a legible condition.

²[***]

³[SCHEDULE I A

MODEL STANDING ORDERS FOR INDUSTRIAL ESTABLISHMENTS IN COAL MINES

1. These orders shall come into force on.....

2. **Definition.**—In these orders, unless the context otherwise requires,—

- (a) 'attendance' means presence of the workman concerned at the place or places where by the terms of his employment he is required to report for work and getting his attendance marked;
- (b) the expression 'employer' and 'workman' shall have the meanings assigned to them in section 2(d) and (i) respectively of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946);

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- 1. Omitted by G.S.R. 824, dated 30th June, 1975.
 - 2. Form omitted by G.S.R. 910, dated 10th August, 1984.
 - 3. Ins. by G.S.R. 732, dated 12th May, 1971.

(c) 'Manager' means the manager of the mine and includes an acting manager for the time being appointed in accordance with the provisions of the Mines Act, 1952 (35 of 1952);

(d) words importing masculine gender shall be taken to include females;

(e) words in the singular shall include the plural and *vice versa*.

3. Classification of workmen.—(a) 'Workmen' shall be classified as—

(i) permanent;

(ii) probationers;

(iii) *badli*s or substitutes;

[(iiiA) ** ** **]

(iv) temporary;

(v) apprentices; and

(vi) casual.

(b) A 'permanent' workman is one who is appointed for an unlimited period or who has satisfactorily put in three months' continuous service in permanent post as a probationer;

(c) A 'probationer' is one who is provisionally employed to fill a vacancy in a permanent post and has not completed three months' service in that post unless the probationary period is extended. If a permanent workman is employed as a probationer in a new post, he may, at any time, during the probationary period not exceeding three months, be reverted to his old permanent post unless the probationary period is extended.

(d) A '*badli*' or substitute is one who is appointed in the post of a permanent workman or a probationer who is temporarily absent; but he would cease to be a '*badli*' on completion of a continuous period of service of one year (190 attendances in the case of below ground workman and 240 attendances in the case of any other workman) in the same post or other post or posts in the same category or earlier the post is vacated by the permanent workman or probationer. A '*badli*' working in place of a probationer would be deemed to be permanent after completion of the probationary period.

(e) A 'temporary' workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period. The period within which it is likely to be finished should also be specified but it may be extended from time to time, if necessary.

(f) An 'apprentice' is a learner who is either paid an allowance or not paid any allowance during the period of his training, which shall *inter alia* be specified in his term of contract.

(g) A 'casual' workman is a workman who has been engaged for work which is of an essentially casual nature.

[(h) ** ** **]

4. Every workman shall be given a ticket appropriate to his classification at the time of his appointment and shall on being required to do so, show it to the

includes an acting person authorised by the employer in that behalf. The said ticket shall carry the signature or thumb impression of the workman concerned. If the workman loses his ticket, the manager shall provide him with another ticket on a payment of 25 paise.

include females; 5. **Display of notices.**—(a) The period and hours of work for all classes of workmen in each shift shall be exhibited in English and in the language understood by the majority of workmen employed in the establishment on notice boards maintained at or near the main entrance of the establishment and at the time-keeper's office, if any.

versa. (b) Notices specifying (a) the days observed by the establishment as holidays and (b) pay days shall be posted on the said notice boards, (c) Notices specifying the rates of wages and scales of allowances payable to all classes of workmen and for all classes of work shall be displayed on the said notice boards.

classified as— 6. **Payment of wages.**—(a) Wages shall be paid direct to the individual workman on any working day between the hours 6.00 A.M. and 6.00 P.M. at the office of the Mine. The manager or any other responsible person authorised by him shall witness and attest the payments and note the date of payment in the wage register. Payment of wages to a contractor's workman shall be made at a place to be specified by the manager and it shall be witnessed by a nominee of the employer deputed for this purpose in writing.

limited period in permanent post (b) Any wages due to a workman but not paid on the usual pay day on account of their being unclaimed shall be paid by the employer on such unclaimed wage pay day in each week as may be notified to the workmen. If the workman so desires, the unpaid wages and other dues payable to him shall be remitted to his address by money order after deducting therefrom the money order commission charges. All claims for the unpaid wages shall be presented to the employer within a period of twelve months from the date on which the wages became due.

fill a vacancy in a hat post unless the is employed as a tionary period not ss the probationary (c) Overtime shall be worked and wages thereof paid in accordance with the provisions of the Mines Act, 1952 as amended by the Mines (Amendment) Act, 1959 and as may be prescribed from time to time. For work on weekly rest day, the workman shall be paid as laid down in any agreement or award or as the case may be, as per usage or custom.

ost of a permanent ould cease to be a ir (190 attendances f case of any other te, ry or earlier if 'badli' working in c completion of the 7. **Shift working.**—More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, a workman shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance, provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workman affected. If as a result of the discontinuance, of the shift working, any workmen are to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Disputes Act, 1947 (14 of 1947), and the rules made thereunder. If shift working is re-started, the workmen shall be given notice and re-employed in accordance with the provisions of the said Act and the said rules.

engaged for work d within a limited d also be specified 8. **Attendance.**—All workmen shall be at work at the Mine at the time fixed nee or not paid any /iq be specified in ed for work which is classification # so, show it to the and notified to them.

9. Absence from place of work.—Any workman, who after going underground or after coming to his work in the department in which he is employed, is found absent from his proper place of work during working hours without permission from the appropriate authority or without any sufficient reason shall be liable to be treated as absent for the period of his absence.

10. Festival holidays and leave.—(a) There shall be seven paid festival holidays or as laid down in the agreement or an award in force. Out of these seven days, the Republic Day, Independence Day and Mahatma Gandhi's Birthday shall be allowed without option and the rest of the days shall be fixed by agreement or local custom. Whenever a workman has to work on any of these holidays, he shall, at his option be entitled to either thrice the wages for the day or twice the wages for the day on which he works and in addition to avail himself of a substituted holiday with wages on any other day or as laid down in an agreement or an award in force.

(b) (i) The workmen shall be entitled to leave with wages in accordance with the provision contained in Chapter VII of the Mines Act, 1952.

(ii) Normally a workman will not be refused the leave applied for by him. But the employer may refuse, revoke or curtail the leave applied for by workman, if the exigencies of work so demand. Wages in lieu of leave shall be paid to a workman, where he has been refused the leave asked for and in cases where he cannot accumulate the leave any further. If a workman is refused leave in a particular year in the interest of work, it would be open to him next year either to avail of leave on two occasions with the usual railway concessions or in case he avails of leave on only one occasion, the railway fare for the unavailed trip would be paid to him in the shape of National Savings/National Defence/ Certificates.

(c) Quarantine leave shall be granted to a workman, who is prevented from attending to his duty because of his coming into contact, through no fault of his own, with a person suffering from a contagious disease. The leave shall be granted for such period as is covered by a certificate from the Medical Officer of the mine. Payment for the period of quarantine leave shall be at the rate of 50 per cent, of the wages (basic plus dearness allowance) payable to a workman. Quarantine leave cannot be claimed, if a workman has refused to accept during the previous three months, prophylactic treatment for the disease in question.

(d) A workman who desires to obtain leave of absence shall apply to the manager not less than fifteen days before the commencement of the leave, except where leave is required in unforeseen circumstances, and the manager shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, orders shall be given on the same day. If the leave asked for is granted, the leave-pass shall be given to the workman. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof, he shall apply to the manager

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who shall send a written reply either granting or refusing extension of leave to the workman. Sanction/refusal of leave should be communicated to the workman in writing invariably.

(e) If a workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose lien on his appointment unless he—

(a) returns within ten days of expiry of his leave, and

(b) explains to the satisfaction of the manager his inability to return on the expiry of his leave.

In case, the workman loses as aforesaid, his lien on the appointment, he shall be entitled to be kept on the 'badli list'.

(f) A workman may be granted casual leave of absence with pay not exceeding five days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but where this is not possible, the head of the department shall, as soon as may be practicable, be informed in writing of such absence and of the probable duration thereof.

(g) Notwithstanding anything mentioned above, any workman who overstays his sanctioned leave or remains absent without reasonable cause will render himself liable for disciplinary action.

11. [***]

12. **Railway travel facilities.** — (a) When a workman proceeds on leave and is qualified for free railway fare, the employer shall give him the cost equivalent of his ticket (including bus fare) and for boat to his home.

(b) Every workman who has completed a period of twelve months' continuous service would qualify for railway fare or bus fare or both for going home on leave and returning to the mine on the expiry of the leave. The twelve months' service shall be deemed to have been completed if, during the twelve months preceding the date on which he applies for leave, he has worked for not less than two hundred and forty days.

(c) If on the expiry of the leave, a workman returns, he shall then receive a cash payment equivalent to the return fare. If on his return the mine is unable to have him back, he shall be paid return fare at once.

(d) If the journey home is by bus or partly by bus and partly by train, the cost of the journey shall be adjusted accordingly.

(e) The workman shall be entitled to railway fare by mail or express train, wherever under the Railway Rules tickets are available for such travel.

(f) The class by which a workman is entitled to travel shall be :—

(i) if his basic wage is Rs. 165 or less per month

III Class.

(ii) if his basic wage is above Rs. 165 and upto
Rs. 265 per month

II Class.

(iii) if his basic wage is above Rs. 265 per month

I Class.

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13. Termination of services.—(a) For terminating the services of a permanent workman having less than one year of continuous service, notice of one month in writing with reasons or wages in lieu thereof shall be given by the employer :

Provided that no such notice shall be required to be given when the services of the workman are terminated on account of mis-conduct established in accordance with the Standing Orders.

¹[(b) Subject to the provisions of the Industrial Disputes Act, 1947 (14 of 1947) no notice of termination of employment shall be necessary in the case of temporary and *badli* workmen :

Provided that a temporary workmen who has completed three months continuous service shall be given two weeks notice of the intention to terminate his employment if.

Provided further that when the services of a temporary workmen who has not completed three months continuous service are terminated before the completion of the term of employment given for termination in writing and when the service of a *badli* workmen are terminated before the return to work of the permanent incumbent or the expiry of his (*Badli*) term of employment he shall be informed of the reasons for such termination in writing].

(c) No workman shall leave the service of an employer unless notice in writing is given at the scale indicated below :

(i) For monthly paid workmen

One month

(ii) For weekly paid workmen

Two weeks :

Provided that it will be for the employer to relax this condition and the workman may pay cash in lieu of such notice.

(d) For purposes of Standing Orders 13(a), (b) and (c) the terms 'service' and 'wages' shall have the same meaning as assigned to these in sections 25(B) (1) and 2(r) respectively of the Industrial Disputes Act, 1947.

14. Stoppage of work and re-opening.—(a) Subject to the provisions of Chapter VA of the Industrial Disputes Act, 1947, the employer may at any time, in the event of underground trouble, fire, catastrophe, break-down of machinery, stoppage of power-supply, epidemic, civil commotion or any other cause beyond the control of the employer, stop any section or sections of the mine wholly or partly for any period or periods.

(b) In the event of such stoppage during working hours, the workmen affected shall be notified by notice put up on the notice board in the departments concerned and of the office as soon as practicable as to when work will be resumed and whether they are to remain or leave their place of work. The workmen will not ordinarily be required to remain for more than two hours after the commencement of the stoppage. Whenever workmen are laid off on account of failure of plant or a temporary curtailment of production or other causes they shall be paid compensation in accordance with the provisions of the Industrial Disputes Act, 1947. Where no such compensation is admissible, they shall be granted leave with or without wages as the case may be at the option of the workman concerned, leave with wages being

1. Subs. by G.S.R. 655(E), dated 10th October, 2007.

ices of a permanent employee of one month in the employer : granted to the extent of any leave due to them. When workmen are to be laid off for an indefinitely long period, their services may be terminated subject to the provisions of the Industrial Disputes Act, 1947. If normal work is resumed two weeks' notice thereof shall be given by the posting of notices at or near the Mine office and workmen discharged earlier by the employer shall, if they present themselves for work, have preference for re-employment.

Act, 1947 (14 of 1947) in the case of (c) The employer may be in the event of a strike affecting either wholly or partially any section of the mine close down either wholly or partially such section of the mine and any other section affected by such closure. The fact of such closure shall be notified by notices put up on notice board in the manager's office. Prior to resumption of work, the workmen concerned will be notified by a general notice indicating as to when work will be resumed. A copy of such notice shall be sent to the registered trade union or unions functioning in the establishment.

When who has not completed the service of permanent incumbent when the service of permanent incumbent is terminated on the basis of the reasons 15. Method of filling vacancies.—In the matter of filling up of permanent vacancies *vacant* and temporary workmen and probationers would be given preference in the order of their seniority.

16. [***]

ss notice in writing 17. Disciplinary action for misconduct.—(i) A workman may be suspended by the employer pending investigation or departmental enquiry and shall be paid subsistence allowance in accordance with the provisions of section 10A of the Act. One month The employer shall normally complete the enquiry within 10 days. The payment of Two weeks : subsistence allowance shall be subject to the workman not taking any employment in and the workman elsewhere during the period of suspension.]

The following shall denote misconduct :—

terms 'service' and provisions 25(B) (1) and

provisions of may at any time, in own of machinery, cause beyond the mine wholly or

workmen affected in the mine concerned and whether ill not ordinarily be of the stoppage. int or a temporary compensation in 1947. Where no such r without wages at : with wages being

- (a) theft, fraud, or dishonesty in connection with the employer's business or property;
- (b) taking or giving of bribes or an illegal gratification whatsoever in connection with the employer's business or in his own interests;
- (c) wilful in-subordination or disobedience, whether alone or in conjunction with another or others, or of any lawful or reasonable order of a superior. The order of the superior should normally be in writing;
- (d) habitual late attendance and habitual absence without leave or without sufficient cause;
- (e) drunkenness, fighting or riotous, disorderly or indecent behaviour while on duty at the place of work;
- (f) habitual neglect of work;
- (g) habitual indiscipline;
- (h) smoking underground or within the mine area or in places, where it is prohibited;
- (i) causing wilful damage to work in progress or to property of the employer;
- (j) sleeping on duty;
- (k) malingering or slowing down work;

1. Rule 16 omitted by G.S.R. 910, dated 10th August, 1984.

2. Subs. by G.S.R. 910, dated 10th August, 1984.

- (l) acceptance of gifts from subordinate employees;
- (m) conviction in any court of law for any criminal offence involving moral turpitude;
- (n) continuous absence without permission and without satisfactory cause for more than ten days;
- (o) giving false information regarding one's name, age, father's name, qualification or previous service at the time of the employment;
- (p) leaving work without permission or sufficient reason;
- (q) any breach of the Mines Act, 1952, or any other Act or any rules, regulations or bye-laws thereunder, or of any standing orders;
- (r) threatening, abusing or assaulting any superior or co-worker;
- (s) habitual money-lending;
- (t) preaching of or inciting to violence;
- (u) abetment of or attempt at abetment of any of the above acts of misconduct;
- (v) going on illegal strike either single or with other workers without giving 14 days previous notice;
- (w) disclosing to any unauthorised person of any confidential information in regard to the working or process of the establishment which may come into the possession of the workman in the course of his work;
- (x) refusal to accept any charge-sheet or order or notice communicated in writing;
- (y) failure or refusal to wear or use any protective equipment given by the employers;
- [(z)] sexual harassment which includes such un-welcome sexual determined behaviour (whether directly or by implication) as—
- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other un-welcome physical, verbal or non-verbal conduct of sexual nature.]

(ii) No order of punishment under Standing Order No. 17(i) shall be made unless the workmen concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. A departmental enquiry shall be instituted before dealing with the charges. During the period of enquiry, the workman concerned may be suspended. The workman may take the assistance of a co-worker to help him in the enquiry, if he so desires. The records of the departmental enquiry shall be kept in writing. The approval of the owner, agent or the chief mining engineer of the employer or a person holding similar position shall be obtained before imposing the punishment of dismissal.

[Sch. IA

copy of the enquiry proceedings shall be given to the workman concerned on the conclusion of the enquiry, on request by the workman.

(iii) If a workman is not found guilty of the charges framed against him, he shall be deemed to be on duty during the full period of his suspension and he shall be entitled to receive the same wages as he would have received if he had not been suspended.

(iv) In awarding punishment under this standing order, the authority awarding punishment shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the authority awarding punishment shall be supplied to the workman concerned.

18. Time limit for making complaints, appeals, etc.—All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his servant shall be submitted within 7 days of such cause of complaint to the manager, of the mine, with the right of appeal to the employer. Any appeal to the employer shall be made within 3 days of the decision of the manager. The employer shall normally give his decision within 3 days of the receipt of the appeal.

19. Liability of manager of the mine.—The manager of the mine shall personally be held responsible for the proper enforcement of these standing orders provided that where a manager is over-ruled by his superior, the latter shall be held responsible for the decision taken.

20. Service certificate.—Every workman who was employed continuously for a period of more than three months shall be entitled to a service certificate at the time of his leaving the service of employer.

21. Entry and exit.—All workmen shall enter and leave the premises of the establishment through authorised gates and shall be liable for search while going in or coming out of the premises. In case of women workmen, search will only be made by women.

22. Exhibition and supply of Standing Orders.—A copy of these orders in English and in the regional languages of the local area in which the mine is situated shall be posted at the manager's office and in such other places of the mine as the employer may decide and it shall be kept in a legible condition. A copy of the standing orders shall be supplied to a workman on application, on payment of a reasonable price. A trade union in the establishment will, however, be entitled to the free supply of a copy of the Standing Orders, provided the union is one which is recognised by the employer.]

[SCHEDULE IB

MODEL STANDING ORDERS ON ADDITIONAL ITEMS APPLICABLE TO ALL INDUSTRIES

(1) Service record

Matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age :

1. Ins. by G.S.R. 30(E), dated 17th January, 1983.

(i) *Service card.*— Every industrial establishment shall maintain a service card in respect of each workman in the form appended to these orders, wherein particulars of that workman shall be recorded with the knowledge of that workman and duly attested by an officer authorised in this behalf together with date.

(ii) *Certification of service.*— (a) Every workman shall be entitled to a service certificate, specifying the nature of work (designation) and the period of employment (indicating the days, months, years) at the time of discharge, termination, retirement or resignation from service.

(b) The existing entries in para 16 of Schedule I and para 20 of Schedule I-A shall be omitted.

(iii) *Residential address of workman.*— A workman shall notify the employer immediately on engagement the details of his residential address and thereafter promptly communicate to his employer any change of his residential address. In case, the workman has not communicated to his employer the change in his residential address, his last known address shall be treated by the employer as his residential address for sending any communication.

(iv) *Record of age.*— (a) Every workman shall indicate his exact date of birth to the employer or the officer authorised by him in this behalf, at the time of entering service of the establishment. The employer or the officer authorised by him in this behalf may before the date of birth of a workman is entered in his service card, require him to supply :

- (i) his matriculation or school leaving certificate granted by the Board of Secondary Education or similar educational authority;
- (ii) a certified copy of his date of birth as recorded in the registers of a municipality, local authority or Panchayat or Registrar of Births;
- (iii) in the absence of either of the aforesaid two categories of certificates, the employer or the officer authorised by him in this behalf may require the workman to supply, a certificate from a Government Medical Officer not below the rank of an Assistant Surgeon, indicating the probable age of the workman provided the cost of obtaining such certificate is borne by the employer;
- (iv) where it is not practicable to obtain a certificate from a Government Medical Officer, an affidavit sworn, either by the workman or his parents, or by a near relative, who is in a position to know about the workman's actual or approximate date of birth, before a First Class Magistrate or Oath Commissioner, as evidence in support of the date of birth given by him.

(b) The date of birth of a workman, once entered in the service card of the establishment shall be the sole evidence of his age in relation to all matters pertaining to his service including fixation of the date of his retirement from the service of the establishment. All formalities regarding recording of the date of birth shall be finalised within three months of the appointment of a workman.

(c) Cases where date of birth of any workman had already been decided on the date these rules come into force shall not be re-opened under these provisions.

Note.—Where the exact date of birth is not available and the year of birth is only established then the 1st July of the said year shall be taken as the date of birth.

(2) Confirmation

The employer shall in accordance with the terms and conditions stipulated in the letter of appointment, confirm the eligible workman and issue a letter of confirmation to him. Whenever a workman is confirmed, an entry with regard to the confirmation shall also be made in his service card within a period of thirty days from the date of such confirmation.

(3) Age of retirement

The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of '[58] years of age by the workman.'

(4) Transfer

A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer :

Provided that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer :

Provided further that a workman is transferred from one job to another, which he is capable of doing, and provided also that where the transfer involves moving from one State to another such transfer shall take place, either with the consent of the workman or where there is a specific provision to that effect in the letter of appointment, and provided also that (i) reasonable notice is given to such workman, and (ii) reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid travelling allowance including the transport charges, and fifty per cent, thereof to meet incidental charges.

(5) Medical aid in case of accidents

²[Where a workman meets with an accident in the course of] or arising out of his employment, the employer shall, at the employer's expense make satisfactory arrangements for immediate and necessary medical aid to the injured workman and shall arrange for his further treatment, if considered necessary by the doctor attending on him. Wherever the workman is entitled for treatment and benefits under the Employees' State Insurance Act, 1948, or the Workmen's Compensation Act, 1923, the employer shall arrange for the treatment and compensation ²[accordingly].

(6) Medical examination

Wherever the recruitment rules specify medical examination of a workman on his first appointment, the employer shall, at the employer's expense, make arrangements for the medical examination by a registered medical practitioner.

1. Subs. by G.S.R. 1040, dated 12th September, 1984.

2. Vide Corrigenda G.S.R. 739, dated 18th June, 1984.

38

The Industrial Employment (.....) Central Rules, 1946

[Sch. II

(7) Secrecy

No workman shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property of an industrial establishment out of the work premises except with the written permission of his immediate superior, nor shall he in any way pass or cause to be passed or disclose or cause to be disclosed any information or matter concerning the manufacturing process, trade secrets and confidential documents of the establishment to any unauthorised person, company or corporation without the written permission of the employer.

(8) Exclusive service

A workman shall not at any time work against the interest of the industrial establishment in which he is employed and shall not take any employment in addition to his job in the establishment, which may adversely affect the interest of his employer.

SCHEDULE II

FORM I

Industrial Employment (Standing Orders) Act, 1946, section 3

Dated.....20....

To

The Certifying Officer

(Area)

(Place)

Sir,

Under the provisions of section 3 of the Industrial Employment (Standing Orders) Act, 1946, I enclose five copies of the draft standing orders proposed by me for adoption in

(Name)

(Postal address)

(Place)

an industrial establishment owned/controlled by me, with the request that these orders may be certified under the terms of the Act. I also enclose a statement giving the particulars prescribed in rule 5 of the Industrial Employment (Standing Orders) Central Rules, 1946.

I am etc.,

(Signature)

Employee
Manager

[Sch. II]

Sch. III] The Industrial Employment (.....) Central Rules, 1946

FORM II

[Notice under section 5 of the Industrial Employment (Standing Orders) Act, 1946]

Office of the Certifying Officer.....area,
place..... dated the.....20.....

I..... Certifying Officer area, forward herewith a copy of
the draft Standing Orders proposed by the employer for adoption in the
..... industrial establishment and submitted to me for certification
under the Industrial Employment (Standing Orders) Act, 1946. Any objections which
the workmen may desire to make to the draft Standing Orders should be submitted
to me within fifteen days from the receipt of this notice.

(Certifying Officer)

To Seal
The Secretary,
Union.
Representative elected under rule 6
Name
Occupation
Industrial Establishment.

FORM III

Industrial Employment (Standing Orders) Act, 1946, section 8
Register

PART I

INDUSTRIAL ESTABLISHMENT

S. No.	Date of the despatch of the copy of standing orders authenticated under section 5 for the first time	Date of filing appeal	Date and nature of decision appeal, if any	Amendment made on appeal,	Date of the despatch of the copy of the standing orders as settled on appeal	Any notice subsequently given or received of any amendment	Result

PART II

(Should contain the authenticated copy of the Standing Orders)

[FORM IV

[See rule 7A (1)]

[To be furnished in respect of each clause appealed against, separately]

- (1) Draft of the Standing Order under appeal as submitted by the employers.
- (2) Objection made/modification suggested, if any, to the Draft Standing Order under appeal, by the Trade Union/ Representatives of workmen.
- (3) Standing Order under appeal, as certified by the Certifying Officer.
- (4) Grounds of appeal by the employers/ trade union/ workmen's representatives.]

[FORM IVA

(See Standing Order 7 A of Schedule I)

Notice of discontinuance/ re-starting of a shift working to be given by an employer.

Name of employer.....

Address

Dated the day of 20.....

In accordance with Standing Order No..... of the Standing Orders certified and approved in respect of my/our industrial establishment, I/we hereby give notice to all concerned that it is my/our intention to discontinue/restart the shift working specified in the Annexure with effect from.....

Signature.....

Designation.....

Annexure

(Here specify the particulars of change in the shift working proposed to be effected).]

Copy forwarded to—

- (1) The Secretary of registered Trade Union, if any.
- (2) The Assistant Labour Commissioner (Central)/Labour Employment Officer (Here enter office address of the Assistant Labour Commissioner (Central) Labour Employment Officer in the local area concerned).
- (3) The Regional Labour Commissioner (Central) Zone.
- (4) The Chief Labour Commissioner (Central), New Delhi.

1. Ins. by G.S.R. 732, dated 12th May, 1971.

2. Ins. by G.S.R. 910, dated 10th August, 1984.

[Sch. III]

The Industrial Employment (.....) Central Rules, 1946

41

[FORM V

(See Standing Order 1, Schedule I-B)

Service Card

Name of Estt./Factory
Ticket/Token No.arately]
e employers.
anding OrderOfficer.
workmen's

1. Register Serial No.
2. Name
3. Specimen Signature/Thumb Impression
4. Father's or Husband's name
5. Sex
6. Religion
7. Date of Birth
8. Place of Birth
9. Date of Joining
10. Details of Medical Certificate at the time of joining
11. Educational and other qualifications
12. Can Read
13. Can Write
14. Can Speak
15. Height
16. Identification Marks
17. Category of Workman
18. Department
19. Details of family members
20. Permanent Address
21. Local Address
22. Quarter No.
23. Life Insurance Policy No.
24. Provident Fund Account No.
25. Nominee for Gratuity
26. Nominee for Pension, if any
27. Employees' State Insurance No.
28. Training courses attended (details)
29. (Eligibility for higher jobs)
30. Proficiency tests passed
31. Employment History

.....

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 ders certified
 by give notice
 shift working

.....

 used to be

.....

 Employment
 Commissioner
 (concerned).

1. In by G.S.R. 30(E), dated 17th January, 1983.

Department	Token No.	Designation	Scale of Pay	Joined	Left (Reason)
1	2	3	4	5	6

32. Absence Periods

From	To	Reason	Medical reports regarding suitability for continued employment
------	----	--------	--

(i) Sick Leave

(ii) Earned Leave

(iii) Any other leave

33. Maternity Benefit

34. Workmen's Compensation

Details of accidents :

35. Details of Disciplinary Action

36. Promotions

(i) Details

(ii) Awards

(iii) Issue of Certificate of commendation

37. Date of superannuation

38. Any other matter.]

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THE MADHYA PRADESH INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1961

[No. 26 of 1961]

[Received the assent of the President on the 8th July, 1961; assent first published in the Madhya Pradesh Gazette, on the 28th July, 1961]

As amended subsequently by the following—

1. M.P. Act 51 of 1962;
2. M.P. Act 34 of 1965;
3. M.P. Act 18 of 1967; and
4. M.P. Act 25 of 1985.

**An Act 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.**

Be it enacted by the Madhya Pradesh Legislature in the Twelfth Year of the Republic of India as follows—

Statement of Objects and Reasons.— The Madhya Pradesh Industrial Relations Act, 1960, the Indian Trade Unions (Madhya Pradesh Amendment) Act, 1960, and the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959, together form an integrated scheme of laws and orders on industrial relations. As the first two Acts were enacted a year after the enactment of the third, it has become imperative to bring the third Act, the Madhya Pradesh Industrial Workmen (Standing Order) Act, in conformity with the first two Acts by re-enacting it. The Bill is designed to serve this purpose.

1. Short title, extent and commencement.— (1) This Act may be called the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961.

(2) It extends to the whole of Madhya Pradesh.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

2. Application of the Act.— (1) This Act shall apply to—

- (a) every undertaking wherein the number of employees on any day during the twelve months preceding or on the day this Act comes into force or on any day thereafter was or is ¹[more than fifty]; and
- (b) such other class or classes of undertaking as the State Government may, from time to time, by notification, specify in this behalf;

²[Provided that it shall not apply to an undertaking carried on by or under the authority of the Central Government or railway administration or a mine or an oilfield.]

(2) Nothing in this Act shall apply to the employees in an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification,

1. Subs. by The M.P. Industrial Employment (Standing Orders) Amendment Act, 2014.

²Published in the M.P. Gazette (Extra-ordinary) dated the 30-12-2014.

2. Added by M.P. 5 of 1962.

Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the Official Gazette apply.

[(3) Nothing in this Act shall apply to an establishment or industrial entity classified as Micro Industry' under the Micro, small and Medium Enterprises Development Act, 2006 (No. 27 of 2006) :

Provided that the State Government may withdraw, partially or fully any exemption granted to any Micro Industry or category of Micro Industries, if it is satisfied that it is so required in the interest of workers.]

RELEVANT NOTES

Indore Development Authority Vs. Indore Development Authority Daily Wages Sub-Engineers Union, 2000 (2) J.L.J. 190. *Chhaya Bhopatkar Vs. State of Madhya Pradesh*, 2001 (4) MPHT 238. *Mahender L. Jain Vs. Indore Development Authority*, 2005 (3) J.L.J. 233.

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) "Certifying Officer" means the Commissioner of Labour or such other officer not below the rank of an Assistant Commissioner of Labour as may be appointed by Government, by notification, to exercise the powers and perform the functions of a Certifying Officer under this Act;
- (b) "standard standing orders" means rules framed under section 21 relating to matters set out in the Schedule;
- (c) "standing orders" in respect of any industrial establishment means the standing orders applicable to such establishment immediately before the coming into force of this Act and includes standard standing orders together with all amendments thereto, if any certified under section 8;
- (d) the words and expressions used in the Act but not defined herein shall have the meaning assigned to them in Madhya Pradesh Industrial Relations Act, 1960 (27 of 1960).

4. Central Act XX of 1946 not to apply.—Nothing in Industrial Employment (Standing Orders) Act, 1946 (XX of 1946), shall apply to any undertaking to which this Act applies:

Provided that any proceeding under the said Act pending on the date of the commencement of this Act may be continued and completed in accordance with the provisions of the said Act as if this Act had not been passed.

5. Power to exempt.—Where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification and subject to such conditions, if any, as it may specify in the notification,—

- (a) exempt any undertaking or class of undertakings from the operation of all or any of the provisions of this Act; and
- (b) as often as may be, cancel any such notification and again subject, by a like notification, the undertaking or class of undertakings to the operation of such provisions.

1. Ins. by The M.P. Industrial Employment (Standing Orders) Amendment Act, 2014. Published in the M.P. Gazette (Extra-ordinary) dated the 30-12-2014.

[S. 3-5]

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S. 6-8]

The M.P. Industrial Employment (S.O.) Act, 1961

45

6. Application of standard standing orders to under-takings.—The State Government may, by notification, apply standard standing orders to such class of undertakings and from such date as may be specified therein.

(2) Where immediately before the commencement of this Act standing orders 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.

(3) The standard standing orders made or amendments certified under this Act shall provide for every matter set out in the Schedule.

7. Submission of amendment.—(1) The employer or any representative of employees may submit to the Certifying Officer in the prescribed manner draft amendment to the standing orders applicable to an undertaking under section 6:

Provided that no such amendment shall, except on an agreement between the parties, be entertained—

(a) in respect of standard standing orders within one year of the date on which—

(i) such orders were made applicable under section 6; or

(ii) an amendment is certified under sub-section (3) of section 8; or

(b) in respect of standing orders within one year of the date on which the last amendment to such orders were certified.

(2) The draft amendments submitted under this section shall be accompanied by a statement giving prescribed particulars of the employees in the undertaking.

(3) Subject to such conditions as may be prescribed, a group of employers or representatives of employees in the same industry may submit a joint draft of amendments under this section.

8. Certification of amendments.—(1) On receipt of the draft under section 7, the Certifying Officer shall forward a copy thereof to the representative of the employees or the employer, as the case may be, requiring objections, if any, to be submitted to him in the prescribed manner within fifteen days of the date of receipt of the copy.

(2) After giving both the parties an opportunity of being heard, the Certifying Officer shall decide whether or not the draft amendments or any modifications thereof or additions thereto are necessary and shall make an order in writing accordingly:

Provided that no order to the effect that the draft amendments or any modifications or additions thereto is necessary shall be made unless the Certifying Officer is satisfied that such amendments or modifications or additions are fair or reasonable.

(3) If, under the preceding sub-section, the Certifying Officer decides that the draft amendments be certified, with or without any modifications or additions, he shall certify the amendment with such modifications or additions, if any, and shall within seven days thereafter send certified copies of such amendments to the employer and to the representative of the employees :

¹[Provided that where the Government has made any amendment in the Standard Standing Orders, the same shall be deemed to be duly incorporated in any award, agreement or settlement and in the certified amendments to the standing orders applicable to an undertaking.]

9. Appeals.—²[Any employer, employee or representative of employees] aggrieved by the order of the Certifying Officer under sub-section (2) of section 8, may, within thirty days of the date of passing the said order, file an appeal before the Industrial Court which may confirm, vary or rescind the order:

Provided that in computing the period of thirty days, the time requisite for obtaining a copy of the order appealed against shall be excluded:

Provided further that the Industrial Court may, for sufficient reasons admit any appeal made after the expiry of such period.

(2) The Industrial Court shall cause a copy of its order under sub-section (1) to be transmitted to the Certifying Officer who shall proceed to take necessary action under sub-section (3) of section 8 as if the order was passed by him.

(3) The order of the Industrial Court shall be final and binding on the parties.

10. Date of operation of amendments.— Amendments of standing orders shall come into operation on the expiry of thirty days from the date on which certified copies thereof are sent under sub-section (3) of section 8 or where an appeal is preferred, on the expiry of seven days from the date on which they are sent by the Certifying Officer under the said sub-section read with sub-section (2) of section 9.

11. Posting of standing orders.— The text of the standing orders shall be prominently posted by the employer in English and Hindi on special boards to be maintained for the purpose at or near the entrance through which the majority of the employees enter the undertaking and in all departments thereof where the employees are employed.

12. Register of standing orders.— A copy of all standing orders shall be filed by the Certifying Officer in a register maintained for the purpose, and he shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee.

13. Disputes regarding application and interpretation of standing orders.— If any question arises as to the application or interpretation of a standing order, an employer, an employee or a representative of employees may refer the question to the Labour Court having jurisdiction and the Court shall, after giving the parties an opportunity of being heard, decide the question and his decision shall be final and binding on the parties.

14. Recovery of money due from an employer.— Any sum required to be paid under this Act by an employer to an employee but not paid by him shall be recovered as delayed wages under the provisions of the Payment of Wages Act, 1936 (IV of 1936).

1. Subs. by The M.P. Industrial Employment (Standing Orders) Amendment Act, 2014, Published in the M.P. Gazette (Extra-ordinary) dated the 30-12-2014.

2. Subs. by M.P. 25 of 1985 for "any person".

15. Appointment of Inspectors and their powers and duties.— (1) The State Government may, by notification, appoint such officers of the Labour Department not below the rank of a Deputy Labour Officer, as it may think fit, to be Inspectors for the purposes of this Act. Such notification shall define the class of undertakings in respect of which and the areas within which they shall exercise their respective jurisdictions.

(2) It shall be the duty of every such Inspector to ensure within the area of his jurisdiction the proper implementation of the provisions of this Act and the rules made thereunder.

(3) An Inspector may, within the area of his jurisdiction make such inquiries and collect such information from the employers and employees as he may consider necessary for the purposes of this Act.

16. Certain officers to be public servants.— An Inspector or a Certifying Officer, appointed under this Act, shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, 1860 (XLV of 1860).

17. Penalties and procedure.— (1) If, in any undertaking to which the Madhya Pradesh Industrial Relations Act, 1960 (27 of 1960), does not apply, any employer modifies his standing orders otherwise than in accordance with the provisions of this Act, he shall be punished with fine which may extend to five thousand rupees and in case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) Any employer who does any act in contravention of standing orders shall be punished with fine which may extend to one hundred rupees and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(3) Whoever contravenes the provisions of this Act or of any rule made thereunder, in cases other than those falling under sub-section (2), shall be punished—

(a) with fine which may extend to one hundred rupees and in the event of such person being previously convicted of an offence under this Act, with fine which may extend to two hundred rupees; and

(b) in the case of a continuing offence, with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(4) The Court convicting an employer under sub-section (1) or sub-section (2) or sub-section (3) may direct such employer to pay such compensation as it may determine to any employer directly and adversely affected by such modification or contravention, as the case may be.

[(5) An offence punishable under this section shall, on a complaint made by the representative of the employees or the Inspector appointed under this Act, be triable by a Labour Court within the local limits of whose jurisdiction it was committed.]

1. Subs. by M.P. 34 of 1965.

(6) In trying offences under this section, the Labour Court shall exercise the same powers and follow the same procedure as in respect of offences under the Madhya Pradesh Industrial Relations Act, 1960 (27 of 1960).

¹[17-A. Summary disposal of cases.— (1) A Labour Court taking cognizance of an offence under sub-section (2) or (3) of Section 17 shall state upon the summons to be served on the accused person that he—

- (a) may appear by pleader and not in person; or
- (b) may, by a specified date prior to the hearing of the charge, plead guilty to the charge by registered letter acknowledgment due and remit to the Labour Court such sum as the Court may, subject to the maximum limit of fine prescribed for the said offence, specify.

(2) Where an accused person pleads guilty and remits the sum in accordance with the provisions of sub-section (1), no further proceedings in respect of the offence shall be taken against him.

(3) Nothing contained in this section shall apply to —

- (a) continuing offence under sub-section (2) and clause (b) of sub-section (3) of Section 17;
- (b) the previously convicted person under clause (a) of sub-section (3) of section 17.]

²[17-B. Notwithstanding anything contained in any other provisions of this Act, an officer authorized by the State Government in this behalf by notification may, subject to any general or special order of the State Government in this behalf, compound any offence committed for the first time or after expiry of a period of two years of commitment of previous offence (if any), either before or after institution of the prosecution, on realization of such amount of composition fee, as he thinks fit, not exceeding the maximum amount of fine but not less than half of the maximum amount of fine for the offence as composition fee; when the offence is so compounded—

- (i) before the institution of the prosecution the offender shall not be liable to prosecution and shall, if in custody, be set at liberty :
- (ii) after the institution of prosecution, the composition shall amount to acquittal of the offender.]

18. Certifying Officer, Labour Court and Industrial Court to have powers of Civil Courts.— In any proceeding under this Act except in respect of an offence, Certifying Officer, the Labour Courts and the Industrial Courts shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witness and compelling the discovery and production of documents and shall be deemed to be a Civil Court within the meaning of sections ³[345 and 346 of the Code of Criminal Procedure, 1973 (No. 2 of 1974)].

1 Ins. by MP 18 of 1967.

2 Ins. by The M.P. Industrial Employment (Standing Orders) Amendment Act, 2014. Published in the M.P. Gazette (Extra-ordinary) dated the 30-12-2014.

3 Subs. by M.P. 25 of 1985.

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The M.P. Industrial Employment (S.O.) Act, 1961

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19. Oral evidence in contradiction of standing orders, etc., not admissible.— No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders shall be admitted in any Court.

20. Procedure before Certifying Officer, Labour Court or Industrial Court.— Subject to the provisions of sub-section (6) of section 17, section 18 and to the rules framed under this Act, the Certifying Officer, the Labour Court or the Industrial Court shall in proceedings before him/it, follow such procedure as he/it may think fit.

21. Powers to make rules.— (1) The State Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the forgoing powers, such rules may—

- (a) provide for additional matters to be included in the Schedule;
- (b) frame standard standing orders for the purpose of this Act and different standard standing orders may be framed for—
 - (i) different classes of undertakings, and
 - (ii) different categories of employees;
- (c) lay down the procedure to be followed by the Certifying Officer, the Labour Court or the Industrial Court;
- (d) specify the fee which may be charged for furnishing copies of standing orders filed in the register under section 12;
- (e) provide for any other matter which is to be or may be prescribed.

(3) The rules made under this section shall be subject to the condition of previous publication in the Gazette.

22. Construction of references.— Any reference in any law for the time being in force to standing orders in relation to an undertaking to which this Act applies shall—

- (i) where standard standing orders have been applied to such undertaking under section 6 of this Act be construed as a reference to such standard orders; and
- (ii) in any other case be construed as a reference to standing orders, if any, in force in respect of such undertaking.

23. Repeal and saving.— The Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959 (No. XIX of 1959), is hereby repealed:

Provided that any proceeding under the said Act pending on the date of the commencement of this Act may be continued and completed in accordance with the provisions of the said Act, as if this Act had not been repealed.

SCHEDULE

[See sections 3 (b) and 6 (3)]

Matters to be provided in standard standing orders

- I. Classification of employees, e.g., whether permanent, temporary, apprentices, probationers, ¹["badlis or fixed term employment's employee"] and whether seasonal or otherwise.
- II. Tickets, cards, service books, registers and service certificates.
- III. Recruitment.
- IV. Manner of intimating to employees the period and hours of work, holidays, pay days and wage rates.
- V. Shift working.
- VI. Holidays, procedure and authority to grant.
- VII. Closing and re-opening of sections of the undertaking and temporary stoppage of work including laying off and the rights and liabilities of the employer and employees arising therefrom.
- VIII. Liability to search and entry into premises by certain gates.
- IX. Attendance and late coming.
- X. Leave, conditions, procedure and authority to grant.
- XI. Termination of employment otherwise than by way of punishment, and the notice thereof to be given to the employers and employees.
- XII. Punishment involving warning, censure, fine and deductions in wages.
- XIII. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
- XIV. Means of redress for employees against unfair treatment or wrongful exactions by the employer or his agents or servants.
- ²[XV. Age of retirement.]

1. Amended by Notfn. No. F-4 (E) 2-2004-A-XVI, Dated 17-3-2005. Published in M.P. Rajpatra (Asadharan) Dated 17-3-2005 at Page 172.

2. Ins. by Notification dated 19-10-1973, M.P. Gaz. 4 (ga), d. 2-11-73, pp. 770-771.

[Sch.]

Notifications]

The M.P. Industrial Employment (S.O.) Act, 1961

51

NOTIFICATIONS

[Notification No. 7788-XVI, dated 4-11-1961, published in M.P. Gazette, dated 17-11-1961, PL I, at p. 1906].— In exercise of the powers conferred by sub-section (3) of section 1 of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (No. 26 of 1961), the State Government hereby notify the 25th November, 1961, as the date on which the said Act shall come into force.

[Notification No. 7770-XVI, published in M.P. Rajpatra, dated 17-11-61, pt. I, p. 1906].— In exercise of the powers conferred by sub-section (2) of section 2 of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (No. 26 of 1961), the State Government hereby notifies that the said Act shall not apply to employees in any undertaking to whom the following rules or regulation apply –

- (i) Civilians Defence Services (Classification, Control and Appeals) Rules;
- (ii) The Indian Railway Establishment Code; and
- (iii) any other rules or regulations which have already been notified by the Central Government under section 13-B of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946).

[Notification No. 4 (e) 10-92-XVI-A (8), dated the 2nd November, 1992, published in M.P. Rajpatra Part I dated 20-11-92, page 3039].— In exercise of the powers conferred by section 3(a) of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (No. 26 of 1961), and in supersession of the previous Notification No. 4 (E)-8-86-XVI-A, dated 21st June, 1986, the State Government hereby appoint Shri G.R. Mahajan, Deputy Labour Commissioner (Head quarter) Indore as the Certifying Officer for the whole of the State of Madhya Pradesh.

[No. 4747-2130-XVI-A, D. 6.8.1980, Published in M.P. Rajpatra, pt. 4(ga), D. 5.9.1980, P. 2223].— In exercise of the powers conferred by sub-section (1) of Section 6 of the M.P. Industrial Employment (Standing Orders) Act, 1961 (No. 26 of 1961) and in supersession of all notifications issued in this behalf previously, the State Government hereby applies, with effect from the date of publication of this notification in the Madhya Pradesh Gazette, the Standard Standing Orders to all undertakings to which the said Act applies.

[Notification No. 8087-8553-XVI, published in M.P. Rajpatra, dated 20-12-63, PL I, page 3439].— In exercise of the powers conferred by section 15 of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (No. 26 of 1961), and in supersession of this Department Notification No. 4918-3899-XVI, dated the 10th July 1963, the State Government hereby appoints the officers mentioned in column (1) of the Table below to be the Inspectors for purposes of the said section and further directs that they shall exercise their respective jurisdiction in respect of all classes of undertakings to which the standing orders are applicable under sub-section (1) of section 6 of the said Act and within the areas specified in the corresponding entries in column (2) of the said Table.

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TABLE

Officers	Area
Deputy Labour Commissioner	All revenue districts of Madhya Pradesh.
Assistant Labour Commissioner	All revenue districts of Madhya Pradesh.
Labour Officer	All revenue districts of Madhya Pradesh.
Deputy Labour	Officer All revenue districts of Madhya Pradesh.

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THE MADHYA PRADESH INDUSTRIAL EMPLOYMENT (STANDING ORDERS) RULES, 1963

[Published by Labour Department Notification No. 9556-9727-XVI, dated the 26th December, 1962, vide M.P. Gazette, dated 1st February 1963, (Part IV-G), page 56]

And as amended subsequently by the following notifications :-

S.No.	Notification No.	Dated	Published in MP Rajpatra		
			Pt.	Dated	Page
1.	369-8835-XVI	22.1.1965	4(ga)	28.05.65	520
2.	968-9050-XVI	27.02.1971	4(ga)	26.03.71	138
3.	5782-9676-XVI	19.10.1973	4(ga)	02.11.73	770
4.	1004-1034-XVI	14.02.1975	4(ga)	21.02.75	74
5.	5167-3541-XVI	07.08.1981	4(ga)	21.08.81	270
6.	757-273-XVI-A	02.03.1987	4(ga)	27.03.87	45
7.	932-83-XVI-A	10.3.1987	4(ga)	27.3.87	51
8.	4(E)10-91-XVI-A	10.01.1992	EXT.	23.01.92	71

NOTE : In the footnotes appearing hereinafter, reference to amending Notifications is made by Serial No. as given to them above.

1. Short title.— These rules may be called the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963.

2. Definitions.— In these rules the context otherwise requires,—

- (i) "Act" means the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (No. 26 of 1961);
- (ii) "Annexure" means an annexure appended to these rules;
- (iii) "Form" means a form appended to these rules; and
- (iv) "Section" means a section of the Act.

RELEVANT NOTES

Indore Development Authority Vs. Indore Development Authority Daily Wages Sub-Engineers Union, 2000 (2) J.L.J. 190. *Chhaya Bhopatkar Vs. State of Madhya Pradesh*, 2001 (4) MPHT 238. *Engineer-in-chief, PHED Vs. Budha Rao Magarde*, 2001 (2) J.L.J. 399, *State of M.P. Vs. Hariram*, 2008 (3) J.L.J. 41.

3. Procedure for submission of amendment.— (1) An application for submission of amendment under sub-section (1) of section 7 shall be in Form A.

(2) The particulars of the employees for the purpose of subsection (2) of section 7 shall, in addition to those mentioned in Form A, be as follows :

- (a) number of employees employed;
- (b) number of employees employed through contractors;
- (c) name of the trade union or trade unions, if any, to which the employees belong; and
- (d) if the application is by a trade union, the latest figure of its membership.

(3) A group of employees or representatives of employees in the same industry desirous of submitting a joint draft of amendments referred to in sub-section (3) of

section 7 shall apply in Form A through a person authorised in this behalf by such group or representatives, as the case may be, and shall in addition to the particulars mentioned in sub-section (2), furnish the following particulars along with the draft:

- (a) list of employees or representatives of employees, as the case may be, constituting the group with names and addresses in full of each undertaking; and
- (b) by a declaration signed jointly by employers or the representatives of the employees in the group to the effect that the undertaking constituting it or that the employees of the undertaking, as the case may be, shall abide by the conditions laid down in the joint draft of amendment.

4. Certification of amendments.— As soon as may be, on receipt of an application under rule 3, the Certifying Officer, shall forward a copy thereof to (a) the employers when the applicant is the representative of employees, or (b) the representatives of employees when the applicant is the employer of the undertaking together with a notice in Form B.

5. Methods of sending Standing Orders.— Standing orders certified in pursuance of sub-section (3) of section 8 shall be sent by registered post to the employer and the representative of the employees, as the case may be.

6. Register of Standing Orders.— The register required to be maintained under section 12 shall be in Form C and shall be properly bound. The Certifying Officer shall furnish a copy of standing orders to any person applying therefor on payment of a fee of rupees five per copy.

16-A. Additional matter included in the Schedule.— In the Schedule to the Act after item XIV, the following item shall be added namely:

“XV-Age of Retirement”].

7. Framing of Standing Orders.— [Subject to the provisions of section 6 of the Act, the Standard Standing Orders for all undertakings to which the Act applies shall be those set out in the Annexure].

FORM A

[See rule 3]

Application for amendment of Standing Orders

Dated the day of 19

To

The Certifying Officer,
.....(Place).

Sir,

1. I hereby apply for the amendment of the standing orders applicable in the following undertakings)-

2. Address to which reply has to be sent

3. (a) The reference of the standing orders to which amendment is sought-
.....

1. Inserted by 3 [2-11-1973].

2. Substituted by No. 2 [26-3-71].

Form-A

Form B]

The M.P. Industrial Employment (S.O.) Rules, 1963

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4. (Not applicable when the application is on behalf of employees) I am entitled to make this application being an employer of the undertaking concerned.

OR

I am entitled to make this application on behalf of the group of employers/¹ representative of employees vide note of authority attached.

Please fill the blank.

5. As an Officer or a representative/approved/registered trade union of the employees concerned I am entitled to make this application under rule 3, [Strike off what is not applicable.]

6. Five copies of the draft amendment typewritten on one side of the paper only indicating amendments are enclosed. The justification for the proposed amendments is mentioned against each.

7. The particulars required by sub-rules (2) and (3) of rule 3 are enclosed.

Station

Signature

Designation.....

Name of the undertaking in case of
an employer and name of the trade
union in the case of employees.

FORM B

[See rule 4]

In the matter of certification of amendments to the standing orders for (name and address of the undertaking)

To

The Employer (Name and address)

OR

The prescribed representatives of employees (state whether representative union, approved union, registered trade union, Labour Officer)

A copy of the draft amendments to the standing orders of..... submitted by is enclosed. Please take notice that objections, if any, which you may desire to make to the draft amendments should be submitted to the undersigned within fifteen days from the receipt of the copy of draft amendments along with this notice by you.

A copy of the standing orders to which amendments are proposed is also enclosed.

Page.....

Date

*Certifying Officer
Madhya Pradesh.*

1. Strike off that portion which is not applicable.

FORM C

[See rule 6]

REGISTER**Part I- Undertaking**

S. No.	Date of the despatch of the copy of standing orders authenticated under section 8 for the first time	Date of filing appeal if any	Date and nature of decision
(1)	(2)	(3)	(4)

Amendment made on on appeal, if any	date of the despatch of the copy of standing orders as settled on appeal	any notice sub- sequently given or received of any amendment.	Result
(5)	(6)	(7)	(8)

Part II

(Should contain the authenticated copy of the standing orders)

ANNEXURE**Standard Standing Orders for all the
Undertakings in the State****1. Definitions.**— In these rules, unless the context otherwise requires,—

(a) "Manager" means, if the undertaking is a factory, a person nominated as manager under the Factories Act, 1948, or a person whom an undertaking shall nominate as Manager for the purpose of these standing orders and includes a person authorised by him.

(b) "Season" means the period or periods of each year during which the principal operations of a seasonal undertaking is carried on.

2. Classification of Employees.— Employees shall be classified as—(i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) Badlies, (v) apprentices, (vi) temporary, [and (vii) fixed term employment's employee :]

(i) A 'permanent' employee is one who has completed six months' satisfactory service in a clear vacance 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;

1. Amended by Notfn. No. F-4 (E) 2-2004-A-XVI, Dated 17-3-2005, Published in M.P. Rajpatra (Asadharan) Dated 17-3-2005 at Page 172.

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¹[(ii) A 'permanent seasonal employee' is an who has completed service for a period equal to 2/3 of the duration of a season or three months whichever is less in a clear vacancy and shall be deemed to be a permanent employee for the purposes of these orders);

(iii) A 'probationer' means an employee who is provisionally employed to fill a clear vacancy, and who has not completed six months' satisfactory service in the aggregate;

(iv) A 'badli' employee means an employee who is employed on the post of a permanent employee, or a probationer or a permanent seasonal employee who is temporarily absent;

(v) An 'apprentice' means a learner; provided that no employee shall be classified as an apprentice if he has had training for an aggregate period of one year; provided further that a longer period of apprenticeship shall be required if prescribed by a law or an award, or by agreement with the representative of employees;

(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.

²[(vii) "fixed term employment's employee" means an employee who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits shall not be less than that of a permanent employee. He shall also be eligible for all statutory benefits available to a permanent employee proportionately according to the period of service rendered by him even though his period of employment does not extend to the qualifying period of employment required in the statute."]

³3. Ticket etc.— (1) The manager shall cause to be entered the name of all employees in the muster roll indicating the classification.

(2) The manager shall arrange to provide every employee except those belonging to the clerical, supervisory or technical personnel with a ticket bearing—

- (i) the name of the department in which he is working;
- (ii) date of entry of his service;
- (iii) his number; and

³[(iii-a) the record of daily attendance];

(iv) such other particulars as the manager may think fit.

1. Substituted by No. 1 [28-5-1965].

2. Added by Notfn. No. F-4 (E) 2-2004-A-XVI, Dated 17-3-2005.

2. Inserted by No. 2 [26-3-71].

Employee

If so required by the manager the employee shall deliver up his ticket before starting work for the day provided that ticket shall be returned to the employee before the close of the shift. If so required by a person authorised by the manager the employee shall show it or produce it for entries being made therein.

For technical, supervisory personnel and clerks a service book may be provided instead of a ticket.

¹[(3) (i) Every badli employee shall be provided with a 'badli card'; on which shall be entered, the days on which he has worked in the undertaking and which shall be surrendered if he obtains permanent employment.

(ii) Every temporary employee shall be provided with a 'temporary card' on which shall be entered the days on which he has worked in the undertaking and which he shall surrender on his discharge or being taken on the badli or permanent register.

(iii) Every casual worker shall be provided with a 'Casual Card' on which shall be entered the days on which he has worked in the undertaking.

(iv) Every apprentice shall be provided with an 'Apprentice Card' on which shall be entered the days on which he has worked in the undertaking and which shall be surrendered if he obtains permanent employment.

(v) The cards referred to in this sub-clause shall also bear the information specified in sub-clause (2) above.]

4. Recruitment.— The manager may after consulting the Employment Exchange lay down the procedure for recruitment of employees and notify it on the notice board on which standing orders are exhibited.

²[4-A. **Letter of appointment.**— Every employee shall be given a letter of appointment, in which among other things, his name, age, qualification, designation, classification, pay-scale, allowance, nature of job, name of department etc., shall be indicated.]

5. Manner of intimating to employees periods and hours of work, holidays, pay days and wage rates.— (a) Notices showing the periods and hours of work for every class and group of employees for each shift in the undertaking shall be displayed on notice board maintained for the purpose in the department concerned, at the time keeper's office and at or near the main entrance of the undertaking.

(b) Notices specifying the dates on which wages are to be paid, shall be displayed on the notice boards at the time-keeper's office and at or near the main entrance of the undertaking.

(c) Notices specifying the wage rates showing separately the allowances, if any, payable to each class of time-rated employees and the basis of calculation of wage rates in respect of piece-rated employees shall be displayed at conspicuous places inside the departments in which the employees concerned are actually working.

(d) One day in each week shall be notified in the manner provided in clause (a) as the day for the payment of wages due to any employee but not paid on the usual pay day on account of their being unclaimed.

1. Ins. by No. 2 [26-3-71].

2. Ins. by No. 7 [27-3-1987].

(e) The unclaimed wages due to an employee shall be paid by the manager on the days notified under this standing order and following the date on which a substantiated claim is presented by the employee or on his behalf by his legal representative within three years from the date on which the wages become due to the employee.

(f) In the case of bidi manufacturing undertaking the manager shall also display notice of the hours when leaves and tobacco shall be distributed and manufactured, bidis shall be received by him, and the manager shall maintain a record showing for each worker the quantity of leaves and tobacco given to him, the bidis of different kinds manufactured and delivered to the manager by him and the number of bidis rejected as of bad quality.

6. Shift Working.— (a) Shift working shall be regulated in accordance with the Factories Act, 1948 (No. 68 of 1948), wherever applicable and subject as aforesaid in accordance with any agreements, settlements or awards.

(b) Subject as aforesaid more than one shift may be worked in the whole undertaking or in one or more sections or departments.

(c) Whenever an additional shift started or whenever working hours of the shift are changed, notice of seven days shall be given.

(d) Whenever a shift is discontinued notice of one month shall be given, provided that wherever any permanent employee is likely to be discharged, notice of three months shall be given before discontinuing that shift.

(e) Change over of any employee or employees from one shift or another shall be regulated by agreement, settlement or award and in their absence by custom or usage. The manager may, in the discretion, transfer an employee from one shift to another if such transfer is in the interest of the undertaking.

(f) Retrenchment of employees as a result of discontinuance of a shift or shifts shall be regulated in accordance with the provisions of the Industrial Disputes Act, 1947, provided that in case of retrenchment of permanent employee notice of three months as provided in standing orders 6 (d) shall be given before retrenchment.

(g) If an undertaking proposes to employ additional employees whether on restarting a shift or otherwise the manager shall give the shift first opportunity of employment to retrenched employees. If an additional shift is started not less than one week's notice shall be put up on the notice board and shall be published in a Hindi newspaper with wide local circulation.

7. Attendance and late coming.— (a) All employees shall be at work in the undertaking at the times fixed and notified. Employees attending late may be shut out and treated as absent provided that no employee who attends within 5 minutes of the starting time shall be shut out. Employee coming late shall not be treated as absent without leave but may be given whatever leave may be due to them.

(b) An employee who is found absent from his proper place of work during working hours, without permission or without any sufficient reason, shall be liable to be treated as absent for the period of his absence, and his wages for the period of absence shall be liable to be deducted subject to the provisions of section 9 of the Payment of Wages Act.

8. Condition and procedure in applying for, and authority which may grant leave and holidays.— (a) Holidays and leave with or without pay or leave of any other kind shall be regulated by the provisions of the law applicable to the undertaking and subject to the minimum prescribed under it by custom, usage, agreement, settlement or award.

(b) An employee who desires to obtain leave of absence shall apply to the manager or the officer authorised by him. It shall be the duty of the manager or the officer to pass orders thereon on two days in a week fixed for the purpose, provided that, if the leave asked for is of an urgent nature; i.e. commences on the date of the application or within three days thereof, orders for the grant or refusal of leave shall be communicated without delay.

(c) The grant of leave or in case it is refused such refusal with reasons therefor shall be recorded on the employee's ticket or service book.

(d) If an employee after proceeding on leave desires an extension of the leave granted, he shall make an application in writing for the same to the manager or the officer authorised by him. A written reply either of the grant or refusal of such extension shall be sent to the employee at the address given by him in the application for extension.

(e) An employee remaining absent beyond the period of leave originally granted or subsequently extended shall be liable to lose his lien on his post and shall be deemed to have left the service from the date of his unauthorised absence unless he returns within ten days of the expiry of the sanctioned leave and/or explains to the satisfaction of the manager or the officer authorised by him, his inability to resume immediately on the expiry of his leave. An employee who so loses his lien but reports for duty within 30 days of the expiry of his leave shall be kept as a badli if he so desires and his name shall be entered in the badli register.

¹[8-A. Holidays.— The employees shall be entitled to three days national holidays, namely, Republic Day, Independence Day, and Gandhi Jayanti and five days festival holiday with full wages every year. The festival holidays shall be determined by the employer in consultation with the representatives of employees and a notice indicating the days fixed shall be pasted on the Notice Board:

Provided that only those employees who will actually work either on the preceding day, or as the case may be, on the succeeding day of such holiday shall be entitled to avail of such holiday:

²[Provided further that nothing in this order shall adversely affect the operation of the term of any contract, agreement, settlement or award which is more beneficial to employees on this subject.]

³[8-B. (1) If an employee is required to work on any National holiday or festival holiday with wages on account of continuous process, essential services or under prevailing practices, then he shall be paid for the work done on each National

1. Ins. by No. 4 [21.2.75].

2. Second proviso inserted by No 4, Subs. by No. 5 [21.8.1981].

3. Ins. by No. 5 [21.8.1981].

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(2) In respect of employees getting wages on the basis of Calendar month, if the National holiday or festival holiday is substituted in accordance with the provisions of Section 52 of the Factories Act, 1948 (No. 63 of 1948) or such a paid holiday occurs on a weekly rest day of the employee then such an employee shall be paid additional wages for such a holiday at his ordinary rates of wages.

8-C. Casual leave.— Subject to the provisions of the terms of any contract, agreement, settlement or award, which are more beneficial to the employees on the subject—

- (1) the permanent employees shall be allowed seven days casual leave with wages in a calendar year; and
- (2) the temporary and badli employees, who have put in 240 days work in the previous year shall be allowed seven days casual leave with wages in a calendar year.

Explanation.— The computation of 240 days shall be made in accordance with Section 79 of the Factories Act, 1948.

- (3) Ordinarily casual leave will not be admissible for more than two days at a time.

- (4) Except when it may not be possible to obtain previous permission, casual leave shall be availed of with the permission of the Manager. Where it is not possible to obtain previous permission, the employee shall intimate in writing the absence and its period at his earliest to the Manager.]

9. Requirement to enter premises by certain gates and liability to search.—

(a) No employee shall enter or leave the premises of the undertaking and the department except by the gates appointed for the purpose.

(b) All the employee including female employees shall surrender articles or things in their possession, for examination by the watch and ward staff of the undertaking or any other person appointed for the purpose and shall also be liable to be detained and searched by the watch and ward staff or the person so appointed for the purpose in the presence of two witnesses provided that the female employee shall be searched by female searcher, and in presence of female witnesses.

10. Closures, temporary stoppages and lay-off, etc.— (a) In the event of the break-down of machinery, stoppage of power supply, fire, epidemic, civil commotion, catastrophe, or any other cause beyond the control of the employer, he may, at any time, without notice, stop wholly or partially for a reasonable period the whole of part of the undertaking, any department or any machine directly or indirectly affected by the catastrophe or the cause.

(b) In any event of stoppage under clause (a) during working hours the employees affected shall, as soon as practicable, be informed by putting up notice on the notice board in the department concerned and at the time-keeper's office as to when work will be resumed and whether they are to stay or leave the premises of the undertaking. The period of detention in the undertaking shall not ordinarily exceed two hours after the commencement of stoppage, and the employees so

detained shall be entitled to receive wages (including all allowances), in the proportion of a quarter day for every two hours or less. Provided that the wages that he receives plus the detention wage shall not exceed his normal day's wages. In the case of piece-rate employees, the average daily earnings in the previous wage period shall be taken to be the daily wage.

(c) Whenever practicable a reasonable notice shall be given of the resumption of the normal work.

(d) Employees may be laid off by the undertaking on account of shortage of coal, power or water, or raw materials or materials or accumulation of stocks, temporary curtailment of production or similar reasons by exhibiting as far as possible, one week's notice for the information of the employees concerned.

(e) The employer may close down any department or section of a department or the whole undertaking after giving two month's notice to the employees and in case of seasonal employees 15 day's notice. Before reopening the department, section or the undertaking, as the case may be, at least seven days' notice shall be given to the employees.

(f) On the re-opening of the department, section of a department or the whole of the undertaking, as the case may be, the manager shall give reasonable notice to the retrenched employees who offer themselves for re-employment and those retrenched employees who offer themselves for re-employment within a fortnight shall be given preference over other persons according to the length of service.

¹[(g) Copies of the notice under this Standing Order shall be immediately sent to the Government Labour Officer of the area concerned by the employer].

11. Termination of employment and the notice thereof to be given by employer and employee.— (a) When the employment of a permanent employee is to be terminated, he shall be given one month's notice or shall be paid wages for one month in lieu of notice. No employee other than a permanent employee shall be entitled to any such notice or wages in lieu thereof for termination of his service.

(b) The reason for the termination of service shall be recorded in writing and shall be communicated to the employee unless such communication may in the opinion of the manager directly or indirectly lay the company or the manager or the person signing the communication open to civil or criminal proceedings at the instance of the employee.

(c) Any permanent employee desirous of leaving the employment shall give one month's notice to his departmental officer stating the reason for which he is leaving but if he so requires he may be relieved earlier than the date on which the period of notice expires.

(d) No notice shall be necessary for the discontinuance of the employment of a permanent seasonal employee on the expiry of the season, but he shall have a lien on his post at the commencement of the next season.

²[(e) subject to the provisions of the Industrial Disputes Act, 1947 (14 of 1947), no temporary employee, whether monthly rated or Weekly rated or piece rated, and no probationer or badli or fixed term employment's employee, as a result

1. Added by No. 1 [28-5-65].

2. Added by Notfn. No. F-4 (E) 2-2004-A-XVI, Dated 17-3-2005.

[Annexure

Annexure]

The M.P. Industrial Employment (S.O.) Rules, 1963

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of non-renewal of contract of employment or on its expiry, shall be entitled to any notice or pay in lieu thereof, if his Services are terminated, but the Services of a temporary employee shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him."]

RELEVANT NOTES

Mahesh Pal Singh Vs. Superintending Engineer Lower Chambal Circle, 2001 (4) MPHT 214.

12. Disciplinary action for misconduct.—(1) The following acts or omissions on the part of an employee shall amount to a major misconduct:

- (a) conviction by a court of law for an offence involving moral turpitude;
- (b) theft, fraud or dishonesty in connection with the business or property of the undertaking;
- (c) taking or giving bribe or any illegal gratification;
- (d) wilful disobedience of any lawful or reasonable order of a superior involving safety of any person or property or other matter having an adverse effect upon the work or wages of other employees;
- (e) gambling within the premises of the undertaking;
- (f) drunkenness, riotous or disorderly behaviour, during working hours at the undertaking or conduct endangering the life or safety of any person, intimidation, physical duress, or any act subversive of discipline;
- (g) collections of any moneys within the premises of the undertaking for purposes and by persons not authorised by law or if no such authority is required by law without the sanction of the manager;
- (h) engaging in trade, or business within the premises of the undertaking including collection of pay-tickets given to the employees or the sale or canvassing of tickets, coupons or other tokens of any commodity or article, without the previous sanction of the manager;
- (i) canvassing for trade union membership and collection of union's dues within the premises except as permissible under law;
- (j) holding meetings inside the premises of the undertaking without the previous permission of the manager or except as permitted by law;
- (k) commencing, going or joining the strike in contravention of the provisions of any law for the time being in force;
- (l) inciting, instigating others to take part or otherwise acting in furtherance of a strike in contravention of the provisions of any law for the time being in force;
- (m) wilful slowing down in performance of work, or abatement or instigation thereof;
- (n) wilful damage to work in process or to any other property of the undertaking;
- (o) disclosing to any unauthorised person any information in regard to the processes of the undertaking which may come into his possession in the course of his work;
- (p) unauthorised absence from duty for more than ten consecutive days;

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¹[(p-1) Obtaining financial assistance from the Employees State Insurance Corporation on the basis of tax on forged documents.]

(q) a minor misconduct of which a workman is found habitually guilty, i. e., for not less than three occasions within a space of one year or less.

²[(r) Sexual harassment including such unwelcome sexually determined behaviour (whether directly or by implication) as :-

- (a) Physical contact and advances;
- (b) Demand or request for sexual favours;
- (c) Sexually coloured remarks;
- (d) Showing pornography; and
- (e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.]

(2) Any of the following acts or omissions shall amount to a minor misconduct:

- (a) late attendance;
- (b) absence from duty without leave or without sufficient cause, which is not major misconduct;
- (c) refusal to work on a job of a similar nature without giving adequate reasons for the same;
- (d) sleeping during working hour;
- (e) failure to observe safety instructions, or unauthorised removal in reference to machinery, guard, fencing or other safety device installed in the premises of the establishment;
- (f) any act or omission for which deductions from the wages of an employed person are authorised by or under the Payment of Wages Act;
- (g) entering or leaving the premises of the undertaking except by the gate or gates appointed for the purpose;
- (h) committing a nuisance in the premises of the undertaking, indiscipline, breach of any standing order or instructions for the maintenance and running of any department and maintaining its cleanliness.

(3) (a) The punishment for a minor misconduct may be— (i) censure, or (ii) fine.

(b) The punishment for a major misconduct may be—

- (i) censure, or
- (ii) fine, or
- (iii) suspension for a period not exceeding four days on any one occasion, or
- (iv) withholding of increment for a period of one year, or
- (v) demotion, or
- (vi) dismissal.

1. Ins. by No. 7 [27.3.1987]

2. Ins. by No. 9 [19.12.2002]

- (c) In awarding the punishment the manager shall take into account the gravity of the misconduct, the previous record of the employee, if any, and other extenuating or aggravating circumstances.
- (4) No punishment shall be imposed on an employee unless proved guilty of misconduct in an enquiry conducted in the following manner:
- (a) The manager or other officer authorised by him in this behalf shall give to the employee a charge sheet clearly setting forth the misconduct charged and the circumstances appearing against him and requiring his explanation;
 - (b) The employee shall be given for submitting his explanation a period of at least 24 hours if he is charged with a minor misconduct and at least 72 hours if he is charged with major misconduct;
 - (c) An employee shall be allowed to defend by himself or the representative of employees, if he so desires;
 - (d) Except in cases where he admits the charge levelled against him the employee shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rests;
 - (e) The substance of the evidence shall be recorded and read over;
 - (f) An order of punishment shall be in writing and shall be issued over the signature of the manager or other officer authorised under standing order (1) (a). A copy of the order passed awarding the punishment shall be given to the employee;
 - (g) In case of an employee other than the one belonging to the clerical, technical or supervisory staff the manager can suspend him pending enquiry into an alleged major misconduct for a period not exceeding four days;
 - (h) The manager may suspend a clerical, technical or supervisory employee for a period of three months pending enquiry into major misconduct alleged against him and shall pay suspension allowance to such employee at the rate of half of the average wage;
 - (i) The order of suspension shall be in writing and may take effect immediately on communication thereof to the employee. If no action is taken within a period of six months then the amount of wages for the period of suspension shall be payable in full.

(5) If on enquiry, the order is confirmed or the period of suspension reduced the employee shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any wage for such period. If, however, the order is rescinded the employee shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended:

Provided that if the enquiry is not completed within four days from the date of submission of explanation, the employee shall be entitled to full wages until the completion of the enquiry from the date of submission of his explanation.

¹[(6) An employer shall not be competent to initiate proceedings against an employee—

- (a) for major misconduct after one year of its commission, and
- (b) for a minor misconduct after six months of its commission.]

13. Means of redress for employee against unfair treatment or wrongful exaction by the employer, agent or servant.— (1) (a) An aggrieved employee may first present his grievance to his immediate superior in person who thereon shall give a reply within 48 hours of the presentation of the complaint;

(b) If the employee is not satisfied with the reply of his immediate superior he or the authorised representative on his behalf may forward the complaint to the manager or any officer appointed by him for this purpose;

(c) The manager or such officer shall personally investigate the complaint at such time and place as he may fix and the complainant employee or the authorised representative shall have a right to be present at such investigations;

Provided that the decision of the Investigation Officer and the action, if any, taken by him shall be communicated to the complainant ordinarily within a week of the presentation of the complaint.

(2) Grievances of employees relating to—

- (a) assault or abuse by any person holding a supervisory position or
- (b) refusal of an application for urgent leave;
- (c) unfair labour practices, such as,—(i) interference with the rights of employees to enroll or continue as an union member; (ii) discrimination, restrain or coercion against any employee or restraint of recognised activities of trade union; and (iii) victimization of an employee or abuse of authority in any form;

shall be enquired into immediately by the manager and he shall take appropriate disciplinary action against such officers of the undertaking who are found responsible for that. The complainant will be supplied with a copy of the order or action taken by the manager in this behalf.

14. An employee against whom any order is passed by the manager may if so desires submit his representation to the Managing Agents or the Managing Director or the Proprietor or any person who has the ultimate control over the management of the undertaking who shall communicate his decision to the employee within a period of 15 days.

²**[14-A. Retirement.**— (1) ³[An employee shall retire from the service of the employer on the date he attains the age of 60 years] but he shall not be retained in service after the age of 60 years :

Provided that nothing in this clause shall adversely affect the operation of the terms of any contract, agreement, settlement, or award on this subject, ³[if the age of retirement is not less than 60 years] :

1. Added by No. 7 (27.3.1987).

2. Subs. by No. 5 [21.8.1981].

3. Subs. by The M.P. Industrial Employment (Standing Orders) Amendment Act, 2014. Published in the M.P. Gazette (Extra-ordinary) dated the 28-06-2014.

Provided further that before retiring an employee from the service in accordance with the provisions contained in this clause, the employer shall give to the said employee at least one month's intimation in writing of such retirement. However, failure to give such intimation will not entitle the employee to continue in service after attaining the age of retirement. On the employer's failure to give such intimation, he shall be liable to pay to the employee concerned one month's wages.

¹[Provided further that this amendment shall not apply to the employees of Corporations, Boards and Undertakings of the State Government.]

²[(1-a) Notwithstanding anything contained in sub-clause (1) the age of retirement for working journalists as defined in Section 2(f) of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (No. 45 of 1955) shall be 60 years.]

(2) For the purpose of clause (1) the age shall be reckoned by any of the following methods in order of priority—

- (i) the date of birth as given by the employee at the time of his employment and accepted by the Manager;
- (ii) The date of birth as given in the Higher Secondary School Certificate or equivalent examination Certificate;
- (iii) The certificate issued by the Local Authority of the place where the employee was born, on the basis of the records maintained by such authority or certified copy of the entry in the Birth and Death Register in which date of birth is mentioned;
- (iv) The date of birth as declare by the employee in his declaration card for purpose of membership of the Employees Provident Fund.

(3) Notwithstanding anything contained in the foregoing clause, if any dispute arises regarding the date of birth intimated at the time of employment or declared in the declaration card for the purpose of membership of the Employees Provident Fund, as the case may be, then the date of birth shall be determined on the basis of School Leaving Certificate and in its absence, the date of birth determined by a Registered Medical Practitioner, not below the rank of Civil Surgeon, shall be considered as final, but any such dispute shall not be entertained within the period of six months before the date of retirement.

15. An employee who leaves service or retires or is discharged shall without avoidable delay but not later than thirty days after he leaves service or retires or as the case may be is discharged, shall be given by the employer a service Certificate indicating such information and particulars as may be notified.]

1. Subs. by The M.P. Industrial Employment (Standing Orders) Amendment Act, 2014. Published in the M.P. Gazette (Extra-ordinary) dated the 28-06-2014.
2. Ins. by No. 8 [23.1.1992]

***SERVICE CERTIFICATE**

(See Rule 15)

1. Name and address of the Institution
2. Name and address of the employee/worker
3. Nature of work/designation
4. Duration of employment from date to
5. Wages rate Rupees per month
6. Reasons for discharge Retirement/Discharge/Resignation/ Other

Signature of employer

16. Liability of the Manager.— The Manager of the undertaking or in case if there is no manager, the Managing Agents, the Managing Director or the Proprietor or any person who has the ultimate control over the management of the undertaking shall be held responsible for the proper and faithful observance of these standing orders.

17. (a) Notice to be exhibited or given under these standing orders shall be in a language understood by majority of employees.

(b) Any notice, order, charge-sheet, communication or intimation which is meant for individual employee and is given in writing under these standing orders shall be in a language understood by majority of employees.

18. Copies of these standing orders shall be posted in the timekeeper's office and in all departments of the undertaking and shall be kept in legible condition.

1. Apprentices Act, 1961 With Rules	125/-
2. Beedi & Cigar Workers (Conditions of Employment) Act, 1966 With Rules	100/-
3. Building & Other Construction Workers (Regulation of Employment & Condition of Service) Act, 1996 With Rules (E)	400/-
4. Building & Other Construction Workers (Regulation of Employment & Condition of Service) Act, 1996 With Rules (H)	400/-
5. Child Labour (Prohibition & Regulation) Act, 1986 With Rules	35/-
6. Contract Labour (Regulation & Abolition) Act, 1970 With Rules (E)	100/-
7. Contract Labour (Regulation & Abolition) Act, 1970 With Rules (H)	100/-
8. Contract Labour (Regul. & Abolition) Act, 1970 With Rules (Diglot)	200/-
9. Dock Workers (Regulation of Employment) Act, 1948 With Rules	50/-
10. Employees Provident Funds & Miscellaneous Provisions Act, 1952	350/-
11. Employees State Insurance Act, 1948 With Rules	400/-
12. Equal Remuneration Act, 1976 With Rules	25/-
13. Factories Act, 1948 With M.P. Rules	500/-
14. Industrial Disputes Act, 1947 With Rules	250/-
15. Industrial Employment (Standing Orders) Act, 1946 With Rules	75/-
16. Industrial Development Bank of India Act, 1964	50/-
17. Industrial (Development & Regulation) Act, 1951	35/-
18. Inter State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979 With Rules	50/-
19. Maternity Benefit Act, 1961 With Rules	45/-
20. Madhya Pradesh Asahgathit Karmkar Kalyan Adhiniyam, 2003	125/-
21. Madhya Pradesh Industrial Relations Act, 1960 With Rules	125/-
22. Madhya Pradesh Sharm Kalyan Nidhi Adhiniyam, 1982 With Rules	50/-
23. Madhya Pradesh Shops & Establishment Act, 1958 With Rules	75/-
24. Minimum Wages Act, 1948 With Rules	125/-
25. Motor Transport Workers Act, 1961 With Rules	25/-
26. Payment of Bonus Act, 1965 With Rules	60/-
27. Payment of Gratuity Act, 1972 With Rules	75/-
28. Payment of Wages Act, 1936 With Rules	75/-
29. Sales Promotion Employees (Conditions of Service) Act, 1976 With Rules	25/-
30. Trade Union Act, 1926 With Rules	50/-
31. Working Journalists & Other News Paper Employees (Conditions of Service) & Miscellaneous Provisions Act, 1955 With Rules	50/-
32. Employees Compensation Act, 1923 With Rules	150/-

पीठासीन अधिकारी श्रम न्यायालय क्रमांक 02, इंदौर

मध्यप्रदेश कर्मचारी कॉंग्रेस द्वारा

निर्भय पिता बुदेसिंह वर्मा

म.प्र. कर्मचारी कॉंग्रेस

लोक स्वास्थ्य यांत्रिकी विभाग, मण्डलेश्वर प्रार्थी

विरुद्ध

1. लोक स्वास्थ्य यांत्रिकी विभाग

द्वारा प्रमुख अभियंता,

लोक स्वास्थ्य यांत्रिकी विभाग,

सतपुड़ा भवन, भोपाल

2. मुख्य अभियंता,

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परिक्षेत्र यशवंत क्लब के सामने,

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31(3) 61 एम.पी.आई.आर के अन्तर्गत पेश किया है ।

02/ प्रार्थी का संक्षिप्त में कथन इस प्रकार है कि प्रार्थी संस्थान

कर्मचारियों की यूनियन है जिसका पंजीयन क्रमांक 23596

है, परिशिष्ट "अ" में उल्लेखित व्यक्ति वर्षों से दैनिक वेतन पर कार्यरत कर्मचारी है उनसे चतुर्थ श्रेणी कर्मचारी का कार्य लिया जाता है चतुर्थ श्रेणी कर्मचारी को 750-945 वेतनमान दिया जाता है परिशिष्ट "अ" में दर्शाये सदस्य स्थाई होने के पात्र है, जिन्हें नियमित नहीं किया गया है न ही स्थाई नियुक्ति दी गयी है, उन्हें दैनिक वेतन भोगी कर्मचारी का वेतन दिया जा रहा है, जबकि कार्य स्थाई पद का लिया जा रहा है, विभाग की ओर से कमेटी के विचारार्थ जो सूची प्रस्तुत की गयी है उसमें प्रार्थी का नाम शामिल नहीं है, प्रार्थी को न्यूनतम वेतन नियमानुसार वेतन भुगतान नहीं किया गया है । इस प्रकार प्रतिप्रार्थीगण को निर्देशित किया जाये कि वह प्रार्थीगणों को नियुक्ति दिनांक से चतुर्थ श्रेणी पद के अन्तर्गत एवं नियुक्ति दिनांक से स्थाई पद का वेतन व अन्य लाभ प्रदान करें.

- 03/ प्रतिप्रार्थी का संक्षिप्त में जबाब इस प्रकार है कि इस न्यायालय को प्रकरण को सुनने का समुचित अधिकार प्राप्त नहीं है, केवल म.प्र. राज्य प्रशासनिक अधिकरण को ही सुनने का अधिकार है। प्रतिप्रार्थी संस्थान पर औद्योगिक विवाद अधिनियम व औद्योगिक संबंध

अधिनियम के प्रावधान लागू नहीं होते हैं, प्रार्थी की नियुक्ति किसी रिक्त अथवा स्वीकृत पद पर नहीं की गई है वे आकस्मिक श्रमिक के नाते दैनिक वेतन भोगी श्रमिक है, प्रार्थी चतुर्थ श्रेणी कर्मचारी परिशिष्ट अ में उल्लेखित के अनुसार नहीं है बल्कि दैनिक वेतन भोगी कर्मचारी है न ही चतुर्थ श्रेणी का कार्य दिया जाता है । 31.12.88 के बाद में के बाद दैनिक वेतन भोगी कर्मचारी नियमित होने की पात्रता नहीं रखते हैं । इस प्रकार प्रार्थी को कोई सहायता नहीं दी जा सकती है, उनका आवेदन पत्र निरस्त किया जावे ।

04/ उपरोक्त अभिवचनों के आधार पर पूर्व पीठासीन अधिकारी द्वारा निम्न वार प्रश्नों का गठन किया गया जिन पर मेरे निष्कर्ष निम्नानुसार है ।

वाद प्रश्न

निष्कर्ष

01. क्या प्रार्थना के संबंधित :: निर्णयानुसार ।

श्रमिकों को चतुर्थ श्रेणी के पद

पर स्थाईकरण व स्थाई वेतन

पाने की पात्रता है ?

02/ सहायता एवं व्यय

:: निर्णयानुसार ।

वाद प्रश्न क्रमांक 1

05/ प्रार्थी की ओर से श्री कमल सिंह वर्मा ने अपने कथन अंकित कराये है जिसमें उन्होंने कहा है कि वह म.प्र. राज्य कर्मचारी कॉंग्रेस शाखा का मण्डलेश्वर का अध्यक्ष है । ये शाखा रजिस्टर्ड यूनियन है जिसका नंबर 25569 है । परिशिष्ट "अ" के कर्मचारी उनके सदस्य है जो चतुर्थ श्रेणी कर्मचारी है, श्री कृष्ण ठक्कर, गोपाल कानूनगो तृतीय श्रेणी कर्मचारी है। चतुर्थ श्रेणी कर्मचारी का वेतन 750 - 945 है जबकि उन्हें दैनिक वेतन दर से भुगतान किया जा रहा है, ये लोग वर्षों से कार्यरत है, स्थाई व अस्थाई कर्मचारियों के काम में कोई अन्तर नहीं है, लिपिक का वेतनमान 950-1230 है, 88 के पूर्व कर्मचारियों को स्थाई कर दिया गया है,

06/ उपरोक्त साक्षी ने कूट परीक्षण में कहा है कि प्रार्थीगणों को कलेक्टर दर से भुगतान किया जाता है, उपरोक्त साक्षी ने इस चीज को स्वीकार किया है कि परिशिष्ट "अ" में दर्शाये

कर्मचारी नियुक्ति दिनांक से आज तक कार्यरत है, उपरोक्त साक्षी ने यह भी स्वीकार किया है कि दैनिक वेतन भोगी कर्मचारी की नियुक्ति किसी रिक्त पद के विरुद्ध नहीं की गई है,

- 07/ प्रतिप्रार्थी के साक्षी बी प्रसाद के कथन अंकित करवाये गये है जिसमें उन्होंने कहा है कि वे कार्यपालन यंत्री के पद पर प्रतिप्रार्थी संस्थान मण्डलेश्वर में पदस्थ है, वे प्रकरण में प्रभारी अधिकारी है, यूनियन की ओर से रजिस्ट्रेशन संबंधी कोई दस्तावेज पेश नहीं किया गया है, श्रमिकों को किसी भी स्वीकृति, स्थाई/अस्थायी पद पर नियुक्ति प्रदान नहीं की गई है, उपरोक्त साक्षी ने कूट परीक्षण में कहा है कि यूनियन की ओर से उन्हें एनेक्सचर (आर)- 2 बी का पत्र दिया गया था, कर्मचारियों की ओर से यूनियन पदाधिकारी चर्चा के लिये जाते हैं उनसे चर्चा के लिये इंकार नहीं किया और न ही ऐसा कहा कि वे कर्मचारियों का प्रतिनिधित्व नहीं कर सकते हैं, विभाग में सबका रिकार्ड है कि कर्मचारी कब से काम कर रहे हैं, रेकार्ड प्रस्तुत नहीं है, यह कहना सही है कि कार्य पर रखने की दिनांक से आज दिनांक तक बीच में कुछ अवधि छोड़कर लगातार काम किया है,

08/ प्रकरण में दस्तावेज भी पेश किये गये हैं परिशिष्ट "अ"

171 कर्मचारियों की सूची है जिसमें विभिन्न कर्मचारी विभिन्न पदों पर कार्यरत होना दर्शाया है । प्रदर्श आर-2 दो-बी श्री कमल वर्मा अध्यक्ष कर्मचारी काँग्रेस, लोक स्वास्थ्य यांत्रिकी विभाग, मण्डलेश्वर के द्वारा कार्यपालन यंत्री को दिया गया ज्ञापन है ।

09/ प्रतिप्रार्थी साक्षी ने कूट परीक्षण में स्वीकार किया है कि कर्मचारियों की और से यूनियन के पदाधिकारी चर्चा के लिये जाते हैं, चर्चा के लिये इंकार नहीं किया जाता प्रदर्श "आर-2ब" के पत्र क्रमांक प्रार्थी कमल वर्मा म.प्र. कर्मचारी काँग्रेस लोक स्वास्थ्य यांत्रिकी विभाग मण्डलेश्वर के अध्यक्ष है तथा उपरोक्त पत्र 24.2.98 कार्यपालन यंत्री को जारी किया गया है, परिशिष्ट "अ" में दर्शाये कर्मचारी वर्षों से दर्शाये अनुसार विभाग में कार्यरत है । सभी की सेवायें प्रथम दृष्टि में 240 दिन से अधिक की प्रतीत होती है जो कि एक कैलेंडर वर्ष में होती है, यह भी स्पष्ट है कि प्रतिप्रार्थी संस्थान-एम.पी.आई.आर. के प्रावधान प्रभावशील है तथा स्टैंडिंग आर्डर्स रूल्स 1963 भी प्रभावशील है, प्रार्थी के पक्ष का समर्थन माननीय उच्च न्यायालय ग्वालियर

लार्वर बेंच डब्ल्यू.पी.नंबर 350/97 अधीक्षण यंत्री विरुद्ध देव प्रकाश श्रीवास निर्णय दिनांक 9.12.98 से भी होता है, प्रतिप्रार्थी संस्थान पर स्टैंडिंग आर्डर्स रूल्स 1963 के प्रावधान प्रभावशील है, परिशिष्ट "अ" में दर्शाये कर्मचारियों को एस.एस.ओ. की धारा 1 (1) के तहत स्थाई होने की पात्रता प्रथम दृष्टि में प्राप्त कर ली है, प्रतिप्रार्थी के साक्षी ने यह भी कहा है कि विभाग में सब का रिकार्ड है कि वे कब से काम कर रहे हैं रिकार्ड प्रस्तुत नहीं है, प्रतिप्रार्थी का कर्तव्य था कि वह प्रार्थी द्वारा दर्शाये कर्मचारियों का रिकार्ड प्रस्तुत करता जो उन्होंने नहीं किया है, उपरोक्त साक्षी ने यह भी स्वीकार किया है कि कार्य रखने की दिनांक से आज दिनांक तक बीच में कुछ अवधि छोड़कर लगातार काम किया है प्रतिप्रार्थीयों का कार्य संतोषजनक है, प्रतिप्रार्थी की ओर से एनेक्सचर आर-5ए, 18.3.91 कार्यालय आयुक्त इंदौर संभाग पेश किया है जिसमें श्रमिकों की श्रेणी अकुशल, अर्द्धकुशल, कुशल (क) कुशल (ख) कुशल (ग) दर्शायी गयी है। परिशिष्ट "अ" में भी प्रार्थीगणों के पद दर्शाये हैं। प्रार्थी का यह कहना है कि वह चतुर्थ श्रेणी के पद पर स्थाई किया जाये, यह तथ्य

स्वीकार नहीं किया जा सकता, बल्कि प्रार्थीगणों को उपरोक्त पत्र 18.3.91 एनेक्सचर आर-5ए में वर्णित श्रमिकों की श्रेणी पद पर स्थाईकरण की पात्रता है, जैसा कि परिशिष्ट "अ" में है, जिसमें कर्मचारियों के पद दर्शाये गये हैं,

10/ वाद प्रश्न क्रमांक -2 :

10/ उपरोक्त विवेचना के आधार पर प्रतिप्रार्थी को निर्देशित किया जाता है कि यह प्रार्थी के द्वारा प्रस्तुत परिशिष्ट के तहत दर्शाये कर्मचारियों को जो कि वर्तमान में सेवा में हैं उन्हें उनके दर्शाये पद पर स्थाई करें तथा धारा 62 (1) एम.पी. आई.आर. के तहत दावा प्रस्तुति दिनांक से दो वर्ष पूर्व तक का स्थाई पद का वेतनमान भी अदा करें. इस हेतु उन्हें 30 दिन का समय दिया जाता है।

(एस. के. विजयवर्गीय)
प्रिसाईडिंग आफिसर
लेबर कोर्ट इंदौर

क्रमांक -----

दिनांक -----

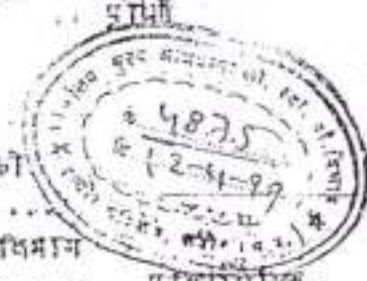
प्रति,

50/2 312/91 एम.पी. आर. आर

प्रति कर्मचारी कर्मित द्वारा
प्रार्थना स्वीकृत वसति
म.प्र. कर्मचारी कर्मित
प्रार्थना स्वीकृत विभाग मन्त्रालय

100 200 300 400
500 600 700 800
900 1000 1100 1200

विभाग - प्रमुख आभारता लोक स्वास्थ्य मन्त्रालय
विभाग सचिवता मन्त्रालय
02- मुख्य आभारता लोक स्वास्थ्य मन्त्रालय विभाग
परिचय कार्यालय वल्लभ दे तामले संदीर



ATTESTED

निर्देश : दि 31-3-93

प्रार्थी म. कर्मचारी कर्मित द्वारा प्रार्थना पत्र अन्तर्गत धारा- 31

01/ 61 एम.पी. आर. आर के अन्तर्गत पेश किया है .

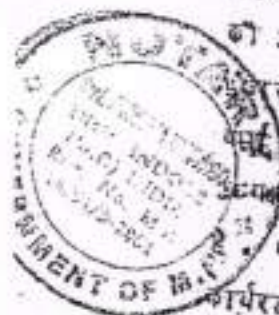
02/ प्रार्थी का संक्षिप्त में कथन इस प्रकार है कि प्रार्थी संस्थान कर्मचारियों की सूचिका है जिसका पंजीयन क्रमांक 25596 है . परिशिष्ट " अ " में उल्लेखित व्यक्तित्व वर्गों से दैनिक वेतन पर आधारित कर्मचारी है . उनसे चतुर्थ श्रेणी कर्मचारी का कार्य लिया जाता है . चतुर्थ श्रेणी कर्मचारी को 750-945 वेतनमान दिया जाता है . परिशिष्ट " अ " में दृष्टिगत सदन्य स्थाई होने के पात्र है . जिन्हें नियमित नहीं किया गया है . न ही स्थाई नियुक्ति दी गयी है . उन्हें दैनिक वेतन शीर्षी कर्मचारी का वेतन दिया जा रहा है . जबकि कार्य स्थाई कर का लिया जा रहा है . विभाग की ओर से कोर्टी के विचारार्थ दो सूची प्रस्तुत की गयी है जसमें प्रार्थी का नाम शामिल नहीं है . प्रार्थी की न्यूनतम वेतन अनुमानानुसार वेतन भुगतान नहीं किया गया है . इस प्रकार प्रतिप्रार्थीगण को निर्दिष्ट किया जाये कि वह प्रार्थीगण को नियुक्ति दिनांक से चतुर्थ श्रेणी पद के अन्तर्गत एवं नियुक्ति दिनांक से स्थाई पद का वेतन व अन्य लाभ प्रदान करें .

03/ प्रतिप्रार्थी का संक्षिप्त में कथन इस प्रकार है कि इस न्यायालय को प्रकल्प को सुनने का अनुचित अधिकार प्राप्त नहीं है . केवल म.प्र. राज्य प्रशासनिक अधिकरण को ही सुनने का अधिकार है . प्रतिप्रार्थी संस्थान पर जो नैतिक विवाद अधिनियम व नैतिक संयुक्त अधिनियम के प्रावधान लागू नहीं होते हैं . प्रार्थी को नियुक्ति दिनांक दिनांक जयका स्थायी पद प्राप्त नहीं की गयी है . के आदेशानुसार मन्त्रालय के नये दैनिक वेतन शीर्षी

भी लीकृत, स्थाई / अस्थायी पर पर नियुक्ति प्रदान नहीं की गयी है।
 उपरोक्त सभी ने वृत्त परीक्षण में कहा है कि यूनियन की ओर से उन्हें एग्रेसिवर
 आर-2 की का पत्र दिया गया था। कर्मचारियों की ओर से यूनियन
 पदाधिकारी चर्चा के लिये जाते हैं। उनसे चर्चा के लिये ईकार नहीं किया
 और न ही ऐसा कहा कि वे कर्मचारियों का प्रतिनिधित्व नहीं कर सकते हैं।
 विभाग में तबका रिपोर्ट है कि कर्मचारी अब से काम कर रहे हैं रेकार्ड प्रस्तुत
 नहीं है। यह कहना सही है कि कार्य पर रहने की दिनांक से आज दिनांक
 तक बीच में कुछ अवधि छोड़कर लगातार कम किया है।

08/ प्रकरण में दस्तावेज भी पेश किये गये हैं। पारिशिष्ट "अ" 171 कर्मचारियों
 की सूची है। जिसमें विभिन्न कर्मचारी विभिन्न पदों पर कार्यरत होना दर्शाया
 है। प्रदर्श आर-2 को भी कागज कारी अग्रस्त कर्मचारी कजित लो. स्वा. यात्रिकी
 विभाग मैनेजर के द्वारा कार्यपालन यंत्री को दिया गया आपन है।

09/ प्रतिस्पर्धी तारी ने वृत्त परीक्षण में स्वीकार किया है कि कर्मचारियों
 की ओर से यूनियन के पदाधिकारी चर्चा के लिये जाते हैं, चर्चा के लिये
 ईकार नहीं किया जाता। ईकार आर-2 के पत्र क्रमिक प्रार्थी कमज
 है तथा उपरोक्त पत्र 24.3.98 कार्यपालन यंत्री को पारी किया गया
 पारिशिष्ट "अ" में दशदि कर्मचारी कर्मों से दशदि जुझार विभाग में
 कार्यरत हैं। तनी की सेवाएँ प्रार्थी दृष्टि में 240 दिन से अधिक की प्रवीत
 होती है जो कि एक कैलेंडर यर् में होती है। यह भी स्पष्ट है कि प्रक्रिया
 संस्थान में वृत्त सम. पी. आर्. आर के प्राक्कान प्रभावगीत हैं तथा स्टैंडिंग
 आर्डर लक्ष 1963 की प्रभावगीत हैं। प्रार्थी के पत्र का समर्थन माननीय
 उच्च न्यायालय ग्वालियर सार्वर डैव हल्लू. पी. नंबर 350 /97 अधीन
 यंत्री विरुद्ध देवप्रकाश की पास तन्त्रिय दिनांक 9.12.98 से भी होता है
 प्रक्रिया संस्थान पर स्टैंडिंग आर्डर लक्ष 1963 के प्राक्कान प्रभावगीत हैं
 पारिशिष्ट "अ" में दशदि कर्मचारियों को एक-एक ओ की धारा 111 के
 तहत स्थाई होने की पात्रता प्रथम दृष्टि में प्राप्त कर ली है। प्रक्रिया
 के तारी ने यह भी कहा है कि विभाग में तबका रिपोर्ट है कि वे अब
 से काम कर रहे हैं रिपोर्ट प्रस्तुत नहीं है। प्रक्रिया का कर्तव्य था कि
 यह प्रार्थी द्वारा दशदि कर्मचारियों का रिपोर्ट प्रस्तुत करता जो उन्होंने
 नहीं किया है। उपरोक्त तारी ने यह भी स्वीकार किया है कि कार्य
 रहने की दिनांक से आज दिनांक तक बीच में कुछ अवधि छोड़कर लगातार
 कम किया है। प्रक्रिया की स्वीकृति है। प्रक्रिया की ओर
 प्रक्रिया आर-2 के पत्र क्रमिक प्रार्थी कमज



~~242~~

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प्रकरण क्रमांक 13/99 एम.पी.आई.आर.

मदन कुमार श्रीवास्तव पुत्र श्री जीवाराम श्रीवास्तव
मार्फत श्री मुंशीलाल शर्मा मेहदोली वाले नर्सरी गेट
के सामने वाटर वर्क्स भिण्ड म.प्र.

..प्रार्थी

विरुद्ध

1. प्रमुख अभियंता लोक स्वास्थ्य यांत्रिकी विभाग
सतपुडा भवन भोपाल म.प्र.
 2. मुख्य अभियंता लोक स्वास्थ्य यांत्रिकी विभाग
टंकी के नीचे मुरार ग्वालियर
 3. कार्यपालन यंत्री लोक स्वास्थ्य यांत्रिकी विभाग खंड भिण्ड
 4. सहायक यंत्री लोक स्वास्थ्य यांत्रिकी विभाग उपखंड भिण्ड म.प्र..
- प्रतिप्रार्थीगण

आदेश दिनांक 28.5.99

1. प्रार्थी मदन कुमार श्रीवास्तव ने यह प्रार्थना पत्र म.प्र.ओ.सं. अधि.
की धारा 31 (3) व 61 के अंतर्गत प्रस्तुत किया है।
2. संक्षेप में प्रार्थी का प्रकरण यह है कि वह प्रतिप्रार्थी संस्थान में
दिनांक 1.6.80से दैनिक वेतन भोगी समयपालक के रूप में
सेवानियुक्त हुआ था । वह नियुक्ति दिनांक के समयपालक के
रिक्त पद पर उससे कार्य लिया जा रहा है उसका कार्य
संतोषप्रद है। उसने स्तरीय आज्ञाओं के अनुसार समयपालक के
पद पर स्थायी वर्गीकरण की पात्रता प्राप्त कर ली है।
प्रतिप्रार्थीगण की स्थायी वर्गीकरण न करने की कार्यवाही अनुचित
व अवैध है। प्रार्थी के तथा स्थायी समयपालक के कार्य में कोई
अंतर नहीं है लेकिन वेतन में अंतर है। प्रतिप्रार्थी संस्थान पर म.
प्र.ओ.सं. अधि. के प्रावधान लागू हैं तथा स्तरीय आज्ञाएं भी

लागू हैं। प्रार्थी को स्थायी वर्गीकरण के निर्देश दिये जायें तथा वेतन के अंतर को भुगतान करने के निर्देश दिये जाए।

3. प्रतिप्रार्थी ने अपने उत्तर प्रार्थना पत्र में यह कहा है कि प्रार्थी को दैनिक वेतन भोगी के रूप में रखा था। उसकी नियुक्ति समयपालक के पद पर नहीं की गई थी। विभाग द्वारा कार्य होने पर कार्य पर रखा जाता है और कार्य न होने की स्थिति में हटा दिया जाता है और दैनिक वेतन भोगी से कोई भी कार्य लिया जा सकता है। प्रार्थी दैनिक वेतन पर रखा गया था। प्रतिवादी शासन का उपकरण है जो औद्योगिक अधि. की श्रेणी में नहीं आता है प्रार्थी की समयपालक पर कोई नियुक्ति नहीं की गई तो स्तरीय आज्ञाओं के तहत स्वत्व प्राप्त करने का प्रश्न उत्पन्न नहीं होता। उसने 6 माह लगातार कार्य नहीं किया है। प्रार्थी ने 240 दिन लगातार कार्य नहीं किया। प्रार्थी दैनिक वेतन भोगी के पद पर कार्यरत है उसे स्थायी वर्गीकरण की पात्रता नहीं है।

4. उपरोक्त अभिवचनों के आधार पर मेरे द्वारा निम्न वाद प्रश्नों के गठन किये गये जिन पर मेरे निर्णय निम्नानुसार है :-

वाद प्रश्न

1. क्या प्रार्थी ने समयपालक के पद पर स्थाई वर्गीकरण की पात्रता प्राप्त कर ली है ?
2. क्या प्रार्थी को वेतन के अंतर को पाने की पात्रता है ?
3. क्या विशेष आपत्ति के प्रकाश में प्रार्थी का प्रार्थना पत्र निरस्ती योग्य है ?
4. सहायता एवं व्यय ?

वाद प्रश्न क्रमांक - 3

5. प्रकरण में प्रार्थी ने अपना स्वयं का कथन लेखबद्ध कराया है तथा प्रतिप्रार्थी की ओर से श्री संजीव कुमार गुप्ता के कथन लेखबद्ध कराये गये हैं। प्रार्थी ने अपने कथन में यह कहा है कि प्रतिप्रार्थी संस्थान में 100 से अधिक कर्मचारी कार्यरत है। प्रतिप्रार्थीगण हैण्डपंप, नलकूप खोदने लगाने वाटर फिल्टर लगाने टैंक बनाने व जनता को पानी सप्लाई करने तथा उसके एवज में जलकर वसूली का कार्य होता है। प्रतिप्रार्थी संस्थान में सिविल मैकेनिकल इलेक्ट्रिकल इंजीनियरिंग का काम होता है। उक्त साक्ष्य के खण्डन में प्रतिप्रार्थी की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई है। प्रार्थी के कथन से स्पष्ट है कि प्रतिप्रार्थी संस्थान में म.प्र.ओ.सं.अधि. के प्रावधान लागू हैं इस संबंध में माननीय म.प्र. उच्च न्यायालय का न्याय दृष्टांत 1993 लेब. आय.सी. 1638 भरत चन्द्र चतुर्वेदी विरुद्ध म.प्र. शासन और अन्य अवलोकनीय है। प्रतिप्रार्थी संस्थान पर स्तरीय आज्ञाएं भी लागू हैं इस संबंध में माननीय म.प्र.उच्च न्यायालय का न्याय दृष्टांत 1999 (1) एम.पी.जे.आर. (1) ए.सी.पी.डब्ल्यू.डी. चंबल आयकट सर्कल ग्वालियर और अन्य विरुद्ध देवप्रकाश श्रीवास और अन्य एम.पी. नं. 1818/ 96 पब्लिक हेल्थ इंजीनियरिंग डिपार्टमेंट द्वारा ए.सी. ग्वालियर और अन्य विरुद्ध गिरीशचन्द्र गुप्ता और अन्य तथा 1989 जे.एल.जे.36 म.प्र. शासन और अन्य विरुद्ध रामप्रकाश शर्मा और अन्य अवलोकनीय है। प्रतिप्रार्थी के विद्वान अभि. का तर्क यह है कि म.प्र. शासन ने म.प्र.ओ.सं. अधि. की अनुसूची 16 में संशोधन किया है इस संबंध में अधिसूचना 21 जनवरी 99 को असाधारण राजपत्र में प्रकाशित हुई है। उक्त अधिसूचना के अनुसार इस न्यायालय को

प्रार्थना पत्र श्रवणाधिकार प्राप्त नहीं है। मेरे द्वारा उक्त अधिसूचना का अवलोकन किया तो मैं यह पाता हूँ कि संशोधन पूर्वगामी प्रभाव से लागू नहीं किया गया है। संशोधन के काफी पूर्व इस न्यायालय प्रकरण प्रस्तुत कर दिया है अतः संशोधन का कोई विपरीत प्रभाव प्रार्थी के प्रकरण पर नहीं है। इस संबंध में मान. म.प्र. उच्च न्यायालय का न्याय दृष्टान्त 1999 (1) जे.एल.जे. 129 जीबखान विरुद्ध शिवचरण दास और अन्य अवलोकनीय है।

वाद प्रश्न क्रमांक 1 व 2

प्रार्थी ने अपने कथन में यह कहा है कि मैं प्रतिप्रार्थी संस्थान में 1.6.80 को दैनिक वेतन भोगी समयपालक के पद पर सेवा नियुक्त हुआ था मुझसे समयपालक के रिक्त पद पर काम लिया गया था। मेरा काम अच्छा था। वर्तमान तक प्रतिप्रार्थी मुझसे समयपालक का काम लेते आ रहे हैं। मैंने समयपालक के रिक्त पद पर कार्य कर समयपालक के स्थायी वर्गीकृत किये जाने व स्थायी का वेतनमान देने की मांग की किंतु नहीं किया गया। मेरा तथा स्थायी समयपालक का कार्य एक समान है उसमें कोई अंतर नहीं है। मुझे दैनिक वेतन भोगी का भुगतान किया जाता है समयपालक का नियमित वेतनमान नहीं दिया गया। इस संदर्भ में प्रतिप्रार्थी साक्षी श्री गुप्ता का तर्क है कि मैं प्रार्थी को दैनिक वेतन भोगी श्रमिक के रूप में कार्य की आवश्यकता अनुसार रखा गया था। प्रार्थी से कभी भी समयपालक का कार्य नहीं लिया गया। प्रार्थी ने कभी रिक्त पद के विरुद्ध कार्य नहीं किया। नियमित समयपालक की भर्ती के लिए नियमानुसार विज्ञप्ति निकालकर चयन समिति निकालकर योग्यता व वरिष्ठता के अनुसार शासन स्तर पर नियुक्तियाँ की जाती हैं। प्रार्थी ने 240 दिन तक लगातार रिक्त पद के विरुद्ध कार्य नहीं किया। यह सही है प्रार्थी दैनिक वेतन भोगी के रूप में 1.6.80 से कार्य कर रहा है। यह सही है कि समयपालक का कार्य प्रार्थी से लिया जाता है। प्रार्थी दैनिक वेतन भोगी के रूप में कार्यरत

था। प्रार्थी का कार्य संतोषजनक है । मैं नहीं बता सकता कि प्रार्थी के कार्य में कब कब टूट रही। कब कब अनुपस्थित और कब कब छुट्टी पर रहा क्योंकि कार्य अवधि लंबी रही । मैं नहीं बता सकता कि प्रार्थी कार्यरत रहा या नहीं । ऐसी स्थिति में प्रार्थी के कथन पर अविश्वास करने का कोई कारण नहीं है प्रार्थी से समयपालक के पद का कार्य लिया गया है । उसे वेतन रोजनदारी से दिया गया। प्रार्थी के काम एवं स्थायी समयपालक के कार्य में कोई अंतर नहीं है इस आधार पर प्रार्थी को नियुक्ति दिनांक से ही स्थायी समयपालक के वेतन अनुसार वेतन पाने की पात्रता है। इस संबंध में माननीय सर्वोच्च न्यायालय का न्याय दृष्टांत 1986 एस.सी.सी. (एल.एण्ड एस) 189 सुरेन्द्र सिंह विरुद्ध सी.पी.डब्ल्यू.डी. अवलोकनीय है। कम वेतन भुगतान करने की नियत से किया गया श्रमिक का वर्गीकरण श्रमिक के शोषण की श्रेणी में आता है तथा भारतीय संविधान के अनुच्छेद 14 और 16 का उल्लंघन है। इस संबंध में माननीय सर्वोच्च न्यायालय का न्याय दृष्टांत ए.आई.आर. 1987 सुप्रीम कोर्ट 2342 भारतीय डाक तार मजदूर मंच विरुद्ध भारत संघ अवलोकनीय है।

प्रार्थी को इस आधार पर कि उसे नियुक्ति दिनांक से ही वेतनमान के अनुसार वेतन पाने की पात्रता है क्योंकि वेतनमान ही प्रतिप्रार्थी संस्थान के लिए न्यूनतम वेतन है क्योंकि वेतनमान रोजनदारी के वेतन से अधिक है इस संबंध में दि मिनिमम वेजेस म.प्र. वेलीडेशन एण्ड एडाप्शन एक्ट 1961 की धारा 6 जिसके द्वारा मूल न्यूनतम वेतन अधि. में धारा 12 (1) ए.जोडी गई अवलोकनीय है।

प्रार्थी ने प्रतिप्रार्थी संस्थान में वर्ष 1980 से कार्यरत है आज वर्ष 99 है लगभग 19 वर्ष बाद यह नहीं कहा जा सकता है कि प्रतिप्रार्थी संस्थान में पद रिक्त नहीं है। इस संबंध में माननीय म.प्र. उच्च न्यायालय का न्याय दृष्टांत 1978 एम.पी. एल.जे. 664 अवलोकनीय है। प्रार्थी ने स्थायी वर्गीकरण की पात्रता प्राप्त कर ली है तथा उसे दिनांक 7.1.97 से वेतन अंतर को पाने की पात्रता है । शेष अंतर की राशि अवधि बाहर है। वाद प्रश्नों का निराकरण इसी अनुसार किया जाता है।

वाद प्रश्न क्रमांक 4

उपरोक्त विवेचन के आधार पर प्रतिप्रार्थी को निर्देशित किया जाता है कि वे प्रार्थी को समयपालक के पद पर स्थायी वर्गीकृत करें तथा वेतनमान में वर्ष 1980 से वेतनवृद्धि लगाकर 1.1.97 को देय वेतन का निर्धारण करें तथा 1.1.97 से वेतन के अंतर का भुगतान करें एवं प्रार्थना पत्र के स्वर्ग के रूप में 250 रुपये अदा करें। इस आदेश के पालनार्थ प्रतिप्रार्थी को 90 दिन का समय दिया जाता है।

(सतीश श्रीवास्तव)
पीठासीन अधिकारी
श्रम न्यायालय क्रमांक-2
ग्वालियर (म.प्र.)

यह आदेश आज दिनांक 28.5.99 को खुले न्यायालय में घोषित किया गया।

(सतीश श्रीवास्तव)
पीठासीन अधिकारी
श्रम न्यायालय क्रमांक-2
ग्वालियर (म.प्र.)

प्रतिलिपि:-

प्रार्थी मदन कुमार श्रीवास्तव पुत्र श्री जीवाराम श्रीवास्तव की ओर सूचनार्थ।

प्रधान कर्मचारी
श्रम न्यायालय क्रमांक 2
ग्वालियर(म.प्र.)

विभाग : पीठासीन अधिकारी का न्यायालय क्रमांक 2 ग्वालियर । म. प्र. ।

क्रमांक 13/99 स्म. पी. आई. आर.

मदन कुमार श्रीवास्तव पुत्र श्री जीवाराम श्रीवास्तव
मार्केट की कुंतीलाल शर्मा मैदानी घाते नर्सरी रोड
के सामने बाहर बस्ती फिरोज म. प्र.

— प्रार्थी

विरुद्ध

- 1- प्रमुख अभियंता लोक स्वास्थ्य यांत्रिकी विभाग
सतसुद्धा स्वन भोपाल म. प्र.
- 2- मुख्य अभियंता लोक स्वा. यां. वि. टंकीके नीचे
मुरार ग्वालियर
- 3- कार्यपालन यंत्री लोक स्वा. यां. वि. कड फिरोज
- 4- सहायक यंत्री लोक स्वा. यां. वि. उपकड फिरोज म. प्र.

— प्रतिप्रार्थी

आदेश दिनांक 28.5.99

प्रार्थी मदन कुमार श्रीवास्तव ने यह प्रार्थनापत्र म. प्र. ओ. स. अधि. की
धारा 31, 33 व 61 के अन्तर्गत प्रस्तुत किया है ।

समिति में प्रार्थी का प्रकरण यह है कि वह प्रतिप्रार्थी संस्थान में वि.
म. प्र. ओ. स. अधि. के रूप में सेवा नियुक्त हुआ था । उस
नियुक्ति दिनांक से समयपालक के रिक्त पद पर उससे कार्य लिया जा रहा है
उसका कार्यसंतोष है । उसने स्तरीय आग्राओं के अनुसार समयपालक के पद पर
स्थायी वर्गीकरण की पात्रता प्राप्त कर ली है । प्रतिप्रार्थी को स्थायी वर्गीकरण
न करने की कार्यवाही अशुचित व अवैध है । प्रार्थी तथा स्थायी समयपालक के
कार्य में कोई अंतर नहीं है लेकिन वेतन में अंतर है । प्रतिप्रार्थी संस्थान पर
म. प्र. ओ. स. अधि. के प्रावधान लागू हैं तथा स्तरीय आग्राएं भी लागू हैं । प्रार्थी
को स्थायी वर्गीकरण के निर्देश दिये जाएं तथा वेतन के अंतर को मुक्त करने के
निर्देश दिये जाएं ।

3 प्रतिप्रार्थी ने अपने उत्तर प्रार्थनापत्र में यह कहा है कि प्रार्थी को
दैनिक वेतन भोगी के रूप में रखा था । उसकी नियुक्ति समयपालक के पद पर
नहीं की गई थी । विभाग द्वारा कार्य होने पर कार्य पर रखा जाता है और
कार्य न होने की स्थिति में हटा दिया जाता है और दैनिक वेतन भोगी से
कोई भी कार्य लिया जा सकता है । प्रार्थी दैनिक वेतन पर रखा गया था ।
प्रतिवादी शासन का उपकरण है जो औद्योगिक अधि. को क्रेषी में नहीं आता
प्रार्थी को समयपालक पर कोई नियुक्ति नहीं की गई तो स्तरीय आग्राओं के
तहत स्वत्व प्राप्त करने का प्रश्न उत्पन्न नहीं होता । उसने 6 माह लगातार
कार्य नहीं किया है । प्रार्थी ने 240 दिन लगातार कार्य नहीं किया ।



दैनिक वेतन भोगी के पद पर कार्यरत है उसे स्थायी वर्गीकरण की पात्रता नहीं है।

4. उपरोक्त अभिवक्तियों के आधार पर मेरे द्वारा निम्न वादपुस्तकों के गठन किये गये जिन पर मेरे निर्णय निम्नानुसार हैं :-

वादपुस्तक

1. क्या प्रार्थी ने समयपालक के पद पर स्थाई वर्गीकरण की पात्रता प्राप्त कर ली है ?
2. क्या प्रार्थी को वेतन के अंतर को पाने की पात्रता है ?
3. क्या विशेष आपत्ति के प्रकाश में प्रार्थी का प्राप्तिनापत्र निरस्ती योग्य है ?
4. सहायता रक्ष्य क्या है ?

वादपुस्तक क्रमांक 3

5. प्रकरण में प्रार्थी ने अपना स्वयं का कथन लेखित कराया है तथा प्रतिप्रार्थी की ओर से श्री संजीव कुमार गुप्ता के कथन लेखित कराये गये हैं। प्रार्थी ने अपने कथन में यह कहा है कि प्रतिप्रार्थी संस्थान में 100 से अधिक कर्मचारी कार्यरत हैं। प्रतिप्रार्थी गण हेण्डपंप, नल्लू छोड़ने लगाने वाले पिस्टर लगाने के काम में व जनता को पानी सप्लाई करने तथा उसके स्वयं में जलकर बसुली का कार्य होता है। प्रतिप्रार्थी संस्थान में सिविल मैकेनिकल इलेक्ट्रिकल इंजीनियरिंग का काम होता है। उक्त साक्ष्य के छंड़न में प्रतिप्रार्थी की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई है। प्रार्थी के कथन से स्पष्ट है कि प्रतिप्रार्थी संस्थान में म.प्र. ओ.सं. अधि. के प्रावधान लागू हैं इस संबंध में मान. म. प्र. उच्च न्यायालय का न्याय दुरुदांत 1993 लेख आय. सी. 1638 भारत चन्द्र चतुर्वेदी विरुद्ध म. प्र. शासन और अन्य अवलोकनीय है। प्रतिप्रार्थी संस्थान पर स्तरीय आदेश की लागू हैं इस संबंध में मान. म. प्र. उच्च न्यायालय का न्याय दुरुदांत 1999 111 एम. पी. के. आर. 111 स. सी. पी. डब्ल्यू. ही. चंडल आयुक्त सैकल गवालियर और अन्य विरुद्ध देवप्रकाश श्रीवास और अन्य एम. पी. नं. 1818/96 पब्लिक हेल्थ इंजीनियरिंग डिपार्टमेंट द्वारा स. सी. गवालियर और अन्य विरुद्ध गिरीशचन्द्र गुप्ता और अन्य तथा 1989 के एम. के. 36 म. प्र. शासन और अन्य विरुद्ध रामप्रकाश शर्मा और अन्य अवलोकनीय है। प्रतिप्रार्थी के विद्वान अधि. का तर्क है कि म. प्र. शासन ने म. प्र. ओ.सं. अधि. की अनुसूची 16 में संशोधन किया है इस संबंध में अधिसूचना 21 जनवरी 99 को अध्यादेश राजपत्रों प्रकाशित हुई है। उक्त अधिसूचना के अनुसार इस न्यायालय को प्राप्तिनापत्र खण्ड अधिकार प्राप्त नहीं है। मेरे द्वारा उक्त अधिसूचना का अवलोकन किया तो मैं यह पाता हूँ कि संशोधन पूर्वगामी प्रभाव से लागू नहीं किया गया है। संशोधन के काफी पूर्व इस न्यायालय

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रूप प्रस्तुत कर दिया है अतः संशोधन का कोई विपरत प्रभाव प्रार्थी के पद पर नहीं है। इस संबंध में मान. म. प्र. उच्च न्यायालय का न्याय दुरुदांत 1999 ई. के. एल. के. 129 जी. प्रो. विस. विरुद्ध गिर्वचरण दास और अन्य अवलोकनीय है।

वास्तुतः क्रमांक 1 व 2

प्रार्थी ने अपने कथन में यह कहा है कि मैं प्रतिप्रार्थी संस्थान में 1.6.80 को दैनिक वेतन भोगी समयपालक के पद पर सेवा नियुक्त हुआ था। मुझसे समयपालक के रिक्त पद पर काम लिया गया था। मेरा काम अच्छा था। वर्तमान तक प्रतिप्रार्थी मुझसे समयपालक का काम लेते आ रहे हैं। मेरी समयपालक के रिक्त पद पर कार्य कर समयपालक के स्थायी वर्गीकृत किये जाने व स्थायी का वेतनमान देने की मांग की किन्तु नहीं किया गया। मेरा तथा स्थायी समयपालक का कार्य एकसामान है उसमें कोई अंतर नहीं है। मुझे दैनिक वेतन भोगी का भुगतान किया जाता है समयपालक का नियमित वेतनमान नहीं दिया गया। इस संदर्भ में प्रतिप्रार्थी साक्षी की शिकायत का तर्क है कि मैं प्रार्थी को दैनिक वेतन भोगी श्रमिक के रूप में कार्य करी आवश्यकतानुसार रखा गया था। प्रार्थी से कभी भी समयपालक का कार्य नहीं लिया गया। प्रार्थी ने कभी रिक्त पद के विरुद्ध कार्य नहीं किया। नियमित समयपालक की भर्ती के लिये नियमानुसार विज्ञापित निकालकर चयन समिति निकालकर योग्यता व वरिष्ठता के अनुसार गैसल स्तर पर नियुक्तियाँ की जाती हैं। प्रार्थी ने 240 दिन तक लगातार रिक्त पद के विरुद्ध कार्य नहीं किया। यह सही है कि प्रार्थी दैनिक वेतन भोगी के रूप में 1.6.80 से कार्य कर रहा है। यह सही है कि समयपालक का कार्य प्रार्थी से लिया जाता है। प्रार्थी दैनिक वेतन भोगी के रूप में कार्यरत था। प्रार्थी का कार्य संतोषजनक है। मैं नहीं बता सकता कि प्रार्थी के कार्य में कब कब टूट रही। कब कब अनुपस्थित और कब कब घुटटी पर रहा क्योंकि कार्यअधि लंबी रही। मैं नहीं बता सकता कि प्रार्थी कार्यरत रहा या नहीं। ऐसी स्थिति में प्रार्थी के कथन पर अविश्वास करने का कोई कारण नहीं है प्रार्थी से समयपालक के पद का कार्य लिया गया उ। वेतन रोजनदारी से दिया गया। प्रार्थी के कार्य एवं स्थायी समयपालक के कार्य में कोई अंतर नहीं है इस आधार पर प्रार्थी की नियुक्ति दिनांक से ही स्थायी समयपालक के वेतन अनुसार वेतन पाने की पात्रता है। इस संबंध में मान. सर्वोच्च न्यायालय का न्याय दुरुदांत 1986 एस. सी. सी. 1 एस. एच. एस. 109 सुरेन्द्र सिंह विरुद्ध सी पी. डब्ल्यू. डी. अवलोकनीय है। कम वेतन भुगतान करने की नीयत से किया गया श्रमिक का



प्रथमिक के श्रेणियों की श्रेणी में आता है तथा भारतीय संविधान के अनुच्छेद 16 का उल्लंघन है। इस संबंध में मान-सर्वोच्च न्यायालय का न्याय दुरुदांत आर्डर 1987 सुप्रीम कोर्ट 2342 सी. पी. डी. नं. 1154 का आदेश है।

प्रार्थी को इस आधार पर कि उसे नियुक्ति दिनांक से ही वेतनमान के अनुसार वेतन पाने की पात्रता है क्योंकि तत्काल ही प्रतिस्पर्धी संस्थान के लिये न्यूनतम वेतन है क्योंकि वेतनमान रोजनकारी के वेतन से अधिक है इस संबंध में दि. मिनिमम वेजेंस म. प्र. वेल्फेयर एण्ड एडाप्शन एक्ट 1961 की धारा 6 जिसके द्वारा मूल न्यूनतम वेतन अधि. में धारा 12 & 13 एजो डी नई है अलोकनीय है।

प्रार्थी ने प्रतिस्पर्धी संस्थान में वर्ष 1980 से कार्यरत है आज वर्ष 99 है लगभग 19 वर्ष बाध यह नहीं कहा जा सकता कि प्रतिस्पर्धी संस्थान में पद रिक्त नहीं है। इस संबंध में मान-म. प्र. उच्च न्यायालय का न्याय दुरुदांत 1978 स्म. पी. एल. के. 664 अलोकनीय है। प्रार्थी ने स्थायी वर्गीकरण की पात्रता प्राप्त कर ली है तथा उसे दि. 7. 1. 97 से वेतन के अंतर को पाने की पात्रता है। वेतन अंतर की राशि अर्द्ध बाध है। पाठ्यक्रम का निराकरण इसी अनुसार किया जाता है।

पाठ्यक्रम क्रमांक 4

उपरोक्त विवेचन के आधार पर प्रतिस्पर्धी को निर्देशित किया जाता है कि वे प्रार्थी को सम्पूर्णतः के पद पर स्थायी वर्गीकृत करें तथा वेतनमान में वर्ष 1980 से वेतनवृद्धि लगाकर 1. 1. 97 को देय वेतन का निर्धारण करें तथा 1. 1. 97 से वेतन के अंतर का भुगतान करें एवं प्रार्थीनापत्र के खर्च के रूप में 250 रुपये अदा करें। इस आदेश के पालनार्थ प्रतिस्पर्धी को 90 दिन का समय दिया जाता है।

-54
सतीश श्रीवास्तव
बीठासीन अधिकारी
प्रथम न्यायालय नं.-2
ग्वालिअर (म.प्र.)

प्रमाणित प्रतिलिपी

यह आदेश आज दि. 28. 5. 99 को कुली न्यायालय में घोषित किया गया।

1544
11/6/99

-54
सतीश श्रीवास्तव
बीठासीन अधिकारी
प्रथम न्यायालय नं.-2
ग्वालिअर (म.प्र.)

प्रधान कर्मचारी,
प्रथम न्यायालय कक्षांक 3,
ग्वालिअर (म.प्र.)

उपस्थिति - प्रार्थी 13/6/99
तीनपक्ष - प्रार्थी, प्रतिस्पर्धी, प्रार्थी का अधिवक्ता
नोट - 6 मिनट

न्यायालय पीठासीन अधिकारी श्रम न्यायालय रीवा म.प्र.

प्र.क्र. 294 / एम.पी.आई.आर.एक्ट / 94

श्री राज कुमार मिश्रा तनय रामदेव प्रसाद मिश्रा उम्र 23 वर्ष चौकीदार, (दै.वे.भो.) लोक स्वास्थ्य यांत्रिकी परियोजना मण्डल रीवा म0प्र0 — आवेदक,

बनाम

1. मध्य प्रदेश शासन द्वारा सचिव, लोक स्वास्थ्य यांत्रिकी विभाग, वल्लभ भवन भोपाल (म0प्र0)
2. मुख्य अभियंता, लोक स्वास्थ्य यांत्रिकी विभाग जबलपुर परिक्षेत्र जबलपुर म0प्र0
3. अधीक्षण यंत्री, लोक स्वास्थ्य यांत्रिकी परियोजना मण्डल रीवा चिरहुला टंकी रीवा।
4. कार्यपालन यंत्री, लोक स्वास्थ्य यांत्रिकीय परियोजना खण्ड रीवा रानी तालाब रीवा।
5. सहायक यंत्री, लोक स्वास्थ्य यांत्रिकी परियोजना उपखण्ड क्र.1 रीवा रानी तालाब।

— अनावेदकगण

आदेश दिनांक 2.3.2002

- 1-प्रार्थी ने यह प्रार्थना पत्र म0प्र0औ0सं0अधि0 1960 की धारा 31(3) एवं 61 के अंतर्गत उसे चौकीदार के पद पर स्थायी वर्गीकृत कर तदानुसार वेतनमान दिलाये जाने बावत् प्रस्तुत किया है।
- 2-प्रार्थी का आवेदन पत्र संक्षेप में इस प्रकार है कि उसे अनावेदक क्र. 03 ने क्र. 01 के लिये चौकीदार के रिक्त पद पर नियुक्त किया गया था, तब से वह लगातार कार्य कर रहा है। उसका कार्य संतोषजनक है। उसने 6 माह से अधिक ज्यादा कार्य कर लिया है। इसलिये उसे स्थायी कर्मचारी के स्वत्व प्राप्त हो गये

हैं, किन्तु उसके निवेदन किये जाने के बावजूद भी स्थायी कर्मचारी घोषित नहीं किया गया और न ही स्थायी कर्मचारी का लाभ प्रदान किया जा रहा है।

3-प्रति प्रार्थीगण ने जवाब में कहा है कि अनावेदक संस्थान उद्योग नहीं है तथा इस पर म०प्र०औ०सं०अधि० 1960 एवं स्तरीय स्थायी आदेश प्रभावशील नहीं होते हैं। आवेदक की दिनांक 29.4.89 या कभी भी चौकीदार रिक्त पद पर नियुक्ति नहीं की गई है। इसलिये उसके द्वारा लगातार कार्य करने एवं संतोषजनक होने का प्रश्न ही नहीं है। सही तथ्य यह है कि विभाग में अस्थायी तौर पर कार्य की आवश्यकता अनुसार स्वीकृत, मस्टर रोल एवं आवंटन पर वह दैनिक वेतन भोगी श्रमिक के रूप में समय-समय पर कार्य करता रहा है। उसने कभी भी लगातार कार्य नहीं किया है। उसने लगातार 6 माह भी कार्य नहीं किया है। अतः उसे स्थायी कर्मचारी के स्वत्व प्राप्त होने का प्रश्न ही नहीं है।

4-उपरोक्त अभिवचनों के आधार पर 3 वाद प्रश्न निर्धारित किये गये हैं जिनका निराकरण निम्नानुसार किया जा रहा है।

वाद प्रश्न 1 :-

निष्कर्ष

- | | |
|---|-------------------|
| 1. क्या प्रार्थी चौकीदार के पद पर स्थायी किये जाने का अधिकारी है ? | - हाँ |
| 2. क्या प्रतिप्रार्थी संस्थान पर म०प्र०औ०सं०अधि० नियम सन् 1960 के प्रावधान लागू नहीं होते हैं ? | - लागू होते हैं। |
| 3. सहायता एवं व्यय ? | - अंतिम पद अनुसार |

5-वाद प्रश्न क्र. 2 :-

उक्त संबंध में प्रार्थी ने कहा है कि मेरे विभाग में 100 से अधिक कर्मचारी कार्यरत है विभाग द्वारा पानी सप्लाई एवं टंकी निर्माण का कार्य किया जाता है। प्रार्थी के उक्त कथन का प्रतिप्रार्थी साक्षी बी०डी०तिवारी द्वारा खण्डन नहीं किया गया है। अतः अनावेदक विभाग के कार्य की प्रकृति एवं कर्मचारियों की संख्या को दृष्टिगत रखते हुये यह माना जाता है कि अनावेदक विभाग इन्जीनियरिंग उद्योग है व उस पर म०प्र०औ०सं०अधि० 1960 के प्रावधान प्रभावशील है। इस संबंध में माननीय उच्च न्यायालय म०प्र० का न्याय दृष्टांत भारत चन्द्र विरूद्ध म०प्र० शासन एवं अन्य (1993 एम०पी०एल०जे० 159) अवलोकनीय है। अतः यह वाद प्रश्न प्रार्थी के हित में निर्णीत किया जाता है।

6-वाद प्रश्न क्र. 1 :-

माननीय उच्च न्यायालय म.प्र. की पूर्ण पीठ के न्यायदृष्टांत अधीक्षण यंत्री विरुद्ध देवप्रकाश श्रीवाश (1999)1(एम.पी.जे.आर.1) के प्रकाश में अनावेदक विभाग शासन को एक उपक्रम है व उस पर स्तरीय स्थायी आदेश प्रभावशील है। उक्त को ही दृष्टिगत रखते हुए प्रार्थी के वर्तमान प्रकरण पर विचार किया जा रहा है।

7-प्रार्थी ने कहा कि मेरी नियुक्ति अनावेदक विभाग में चौकीदार के रिक्त पद पर दिनांक 29.4.89 को की गई थी, तब से मैं लगातार विभाग में कार्य करता चला आ रहा हूँ। मेरा कार्य संतोषजनक है। प्रमाणित दस्तावेज प्रदर्श पी-1 लगायात पी-5 से इस बात की पुष्टि होती है कि प्रार्थी चौकीदार के पद पर कार्य कर रहा है। प्रतिप्रार्थी साक्षी बी.डी.तिवारी ने भी कहा है कि प्रार्थी हमारे विभाग में दै.वे.भो.कर्मचारी के रूप में दिनांक 29.4.89 से कार्यरत है। विपक्षी साक्षी ने जिरह में स्वीकार किया है कि प्रार्थी नियुक्ति दिनांक से कार्य कर रहा है। मेरे पास प्रार्थी के संबंध में कोई चेतावनी शिकायत नहीं आई। प्रतिप्रार्थी साक्षी ने मुख्य परीक्षण में यह भी कहा है कि प्रार्थी से लगातार कार्य नहीं लिया गया है किन्तु अपने उक्त कथन के समर्थन में उसने कोई दस्तावेजी प्रमाण प्रस्तुत नहीं किया है। अतः उक्त तथ्य सिद्ध नहीं हुआ है। अतः विपरीत निष्कर्ष यही निकाला जाता है कि प्रार्थी लगातार कार्य कर रहा है। प्रकरण में आई साक्ष्य से यह सिद्ध है कि प्रार्थी ने नियुक्ति दिनांक से 6 माह से अधिक समय तक लगातार चौकीदार के पद पर कार्य कर लिया है अतः उसका कार्य संतोषजनक है। इसका अर्थ यह हुआ कि उसने स्तरीय स्थायी आदेश 2 (6) के परन्तुक की अपेक्षा पूर्ण कर चौकीदार के पद पर नियमित स्थापना का स्थायी वर्गीकृत होने एवं उक्त स्थाई पद का नियमित स्थापना का वेतनमान पाने की पात्रता प्राप्त कर ली है।

8- प्रार्थी ने अपने कथन में रिक्त पद पर नियुक्त हो कर कार्यरत होना बताया है, जबकि विपक्षी साक्षी तिवारी का कहना है कि विभाग में चौकीदार का स्वीकृत, रिक्त पद नहीं है। उसने अपने कथन के समर्थन में प्रदर्श डी-1 का दस्तावेज प्रदर्शित कराया है। स्तरीय स्थायी आदेश 2(6) के तहत रिक्त पद का होना आवश्यक नहीं है। इस संबंध में माननीय उच्च न्यायालय म.प्र. का न्यायदृष्टांत एम.पी.एस.आर.टी.सी. विरुद्ध हरीश जयन्ती प्रसाद (1990 एम.पी.एल.जे. 97), एम.पी.एस.आर.टी.सी. विरुद्ध अवधेश प्रताप सिंह (1979 एम.पी.एल.जे. 325), बिजली कर्मचारी संघ विरुद्ध एम.पी.ई.बी. (1986 एम.पी.एल.जे. 285) इंजीनियर-इन-चीफ विरुद्ध श्यामलाल (2001 एम.पी.एल.एस.आर. 505) एवं इंजीनियर-इन-चीफ विरुद्ध बुधाराव एवं अन्य (2002) 1 (एम.पी.एल.जे. 385)

अवलोकनीय है। अतः प्रार्थी उक्त न्यायदृष्टांतों के प्रकाश में चौकीदार के पद पर स्थायी वर्गीकृत किये जाने एवं न्यायदृष्टांत म.प्र. शासन विरुद्ध रामप्रकाश (1989 जे.एल.जे. 90) के पैरा 12 के प्रकाश में उक्त स्थाई पद का वेतनमान पाने का अधिकारी है।

9 प्रार्थी उपरोक्त दोनों सहायता माननीय उच्च न्यायालय म.प्र. के न्यायदृष्टांत इंजीनियर-इन-चीफ विरुद्ध बुधाराव (2002) 1 (एम.पी.एल.जे. 385) के प्रकाश में इस आदेश की तारीख से प्राप्त करने का अधिकारी है। इस प्रकार वाद प्रश्न क्र.1 का निराकरण उपरोक्तानुसार किया जाता है।

10- वाद प्रश्न क्र.-3

परिणाम स्वरूप प्रतिप्रार्थीगण को आदेशित किया जाता है कि वे इस आदेश की तारीख से 30 दिवस के अन्दर प्रार्थी को चौकीदार के पद पर नियमित स्थापना में स्थाई वर्गीकृत कर 90 दिवस के अन्दर उक्त स्थाई पद का नियमित स्थापना का वेतनमान एवं वेतनमान के अन्तर की राशि प्रदान करें। उभयपक्ष अपना-अपना वाद व्यय स्वयं वहन करें।

(व्ही.के.कोष्टी)
Presiding Officer
Labour Court Rewa (MP)

आदेश खुले न्यायालय में घोषित किया गया।

(व्ही.के.कोष्टी)
Presiding Officer
Labour Court Rewa (MP)

14

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18

सत्य प्रतिबिम्ब

न्यायालय पीठाधीन अधिकारी श्री न्यायालय टी.पी. ०५०.

५०५० २९५/एमपीआईआरएच/९५

राजकुमार मिश्रा जनक रामदेव प्रसाद मिश्रा उम्र २३ वर्ष चौकीदार [दे. के. मो.]
लोक स्वास्थ्य यांत्रिकी परियोजना मण्डल टी.पी. म.पु.

आदेशक,

प्रमाण

1. मध्य प्रदेश शासन द्वारा तयित लोक स्वास्थ्य यांत्रिकी विभाग वल्लभ शास्त्री मोराला ५०५०५
2. मुख्य अभियंता, लोक स्वास्थ्य यांत्रिकी विभाग जबलपुर परियोजना जबलपुर म.पु.
3. अधीक्षक यंत्री, लोक स्वास्थ्य यांत्रिकी परियोजना मण्डल टी.पी. जिरहुला टी.पी.
4. कार्यपालन यंत्री, लोक स्वास्थ्य यांत्रिकी परियोजना मण्डल टी.पी. रानी तालाब टी.पी.
5. सहायक यंत्री, लोक स्वास्थ्य यांत्रिकी परियोजना मण्डल टी.पी. रानी तालाब टी.पी.

आदेशक,

आदेश दिनांक २३.१०.२०१६

ग्राहक ने यह प्रार्थना पत्र ५०५०५आईआरएच ०१९६० की धारा ३१(३) एवं ६१ के अंतर्गत उसे चौकीदार के पद पर स्थायी वर्गीकृत कर तदनुसार वेतनमान दिया जाने का वास्तविक प्रस्तुत किया है।

- 2- ग्राहक का आवेदन पत्र देखे में इस प्रकार है कि उसे आदेशक ५०५ ने ५०५ के लिए चौकीदार के रिक्त पद पर नियुक्त किया गया था, तब से वह लगातार कार्य कर रहा है। उक्त कार्य तृतीयक है। उसने ६ माह से अधिक ज्यादा कार्य कर लिया है। इसलिए उसे स्थायी कर्मचारी के स्वरूप प्राप्त हो गये है, किन्तु उसे उसके नियुक्ति किये जाने के बावजूद भी स्थायी कर्मचारी घोषित नहीं किया गया और न ही स्थायी कर्मचारी का नाम प्रदान किया जा रहा है।
- 3- ग्राहक ने कहा है कि आदेशक संस्थान अयोग नहीं है तथा इस पर ५०५आईआरएच ०१९६० एवं राष्ट्रीय स्थायी आदेश प्रभावशाली नहीं होते हैं। आदेशक की दिनांक २९.५.०९ या कमी भी चौकीदार रिक्त पद पर नियुक्त नहीं की गई है। इसलिए उसके द्वारा लगातार कार्य करने एवं संतोषजनक होने का प्रश्न ही नहीं है। तभी तथ्य यह है कि विभाग में स्थायी तौर पर कार्य की आवश्यकता अनुसार स्वीकृत, मंडल टी.पी. एवं आवेदन पर वह तत्काल सेवा में। तब से तब से समय-समय पर कार्य करता रहा है। उसने कभी भी लगातार कार्य नहीं किया है। उसने लगातार ६ माह भी कार्य नहीं किया है। और उसे स्थायी कर्मचारी के स्वरूप प्राप्त होने का प्रश्न ही नहीं है।
- 4- उपरोक्त अभियंतों के आधार पर ३ माह प्रश्न निवारित किये गये हैं, जिनका निराकरण निम्नानुसार किया जा रहा है -

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165

13

निवेदन

चौकीदार के पद पर रखाई किये जाने का

अभिप्रेत है २

2. क्या प्रतिपार्थी तंत्रस्थान पर म.प्र.जी.सं. अधिनियम

सन् 1960 के प्रावधान लागू नहीं होते हैं २

3. सहायता एवं व्यय २

5- वाद प्रश्न क्र० 2 :-

उक्त संबंध में प्रार्थी ने कहा है कि मेरे विभाग में 100 से अधिक कर्मचारी कार्यरत हैं। विभाग द्वारा पानी सप्लाई एवं टंकी निर्माण का कार्य किया जाता है। प्रार्थी के उक्त कथन का प्रतिपार्थी ताक्षी बी०डी०एन०एन०एन० द्वारा खंडन नहीं किया गया है। अतः अनापेक्षक विभाग के कार्य की प्रकृति एवं कर्मचारियों की संख्या को दृष्टिगत रखते हुए यह माना जाता है कि अनापेक्षक विभाग इंजीनियरिंग उद्योग है। व उत पर म.प्र.जी.सं. अधि. 1960 के प्रावधान प्रभावशील है। उक्त संबंध में माननीय उच्च न्यायालय म०प्र० का न्याय-दुष्टांत भारतवर्ष विरुद्ध- म०प्र०शासन एवं अन्य [1993 एम.पी.एन.ने. 1596] अवलोकनीय है। अतः यह वाद प्रश्न प्रार्थी के हित में निर्णित किया जाता है।

6- वाद प्रश्न क्र० 1 :-

माननीय उच्च न्यायालय म०प्र० की पूर्ण पीठ के न्यायदुष्टांत अधीन पूर्ण विरुद्ध- देवप्रकाश शीमाश [1999] 1 एम०पी०एन०एन०एन० 1 के प्रकाश में अनापेक्षक विभाग शासन का एक उपक्रम है। व उत पर स्तरीय स्थायी अग्रिम प्रभावशील है। उक्त को ही दृष्टिगत रखते हुए प्रार्थी के वर्तमान प्रकरण पर विचार किया जा रहा है।

7- प्रार्थी ने कहा है कि मेरी नियुक्ति अनापेक्षक विभाग में चौकीदार रिक्त पद पर दिनांक 29.4.89 को की गई थी, तब से मैं लगातार विभाग कार्य करता आ रहा हूँ। मेरा कार्य संतोषजनक है। प्रमाणित दस्तावेज प्रदीप पी-1 लगायात पी-5 से इस बात की पुष्टि होती है कि प्रार्थी चौकीदार पद पर कार्य कर रहा है। प्रतिपार्थी ताक्षी बी०डी०एन०एन० ने भी कहा है कि प्रार्थी हमारे विभाग में दौरे/भौगो कर्मचारी के रूप में दिनांक 29.4.89 से कार्यरत है। विपक्षी ताक्षी ने जिरह में स्वीकार किया है कि प्रार्थी नियुक्ति दिनांक से कार्य कर रहा है। मेरे पास प्रार्थी के संबंध में कोई वेताफनी, शिकायत नहीं आती। प्रतिपार्थी ताक्षी ने मुख्य परीक्षण में यह भी कहा है कि प्रार्थी से लगातार कार्य नहीं लिया गया है। किन्तु अपने उक्त कथन के संकेत में इसने कोई दस्तावेजी प्रमाण प्रस्तुत नहीं किया है। अतः उक्त सत्य सिद्ध नहीं हुआ है। अतः विस्तृत निवेदन पेशी निकाला जाता है कि प्रार्थी लगातार कार्य कर रहा है। प्रकरण में जोई ताक्ष्य से यह सिद्ध है कि प्रार्थी ने नियुक्ति दिनांक से 6 महीने तक लगातार चौकीदार के पद पर कार्य कर

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59

मिला है अतः उसका कार्य संतोषजनक है। इसका अर्थ यह हुआ कि उसने स्तरीय स्थायी आदेश 286 के त्र परम्पूक की अपेक्षा पूर्ण कर चौकीदार के पद पर नियमित स्थापना का स्थायी वर्गीकृत होने एवं उक्त स्थाई पद का नियमित स्थापना का वेतनमान पाने की वाकता प्राप्त कर ली है।

8- प्रार्थी ने अपने कथन में रिक्त पद पर नियुक्त हो कर कार्यरत होना बताया है, जबकि सिधी साक्षी तिवारी का कहना है कि विभाग में चौकीदार का स्वीकृत, रिक्त पद नहीं है। उसने अपने कथन के समर्थन में पूर्वी डी-1 का दस्तावेज प्रदर्शित किया है। स्तरीय स्थायी आदेश 286 के अंतर्गत रिक्त पद का होना आवश्यक नहीं है। इस संबंध में माननीय उच्च न्यायालय म०प्र० का न्यायद्वारा 24.04.1990 एम.पी.एल.टी.सी. विस्तार-हरीश्वर व्यन्ती प्रसाद 1990 एम.पी.एल.जे. 97 एम.पी.एल.टी.सी. विस्तार-अपेक्षा प्रताप सिंह 1979 एम.पी.एल.जे. 325, बिजली कर्मचारी संघ विस्तार-एम.पी.ई.डी. 1986 एम.पी.एल.जे. 285 इंजीनियर-इन-चीफ विस्तार-श्यामलाल 2001 एम.पी.एल.टी.सी. 505 एवं इंजीनियर-इन-चीफ विस्तार-बुधाराव एवं अन्य 2002 11 एम.पी.एल.जे. 385 अवलोकनीय है। अतः प्रार्थी उक्त न्यायद्वारा के प्रकाश में चौकीदार के पद पर स्थायी वर्गीकृत किये जाने एवं न्यायद्वारा म०प्र० शासन विस्तार-रोमूकाश 1989 जे०से०जे० 90 के पैरा 12 के प्रकाश में उक्त स्थाई पद का वेतनमान पाने का अधिकारी है।

9- प्रार्थी उपरोक्त दोनों सहायक माननीय उच्च न्यायालय म०प्र० के न्यायद्वारा इंजीनियर-इन-चीफ विस्तार-बुधाराव 2002 11 एम०पी०एल०जे० 385 के प्रकाश में इस आदेश की तारीख से प्राप्त करने का अधिकारी है। इस प्रकार बाद प्रश्न 90 का निराकरण उपरोक्तानुसार किया जाता है।

10- बाद प्रश्न 90 3 :-

परिणाम स्वयं प्रतिप्रार्थीगण को आदेशित किया जाता है कि वे इस आदेश की तारीख से, 30 दिवस के अन्तर प्रार्थी को इसके अन्तर्गत चौकीदार के पद पर नियमित स्थापना में स्थाई वर्गीकृत कर 90 दिवस के अन्तर उक्त स्थाई पद का नियमित स्थापना का वेतनमान एवं वेतनमान के अन्तर की राशि प्रदान करें। अन्य पक्ष अपना-अपना बाद अर्थ स्वयं करें।

प्रसिद्धि अधिकारी
Presiding Officer

Labour Court New Delhi

आदेश को ज्ञात किया गया।

प्रसिद्धि अधिकारी
Labour Court New Delhi

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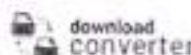
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Annexure - (E)
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Supreme Court of India**Mahendra L. Jain & Ors vs Indore Development Authority & ... on 22 November, 2004**

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:

JUDGMENT WITH CIVIL APPEAL NOS.334 & 335 OF 2002 S.B. SINHA, 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.50.50 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.

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 & Kashmir & 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 law, 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 Municipal 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.



This judgement ranked 2 in the hitlist. (Hitlist Main Judgement)

Referred 152 times...

State of M.P. v. Lalit Kumar Verma, (SC) : Law Finder Doc Id # 125031

2007(1) S.C.T. 620 : 2007 AIR (SC) 528 : 2007(1) LLJ 789 : 2007 LIC 987 : 2007(2) SLR 74 : 2007(1) SCC 575 : 2006(12) Scale 642 : 2006(Sup9) SCR 591 : 2007 AIR (SCW) 70 : 2007(1) LLN 600 : 2007(112) FLR 345 : 2007(1) SCC (L&S) 405 : 2007(3) JabLJ 26

SUPREME COURT OF INDIA

Before :- S.B. Sinha and Markandey Katju, JJ.

Civil Appeal No. 5185 of 2006 (Arising out of S.L.P. (C) No. 3080 of 2005). D/d. 24.11.2006

State of M.P. and others - Appellants

Versus

Lalit Kumar Verma - Respondent

For the Appellants :- S.K. Dubey, Sr. Advocate, Amit Mishra and B.S. Banthia, Advocates.

For the Respondent :- Ashok Mathur, Advocate.

A. Madhya Pradesh Industrial Relations Act, 1960 - Constitution of India, Article 16 - Industrial Disputes Act, 1947, Section 25F - Daily wager - Termination of service - Compliance of provisions of 1947 Act - Whether applicable - Workman claimed classification in permanent category prior to termination - Held, respondent was not appointed against clear vacancy as per statutory Rules in a permanent post, was not given ticket of permanent employee, working on daily wages alone would not entitle him to status of permanent employee - Policy of state regarding regularisation has no application in case of respondent and is even unconstitutional being hit by Article 16 of Constitution - Interest of justice would be subserved if benefit already given to respondent shall not be recovered and he be paid Rs. 1,50,000 as compensation and costs for condoning massive delay in filing SLP.

[Paras 6, 9, 15, 19 and 20]

B. Constitution of India, Article 12 - Irregular and illegal appointment - Distinction between - Held, in event appointment is made in total disregard of constitutional scheme as also recruitment Rules framed by employer which is State within meaning of Article 12 of constitution, recruitment would be an illegal one but where substantial compliance of constitutional scheme as also Rules have been made appointment may be irregular in the sense that some provisions of Rules might not have been strictly adhered to.

[Para 11]

Cases referred :

State of Madhya Pradesh v. Yogesh Chandra Dubey, 2006(4) SCT 265 (SC) : [(2006)9 SCALE 73 : (2006)8 SCC 67].

Mahendra L. Jain v. Indore Development Authority, 2005(1) SCT 146 (SC) : [(2005) 1 SCC 639].

M.P. Housing Board v. Manoj Shrivastava, 2006(1) SCT 807 (SC) : [(2006)2 SCC 702].

Municipal Council, Sujapur v. Surinder Kumar, (2006)5 SCC 173.

Indian Drugs and Pharmaceuticals Ltd. v. Workmen, Indian Drugs and Pharmaceuticals Ltd., 2007(1) SCT 214 (SC).

Secretary, State of Karnataka v. Umadevi, 2006(2) SCT 462 (SC) : [(2006) 4 SCC 1].

Mineral Exploration Corpn. Employees Union v. Mineral Exploration Corpn. Ltd., 2006(3) SCT 802 (SC) : [(2006) 6 SCC 310].

National Fertilizers Ltd. v. Somvir Singh, 2006(3) SCT 67 (SC) : [(2006)5 SCC 493].

R.S. Garg v. State of U.P., 2006(3) SCT 682 (SC) : [2006(7) SCALE 405].

State of Gujarat v. Karshanbhai K. Rabari, 2006(3) SCT 624 (SC) : [(2006) 6 SCC 21].

Principal, Mehar Chand Polytechnic v. Anu Lamba, 2006(4) SCT 49 (SC) : [(2006)7 SCC 161].

B.N. Nagarajan v. State of Karnataka [(1979)4 SCC 507].

JUDGMENT

S.B. Sinha, J. - Leave granted.

2. 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 there against 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.

1

3. 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. v. Yogesh Chandra Dubey & Ors., 2006(4) SCT 265 (SC) : [(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.

4. 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.

5. 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."

6. 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.

7. In **Mahendra L. Jain & Ors. v. Indore Development Authority & Ors.**, 2005(1) SCT 146 (SC) : [(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,

240

194

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."

8. The said decision shall apply in all fours to the facts of the present case. (See also **M.P. Housing Board & Anr. v. Manoj Shrivastava**, 2006(1) SCT 807 (SC) : [(2006)2 SCC 702], **Municipal Council, Sujampur v. Surinder Kumar**, (2006)5 SCC 173 and **Indian Drugs and Pharmaceuticals Limited v. Workmen, Indian Drugs and Pharmaceuticals Limited**, Civil Appeal No. 4996 of 2006, decided on 16.11.2006 : 2007(1) SCT 214 (SC))

9. 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 regularised in service having regard to the Constitution Bench decision of this Court in **Secretary, State of Karnataka & Ors. v. Umadevi & Ors.**, 2006(2) SCT 462 (SC) : [(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 above referred 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 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."

10. Strong reliance has also been placed by Mr. Mathur upon a Division Bench decision of this Court in **Mineral Exploration Corpn. Employees Union v. Mineral Exploration Corpn. Ltd. & Anr.**, 2006(3) SCT 802 (SC) : [(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."

11. 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.

12. In **National Fertilizers Ltd. v. Somvir Singh, 2006(3) SCT 67 (SC) : [(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."

(242)

13. In **R.S. Garg v. State of U.P. & Ors., 2006(3) SCT 682 (SC) : [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. v. Karshanbhai K. Rabari & Ors., 2006(3) SCT 624 (SC) : [(2006) 6 SCC 21]**}

Yet, recently in **Principal, Mehar Chand Polytechnic & Anr. v. Anu Lamba & Ors., 2006(4) SCT 49 (SC) : [(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."

14. 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. v. State of Karnataka & Ors. [(1979) 4 SCC 507]**.

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

16. 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.

17. 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.

243 197

18. 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.

19. 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.

20. 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.

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

Appeal allowed.

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The Companies Act, 1956
The Industrial Disputes Act, 1947
Article 309 in The Constitution Of India 1949
Section 617 in The Companies Act, 1956
Article 311 in The Constitution Of India 1949

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Official Liquidator vs Dayananad & Ors on 4 November, 2008
Mr.Ramesh Vitthal Patil & Ors vs Kalyan Dombivli Municipal ... on 7 June, 2010
Mr.Ramesh Vitthal Patil & Ors vs Kalyan Dombivli Municipal ... on 7 June, 2010
Chief Conservator Of Forests vs Ashikque on 9 March, 2012
G.M., O.N.G.C., Shilchar vs O.N.G.C. Contractual Workers ... on 16 May, 2008



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Supreme Court of India

Hindustan Aeronautics Ltd vs Dan Bahadur Singh & Ors on 27 April, 2007

Author: G P Mathur

Bench: G.P. Mathur, A.K. Mathur

CASE NO.:

Appeal (civil) 2195 of 2007

PETITIONER:

Hindustan Aeronautics Ltd

RESPONDENT:

Dan Bahadur Singh & Ors

DATE OF JUDGMENT: 27/04/2007

BENCH:

G.P. Mathur & A.K. Mathur

JUDGMENT:

User Queries

government company and government

horticulture

hindustan aeronautics ltd

240 days

hindustan aeronautical

continuity of service

industrial establishment

trade union

executive functions

artificial breaks

faizabad

309

casual labour

'article 309 ORR army rules 1954'

article 309

indian drugs of pharmaceuticals ltd

indian drugs

on completion of 240 days

policy decision

against statutory rules

J U D G M E N T CIVIL APPEAL NOs. 2195 OF 2007 (@ Special Leave Petition (Civil) Nos.10478-10479 of 2005) G. P. MATHUR, J.

1. Leave granted.

2. These appeals, by special leave, have been preferred against the judgment and order dated 7.3.2005 of Allahabad High Court (Lucknow Bench), by which the special appeals preferred by the appellant herein were dismissed and the judgment and order dated 31.8.1999 passed by a learned Single Judge by which two writ petitions were disposed of was affirmed.

3. Hindustan Aeronautics Ltd. Muster Roll Trade Union Congress, Korwa, Sultanpur, filed Writ Petition No.10513 of 1990 against the appellant Hindustan Aeronautics Ltd., Korwa Division, Sultanpur (hereinafter referred to as 'the Company') & Ors., wherein the main relief claimed was as under :-

"Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to regularize the services of the members of the petitioner union fully described in Annexure No.1 and place them in the pay scale of the post of Mali and allow them and treat them as continuing in service with all benefits without any break."

It was averred in the writ petition that the petitioner union is a registered trade union under the provisions of the Trade Unions Act, 1926 with the Registrar, Trade Unions U.P., Kanpur, of daily rated Malies i.e. Muster Roll employees (workmen within the meaning of the Industrial Disputes Act) working in the establishment of the appellant herein. The petitioner union was seeking regularization of services of its members and their continuance in service without any break as well as equal pay for equal work. The members of the petitioner union whose names figure at serial nos. 1 to 77 in Annexure 1, are land losers as their land was acquired for establishment of appellant and the remaining persons are non land losers. The members of the petitioner union were continuing as daily rated Malies for the last about 5 to 7 years with 2-3 days break on 2 or 3 occasions in each month although the work and post continue to be available. There was a policy of the State Government to provide employment to at least one member of the family whose land had been acquired and several Government orders had been issued in this regard. The daily rated Malies were getting much less amount as wages than those Malies who were in a regular scale of pay though there was no difference in work. In spite of work and posts being available, artificial break in service was created with a view to deprive them of their continuity in service. The members of the petitioner union had put in more than 240 days of continuous service in each calendar year, yet their services had not been regularized. They were entitled to not only regularization of their services but also the pay scale of the post of Mali as there was no difference in the nature of work and duties being performed by them from those who were in the regular pay scale.

4. The appellant herein filed a counter affidavit on the ground, inter alia, that the list of members contained in Annexure 1 to the writ petition was not within the knowledge of the appellant company. The writ petitioners were being engaged as casual labourers in the appellant Company as per the settlement arrived at on 6.3.1989 between the writ petitioners and the management of the Company with the intervention of Deputy Labour Commissioner, Faizabad. It was further averred that after acquisition of land by the State Government for the purpose of setting up of Korwa Division of the Hindustan Aeronautics Ltd., factory premises were established in 1983. Since a new area had to be developed and the work had to be started from scratch, initially a large number of workmen including Malies were engaged for horticulture and land scape development work. However, at the present juncture, the horticulture work was limited for maintenance of land and garden and thus the requirement of the labourers for this work had considerably decreased and there was no continuous and full time work. The land losers whose land had been acquired were given preference for this type of work. In the settlement arrived at on 6.3.1989 it was agreed that the land losers would be engaged for 20 days in a month and non land losers would be engaged for 15 days in a month on daily basis as casual unskilled labourers. The writ petitioners were paid daily wages which was much higher than the minimum wages prescribed under the Minimum Wages Act but they could not be paid wages like Malies employed in regular pay scale. The writ petitioners cannot be given appointment on regular post as there is no continuous and full time work of that nature in the company. It was further averred that the company is already having surplus labour and, therefore, a ban has been imposed on recruitment. The writ petitioners were being engaged essentially to fulfil the terms of the settlement arrived at on 6.3.1989. Lastly, it was submitted that the basic object of the company was to produce state of art avionics equipment for aircrafts which was being manufactured for use by the Indian Air Force. The horticulture activities are in no way connected with the production activities of the company. It was purely seasonal and intermittent in nature and there was not enough continuous and full time workload to justify the employment of a large work force on permanent basis. A supplementary counter affidavit was also filed wherein it was averred that at the initial stage manpower was required for levelling of the land for gardening purposes and for purposes related to horticulture development in factory premises as well as in residential area of the establishment. In the establishment there was no post for gardeners (Malies) and the sanction for horticulture work is being given by the General Manager of the establishment on the basis of man days required for work every month. After assessing the requirement of the establishment 2106 man days had been sanctioned in the establishment for different categories of casual workmen. The sanction given for the month of December 1998 would show that there are 78 man days for skilled grade and 2024 man days for unskilled casual workmen. The number of man days of individual workman differ in every month. The excess (balance) number of man days from land losers/skilled category was distributed every month amongst the unskilled casual workmen. A

settlement in this regard was arrived at on 26.7.1995 before the Assistant Labour Commissioner, Faizabad. After the settlement, a cogent scheme had been framed by the establishment based on reasonable classification for engagement of the casual labour for the purpose of meeting the requirement of horticulture work in the establishment. It was further averred in the counter affidavit that a policy decision had been taken by the Board of Directors on 19.5.1987 by which the induction of manpower in the establishment has been frozen as on 30.5.1987. Therefore, in view of the policy decision and absence of any post, the writ petitioners could not be engaged on regular basis nor could they be regularized on any post in the establishment. The said policy decision had been taken at the apex level looking to the financial stringency and surplus manpower and also lean supply of orders and the fact that the activity for which the writ petitioners are being engaged is only incidental.

5. Writ Petition No.10524 of 1990 was filed by few individuals claiming the same relief as in Writ Petition No.10513 of 1990 and was based on same grounds.

6. The learned Single Judge, relying upon some decisions of this Court and also of the High Court, disposed of both the writ petitions by a common order and the operative part of the order is being reproduced below :-

"Admittedly, petitioners are engaged as daily rated workers in the factory and the factory is giving them work for 18-20 days and is taking work for these days from the petitioners. Therefore, it cannot be believed that there is not work and the respondents are only engaging the petitioners in order to provide them livelihood. If there is no work, the respondents company could request the Labour Commissioner to stop the engagement. No employer can pay his workmen without work. It shows that the work is there.

In this background the contention of the petitioners that the artificial break in service is being created by the respondents in order to deny the regularization of petitioners who having completed 240 days and having rendered more than 8 years of services satisfactorily are entitled for their regularization, and the artificial break is liable to be ignored.

In view of the aforesaid facts these petitions are disposed of with a direction to the respondents to absorb the petitioners as regular employees or such of them as may be required to do the quantum of work which may be available on perennial basis may be absorbed if they are otherwise found fit and they will be paid wages of regular employees. This shall be done within three months from the production of certified copy of this order.

"However, the rest of the petitioners shall not be disengaged and shall be allowed to continue as per settlement dated 26.7.1995 and shall be regularized as and when the perennial work is available. The question as to whether the work of perennial nature is available or not shall be decided by the Deputy Labour Commissioner who shall decide the same every year in order to facilitate the absorption of the petitioners. No order as to costs."

7. Feeling aggrieved by the directions issued by the learned Single Judge, the appellant herein preferred special appeals but the same were dismissed by the impugned order dated 7.3.2005 on the finding that there was no illegality or infirmity in the judgment and order of the learned Single Judge by which the writ petitions were disposed of.

8. Before considering the contentions raised by learned counsel for the parties, it is necessary to set out the terms of the settlement which was entered into by the parties before the Deputy Labour Commissioner, Faizabad. Paras 1 to 3 of the settlement dated 6.3.1989 which are relevant for the controversy in hand are being reproduced below :-

"1. The land losers shall be given preference in engaging for the work in Horticulture Department and they will be given the job for 20 days a month as required.

2. Other casual workers (other than land losers) who have completed 240 days in a calendar year, shall be given the job for 15 days a month as required.

3. Case of other casual labourers of Horticulture Department who are not covered under above paras (1) or (2), efforts will be made to engage them through other departments. As regards their

work and condition of duty, H.A.L. Management will have no responsibility."

Para 2 of the settlement dated 26.7.1995 which was arrived at by the parties before the Assistant Labour Commissioner, Faizabad, which is relevant, is being reproduced below :- "2. Demand No.9 which is related to distribution of working days, both parties agreed that Employer will distribute all the available and approved man days among all the labourers. 67 land losers and two skilled labourers will be given work every month from available working days. In this way remaining man days after utilization form 2106 man days will be equally distributed among the other 20 non land loser labourers. Balance part or fraction of the day will not be taken into account for this purpose."

9. Shri R.N. Trivedi, learned counsel for the appellant, has submitted that Hindustan Aeronautics Ltd. is a Government Company within the meaning of Section 617 of the Companies Act and the persons employed in the factory of the appellant Company at Korwa are not government servants but are mainly governed by the provisions of Industrial Disputes Act and other allied enactments. A government servant enjoys a status on account of constitutional provisions and rules framed under Article 309 of the Constitution, which is not the case with the members of the respondent union. Learned counsel has submitted that the respondent union having entered into settlements with the appellant on 6.3.1989 and 26.7.1995 can claim rights only on the basis of the said settlements and no claim for regularization or permanency in service or grant of pay scale at par with those who are in the regular establishment of the appellant is maintainable. Learned counsel for the respondents has, on the other hand, submitted that the members of the respondent union had worked for more than 240 days in a year for more than 6-7 years before the filing of the writ petition. An artificial break of 2-3 days was deliberately created twice or thrice in a month in their service just to deprive them of continuity in service. He has further submitted that the concerned workmen having worked for a very long period and work being available, they should be given permanent status and also the same pay scale which is being given to those who are in the regular establishment of the appellant.

10. We have considered the submissions made by learned counsel for the parties. The position of a government servant is entirely different from that of a workman who is working in an industrial establishment like the appellant Company. A government servant enjoys a status and a security of tenure on account of certain constitutional provisions. In *Union Public Service Commission v. Girish Jayanti Lal Veghela & Ors.* (2006) 2 SCC 482 it was held as under :-

"In the case of a regular government servant there is undoubtedly a relationship of master and servant but on account of constitutional provisions like Articles 16, 309 and 311 his position is quite different from a private employee. Thus, employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules framed by the Government in exercise of power conferred by Article 309 of the Constitution and the service rules can be unilaterally altered by it."

11. An appointment in government may be on probation or in temporary capacity or permanent in nature. A permanent government servant has a right to hold the post and he cannot be dismissed or removed or reduced in rank unless the requirements of Article 311 of the Constitution or the Rules governing his service are complied with.

12. The appellant, Hindustan Aeronautics Ltd., is a government company within the meaning of Section 617 of the Companies Act. What will be the legal position of a Government Company and whether its employees can be treated to be government servants was examined in *Heavy Engineering Mazdoor Union v. State of Bihar and Ors.* (1969) 1 SCC 765 and it was held as under in para 4 of the reports:

".....It is an undisputed fact that the company was incorporated under the Companies Act and it is the company so incorporated which carries on the undertaking. The undertaking, therefore, is not one carried on directly by the Central Government or by any one of its departments as in the case of posts and telegraphs or the railways....."

in *A.K. Bindal v. Union of India* (2003) 5 SCC 163 the difference between an employee of a government and an employee of a Government Company was pointed out and it was held : "17. The legal position is that identity of the Government Company remains distinct from the government. The Government Company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire share holding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the Government Company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (See *Pyare Lal Sharma v. Managing Director* (1989) 3 SCC 448)."

An employee working in an industrial establishment enjoys a limited kind of protection. He may lose his employment in various contingencies which are provided under the Industrial Disputes Act such as lay off as provided in Section 25-C, retrenchment as provided in Section 25-F, transfer of industrial establishment or management of an undertaking as provided in Section 25-FF, closure of undertaking as provided in Section 25-FFF. He may be entitled to notice or wages in lieu of notice and monetary compensation depending upon the length of service put in by him. But the type of tenure of service normally enjoyed by a permanent employee in Government Service, namely, to continue in service till the age of superannuation, may not be available to an employee or workman working in an industrial establishment on account of various provisions in the Industrial Disputes Act where his tenure may be cut short not on account of any disciplinary action taken against him, but on account of a unilateral act of the employer. Therefore, the claim for permanency in an industrial establishment has to be judged from a different angle and would have different meaning.

13. In *B.N. Nagarajan & Ors. v. State of Karnataka & Ors.* (1979) 4 SCC 507, it was held that the words "regular" or "regularization" 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. Further, when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 thereof in contravention of the rules. This view has been approved by a Constitution Bench in *Secretary, State of Karnataka v. Uma Devi* (2006) 4 SCC 1 (para 16). It was emphasized here that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

14. The next question which requires consideration is whether completion of 240 days in a year confers any right on an employee or workman to claim regularization in service. In *Madhyamik Shiksha Parishad v. Anil Kumar Mishra & Ors.* (2005) 5 SCC 122 it was held that the completion of 240 days' work does not confer the right to regularization under the Industrial Disputes Act. It merely imposes certain obligations on the employer at the time of termination of the services. In *M.P. Housing Board & Anr. v. Manoj Shrivastava* (2006) 2 SCC 702 (paragraph 17) after referring to several earlier decisions it has been reiterated that it is 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. This view has been reiterated in *Gangadhar Pillai v. Siemens Ltd.* (2007) 1 SCC 533. The same question has been examined in considerable detail with reference to an employee working in a Government Company in *Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs & Pharmaceuticals Ltd.* 2007(1) SCC 408 and paragraphs 34 and 35 of the reports are being reproduced below:-

34. Thus, it is well settled that there is no right vested in any daily wage to seek regularization. Regularization can only be done in accordance with the rules and not de hors the rules. In the case of *E. Ramakrishnan and Ors. v. State of Kerala and Ors.* (1996) 10 SCC 565 this Court held that there can be no regularization de hors the rules. The same view was taken in *Dr. Kishore v. State of Maharashtra* (1997) 3 SCC 209 and *Union of India and Ors. v. Bishambar Dutt* (1996) 11 SCC 341. The direction issued by the Services Tribunal for regularizing the services of persons

who had not been appointed on regular basis in accordance with the rules was set aside although the petitioner had been working regularly for a long time.

35. In *Dr. Surinder Singh Jamwal and Anr. v. State of Jammu & Kashmir and Ors.* AIR 1996 SC 2775, it was held that ad hoc appointment does not give any right for regularization as regularization is governed by the statutory rules.

15. In the judgment under challenge the High Court has issued a direction to absorb the members of the respondent union as regular employees or such of them as may be required to do the quantum of work which may be available on perennial basis and has issued a further direction that they will be paid the wages of regular employees. It has also been directed that such of the members of the respondent union who are not absorbed as regular employees shall not be disengaged and shall be allowed to continue as per settlement dated 26.7.1995 and shall be regularized as and when the perennial work is available. The direction issued by the High Court in effect has two components i.e. creation of posts and also payment of regular salary as in absence of a post being available a daily wager cannot be absorbed as a regular employee of the establishment. This very question has been considered in *Indian Drugs & Pharmaceuticals Ltd.* (supra) and, therefore, we do not consider it necessary to refer to the various reasons given and decisions cited therein. Paras 37, 38 and 47 of the reports, wherein the Bench recorded its conclusions read as under :-

37. Creation and abolition of posts and regularization are a purely executive function vide *P.U. Joshi v. Accountant General, Ahmedabad and Ors.* (2003) 2 SCC

632. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, too, must know its limits.

38. The respondents have not been able to point out any statutory rule on the basis of which their claim of continuation in service or payment of regular salary can be granted. It is well settled that unless there exists some rule no direction can be issued by the court for continuation in service or payment of regular salary to a casual, ad hoc, or daily rate employee. Such directions are executive functions, and it is not appropriate for the court to encroach into the functions of another organ of the State. The courts must exercise judicial restraint in this connection. The tendency in some courts/tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situation can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary.

47. We are of the opinion that if the court/tribunal directs that a daily rate or ad hoc or casual employee should be continued in service till the date of superannuation, it is impliedly regularizing such an employee, which cannot be done as held by this Court in *Secretary, State of Karnataka v. Umadevi* (2006) 4 SCC 1, and other decisions of this Court."

16. In view of the discussion made above, the impugned judgment of the learned Single Judge which was affirmed in appeal by the Division Bench cannot be sustained and has to be set aside. The respondents are not entitled to the relief claimed by them.

17. The appeals are accordingly allowed. The judgment and order dated 31.8.1999 of the learned Single Judge and judgment and order dated 7.3.2005 of the Division Bench are set aside and the writ petitions filed by the respondents herein are dismissed. It is, however, made clear that in case there is any violation of the terms of the settlements on the part of the appellant herein, the respondents will be entitled to enforce their rights in accordance with law. No order as to costs.

Cites 8 docs - [View All]

Article 226 in The Constitution Of India 1949

The Companies Act, 1956

B.N. Nagarajan And Ors. vs State Of Karnataka And Ors. on 3 May, 1979

Article 136 in The Constitution Of India 1949

Section 617 in The Companies Act, 1956

Cited by 5 docs

T.M. Pokker vs Travancore Cochin Chemicals ... on 16 July, 2008

Bata India Limited vs The Fourth Industrial Tribunal on 18 June, 2010

Sudipta Mondal vs Arjun Kumar Dey & Ors on 16 December, 2010

State Of Gujarat vs Dipak Kumar Madhusudanbhai ... on 25 April, 2008

Tapi Irrigation Development ... vs Bhanudas Nathu Patil on 16 June, 2008

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Supreme Court of India

Hindustan Petroleum Corpn. Ltd vs Ashok Ranghba Ambre on 15 January, 2008

Author: C Thakker

Bench: C.K. Thakker, J.M. Panchal

CASE NO.:

Appeal (civil) 391 of 2008

PETITIONER:

HINDUSTAN PETROLEUM CORPN. LTD.

RESPONDENT:

ASHOK RANGHBA AMBRE

DATE OF JUDGMENT: 15/01/2008

BENCH:

C.K. THAKKER & J.M. PANCHAL

JUDGMENT:

J U D G M E N T ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 10819 OF 2005
C.K. THAKKER, J.

1. Leave granted.

2. The present appeal is filed by the Hindustan Petroleum Corporation Ltd. (Corporation for short) against judgment and final order dated January 28, 2005 in Writ Petition No. 661 of 1992 by the High Court of Judicature at Bombay. By the impugned order, the High Court allowed the writ petition filed by the respondent-writ petitioner and ruled that he was entitled to the status of permanent employee of the Corporation with effect from the date of filing of the petition i.e. March 16, 1992 and all the benefits accruing by virtue of such permanency.

3. Short facts giving rise to the present appeal are that appellant-Corporation is a Government Company within the meaning of Section 617 of the Companies Act, 1956. It is the case of the Corporation that the writ petitioner was engaged by the Corporation in 1984 on casual basis as an unskilled workman at its refinery at Bombay. The writ petitioner filed Writ Petition No. 661 of 1992 in the High Court by invoking Article 226 of the Constitution, inter alia, praying that he be declared as permanent workman on the post of Compounder/Dresser with effect from June 6,

User Queries
permanent employee
termination of services
c k thakker
petitioner is not workmen
hindustan petroleum
back wages
section 25f
petroleum
reinstate
25f

1987 in the Corporation. A prayer was also sought to direct the Corporation to extend to the writ petitioner all benefits accrued in his favour by virtue of his permanency with 18% interest. It appears from the record, however, that since the writ petitioner was engaged purely on ad hoc and temporary basis without following proper procedure of law and without there being any right in his favour, the Corporation stopped engaging him from June, 1996. Being aggrieved by the said action, the workman raised an industrial dispute. Failure report was submitted by the Conciliation Officer and the Central Government, in exercise of power under Section 10(d) read with Section 10(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) referred the dispute for adjudication to the Central Government Industrial Tribunal, Mumbai.

4. The Tribunal vide Award dated April 10, 2003, allowed the Reference. It was held that the workman was not a regularly appointed Compounder/Dresser but was a daily wage employee. But as he had worked for more than 240 days in the calendar year just preceding the date of his oral termination, the action amounted to retrenchment within the meaning of Section 25F of the Act and he was entitled to reinstatement with back wages. The Tribunal, however, made it clear that it was not considering the question of regularization of services of the workman because of two reasons;

(i) the Reference did not cover the question of regularization; and (ii) the workman had already filed a writ petition for the relief of regularization which was pending in the High Court. The Award passed by the Industrial Tribunal was challenged by the Corporation in the High Court. A Single Judge of the High Court as well as a Division Bench confirmed the said Award. The matter came to an end there and the award attained finality.

5. The writ petition which was instituted by the writ petitioner-workman then came up for hearing before the Division Bench of the High Court and as stated above, the High Court allowed the petition by making rule absolute and by directing the appellant-Corporation to make the writ petitioner permanent and to grant benefits with effect from the date of filing of the writ petition. The aforesaid order and directions issued in the writ petition by the High Court are challenged by the Corporation in the present appeal.

6. Notice was issued on May 11, 2005 and affidavit in reply and rejoinder were filed thereafter. The Registry was then directed to place the matter for final hearing and that is how the matter has been placed before us.

7. We have heard learned counsel for the parties.

8. The learned counsel for the appellant- Corporation submitted that the High Court was in grave error in directing the appellant- Corporation to make the writ petitioner permanent by granting all benefits with effect from 1992. It was submitted that the writ petitioner was never appointed in accordance with the recruitment procedure on regular basis. Nor he was qualified to be appointed as Compounder-cum-Dresser. No doubt, when the Corporation stopped engaging the workman in 1996, he raised an industrial dispute and in a Reference, Industrial Tribunal passed an Award of reinstatement in favour of the employee which was confirmed by the High Court. To that extent, therefore, the Corporation cannot make any grievance as the order has become final. The workman was accordingly reinstated and was also paid back wages as per the directions in the Award. The counsel, however, submitted that the limited grievance of the appellant-Corporation is that the High Court, in exercise of power under Article 226 of the Constitution, could not have directed the Corporation to make the writ petitioner permanent and grant benefit on that basis from 1992. When initial appointment of the workman was illegal and he was not having requisite qualifications, it was not open to the High Court to grant relief which was claimed by the writ petitioner under Article 226 of the Constitution and the appeal deserves to be allowed.

9. The learned counsel for the respondent-workman, on the other hand, supported the order passed by the High Court. He submitted that when the action of termination of services of the workman was held to be bad and the Reference was allowed and Award was passed in favour of the workman granting reinstatement and full back wages, the order passed by the High Court in the writ petition could not be objected. It is a consequential action based on earlier award. Even otherwise, the workman was entitled to all the benefits including permanency and payment of

wages and other reliefs. It was made explicitly clear in the Award passed by the Industrial Tribunal that the relief of permanency was not considered in view of the fact that a petition instituted by the workman was pending in the High Court and ambit and scope of Reference was limited to termination of services of the workman. The High Court, therefore, considered the facts and circumstances and rightly granted relief in favour of the writ petitioner. It was also submitted that the petitioner could not be said to be not qualified to be appointed as Compounder/ Dresser. He was appointed as early as in 1984. Even prior to first termination, he had completed services of more than a decade. He had also passed S.S.C. examination as early as in 1969. He had obtained Nursing Certificate from St. John Ambulance Association of India. He had cleared First Aid Examination and was having experience of more than two decades. If, in the light of all these facts, the High Court granted relief in favour of the writ petitioner, it cannot be said that by doing so, the High Court had committed any illegality or impropriety and the said order requires interference in exercise of discretionary jurisdiction of this Court under Article 136 of the Constitution.

10. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. So far as termination of services of the workman is concerned, the question was decided in his favour in earlier proceedings which had become final and it is not open to the Corporation to argue that point. It has rightly been stated on behalf of the Corporation that the order holding termination of services of the workman being illegal and contrary to law had reached finality. An Award passed by the Industrial Tribunal was confirmed by a Single Judge as well as Division Bench of the High Court. The workman was reinstated and was also granted all benefits to which he was held entitled in those proceedings. But, it has come on record that at the time when the services of the workman were terminated in 1996, a writ petition filed by the workman was pending in the High Court. In the year 1992, the workman had approached the High Court for the status of permanency and all benefits flowing therefrom.

11. To us, however, the learned counsel for the appellant-Corporation is right in submitting that setting aside an action of termination of services being violative of Section 25F of the Act does not necessarily follow that the workman must be held entitled to the benefits claimed by him in the writ petition, namely, status of permanency and claim of regular pay scales and other benefits based on permanency. In our judgment, two things are distinct, different and operate in different areas. In Reference proceedings, the question before the Industrial Tribunal as also before the High Court was whether termination of services of the workman was in consonance with law. Once it was held that there was breach of Section 25F of the Act, it necessarily followed that the order of termination was in violation of law and direction was required to be issued in the form of reinstatement of the workman. The said order was, therefore, confirmed by the High Court. But our considered opinion, in the proceedings before the High Court under Article 226 of the Constitution as to permanency and other benefits on that basis, the writ petitioner could not contend that since the action of termination of his services was held to be illegal and he was ordered to be reinstated by Industrial Tribunal and the said Award was confirmed by the High Court, ipso facto, he ought to be treated as permanent employee of the Corporation and must be held entitled to the benefits claimed in the writ petition. To that extent, therefore, the order passed by the High Court is not in consonance with law.

12. Both the parties in this connection referred to several judgments in support of their respective contentions. We do not wish to deal with all those judgments since, in our opinion, law is well settled on the point. But as already noted earlier, the High Court, not only continued the appointment of the writ petitioner but observed that once the appointment was made and the workman was allowed to work for two decades, it would be hard and harsh to deny him the confirmation on the post.

13. The High Court further stated We, therefore, hold that the petitioner (workman- respondent herein) is entitled to the status of permanent employee of the Corporation and accordingly we make the rule absolute in terms of prayer clause (a) with modification that the petitioner would be entitled to permanency with effect from the date of filing of the petition i.e. 16.3.1992. Petition is accordingly disposed of.

14. Prayer (a) in the Writ Petition before the High Court reads thus:

(a) That this Honble Court be pleased to declare the petitioner to be a permanent workman of the respondents in the post of Compounder/ Dresser w.e.f. 6.6.1987 and direct the respondents to pay the petitioner all the benefits accruing by virtue of his permanency including fitment with annual increments in the appropriate grade with retrospective effect.

15. The High Court observed that the writ petitioner was working as Compounder/Dresser right from 1984. It was not disputed that there was requirement of Compounder/Dresser at the Refinery which was working all throughout seven days in a week. It also noted the observation of the Tribunal in earlier Award that if the policy decision was breached in the appointment of the workman, the appointment could not be said to be illegal or prohibited by law. Such appointment would be merely irregular but not illegal.

16. In our opinion, the High Court was in clear error in equating reinstatement of employee in service in earlier proceedings with confirmation and granting status of permanency. Continuation in or regularization of service of an employee and extending the benefit of confirmation or making him permanent are two different concepts. Before more than four decades, in *State of Mysore & Anr. v. S.V. Narayanappa*, (1967) 1 SCR 128, setting aside the order passed by the High Court of Mysore, this Court observed that the High Court erroneously proceeded on an assumption that regularisation meant permanence. The Court stated that regularization would not mean that the appointment would have to be considered as permanent.

17. Again, in *B.N. Nagarajan & Ors. v. State of Karnataka & Ors.*, (1979) 4 SCC 507, orders were passed by the State Government promoting certain officers as Assistant Engineers on a regular basis. It was argued that the regularization of the promotion gave it the colour of permanence and the appointments of the promotees as Assistant Engineers must, therefore, be deemed to have been made substantively. The Court held that the words regular or regularisation do not connote permanence. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments and cannot be construed so as to convey an idea of the nature of tenure of appointments.

18. In the case on hand, according to the appellant-Corporation, the workman was appointed on a purely ad hoc and temporary basis, without following due process of law. His name was never sponsored by the Employment Exchange nor an advertisement was issued for the purpose of filling the post to which the writ petitioner was appointed. Cases of other similarly situated persons were not considered and the appointment was not legal and lawful. In industrial adjudication, an order of termination was quashed as it was not in accordance with law. But that did not mean that the workman had substantive right to hold the post. The High Court was, therefore, wrong in directing the Corporation to make the writ petitioner permanent and to extend him all benefits on that basis from 1992. The said direction, therefore, has to go.

19. For the foregoing reasons, the appeal is allowed by setting aside the direction issued by the High Court ordering the appellant-Corporation to make the writ- petitioner (respondent herein) permanent employee of the Corporation and to grant all benefits on that basis with effect from the date of filing of writ petition.

20. We may, however, observe that since the writ petitioner is working with the appellant-Corporation since 1984 and by now, he has completed more than two decades, his case for permanency be considered by the Corporation sympathetically. If there is age bar in considering the case of the writ petitioner for permanent appointment, the appellant- Corporation will not treat the writ petitioner ineligible on that count in view of the fact that he is already in service of the Corporation since 1984. If there are statutory rules/administrative instructions/guidelines which require minimum educational qualification and/or experience, it is open to the Corporation to insist compliance with such rules/instructions/guidelines. But if there is power of relaxation with the Corporation or any of its Officers, the appellant-Corporation will consider that aspect as well keeping in view the fact that the writ petitioner was appointed in 1984, has completed service of more than twenty years and is having rich experience.

21. In the result, the appeal is allowed. The order passed and directions issued by the High Court are set aside but with the above observations. On the facts and in the circumstances, however, the

parties shall bear their own costs.

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Madhya Pradesh Industrial Tribunal, Indore

Single Bench : Justice S.P.Khare,
Presiding Officer.

Reference No.6 of 2008

Westchimi Madhya Pradesh
Engineering Udyog Shramik
Sangh, Mandsaur.

--- First Party.

Vs.

Executive Engineer,
Public Works Department,
Shajapur.

--- Second Party.

(Reference under Section 10 of the Industrial
Disputes Act, 1947, made by the Deputy
Labour Commissioner, M.P., Indore)

First party by Shri Girish Patwardhan, Advocate.

Second party by Shri Santosh Chaurasiya, Advocate.

AWARD

(Passed on 10th September, 2008)

(Pronounced on 11th September, 2008)

This is a reference under Section 10 of the Industrial Disputes Act, 1947, (hereinafter to be referred to as the Act), which has been made by the Deputy Labour Commissioner, Indore on 9.4.2008 for adjudication. The terms of reference are as under:-

" क्या संस्थान में रिक्त पद उपलब्ध है ? और क्या श्री लालजी पिता हीरालाल तथा अन्य 216 (कुल 217 संलग्न सूची अनुसार) ने सूची में उल्लेखित पदों के लिये निर्धारित अर्हता अर्जित की है ? यदि हाँ तो उक्त सेवानिवृत्तों को श्रम अधिनियमों के अन्तर्गत स्थायी/नियमित कर किस प्रकार के वेतनमान पाने की पात्रता आती है ? एवं इस तरह उक्त श्रमिकों को स्थायी/नियमित किये जाने से वरिष्ठ श्रमिकों पर कोई विपरीत प्रभाव तो नहीं पड़ेगा ? और क्या माननीय सर्वोच्च

-2-

विरुद्ध सुरेश कुमार वर्मा) 1998 Sol Case No. 040 में (नियमितिकार बाबद) दिये गये निर्णय दिनांक 24.1.96 तथा सिविल अपील नं. 7343/93 एवं 7047, 7048/02, 751/1995 (उड़ीसा राज्य एवं अन्य विरुद्ध बालाराम साहू एवं अन्य) में (समान कार्य समान वेतन के संबंध में) दिये गये निर्णय दिनांक 29.10.02 के विपरीत तो नहीं है ? यदि नहीं तो इस संबंध में नियोजक को क्या निर्देश दिये जाने चाहिए ?"

2. The first party Union is represented by Shri Jagdish Mishra who is said to be the President of the Union. It has submitted its statement of claim. The second party (employer) has submitted its reply. Both the sides have submitted documents and affidavits.

3. From the order of reference and the statement of claim submitted by the first party Union and its reply by the second party and from the documents and affidavits, it is found that Lalji and 216 other persons as per list annexed to the order of reference were appointed in Public Works Department on daily wages. They are working for several years. They have not been granted regular pay scale. They are being paid wages as per Minimum Wages Act, 1948. It is not in dispute that there are no "clear vacancies" (permanent posts) against which these daily wage employees may be appointed. The procedure for recruitment of regular employees has not been followed while engaging these persons on daily wages. The legal position is now well settled that such daily wage employees are not entitled to classification as permanent employees as per SSO 2(i) framed under the M.P. Industrial Employment (Standing Orders) Act, 1961.



as under :-

"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".

5 In Superintending Engineer, P.W.D. vs. Dev Prakash Shrivastava, 1999(1) MPLJ 466, the Full Bench of the High Court of M.P. laid down the law in para 4 as under:-

"Clause 2 (i) clearly says that 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. What it conveys is that a person would be entitled to be declared under this Standing Order as a permanent employee subject to the conditions that he has put in six months' satisfactory service against a clear vacancy. Therefore, one of the pre-condition is the existence of a clear vacancy, second is that he should have worked against the clear vacancy for a minimum period of six months and third is that his service should be satisfactory. It is irrelevant that a man might have worked for 10-15 years and if there is no permanent vacancy available and his service record is not satisfactory, then he cannot be classified as a permanent employee."

6. The above mentioned definition of "permanent employee" has been interpreted by the Supreme Court in several recent decisions. In State of M.P. vs. Onkar Prasad Patel, 2006 (108) FLR 347 = (2005) 13 SCC 489 it has been held by the Supreme Court: "In view of the clear definition of a "permanent employee", as given in the Standard Standing Order, the applicant/workman cannot be categorized as a permanent employee even though he may have completed six months satisfactory service. The other requirement that the service was rendered in a "clear vacancy" in one or more posts has to be established. The conditions are cumulative and are not independent of each other". The Supreme Court set aside the orders of the Labour Court, Industrial Court and the High Court taking contrary view. It has been observed by the Supreme Court in Para 3 of the above judgment: "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".

7. In M.P.Housing Board vs. Manoj Shrivastava, (2006) 2 SCC 702 the Supreme Court again held: "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".

8. In Para 10 of the above judgment the Court has



-5-

as under :-

"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 prescribed therefor".

9. Again in State of M.P. vs. Lalit Kumar Verma, AIR 2007 SC 528 the Supreme Court reiterated: "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".

10. In Secretary, State of Karnataka vs. Umadevi, AIR 2006 SC 1806 the Constitution Bench of the Supreme Court dealt with the cases of daily wage employees and laid down the law as under:-

" Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would

not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

While directing that appointments, temporary or casual, be regularized or made permanent, Courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain - not at arms length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment



-7-

Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules.

The argument that Art. 23 of the Constitution is breached the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

11. In State of M.P. vs. Yogesh Chandra Dubey, (2006) 8 SCC 67 the Supreme Court observed: "A post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. Regularisation is not a mode of appointment".

12. Further in Indian Dress ...

stated: "Unless there existed some rule (statutory) no direction for continuation in service or payment of regular pay scale could be issued in favour of a casual, adhoc or a daily rated employee. The Court cannot create a post where none exists nor issue any direction to absorb or regularise temporary employees nor continue them in service nor pay them salary of regular employees as these are purely executive or legislative functions".

13. In Hindustan Aeronautics Limited vs. Dan Bahadur Singh, AIR 2007 SC 2733 the petitioners were Malis working on daily wages. They had worked for about eight years on daily wages. They claimed parity with Malis working on regular pay scale. The Allahabad High Court directed that the petitioners be absorbed as regular employees and to pay them wages in regular pay scale. The Supreme Court found that the order of the Allahabad High Court has two components i.e. creation of posts and also payment of regular salary. The Supreme Court relying upon the earlier decisions in Manoj Shrivastava, Indian Drugs and Pharmaceuticals Limited and Umadevi's cases referred above set aside the order of the Allahabad High Court. It has been held that the Court cannot direct the employer to create permanent posts for absorbing the daily wage employees.

14. In Umadevi's case referred above in para 36 the Supreme Court made the following observations in this respect :-

" If the court were to void a contractual employment of this nature on the ground that the parties were



-9-

enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it".

15. It has been argued on behalf of the first party that in Umadevi's case it has been observed by the Supreme Court that those daily wage employees who have rendered 10 years of service should be considered by the appointing authority for grant of regular pay scale and, therefore, a direction should be given to the second party. This argument is not acceptable. The Supreme Court has given direction in respect of those employees only who have been appointed according to the procedure prescribed by law against clear vacancies and not in respect of those persons who have been appointed without sanction of regular posts, without following the procedure for regular recruitment. In any case if the first party feels that there is such a direction by the Supreme



employees in light of the observations of the Supreme Court. There is no need of any further direction by this Tribunal.

16. It has also been argued on behalf of the first party that these employees should be given atleast the minimum of the pay of regular pay scale. This argument has not been accepted by our High Court in M.P. Urja Vikas Nigam Limited vs. Rudra Prasad Mishra, 2008-1-LLJ-50 and, therefore, the employer cannot be directed to give the minimum of the pay scale to these 217 employees. These 217 employees whose names are given in the list annexed to the order of reference, who are working on daily wages, are not entitled classification as permanent employees. They are also not entitled to regular pay scale.

17. In view of above legal position, 217 workmen whose names are given in the list annexed to the order of reference, who are working on daily wages, are not entitled to classification as permanent employees. They are also not entitled to regular pay scale.

18. The reference is answered accordingly. A copy of this Award be sent to the Deputy Labour Commissioner, Indore as per Section 17 of the Act and Rule 25-A of the M.P. Industrial Disputes Rules, 1957 for acknowledgment. The case is fixed on 25.09.2008 for pronouncement of the Award and the acknowledgment must be communicated to this Tribunal before that date.

TRUE COPY

sd/ *[Signature]*
(Justice S. D. Khanna)

Cites 28 docs - [View All]

Section 25F in The Industrial Disputes Act, 1947

Article 14 in The Constitution Of India 1949

Section 36 in The Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947

State Of Karnataka vs Uma Devi And Others Reported In ... on 21 January, 2011

Citedby 32 docs - [View All]

Deputy Executive Engineer vs Surendranagar District Mazdoor on 8 October, 2014

Amreli Municipality vs Saurashtra Shramik Sangh & Ors on 8 October, 2014

Amreli Municipality vs Saurashtra Shramik Sangh & Ors on 8 October, 2014

Dy. Executive Engineer vs Surendranagar District on 8 October, 2014

Amreli Municipality vs Saurashtra Shramik Sangh & Ors on 8 October, 2014

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Supreme Court of India

Hari Nandan Prasad & Anr vs Employer I/R To Mangmt.Of F.C.I. & ... on 17 February, 2014

Author: A.K.Sikri

Bench: K.S. Radhakrishnan, A.K. Sikri

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 2417-2418 /2014

(arising out of S.L.P.(Civil) Nos. 29634-29635/2008)

Hari Nandan Prasad & Anr.

Appellants

Vs.

Employer I/R to Mangmt.of FCI & Anr.

Respondents

J U D G M E N T

A.K.SIKRI,J.

1. Leave granted.

2. The two appellants have filed one combined Special Leave Petition, which arises out of a common judgment dated 27.6.2008 passed by the Division Bench of the Jharkhand High Court in two LPAs which had been filed by the respondent herein viz. Food Corporation of India (FCI).

User Queries

unfair labour practice

fci

uma devi judgment

umadevi

back wages

240 days

up power corporation

art 14

daily wager

wager

umadevi case

mitu

affirmative action

temporary worker

retrenchment compensation

regular service

full back wages

uma devi case

any case against the case of uma devi

maharashtra state road transport

The two appellants were working on casual basis with the FCI. After certain time, their services were dispensed with. Both of them raised industrial dispute alleging wrongful termination which was referred to the Central Government- cum- Industrial Tribunal (CGIT). These proceedings culminated in two awards dated 12.12.1996 and 18.12.1996 respectively passed by the CGIT. In both these awards, termination of both the appellants was held to be illegal and they were directed to be reinstated with 50% back wages. The CGIT also ordered their regularization in service. FCI filed Writ Petitions in both the cases challenging these awards which were initially admitted sometime in the year 1988 and the operation of the awards was stayed. However, orders were passed under Section 17-B of the Industrial Disputes Act (ID Act) directing payment of full wages as last wages drawn to the appellants from the date of the award in each case. These Writ Petitions were ultimately dismissed by the learned Single Judge vide common judgment and order dated 19.5.2005. As pointed out above, this judgment of the learned Single Judge was challenged by the FCI by filing LPAs. These LPAs have been allowed by the Division Bench, thereby setting aside the orders of the learned Single Judge as well as awards passed by the CGIT. This is how two appellants are before us in this appeal.

3. Before we proceed further, we deem it appropriate to give the details of nature of employment of each of the appellants with the FCI and tenure etc. as well as the gist of the tribunal's awards.

Hari Nandan.

He was engaged on daily wages basis as Labourer-cum-Workman, in the exigency of the situation, at Food Storage Depot, Jasidih by the Depot In- charge, FCI, Jasidih on 1st June 1980. On the ground that services of appellant No.1 were no more required, he was disengaged w.e.f. 1.3.1983. While doing so, no notice or notice pay or retrenchment compensation was given to him. Appellant No.1 raised industrial dispute which was referred to the CGIT by the Central Government vide reference order dated 1.10.1992, with the following terms of reference:

"Whether the action of the management of Food Corporation of India, in retrenching Shri Hari Nandan Prasad, Ex-Casual Workman, in contravention of Section 25-F of the I.D.Act, 1947 and denying reinstatement with full back wages and regularization of his service is legal and justified? If not to what relief the concerned workman is entitled to?"

5. The CGIT gave its award dated 12.12.1996 holding that the termination was in contravention of Section 25-F of the Industrial Disputes Act. The CGIT also, while ordering reinstatement of appellant No.1, held that he was also entitled to regularization of his services from the date of his stoppage from service dated 1.3.1983. Back wages to the extent of 50% were awarded. As far as question for regularization is concerned, it was based on Circular issued by the FCI whereby any temporary worker employed for more than 90 days was entitled for regularization of his service. It was noted that as per the said Circular the Management had regularized the services of 70-75 similarly situated casual workers and therefore denying the same benefit to appellant No.1 amounted to discrimination.

Gobind Kumar Choudhary.

6. Appellant No.2 was engaged on daily wages as casual Typist at the District Office, FCI, Darbhanga against a vacancy of Class-III post on 5.9.1986. He worked in the capacity till 15.9.1990 when his name was struck off the rolls. He also raised industrial dispute which was referred to CGIT with following terms of reference:

"Whether the action of the Management of Food Corporation of India, Laaherisarai, Darbhanga is legal and justified in retrenching Shri Govind Kumar Chaudhary, who was working as Casual Typist, arbitrarily and in violation of Section 25-F of the I.D.Act, and denying reinstatement with full back wages and regularization of service

“is legal and justified? If not to what relief the concerned workman is entitled to?” In his case, the award dated 18.12.1996 was made by the CGIT on almost identical premise, as in the case of appellant No.1, supported by similar reasons.

7. The learned Single Judge while dismissing both the Writ Petitions filed by the FCI concurred with the findings and reasons given by the CGIT.

8. In the LPAs before the Division Bench, the primary contention of the FCI was that there could not have been any direction of regularization of services even on the admitted case of both the workmen, viz. merely on the ground that they had worked for more than 240 days in a calendar year as casual employees. It was also submitted that though the District Manager of the FCI was authorized to employ persons as temporary workers, such an authority was given for employing them for 7 days only and no more, and in case of violation of this strict stipulation contained in the Circular issued by the FCI, the concerned officer could be proceeded against departmentally. It was further argued that even if such temporary employment was to continue beyond stipulated period of 7 days, since these two workmen had worked on daily wages basis, that too for a period of 3 years or so, there could not have been any regularization of these workmen in view of the judgments of this Court in the case of Delhi Development Horticulture Employees Union vs. Delhi Administration AIR 1992 SC 789 and Constitution Bench judgment in the case of Secretary, State of Karnataka vs. Uma Devi & Ors. (2006) 4 SCC 1. These contentions have impressed the Division Bench of the High Court, and accepted by it, giving the following reasons:

“The Tribunal has apparently misconceived the principles of law laid down in this context. In the case of Delhi Development Horticulture Employees Union vs. Delhi Administration (AIR 1992) SC 789) the Supreme Court has categorically laid down that temporary employees, even if they have worked for more than 240 days, cannot claim any right or benefit for automatic regularization of their services. Similar view has been taken in the case of Post Master General, Kolkata & Ors vs. Tutu Das (Dutta), reported in 2007 (5) SCC 317. More so, where no posts are created or no vacancies to sanctioned posts exists, only on the ground of working for more than 240 days, regularization cannot be directed. Even in cases where there are regular posts and vacancies, the procedure laid down for appointment has to be followed.”

9. In so far as contention of the appellant predicated on Circular dated 6.5.1997 is concerned, on the basis of which they claimed that 70-75 persons had been regularized and discriminatory treatment could not be meted to them, this contention has been brushed aside by the High Court the impugned judgment in the following manner:

“The contention of Mrs. Pal that there has been discrimination as several persons were regularized on the basis of the Circular of the Management dated 6.5.1987, cannot be accepted. Reliance for this purpose on the case of U.P. State Electricity Board vs. Pooran Chandra Pandey reported in (2007) 11 SCC 92, is also of no help to her. Firstly, there were several conditions and criteria in the said Circular for regularization, but there is no finding that the respondents workmen in these appeals fulfilled such criteria. Secondly, in the case of U.P.State Electricity Board matter (supra) the employees of the Co-operative Society who were taken over by the Electricity Board claimed that the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees working from before 4.5.1990, will also apply to them as they were also appointed prior to 4.5.1990 in the Society. It was held that since the taken over employees were appointed in the Society before 4.5.1990, they could not be denied the benefit of the said decision of the Electricity Board. There is nothing to show that the appointment of the taken over employees was made by the Society without following the procedure in that behalf, whereas in the present case, the

respondents workmen were not appointed against vacant and sanctioned posts after following the procedure of appointment.

Furthermore, in paragraph 6 of the judgment of the Constitution Bench in the case of Secretary, State of Karnataka vs. Uma Devi (2006) 4 SCC 1, it was held that no Government order, notification or circular can be substituted for the statutory rules framed under the authority of law. In para 16 of the judgment in the case of R.S.Garg vs. State of U.P. (2006 (6) SCC 430), it has been held that even the Government cannot make rules or issue any executive instructions by way of regularization. Similar view has been taken in the case of the Post Master General (supra). Therefore, the respondent workmen cannot claim regularization on the basis of the said Circular of the Management dated 6.5.1987, nor the said judgment of the U.P. Electricity Board (supra) is of any help to them."

10. Heavily relying upon the judgment in the case of Uma Devi (supra), the High Court has held that as both the appellants did not render 10 or more years of service, their cases do not come even in the exception carved out by the Constitution Bench in Uma Devi's case.

11. Another contention raised by the appellants before the High Court was that the ratio of Uma Devi's case had no relevance in the cases of industrial adjudication by the Labour Courts/Industrial Tribunals. However, even this submission was found to be meritless by the High Court taking support of the judgment of this Court in U.P. Power Corporation Vs. Bijli Mazdoor Sangh & Ors. (2007) 5 SCC 755.

12. We may record here that the Division Bench accepted that there was infraction of Section 25-F of the I.D.Act in both the cases. However, they were held not entitled to reinstatement because of the reason that they were employed strictly as temporary workers, without any stipulation or promise that they would be made permanent and therefore reinstatement of such workers was not warranted and they were entitled to get monetary compensation only. As far as compensation is concerned, since both the appellants were paid the money equivalent to wages last drawn, for number of years when the Writ Petitions were pending, under Section 17-B of the I.D. Act, the High Court felt that the appellants were duly compensated and no further amount was payable.

13. Challenging the validity of the approach of the High Court, the learned counsel for the appellants submitted that the entire thrust of the judgment of the High Court rests on the decision of this Court in Uma Devi's case which was impermissible as the said judgment is clarified by this Court subsequently in the case of Maharashtra State Road Transport Corporation Anr. vs. Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 8 SCC 556, wherein it is held, in categorical terms, that in so far as Industrial and Labour Courts are concerned, they enjoy wide powers under Section 30(1)(b) of the Industrial Disputes Act to take affirmative action in case of unfair labour practice and these powers include power to order regularization/permanency. The Court has, further, clarified that decision in Uma Devi limits the scope of powers of Supreme Court under Article 32 and High Courts under Article 226 of the Constitution to issue directions for regularization in the matter of public employment, but power to take affirmative action under section 30(1)(b) of the I.D.Act which rests with the Industrial/Labour Courts, remains intact. It was, thus, argued that entire edifice of the impugned judgment of the High Court erected on the foundation of Uma Devi (supra) crumbles.

14. The learned counsel for the FCI, on the other hand, referred to the judgment in U.P. Power Corporation (supra) wherein this Court has taken unambiguous view that the law laid down in Uma Devi is applicable to Industrial Tribunals/Labour Courts as well. It was submitted that the judgment in U.P. Power Corporation (supra) was not taken note of in the subsequent judgment in Maharashtra State Road Transport Corporation (supra) and this Court should follow the earlier judgment rendered in U.P. Power Corporation's case. The learned counsel also relied upon the

recent judgment of this Court in the case of Assistant Engineer, Rajasthan Development Corporation & Anr. vs. Gitam Singh (2013) 5 SCC 136 to contend that even when there is a wrongful termination of services of a daily wager because of non-compliance of the provisions of Section 25-F of the I.D. Act, such an employee is not entitled to reinstatement but only monetary compensation. On the aforesaid basis, the learned counsel pleaded for dismissal of the appeal.

15. We have given considerable thoughts to the submissions made by the learned counsel for the parties on either side. It is clear from the aforesaid narratives that this case has two facets, which are reflected even in the terms of references as well on which the disputes were referred to the CGIT. First refers to the validity of the termination and the other one pertains to the regularization. Twin issues, which have, thus, to be gone into, are: (1) whether termination of service of the appellants was illegal?

Related issue here would be that if it is illegal, then whether in the facts and circumstances of this case, the appellants would be entitled to reinstatement in service or monetary compensation in lieu of reinstatement would be justified?

(2) whether the appellants are entitled to regularization of their services?

We would also record that both the issues, in the facts of this case, are somewhat overlapping which would become apparent, with the progression of our discussion on these issues.

Reg.: Validity of termination.

16. This issue hardly poses any problem. Admitted facts are that both the appellant had worked for more than 240 days continuously preceding their disengagement/termination. At the time of their disengagement, even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, mandatory pre-condition of retrenchment in paying the aforesaid dues in accordance with Section 25-F of the I.D. Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well. With this, we advert to the issue of relief which should be granted in such cases, as that was the topic of hot debate before us as well.

17. Admittedly, both the workmen were engaged on daily wages basis. Their engagement was also in exigency of situation. In so far as appellant No.1 is concerned, he was disengaged way back in the year 1983. The dispute in his case was referred for adjudication to CGIT in 1992 only. There is a time lag of 9 years. Though no reasons are appearing on record for such an abnormal delay, it seems that he had raised the industrial dispute few years after his disengagement which can be inferred from the reading of the award of the CGIT as that reveals that after his disengagement he kept on making representations only and he took recourse to judicial proceedings only after Circular dated 6.5.1997 was issued as per which the FCI had decided to regularize the services of all casual workmen who had completed more than 90 days before 1996. Be that as it may, at this juncture what we are highlighting is that appellant No.1 had worked on daily wages basis for barely 3 years and he is out of service for last 30 years. Even when the Tribunal rendered his award in 1996, 13 years had elapsed since his termination. On these facts, it would be difficult to give the relief of reinstatement to the persons who were engaged as daily wagers and whose services were terminated in a distant past. And, further where termination is held to be illegal only on a technical ground of not adhering to the provisions of Section 25-F of the Act. Law on this aspect, as developed over a period of time by series of judgments makes the aforesaid legal position very eloquent. It is not necessary to traverse through all these judgments. Our purpose would be served by referring to a recent judgment rendered by this very Bench in the case of BSNL vs. Bhurumal 2013 (15) SCALE 131 which has taken note of the earlier case law relevant to

the issue. Following passage from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement.

"The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL vs. Man Singh (2012) 1 SCC 558, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In the case of Incharge Officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126, it was held that those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion.

Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

In Jagbir Singh vs. Haryana State Agriculture Mktd. Board (2009) 15 SCC 327 delivering the judgment of this Court, one of us (R.M.Lodha,J.) noticed some of the recent decisions of this Court, namely, U.P.State Brassware Corpn. Ltd. Vs. Uday Narain Pandey (2006) 1 SCC 479, Uttaranchal Forest Department Corpn. Vs. M.C.Joshi (2007) 9 SCC 353, State of M.P. vs. Lalit Kumar Verma (2007) 1 SCC 575, M.P.Admn. vs. Tribhuban (2007) 9 SCC 748, Sita Ram vs. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, Jaipur Development Authority vs. Ramsahai (2006) 11 SCC 684, GDA vs. Ashok Kumar (2008) 4 SCC 261 and Mahboob Deepak vs. Nagar Panchayat, Gajraula (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14).

It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

Jagbir Singh has been applied very recently in Telegraph Deptt. Vs. Santosh Kumar Seal (2010) 6 SCC 773, wherein this Court stated: (SCC p.777, para 11) In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement

and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.

Taking note of the judgments referred to in the aforesaid paragraphs and also few more cases in other portion of the said judgment, the legal position was summed up in the following manner:

"It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied".

18. We make it clear that reference to Uma Devi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, appellant No.1 would not be entitled to reinstatement. This could be the position in respect of appellant No.2 as well. Though the factual matrix in his case is slightly different, that by itself would not have made much of a difference. However, the matter does not end here. In the present case, the reference of dispute to the CGIT was not limited to the validity of termination. The terms of reference also contained the claim made by the appellants for their regularization of service.

226

19. We have already pointed out that the two aspects viz. that of reinstatement and regularization are intermixed and overlapping in the present case. If the appellants were entitled to get their services regularized, in that case it would have been axiomatic to grant the relief of reinstatement as a natural corollary. Therefore, it becomes necessary, at this stage, to examine as to whether the order of CGIT, as affirmed by the learned Single Judge of the High Court directing regularization of their service, was justified or the approach of the Division Bench of the High Court in denying that relief is correct.

Re: Relief of Regularization

20. Before we advert to this question, it would be necessary to examine as to whether the Constitution Bench judgment in Uma Devi case have applicability in the matters concerning industrial adjudication. We have already pointed out above the contention of the counsel for the appellants in this behalf, relying upon Maharashtra State Road Transport case that the decision in Uma Devi would be binding the Industrial or Labour Courts. On the other hand, counsel for the FCI has referred to the judgment in U.P. Power Corporation for the submission that law laid down in Uma Devi equally applies to Industrial Tribunals/Labour Courts. It, thus, becomes imperative to examine the aforesaid two judgments at this juncture.

1. A perusal of the judgment in U.P. Power Corporation would demonstrate that quite a few disputes were raised and referred to the industrial tribunal qua the alleged termination of respondent Nos.2 and 3 in that case. Without giving the details of those cases, it would be sufficient to mention that in one of the cases the tribunal held that after three years of their joining in service both respondents 2 and 3 were deemed to have been regularized. The appellants filed the Writ Petition which was also dismissed. Challenging the order of the High Court, the appellants had approached this Court. It was argued that there could not have been any regularization order passed by the Industrial Court in view of the decision in Uma Devi. Counsel for the workmen had taken a specific plea that the powers of the industrial adjudicator were not under consideration in Uma Devi's case and that there was a difference between a claim raised in a civil suit or a Writ Petition on the one hand and one adjudicated by the industrial adjudicator. It was also argued that the labour court can create terms existing in the contract to maintain industrial peace and therefore it had the power to vary the terms of the contract. While accepting the submission of the appellant therein viz. U.P. Power Corporation, the Court gave the following reasons:

"It is true as contended by learned counsel for the respondent that the question as regards the effect of the industrial adjudicators' powers was not directly in issue in Umadevi case. But the foundation logic in Umadevi case is based on Article 14 of the Constitution of India. Though the industrial adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularization, the same cannot be viewed differently.

The plea of learned counsel for the respondent that at the time the High Court decided the matter, decision in Umadevi case was not rendered is really of no consequence. There cannot be a case of regularization without there being employee-employer relationship. As noted above the concept of regularization is clearly linked with Article 14 of the Constitution. However, if in a case the fact situation is covered by what is stated in para 45 of Umadevi case the industrial adjudicator can modify the relief, but that does not dilute the observations made by this Court in Umadevi case about the regularization.

On facts, it is submitted by learned counsel for the appellants that Respondent No.2 himself admitted that he never worked as a pump operator, but was engaged as daily

"wage basis. He also did not possess the requisite qualification. Looked at from any angle, the direction for regularization, as given, could not have been given in view of what has been stated in Umadevi case."

227

22. It is clear from the above that the Court emphasized the underline message contained in Umadevi's case to the effect that regularization of a daily wager, which has not been appointed after undergoing the proper selection procedure etc. is impermissible as it was violative of Art.14 of the Constitution of India and this principle predicated on Art.14 would apply to the industrial tribunal as well inasmuch as there cannot be any direction to regularize the services of a workman in violation of Art.14 of the Constitution. As we would explain hereinafter, this would mean that the industrial court would not issue a direction for regularizing the service of a daily wage worker in those cases where such regularization would tantamount to infringing the provisions of Art.14 of the Constitution. But for that, it would not deter the Industrial Tribunals/Labour Courts from issuing such direction, which the industrial adjudicators otherwise possess, having regard to the provisions of Industrial Disputes Act specifically conferring such powers. This is recognized by the Court even in the aforesaid judgment.

23. For detailed discussion on this aspect, we proceed to discuss the ratio in the case of Maharashtra State Road Transport Corporation (supra). In that case the respondent Karamchari Union had filed two complaints before the Industrial Court, Bombay alleging that the appellant Corporation had indulged in unfair labour practice qua certain employees who were engaged by the appellant as casual labourers for cleaning the buses between the years 1980-1985. It was stated in the complaints that these employees were made to work every day at least for 8 hours at the depot concerned of the Corporation; the work done by them was of permanent nature but they were being paid a paltry amount; and even when the post of sweepers/cleaners were available in the Corporation, these employees had been kept on casual and temporary basis for years together denying them the benefit of permanency. After adjudication, the Industrial Court held that the Corporation had committed unfair labour practice under items 5 and 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (MRTU and PULP Act). As a consequence, it directed the Corporation to pay equal wages to the employees concerned which was being paid to Swachhaks and also pay arrears of wages to them. In the second complaint, the Industrial Court returned the finding that the Corporation was indulging in unfair labour practice under Item 6 of Schedule IV, by continuing these employees on temporary/casual/daily wage basis for years together and thereby depriving them the benefits of permanency. The direction in this complaint was to cease and desist from the unfair labour practice by giving them the status, wages and all other benefits of permanency applicable to the post of cleaners, w.e.f. 3.8.1982. The Corporation challenged these two orders of the Industrial Court before the High Court of Judicature at Bombay in five separate Writ Petitions. These were disposed of by the learned Single Judge vide common judgment dated 2.8.2001 holding that complaints were maintainable and the finding of the Industrial Court that the Corporation had indulged in unfair labour practice was also correct. The Corporation challenged the decision of the learned Single Judge by filing LPAs which were dismissed by the Division Bench on 6.5.2005. This is how the matter came before the Supreme Court. One of the contentions raised by the appellants before this Court was that there could not have been a direction by the Industrial Court to give these employees status, wages and other benefits of permanency applicable to the post of cleaners as this direction was contrary to the ratio laid down by the Constitution Bench of this Court in Umadevi (supra). The Court while considering this argument went into the scheme of the MRTU and PULP Act. It was, inter-alia, noticed that complaints relating to unfair labour practice could be filed before the Industrial Court. The Court noted that Section 28 of that Act provides for the procedure for dealing with such complaints and Section 30 enumerates the powers given to the Industrial and Labour Courts to decide the matters before it including those relating to unfair labour practice. On the reading of this section, the Court held that it gives specific power to the Industrial/Labour Courts to declare that an

unfair labour practice has been engaged and to direct those persons not only to cease and desist from such unfair labour practice but also to take affirmative action. Section 30(1) conferring such powers is reproduced below:

"30. Powers of Industrial and Labour Courts.- (1)Where a court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order-

(a)declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognized union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section(1) of Section 20 or its right under Section 23 shall be suspended."

24. It was further noticed that Section 32 of the Act provides that the Court shall have the power to decide all connected matters arising out of any application or a complaint referred to it for decision under any of the provisions of this Act. The Court then extensively quoted from the judgment in Uma Devi in order to demonstrate the exact ratio laid down in the said judgment and thereafter proceeded to formulate the following question and answer thereto:

"The question that arises for consideration is: have the provisions of the MRTU and PULP Act been denuded of the statutory status by the Constitution Bench decision in Umadevi? In our judgment, it is not."

25. Detailed reasons are given in support of the conclusion stating that the MRTU and PULP Act provides for and empowers the Industrial/Labour Courts to decide about the unfair labour practice committed/being committed by any person and to declare a particular practice to be unfair labour practice if it so found and also to direct such person ceased and desist from unfair labour practice. The provisions contained in Section 30 giving such a power to the Industrial and Labour Courts vis-à-vis the ratio of Uma Devi are explained by the Court in the following terms:

"The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

The provisions of the MRTU and PULP Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi. Unfair labour practice on the part of the employer in engaging employees as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and

privileges of permanent employees as provided in Item 6 of Schedule IV and the power of the Industrial and Labour Courts under Section 30 of the Act did not fail for adjudication or consideration before the Constitution Bench.

Umadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

26. The Court also accepted the legal proposition that Courts cannot direct creation of posts, as held in *Mahatma Phule Agricultural University vs. Nasik Zilla Sheth Kamgar Union* (2001) 7 SCC 346. Referring to this judgment, the Court made it clear that inaction on the part of the State Government to create posts would not mean an unfair labour practice had been committed by the employer (University in that case) and as there were no posts, the direction of the High Court to accord the status of permanency was set aside. The Court also noticed that this legal position had been affirmed in *State of Maharashtra vs. R.S.Bhonde* (2005) 6 SCC 751. The Court also reiterated that creation and abolition of post and regularization are purely Executive functions, as held in number of judgments and it was not for the Court to arrogate the power of the Executive or the Legislature by directing creation of post and absorbing the workers or continue them in service or pay salary of regular employees. This legal position is summed up in para 41 which reads as under:

"Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the courts."

27. However, the Court found that factual position was different in the case before it. Here the post of cleaners in the establishment were in existence. Further, there was a finding of fact recorded that the Corporation had indulged in unfair labour practice by engaging these workers on temporary/causal/daily wage basis and paying them paltry amount even when they were discharging duties of eight hours a day and performing the same duties as that of regular employees.

28. In this backdrop, the Court was of the opinion that direction of the Industrial Court to accord permanency to these employees against the posts which were available, was clearly permissible and with the powers, statutorily conferred upon the Industrial/Labour Courts under Section 30 (1)(b) of the said Act which enables the Industrial adjudicator to take affirmative action against the erring employees and as those powers are of wide amplitude abrogating within its fold a direction to accord permanency.

29. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In *U.P. Power Corporation*, this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Art.14 of the Constitution, on which judgment in *Umadevi* is primarily founded. On the other hand, in *Bhonde* case, the Court has recognized the principle that having regard to statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory

power does not get denuded by the judgment in Umadevi's case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent post even when available and continuing to workers on temporary/daily wage basis and taking the same work from them and making them some purpose which were performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice as enumerated in Schedule IV of MRTP and PULP Act and it necessitates giving direction under Section 30 of the said Act, that the Court would give such a direction.

30. We are conscious of the fact that the aforesaid judgment is rendered under MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/Labour Court by the said Act. At the same time, it also hardly needs to be emphasized the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide. The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act, to give reliefs such as a reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

31. In the language of Krishna Iyer, J:

The Industrial Disputes Act is a benign measure, which seeks to pre-empt industrial tensions, provide for the mechanics of dispute- resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counter-productive battles and the assurance of industrial justice may create a climate of goodwill." (Life Insurance Corpn. Of India v. D.J. Bahadur 1980 Lab IC 1218, 1226(SC), per Krishna Iyer, J.).

In order to achieve the aforesaid objectives, the Labour Courts/Industrial Tribunals are given wide powers not only to enforce the rights but even to create new rights, with the underlying objective to achieve social justice. Way back in the year 1950 i.e. immediately after the enactment of Industrial Disputes Act, in one of its first and celebrated judgment in the case of Bharat Bank Ltd. V. Employees of Bharat Bank Ltd. [1950] LLJ 921,948-49 (SC) this aspect was highlighted by the Court observing as under:

"In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

32. At the same time, the aforesaid sweeping power conferred upon the Tribunal is not unbridled and is circumscribed by this Court in the case of New Maneckchowk Spinning & Weaving Co.Ltd.v. Textile Labour Association [1961] 1 LLJ 521,526 (SC) in the following words:

"This, however, does not mean that an industrial court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to the matter as laid down by the legislature or by this Court."

33. It is, thus, this fine balancing which is required to be achieved while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principle of fair play and justice.

34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to backdoor entry into the service which is an anathema to Art.14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.

35. The aforesaid examples are only illustrated. It would depend on the facts of each case as to whether order of regularization is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights

36. In the aforesaid backdrop, we revert the facts of the present case. The grievance of the appellants was that under the Scheme contained in Circular dated 6.5.1997 many similarly placed workmen have been regularized and, therefore, they were also entitled to this benefit. It is argued that those who had rendered 240 days service were regularized as per the provision in that Scheme/Circular dated 6.5.1987.

37. On consideration of the cases before us we find that appellant No.1 was not in service on the date when Scheme was promulgated i.e. as on 6.5.1987 as his services were dispensed with 4 years before that Circular saw the light of the day. Therefore, in our view, the relief of monetary compensation in lieu of reinstatement would be more appropriate in his case and the conclusion in the impugned judgment qua him is unassailable, though for the difficult reasons (as recorded by us above) than those advanced by the High Court. However, in so far as appellant No.2 is concerned, he was engaged on 5.9.1986 and continued till 15.9.1990 when his services were terminated. He even raised the Industrial dispute immediately thereafter. Thus, when the Circular dated 5.9.1987 was issued, he was in service and within few months of the issuing of that Circular he had completed 240 days of service.

38. Non-regularization of appellant No.2, while giving the benefit of that Circular dated 6.5.1987 to other similar situated employees and regularizing them would, therefore, be clearly discriminatory. On these facts, the CGIT rightly held that he was entitled to the benefit of scheme contained in Circular dated 6.5.1987. The Division Bench in the impugned judgment has failed to notice this pertinent and material fact which turns the scales in favour of appellant No.2. High Court committed error in reversing the direction given by the CGIT, which was rightly affirmed by the learned Single Judge as well, to reinstate appellant No.2 with 50% back wages and to regularize him in service. He was entitled to get his case considered in terms of that Circular. Had it been done, probably he would have been regularized. Instead, his services were wrongly and illegally terminated in the year 1990. As an upshot of the aforesaid discussion, we allow these appeals partly. While dismissing the appeal qua appellant No.1, the same is accepted in so far as

appellant No.2 is concerned. In his case, the judgment of the Division Bench is set aside and the award of the CGIT is restored. There shall, however, be no order as to costs.

.....J.

(K.S.Radhakrishnan)

(A.K.Sikri) New Delhi, February 17, 2014

न्यायालय -- श्रम न्यायालय क्र. 2, खालियर म.प्र.

122/सम्पीआ इआर/04 (वि.वि.)

रमेशचंद्र श्रीवास्तवजी. रामजीलाल
श्रीवास्तव, ककड़ापुरा, असाई गली,
लहार जि. भिण्ड म.प्र.
वि.

आवेदक



मुख्य अभिरंता,
लो. स्वा. यां. वि., परिरेक्ष,
खालियर म.प्र. बाटीपुर
खालियर म.प्र.
2. लो. कार्यपालनयंत्री,
लो. स्वा. यांत्रिकी विभाग,
लंड भिण्ड, जि. भिण्ड
3. कार्यपालनयंत्री,
लोक स्वास्थ्य यां. वि., लंड,
मुरैना, जि. मुरैना म.प्र.
4. सहायक सी.ओ.,
लोक स्वास्थ्य यां. वि., उपलंड,
अम्बाह, जि. मुरैना म.प्र.

अनावेदकगण

आदेश दि. 25-7-07

सहायक न्यायाधीश
25-7-07
सहायक न्यायाधीश

1. आवेदक ने यह आवेदन पत्र धारा 108 अंतर्गत म.प्र. औ. सं. 1960 प्रस्तुत कर अनावेदकगण से वेतन के अंतर की राशि रु. 1,45,885/- दिलवाये जाने की सहायता चाही है।

2. प्रकरण के संबंधित तथ्य इस प्रकार हैं कि - श्रम न्यायालय क्र. 2, खालियर द्वारा एक आदेश आवेदक के संबंधित प्रकरण क्र. 187/97/सम्पीआ इआर रकट पारित हुआ था। जिसकी अपील मान. औषो. न्यायालय, लंडपठ, खालियर के समक्ष प्रस्तुत हुई थी जहाँ श्रम न्यायालय के उक्त आदेश दिनांकित 15.3.99 को स्थिर रखा गया था।

3. आवेदक का संक्षिप्त में प्रकरण इस प्रकार है कि यह प्रकरण प्रस्तुत करने की दिनांक को वह अनावेदकगण के उपलंड, अम्बाह जि. मुरैना में कार्यरत है। तथा पूर्व में आवेदक उपलंड लहार जि. भिण्ड में रदस्त था। उपलंड लहार से स्थानांतरित होकर वह उपलंड अम्बाह जि. मुरैना में रदस्त किया गया है। इस कारणसे प्रकरण अनावेदन का तीन व चार आवश्यक पक्षकार होने से उन्हें पक्षकार के रूप में जोड़ा गया है।

सहायक न्यायाधीश
Labour Court No. 2
Gwalior (M.P.)



4 आवेदक के अनुसार उसे दि. 22.3.95 से 31.10.99 तक के वेतन के अंतर की राशि 72011.00 रु. वृद्धतः हजार ग्यारहमात्र प्राप्त हो चुकी है। किंतु नवंबर 99 से आगे की अवधि का वेतन के अंतर भुगतान नहीं किया गया है। इस संबंध में उसने अने अने माध्यमों पर दि. 8.11.99 को नोटिस 24.9.04 भी भेजा था। आवेदक को दावा प्रस्तुत करने के माह में भी वास्तविक देय वेतन नहीं दिया जा रहा है। आवेदक ने 1.11.99 से 31.10.04 तक की अवधि के वेतन के अंतर की राशि रु. 1,41,885.00 रु. दिलवाये जाने की मांग की है।

5 अनावेदक क्र. 1, तीन व चार द्वारा जवाब प्रस्तुत कर अभिव्यक्ति किया गया है कि आवेदक ने प्र. क्र. 187/97 ई/एमपीआईआर में पारित निर्णय के पालनार्थ प्रकरण प्रस्तुत किया है। किंतु अनावेदक क्र. 1, 3 व चार प्रकरण में पक्षकार नहीं हैं। इसके अतिरिक्त प्र. क्र. 187/97 ई/एमपीआईआर में पक्षकार नहीं बनाया गया है। जिससे प्रकरण में पक्षकारों के अस्तित्व का दोषलाभ है। अनावेदक क्र. एक, तीन व चार को अनावश्यक रूप से पक्षकार बनाया गया है। क्योंकि आवेदक अनावेदक क्र. दो के अधीन पदस्थ रहा है। तथा उसे स्थानान्तरण के बाद अनावेदक क्र. 1, 3 व 4 के अधीन पदस्थ किया गया है। इसके अलावा अनावेदक क्र. 1, 3 व 4 ने आवेदक के आवेदनपत्र में अभिव्यक्ति तथ्यों को परोक्ष रूप से स्वीकार किया है। किंतु यह भी अभिव्यक्ति किया है कि आवेदक का आवेदनपत्र एमपीआईआर क्र. 48 ई. के अनुसार अव्याप्य है।

6 अनावेदक क्र. दो ने जवाबदाता प्रस्तुत कर अभिव्यक्ति किया है कि आवेदनपत्र में लिखे तथ्य अनावेदक तीन व चार से संबंधित हैं। जिसका विस्तृत उत्तर उक्त अनावेदक क्र. दो ने देने में सक्षम हैं। आवेदक वर्ष 87 से अनावेदक क्र. 3 व 4 के अधीन कार्यरत हैं। उनका यह भी अभिव्यक्ति है कि उन्हें आवेदक की ओर से कोई सूचनापत्र प्राप्त नहीं हुआ है और यह भी अभिव्यक्ति किया है कि आवेदक का संपूर्ण वेतन छंद मुरैना से दिया जाता है। तथा समस्त विभागीय व प्रशासकीय कार्य ही छंद मुरैना कार्यालय से की जाती है। आवेदक द्वारा अनावेदक क्र. दो को अनावश्यक रूप से पक्षकार बनाया गया है। अतः प्रकरण निरस्त किया जावे।

7. उभयपक्षों के अभिव्यक्तियों के आधार पर निम्न

प्रमाणित
दि. 11.11.99
No. 114/P



इस आदेशद्वारा देय मानी जायेगी उसे भुगतान करने के लिये जवाब दे रहे हैं। यह निर्विवाद है कि उनके अधीन कार्यपालनधीन, लो. स्वा. या. वि. के, मुरैना जिला मुरैना एवं सहायक धनी, लो. स्वा. या. वि. उपर्युक्त आदेश कार्यरत हैं। पूर्व में अनावेदक विभाग द्वारा वेतन के अंतर की राशि का भुगतान किया जा चुका है। और वे आगे की अवधि का भी न्यायालय के आदेशानुसार जिसे मान. औद्यो. न्यायालय द्वारा रखा गया है। वेतन के अंतर की राशि देने के लिये उत्तरदायी है। यह राशि आवेदक की ओर से प्रस्तुत घाट प्रदर्श पी. एच. के अनुसार 1,41,885 00 होती है। इसका छेड़न अनावेदक द्वारा एक द्वारा नहीं किया गया है। अनावेदक द्वारा 3 ने न्यायालय में जो कथन दिया है विश्वसनीय नहीं है। प्रदर्श पी. एच. के आदेश की जानकारी न होना उनके द्वारा बताया गया है, जबकि इस आदेश के अनुसार अनावेदक ने पूर्व में आवेदक को 72011-00 रु. का भुगतान किया है। उन्होंने अपने मुख्य परीक्षणों आवेदक को दे. वे. भो. समझाल मानकर श्रमायुक्त द्वारा निर्धारित वेतन देने का कथन दिया है। क्योंकि जबकि आवेदक को न्यायालय व औद्यो. न्यायालय द्वारा स्थायी वर्गीकृत किया जाकर स्थायी समझाल का वेतनमान देने का आदेश दिया है। व जिसके अनुसार आवेदक को भुगतान भी हो चुका है। कृपया परीक्षणों जो कथन दिया है कि अनावेदक द्वारा आवेदक को स्थायी वर्गीकृत कर दिया गया है, यह कथन व मुख्य परीक्षणों दिया गया कथन कि आवेदक को दे. वे. भो. समझाल का श्रमायुक्त द्वारा निर्धारित दर से भुगतान किया जाता है, दोनों कथनों में विरोधाभास है। अनावेदक साक्षी स्थानांतरण आदेश को मानकर दे. वे. भो. का भुगतान कर रहे हैं। जबकि अनावेदक द्वारा एक के विरुद्ध प्रकरण में आवेदक को स्थायी वर्गीकृत घोषित किया जा चुका है। अनावेदक द्वारा तीन द्वारा आवेदक की एल. पी. टी. के सर्व सेवापुस्तिका प्रकरण में पेश नहीं की गयी है। जो प्रकरण में महत्वपूर्ण दस्तावेज है, जिसे यह ज्ञात हो सकता है कि आवेदक को कौन सा वेतनमान दिया जा रहा है। और कौन सा वेतन के अंतर का भुगतान किया जा चुका है। अनावेदक द्वारा दो सर्व छीन व चार एक ही विभाग के होकर अनावेदक द्वारा एक वे अधीन कार्य करते हैं। और यह मानने में कोई कारण नहीं है कि अनावेदक द्वारा तीन को प्रदर्श पी. एच. के अनुसार आवेदक को भुगतान करने के लिए

सहायक निदेशक -
गोवाली (M.P.)
अम न्यायालय



जानकारी नहीं है। अर्थात् आदेशक प्र. 3 का प्रदर्शनी. तन के आदेश की जानकारी अनिवार्य रूप से है। और होना चाहिए।

06. अतः आदेशक को प्रस्तुत चार्ट प्रदर्शनी. 10 के अनुसार 1.11.99 से 30.10.04 तक की अवधि का रु. 1,41,885.00

प्राप्त करने का अधिकारी है। अनावेदक की ओर से कोई गम्भीर त्रुटि से चार्ट का वास्तविक सैंडन नहीं किया गया है।

अतः अनावेदक की ओर से प्रस्तुत मान. सर्वोच्च न्यायालय के निर्णय सेक्रेटरी स्टेट आफ कर्नाटका एवं अन्य वि. उपादेवी स. आ. आर.

2006 सुप्रीमकोर्ट 1806 का प्रश्न है, मैं मान. सर्वोच्च न्यायालय द्वारा यह निर्णित किया गया है कि जिन प्रकरणों में नियमितीकरण के संबंध में निर्णय दिया जा चुका हो और वे न्यायालय के समक्ष विचारार्थ न हो तो उन्हें उपादेवी के निर्णय के अनुसार पुनः सुनवाई में न लिया जावे, परंतु प्रक्रिया में स्वी. धार्मिक आवश्यकताओं, अनिवार्यताओं के

अनेक कर नियमितीकरण अध्या. स्थायीकरण उन्हें न किया जावे जो स्वि. धार्मिक योजना अनुसार नियमित रूप से नियुक्त न किये गये हों।

वर्तमान वसुली के प्रकरण के संबंध में कम न्यायालय का आदेश दि. 15-3-99 को हुआ था कि ~~वि. उपादेवी के निर्णय के अनुसार पुनः सुनवाई में न लिया जावे~~ ¹⁵⁻³⁻⁹⁹ ~~जबकि मान. सर्वोच्च न्यायालय का निर्णय दि. 10-4-06 को हुआ है।~~ ²⁵⁻⁸⁻⁰⁸

08. दूसरा निर्णय अनावेदक की ओर से सिविल अपील नं. 1270/06, प्रमुख मैजिस्ट्रेट स. पी. स्टेट एंडो वि. एल. पाण्डे का प्रस्तुत किया गया है, किंतु इस निर्णय में विपक्षी कर्मचारी की नियुक्ति निमित्त पद पर नहीं हुई थी, जबकि आवेदक के मूल प्रकरण में ऐसा नहीं है।

09. तीसरा न्यायवृद्धांत 2005 एम. पी. एल. एल. आर. पृष्ठ 466 कार्यालय की, मैं प्र. वि. मण्डल, वि. जगदीश, मैं मान. म. प्र. औद्योग. न्यायालय द्वारा चरण 6 में यह स्पष्ट किया गया है कि अपीलाण्ट है किटान अभि. द्वारा वर्तमान प्रकरण में स्तरीय स्थायी आशों के अंतर्गत प्रकरण प्रस्तुत नहीं किया जा सकता एवं स्पष्ट रिक्त पद के अस्तित्व सिद्ध न होने पर अपीलाण्ट स्थायी कर्मचारी का दावा स्तरीय स्थायी आदेश नियम 2 के अंतर्गत नहीं कर सकता है। चरण सात में यह स्पष्ट किया गया है कि समान कार्य के समान वेतन के आधार पर भारतीय संविधान के अनुच्छेद 14 के अंतर्गत प्रस्तुत किया गया है। वर्तमान में मूल प्रकरण स्तरीय स्थायी आशों के अंतर्गत प्रस्तुत किया गया है व उसके अनुसार प्रकरण के

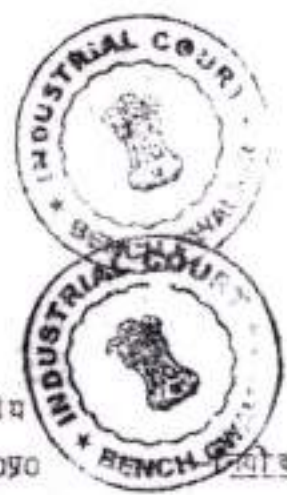
(Signature)
बोर्डर में सुनिश्चित
नियम क. 1

औद्योगिक न्यायालय म. प्र., खण्डपीठ ग्वालियर

विधि आ. प्र. - 140/सम्पीडनआर/07

मोप्रो आत्म द्वारा,

1. मुख्य अभियंता, लोक स्वास्थ्य यांत्रिकीय विभाग पानी की टंकी के नीचे पात, गुराँर, ग्वालियर मोप्रो
2. कार्यालय फेंरी, लोक स्वास्थ्य यांत्रिकीय विभाग छह भिन्ड मोप्रो
3. कार्यालय फेंरी, लोक स्वास्थ्य यांत्रिकीय विभाग, छह गुरेना मोप्रो
4. सहायक फेंरी, लोक स्वास्थ्य यांत्रिकीय विभाग अखण्ड इम्प्लांट विभाग गुरेना मोप्रो



विरुद्ध

रमेश चन्द्र श्रीवास्तव पुत्र श्री रामजीलाल श्रीवास्तव, निवासी गजपुरा दुताईमरी, लहार रोड, जिला भिन्ड मोप्रो

नियोजक

तमस :- मान. श्री पी. के. बोहरा, जज न्यायाधीश

अवस्थिति :- नियोजता द्वारा अधि की पुनर्नियुक्ति करवावही द्वारा अधि की पुनर्नियुक्ति के अधीन।

:: आदेश ::

1. आज दिनांक 30.10.2007 को पारित किया गया।

1/ यह विधि आदेश-प्र. मोप्रो 010/07 अधि. 1-50 की धारा 67 के अन्तर्गत कम न्यायालय द्वारा 2, न्यायालय प्रकरण क्रमांक 122/सम्पीडनआर/04 3 विधि अधि. 1-50 अधि. आदेश दिनांक 25.7.07 के विरुद्ध नियोजता की अधि. प्रकृति किया गया है, जिसे द्वारा नियोजता के विरुद्ध 14/88508 की वक्तुली देह आर. आर. ती. जारी करने के निर्देश दिये गये हैं।

इमानित किया जाता है कि
यह न्यायालय प्रकरण है।

रमेश चन्द्र श्रीवास्तव

के. १५०/१९९९/०३

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2/ यह निर्विवाद है कि कर्मचारी ने श्रम न्यायालय के समक्ष उक्त टाईम डीपर के पद पर स्थायी वर्गीकृत होने वाले बायल प्रकरण प्रमाण 107/97/एससीआयआर प्रस्तुत किया था, जिसका निराकरण आदेश दिनांक 15.3.99 [पी/1] द्वारा दिया जाकर नियोक्ता को निर्देश दिये गये थे कि यह कर्मचारी रोसाबन्द को टाईम डीपर के पद पर स्थायी वर्गीकृत कर वेतन के अंतर का अनुमान 22.3.95 से करें। उक्त आदेश के विरुद्ध नियोक्ता द्वारा श्रम न्यायालय के समक्ष अपील नं. 413/99/एससीआयआर प्रस्तुत की गई थी। जो प्रोसीडिंग आदेश दिनांक 15.11.2000 [पी/2] द्वारा प्रारंभिक स्टेज पर ही खारिज कर दी गई थी।

3/ कर्मचारी द्वारा श्रम न्यायालय के उक्त आदेश के पालन में वेतन के अंतर की राशि का विवरण प्रवर्ग पी/10 प्रस्तुत किया गया है, जिसके अंतर्गत नियोक्ता की ओर से कोई विवरण-पत्रक प्रस्तुत नहीं किया गया है। अतः श्रम न्यायालय ने प्रवर्ग पी/10 के विवरण-पत्रक के आधार पर गणनाकर प्रस्तावित आदेश पारित करने में कोई त्रुटि नहीं की है।

4/ अतः नियोक्ता का विविध आवेदन-पत्र निरस्त किया जाता है। उभायउभय अपना-अपना स्थय स्वयं वहन करेंगे।

38

12-2-09
MEMBER JUDGE
Industrial Court Bench
MUMBAI (M.P.)

आवेदन प्राप्त होने का दिनांक 12-2-09
आवेदन को अस्वीकृत होने का दिनांक 12-2-09
आवेदन के अस्वीकृत होने का दिनांक 12-2-09
आवेदन को अस्वीकृत होने का दिनांक 12-2-09
आवेदन को अस्वीकृत होने का दिनांक 12-2-09
आवेदन को अस्वीकृत होने का दिनांक 12-2-09
आवेदन को अस्वीकृत होने का दिनांक 12-2-09
आवेदन को अस्वीकृत होने का दिनांक 12-2-09
आवेदन को अस्वीकृत होने का दिनांक 12-2-09
आवेदन को अस्वीकृत होने का दिनांक 12-2-09

प्रतिनिधि को

विचार को

प्रस्ताव

CERTIFIED TRUE COPY

Shri Registrar,
Industrial Court
Mumbai



241

IN THE HON'BLE HIGH COURT OF MADHYA PRADESH
JUDICATURE JABALPUR : BENCH AT GWALIOR

WRIT PETITION No. 1355 OF 2008

STATE OF MADHYA PRADESH & ORS
- PETITIONERS

VERSUS

RAMESH CHANDRA SHRIVASTAVA
- RESPONDENT

WRIT PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT OF MANDAMUS/CERTIORARI OR ANY OTHER WRIT ORDER OR DIRECTION IN THE NATURE OF WRIT QUASHING ORDERS, DATED 30th OCT' 2007 PASSED IN MISC. APPEAL NO. 140/MPJR/2007 BY INDUSTRIAL COURT BENCH AT GWALIOR AND ORDER DATED 25-07-2007 PASSED IN MISC. CASE NO. 122-A/MPJR/2004 (Misc) BY LABOUR COURT NO.2 GWALIOR IN CONSEQUENCE TO ORDER DATED 15-03-99 PASSED IN CLAIM CASE NO. 187/MPJR/97 BY LABOUR COURT NO.2 GWALIOR AND ORDER DATED 15-11-2000 PASSED BY INDUSTRIAL COURT BENCH GWALIOR IN APPEAL NO. 413/MPJR/98 AS WELL AS ORDER DATED 15-11-2000 PASSED BY LABOUR COURT NO. 2 GWALIOR IN CASE NO. 17/2000/MPJR AND ORDER DATED 18-5-2006 PASSED BY INDUSTRIAL COURT IN MISC. CASE NO. 85/02/MPJR AS WELL AS REVENUE RECOVERY CERTIFICATE DATED 1-3-2008 FOR RS. 1,41,885.00

AND / OR

IN THE MATTER OF ISSUING ANY OTHER WRIT ORDER OR DIRECTION IN THE NATURE OF WRIT UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA AS THIS HON'BLE COURT MAY DEEM FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE

Executive Engineer
Public Health Engg. Division
Jabalpur (M.P.)



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

ORDER

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 Writ No 1188 of 2008 assailing all the orders. The High Court reproduced clause (2) of the Madhya Pradesh Employment Standard Orders Rules, 1963 and the pronouncement of this Court in the case of X.P. & Ors. vs. Lalit Kumar Verma [(2007) 1 SCC 575] and

case 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 noted 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 was 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

36

244

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.

(Dipak Misra)

(Prafulla C. Pant)

New Delhi.
September 17, 2015

(31)
245

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s) 7006-7008/2009

ASHISH CHANDRA SHRIVASTAVA

Appellant(s)

VERSUS

STATE OF M.P. THR. CH. ENG. PHE DEPTT & ORS

Respondent(s)

(with interim relief and office report)

Date - 17/09/2015 These appeals were called on for hearing today

BEFORE : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Mr. Nitin S. Tambekar, Adv.
Mr. B.S. Sai, Adv.
Mr. K. Rajeev, AOR

For Respondent(s) Mr. S.K. Dubey, Sr. Adv.
Mr. C. D. Singh, AOR
Ms. Sylena Mohapatra, Adv.
Mr. Yogesh Tiwari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

(Gulshan Kumar Azora)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8431-8432 OF 2014
(Arising out of SLP (C) Nos: 2057-2058 of 2014)

STATE OF MADHYA PRADESH AND ORS

Appellants

VERSUS

DILIP SINGH PATEL AND ORS

Respondents

O R D E R

Leave granted.

These appeals have been preferred by appellants-State of Madhya Pradesh & Ors. against the judgment and order dated 30th March, 2012 passed by the High Court of Madhya Pradesh Bench at Gwalior in Writ Appeal no 153 of 2012 and order dated 2nd November, 2012 passed in Review Petition No. 148 of 2012. By the impugned judgment, the Division Bench of the High Court affirmed the order dated 14th February, 2012 passed by learned Single Judge in W.P. No. 5212 of 2009(S) and the review petition against the said order was dismissed.

The factual matrix of the case is as follows:

The respondents-employees were classified as permanent employees as per the statutory provisions of M.P. Standing Standards Orders. However, they were not granted the benefit of Sixth Pay Commission. Learned Single Judge after taking into consideration the facts and circumstances of the case and judgment of the High Court in 'Engineering-in-Chief, P.H.E.D. and Others vs. Budha Rao Magarde and Others', 2002(1)M.P.L.J. 385 held that the respondents-employees are eligible to receive revised scale after their classification. This order was affirmed by Division

learned counsel appearing for the State submitted that the respondents were daily wage employees and classified as casual employees are not entitled for revision of pay in terms of State Pay Commission. Per contra, learned counsel for the respondents, the respondents were classified as permanent employees as per the statutory provision of the M.P. Standing Standards Orders are entitled for the revised scale of pay. He further submits that respondent no. 1 and 2 are already receiving regular scale of pay.

We have heard learned counsel for the parties and perused the records. It appears that the respondents again came before the Administrative Tribunal, Gwalior by filing original applications such as O.A. No. 548 of 1995, O.A. No. 133 of 1991 etc. In compliance of the orders passed in such original applications, the Chief Engineer, Yamuna Kachhar, Water Resources Department, Gwalior (M.P.) by orders issued in between April, 2004 and June, 2004 provided the minimum wages and allowances to the respondents without increment as per the Schedule of the pay scale from the date of the order of the Tribunal. It was further ordered that the regularization of the daily wages employees shall be made as per the seniority list with due procedure and the benefit of increment and other benefits can only be granted after the regularization as per the Rules. It was ordered that the order of the Court for benefit of minimum wages and allowance shall be effected from the issuance of those orders.

From the aforesaid facts, it is clear that the respondents are entitled for minimum wages and allowance as per the fixed Schedule of the pay scale but without any increment. In such case, if the pay scale is revised from time to time including the pay-scale as revised pursuant to Sixth Pay Commission, the respondents will be entitled to minimum wages and allowance as per said revised scale without increment. Only after regularisation of their service, as per seniority and rules, they can claim the benefit of increment and other benefits.

In view of aforesaid observations, while we are not inclined to interfere with the substantive part of the impugned judgment and order passed by learned Single Judge or the Division Bench or the order passed in Review Application, we modify the order dated 14th February, 2012 passed by learned Single Judge in W.P. No. 5212 of 2009 (S) as to the extent above. The benefits to which the respondents are entitled as per the observation as made above, if not paid be paid within two months. Those who are appointed on the regular pay scale, they will be entitled to corresponding pay scale and other benefits.

The appeals stand disposed of.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(PRAFULIA CHANDRA PANT)

NEW DELHI;
AUGUST, 27, 2014

Writ Petition No.2000/2015

Kaluram Narwariya

vs.

State of MP & others

1

06.04.2015

Shri B.P.Singh, Advocate for the petitioner.

Shri Pravin Newaskar, Dy.Govt. Advocate for the
respondent/State.

Heard.

The grievance of the petitioner is that he has been classified as a permanent employee by the employer by order, Annexure P/2. This permanent status is not taken away till date. Despite classifying the petitioner as a permanent employee, he has not been given pay scale attached to the said permanent post. In addition, the petitioner is praying for the benefits of DA, increments, seniority and other benefits.

2. During the course of argument, Shri B.P.Singh relied on a Division Bench judgment passed in Writ Appeal No. 110/2011 and other connected matters, decided on 1.11.2011. It is contended that the Supreme Court affirmed the said order recently on 21.1.2015. It is contended that the respondents shall consider the case of the petitioner in the light of said judgment.

3. Shri Pravin Newaskar, learned Deputy

250

Writ Petition No.2000/2015

Kaluram Narwariya

vs.

State of MP & others

2

Government Advocate submits that so far the decision of Division Bench and Supreme Court aforesaid is concerned, he is not disputing the legal position. He submits that on facts, every petitioner's case needs to be examined.

4. I have heard learned counsel for the parties at length.

5. The Division Bench in Writ Appeal No. 110/2011 and connected matters (Annexure P/3) opined as under:-

"whether an employee comes by way of normal recruitment process or through the process of classification, the fact remains that both i.e. the normally recruited employee and a classified employee work on the same post and perform the same duties. It cannot be held that the classification has any less effect or force as compared to the normal process of appointment, because the classification is also based upon the law in the form of Standing Orders and as such both employees who have been brought into service through either of the two processes permitted by law, as permanent employees against a particular post, should be entitled to the same benefits. Taking a contrary view would mean that the employees inducted

Writ Petition No.2000/2015

Kaluram Narwariya

vs.

State of MP & others

3

through classification process would be saddled with an undesirable disability throughout their service, as compared to other employees which may tantamount to violation of the principle of "equal pay for equal work". Our view finds support from another Division Bench decision of this Court report in the case of State of M.P. Vs. Ram Prakash (1989 J.L.J. 36).

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

6. The Apex Court dismissed, the SLP (Civil) No.(s) 20025/2011. The Apex Court opined as under:-

"In Rest of the Matters

Delay condoned.

Dismissed.

We direct the State Government to implement the order(s) passed by the High Court within eight months' time from today.

If for any reason, the petitioner-State does not implement the order(s) passed by the High Court, the respondents are at liberty to approach this Court by way of filing contempt petition(s)."

7. Apart from this, similar orders passed by this Court are affirmed by the Division Bench and by Supreme

Writ Petition No.2000/2015

Kaluram Narwariya

vs.

State of MP & others

4

Court.

8. Considering the aforesaid, it can be safely concluded that the *ratio decidendi* of the judgment passed by this Court in State of MP vs. Ramprakash, reported in 1989 J.L.J. 36, followed in Writ Appeal No. 110/2011, is that the mode of induction as a permanent employee through Standard Standing Orders is also a permissible and statutory mode of induction. Once an employee is given permanent status under the Standing Orders, he becomes a permanent employee for all purposes. The said judgment in *Ramprakash* and in Writ Appeal No. 110/2011 has to be read as a judgment in *rem* and not a judgment in *personam*.

9. In view of this ratio, a model employer/welfare State should extend the similar benefits to all similarly situated persons. We are not oblivious of the fact that a sizable number of poor employees, who are in a lower echelon of the State Government service, are required to knock the doors of the Court for seeking similar relief. This kind of litigation can be avoided, if Government extends the benefits to all similarly situated persons.

Writ Petition No.2000/2015

Kaluram Narwariya

vs.

State of MP & others

5

Once the Government's SLPs are dismissed and the legal position has attained a finality, in all fairness, the respondents should extend the benefit of the said principle to all similarly situated employees. In (1985) 2 SCC 648 (*Inder Pal Yadav and others vs. Union of India and others*), the Apex Court opined as under:-

"Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court."

10. In the light of aforesaid and at the cost of repetition, in my opinion, the judgment passed in *State of MP vs. Ramprakash (supra)* is a judgment in rem. The same can be said about the order dated 1.11.2011 (Annexure P/3). Resultantly, this petition is disposed of by following directions :-

- (1) The petitioner shall file a fresh representation before respondents along with the proof of acquiring permanent status by way of classification. The respondents shall verify and if

Writ Petition No.2000/2015

Kaluram Narwariya

vs.

State of MP & others

6

petitioner's permanent status remains intact, he shall be given similar treatment, i.e., grant of regular pay scale attached to the permanent post from the date of classification as permanent employee.

- (2) The respondents shall also grant increments attached to the pay scale and if rules permit, extend benefit of DA in favour of the petitioner.
- (3) The respondents shall also pass a speaking order regarding claim of grant of seniority to the petitioner from the date of classification as permanent employee.
- (4) If for any justifiable reason, the petitioner is not found entitled for any of the benefits claimed, a detailed and reasoned order be passed and communicated to the petitioner. The aforesaid exercise be completed within 120 days from the date of production of copy of this order along with the representation.
- (5) It is made clear that it will not be open to the respondents to deny relief to the petitioners on the

Writ Petition No.2000/2015

Kaluram Narwariya

vs.

State of MP & others

7

ground that they were not litigants in W.A. No. 1266/2010 and other similar matters, which were decided on merits, if they are otherwise similarly situated.

Petition is disposed of.

(Yog)

(Sujoy Paul)
Judge

कार्यालय मुख्य अभियंता,
लोक स्वास्थ्य यंत्रिकी विभाग,
परिक्षेत्र (म0प्र0)

पत्र क्रमांक / मु.अ./स्था./लो.स्वा.यं.वि./2017 दिनांक / /2017

प्रति,

श्री/श्रीमती
दैनिक वेतन भोगी
कार्यालय अधीक्षण यंत्री/कार्यपालन यंत्री/सहायक यंत्री
लोक स्वास्थ्य यंत्रिकी विभाग
.....

कारण बताओ सूचना पत्र

यह कि विभागीय अभिलेखों के अनुसार आप वर्ष से खण्ड में दैनिक वेतन भोगी श्रमिक के रूप में कार्य कर रहे हैं। आपके द्वारा माननीय उच्च न्यायालय में रिट याचिका क्रमांक दायर की गई थी, जिस पर न्यायालय ने आदेश दिनांक को पारित किया था, जिसमें माननीय उच्च न्यायालय ने आपके अभ्यावेदन पर निर्णय करने का आदेश दिया है। आपने अभ्यावेदन दिनांक को प्रस्तुत किया है, जिस पर नियमानुसार विचार किया जा रहा है। इस संबंध में तीन बिन्दु उल्लेखनीय हैं :-

- दैनिक वेतन भोगी श्रमिकों को देय पारिश्रमिक/परिलब्धियों के संबंध में अनेक प्रकरण माननीय उच्चतम न्यायालय में भी लंबित थे, तथा इस संबंध में उच्चतम न्यायालय ने प्रकरण क्रमांक Contempt Petition (Civil) No. 771/2015 (रामनरेश रावत विरुद्ध श्री अश्विनी राय एवं अन्य) में अंतिम आदेश दिनांक 15.12.2016 को पारित किया है। इस परिपेक्ष्य में म0प्र0 शासन के आदेश क्रमांक एफ-16-01/2016/1/34 भोपाल दिनांक 18.01.2017 के अनुसार दैनिक वेतन भोगी श्रमिकों के स्थायी वर्गीकरण की स्थिति पर विधि अनुसार विचार किया जाकर अग्रिम कार्यवाही की जानी है।
- पूर्व में माननीय उच्च न्यायालय जबलपुर ने प्रकरण क्रमांक Writ Petition No. 198/1999 (मनसुखलाल सराफ विरुद्ध अरुण कुमार तिवारी एवं अन्य) में, ऐसी नियुक्तियों जो विधि अनुसार नहीं की गई हैं, को शून्य घोषित किया है। इस संबंध में मुख्य सचिव कार्यालय, मंत्रालय, वल्लभ भवन, भोपाल के आदेश क्रमांक 323/मु.स./सा.प्र.वि./2015 भोपाल दिनांक 19 अगस्त 2015 एवं आदेश क्रमांक 478/मु.स./सा.प्र.वि./2015 भोपाल दिनांक 09 नवम्बर 2015 द्वारा विभाग में की गई नियुक्तियों की जाँच के आदेश भी दिये गये हैं।

- हाल में सामान्य प्रशासन विभाग के आदेश क्रमांक एफ 5-1/2013/1/3 भोपाल दिनांक 07 अक्टूबर 2016 के द्वारा "कार्यरत दैनिक वेतन भोगी श्रमिकों के लिये स्थायी कर्मियों को विनियमित करने की योजना" जारी की गई है तथा इस संबंध में पूरक आदेश लोक स्वास्थ्य यांत्रिकी विभाग के आदेश क्रमांक एफ 16-102/2016/1/34 भोपाल, दिनांक 24 दिसम्बर 2016 तथा प्रमुख अभियंता लोक स्वास्थ्य यांत्रिकी विभाग के आदेश क्रमांक 10287/प्र.अ./स्था./अराज./लो.स्वा.यौ.वि./2016 भोपाल दिनांक 31.12.2016 द्वारा जारी किये गये हैं। इस योजना में आपकी पात्रता होने के संबंध में भी विनिश्चय किया जाना है।

उपरोक्त परिपेक्ष्य में आपको दिये जानी वाली परिलक्षितियों / लाभ की पात्रता का निर्धारण करने के पूर्व यह आवश्यक है कि आपकी नियुक्ति की वैधानिकता, आपके स्थायी वर्गीकृत होने की पात्रता/वैधानिकता, तथा शासन की "कार्यरत दैनिक वेतन भोगी श्रमिकों के लिये स्थायी कर्मियों को विनियमित करने की योजना" में सम्मिलित होने के संबंध में आपकी पात्रता पर विचार किया जाये। यहाँ उल्लेखनीय है कि स्थायी वर्गीकरण के संबंध में निर्णय करने के पूर्व माननीय उच्च न्यायालय खण्डपीठ ग्वालियर द्वारा रिट पिटीशन क्रमांक 6037/ 2011 (विजय कुमार जैन विरुद्ध म.प्र. शासन एवं अन्य) में प्रतिपादित सिद्धान्त के अनुसार आपको सुनवाई का मौका देना आवश्यक है, जो कि इस सूचना पत्र द्वारा दिया जा रहा है।

विभागीय तौर पर परीक्षण करने पर आपके नियोजन के संबंध में दो प्रकार की अनियमिततायें/अवैधानिकतायें होना प्रतीत होती हैं :-

- (अ) किसी भी नियम/प्रक्रिया के पालन किये बिना आपका नियोजन किया जाना।
- (ब) किसी रिक्त पद के उपलब्ध हुए बिना स्थायी वर्गीकरण की कार्यवाही की जाना।

नियोजन के संबंध में प्रक्रिया का पालन न होना

शासकीय रोजगार प्रदान करने के पूर्व नियम निर्धारण एवं नियमों के अनुसार चयन करना अनिवार्य है। इस संबंध में माननीय उच्चतम न्यायालय ने उमादेवी प्रकरण (सिविल अपील 3595-3612/1999) में पारित आदेश दिनांक 10.04.2006 की प्रथम कड़िका में निम्न उल्लेख किया गया है:-

1. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made there under. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

-3-

आपके प्रकरण में यह पाया गया है कि नियोजक (कार्यपालन यंत्री, लोक स्वास्थ्य यांत्रिकी खण्ड) द्वारा किसी नियम/प्रक्रिया के पालन किये बिना तथा रिक्त पद उपलब्ध हुए बिना आपको कार्य पर रखा गया है। अतः माननीय उच्चतम न्यायालय द्वारा उमादेवी प्रकरण के अनुसार आपका नियोजन प्रथम दृष्टया अवैधानिक नियुक्ति की श्रेणी में आता है।

यहाँ यह भी उल्लेखनीय है कि म०प्र० औद्योगिक नियोजन (स्थायी आज़ाएँ) अधिनियम-1961 एवं नियम 1963 के तहत बनाये गये standard standing orders के अंतर्गत औद्योगिक श्रमिकों की नियुक्ति के संबंध में प्रावधान किये गये हैं, एवं इस संबंध में clause 4 एवं 4-A निम्नानुसार है :-

"4. Recruitment- The manager may after consulting the Employment Exchange lay down the procedure for recruitment of employees and notify it on the notice board on which standing orders are exhibited.

4-A. Letter of appointment- Every employee shall be given a letter of appointment, in which among other things, his name, age, qualification, designation, classification, pay-scale, allowance, nature of job, name of department etc., shall be indicated."

विभागीय तौर पर उपलब्ध जानकारी अनुसार नियोजक (कार्यपालन यंत्री, लोक स्वास्थ्य यांत्रिकी खण्ड) ने उपरोक्त प्रक्रिया का कोई पालन नहीं किया। विशिष्टतः रोजगार कार्यालय से परामर्श कर, या अन्यथा, भर्ती संबंधी कोई नियम नहीं बनाये गये, न ही ऐसे कोई नियम/प्रक्रिया/रिक्तियों की जानकारी सूचना पटल पर प्रदर्शित की गई। आपको कार्य पर रखने के समय कोई नियुक्ति पत्र नियोजक द्वारा जारी नहीं किया गया। यह भी उल्लेखनीय है कि आपको किसी स्वीकृत एवं रिक्त पद के विरुद्ध कार्य पर नहीं रखा गया था, बल्कि दैनिक वेतन भोगी श्रमिक के रूप में नियोजक द्वारा बिना किसी विज्ञप्ति जारी किये तथा बिना किसी प्रक्रिया का पालन किये तात्कालिक आवश्यकता को ध्यान में रखते हुए वर्ष में रखा गया था और तब से आप कार्यरत हैं। अतः आपकी नियुक्ति किसी विधि मान्य प्रक्रिया से नहीं हुई, आपका तत्समय नियुक्ति आदेश जारी नहीं हुआ, तथा म०प्र० औद्योगिक नियोजन (स्थायी आज़ाएँ) अधिनियम 1961 एवं नियम 1963 के तहत बनाये गये Standard Standing Orders के अंतर्गत श्रमिकों के पद भी स्वीकृत नहीं थे।

माननीय उच्च न्यायालय म०प्र० जबलपुर में रिट याचिका क्रमांक 198/1999 (मनसुखलाल सराफ विरुद्ध अरुण कुमार तिवारी एवं अन्य) में पारित आदेश दिनांक 6.8.2015 में उच्च न्यायालय ने निर्धारित किया है कि ऐसे समस्त आदेश जहाँ विहित भर्ती नियमों का पालन न करते हुये भर्तियों की गई हैं वो कानूनी रूप से शून्य मानी जायेंगी। यथा :-

47. "By this pronouncement, we declare that all appointments made in similar manner (without following the selection process prescribed by the relevant recruitment rules), in breach of statutory rules, be treated as non-est in the eye of law from its inception and would stand annulled forthwith. However, we may leave the passing of a formal general Government order for revocation of all such appointments or on case to case basis, to be issued by the Appropriate Authority of the State Government."

इस प्रकार उमादेवी तथा मनसुखलाल प्रकरणों में प्रतिपादित सिद्धांतों के अनुसार आपका नियोजन प्रथम दृष्टया अवैधानिक प्रतीत होता है।

अतः इस परिपेक्ष्य में कारण बतायें कि आपका नियोजन क्यों न अवैधानिक माना जाये तथा इस संबंध में विधि अनुसार अग्रिम कार्यवाही की जाए ?

स्थायी वर्गीकरण की कार्यवाही नियम विरुद्ध होना :-

2. प्रमुख अभियंता लोक स्वास्थ्य यांत्रिकी विभाग भोपाल के आदेश क्रमांक 1139 / प्र. अ/स्था/लो.स्वा.यां./2003 भोपाल, दिनांक 03.02.2003 द्वारा रिक्त पदों के विरुद्ध कार्य कर रहे दैनिक वेतन भोगी श्रमिकों को स्थाई वर्गीकृत करने के निर्देश दिये गये थे। इस तारतम्य में कार्यपालन यंत्री लोक स्वास्थ्य यांत्रिकी खण्ड के आदेश क्रमांक दिनांक द्वारा आपको त्रुटिवश स्थाई वर्गीकृत करने के आदेश जारी किये गये थे, जबकि उनकी स्थापना में स्थायी वर्गीकृत श्रमिकों के कोई पद स्वीकृत नहीं थे, न ही कोई पद रिक्त थे। उक्त आदेश में आपका नाम सरल क्रमांक पर अंकित है। इस संबंध में लेख है कि प्रमुख अभियंता लोक स्वास्थ्य यांत्रिकी विभाग भोपाल के पत्र क्रमांक 6206/स्था.अराज./प्र.अ./लो.स्वा.यां.वि./2011 भोपाल दिनांक 15.07.2011 द्वारा पुनः यह स्पष्ट किया गया था कि मात्र रिक्त पदों के विरुद्ध कार्य कर रहे श्रमिकों को ही स्थाई वर्गीकृत किया जाना है, तथा ऐसे श्रमिकों को छोड़कर शेष समस्त श्रमिकों के स्थाई वर्गीकरण आदेश तत्काल प्रभाव से निरस्त किये जाये। तदुपरांत कार्यपालन यंत्री लोक स्वास्थ्य यांत्रिकी खण्ड के आदेश क्रमांक दिनांक द्वारा आपका स्थाई वर्गीकरण आदेश निरस्त किया गया है/(परंतु संबंधित कार्यपालन यंत्री द्वारा इस आदेश का पालन नहीं किया गया और आपका स्थायी वर्गीकरण का प्रथम दृष्टया अवैधानिक आदेश को निरस्त करने संबंधी कोई कार्यवाही नहीं की)।

3. जहां तक स्थायी वर्गीकरण का प्रश्न है यह उल्लेखनीय है कि आपके नियोजक (कार्यपालन यंत्री लोक स्वास्थ्य यांत्रिकी खण्ड) की स्थापना में निम्न पद स्वीकृत है :-

- | | |
|---|---|
| अ. नियमित स्थापना | — विभिन्न संवर्गों में स्वीकृत पद |
| ब. कार्यभारित स्थापना | — विभिन्न संवर्गों में स्वीकृत पद |
| स. दैनिक वेतन भोगी श्रमिक (स्थायी वर्गीकृत) | — कोई पद स्वीकृत नहीं है। |
| द. दैनिक वेतन भोगी श्रमिक (अन्य) | — कोई पद स्वीकृत नहीं है। |

4. वित्त विभाग के आदेश क्रमांक 478-चार-ब-1-87 दिनांक 01.04.1987 के अनुसार वर्ष 1987 के उपरांत दैनिक वेतन पर की जाने वाली नियुक्तियों पर पूर्ण प्रतिबंध लागू किया गया था। नियोजक (कार्यपालन यंत्री लोक स्वास्थ्य यांत्रिकी खण्ड) की स्थापना में दैनिक वेतन भोगी श्रमिकों हेतु कोई भी स्थायी वर्गीकृत पद स्वीकृत नहीं थे तथा तत्समय रिक्त पद भी नहीं थे तथा वर्तमान में भी कोई भी स्थायी वर्गीकृत पद स्वीकृत नहीं है तथा रिक्त भी नहीं है। दैनिक वेतन भोगी श्रमिकों के अन्य कोई पद भी स्वीकृत नहीं है।

-5-

कार्यपालन यंत्री लोक स्वास्थ्य यांत्रिकी खण्ड को स्थायी वर्गीकृत श्रमिक के पद स्वीकृत करने अथवा इन पदों पर नियुक्ति करने के अधिकार पूर्व में नहीं थे तथा वर्तमान में भी नहीं है।

इस संबंध में माननीय उच्चतम न्यायालय ने "म0प्र0 शासन एवं अन्य विरुद्ध ललित कुमार वर्मा (2007 1 एस.सी.सी. 575)" प्रकरण में निम्न उल्लेख किया है :-

"7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. The 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."

अतः मात्र दैनिक वेतन भोगी श्रमिक के रूप में 6 माह/240 दिवस कार्य करने से ही स्थायी वर्गीकृत होने की पात्रता नहीं होती है। उक्त सिद्धांत माननीय उच्चतम न्यायालय द्वारा अवमानना याचिका क्रमांक 771/2015 (रामनरेश रावत विरुद्ध श्री अश्विनी राय एवं अन्य) में भी मान्य किया गया है।

उपरोक्त परिस्थितियों में अतः कारण बताये कि क्यों न यह माना जाये कि आपके स्थायी वर्गीकरण की कार्यवाही अवैधानिक थी तथा क्यों न कार्यपालन यंत्री द्वारा आपको स्थायी वर्गीकृत घोषित किये जाने संबंधी आदेश क्रमांक दिनांक विधि अनुसार न होने के कारण उसे शून्यवत घोषित किया जाए।

"कार्यरत दैनिक वेतन भोगी श्रमिकों के लिये स्थायी कर्मियों को विनियमित करने की योजना" के अंतर्गत पात्रता :-

सामान्य प्रशासन विभाग के परिपत्र क्रमांक एफ 5-1/2013/1/3 भोपाल, दिनांक 7.10.2016 के द्वारा दैनिक वेतन भोगी श्रमिकों के लिये स्थायी कर्मियों को विनियमित करने की योजना जारी की गई है। इस संबंध में लोक स्वास्थ्य यांत्रिकी विभाग के पत्र क्रमांक एफ 16-102/2016/1/34 भोपाल दिनांक 24.12.2016 तथा प्रमुख अभियंता, लोक स्वास्थ्य यांत्रिकी विभाग के पत्र क्रमांक. 10287/प्र.अ./स्था./अराज./लो.स्वा.यौ.वि./2016 भोपाल दिनांक 31.12.2016 द्वारा पूरक निर्देश जारी किये गये हैं। इन तीनों पत्रों की छायाप्रति सुलभ संदर्भ हेतु संलग्न है। इस योजना के अंतर्गत आपके श्रेणीकरण एवं पात्रता रखने संबंधी अपना पक्ष प्रस्तुत करें।

आप दिनांक तक अपना जवाब/पक्ष प्रस्तुत करें, अन्यथा यह माना जावेगा कि आपको इस संबंध में कुछ नहीं कहना है तथा उपरोक्त तथ्य आपको स्वीकार है एवं तदनुसार प्रकरण में एक पक्षीय कार्यवाही की जावेगी।

संलग्न :- उपरोक्तानुसार।

मुख्य अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
परिक्षेत्र

261

पृष्ठा क्रमांक / मु.अ. / स्था. / लो.स्वो.यौ.वि. / 2017
प्रतिलिपि :-

दिनांक / / 2017

कार्यपालन यंत्री, लोक स्वास्थ्य यांत्रिकी विभाग खण्ड को सूचनार्थ।
कृपया इस विषय पर समस्त आवश्यक दस्तावेज लेकर दिनांक को
कार्यालय में उपस्थित हों।

मुख्य अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
..... परिक्षेत्र

दैनिक वेतन भोगी श्रमिक से संबंधित विवरण

1. दैनिक वेतन भोगी श्रमिक का नाम - _____
2. दैनिक वेतन भोगी पदनाम - _____
3. कब से कार्यरत है - (यदि हो तो आदेश संलग्न करें, यदि आदेश नहीं हो तो ऐसा उल्लेख करें)।
4. स्थायी वर्गीकरण का आदेश/क्रमांक/दिनांक, यदि हो तो संलग्न करें।
5. स्थायी वर्गीकरण का आदेश निरस्त करने का आदेश क्रमांक/दिनांक, यदि हो तो संलग्न करें, यदि आदेश नहीं हो तो ऐसा उल्लेख करें।
6. मूल रिट याचिका क्रमांक _____ (याचिका की प्रति एवं अंतिम आदेश संलग्न करें)।
 A. यदि अभ्यावेदन प्रस्तुत किया हो तो प्रस्तुति का दिनांक एवं प्रति संलग्न करें।
 B. अवमानना याचिका हो तो विवरण दें।
7. नियोजक का नाम (कार्यालय कार्यपालन यंत्री का नाम)।
8. नियोजन की स्थापना में स्वीकृत पदों का विवरण।
 a- नियमित- सभी संवर्गों _____ पद स्वीकृत हैं।
 b- कार्यभारित - सभी संवर्गों _____ पद स्वीकृत हैं।
 c- श्रमिक (स्थायी वर्गीकृत)- कोई पद स्वीकृत नहीं हैं/ _____ पद स्वीकृत हैं।
 d- श्रमिक, (अन्य)- कोई पद स्वीकृत नहीं हैं/ _____ पद स्वीकृत हैं।
9. क्या नियोजक को दैनिक वेतन भोगी श्रमिकों के पदों की स्वीकृति प्राप्त हुई है, यदि हाँ तो पत्र क्रमांक _____ दिनांक _____ (आदेश संलग्न करें)।
10. आवेदक की नियुक्ति किस प्रक्रिया से हुई, विवरण दें (आवेदक की नियुक्ति के समय किसी प्रक्रिया का पालन नहीं किया गया, मात्र तात्कालिक आवश्यकता के अनुसार कार्य पर रखा गया/आवेदक की नियुक्ति _____ प्रक्रिया के अनुसार हुई आदेश संलग्न है)।
11. किस पद के विरुद्ध हुई, पद स्वीकृति एवं आदेश क्रमांक बतायें, संलग्न करें।
12. श्रमिक द्वारा अन्य कोई याचिका प्रकरण/श्रम न्यायालय में दायर किया गया हो तो उसका विवरण दें।
13. वर्तमान में श्रमिक को दी जा रही परिलब्धियों (चार्ट) (शासन के आदेश क्रमांक एफ-16-14/2017/1/34 दिनांक 11 जनवरी 2017 के पैरा 49 के अनुसार)।
14. शासन का आदेश दिनांक 7.10.2016, 24.12.2016 कार्यालय प्रमुख अभियंता का पत्र दिनांक 31.12.2016 के अनुरूप वेतन निर्धारण का पत्रक संलग्न करें। (तुलनात्मक पत्रक संलग्न करें)।
15. इस श्रमिक से संबंधित अन्य कोई सुसंगत दस्तावेज हो तो संलग्न करें।

मध्यप्रदेश शासन
लोक स्वास्थ्य यांत्रिकी विभाग
मंत्रालय वल्लभ भवन भोपाल

// आदेश //

क्रमांक एफ 16-14/2017/1/34.

भोपाल, दिनांक 1/ जनवरी, 2017

1. इस आदेश द्वारा श्री सुरेन्द्र निम्बालकर ("आवेदक"), दैनिक वेतन भोगी श्रमिक, द्वारा प्रस्तुत अभ्यावेदन दिनांक 01.10.2016 का निराकरण किया जा रहा है।

2. संक्षेप में प्रकरण की पृष्ठभूमि निम्नानुसार है :-

(i) आवेदक द्वारा माननीय उच्च न्यायालय जबलपुर के समक्ष एक रिट याचिका क्रमांक 16101/2016 दायर की गई थी, जिसमें दिनांक 26.09.2016 को पारित आदेश का Operating Paragraph निम्नानुसार है:-

"This Court deems it proper to dispose of this petition in terms of the order passed in Kaluram Narwariya (Supra) Parties are directed to act in accordance with the directions issued therein. Petition is disposed of without expressing any view on merits."

(ii) तदनुसार आवेदक द्वारा निम्नानुसार अभ्यावेदन दिनांक 01.10.2016 को प्रस्तुत किया गया :-

माननीय उच्च न्यायालय में याचिकाकर्ता द्वारा नियमित वेतन हेतु याचिका क्रमांक 16101/2016 दायर की गई थी जिसमें माननीय न्यायालय द्वारा नियमित वेतन भुगतान करने का आदेश दिनांक 28.09.2016 को दिया गया है, जिसके पालन में उनके द्वारा आदेश की प्रतिलिपि सहित यह आवेदन प्रस्तुत किया जा रहा है। अन्य कर्मचारियों को माननीय उच्च न्यायालय के आदेश अनुसार नियमित वेतन एवं एरियर्स राशि का भुगतान किया जा चुका है। अतः माननीय उच्च न्यायालय द्वारा पारित आदेश का पालन करते हुये उन्हें भी नियमित वेतन एवं एरियर्स राशि का भुगतान किया जाए।

3. प्रकरण के संबंध में तथ्यात्मक स्थिति की जानकारी प्रमुख अभियंता कार्यालय से प्राप्त हुई है।

4. आवेदक द्वारा प्रस्तुत अभ्यावेदन पर विचार किया गया।

5. न्यायालय के निर्देश के अनुसार प्रकरण का निराकरण कालूराम नरवरिया विरुद्ध म0प्र0 शासन एवं अन्य (रिट याचिका क्रमांक 2000/2015 में पारित आदेश दिनांक 08.04.2015) के परिपेक्ष्य में किया जाना है। कालूराम नरवरिया के प्रकरण में उच्च न्यायालय ग्वालियर बेंच ने निम्न आदेश पारित किया है :-

1. The grievance of the petitioner is that he has been classified as a permanent employee by the employer by order, Annexure P/2. This permanent status is not taken away till date. Despite classifying the petitioner as a permanent employee, he has not been given pay scale attached to the said permanent post. In addition, the petitioner is praying for the benefits of DA, increments, seniority and other benefits.

24

2. During the course of argument, Shri B.P. Singh relied on a Division Bench judgment passed in Writ Appeal No. 110/2011 and other connected matters, decided on 1.11.2011. It is contended that the Supreme Court affirmed the said order recently on 21.1.2015. It is contended that the respondents shall consider the case of the petitioner in the light of said judgment.

3. Shri Pravin Newaskar, learned Deputy Government Advocate submits that so far the decision of Division Bench and Supreme Court aforesaid is concerned, he is not disputing the legal position. He submits that on facts, every petitioner's case needs to be examined.

4. I have heard learned counsel for the parties at length.

5. The Division Bench in Writ Appeal No. 110/2011 and connected matters (Annexure P/3) opined as under:-

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

6. The Apex Court dismissed the SLP (Civil) No.(s) 20025/2011. The Apex Court opined as under:-

"In Rest of the Matters
Delay condoned.
Dismissed.

We direct the State Government to implement the order(s) passed by the High Court within eight months' time from today. If for any reason, the petitioner-State does not implement the order(s) passed by the High Court, the respondents are at liberty to approach this Court by way of filing contempt petition(s)."

7. Apart from this, similar orders passed by this Court are affirmed by the Division Bench and by Supreme Court.

8. Considering the aforesaid, it can be safely concluded that the ratio decidendi of the judgment passed by this Court in State of MP vs. Ram Prakash, reported in 1989 J.L.J. 36, followed in Writ Appeal No. 110/2011, is that the mode of induction as a permanent employee through Standard Standing Orders is also

26

apermissible and statutory mode of induction. Once an employee is given permanent status under the Standing Orders, he becomes a permanent employee for all purposes. The said judgment in Ramprakash and in Writ Appeal No. 110/2011 has to be read as a judgment in rem and not a judgment in personam.

9. In view of this ratio, a model employer/welfare State should extend the similar benefits to all similarly situated persons. We are not oblivious of the fact that a sizeable number of poor employees, who are in a lower echelon of the State Government service, are required to knock the doors of the Court for seeking similar relief. This kind of litigation can be avoided, if Government extends the benefits to all similarly situated persons. Once the Government's SLPs are dismissed and the legal position has attained a finality, in all fairness, the respondents should extend the benefit of the said principle to all similarly situated employees. In (1985) 2 SCC 648 (Inder Pal Yadav and others vs. Union of India and others), the Apex Court opined as under:-

"Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court."

10. In the light of aforesaid and at the cost of repetition, in my opinion, the judgment passed in State of MP vs. Ramprakash (supra) is a judgment in rem. The same can be said about the order dated 1.11.2011 (Annexure P/3). Resultantly, this petition is disposed of by following directions:-

(1) The petitioner shall file a fresh representation before respondents along with the proof of acquiring permanent status by way of classification. The respondents shall verify and if petitioner's permanent status remains intact, he shall be given similar treatment, i.e., grant of regular pay scale attached to the permanent post from the date of classification as permanent employee.

(2) The respondents shall also grant increments attached to the pay scale and if rules permit, extend benefit of DA in favour of the petitioner.

(3) The respondents shall also pass a speaking order regarding claim of grant of seniority to the petitioner from the date of classification as permanent employee.

(4) If for any justifiable reason, the petitioner is not found entitled for any of the benefits claimed, a detailed and reasoned order be passed and communicated to the petitioner. The aforesaid exercise be completed within 120 days from the date of production of copy of this order along with the representation.

(5) It is made clear that it will not be open to the respondents to deny relief to the petitioners on the ground that they were not litigants in W.A. No. 1266/2010 and other similar matters, which were decided on merits, if they are otherwise similarly situated. Petition is disposed of.

6. कालूराम नरवरिया प्रकरण में न्यायालय का मूल निर्देश यह था कि यदि याचिकाकर्ता को वर्गीकरण की प्रक्रिया के अनुसरण में permanent status प्राप्त हो गया हो तो उसे permanent post से संबद्ध नियमित वेतनमान प्रदान किया जाये ("grant of regular pay scale attached to the permanent post from the date of classification as permanent employee.")।
7. अतः प्रकरण में निम्न विचारणीय बिन्दु तय किये गये हैं, तथा उन पर संक्षिप्त निष्कर्ष निम्न तालिका में अभिलिखित किये गये हैं (विस्तृत विवेचना तालिका के नीचे उपलब्ध है) :-

क्रमांक	बिन्दु	निष्कर्ष
(i)	आवेदक का नियोजन विभाग में किस प्रक्रिया /नियमों के अंतर्गत हुआ था ? क्या आवेदक को किसी स्वीकृत रिक्त पद के विरुद्ध रखा गया है? यदि हाँ तो उस पद से संबंधित परिलाभ (वेतन भत्ते आदि) क्या है ?	आवेदक का नियोजन विभाग में किसी विधिक नियम/ प्रक्रिया का पालन किये बिना हुआ था। आवेदक को किसी स्वीकृत रिक्त पद के विरुद्ध नहीं रखा गया था। किसी पद से संबंधित परिलाभ का प्रश्न उत्पन्न नहीं होता।
(ii)	क्या आवेदक स्थायी वर्गीकृत श्रमिक है? यदि हाँ तो आवेदक को किन नियमों/प्रावधानों के अंतर्गत स्थायी वर्गीकृत घोषित किया गया है ? स्थायी वर्गीकृत घोषित करने पर औद्योगिक श्रमिक को क्या परिलाभ प्राप्त करने की पात्रता है?	आवेदक स्थायी वर्गीकृत श्रमिक नहीं है। आवेदक वर्ष 1991 से दैनिक वेतन भोगी श्रमिक के रूप में कार्यरत है। वर्ष 2007 में नियोजक द्वारा आवेदक को त्रुटिवश स्थायी वर्गीकृत घोषित किया गया था, परंतु ऐसा किन नियमों के अंतर्गत किया गया इसका स्पष्ट उल्लेख आदेश में नहीं किया गया था। तदोपरान्त नियोजक द्वारा त्रुटि सुधारते हुये वर्ष 2011 में आवेदक का स्थायी वर्गीकरण निरस्त किया गया। स्थायी वर्गीकरण के उपरान्त औद्योगिक श्रमिक को कोई अतिरिक्त वित्तीय लाभ प्राप्त नहीं होते हैं। श्रम कानून के अनुरूप छंटनी/कार्य से पृथक् करने के संदर्भ में नियमानुसार संरक्षण प्राप्त होता है।
(iii)	यदि आवेदक को किसी पद के विरुद्ध स्थायी वर्गीकृत घोषित न किया गया हो तो क्या सम्बन्धित नियोजक के कार्यालय में ऐसे स्थायी/अस्थायी स्वीकृत एवं रिक्त पद उपलब्ध हैं जिनके विरुद्ध आवेदक को वेतनमान दिया जा सके।	आवेदक को किसी रिक्त /स्वीकृत पद के विरुद्ध पारिश्रमिक पाने की पात्रता नहीं है।
(iv)	क्या आवेदक को "समान कार्य हेतु समान वेतन" के आधार पर नियमित वेतनमान प्राप्त करने की पात्रता है। क्या आवेदक को पूर्व में कतिपय श्रमिकों को प्रदत्त परिलाभों के अनुरूप परिलाभ प्राप्त करने की पात्रता है ?	आवेदक को नियमित वेतनमान प्राप्त करने की पात्रता नहीं है। यदि पूर्व में त्रुटिपूर्ण आदेशों के आधार पर कतिपय श्रमिकों को कुछ परिलाभ प्रदान किये गये हैं, तो उनके अनुरूप आवेदक को परिलाभ प्राप्त करने की पात्रता नहीं है।

(v)	वर्तमान स्थिति में आवेदक को क्या-क्या लाभ प्राप्त करने की पात्रता है?	आवेदक दैनिक वेतन भोगी श्रमिकों हेतु सामान्य प्रशासन विभाग द्वारा जारी परिपत्र दिनांक 07.10.2016 के अनुसार लाभ प्राप्त करने की पात्रता रखता है।
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बिन्दु क्रमांक 7 (i) :- आवेदक का नियोजन विभाग में किस प्रक्रिया / नियमों के अंतर्गत हुआ था ? क्या आवेदक को किसी स्वीकृत रिक्त पद के विरुद्ध रखा गया है? यदि हाँ तो उस पद से संबंधित परिलाम (वेतन मत्ते आदि) क्या है ?

8. आवेदक कार्यपालन यंत्री, राजधानी परियोजना खण्ड क्रमांक-2 जोक स्वास्थ्य यांत्रिकी विभाग भोपाल ("नियोजक") के अंतर्गत दैनिक वेतन भोगी श्रमिक के रूप में कार्यरत है। इस नियोजक की स्थापना में दो प्रकार से कर्मियों का नियोजन हो सकता है :-

(क) म०प्र० औद्योगिक नियोजन (स्थायी आज्ञाएँ) अधिनियम-1961 एवं नियम 1963 के तहत बनाये गये standard standing orders के अंतर्गत, एवं
(ख) भारत के संविधान के अनुच्छेद 309 के अंतर्गत म०प्र० शासन द्वारा निर्धारित नियमों के अनुसार।

9. अतः प्रथमतः यह निर्धारण करने की आवश्यकता है कि क्या आवेदक का नियोजन उपरोक्त औद्योगिक श्रम कानून के अंतर्गत विहित प्रक्रिया के अनुसार किया गया है, अथवा क्या यह नियोजन शासन द्वारा संविधान के अनुच्छेद 309 के अंतर्गत निर्धारित प्रक्रिया के अनुसार किया गया है।

10. म०प्र० औद्योगिक नियोजन (स्थायी आज्ञाएँ) अधिनियम - 1961 एवं नियम 1963 के तहत बनाये गये standard standing orders के अंतर्गत औद्योगिक श्रमिकों की नियुक्ति के संबंध में प्रावधान किये गये हैं, एवं इस संबंध में clause 4 एवं 4-A निम्नानुसार है :-

*4. Recruitment- The manager may after consulting the Employment Exchange lay down the procedure for recruitment of employees and notify it on the notice board on which standing orders are exhibited.

4-A. Letter of appointment.- Every employee shall be given a letter of appointment, in which among other things, his name, age, qualification, designation, classification, pay-scale, allowance, nature of job, name of department etc., shall be indicated."

11. उपरोक्त प्रावधान आज्ञापक प्रकृति के हैं। शासकीय रोजगार प्रदान करने के पूर्व नियम निर्धारण एवं नियमों के अनुसार चयन करना अनिवार्य है, इस संबंध में माननीय उच्चतम न्यायालय ने उमादेवी प्रकरण (सिविल अपील 3595-3612/1999) में पारित आदेश दिनांक 10.04.2006 की प्रथम कंडिका में निम्न उल्लेख किया गया है:-

1. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made there under. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

12. औद्योगिक श्रमिकों का वर्गीकरण standard standing orders के Clause 2 के अंतर्गत निम्नानुसार उल्लेखित है :-

2. (i) permanent, (ii) permanent seasonal, (iii) probationers, (iv) Badlies, (v) apprentices, and (vi) temporary (vii) fixed term employment's employee:

(i) A 'permanent' employee is one who has completed six months satisfactory service in a clear vacancy in one or more post 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;

(ii) A 'permanent seasonal employee' is one who has completed service for a period equal to 2/3rd of the duration of a season or three months whichever is less in a clear vacancy and shall be deemed to be a permanent employee for the purpose of these order;

(iii) A 'probationer' means an employee who is provisionally employed to fill a clear vacancy, and who has not completed six months' satisfactory service in the aggregate;

(iv) A 'badli', employee means an employee who is employed on the post of a permanent seasonal employee, or a probationer or a permanent seasonal employee who is temporarily absent.

(v) An 'apprentice' means a learner, provided that no employee shall be classified as an apprentice if he has / had training for an aggregate period of one year, provided further that a longer period of apprenticeship shall be required if prescribed by a law or an award, or by agreement with the representative of employees;

(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."

(vii) "Fixed term employment's employee "means an employee who has been engaged on the basis of contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits shall not be less than that of a permanent employee. He shall also be eligible for all statutory benefits available to a permanent employee promotionately according to the period of service rendered by him even though his period of employment does not extend to the qualifying period of employment required in the statute."

13. इस प्रकार औद्योगिक श्रम कानून की अपेक्षा है कि नियोजन के पूर्व प्रथमतः नियोजक को रोजगार कार्यालय से परामर्श कर श्रमिकों की भर्ती के संबंध में नियम/प्रक्रिया तय करनी चाहिये। तत्पश्चात् प्रक्रिया का पालन कर नियुक्त किये गये प्रत्येक श्रमिक को एक नियुक्ति पत्र प्रदान करना चाहिये, जिसमें अन्य बिन्दुओं के अलावा उसके पदनाम, वर्गीकरण तथा पद से संबंधित वेतनमान एवं भत्तों का विवरण होना चाहिये।

12

14. वर्तमान प्रकरण में प्रमुख अभियंता कार्यालय से प्राप्त जानकारी के अनुसार नियोजक ने उपरोक्त प्रक्रिया का कोई पालन नहीं किया। विशिष्टतः रोजगार कार्यालय से परामर्श कर, या अन्यथा, भर्ती संबंधी कोई नियम नहीं बनाये गये, न ही ऐसे कोई नियम/प्रक्रिया/रिवित्यों की जानकारी सूचना पटल पर प्रदर्शित की गई। आवेदक को कार्य पर रखने के समय कोई नियुक्ति पत्र नियोजक द्वारा जारी नहीं किया गया। यह भी उल्लेखनीय है कि आवेदक को किसी स्वीकृत एवं रिक्त पद के विरुद्ध कार्य पर नहीं रखा गया था, बल्कि दैनिक वेतन भोगी श्रमिक के रूप में नियोजक द्वारा बिना किसी विज्ञप्ति जारी किये तथा बिना किसी प्रक्रिया का पालन किये तात्कालिक आवश्यकता को ध्यान में रखते हुए वर्ष 1991 में रखा गया था और तब से ये कार्यरत है। चूंकि आवेदक की नियुक्ति किसी विधि मान्य प्रक्रिया से नहीं हुई, उसका तत्समय नियुक्ति आदेश जारी नहीं हुआ तथा म0प्र0 औद्योगिक नियोजन (स्थायी आज़ारें) अधिनियम 1961 एवं नियम 1963 के तहत बनाये गये Standard Standing Orders के अंतर्गत श्रमिकों के पद भी स्वीकृत नहीं है, अतः उसका नियोजन उपरोक्त औद्योगिक श्रम कानून के अंतर्गत 07 श्रेणियों के औद्योगिक श्रमिकों में से किस श्रेणी में मान्य किया जाये, इसका निर्धारण करना कठिन है।

15. जहाँ तक संविधान के अनुच्छेद 309 के अंतर्गत बनाये गये भर्ती नियमों के अनुसार नियोजन का प्रश्न है, यह उल्लेखनीय है कि इन नियमों के अनुसार नियुक्ति करने के पूर्व नियुक्तकर्ता अधिकारी को यह सुनिश्चित करना आवश्यक है कि उक्त पद का निर्माण/स्वीकृति सक्षम स्तर से प्राप्त हो गयी है। म0प्र0 शासन एवं अधिनस्थ स्थापनाओं में पद स्वीकृति का अधिकार म0प्र0 कार्यपालक नियमों के अनुसार वित्त विभाग का है। प्रमुख अभियंता से प्राप्त जानकारी के अनुसार वित्त विभाग द्वारा (अथवा किसी अन्य विभाग द्वारा) दैनिक वेतन भोगी श्रमिकों के कोई भी पद संबंधित नियोजक की स्थापना में स्वीकृत नहीं किये गये हैं। वर्तमान में नियोजक की स्थापना में निम्न पद स्वीकृत है:-

नियमित स्थापना	- विभिन्न संवर्गों में 57 स्वीकृत पद
कार्यभारित स्थापना	- विभिन्न संवर्गों में 264 स्वीकृत पद
श्रमिक (स्थायी वर्गीकृत)	- कोई पद स्वीकृत नहीं है
श्रमिक (अन्य)	- कोई पद स्वीकृत नहीं है

नियमित एवं कार्यभारित स्थापना में विभिन्न संवर्गों में स्वीकृत पदों की पदपूर्ति हेतु शासन ने भर्ती नियम बनाये हैं। इन नियमों में आरक्षण, शैक्षणिक एवं अन्य अर्हतायें तथा चयन हेतु प्रक्रिया का निर्धारण किया गया है। दैनिक वेतन भोगी श्रमिकों (चाहे वे स्थायी वर्गीकृत हों अथवा नहीं) के लिये कोई भी पद स्वीकृत नहीं है, न ही पूर्व में कभी कोई पद स्वीकृत रहे थे।

16. प्रमुख अभियंता कार्यालय से प्राप्त जानकारी के अनुसार आवेदक को नियमित/कार्यभारित स्थापना के किसी भी स्वीकृत रिक्त पद के विरुद्ध नहीं रखा गया है। यह स्पष्ट किया गया है कि आवेदक को बिना पद की स्वीकृति के दैनिक वेतन भोगी श्रमिक के रूप में कार्य की तात्कालिक आवश्यकताओं के आधार पर वर्ष 1991 में रखा गया था, परंतु इस हेतु किसी विधिक प्रक्रिया का पालन नहीं किया गया था।

17. यहाँ यह भी विशेष रूप से उल्लेखनीय है कि वित्त विभाग के आदेश क्रमांक 478-चार-ब-1-87, दिनांक 01.04.1987 के अनुसार वर्ष 1987 के उपरांत दैनिक वेतन पर की जाने वाली नियुक्तियों पर पूर्ण प्रतिबंध लागू किया गया था। इस आदेश में उल्लेख है कि :-

" राज्य शासन द्वारा पूर्व में लिये गये निर्णय अनुसार दैनिक वेतन पर की जाने वाली नियुक्तियों पर आगामी आदेश तक प्रतिबंध लागू किया गया था। लेकिन शासन के ध्यान में यह लाया गया है कि अधिकारियों द्वारा उक्त निर्देशों का उल्लंघन किया जा रहा है।

26

2. अतः दैनिक वेतन पर नियुक्ति सम्बन्धी शासकीय अधिकारियों को प्रदत्त अधिकार तत्काल प्रभाव से आगामी आदेश तक स्थगित करते हुये यह निर्णय लिया गया है कि कोई भी विभाग/अधीनस्थ अधिकारी आदि बिना राज्य शासन की पूर्व स्वीकृति के किसी भी पद पर दैनिक वेतन पर नियुक्ति आदि नहीं करेगा।

3. उक्त प्रतिबन्ध 90 दिन की अवधि के लिये की जाने वाली नियुक्तियों पर भी लागू होगा। यदि इसके बावजूद भी किसी अधिकारी द्वारा दैनिक वेतन पर नियुक्तियों की जाना पाया जाता है तो, मजदूरी के रूप में भुगतान की गई राशि की वसूली सम्बन्धित अधिकारी के वेतन से की जावेगी।

4. यह आदेश उन नियुक्तियों पर लागू नहीं होगा, जो दिनांक 1 मई 1985 के पूर्व की गई है।

उपरोक्त आदेश की अवज्ञा कर वर्ष 1991 में आवेदक को दैनिक वेतन भोगी श्रमिक के रूप में नियोजित किया गया, अतः आवेदक का नियोजन प्रारंभ से ही पूर्णतः अवैधानिक था।

18. उच्चतम न्यायालय द्वारा उमादेवी प्रकरण के अनुसार आवेदक का नियोजन अवैधानिक नियुक्ति की श्रेणी में आता है। उमादेवी प्रकरण में दिये निर्णय के पालन में म0प्र0 शासन सामान्य प्रशासन विभाग द्वारा जारी आदेश क्रमांक एफ 5-3/2006/1/3 दिनांक 16 मई 2007 में यह निर्देश दिया गया कि अवैधानिक नियुक्तियों का नियमितीकरण न किया जाये। इस विषय पर हाल में उच्च न्यायालय म0प्र0 जबलपुर में रिट याचिका क्रमांक 198/1999 मनसुखलाल सराफ विरुद्ध अरुण कुमार तिवारी एवं अन्य में पारित आदेश दिनांक 06.08.2015 में उच्च न्यायालय ने निर्धारित किया है कि ऐसे समस्त आदेश जहाँ विहित भर्ती नियमों का पालन न करते हुये भर्तियों की गई हैं वो कानूनी रूप से शून्य मानी जायेंगी। यथा :-

47. "By this pronouncement, we declare that all appointments made in similar manner (without following the selection process prescribed by the relevant recruitment rules), in breach of statutory rules, be treated as non-est in the eye of law from its inception and would stand annulled forthwith. However, we may leave the passing of a formal general Government order for revocation of all such appointments or on case to case basis, to be issued by the Appropriate Authority of the State Government."

19. अतः उपरोक्त विवेचना अनुसार इस बिन्दु पर निम्न निष्कर्ष अभिलिखित किया जाता है :-

"आवेदक का नियोजन विभाग में किसी विधिक नियम/प्रक्रिया का पालन किये बिना हुआ था। आवेदक को किसी स्वीकृत रिक्त पद के विरुद्ध नहीं रखा गया था। किसी पद से संबंधित परिलाम का प्रश्न उत्पन्न नहीं होता।"

बिन्दु क्रमांक 7 (ii) :- क्या आवेदक स्थायी वर्गीकृत श्रमिक है? यदि हाँ तो आवेदक को किन नियमों/प्रावधानों के अंतर्गत स्थायी वर्गीकृत घोषित किया गया है? स्थायी वर्गीकृत घोषित करने पर औद्योगिक श्रमिक को क्या परिलाम प्राप्त करने की पात्रता है?

20. उपरोक्त कड़िका-12 में उल्लेखित औद्योगिक श्रमिकों के वर्गीकरण के अवलोकन से स्पष्ट है कि श्रमिकों का स्थायी वर्गीकरण Clause 2 (i) के अनुसार किया जा सकता है यदि ऐसे श्रमिकों ने 6 माह की संतोषप्रद सेवा स्पष्ट रिक्त पद के विरुद्ध की हो। इसके अतिरिक्त Clause 2(vi) के अनुसार यदि कोई अस्थायी वर्गीकृत श्रमिक 6 माह से अधिक अवधि तक कार्य करता रहे तो उसे भी स्थायी

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वर्गीकृत श्रमिक माना जा सकता है, परंतु रिक्त पद के अभाव में श्रमिक को स्थायी वर्गीकृत श्रमिक का दर्जा प्राप्त करने का अधिकार नहीं होगा (इस संबंध में आगामी कंडिकाओं में विवेचना देखें)।

21. प्रमुख अभियंता से प्राप्त जानकारी के अनुसार नियोजक ने वर्ष 1991 में आवेदक को दैनिक वेतन भोगी श्रमिक के रूप में कार्य पर रखा था। नियोजक की स्थापना में स्थायी वर्गीकृत श्रमिक के पद स्वीकृत नहीं है। आवेदक द्वारा 240 दिन की सेवाएं पूर्ण करने के कारण आदेश दिनांक 31.07.2007 से नियोजक द्वारा आवेदक को दिनांक 24.07.2007 से स्थायी वर्गीकृत घोषित किया गया। इस आदेश में स्पष्ट रूप से उल्लेख किया गया है कि "स्थायी वर्गीकृत घोषित होने से कर्मचारियों को किसी भी प्रकार की वेतनवृद्धि वरिष्ठता कम में कोई बदलाव नहीं आयेगा"। इसके उपरान्त नियोजक के आदेश दिनांक 05.07.2010 द्वारा स्थायी वर्गीकरण दिनांक में संशोधन कर आवेदक के विभाग में कार्य प्रारंभ करने के दिनांक से 6 माह उपरान्त उसे स्थायी वर्गीकृत घोषित किया गया। परंतु इस आदेश में भी स्पष्ट किया गया था कि स्थायी वर्गीकृत घोषित होने से किसी भी प्रकार का वेतन में कोई परिवर्तन नहीं होगा।
22. हालांकि नियोजक के आदेश दिनांक 31.07.2007 एवं 05.07.2010 में इसका उल्लेख नहीं है कि स्थायी वर्गीकरण किन प्रावधानों के अंतर्गत किया जा रहा है, ऐसा प्रतीत होता है कि स्थायी वर्गीकरण मात्र इसलिये किया गया क्योंकि संबंधित दैनिक वेतन भोगी श्रमिकों ने नियोजक के पास 6 माह अथवा उससे अधिक अवधि तक कार्य किया। इस संबंध में म0प्र0 शासन के पत्र क्रमांक एफ-16-295/2001/1/34 दिनांक 10.10.2001 के परिपेक्ष्य में प्रमुख अभियंता ने अपने पत्र क्रमांक 6206/स्था.अराज./प्र.अ./लो.स्वा.यौ.वि./2011, दिनांक 15.07.2011 द्वारा निर्देशित किया गया कि समस्त प्रकरणों का परीक्षण कर यह सुनिश्चित किया जाना चाहिये कि ऐसे स्थायी वर्गीकरण के आदेश जो रिक्त पद के विरुद्ध कार्य कर रहे कर्मचारियों के लिये जारी किये गये हैं, उन्हें छोड़कर शेष समस्त स्थायी वर्गीकरण के आदेश तत्काल प्रभाव से निरस्त किये जायें। इस परिपेक्ष्य में नियोजक द्वारा अपने आदेश क्रमांक 93/स्था./का.य./रा.परि.खण्ड-2/भोपाल दिनांक 22.07.2011 द्वारा आवेदक का स्थायी वर्गीकरण का आदेश निरस्त किया गया।
23. यहाँ यह उल्लेख करना आवश्यक है कि मात्र 06 माह /240 दिवस पर दैनिक वेतन भोगी श्रमिक के रूप में कार्य करने से स्थायी वर्गीकरण की पात्रता उत्पन्न नहीं होती, जब तक कि इस हेतु स्थायी वर्गीकृत रिक्त पद उपलब्ध न हो। इस संबंध में उच्चतम न्यायालय द्वारा म0प्र0 शासन एवं अन्य विरुद्ध ललित कुमार वर्मा (2007 1 एस.सी.सी. 575) में निर्धारित किया है कि :-
 "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."
24. ललित कुमार वर्मा प्रकरण में पारित आदेश के आधार पर उच्च न्यायालय ग्वालियर बेंच में रिट याचिका क्रमांक 1388/2008 में संबंधित याचिकाकर्ता को रिक्त पद उपलब्ध न होने पर स्थायी वर्गीकरण का पात्र नहीं माना गया। तत्पश्चात याचिकाकर्ता द्वारा उच्चतम न्यायालय में सिविल अपील (क्रमांक 7006-7008/2009 रमेशचन्द्र श्रीवास्तव विरुद्ध म0प्र0 शासन एवं अन्य) दायर की गई, जिसमें उच्चतम न्यायालय द्वारा पारित आदेश में भी यही न्याय दृष्टांत मान्य किया गया तथा याचिकाकर्ता को स्थायी वर्गीकरण का पात्र नहीं माना गया। इस संबंध में उच्चतम न्यायालय ने पुनः अवमानना याचिका क्रमांक 771/2015 रागनरेश रावत विरुद्ध अश्विनी राय एवं अन्य में पारित आदेश दिनांक 15.12.2016 में उल्लेख किया है कि :-

* 20) A direct judgment on the subject is State of M.P. & Ors. v. Lalit Kumar Verma wherein it was held that a workman would be entitled to classification as

permanent or temporary employee if the conditions precedent are satisfied. It was held that the respondent was not appointed against the clear vacancy, he was not appointed in a permanent post or placed on probation. This Court, thus, held that working on daily wages alone would not entitle him to the status of permanent employee. Para 7 of this judgment needs to be looked into.

"7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. The 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."

25. यद्यपि इस प्रकरण में आवेदक स्थायी वर्गीकृत श्रमिक नहीं है, तथापि यदि आवेदक स्थायी वर्गीकृत श्रमिक भी होता तो भी उसको देय पारिश्रमिक में स्वतः कोई वृद्धि नहीं होती। स्थायी वर्गीकरण के उपरान्त पारिश्रमिक में वृद्धि तभी हो सकती है, जब श्रमिक की नियुक्ति किसी स्पष्ट रिक्त स्थायी वर्गीकृत पद पर हो एवं ऐसी नियुक्ति होने पर श्रमिक को स्थायी वर्गीकृत रिक्त पद हेतु निर्धारित पारिश्रमिक प्राप्त होगा। जैसा कि पूर्व में उल्लेख किया गया है नियोजक की स्थापना में स्थायी वर्गीकृत दैनिक वेतन भोगी श्रमिक के कोई पद स्वीकृत नहीं है, अतः यदि किसी श्रमिक को नियोजक की स्थापना में स्थायी वर्गीकृत घोषित भी किया जाता तो भी संबंधित श्रमिक को कोई अतिरिक्त पारिश्रमिक प्राप्त करने की पात्रता नहीं होती।

26. स्थायी वर्गीकृत होने पर संबंधित श्रमिक को उपरोक्त औद्योगिक श्रम कानून के अंतर्गत छंटनी/कार्य से पृथक करने के संबंध में कुछ संरक्षण प्राप्त है, परंतु उन्हें पृथक से पारिश्रमिक प्राप्त करने का प्राक्धान नहीं है, विशिष्ट रूप से उन्हें नियमितीकरण की पात्रता नहीं है। इस संबंध में उच्चतम न्यायालय ने रामनरेश रावत प्रकरण (Supra) में निम्न उल्लेख किया है—

"16) For this purpose, we would first like to refer to the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and the Rules made thereunder known as the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963. Section 3(c) of the Act defines "Standing Orders" and as per 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. Section 21 empowers the State Government to make rules to carry out the purposes of the said Act which are required to be notified. It empowers the State Government to frame Standard Standing Orders as well. It is in exercise of powers under Section 21(1) of the Act that the State Government has framed Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 (hereinafter referred to as the 'Rules'). Annexure to these Rules contains standard Standing Orders for all undertakings in the State. Standing Order No. 2 of this 18 Order enumerates classification of employees which has already been reproduced above. As per this classification, an employee would be known as 'permanent employee' who has completed six months' satisfactory service in a clear vacancy in one or more posts whether on probation or otherwise or a person whose name has been entered in the muster roll and who is given a ticket of 'permanent employee'. It follows from the above that merely by putting in six months' satisfactory service, an employee can be treated as 'permanent employee'.

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Rights which would flow to different categories of employees including 'permanent employee' are not stipulated in these Rules or even in the parent Act. It can be gathered from Rule 11 of the said Rules, which relates to termination of employment, that in case of a 'permanent employee' one month's notice or wages for one month in lieu of notice is required when the employment of a 'permanent employee' is to be terminated. On the other hand, no such notice or wages in lieu thereof is needed to be given to any other category of employees. Additional obligation casts on the employer is to record reasons for termination of service in writing and communicate the same to the employee."

27. अतः उपरोक्त विवेचना अनुसार इस बिन्दु पर निम्न निष्कर्ष अभिलिखित किया जाता है :-

"आवेदक स्थायी वर्गीकृत श्रमिक नहीं है। आवेदक वर्ष 1991 से दैनिक वेतन भोगी श्रमिक के रूप में कार्यरत है। वर्ष 2007 में नियोजक द्वारा आवेदक को ब्रुटिवश स्थायी वर्गीकृत घोषित किया गया था, परंतु ऐसा किन नियमों के अंतर्गत किया गया इसका स्पष्ट उल्लेख आदेश में नहीं किया गया था। तदोपरान्त नियोजक द्वारा ब्रुटि सुधारते हुये वर्ष 2011 में आवेदक का स्थायी वर्गीकरण निरस्त किया गया। स्थायी वर्गीकरण के उपरान्त औद्योगिक श्रमिक को कोई अतिरिक्त वित्तीय लाभ प्राप्त नहीं होते हैं। श्रम कानून के अनुरूप छंटनी/कार्य से पृथक करने के संबंध में नियमानुसार संरक्षण प्राप्त होता है।"

बिन्दु क्रमांक 7 (III) :- यदि आवेदक को किसी पद के विरुद्ध स्थायी वर्गीकृत घोषित न किया गया हो तो क्या सम्बन्धित नियोजक के कार्यालय में ऐसे स्थायी/अस्थायी स्वीकृत एवं रिक्त पद उपलब्ध हैं जिनके विरुद्ध आवेदक को वेतनमान दिया जा सके।

28. नियोजक की नियमित स्थापना तथा कार्यभारित स्थापना में पद स्वीकृत है, जिनकी पूर्ति हेतु शासन द्वारा भर्ती नियम बनाये गये हैं। आवेदक को नियमानुसार इन स्थापनाओं से संबंधित पदों में से किसी पद का वेतनमान/परिलब्धियाँ प्राप्त करने की पात्रता नहीं है। जैसा कि ऊपर उल्लेख किया गया है उच्चतम न्यायालय के उमादेवी प्रकरण तथा उच्च न्यायालय जबलपुर के मनसुखलाल सराफ प्रकरण के अनुसार आवेदक का नियोजन अवैधानिक श्रेणी में आता है। उपरोक्त परिस्थिति में आवेदक को श्रमायुक्त द्वारा निर्धारित पारिश्रमिक दिया जा रहा है।

29. अतः उपरोक्त विवेचना अनुसार इस बिन्दु पर निम्न निष्कर्ष अभिलिखित किया जाता है :-

" आवेदक को किसी रिक्त /स्वीकृत पद के विरुद्ध पारिश्रमिक पाने की पात्रता नहीं है। "

बिन्दु क्रमांक 7 (IV) :- क्या आवेदक को "समान कार्य हेतु समान वेतन" के आधार पर नियमित वेतनमान प्राप्त करने की पात्रता है? क्या आवेदक को पूर्व में कतिपय श्रमिकों को प्रदत्त परिलामों के अनुरूप परिलाम प्राप्त करने की पात्रता है?

30. इस विषय पर कालूराम नरवरिया प्रकरण में पारित आदेश की कंडिका 5 उल्लेखनीय है :-

The Division Bench in Writ Appeal No. 110/2011 and connected matters (Annexure P/3) opined as under:-

"whether an employee comes by way of normal recruitment process or through the process of classification, the fact remains that both i.e. the normally recruited employee and a classified employee work on the same post and perform the same duties. It cannot be held that the classification has any less effect or force as compared to the normal process of appointment, because the

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classification is also based upon the law in the form of Standing Orders and as such both employees who have been brought into service through either of the two processes permitted by law, as permanent employees against a particular post, should be entitled to the same benefits. Taking a contrary view would mean that the employees inducted through classification process would be saddled with an undesirable disability throughout their service, as compared to other employees which may tantamount to violation of the principle of "equal pay for equal work". Our view finds support from another Division Bench decision of this Court report in the case of State of M.P. Vs. Ram Prakash (1989 J.L.J. 36). For the aforementioned reasons, we do not find any good ground to interfere with the order passed by the learned Single Judge. Accordingly, the writ appeals are dismissed.

31. यह उल्लेख करना आवश्यक है कि उपरोक्त कंडिका स्थायी वर्गीकृत श्रमिकों की पात्रता के संबंध में है। जैसा कि पूर्व में उल्लेख किया गया है कि आवेदक स्थायी वर्गीकृत श्रमिक नहीं है अतः उसे उपरोक्त सिद्धांत के अनुसार नियमित कर्मचारी के समकक्ष परिलब्धियों प्राप्त करने की पात्रता नहीं है।
32. यहाँ यह प्रश्न भी विचारणीय है कि यदि आवेदक स्थायी वर्गीकृत श्रमिक होता (जैसे, उसका स्थायी वर्गीकरण निरस्त करने का आदेश जारी न हुआ होता) तो क्या उसे उपरोक्त सिद्धांत के अनुसार नियमित कर्मचारी के समकक्ष परिलब्धियों प्राप्त होती। यहाँ इस विन्दु पर विशेष ध्यान देना चाहिये कि न्यायालय का उपरोक्त मत विधिक रूप से नियोजित/कार्यरत स्थायी वर्गीकृत श्रमिकों एवं विधिक रूप से नियोजित/कार्यरत नियमित कर्मचारियों के संबंध में है। अर्थात्, यदि एक व्यक्ति का कार्य पर नियोजन विधिक रूप से Standard Standing orders के अंतर्गत हुआ हो तथा दूसरे व्यक्ति का नियोजन सामान्य प्रक्रिया अनुसार (अर्थात् शासन द्वारा संविधान के अनुच्छेद 309 के अंतर्गत बनाये गये भर्ती नियमों के अनुसार) हुआ हो तथा वे दोनों व्यक्ति एक समान पद पर एक समान कर्तव्यों का निर्वहण कर रहे हों तो उन दोनों व्यक्तियों की परिलब्धियों में अंतर नहीं होना चाहिये। चूंकि न्यायालय ने ऐसे दोनों व्यक्तियों का नियोजन विधि अनुसार होना मान्य किया है, अतः उनकी परिलब्धियों में अंतर होना "समान कार्य हेतु समान वेतन" के सिद्धांत के अनुसार उचित नहीं माना है।
33. न्यायालय के उपरोक्त मत को कियान्वित करने के पूर्व यह सुनिश्चित करना आवश्यक है कि क्या संबंधित श्रमिक का नियोजन विधि सम्मत है अथवा नहीं। वर्तमान प्रकरण में, जैसा कि पूर्व में उल्लेख किया गया है, आवेदक के नियोजन के पूर्व किसी विधि सम्मत प्रक्रिया का पालन नहीं किया गया। आवेदक दैनिक वेतन भोगी श्रमिक के रूप में कार्यरत है एवं संबंधित नियोजक की स्थापना में दैनिक वेतनभोगी श्रमिक (स्थायी वर्गीकृत या अन्यथा) का कोई पद स्वीकृत नहीं है। इस प्रकार उमादेवी तथा मनसुखलाल प्रकरणों में प्रतिपादित सिद्धांतों के अनुसार आवेदक का नियोजन अवैधानिक है। इस प्रकार की Casual /backdoor नियुक्तियों को उच्चतम न्यायालय ने उमादेवी प्रकरण में सरकारी सेवाओं में कार्य करने हेतु बड़ी संख्या में इच्छुक अन्य अभ्यर्थियों के अधिकारों का हनन माना है।
34. अतः स्पष्ट है कि (क) आवेदक का नियोजन Standard Standing orders के अंतर्गत विधि सम्मत प्रक्रिया के अनुसार नहीं हुआ है। (ख) आवेदक का स्थायी वर्गीकरण किसी पद पर अथवा किसी पद के विरुद्ध नहीं हुआ है। आवेदक का पूर्व में किसी रिक्त पद के उपलब्ध हुये बिना स्थायी वर्गीकरण का आदेश पारित किया गया था, जो विधि सम्मत नहीं होने के कारण नियोजक द्वारा निरस्त कर दिया गया। (ग) नियोजक की स्थापना में कोई भी स्थायी वर्गीकृत पद स्वीकृत नहीं है।
35. उपरोक्त विवेचना अनुसार आवेदक का नियोजन औद्योगिक श्रम कानून के अंतर्गत विधि सम्मत मान्य नहीं किया जा सकता अतः नियमित कर्मचारी के वेतन/परिलब्धि प्राप्त करने की पात्रता उत्पन्न नहीं होती।



36. इस संबंध में विशेष रूप से उल्लेखनीय है कि कालूराम नरवरिया प्रकरण में पारित आदेश दिनांक 06.04.2015 की कड़िका 8 में निम्न उल्लेख किया गया है :-

The Apex Court dismissed the SLP (Civil) No.(s) 20025/2011. The Apex Court opined as under:-

"In Rest of the Matters

Delay condoned.

Dismissed.

We direct the State Government to implement the order(s) passed by the High Court within eight months' time from today. If for any reason, the petitioner-State does not implement the order(s) passed by the High Court, the respondents are at liberty to approach this Court by way of filing contempt petition(s)."

37. उक्त प्रकरण में उच्चतम न्यायालय के आदेश उपरांत मप्र शासन द्वारा संबंधित श्रमिकों को जो परिलब्धियाँ उपलब्ध कराई थी उससे वे श्रमिक संतुष्ट नहीं हुये तथा उन्होंने शासन के नियमित स्थापना में कार्यरत कर्मचारियों के समान वेतनमान, वेतनवृद्धि, भत्ते एवं अन्य लाभ की मांग उच्चतम न्यायालय में अवमानना याचिका क्रमांक 771/2015 में सुनवाई के दौरान की। इस प्रकरण में उच्चतम न्यायालय में आदेश दिनांक 15.12.2016 द्वारा याचिका कर्ताओं के तर्कों को अमान्य करते हुये याचिका खारिज कर दी। उच्चतम न्यायालय ने प्रकरण का मूल मुद्दा - क्या स्थायी वर्गीकरण किये जाने के उपरांत श्रमिकों को नियमित कर्मचारी माना जा सकता है - पर विस्तृत विवेचना करते हुये पाया कि स्थायी वर्गीकृत कर्मचारियों को नियमित वेतनमान पाने की पात्रता नहीं है। विशिष्ट रूप से, जहाँ तक "समान कार्य हेतु समान वेतन सिद्धांत" का प्रश्न है, के संबंध में उच्चतम न्यायालय ने अवमानना याचिका क्रमांक 771/2015 में अपने आदेश की कड़िका 13 में निम्न उल्लेख किया है:-

13. Another significant reason for referring to the judgment of Jagjit Singh is that the Court culled out the principles of 'equal pay for equal work' from the earlier judgments on the subject and collated them at one place. Further, the Court also drew an important distinction between the grant of benefit of 'equal pay for equal work' to temporary employees on the one hand and the status of regular employees on the other hand. Insofar as parameters of principles of 'equal pay for equal work' deduced 16 by the Court are concerned (para 42), our purpose of deduction stated in sub-para vi thereof is important, which is reproduced below:

"(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see-Orissa University of Agriculture & Technology Vs. Manoj K. Mohanty)."

38. चूंकि आवेदक की नियुक्ति नियमित प्रक्रिया से नहीं हुई है, (वस्तुतः जैसा पूर्व में उल्लेखित है आवेदक की नियुक्ति अवैधानिक है) इसलिये उसे नियमित वेतनमान उपरोक्त उल्लेखित सिद्धांत के अनुसार भी नहीं दिया जा सकता है।
39. जहाँ तक कतिपय अन्य श्रमिकों को उपलब्ध कराये गये परिलाभों के अनुरूप आवेदक को परिलाभ उपलब्ध कराने का प्रश्न है, यह विचारणीय है कि क्या उपरोक्त श्रमिकों को उपलब्ध कराये गये परिलाभ विधि सम्मत है अथवा नहीं। जैसा कि निर्धारित किया गया है कि आवेदक को श्रमायुक्त द्वारा निर्धारित पारिश्रमिक के अतिरिक्त अन्य कोई परिलाभ प्राप्त करने की पात्रता नहीं है, अतः यदि त्रुटियश अन्य श्रमिकों को पूर्व में अधिक पारिश्रमिक/परिलाभ उपलब्ध कराये गये हों तो इस आधार

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39. पर आवेदक को उसका लाभ लेने की पात्रता नहीं होती। इस संबंध में उच्चतम न्यायालय ने रामनरेश रावत प्रकरण में उल्लेख किया है कि :-

24) In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms (See Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors.).

40. उपरोक्त परिस्थितियों में आवेदक को वर्तमान में प्राप्त हो रहे श्रमायुक्त द्वारा निर्धारित परिलब्धियों के अतिरिक्त अन्य किसी लाभ को प्राप्त करने की पात्रता नहीं है।

41. अतः उपरोक्त विवेचना अनुसार इस बिन्दु पर निम्न निष्कर्ष अभिलिखित किया जाता है :-

" आवेदक को नियमित वेतनमान प्राप्त करने की पात्रता नहीं है। यदि पूर्व में त्रुटिपूर्ण आदेशों के आधार पर कतिपय श्रमिकों को कुछ परिलाम प्रदान किये गये हैं, तो उनके अनुरूप आवेदक को परिलाम प्राप्त करने की पात्रता नहीं है। "

बिन्दु क्रमांक 7(v) :- वर्तमान स्थिति में आवेदक को क्या-क्या लाभ प्राप्त करने की पात्रता है?

42. दिनांक 07.10.2016 के पूर्व मध्यप्रदेश शासन द्वारा दैनिक वेतन भोगी श्रमिकों हेतु कोई वेतनमान निर्धारित नहीं किया गया था, अतः उन्हें श्रमायुक्त मध्यप्रदेश द्वारा निर्धारित दरों पर मजदूरी का भुगतान किया जाता रहा है।

43. MOPRO शासन के विभिन्न विभागों में बड़ी संख्या में कई वर्षों से दैनिक वेतन भोगी श्रमिक कार्यरत थे। कल्याणकारी राज्य की अवधारणा के अंतर्गत एक आदर्श नियोजता के रूप में राज्य शासन ने श्रमायुक्त द्वारा निर्धारित पारिश्रमिक से अधिक पारिश्रमिक श्रमिकों को उपलब्ध कराने हेतु हाल में एक योजना स्वीकृत की है। सामान्य प्रशासन विभाग मध्यप्रदेश शासन के परिपत्र दिनांक 07.10.2016 द्वारा प्रदेश में कार्यरत दैनिक वेतन भोगी श्रमिकों के विनियमन के लिए परिपत्र जारी किया गया है। दैनिक वेतन भोगी श्रमिकों को क्या-क्या लाभ प्राप्त करने की पात्रता है, इस संबंध में उच्चतम न्यायालय के समक्ष अवमानना प्रकरण क्रमांक 771/2015 में सुनवाई के दौरान उक्त परिपत्र प्रस्तुत किया गया था। शासन के इस परिपत्र का उच्चतम न्यायालय ने संज्ञान लिया, तथा सम्पूर्ण सुनवाई उपरांत अवमानना याचिका आदेश दिनांक 15.12.2016 द्वारा निरस्त कर दी गई।

44. सामान्य प्रशासन विभाग के परिपत्र दिनांक 07.10.2016 के अनुसार आवेदक को श्रमिक पदनाम के अनुरूप अकुशल श्रेणी के वेतनमान रुपये 4000-80-7000/- की पात्रता दिनांक 01 सितम्बर 2016 से आती है, जिसमें वर्तमान दर पर महंगाई भत्ता भी दिये जाने का प्रावधान है। इस संबंध में योजना को लोक स्वास्थ्य यांत्रिकीय विभाग में लागू करने हेतु शासन ने आदेश क्रमांक एफ 6-102/2016/1/34, भोपाल दिनांक 24.12.2016 द्वारा निर्देश जारी कर दिये गये हैं।

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45. सामान्य प्रशासन विभाग के आदेश क्रमांक एफ 5-1/2013/1/3 भोपाल दिनांक 07.10.2016 से स्थायी वर्गीकृत दैनिक वेतन भोगी कर्मचारियों के निम्नानुसार वेतनमान निर्धारित किए गये हैं:-

श्रेणी	वेतनमान
1	2
अकुशल	4000-80-7000
अर्द्धकुशल	4500-90-7500
कुशल	5000-100-8000

46. उक्त आदेश के परिप्रेक्ष्य में लोक स्वास्थ्य यांत्रिकीय विभाग के आदेश क्रमांक एफ/16-102/2016/1/34, दिनांक 24.12.2016 द्वारा निम्नानुसार वेतनमान श्रेणी अनुसार निर्धारित किया गया है :-

क्र.	श्रेणी	पदनाम	पदनाम पर कार्यरत स्थायी वर्गीकृत श्रमिक का वेतनमान
1.	अकुशल	श्रमिक, चपरासी, पार्ट टाइम स्वीपर, माली, खल्लासी, हेल्पर, टेलीफोन अटेंडेंट, आल टाइम हेल्पर, चौकीदार, अकुशल श्रमिक, मजदूर, लेबर, क्लीनर	4000-80-7000
2.	अर्द्ध कुशल	टाईपिस्ट, सहायक ग्रेड-3, लिपिक, कापिस्ट, पंप अटेंडेंट, सहायक हेण्डपंप मैकेनिक, पंप चालक, सहायक प्लम्बर, सहायक मैकेनिक, सहायक इलेक्ट्रिशियन, सहायक पंप चालक, सहायक सुपरवाइजर, सहायक माली, सहायक लाइनमैन, वाल्वमैन, चौकीदार, पंप अटेंडेंट, मस्टरक्लर्क, सहायक पंप चालक, सहायक बेल्टर, रिफरेंसर, क्लर्क, नोटिस क्लर्क आडिटर, क्लोरीन टेस्टर, मोटर रीडर, बिल क्लर्क, वायरमैन, गेज रीडर, स्वीपर, गनमैन, बिल वितरक, सहायक आटो इलेक्ट्रिशियन, रिफरेंसर, पंप सहायक, सहायक फिटर	4500-90-7500
3.	कुशल	स्नातक उपर्यंत्री, हेण्डपंप मैकेनिक, टेलीफोन आपरेटर, इलेक्ट्रिशियन, कम्प्युटर आपरेटर, कारपेंटर, कैमिस्ट, मैकेनिक, मेसन्, फिटर, पाईप फिटर, प्रयोगशाला सहायक, समयपालक, सुपरवाइजर, सर्वेयर, स्टोर क्लर्क, फोटोकॉपिस्ट, स्टेनो, टायपिस्ट, फिल्टर आपरेटर, वायरलेस आपरेटर, स्थल सहायक, टाईमकीपर, टर्नर, सहायक रिंग आपरेटर, सहायक प्रोग्रामर, प्रयोगशाला अटेंडेंट, हिन्दी शीघ्रलेखक, फिल्टर आपरेटर, सहायक कैमिस्ट	5000-100-8000

47. इस प्रकार लोक स्वास्थ्य यांत्रिकी विभाग में कार्यरत दैनिक वेतन भोगी श्रमिकों को पारिश्रमिक एवं अन्य लाभ प्राप्त हो सकेंगे। इन लाभों में निम्न सम्मिलित हैं:-

- इन श्रमिकों के लिये एक वेतनमान दिया जायेगा। आवेदक की श्रेणी के अनुसार उसके लिये अकुशल श्रमिक के अनुरूप पारिश्रमिक दिए जाने हेतु वेतनमान रुपये 4000-80-7000/- निर्धारित किया गया है।
- वरिष्ठता का लाभ प्राप्त होगा। वरिष्ठता का लाभ देने हेतु 01 सितम्बर 2016 की स्थिति में उनके द्वारा पूर्ण किये गये वर्षों के आधार पर संबंधित वेतनमान में अंकित वेतनवृद्धि की दर से गणना

12

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की जावेगी। आवेदक का नियोजन वर्ष 1991 में किया गया था, अतः उसे 25 वर्ष की वरिष्ठता प्राप्त होगी, तथा तदनुसार उसका वेतन निर्धारण किया जायेगा।

- यह वेतन निर्धारण 01 सितम्बर 2016 की तिथि से होगा। आगामी वेतनवृद्धि सितम्बर 2017 से देय होगी।
- मंहगाई भत्ता भी देय होगा।
- कोई एरियर देय नहीं होगा।
- अधिवार्षिकी आयु पूर्ण होने पर 15 दिन प्रतिवर्ष के सेवाकाल के वेतन के आधार पर उपादान की पात्रता होगी। यह राशि आवेदक के लिये रुपये 1,25,000/- तक सीमित होगी।
- घतुर्थ श्रेणी का पद रिक्त होने पर आवेदक का उस पद पर नियमितीकरण हेतु सामान्य प्रशासन विभाग द्वारा जारी परिपत्र दिनांक 07.10.2016 में विहित प्रक्रिया एवं पात्रता अनुसार विचार किया जा सकेगा।

48. अतः उपरोक्त विवेचना अनुसार इस बिन्दु पर निम्न निष्कर्ष अभिलिखित किया जाता है:-

"आवेदक दैनिक वेतन भोगी श्रमिकों हेतु सामान्य प्रशासन विभाग द्वारा जारी परिपत्र दिनांक 07.10.2016 के अनुसार लाभ प्राप्त करने की पात्रता रखता है।"

49. नियोजक द्वारा की गई गणना के अनुसार आवेदक को दिनांक 01 सितम्बर 2016 को पारिश्रमिक रुपये 15,312/- प्रतिमाह प्राप्त होंगे। फिलहाल श्रमायुक्त द्वारा निर्धारित दर से आवेदक को रुपये 10,035/- प्रतिमाह प्राप्त होते हैं। इस प्रकार आवेदक को प्रतिमाह रुपये 5,277/- (लगभग 53 प्रतिशत अधिक) का लाभ होगा। गणना का विवरण निम्नानुसार है :-

पूर्व अनुसार पारिश्रमिक	(प्रतिमाह रुपये में)
श्रमायुक्त द्वारा निर्धारित पारिश्रमिक	8,850
20 वर्ष की सेवा उपरांत विशेष लाभ	2,500
शासकीय अंशदान ई.पी.एफ.	685
योग परिलब्धियों	10,035

सामान्य प्रशासन विभाग द्वारा जारी परिपत्र दिनांक 07.10.2016 के अनुसार पात्रता (दिनांक 01.09.2016 की स्थिति में)

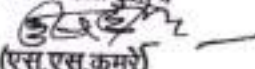
आवेदक को देय वेतनमान 4000-80-7000

न्यूनतम वेतनमान	4,000
कुल पूर्ण वर्ष (25) हेतु देय वेतनवृद्धि $25 \times 80 =$	2,000
मूलवेतन	6,000
मंहगाई भत्ता (132 प्रतिशत)	7,920
कुल वेतन	13,920
शासकीय अंशदान ई.पी.एफ. (10 प्रतिशत)	1,392
योग परिलब्धियों	15,312

उपरोक्तानुसार आवेदक के अभ्यावेदन का निराकरण किया जाता है।

मध्यप्रदेश के राज्यपाल के नाम से

तथा आवेदकानुसार


(एस.एस.कुमर)

उप सचिव

मध्यप्रदेश शासन, लोक स्वास्थ्य यांत्रिकी विभाग

पृष्ठा क्रमांक एफ 16-14/2017/1/34,

भोपाल, दिनांक 1/जनवरी, 2017

प्रतिलिपि :-

- ✓ 1. प्रमुख अभियंता, लोक स्वास्थ्य यांत्रिकी विभाग की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।
2. मुख्य अभियंता, लोक स्वास्थ्य यांत्रिकी विभाग परिक्षेत्र भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।
3. अधीक्षण यंत्री, लोक स्वास्थ्य यांत्रिकी भोपाल मण्डल, भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।
4. कार्यपालन यंत्री, राजधानी परियोजना खण्ड क्रमांक 2 लोक स्वास्थ्य यांत्रिकी विभाग भोपाल एवं प्रभारी अधिकारी की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।
5. संबंधित श्री सुरेन्द्र निम्बालकर, अकुरुल श्रमिक द्वारा कार्यपालन यंत्री, राजधानी परियोजना खण्ड क्रमांक 2 लोक स्वास्थ्य यांत्रिकी विभाग भोपाल की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।



उप सचिव,

मध्यप्रदेश शासन

लोक स्वास्थ्य यांत्रिकी विभाग

विवरण

1. दैनिक वेतन भोगी श्रमिक का नाम
2. दैनिक वेतन भोगी - पद नाम
3. कब से कार्यरत है - (यदि हो तो आदेश संलग्न करें)।
4. स्थायी वर्गीकरण का आदेश / क्रमांक / दिनांक, यदि हो तो संलग्न करें।
5. स्थायी वर्गीकरण ^{निरस्त करने} का — आदेश क्रमांक / दिनांक, यदि हो तो संलग्न करें।
6. मूल रिट याचिका क्रमांक — (याचिका की प्रति एवं अंतिम आदेश संलग्न करें)।
6. (A) यदि अभ्यावेदन प्रस्तुत किया हो तो प्रस्तुति का दिनांक एवं प्रति संलग्न करें।
6. (B) अवमानना याचिका हो तो विवरण दें।
7. नियोजक का नाम (कार्यपालन यंत्री का नाम)।
8. नियोजक की स्थापना में स्वीकृत पदों का विवरण।
 1. नियमित 2. कार्यमास्ति 3. श्रमिक स्थायी वर्गीकरण 4. श्रमिक, अन्य।
9. क्या नियोजक को दैनिक वेतन भोगी श्रमिकों के पदों की स्वीकृति प्राप्त हुई है, यदि हाँ तो पत्र क्रमांक — दिनांक —
10. आवेदक की नियुक्ति किस प्रक्रिया से हुई, विवरण दें।
11. किस पद के विरुद्ध हुई, पद स्वीकृति एवं आदेश क्रमांक बतायें, संलग्न करें।
12. श्रमिक द्वारा अन्य कोई याचिका प्रकरण / श्रम न्यायालय में दायर किया गया हो तो उसका विवरण दें।
13. वर्तमान में श्रमिक को दी जा रही परिलब्धियाँ (चार्ट)।
14. शासन का आदेश दिनांक 7.10.2016, 24.12.2016 कार्यालय प्रमुख अभियंता का पत्र दिनांक 31.12.2016 के अनुरूप वेतन निर्धारण का पत्रक संलग्न करें। (तुलनात्मक पत्रक संलग्न करें)।
15. इस श्रमिक से संबंधित अन्य कोई सुसंगत दस्तावेज हो तो संलग्न करें।

305

मध्य प्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय, भोपाल

क्रमांक एफ 5-1/2013/1/3
प्रति,

भोपाल दिनांक 07 अक्टूबर, 2016

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल,
समस्त विभागाध्यक्ष,
समस्त संभागीय आयुक्त,
समस्त कलेक्टर,
समस्त मुख्य कार्यपालन अधिकारी, जिला पंचायत,
मध्य प्रदेश।

विषय:- कार्यरत दैनिक वेतन भोगी श्रमिकों के लिए "स्थायी कर्मियों को विनियमित करने की योजना"।

राज्य शासन द्वारा नियमितीकरण से वंचित दैनिक वेतन भोगियों के संबंध में निम्नानुसार कार्यवाही करने का निर्णय लिया गया है :-

- 1.1 इन्हें 'दैनिक वेतन भोगी' के स्थान पर 'स्थायी कर्मी' की श्रेणी दी जावे।
- 1.2 इन्हें निम्नानुसार वेतनमान स्वीकृत किया जावे।

श्रेणी	वेतनमान
1	2
अकुशल	4000-80-7000
अर्द्धकुशल	4500-90-7500
कुशल	5000-100-8000

(Signature)

निरन्तर.....2

-2-

- 1.3 वरिष्ठता का लाभ देने हेतु 01 सितम्बर, 2016 की स्थिति में उनके द्वारा पूर्ण किए वर्षों के आधार पर संबंधित वेतनमान में अंकित वेतनवृद्धि की दर से गणना को उन्हें संबंधित वेतनमान में वेतन निर्धारण किया जावेगा।
- 1.4 इस पर उन्हें मंहगाई भत्ता देय होगा। (वर्तमान 125 प्रतिशत)
- 1.5 कोई एरियर देय नहीं होगा।
- 1.6 यह वेतन निर्धारण 01 सितम्बर, 2016 की तिथि से होगा। आगामी वेतनवृद्धि सितम्बर, 2017 से देय होगी।
- 1.7 अधिवार्षिकी आयु पूर्ण होने पर 15 दिन प्रतिवर्ष के सेवाकाल के वेतन के आधार पर उपादान की पात्रता होगी। यह राशि अकुशल के लिए रु. 1,25,000/-, अर्द्धकुशल के लिए रु. 1,50,000/- एवं कुशल के लिए रु. 1,75,000/- तक सीमित होगी।
- 1.8 ऐसे दैनिक वेतन भोगी जो दिनांक 16 मई, 2007 को कार्यरत थे, व दिनांक 01 सितम्बर, 2016 को भी कार्यरत हैं, इस वेतन क्रम एवं अन्य लाभों के लिए पात्र होंगे। दिनांक 16 मई 2007 के पश्चात शासन की अनुमति/अनुमोदन उपरान्त सक्षम अधिकारी द्वारा दैनिक वेतन भोगी के पद पर नियुक्त किये गये हैं उन्हें भी योजना की पात्रता होगी। दिनांक 01 सितम्बर 2016 के पूर्व सेवानिवृत्त/सेवा से पृथक किये गये अथवा सेवा छोड़ चुके दैनिक वेतन भोगियों को इस योजना की पात्रता नहीं

Atchannur

निरन्तर... 3

होगी। संविदा, अंशकालीन एवं आउट सोर्सिंग के माध्यम से नियुक्त कर्मचारियों के लिए यह योजना लागू नहीं है।

2. चतुर्थ श्रेणी के रिक्त नियमित पदों पर प्राथमिकता के आधार पर नियुक्ति हेतु एक योजना बनाई गई है जो संलग्न परिशिष्ट- 'अ' पर है। इस योजना के क्रियान्वयन हेतु मध्यप्रदेश कनिष्ठ सेवा (संयुक्त अर्हता) नियम, 2013 के नियम-7 में वर्णित समूह-6 में चतुर्थ श्रेणी की चयन प्रक्रिया को एक वर्ष के लिए स्थगित की जाती है।

3. मान. उच्च न्यायालय द्वारा पारित आदेश के अनुपालन में जिन दैनिक वेतन भोगी कर्मचारियों को कतिपय विभागों द्वारा आदेश जारी किये गये हैं, उन्हें पूर्ववत् रखा जाए। जिन दैनिक वेतन भोगी कर्मचारियों द्वारा मान. उच्च न्यायालय में प्रकरण दायर किये गये हैं उन दैनिक वेतन भोगी कर्मचारियों द्वारा संबंधित न्यायालयीन प्रकरण वापिस लिये जाने पर प्रस्तावित योजना का लाभ दिया जाए।

4. निर्माण विभागों के अतिरिक्त अन्य जिन विभागों में दैनिक वेतन भोगी श्रमिक कार्यरत हैं, उन्हें वर्तमान में श्रमायुक्त द्वारा समय-समय पर निर्धारित न्यूनतम मजदूरी दी जाती है। राज्य शासन एक कल्याणकारी राज्य होने की अवधारणा पर उस न्यूनतम मजदूरी से बेहतर मजदूरी देने के लिए इस श्रेणी के दैनिक वेतन भोगी श्रमिकों को भी स्थायी कर्मों का पदनाम देते हुए वही वेतनमान एवं सुविधाएं देय होगी, जो उनके समकक्ष दैनिक वेतन भोगी को कंडिका-1.1 से 1.8 के अधीन निर्माण विभागों के स्थायी कर्मों को देय होगी। तदनुसार संबंधित विभागों द्वारा कार्यपालिका आदेश जारी किये जाएं।

(Signature)

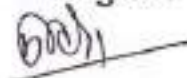
निरन्तर...4

-4-

5. मध्यप्रदेश दैनिक वेतन भोगी कर्मचारी (सेवा की शर्तें) नियम, 2013 जो कि संविधान के अनुच्छेद 309 के अन्तर्गत जारी किये गये हैं को निरस्त किया जाकर विभिन्न निर्माण उपरोक्त कंडिका- 1.1 से 1.8 के अनुसार मध्यप्रदेश औद्योगिक नियोजन (स्थायी आज़ाएं) अधिनियम 1961 व नियम 1963 के अन्तर्गत इन निर्माण विभागों में कार्यरत श्रमिकों को औद्योगिक श्रमिक मानते हुए आदेश जारी किये जाएंगे व संबंधित विभाग के स्थायी कर्मियों का नियमन तदनुसार किया जाए।

6. कृपया उपरोक्तानुसार कार्यवाही सुनिश्चित की जाए।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार,



(एम.के. वाष्णीय)

प्रमुख सचिव

मध्य प्रदेश शासन

सामान्य प्रशासन विभाग

भोपाल दिनांक 07 अक्टूबर, 2016

पृ.क्रमांक एफ 5-1/2013/1/3

प्रतिलिपि:-

1. राज्यपाल के सचिव, म.प्र. राजभवन, भोपाल।
2. महालेखाकार, म.प्र. ग्वालियर/भोपाल।
3. रजिस्ट्रार जनरल, उच्च न्यायालय म.प्र. जबलपुर।
4. प्रमुख सचिव/सचिव, मुख्यमंत्री, मुख्यमंत्री कार्यालय, म.प्र.।
5. मा. मंत्री/राज्यमंत्रीगण के निज सचिव/निज सहायक, म.प्र.।
6. महानिदेशक, प्रशासन अकादमी, म.प्र. भोपाल।
7. अध्यक्ष, माध्यमिक शिक्षा मण्डल, भोपाल।
8. अध्यक्ष, व्यावसायिक परीक्षा मण्डल, म.प्र. भोपाल।

निरन्तर...5

-5-

9. प्रमुख सचिव/सचिव/ उप सचिव/अवर सचिव(स्थापना/अधीक्षण) सा.प्र.विभाग, मंत्रालय, भोपाल।
 10. प्रमुख सचिव, म.प्र.विधान सभा सचिवालय, भोपाल ।
 11. मुख्य निर्वाचन पदाधिकारी, म.प्र. भोपाल ।
 12. सचिव, म.प्र. राज्य निर्वाचन, भोपाल ।
 13. सचिव, लोकायुक्त, म.प्र.भोपाल ।
 14. सचिव, लोक सेवा आयोग म.प्र. इन्दौर ।
 15. मुख्य सचिव के उप सचिव, मुख्य सचिव कार्यालय, म.प्र.।
 16. महाधिवक्ता/उप महाधिवक्ता, म.प्र. उच्च न्यायालय जबलपुर, खण्डपीठ इन्दौर/ग्वालियर।
 17. आयुक्त, जनसम्पर्क संचालनालय, म.प्र., भोपाल ।
 18. समस्त जिला कोषालय अधिकारी, म.प्र. ।
 19. मुख्य लेखाधिकारी, मंत्रालय, भोपाल ।
 20. अध्यक्ष, म.प्र. राज्य कर्मचारी कल्याण समिति, भोपाल ।
 21. अध्यक्ष, शासन के समस्त मान्यता प्राप्त कर्मचारी संघ, भोपाल ।
- की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अर्पित ।

(Signature)
(सी.बी. पड़वार)

उप सचिव

मध्य प्रदेश शासन

सामान्य प्रशासन विभाग

परिशिष्ट-"अ"

मध्य प्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय

विषय:- कार्यरत दैनिक वेतन भोगी "स्थायी कर्मियों" को नियमित सेवा के अधिक अवसर उपलब्ध कराये जाने बावत् । (चयन प्रक्रिया)

मध्यप्रदेश कनिष्ठ सेवा(संयुक्त अर्हता) नियम, 2013 के नियम-7 के वर्णित समूह- 6 में चतुर्थ श्रेणी के पदों पर नियुक्ति हेतु प्रोफेशनल एक्जामिनेशन बोर्ड को अधिकृत किया गया है । चतुर्थ श्रेणी के अधिकांश पद जिला स्तर के होते हैं । बोर्ड द्वारा प्रदेश स्तर पर आवेदन प्राप्त किये जाने से कहीं के निवासी व्यक्ति का दूरस्थ जिले में पदस्थापना प्राप्त हो जाती है जो निम्न वेतन भोगी के लिए कई व्यवहारिक कठिनाईयाँ उत्पन्न करती हैं इसको देखते हुए जिला स्तर पर चतुर्थ श्रेणी के रिक्त पदों की पूर्ति हेतु निम्नानुसार चयन प्रक्रिया अपनाई जाए :-

(1) जिला स्तर के चतुर्थ श्रेणी के रिक्त पदों की पूर्ति हेतु चयन करने के लिए निम्नानुसार समिति गठित की जाए :-

- | | |
|--|-----------|
| 1. संभागीय आयुक्त | - अध्यक्ष |
| 2. जिला कलेक्टर | - सदस्य |
| 3. मुख्य कार्यपालन अधिकारी
जिला पंचायत | - सदस्य |
| 4. जिले के संबंधित विभाग
का कार्यालय प्रमुख | - सदस्य |
| 5. अनुसूचित जाति/जनजाति
का नामांकित अधिकारी | - सदस्य |

(Signature)

निरन्तर.....2

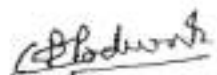
(2) समिति का कार्य व चयन के मापदण्ड :-

1. चयन समिति जिले में कार्यरत स्थायी कर्मों चतुर्थ श्रेणी के रिक्त पदों पर नियुक्ति हेतु चयन सूची तैयार करेगी ।
2. 10 वीं उत्तीर्ण स्थायी कर्मों को रिक्त पदों पर वरियता के आधार पर चयन किया जाएगा ।
3. यदि स्थायी कर्मों 12 वीं उत्तीर्ण है तो उसे वरियता अंक निर्धारित कर लाभ दिया जावेगा । 12 वीं उत्तीर्ण से अधिक योग्यताधारी को कोई वरियता अंक की पात्रता नहीं होगी ।
4. स्थायी कर्मों लम्बी अवधि से कार्य कर रहे हैं उन्हें वर्ष के आधार पर वरियता अंक निर्धारित कर मेरिट में सूची स्थान दिया जाएगा ।
5. यदि इस संवर्ग में कोई विधवा महिला अथवा पूर्व में अनुकंपा पर नियुक्त कर्मचारी 10 वीं उत्तीर्ण नहीं है तो 8 वीं उत्तीर्ण होने पर नियुक्ति की पात्रता होगी अर्थात् समिति उनके नाम पर विचार करेगी ।
6. चयन समिति विभाग वार रिक्त पदों पर उसी कार्यालय में कार्यरत स्थायी कर्मों के चयन पर प्रथमतः विचार करेगी । पात्र कर्मचारी उपलब्ध न होने पर अन्य कार्यालयों के कर्मचारियों को नियुक्ति देने पर विचार करेगी ।

Chodurukh

निरन्तर....3

7. स्थायी कर्मों को जिले के चतुर्थ श्रेणी के रिक्त पद पर नियुक्ति हेतु कोई परीक्षा अथवा साक्षात्कार नहीं लिया जावेगा। निर्धारित मापदण्ड की पूर्ति होने पर मेरिट आधार पर चयन सूची तैयार की जावेगी।
8. रिक्त पदों पर चयन/नियुक्तियाँ जिला स्तर पर निर्धारित रोस्टर के आधार पर पालन सुनिश्चित किया जावेगा।
9. प्रतिनियुक्ति के पदों पर नियमितीकरण नहीं किया जा सकेगा।
10. चतुर्थ श्रेणी के रिक्त पदों की जानकारी संबंधित विभाग/कार्यालय प्रमुख द्वारा कलेक्टर को भेजा जावेगा। जिले के सभी कार्यालय से जानकारी प्राप्त होने पर चयन समिति की बैठक कराने का दायित्व संबंधित जिले के कलेक्टर का रहेगा।
11. चयन समिति द्वारा चयन सूची तैयार कर संबंधित कार्यालयों को सूची भेजेगी। चयन सूची प्राप्त होते ही नियुक्तिकर्ता जिला कार्यालय प्रमुख द्वारा 15 दिवस के भीतर नियुक्ति आदेश जारी करेंगे।
12. जिले के विभिन्न विभागों के जिला कार्यालय में चतुर्थ श्रेणी के रिक्त पदों की पूर्ति हेतु वर्ष में 02 बार समिति की बैठक आयोजित की जाएगी।


(सी.बी. पंडवार)

उप सचिव
मध्य प्रदेश शासन
सामान्य प्रशासन विभाग

कार्यालय प्रमुख अतिथि
लोक स्वास्थ्य यंत्रिकी विभाग
मध्य प्रदेश भोपाल

दिनांक ६८४०, जति, २०२०, लो.स्वा.य.प. १५

दिनांक दिनांक १५ - १० - २०२०

प्रमुख सचिव
मध्य प्रदेश शासन,
लोक स्वास्थ्य यंत्रिकी विभाग
मंत्रालय, भोपाल।

विषय - दैनिक वेतन भोगी कर्मचारियों को नियमित वेतनमान देने से संबंधित प्रकरणों में मान न्यायालयों द्वारा दिये गये विभिन्न प्रकार के निर्णयों के संबंध में।

उपरोक्त विषयातर्गत लेख है कि विभाग में कार्यरत दैनिक वेतनभोगी कर्मचारियों को नियमित वेतनमान देने से संबंधित न्यायालयीन प्रकरणों में माननीय श्रम न्यायालयों एवं माननीय उच्च न्यायालय द्वारा विभिन्न प्रकार के निर्णय पारित किये गये हैं, जिनमें से मुख्य त्रुटि का विवरण निम्नानुसार है:-

क्र.	कर्मचारी का नाम	प्रकरण क्रमांक	निर्णय का संक्षिप्त विवरण	कार्यालयीन रिमार्क
(1)	(2)	(3)	(4)	(5)
1	कार्यालय श्री, लोक स्वास्थ्य यंत्रिकी विभाग मंत्रालय खंड क्र-१, (इंदौर नगर निगम) मंडलेश्वर के अधीनस्थ कार्यरत 171 कर्मचारी	मान.श्रम न्यायालय प्रकरण क्रमांक- (1) 312/97 एमपीआईआर (2) मान.औद्योगिक न्या.इंदौर अपील क्र. 273/एमपीआईआर/99 (3) मान.उच्च न्याया इंदौर- उक्त्यु.पी.नं. 833/2004 (4) आर.पी.नं. 203/2011 (5) मान.सर्वोच्च न्याया एसएलपी (सी) सीसी-21827/2012	कर्मचारियों को दशदि पद पर स्थायी करें तथा धारा 62 (1) एमपीआईआर के तहत दावा प्रस्तुति दिनांक से दो वर्ष पूर्व तक का स्थाई पद का वेतनमान भी अदा करें।	मान.श्रम न्यायालय द्वारा निर्णय में दिये गये दिनांक से ही कर्मचारी को वेतनमान एवं वेतन अंतर का लाभ दिया जाना होगा।
2	श्री नुबारक खान, लोक स्वास्थ्य यंत्रिकी उपखंड ग्वाहाटी, जिला-गुना	(1) मान.श्रम न्याया प्रकरण क्र. 195/एमपीआईआर/92 (2) मान.औद्योगिक न्या.प्रकरण क्र. 180/एमपीआईआर/98 (3) मान.उच्च न्याया, उक्त्यु.पी.नं. 83/2000, उक्त्यु. ए. नं. 270/2013 (4) मान.सर्वोच्च न्यायालय एसएलपी (सी) सीसी-18250/2014	प्रकरण प्रस्तुत करने के 2 वर्ष पूर्व की दिनांक से चालक के पद का निर्धारित वेतनमान एवं वेतन के अंतर की राशि व अन्य हितलाभ प्रदान करें।	मान.श्रम न्यायालय द्वारा निर्णय में दिये गये दिनांक से ही कर्मचारी को वेतनमान एवं वेतन अंतर का लाभ दिया जाना होगा। अन्य हित लाभ क्या होंगे, इस संकेत में निर्णय देने की आवश्यकता होगी।

क्र.	कर्मचारी का नाम	प्रकरण क्रमांक	निर्णय का संक्षिप्त विवरण	कार्यालयीन रिमार्क
(1)	(2)	(3)	(4)	(5)
3	श्री सुल्तान सिंह नरहरिया, लोक स्वास्थ्य यांत्रिकी संधारण खंड क्रमांक-1, न्यायलय	मान. उच्च न्यायालय (1) डब्ल्यू.पी.नं. 595/2009 (2) डब्ल्यू.ए.नं. 110/2010 (3) आर.पी.नं. 153/2011 मान.सर्वोच्च न्यायालय एस.एल.पी. (सी)सीसी-20025/2011	Petitioner shall be entitled for regular pay scale of the post of pump driver on which he was classified as permanent from the date, the order of classification has been issued by the respondents i.e. with effect from 27/11/04. The petitioner shall also be entitled for arrears of pay from the date of the order of classification as pump driver i.e. with effect from 27/11/04.	विभाग द्वारा जारी किये गये स्थायी वर्गीकरण के आदेश के दिनांक से वेतनमान का लाभ दिया जाना है।
4	श्री कृष्णराम यादव, लोक स्वास्थ्य यांत्रिकी खंड होशंगाबाद	मान. उच्च न्यायालय (1) डब्ल्यू.पी.नं. 6688/2010 (2) डब्ल्यू.ए.नं. 1266/2010 मान.सर्वोच्च न्यायालय (3)एसएलपी(सी) सीसी-8473/2012	Respondents are directed to grant to the petitioners regular pay scale to the post on which he has been classified in accordance to the provisions of the standing standard orders. Necessary action for payment of salary & other benefit be extended to the petitioners within three months from the date of receipt of certified copy of this order.	विभाग द्वारा जारी किये गये स्थायी वर्गीकरण के आदेश में उल्लेख किये गये स्थायी वर्गीकरण के दिनांक से वेतनमान का लाभ दिया जाना है। अन्य हित लाभ क्या होंगे, इस संबंध में निर्णय लेने की आवश्यकता होगी।
5	श्रीमति अन्नपूर्णा सरोदे एवं अन्य, लोक स्वास्थ्य यांत्रिकी मैके.खंड भोपाल	मान.उच्च न्यायालय (1) डब्ल्यू.पी.नं. 8090/2009 (2) डब्ल्यू.ए.नं. 832/2009 मान.सर्वोच्च न्यायालय (3)एसएलपी(सी) सीसी-21835/2012	It is directed that the appellants employees will be entitled to the regular pay scales (with effect from the date on which such classification become effective) which are payable to the normally appointed employees for the post against which they have been classified.	स्थायी वर्गीकरण जिस दिनांक से प्रभावशील होना है, उसी दिनांक से वेतनमान का लाभ दिया जाना है।

क्र.	कर्मचारी का नाम	प्रकरण क्रमांक	निर्णय का संक्षिप्त विवरण	कार्यालयीन रिमार्क
(1)	(2)	(3)	(4)	(5)
6	श्री कालूराम नरवरिया लोक स्वास्थ्य यांत्रिकी खंड, शिवपुरी	मान. उच्च न्यायालय इब्ल्यू पी. नं. 2000/2015 निर्णय दिनांक 6.4.2015	(1) He shall be given similar treatment i.e. grant of regular pay scale attached to the permanent post from the date of classification as permanent employee. (2) The Respondents shall also grant increments attached to the pay scale and if rules permit extend benefit of DA in favour of the petitioner. (3) The respondents shall also pass a speaking order regarding claim of grant of Seniority of the petitioner from the date of classification as permanent employee. (4) If for any justifiable reason the petitioner is not found entitled for any of the benefits claimed, a detailed and reasoned order be passed and communicated to the petitioner.	स्थायी वर्गीकरण के दिनांक से वेतनमान का लाभ दिया जाना है तथा वेतनवृद्धि, मंहगाई भत्ता एवं वरिष्ठता संबंधी मामलों पर निर्णय लिया जाकर, कर्मचारी के अभ्यावेदन का निराकरण किया जाना है।

उपरोक्त समस्त निर्णयों की छाया प्रतियों आपके अवलोकनार्थ संलग्न कर आवश्यक कार्यवाही हेतु प्रेषित है। कृपया प्रकरणों में की जाने वाली आगामी कार्यवाही हेतु आवश्यक निर्देश जारी करने का कष्ट करें।

संलग्न- उपरोक्तानुसार।

पृ.क्रमांक 6880/विधि/प्र.अ./लो.स्वा.यों.वि/15
प्रतिलिपि:-

प्रमुख अभियंता
भोपाल, दिनांक 13-8-15

प्रमुख सचिव, मध्य प्रदेश शासन विधि एवं विधायी कार्य विभाग, विध्यांचल भवन, भोपाल की ओर दिनांक 10.8.2015 को अपर मुख्य सचिव (वित्त) के कक्ष में हुई बैठक में दिये गये निर्देशों के तारतम्य में आवश्यक कार्यवाही हेतु प्रेषित।

संलग्न:- उपरोक्तानुसार

प्रमुख अभियंता
12/8

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL ORIGINAL JURISDICTION****CONTEMPT PETITION (CIVIL) NO. 771 OF 2015****IN****SPECIAL LEAVE PETITION (C) NO. 25284 OF 2012**

RAM NARESH RAWAT

.....PETITIONER(S)

VERSUS

SRI ASHWINI RAY & ORS.

.....RESPONDENT(S)

WITH**CONTEMPT PETITION (CIVIL) NO. 838 OF 2015****IN****SPECIAL LEAVE PETITION (C) NO. 9635 OF 2013****CONTEMPT PETITION (CIVIL) NO. 858 OF 2015****IN****SPECIAL LEAVE PETITION (C) NO. 23985 OF 2012****CONTEMPT PETITION (CIVIL) NO. 62 OF 2016****IN****SPECIAL LEAVE PETITION (C) NO. 31343 OF 2011****CONTEMPT PETITION (CIVIL) NOS. 82-85 OF 2016****IN****SPECIAL LEAVE PETITION (C) NOS. 18245 OF 2014, 18246, 18247 &
18249 OF 2014****CONMT.PET.(C) NO. 101/2016 IN SLP(C) NO. 19220/2014****CONMT.PET.(C) NO. 787/2015 IN SLP(C) NO. 19224/2014**

CONMT.PET.(C) NO. 788/2015 IN SLP(C) NO. 19286/2014

CONMT.PET.(C) NO. 819/2015 IN SLP(C) NO. 19217/2014

CONMT.PET.(C) NO. 823/2015 IN SLP(C) NO. 19218/2014

CONMT.PET.(C) NO. 856/2015 IN SLP(C) NO. 19230/2014

CONMT.PET.(C) NO. 121-131/2016 IN SLP(C) NO. 8473/2012, 19394/2012, 23980/2012, 23981/2012, 23986/2012, 34868/2012, 38228/2012, 38231/2012, 38235/2012, 38236/2012, 19236/2014.

CONMT.PET.(C) NO. 735/2015 IN SLP(C) NO. 19278/2014

CONMT.PET.(C) NO. 793-817/2015 IN SLP(C) NO. 20025/2011 AND 19396/12, SLP(C) NO. 30275/2012, SLP(C) NO. 30276/2012, SLP(C) NO. 1577/2013, SLP(C) NO. 5597/2013, SLP(C) NO. 29683/2013, SLP(C) NO. 19095/2014, SLP(C) NO. 19282/2014, SLP(C) NO. 19251/2014, SLP(C) NO. 25279/2012, SLP(C) NO. 12438/2013, SLP(C) NO. 12433/2013, SLP(C) NO. 5350/2013, SLP(C) NO. 19221/2014, SLP(C) NO. 19260/2014, SLP(C) NO. 19257/2014, SLP(C) NO. 19206/2014, SLP(C) NO. 25277/2012, SLP(C) NO. 19094/2014, SLP(C) NO. 19205/2014, SLP(C) NO. 19219/2014, SLP(C) NO. 19237/2014, SLP(C) NO. 19246/2014 AND SLP(C) NO. 19255/2014

CONMT.PET.(C) NO. 215/2016 IN SLP(C) NO. 21830/2012

WITH

CONMT.PET.(C) NO. 216/2016 IN SLP(C) NO. 21835/2012

CONMT.PET.(C) NO. 512/2016 IN SLP(C) NO. 18413/2014

CONMT.PET.(C) NO. 475/2016 IN SLP(C) NO. 8203/2012

CONMT.PET.(C) NO. 536/2016 IN SLP(C) NO. 19393/2012

AND

J U D G M E N T

A.K. SIKRI, J.

All the petitioners who have filed these contempt petitions were engaged by the State of Madhya Pradesh on different dates on different posts but all of them were engaged as daily wagers. They continued as daily wagers for long spell of time. According to the petitioners, in terms of Madhya Pradesh Industrial Environment (Standing Order) Rules, 1963, they became entitled to be classified as 'permanent employees'. However, their demand for classification as permanent employees was not acceded to by the State, which inaction of the State Government provoked some of these employees to raise the industrial dispute for their classification which resulted into award(s) of the labour court directing their classification as 'permanent'. The labour court also held that on their classification as permanent, they would be entitled to the pay-scale of permanent post from dates specified in the award. Appeals were filed by the State against those orders which were dismissed by the industrial court and writ petitions also came to be dismissed by the High Court. This resulted in passing of the orders by the concerned authorities in the State Government classifying these petitioners as permanent employees. It was also ordered that they shall be entitled to

minimum pay as fixed by the Labour Commission. This led to another round of litigation as the petitioners claimed that on their classification as 'permanent' to their respective posts they were entitled to receive the pay-scale attached to the said posts. These reliefs were granted to them by the labour court against which appeal preferred before the industrial court and the writ petition before the High Court were also dismissed. In all these cases, thereafter, special leave petitions were filed which were dismissed by this Court by common order dated 21st January, 2015. This order reads as under:

"Delay condoned.

Dismissed.

We direct the State Government to implement the order(s) passed by the High Court within eight months' time from today.

If for any reason, the petitioner-State does not implement the order(s) passed by the High Court, the respondents are at liberty to approach this Court by way of filing contempt petition(s)."

- 2) The State Government has passed the orders fixing the pay of these petitioners at the minimum of the regular pay-scale attached to the respective posts. To demonstrate, by way of example, in the case of Ram Naresh Rawat, who was engaged as a daily wager, the pay is fixed at Rs. 15330/- in the pay-scale of Rs. 5200/- attached to the said post. Break up of the aforesaid salary fixing is as under:

Sl. No.	Particulars	Amount (Rs.)
2(i)	Minimum in the Regular pay scale granted vide order dated 11.03.2016 (per month)	5200/-
2(ii)	Grade pay (per month)	1800/-
2(iii)	D.A. (per month)	8330/-
2(iv)	Total salary and other benefits in hand (i+ii+iii) per month	15330/-

At the time of passing the order, he was getting monthly wage of Rs. 11,300/- as the daily wager. His salary, therefore, stands enhanced of Rs. 4030/-. In addition, he is given arrears in the sum of Rs. 5,93,887/-. In similar manner, pay of all the petitioners has been fixed.

- 3) The petitioners are, however, not satisfied with the aforesaid fixation and contended that the pay fixation has not been done as per the orders of this Court. The precise submission is that once they are conferred the status of permanent employee by the court and it is also categorically held that they are entitled to regular pay attached to the said post, not only the pay should be fixed in the regular pay-scale, the petitioners would also be entitled to the increments and other emoluments attached to the said post. In other words, they pleaded that fixation of pay at the minimum of the pay-scale is uncalled for and does not amount to complying with the directions of the Court in full measure. It is also submitted that in some other cases where the High Court has given

similar directions, which are followed in their cases, the State Government has not only fixed pay in the regular pay-scale but has also been granting increments etc. as well.

- 4) The case set up by the respondents, on the other hand, is that the petitioners are daily wage employees. They have not been 'regularised' in their respective posts for want of adequate number of regular vacancies. They are granted 'permanency' in terms of standing orders which, at the most, entitles them to get the pay which is given to employees appointed on regular basis but such an entitlement is to the minimum of the said pay-scale. It is also argued that even the direction of the High Court was to grant pay in the regular pay-scale with effect from the date of classification orders and there is no direction given by the High Court to give them increments etc. which is admissible only when a person is appointed on regular basis or whose services are regularised, which has not happened in the case of the petitioners.
- 5) Learned counsel who appeared for these petitioners have drawn our attention to the relevant provisions of the standing orders on the basis of which they were classified as permanent. It is standing order No. 2 which deals with classification of the employees and 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;

(ii) A 'permanent seasonal employee' is one who has completed service for a period equal to 2/3rd of the duration or a season or three months whichever is less in a clear vacancy and shall be deemed to be a permanent employee for the purpose of these order;

(iii) A 'probationer' means an employee who is provisionally employed to fill a clear vacancy, and who has not completed six months' satisfactory service in the aggregate;

(iv) A 'badli', employee means an employee who is employed on the post of a permanent seasonal employee, or a probationer or a permanent seasonal employee who is temporarily absent.

(v) An 'apprentice' means a learner, provided that no employee shall be classified as an apprentice if he has had training for an aggregate period of one year, provided further that a longer period of apprenticeship shall be required if prescribed by a law or an award, or by agreement with the representative of employees;

(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."

- 6) Once the labour court classified them as permanent, which classification had attained finality, it necessarily follows that they are entitled to all benefits which are to be given to regularly appointed employees.

- 7) It is further submitted that the High Court specifically went into the question as to whether, on attaining permanency, these petitioners were entitled to the pay-scale attached to the post which is given to the regularly recruited employee and answered the said question in the affirmative. Our attention was drawn to one such order dated 8th May, 2008 passed by the High Court in Writ Petition No. 1306 of 2008 where this issue is specifically dealt with in detail and decided in favour of the petitioners, after taking note of various judgments. It was further pointed out that in some other cases, increments are also given while fixing pay in the regular pay-scale. Example of one such case given by the petitioner is ***State of Madhya Pradesh & Ors. Vs. Bhasker Sharma***¹ wherein the Writ Appeal was also dismissed. It was submitted that after the dismissal of the appeal, *Bhasker Sharma* was not only granted regular pay-scale but is getting increments and other benefits attached to the said post as well. It was also argued that many such employees have been given similar benefits and the State Government has now taken a 'U' turn and is not willing to extend such benefits to the petitioners herein. Copies of many such orders passed by the High Court are filed by the petitioners as additional documents in support of their submissions.
- 8) Mr. Mukul Rohatgi, learned Attorney General, who appeared on behalf of

¹ Writ Appeal No. 322/2009; Order dated 30.11.2009; By High Court of M.P., Gwalior Bench

the State Government and the Contemnors emphasised that the only direction of the High Court, which has been upheld by this Court, is that these petitioners are entitled to pay in a regular scale. It is argued that they have been classified as "permanent" because of the aforesaid standing orders which means that their services would not be terminated. However, that does not mean that the petitioners are regularised against any posts. It was also argued that each of these petitioners have been given substantial amount as arrears of pay in terms of the orders passed by the High Court and there is significant enhancement in the monthly emoluments now drawn by these petitioners. The learned Attorney General further submitted that there are 520 such employees who have gained entry into the service through backdoor as they were not appointed on regular basis against regular vacancy after following required selection procedure. Such employees, like the petitioners, cannot seek regularisation and benefits emanating from such regularisation in view of the law laid down by the Constitution Bench of this Court in **State of Karnataka Vs. Uma Devi**². It was also argued that instant proceedings are in the contempt cases where scope of jurisdiction was limited. The State had complied with the directions in a *bona fide* manner on its understanding about the orders of the High Court against which SLPs have been dismissed and in case the grievance of the petitioners is that they are entitled to something more

2 (2006) 4 SCC 1

than what is granted by the State Government, they can challenge the order passed by the Government fixing their pay, by taking recourse to substantive proceedings but not in the form of contempt petition.

- 9) Mr. Rohatgi also brought to the notice of this Court a subsequent event which has been brought on record by filing additional affidavit. It was pointed out that on 7th October, 2016, the State Government has promulgated a one-time scheme for regularisation of all daily wage employees in the State. Copy of the said scheme is annexed, salient features whereof are as under:

“(I) The Daily wage employees will now be classified as “Sthayee Karmi”.

(II) They are classified in three categories, i.e., Unskilled, Semi-skilled, and Skilled. Their pay scale is also determined accordingly. Pay Scale of a skilled employee is Rs. 5000-100-8000.

(III) They will be given the benefit of seniority and their actual pay on September 1, 2016 in their pay scale will be determined based on the years of service put in by them.

(IV) They will be entitled to Dearness Allow. (Presently at 125%)

(V) The pay fixation in the pay scale will be applicable from 1.9.2016. Next increment in salary will be given in September 2017.

(VI) On attaining the age of superannuation, they will be entitled to Gratuity based on 15 days salary per year during the period of service. Maximum limit of this amount will be Rs. 1,25,000/- for unskilled, Rs. 1,50,000/- for semi-skilled, and Rs. 1,75,000/- for skilled workers.

(VII) Such daily wagger employees who were working on 16.5.2007, and have also been in service as on 1.9.2016

will be entitled to the pay scale mentioned above and other benefits.

6. In view of the aforesaid scheme, the MP Daily Wages Employee (Conditions of Service), Rules, 2013 now stands repealed.

7. The scheme also prescribes the steps to be taken for filling up the vacant Regular posts. For this purpose the vacant Class IV posts available in the regular setup under various departments at the district level would be filled up on priority from the existing *sthayee karmis*. The workers working with various Construction Departments (Nirman Vibhag) will be treated as Industrial Workers for the purposes of Standing Order Act, 1961 and Rules, 1963 and the permanent classified employees of such Departments are also entitled to be regularised accordingly.

8. In view of the aforesaid, it is submitted that the daily wage employees are also entitled to the aforesaid benefits at the time of superannuation as mentioned in the Scheme."

He, thus, submitted that if the petitioners opt for the said scheme, they would get the benefits thereof after their retirement.

10) Before we consider the respective submissions, we want to make two observations which are crucial to the issue involved. These are:

(i) The matter is being examined in the contempt jurisdiction of this Court. From the chronology of events given, it would be clear that initially these petitioners had claimed their classification as 'permanent' to the respective posts. They succeeded in this attempt and the orders passed therein in their favour was that they would be classified as 'permanent' and that they would also be entitled to pay-scale of

permanent posts from the dates specified in the award given by the labour court.

In the second round of litigation, out of which present contempt petitions arise, direction of the High Court is to grant them pay-scales attached to the posts to which they are working.

This order has been upheld by this Court as well inasmuch as Special Leave Petitions filed by the State Government have been dismissed by common orders dated 21st January, 2015. However, there is no specific direction for grant of increments.

- (ii) In order to implement the directions of High Court, against which special Leave Petitions have been dismissed, the State Government has passed order dated 11th March, 2016 vide which the pay-scale of the petitioners has been fixed in the pay-scale attached to these posts. This has also been given from the dates to which these petitioners are held entitled to and on that basis arrears of pay have also been paid. However, the pay is fixed at the minimum of the said pay-scales and there is also stipulation in the said orders dated 11th March, 2016 that these employees would not be entitled to increment of salary.

- 11) It is clear from the above that the petitioners have been given pay in the regular pay-scale. Petitioners, however, have joined issue by contending that orders dated 11th March, 2016 do not carry out the complete compliance of the directions given by the High court that on

fixation of pay in the regular pay-scale the petitioners are also entitled to increments of salary, as is given to the regular employees, on annual basis.

Therefore, the question that arise for consideration is as to whether the petitioners are also entitled to the increments.

- 12) It is not in dispute that the petitioners were initially engaged on daily wage basis. Their engagement was also done without following any selection procedure. It also does not emerge from record that the initial engagement of these petitioners was against regular vacancies. Normally, in such a situation even if these persons, because of their long service and also on the assumption that they are discharging the same duties as discharged by regular employees, such employees can claim the salary which is being paid to regular employees holding similar posts on the principles of 'equal pay for equal work'. This aspect has exhaustively and authoritatively being dealt with by this Court in a recent judgment dated 26th October, 2016 in Civil Appeal No. 213 of 2013, titled ***State of Punjab and Ors. vs. Jagjit Singh and Ors.***³ and other connected appeals, though, there is one distinguished factor, viz. the petitioners herein have been conferred the status of 'permanent' employees. However, an important question which arises is as to whether such 'permanent' employees are same as employees appointed

³ Civil Appeal No. 213 of 2013; 26th October, 2016

on 'regular' basis or their services stand regularized. This aspect shall be touched upon and dealt with a little later. At this stage, reference is made to the aforesaid judgment in the case of **Jagjit Singh**³ for the purpose that even if principle of 'equal pay for equal work' is applicable and the pay in the regular pay-scale is admissible to such employees, these employees would be entitled to minimum of the regular pay-scale and not the increments. This case is taken note of and discussed in **Jagjit Singh**³ in the following manner:

"36. Secretary, State of Karnataka v. Umadevi [(2006) 4 SCC 1], decided by a five-Judge Constitution Bench: Needless to mention, that the main proposition canvassed in the instant judgment, pertained to regularization of government servants, based on the employees having rendered long years of service, as temporary, contractual, casual, daily-wage or on ad-hoc basis. It is, however relevant to mention, that the Constitution Bench did examine the question of wages, which such employees were entitled to draw. In paragraph 8 of the judgment, a reference was made to civil appeal nos. 3595-612 of 1999, wherein, the respondent-employees were temporarily engaged on daily-wages in the Commercial Taxes Department. As they had rendered service for more than 10 years, they claimed permanent employment in the department. They also claimed benefits as were extended to regular employees of their cadre, including wages (equal to their salary and allowances) with effect from the dates from which they were appointed. Even though the administrative tribunal had rejected their claim, by returning a finding, that they had not made out a case for payment of wages, equal to those engaged on regular basis, the High Court held that they were entitled to wages, equal to the salary of regular employees of their cadre, with effect from the date from which they were appointed. The direction issued by the High Court resulted in payment of higher wages retrospectively, for a period of 10 and more years. It would also be relevant to mention, that in passing the above direction, the High Court had relied on the decision rendered by a three-Judge bench of this Court in Dharwad District PWD Literate Daily- Wage

Employees Association v. State of Karnataka[(1990) 2 SCC 396]. The Constitution Bench, having noticed the contentions of the rival parties, on the subject of wages payable to daily-wagers, recorded its conclusions as under:-

"55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a

situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. Nos. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

We have extracted the aforesaid paragraph, so as not to make any inference on our own, but to project the determination rendered by the Constitution Bench, as was expressed by the Bench. We have no hesitation in concluding, that the Constitution Bench consciously distinguished the issue of pay parity, from the issue of absorption/regularization in service. It was held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary at the lowest grade of their cadre. The Constitution Bench expressed the view, that the concept of equality would not be applicable to the issue of absorption/regularization in service. And conversely, on the subject of pay parity, it was unambiguously held, that daily-wage earners should be paid wages equal to the salary at the lowest grade (without any allowances). "

- 13) Another significant reason for referring to the judgment of **Jagjit Singh**³ is that the Court culled out the principles of 'equal pay for equal work' from the earlier judgments on the subject and collated them at one place. Further, the Court also drew an important distinction between the grant of benefit of 'equal pay for equal work' to temporary employees on the one hand and the status of regular employees on the other hand. Insofar as parameters of principles of 'equal pay for equal work' deduced

by the Court are concerned (para 42), our purpose of deduction stated in sub-para vi thereof is important, which is reproduced below:

"(vi) For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – **Orissa University of Agriculture & Technology Vs. Manoj K. Mohanty**⁴). "

- 14) Insofar as distinction between pay parity and regularisation of service is concerned, referring to the Constitution Bench judgment in **Uma Devi**², the Court made the following observations:

"We are of the considered view, that in paragraph 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity, and regularization in service. It was held, that on the issue of pay parity, the concept of 'equality' would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of 'equality' could not be invoked for absorbing temporary employees in Government service, or for making temporary employees regular/permanent. All the observations made in the above extracted paragraphs, relate to the subject of regularization/permanence, and not, to the principle of 'equal pay for equal work'. As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good, by making such a direction. "

Thus, it follows that even if principle of 'equal pay for equal work' is applicable, temporary employee shall be entitled to minimum of the pay-scale which is attached to the post, but without any increments.

4 (2003) 5 SCC 188

- 15) Insofar as petitioners before us are concerned they have been classified as 'permanent'. For this reason, we advert to the core issue, which would determine the fate of these cases, viz., whether these employees can be treated as 'regular' employees in view of the aforesaid classification? In other words, with their classification as 'permanent', do they stand regularized in service?
- 16) For this purpose, we would first like to refer to the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and the Rules made thereunder known as the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963. Section 3(c) of the Act defines "Standing Orders" and as per 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. Section 21 empowers the State Government to make rules to carry out the purposes of the said Act which are required to be notified. It empowers the State Government to frame Standard Standing Orders as well. It is in exercise of powers under Section 21(1) of the Act that the State Government has framed Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 (hereinafter referred to as the 'Rules'). Annexure to these Rules contains standard Standing Orders for all undertakings in the State. Standing Order No. 2 of this

Order enumerates classification of employees which has already been reproduced above. As per this classification, an employee would be known as 'permanent employee' who has completed six months' satisfactory service in a clear vacancy in one or more posts whether on probation or otherwise or a person whose name has been entered in the muster roll and who is given a ticket of 'permanent employee'. It follows from the above that merely by putting in six months' satisfactory service, an employee can be treated as 'permanent employee'. Rights which would flow to different categories of employees including 'permanent employee' are not stipulated in these Rules or even in the parent Act. It can be gathered from Rule 11 of the said Rules, which relates to termination of employment, that in case of a 'permanent employee' one month's notice or wages for one month in lieu of notice is required when the employment of a 'permanent employee' is to be terminated. On the other hand, no such notice or wages in lieu thereof is needed to be given to any other category of employees. Additional obligation casts on the employer is to record reasons for termination of service in writing and communicate the same to the employee.

- 17) With this, we advert to the question posed above. In the first blush, this question appears to be somewhat puzzling, as to how such a question can arise because normally an employee who is given the designation of 'permanent employee' should be treated as 'regular employee' as well.

However, this puzzle vanishes when we examine the standing orders, acts and rules in question under which designation of 'permanent employee' is acquired. Fortunately for us, we are not trading on a virgin territory.

- 18) This Court has already examine the issue in the context of these very standing orders of Madhya Pradesh. In the case of ***Mahendra L. Jain & Ors. v. Indore Development Authority & Ors.***⁵, this Court analyzed the Standard Standing Order in question and held that permanent classification does not amount to regularization, inasmuch as it was noted that the matter relating to the recruitment is governed by a separate statute, as can be seen from the following discussion therein:

"28. 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

⁵ (2005) 1 SCC 639

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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 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."

- 19) The issue came up again in the case of ***M.P. State Agro Industries Development Corporation Ltd. & Anr. v. S.C. Pandey***⁶ wherein this Court held that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularized in service. The Court also reiterated that the Standing Orders categorize the nature of employment and do not classify individual employees in different post according to the hierarchy created in the Department and thus proviso to Rule 2 does not apply to promotions or regularization in higher grade. We would like to reproduce following paras from the said judgment:

"17. The question raised in this appeal is now covered by a decision of this Court in *M.P. Housing Board v. Manoj Shrivastava* [(2006) 2 SCC 702] wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and

⁶ (2006) 2 SCC 716

appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes; (2) a daily-wager does not hold a post as he is not appointed in terms of the provisions of the Act and the Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularised in service; (4) if an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.

18. The said decision applies on all fours to the facts of this case. In *Mahendra L. Jain* [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] this Court has categorically held that the Standing Orders governing the terms and conditions of service must be read subject to the constitutional and statutory limitations for the purpose of appointment both as a permanent employee or as a temporary employee. An appointment to the post of a temporary employee can be made where the work is essentially of temporary nature. In a case where there existed a vacancy, the same was required to be filled up by resorting to the procedures known to law i.e. upon fulfilling the constitutional requirements as also the provisions contained in the 1976 Regulations. No finding of fact has been arrived at that before the respondent was appointed, the constitutional and statutory requirements were complied with.

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22. Such appointments, in our opinion, having regard to the decisions in *Mahendra L. Jain* [(2005) 1 SCC 639 : 2005 SCC (L&S) 154] and *Manoj Shrivastava* [(2006) 2 SCC 702] must be made in accordance with extant rules and regulations. It is also a well-settled legal position that only because a temporary employee has completed 240 days of work, he would not be entitled to be regularised in service. Otherwise also the legal position in this behalf is clear as would appear from the decision of this Court in *Dhampur Sugar Mills Ltd. v. Bhola Singh* [(2005) 2 SCC 470 : 2005 SCC (L&S) 292] apart from *Mahendra L. Jain* [(2005) 1 SCC 639 : 2005 SCC (L&S) 154]."

20) A direct judgment on the subject is ***State of M.P. & Ors. v. Lalit Kumar***

Verma⁷ wherein it was held that a workman would be entitled to classification as permanent or temporary employee if the conditions precedent are satisfied. It was held that the respondent was not appointed against the clear vacancy, he was not appointed in a permanent post or placed on probation. This Court, thus, held that working on daily wages alone would not entitle him to the status of permanent employee. Para 7 of this judgment needs to be looked into.

"7. A workman, therefore, would be entitled to classification of permanent or temporary employee, if the conditions precedent therefor are satisfied. The 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."

- 21) It is, thus, somewhat puzzling as to whether the employee, on getting the designation of 'permanent employee' can be treated as 'regular' employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, a person who is known as 'permanent employee' would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as 'permanent employee'. Moreover, this Court has, as would be noticed now, drawn a distinction between 'permanent employee' and 'regular employee'.

⁷ (2007) 1 SCC 575

22) We may mention, at this stage that this aspect has come up for consideration, in another context, in ***State of Madhya Pradesh and Others vs. Dilip Singh Patel and Others***⁸. That was a case where similarly situated employees, who were classified as 'permanent employees' under the Standing Orders Act, were given minimum of the pay-scale attached to their posts. However, after the implementation of Sixth Pay Commission, benefits thereof were not extended to these employees. High Court held that they would be entitled to have their pay fixed as per the revised scales in accordance with the recommendations of Sixth Pay Commission which were accepted *qua* regular employees. This Court, though, upheld the orders of the High Court giving them the benefit of revision of pay-scale pertained to Sixth Pay Commission, but at the same time made it clear that they would be entitled to minimum salary and allowances as per the said revised scales and would not be entitled to any increments. It was further held that such increments would be admissible only after regularisation of their services which regularisation was to take place as per the seniority list with due procedure. Following passage from the said judgment, which captures the aforesaid directions, is quoted hereunder:

"We have heard learned counsel for the parties and perused the records. It appears that the respondents earlier moved before the Administrative Tribunal, Gwalior by filing original applications such as O.A. No. 648 of 1995, O.A. No. 293 of 1991 etc. In compliance of the

⁸ *Civil Appeal Nos. 8431-8432 of 2014; decided on August 27, 2014.*

orders passed in such original applications, the Chief Engineer, Yamuna Kachhar, Water Resources Department, Gwalior (M.P.) (by orders issued in between April, 2004 and June, 2004) provided the minimum wages and allowances to the respondents without increment as per the Schedule of the pay scale from the date of the order of the Tribunal. It was further ordered that the regularization of the daily wages employees shall be made as per the seniority list with due procedure and the benefit of increment and other benefits can only be granted after the regularisation as per the Rules. It was ordered that the order of the Court for benefit of minimum wages and allowances shall be

From the aforesaid facts, it is clear that the respondents are entitled for minimum wages and allowance as per the fixed Schedule of the pay scale but without any increment. In such case, if the pay scale is revised from time to time including the pay-scale as revised pursuant to Sixth Pay Commission, the respondents will be entitled to minimum wages and allowance as per the said revised scale without increment. Only after regularisation of their service, as per seniority and rules, they can claim the benefit of increment and other benefits."

- 23) From the aforesaid, it follows that though a 'permanent employee' has right to receive pay in the graded pay-scale, at the same time, he would be getting only minimum of the said pay-scale with no increments. It is only the regularisation in service which would entail grant of increments etc. in the pay-scale.
- 24) In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well.

However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms (See *Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors.*⁹).

25) These contempt petitions are, accordingly, dismissed.

.....J.
(A.K. SIKRI)

.....J.
(N.V. RAMANA)

NEW DELHI;
DECEMBER 15, 2016.

9 (1997) 6 SCC 766

ITEM NO.IC
(For Judgment)

COURT NO.9

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CONMT.PET.(C) No. 771/2015 In SLP(C) No. 25284/2012

RAM NARESH RAWAT

Petitioner(s)

VERSUS

SRI ASHWINI RAY AND ORS.

Respondent(s)

CONTEMPT PETITION (CIVIL) NO. 838 OF 2015
IN
SPECIAL LEAVE PETITION (C) NO. 9635 OF 2013

CONTEMPT PETITION (CIVIL) NO. 858 OF 2015
IN
SPECIAL LEAVE PETITION (C) NO. 23985 OF 2012

CONTEMPT PETITION (CIVIL) NO. 62 OF 2016
IN
SPECIAL LEAVE PETITION (C) NO. 31343 OF 2011

CONTEMPT PETITION (CIVIL) NOS. 82-85 OF 2016
IN
SPECIAL LEAVE PETITION (C) NOS. 18245 OF 2014, 18246, 18247 & 18249
OF 2014

CONMT.PET.(C) NO. 101/2016 IN SLP(C) NO. 19220/2014

CONMT.PET.(C) NO. 787/2015 IN SLP(C) NO. 19224/2014

CONMT.PET.(C) NO. 788/2015 IN SLP(C) NO. 19286/2014

CONMT.PET.(C) NO. 819/2015 IN SLP(C) NO. 19217/2014

CONMT.PET.(C) NO. 823/2015 IN SLP(C) NO. 19218/2014

CONMT.PET.(C) NO. 856/2015 IN SLP(C) NO. 19230/2014

CONMT.PET.(C) NO. 121-131/2016 IN SLP(C) NO. 8473/2012, 19394/2012,
23980/2012, 23981/2012, 23986/2012, 34868/2012, 38228/2012,
38231/2012, 38235/2012, 38236/2012, 19236/2014.

CONMT.PET.(C) NO. 735/2015 IN SLP(C) NO. 19278/2014

CONMT.PET.(C) NO. 793-817/2015 IN SLP(C) NO.20025/2011 AND
19396/12, SLP(C) NO. 30275/2012, SLP(C) NO. 30276/2012, SLP(C) NO.

1577/2013, SLP(C) NO. 5597/2013, SLP(C) NO. 29683/2013, SLP(C) NO.
19095/2014, SLP(C) NO. 19282/2014, SLP(C) NO. 19251/2014, SLP(C)
NO. 25279/2012, SLP(C) NO. 12438/2013, SLP(C) NO. 12433/2013,
SLP(C) NO. 5350/2013, SLP(C) NO. 19221/2014, SLP(C) NO. 19260/2014,
SLP(C) NO. 19257/2014, SLP(C) NO. 19206/2014, SLP(C) NO. 25277/2012,
SLP(C) NO. 19094/2014, SLP(C) NO. 19205/2014, SLP(C) NO.
19219/2014, SLP(C) NO. 19237/2014, SLP(C) NO. 19246/2014 AND SLP(C)
NO. 19255/2014

CONMT.PET.(C) NO. 215/2016 IN SLP(C) NO. 21830/2012

WITH

CONMT.PET.(C) NO. 216/2016 IN SLP(C) NO. 21835/2012

CONMT.PET.(C) NO. 512/2016 IN SLP(C) NO. 18413/2014

CONMT.PET.(C) NO. 475/2016 IN SLP(C) NO. 8203/2012

CONMT.PET.(C) NO. 536/2016 IN SLP(C) NO. 19393/2012

A N D

CONMT. PET. (C) NO. 106/2016 IN SLP(C) NO. 19292/2012

Date : 15/12/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mr. N.K.Mody, Sr. Adv.
Mr. Ankur Mody, Adv.
Mr. Adarsh Tripathi, Adv.
Ms. Apurva Shukla, Adv.
Mr. Amlan Kumar Ghosh, Adv.

M/s. S.M. Jadhav & Company, Adv.

Mr. B. S. Banthia, Adv.

Mr. S. K. Verma, Adv.

Ms. Manju Jetley, Adv.

Mr. Akshat Shrivastava, Adv.

For Respondent(s) Mr. Arjun Garg, Adv.
Mr. Isham Nagar, Adv.

Mr. C. D. Singh, Adv.

Hon'ble Mr. Justice A.K. Sikri pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice N.V. Ramana.

The contempt petitions are dismissed in terms of the signed reportable judgment.

(Madhu Bala)
Court Master

(Mala Kumari Sharma)
Court Master

(Signed reportable judgment is placed on the file)

ITEM NO.1501

COURT NO.11

SECTION IV-C

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 10519/2020

(Arising out of impugned final/interim judgment and order dated 13-02-2020 in WA No. 20/2020 passed by the High Court Of M.P. Principal Seat At Jabalpur)

VIBHUTI SHANKAR PANDEY

Petitioner(s)

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

Respondent(s)

Date : 08-02-2023 This petition was called on for pronouncement of judgment today.

For Petitioner(s)

Mr. Ajay Choudhary, AOR

For Respondent(s)

Mr. Sunny Choudhary, AOR

Hon'ble Mr. Justice Sudhanshu Dhulia pronounced the judgment of the Bench comprising Hon'ble Mr. Justice S. Ravindra Bhat and His Lordship.

Leave granted.

The appeal is dismissed in terms of the signed judgment, which is placed on the file.

Pending application(s), if any, stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)(KAMLESH RAWAT)
COURT MASTER (NSH)



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. _____ OF 2023
(ARISING OUT OF SLP (C) NO. 10519 OF 2020)

VIBHUTI SHANKAR PANDEY

...APPELLANT

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

...RESPONDENTS

J U D G M E N T

Leave granted.

2. This appeal has been filed by the appellant who is aggrieved by the order dated 13.02.2020, by which a Division Bench of the Madhya Pradesh High Court has set aside the order of the learned Single Judge dated 27.06.2019, which had granted the benefit of regularization to the present appellant.
3. The case of the appellant is that he was engaged in 1980 as a Supervisor, on daily rated basis, under a project of the State Water Resources Department of Madhya

Pradesh. The appellant sought regularization on the post of Supervisor/Time Keeper. Admittedly, the minimum qualification for the said post was matriculation with mathematics; a qualification which the appellant did not possess. These qualifications were relaxed by a Government Circular dated 31.12.2010 and the appellant sought his regularization on the post of Supervisor/Time Keeper, as he was qualified for the post and had been working on daily wage basis for a long period of time. In fact, in another writ petition (W.P. 13997/2010) filed by the appellant earlier, the High Court of Madhya Pradesh vide order dated 02.11.2017, had given directions to the State Government to decide the claim of the writ petitioner in accordance with law. Vide order dated 18.06.2018 issued by the Office of Chief Engineer, Rani Avanti Bai Lodhi Sagar Project, the claim of the appellant for regularization was rejected for the reasons that though the minimum qualifications of matriculation with mathematics will not come in the way for his regularization, but the fact remains that the appellant was never appointed against any post. Moreover, his appointment was never made by the

competent authority and there were no posts available at the time for regularization. The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in **Secretary, State of Karnataka and Ors. v. Umadevi and Ors.**¹, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.

¹ [2006] 4 SCC 1

4. In view of the law laid down by the Constitution Bench of this Court in **Uma Devi** (supra), the appellant had no case for regularization. There is no scope, hence, for our interference with the order of the Division Bench of the Madhya Pradesh High Court. Appeal is dismissed.

.....
J.

[S. RAVINDRA BHAT]

.....J.

[SUDHANSHU DHULIA]

New Delhi,

February 8, 2023

THE HIGH COURT OF MADHYA PRADESH

WRIT APPEAL NO. 20/2020

State of Madhya Pradesh V. Vibhuti Shunkar Pandey

Jabalpur, Dated : 13.02.2020

Shri J.K. Pillai, learned Govt. Advocate for the appellants/State.

Shri K.N. Pethia, learned counsel for the respondent.

With the consent of learned counsel for the parties, the matter is finally heard.

There is a delay of 102 days in filing the present writ appeal. Condonation whereof is being sought vide Interlocutory Application No. 80/2020. For the reasons which find mention in the application and which prevented the appellant from filing the appeal within the period of limitation, sufficient cause is made out. Consequently, delay is condoned. Interlocutory Application No. 80/2020 stands disposed of.

2. This intra-court appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 is directed against the order dated 27.6.2019 passed in Writ Petition No. 17517/2018.

3. The Writ Petition was directed against the order dated 18.6.2018; whereby the claim of the petitioner for regularization was rejected. The order was passed in furtherance to direction in Writ Petition No. 13997/2000 decided on 2.11.2017. In the said Writ petition the petitioner had confined his claim for consideration in terms of G.A.D circular dated 31.12.2010. Evidently, earlier the claim of the petitioner for regularization as Time Keeper was turned down because his not passing matriculation with Mathematics and Science as subjects. These

conditions were relaxed vide circular dated 31.12.2010. The committee which considered the case of the petitioner, rejected it for the reasons that there was no permanent cadre in Narmada Valley Development Authority where the postings were on deputation, and that when engaged on daily wages in the office of Sub-Divisional Officer, Katanga there was no vacant post and was not found possessing requisite qualification and the appointment was not by the Competent Authority.

4. It is urged on behalf of the appellants that learned Single Judge glossed over these vital aspects and the law laid down by the **Supreme Court in Secretary, State of Karnataka and others v. Uma Devi and others {(2006) 4 SCC 1}** that the earlier regularization order were denuded of its precedence and overreached the relief by the petitioner by directing regularization from 1990.

5. Respondent/petitioner has, however, supported the order.

6. Considered rival submissions and perused the cogent material on record.

7. Admittedly in Writ Petition No. 13997/2010 the petitioner had confined his claim in context to circular dated 31.12.2010 and from retrospective date. Thus, the decision by learned Single Judge in granting regularization from the date on which his juniors were regularized was beyond the claim of the petitioner. Even the petitioner was estopped from claiming the regularization from a date prior to 31.12.2010. Furthermore, learned Single Judge while directing regularization from 1990 took into consideration the orders in favour of certain persons employed in the year 1990, when the petitioner admittedly was not eligible, glossed over the principle of law laid down in Uma Devi (supra) wherein it has been held:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

7. When earlier regularization order having been denuded of its precedence, the direction for regularization on the basis of such order cannot be upheld.
8. In view whereof the impugned order dated 27.6.2019 in Writ Petition No. 17517/2018 (S) is set aside. The petition filed by the petitioner is dismissed.
9. The appeal is allowed to the extent above. No costs.

(SANJAY YADAV)
JUDGE

(ATUL SREEDHARAN)
JUDGE

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HIGH COURT OF MADHYA PRADESH: JABALPUR

(SB : Hon'ble Shri Justice Subodh Abhyankar)

W.P. No. 17517/2018 (S)**Vibhuti Shankar Pandey**

.....Petitioner

Versus

State of Madhya Pradesh & others

.....Respondents

Present:

For the Petitioner : Shri K.N. Pethia & Shri Brajesh Mishra, Advocates

For the Respondents : Ku. Aditi Varma, Panel Lawyer for the State.

Whether Approved for Reporting: No

ORDER (Oral)

(27.06.2019)

This writ petition has been filed under Article 226 of the Constitution of India by the petitioner, who has been working as Supervisor in Rani Avanti Bai Lodhi Sagar Pariyojna, against the order dated 18.06.2018 (Annexure P/11) passed by the respondent No.3 – Chief Engineer, Rani Avanti Bai Lodhi Sagar Pariyojna, Bargi Hills, Jabalpur whereby the representation submitted by the petitioner for his regularization has been rejected. The aforesaid representation was submitted by the petitioner pursuant to an order dated 02.11.2017 passed by this Court in W.P. No.13997/2010.

2. In brief, the facts of the case are that the petitioner entered into the services of the Water Resource Department in the year 1980 and has been

working continuously since then in the said department. The grievance of the petitioner is that despite working continuously for such a long time and despite the fact that juniors to the petitioner, namely, Shri Aadesh Jain and Shri Vishwamitra Choubey were subsequently regularized in the services on the post of Time Keeper vide order dated 08.01.1988 (Annexure P/8 to rejoinder filed in W.P. No.13997/2010) and similarly, one Shri Ajit Singh Gour, was also got regularized despite the fact that he joined the services of Narmada Valley Development Authority (hereinafter referred to in short as "NVDA") in the year 1990 i.e., after the petitioner, the petitioner is left out from the process of regularization.

3. The contention of the petitioner is that on 09.01.1990 a circular (Annexure P/1) has been issued by the State Government for regularization of the services of daily wagers working on Class-III and IV posts prior to 31.12.1988 and it is provided that those employees who are working on such posts which are not sanctioned, posts be sanctioned and they be regularized. It is the further case of the petitioner that the Deputy Collector, Jabalpur vide letter dated 18.01.1990 (Annexure P/3) written to the Chief Engineer has recommended for regularization of the petitioner. However, in the year 2004, the petitioner was informed that his case cannot be considered as he has not passed the Matriculation with Science subject. Hence, a writ petition being W.P. No.2148/2004 was filed by the petitioner for his regularization and the same was disposed of by this Court vide order dated 16.04.2004 (Annexure P/5) with a direction to the respondents to regularize the services of the petitioner in view of the guidelines issued by this Court in W.P. No.9900/2003 decided on 14.11.2003. Again the representation of the

petitioner was rejected by order dated 12.05.2004, therefore, the petitioner has filed writ petition bearing W.P. No.4466/2005 (S) which has been disposed of by this Court on 04.08.2006 (Annexure P/7) in the light of an order dated 03.08.2006 passed by this Court in W.P. No.3838/2005 (S) (*Daddi Lal Yadav vs. State of M.P. and others*) on due consideration of the decisions of the Apex Court in *Secretary, State of Karnataka and others vs. Uma Devi and others* (2006) 4 SCC 1 and certain other decisions. Against the order dated 04.08.2006 (Annexure P/7), the respondents preferred Writ Appeal No.1260/2007 and the same was also disposed of by a Division Bench of this Court vide order dated 18.11.2008 (Annexure P/8) with a direction to consider the case of the petitioner in view of the circular issued in this behalf on 16.05.2007 and 06.09.2008. Subsequently, another circular has also been issued by the State Government on 31.12.2010 (Annexure P/9) in which it is provided that the daily wagers, who are working for more than 10 years on the post of Time Keeper, shall be regularized by relaxing the condition of having passed Higher Secondary or 12th class examination with Mathematics subject. Since no orders were passed in the case of the petitioner, again a writ petition being W.P. No.13997/2010 was filed by the petitioner, which came to be disposed of on 02.11.2017 (Annexure P/10) directing the respondents to decide the petitioner's representation in terms of the aforesaid GAD circular dated 31.12.2010 and thus, the final order has been passed by the respondents on 18.06.2018 (Annexure P/11), which is under challenge before this Court.

4. Learned counsel for the petitioner has submitted that the impugned order has been passed *inter alia* on the ground that there are no recruitment

rules or the service rules in NVDA and that the petitioner's qualification does not meet the necessary requirement as provided by the Rules made in this behalf. Learned counsel has further submitted that the impugned order is liable to be set aside only on the ground that in the circular dated 31.12.2010, which clearly provides that those employees, who are posted as Time Keeper since last 10 years and who have not passed the Matriculation with Mathematics as subject, relaxation in qualification be given to them. It is further submitted that there is a rider in the aforesaid circular that the said facility will be given to only those daily wagers, who have completed 10 years service as on 10.04.2006 whereas in the present case, the petitioner is employed since 1980 as Time Keeper, which fact has not been denied by the respondents also, hence, Shri Pethia, learned counsel has further submitted that the case of the petitioner is on a better footing than the other similarly situated employees, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour, who were admittedly appointed subsequent to the petitioner, as they were junior to the petitioner but despite this fact, their services were regularized. Thus, it is submitted that the impugned order be set aside and the respondents be directed to regularize the services of the petitioner.

5. Learned counsel for the petitioner has also placed reliance upon a Full Bench decision of this Court in the case of *Superintending Engineer, Public Works Department, Circle Gwalior and another vs. Dev Prakash Shrivastava, Gwalior and others* reported in 1999 (1) MPLJ 466 to submit that the M.P. Industrial Employment (Standing Orders) Act, 1961 (hereinafter referred to as "the Act of 1961"), Rules and Orders issued thereunder would

also be applicable to the Government Departments and as the petitioner has admittedly completed more than 180 days' services, his rights are also secured under the aforesaid Act of 1961.

6. *Per contra*, learned counsel for the respondents/State has vehemently opposed the prayer and submitted that no case for interference is made out in the present petition as there is no provision under which the petitioner's services could be regularized in NVDA. Apart from that, it is submitted that the petitioner's qualification is also not sufficient which would allow the respondents to regularize his services. Learned counsel has tried to distinguish the case of the petitioner with that of other similarly situated persons, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour on the ground that all these persons met the requisite qualification of Matriculation with Mathematics and as such the petitioner cannot claim parity on the basis of their regularization.

7. In rebuttal, Shri Pethia has submitted that so far as the regularization of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour is concerned, the same was done in the year 1990 whereas the aforesaid Rule regarding the educational qualification of Time Keeper has come into force in the year 2007. Thus, it is contended by Shri Pethia that when the services of the aforesaid persons were regularized in the year 1990, the petitioner was already senior to them and there was no question of any qualification or disqualification for the purposes of regularization of the said persons, hence, it is submitted that on this ground the petitioner cannot be discriminated as he has already rendered the services for around 38 years. To bolster this submission, learned counsel for the petitioner has relied upon the judgment

passed by the Apex Court in the case of *Secretary, Haryana State Electricity Board vs. Suresh and other etc, etc.* (AIR 1999 SC 1160).

8. Heard learned counsel for the parties and perused the record.

9. From the record, this Court finds that while dismissing the claim of the petitioner, the following order has been passed by the respondent:-

- i. That, the case of the petitioner for regularization on the post of Supervisor has been considered in accordance with the circular dated 16.05.2007 and also circular dated 31.12.2010. It has been held that Narmada Valley Development Authority has been established for the development of Narmada River Scheme and the employees appointed under the authority is not governed by any Cadre or Recruitment Rules or any sanctioned and Vacant post and these authorities are parted in different zone and petitioner was not performing the duties against the sanctioned and vacant post therefore he is not coming under the purview of the policy dated 16.05.2007 therefore, his case has not been recommended for regularization.
- ii. That as per Clause 4.1 of policy dated 16.05.2007, it is mandatory condition that while considering the case of regularization of the employee their sanctioned and vacant post should be available with the answering respondents as the petitioner was engaged as per availability of work and condition and there was no regular and sanctioned post of supervisor therefore, the case of the petitioner is not found fit to recommend for regularization.
- iii. That as per the Clause 4.1 of the circular dated 16.05.2007, the petitioner has been given the benefit of circular dated 31.12.2010, petitioner has been given benefit of relaxation to pass eligibility examination as provided in the aforesaid circular.

- iv. That the answering respondents also by following the Clause 4.1 of the policy dated 16.05.2007, came to the conclusion that the petitioner was not engaged by the competent authority and his appointment is not legal therefore his case is not found fit for recommending the regularization.
- v. That the answering respondents have also come to the conclusion that in absence of any recruitment rules or cadre with the Narmada Valley Development Authority, it is not possible to follow the roster system while regularizing the petitioner in the appropriate post and final the committee has given its conclusion that the case of the petitioner has been considered in accordance with law and according to Clause 1, 2(1), 2(2), 2(4) and 2(5), the petitioner is not entitled to consider for regularization in service of the answering respondents."

10. It is also found that the petitioner has also relied upon the circulars issued by the State Government from time to time and has also filed a circular as Annexure P/9 which clearly provides that the persons who are working as daily wagers be regularized and also that their qualification be relaxed. The said circular, in the opinion of this court, would be applicable in the case of the petitioner.

11. So far as the regularization of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour is concerned, the respondent's contention is that they all had the requisite qualification hence their case is distinguishable, however, according to the petitioner, their appointment orders were passed in the year 1990 when the additional qualification of Mathematics was not required whereas the Rules regarding the educational qualification of Time Keeper have come into force in the year 2007. The aforesaid contention has not been denied by the respondent, which leads this

Court to conclude that the petitioner has been discriminated inasmuch as when the appointment orders of Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour were passed in the year 1990, there was no mandatory requirement that an incumbent must possess the matriculation with Mathematics as the Rules in this behalf came in the year 2007 only. Thus, it cannot be said that the aforesaid persons were appointed only because they had special qualification of matriculation with Mathematics. In view of the same, as the petitioner has been able to make out a case of parity that his case is at par with the other persons, namely, Shri Aadesh Jain, Shri Vishwamitra Choubey and Shri Ajit Singh Gour, whose services have already been regularized, thus, the impugned order dated 18.06.2018 (Annexure P/11) cannot be sustained and is liable to be set aside.

12. As a result, the writ petition succeeds and is hereby **allowed** and the impugned order dated 18.06.2018 (Annexure P/11) is set aside and the respondents are directed to regularize the services of the petitioner from the date on which his juniors as above, were regularized. The respondents are also directed to accord all the consequential benefits to the petitioner.

(SUBODH ABHYANKAR)
JUDGE

2023 LiveLaw (SC) 91

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

S. RAVINDRA BHAT; J., SUDHANSHU DHULIA; J.

February 8, 2023

CIVIL APPEAL NO. OF 2023 (ARISING OUT OF SLP (C) NO. 10519 OF 2020)

VIBHUTI SHANKAR PANDEY *versus* THE STATE OF MADHYA PRADESH & ORS.

Service Law - Regularisation - Two conditions for regularisation of daily wage employees - Firstly, initial appointment must be done by the competent authority and Secondly, there must be a sanctioned post on which the daily rated employee must be working - No claim for regularization if these conditions are not met. Secretary, State of Karnataka and Ors. v. Umadevi and Ors. (2006) 4 SCC 1.

(Arising out of impugned final/interim judgment and order dated 13-02-2020 in WA No. 20/2020 passed by the High Court of M.P. Principal Seat at Jabalpur)

For Petitioner(s) Mr. Ajay Choudhary, AOR

For Respondent(s) Mr. Sunny Choudhary, AOR

J U D G M E N T

Leave granted.

2. This appeal has been filed by the appellant who is aggrieved by the order dated 13.02.2020, by which a Division Bench of the Madhya Pradesh High Court has set aside the order of the learned Single Judge dated 27.06.2019, which had granted the benefit of regularization to the present appellant.

3. The case of the appellant is that he was engaged in 1980 as a Supervisor, on daily rated basis, under a project of the State Water Resources Department of Madhya Pradesh. The appellant sought regularization on the post of Supervisor/Time Keeper. Admittedly, the minimum qualification for the said post was matriculation with mathematics; a qualification which the appellant did not possess. These qualifications were relaxed by a Government Circular dated 31.12.2010 and the appellant sought his regularization on the post of Supervisor/Time Keeper, as he was qualified for the post and had been working on daily wage basis for a long period of time. In fact, in another writ petition (W.P. 13997/2010) filed by the appellant earlier, the High Court of Madhya Pradesh vide order dated 02.11.2017, had given directions to the State Government to decide the claim of the writ petitioner in accordance with law. Vide order dated 18.06.2018 issued by the Office of Chief Engineer, Rani Avanti Bai Lodhi Sagar Project, the claim of the appellant for regularization was rejected for the reasons that though the minimum qualifications of matriculation with mathematics will not come in the way for his regularization, but the fact remains that the appellant was never appointed against any post. Moreover, his appointment was never made by the competent authority and there were no posts available at the time for regularization. The appellant on the other hand, had set his claim for regularization as persons who were junior to him as daily wagers were regularized in the year 1990 or even before. The learned Single Judge while allowing the writ petition gave directions for regularization of the appellant from the date on which his juniors were regularized. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in

Secretary, State of Karnataka and Ors. v. Umadevi and Ors.¹, as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27.06.2019.

4. In view of the law laid down by the Constitution Bench of this Court in **Uma Devi** (supra), the appellant had no case for regularization. There is no scope, hence, for our interference with the order of the Division Bench of the Madhya Pradesh High Court. Appeal is dismissed.

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¹ (2006) 4 SCC 1