

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 5814/2011

STATE OF MADHYA PRADESH & ORS.

Appellant(s)

VERSUS

KUMARI ARATI SAXENA

Respondent(s)

J U D G M E N T

A.S. BOPANNA, J.:

(1) The appellants-State of Madhya Pradesh is before this Court assailing Order dated 16.02.2010 passed by the Division Bench of the High Court of Madhya Pradesh at Gwalior in Writ Petition NO.4225/2005. Through the said order the Division Bench of the High Court has approved the Award dated 10.03.2000 passed by the Additional Presiding Officer, Labour Court No.1, Gwalior, in Case NO.107/M.P.I.R/98 by dismissing the appeal filed by the appellants-State and upholding the order passed by the learned Appellate Judge as well.

(2) We have heard Mrs. Pragati Neekhra, learned Additional Advocate General appearing for the appellants-State and Mr. Tapesh Kumar Singh, learned counsel appearing for the

respondent and also perused the impugned order and the materials on record.

(3) The brief facts leading to the present situation is that the respondent herein had filed an application under Sections 31, 61 and 62 of the Madhya Pradesh Industrial Relations Act, 1960 seeking for categorizing her permanently on the post of Junior Division Clerk and providing permanent salary structure of the said post. In the proceedings before the Additional Presiding Officer, Labour Court No.1, Gwalior, in Case NO.107/M.P.I.R/98, the appellants-State, who were shown as respondents, had appeared and filed their objection statement. It was contended therein that the respondent herein was appointed on 05.06.1992 for the work of Hindi Typist on daily wages. It was contended that the said appointment was not against a clear vacancy and, therefore, the claim as put forth by the respondent before the Labour Court is not justified. The Labour Court on taking note of the rival contentions framed four points for its consideration. While adverting to the legal contentions, the factual aspects relating to the case were taken note. Insofar as the claim as put forth by the respondent seeking that she be categorized as a permanent employee, the Labour Court on taking note of the legal position as also the factual position emerging in the case had recorded a factual finding that the respondent herein had worked for more than six months continuously on the vacant post of Typist-Lower Division Clerk from the date of the appointment. In that

background the Labour Court keeping in view the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 with a specific reference to the Standing Order 2(vi) had arrived at the conclusion that the respondent is entitled to be considered as a permanent employee as the eligibility condition indicated therein as an exception is satisfied.

(4) At this stage it is necessary to take note of the contentions put forth by Ms. Pragati Neekhara, learned Additional Advocate General appearing for the appellants-State, with reference to the very same provision at Standing Order 2(i). We have referred to the same and we find that in the said Standing Order the provision made is in respect of the permanent employee if appointed against a vacant post. However, the Exception, as referred to by the Labour Court, is in respect of a temporary employee and the circumstance under which such temporary employee will be deemed to be a permanent employee. In that light we are of the opinion that the consideration as made by the Labour Court is to take note of the claim which was put forth that though the respondent was appointed as a temporary employee she has satisfied the condition to be deemed as a permanent employee as per the said Exception contained in the Standing Order and had accordingly considered and ordered that the respondent be treated as a permanent employee which is justified in the factual background arising in the instant case.

(5) In this regard what is necessary to be taken note, in a proceeding of the present nature is that when such conclusion

as reached by the Labour Court is assailed in a proceeding in the higher forum what is necessary to be taken note is as to whether there is any perversity in the conclusion reached by the Labour Court and it would not be open to reappraise the evidence. In that regard the finding of fact recorded by the Labour Court is that the respondent herein had served for more than six months as a temporary employee attracting the requirement in Standing Order 2(vi). When the said finding of fact is undisputed the subsequent conclusion as reached by the Labour Court cannot be considered as perverse.

(6) Be that as it may, when the Award passed by the Labour Court was carried in the appeal bearing Appeal No.269/MPiR/2000, the learned Judge of the Appellate Authority has also adverted to the very same aspect and has upheld the order passed by the Labour Court. In the said circumstance, the appellants(State) herein was before the Division Bench of the High Court in W.P.NO.4225/2005. The Division Bench keeping in view the principle that is required to be followed while examining such matter has noted that the Labour Court has recorded a finding of fact while ordering classification of the respondent herein to the post of Typist as a permanent employee. In that view when such conclusion is reached concurrently by the three courts below such finding of fact would not call for interference in the proceedings of the present nature where the scope for examination is limited.

(7) Having arrived at the above conclusion one other aspect which requires to be taken note is that the Division Bench of

the High Court while ultimately disposing of the appeal has also made a reference to the Order dated 17.11.2004 passed by the Executive Engineer, Public Health Engineering Department. The said reference is for the reason that under the said order the Department itself had classified the respondent herein to the post of Hindi Stenographer w.e.f. 27.11.1999. In that regard, learned counsel for the appellant would contend that a serious error has been committed by the Division Bench of the High Court inasmuch as the Order dated 17.11.2004 itself is being enquired into relating to the reason for which such order was passed as the same has been erroneously passed by the concerned Authority. In that regard learned counsel for the appellant has also referred to the Order dated 18.04.2017 passed by this Court in SLP(C)No.6697 of 2016 and it is contended by learned counsel for the appellants-State that this Court while examining the order passed by the Chief Secretary of the State of Madhya Pradesh directing the enquiry, has upheld the same and, therefore, in the present circumstances the correctness or otherwise of the Order dated 17.11.2004 is required to be enquired into and in that circumstances granting the benefit to the respondent based on such order would not be justified. In that regard having referred to the Order dated 18.04.2017 passed in SLP(C)No.6697 of 2016, we also notice that this Court in that regard while approving the manner in which the enquiry could be proceeded by issuing individual notice had also indicated that there would be protection to all such employees whose appointments have been made in consonance with

the statutory provisions, or under a valid policy decision of the State Government, and/or in consonance with the judgment rendered on the subject of regular appointment, or regularization of appointment.

(8) If the said observation is kept in view, in any event at the first instance since in the instant facts consideration of the permanent status relating to the respondent was made in a proceeding contemplated in law by filing an application before the Labour Court and based on the finding of fact a benefit has been granted, such permanent status as accorded to the respondent in view of the proceedings before the Court in any event cannot be disturbed.

(9) Further, the only other aspect which arises for consideration herein is as to whether the Division Bench of the High Court was justified in directing that the respondent be classified on the post of Hindi Stenographer w.e.f. 27.11.1999 and issuing such direction based on the Order dated 17.11.2004.

(10) In that regard to arrive at a conclusion we once again refer to the Award dated 10.03.2000 passed by the Labour Court. The Labour Court while taking into consideration the length of service rendered by the respondent herein had ordered that she be regularized as a Lower Division Clerk w.e.f. 20.07.1996. The fact that the respondent has discharged her duty as a Typist earlier to the said date and regularization has been granted from the said date cannot be disputed. If that be the position when such service has been rendered satisfactorily and post of the Hindi Stenographer is not a promotional post but the

respondent having gone through the process of assessment and is presently working as a stenographer the said benefit granted by the High court need not be disturbed though it is clarified that such benefit cannot be construed as a benefit arising out of the Order dated 17.11.2004 but independent of the same keeping in view the long service rendered by the respondent in that post and that too after she is considered as a permanent typist. It is further made clear that if in respect of any other person there is individual enquiry pending based on the benefit claimed under the Order dated 17.11.2004 or similar orders, the same shall not stand affected by the benefit that is granted to the respondent herein which is in the peculiar fact of the present case keeping in view the order of the Labour Court and the benefit granted thereunder and also the subsequent status which the respondent on her own merit has acquired due to long satisfactory service.

(11) Therefore, with the above clarification to the observations as made by the Division Bench of the High Court, we see no reason to interfere with the Award dated 10.03.2000 passed by the Labour Court or the Order dated 16.02.2010 passed by the Division Bench of the High Court. Needless to mention that in view of the finality to the litigation, all service benefits payable to the respondent herein shall be computed and paid in an expeditious manner.

(12) In terms of the above, the appeal stands disposed of with no order as to costs.

.....J.
(A.S. BOPANNA)

.....J.
(HRISHIKESH ROY)

NEW DELHI,
SEPTEMBER 26, 2019.