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

Equivalent citations: AIR 2006 SUPREME COURT 3499, 2006 (2) SCC 702, 2006 AIR SCW 1235, 2006 (2) JLJR 198, 2006 (2) ALL CJ 997, 2006 (3) SRJ 566, (2006) 2 SCALE 572, 2006 ALL CJ 2 997, (2006) 109 FACLR 194, (2006) 43 ALLINDCAS 645 (PAT), 2006 BLJR 1 565, (2006) 2 PAT LJR 151, (2006) 2 SUPREME 354, (2006) 2 JAB LJ 1, (2006) 2 LAB LN 84, (2006) 2 SCJ 577, (2006) 7 SERVLR 316, (2006) 101 CUT LT 580, (2006) 2 LABLJ 119

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

CASE NO.:
Appeal (civil) 1265 of 2006

PETITIONER:
M.P. Housing Board & Anr

RESPONDENT:
Manoj Shrivastava

DATE OF JUDGMENT: 24/02/2006

BENCH:
S.B. Sinha & P.K. Balasubramanyan

JUDGMENT:

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

Leave granted.

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

holding:

> "According to the discussion of issue No. 1 and 2 it has been decided that the applicant is entitled to be categorized in the permanent category on the post of Sub-Engineer (Civil). Hence the non-applicant is ordered from the date of submitting the application of applicant in this Court from 10.5.2005 2 years prior from it the applicant be categorized in permanent category.
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> Because the applicant had been appointed in daily wages hence in the circumstances of the case and I do not consider it proper to give benefit of salary of a permanent category to the applicant. But, the applicant is entitled to claim pay scale of permanent category from 10.5.2000 the date of submitting application before this Court."

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

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

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

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

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

> "(i) A 'permanent' employee is one who has completed six months' satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;
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> (vi) 'temporary employee' means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of Clause (i) above."

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

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

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

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

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

> " The 1973 Act or the Rules framed thereunder do not provide for appointments on ad hoc basis or on daily wages. The 1961 Act itself shows that the employees are to be

> classified in six categories, namely, permanent, permanent seasonal, probationers, badlies, apprentices and temporary. The recruitments of the appellants do not fall in any of the said categories. With a view to become eligible to be considered as a permanent employee or a temporary employee, one must be appointed in terms thereof. Permanent employee has been divided in two categories (i) who had been appointed against a clear vacancy in one or more posts as probationers and otherwise; and (ii) whose name had been registered both at muster roll and who has been given a ticket of permanent employee. A "ticket of permanent employee"

was, thus, required to be issued in terms of Order 3 of the Standard Standing Orders. Grant of such ticket was imperative before permanency could be so claimed. The appellants have not produced any such ticket."

It was further held:

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

It was furthermore held:

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

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

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

> "The fact that all appointments have been made without following the procedure or services of some persons appointed have been regularised in past, in our opinion, cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution of India will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now well-settled. [See State of A.P. v. S.B.P.V. Chalapathi Rao and Others,(1995) 1 SCC 724, para 8, Jalandhar Improvement Trust v. Sampuran Singh (1999) 3 SCC 494, para 13 and State of Bihar and Others v. Kameshwar Prasad Singh and Another (2000) 9 SCC 94, para 30].
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> In the instant case, furthermore, no post was sanctioned. It is now well-settled when a post is not sanctioned, normally, directions for reinstatement should not be issued. Even if some posts were available, it is for the Board or the Market Committee to fill-up the same in terms of the existing rules. They, having regard to the provisions of the regulations, may not fill up all the posts."

It is now well-settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service. [See Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Others, [(2005) 5 SCC 122], Executive Engineer, ZP Engg. Divn. And Another v. Digambara Rao and others, [(2004) 8 SCC 262], Dhampur Sugar Mills Ltd. v. Bhola Singh, [(2005) 2 SCC 470], Manager, Reserve Bank of India, Bangalore v. S. Mani and Others, [(2005) 5 SCC 100] and Neeraj Awasthi (supra)] In State of Karnataka & Ors. v. KGSD Canteen Employees Welfare Association & Ors. [(2006) 1 SCALE 85] it was held:

> "The question which now arises for consideration is as to whether the High Court was justified in directing regularization of the services of the Respondents. It was evidently not. In a large number of decisions, this Court has categorically held that it is not open to a High Court to exercise its discretion under Article 226 of the Constitution of India either to frame a scheme by itself or to direct the State to frame a scheme for regularising the services of ad hoc employees or daily wages employees who had not been appointed in terms of the extant service rules framed either under a statute or under the proviso to Article 309 of the Constitution of India. Such a scheme, even if framed by the State, would not meet the requirements of law as the executive order made under Article 162 of the Constitution of India cannot prevail over a statute or statutory rules framed under proviso to Article 309 thereof. The State is obligated to make appointments only in fulfilment of its constitutional obligation as laid down in Articles 14, 15 and 16 of the Constitution of India and not

> by way of any regularization scheme. In our constitutional schemes, all eligible persons similarly situated must be given opportunity to apply for and receive considerations for appointments at the hands of the authorities of the State. Denial of such a claim by some officers of the State times and again had been deprecated by this Court. In any view, in our democratic polity, an authority howsoever high it may be cannot act in breach of an existing statute or the rules which hold the field."

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

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

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

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

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

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