

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 wager 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 examined 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 Adhinyam 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

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

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. Bholu 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.



JUDGMENT

9 (1997) 6 SCC 766