

W.P. No.10893/2013**15.02.2017**

Shri A.P.Singh, learned Govt. Advocate for petitioner.

Shri R.K.Jain, learned counsel for respondent.

With consent of learned counsel for the parties, the matter is finally heard.

This petition at the instance of State of M.P. and its functionaries is directed against the Award dated 21.12.2012 passed by the Labour Court on an application under Section 2 A (2) of the Industrial Disputes Act, 1947 (for short 'the Act of 1947') has directed the reinstatement.

Case of the respondent workman before the Labour Court was that she was engaged as part time waterwoman in 2002 and from 2004 by order dated 21.09.2004 she was appointed as regular basis; however, without show cause notice; any disciplinary inquiry and without adhering to the stipulations contained under Section 25 F of the Act of 1947 her services has been dispensed with. Accordingly she claimed reinstatement with backwages.

Respondents (petitioners) denied the contentions of petitioners being engaged since 2002 and regularly appointed from 21.09.2004. It was stated that the workman was engaged only for a period of 2 hours in the year 2004, vide office order dated 21.09.2004 (Ex.D/1) on part time basis.

The petitioner led oral evidence in support of the contentions that she was engaged in 2002 and has continuously worked since then and that she was regularized in the year 2004 and her services were terminated in 2010. However, no documentary evidence was brought on record to substantiate the contentions. Except that an application was filed on 07.07.2011 for production of attendance register and pay-slip from September 2002 to 21.05.2010, whereon the Labour Court vide order dated 29.09.2011 recorded that as the documents are not filed adverse inference would be drawn.

As no documents were produced by the employer, the Labour Court drawing presumption that the workman must have been engaged in the year 2002 has continuously worked for more than 240 days in 12 calendar months from the date of termination and held that as there was non-compliance of the provisions contained under Section 25 F of the Act of 1947 the termination was illegal. Accordingly, directed for reinstatement.

It is submitted on behalf of the petitioner that the Labour Court glossed over the evidence led on behalf of the employer that the workman was engaged only on part time basis intermittently. It is urged that even the letter dated 21.09.2004 records her appointment, as part time temporary waterwoman as would create any right in favour of the workman to claim reinstatement and continuity in service. It is urged that there

was no sanctioned post of a part time waterwoman, nor any procedure was adhered to while engaging the respondent workman. It is urged that even if the presumption drawn by the Labour Court is taken to be true which otherwise is questionable, since there is no sanctioned post of waterwoman in the establishment, the reinstatement on the said post is erroneous. Reliance is placed on the decision in Vice-Chancellor, Lucknow University Lucknow, U.P. vs. Akhilesh Kumar Khare and Anr. (2016) 1 SCC 521 to substantiate the submission.

In Akhilesh Kumar Khare (supra) it is held :

"11. In Umadevi's case, this Court settled the principle that no casual workers should be regularised by the Courts or the State Government and as per constitutional provisions all the citizens of this country have right to contest for the employment and temporary or casual workers have no right to seek for regularization. In para (47), this Court held as under:

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for

selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

15. The respondents were merely casual workers and they do not have any vested right to be regularised against the posts. The High Court fell in error in affirming the award passed by the Labour Court directing regularisation. In the facts and circumstances of the case, as the respondents were out of employment for more than twenty years and now they are over aged and cannot seek for regular appointment, in our view, the interest of justice will be subserved if the judgment of the High Court is modified to the extent by directing payment of monetary compensation for the damages to the respondents.

17. In the light of the above discussion, the impugned judgment of the High Court is modified and keeping in view the fact that the respondents are facing hardship on account of pending litigation for more than two decades and the fact that some of the respondents are over aged and thus have lost the opportunity to get a job elsewhere, interest of justice would be met by directing the appellant-university to pay compensation of rupees four lakhs

to each of the respondents. By order dated 11.07.2011, this Court directed the appellant to comply with the requirements of Section 17B of the Industrial Disputes Act, 1947 and it is stated that the same is being complied with. The appellant-university is directed to pay the respondents rupees four lakhs each within four months from the date of receipt of this judgment. The payment of rupees four lakhs shall be in addition to wages paid under Section 17B of the Industrial Disputes Act, 1947.”

There is no denial of fact by the workman that there is no sanctioned post of waterwoman in the petitioner's setup and that she was engaged vide letter dated 21.09.2004 on part time basis by exercising financial power to meet the exigency and that there is no evidence led by the workman that any procedure for recruitment was resorted.

There is even a dispute as to the identity of the respondent workman being Kusum or Tarabai. There are documents on record that the petitioner representing herself as Tarabai, wife of Halke Ahirwar had obtained loan of Rs.20000/- for vegetable vending from State Bank of India in the year 2003. The application was filed showing her to be a resident of Bhagatnagar. There are another set of documents on record which reflects Kusum Ahirwar to be wife of late Halke Ahirwar with the resident shown as Anantpara. These documents are domicile certificate issued on 1.09.2010. Employment card issued in the name of Kusum on 1.09.2010. There is also a Scheduled Caste certificate dated 30.12.2002 issued in the name of Kusum wife of late Halke Ahirwar. It being not the

contention of the respondent-workman that there were two Halke Ahirwar, or that Halke Ahirwar had two wives. It is doubted as to whether the respondent is Tarabai or Kusum. To ascertain the same Collector, Tikamgarh is directed to conduct the enquiry to find out whether the Tarabai and Kusum are one and same. And if it is found that the respondent is Tarabai representing herself as Kusum, Collector, Tikamgarh is directed to take action against her in accordance with law.

As regard to direction of reinstatement taking into consideration the given facts of the case and the verdict by the Supreme Court in Akhilesh Kumar Khare (supra) respondent is not entitled for reinstatement. Instead, the cause of justice would be sub-served if she is compensated with Rs.50000/- (Fifty Thousand) to be paid within three months. In case of non-payment the same shall carry the interest @ 6% per annum from the date of this order till final payment is made.

The said compensation be deposited with the Labour Court within a period of thirty days. The respondent-workman would be entitled for the same subject to the outcome of the inquiry to be conducted by the Collector to find out the correctness of the stand taken by the petitioner as to identity of respondent-workman being Kusum or Tarabai.

Petition is allowed to the extent above. No costs.

(SANJAY YADAV)
JUDGE