

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

WRIT PETITION NO.1102 of 2013

Between:-

- 1. THE STATE OF MADHYA PRADESH
THROUGH ENGINEER IN CHIEF, PUBLIC
HEALTH ENGINEERING DEPARTMENT, 7
NUMBER STOP BHOPAL**
- 2. SUPERINTENDENT ENGINEER, PUBLIC
HEALTH ENGINEERING, 6 NO. STOP,
BHOPAL**
- 3. EXECUTIVE ENGINEER, PHE SEHORE**
- 4. SUB DIVISIONAL OFFICER, PHE
DEPARTMENT, SUB DIVISION ASTHA,
DISTRICT SEHORE**

.....PETITIONERS

(BY SHRI MANHAR DIXIT, ADVOCATE)

AND

**KESAV PRASAD RAJE S/O MAGJU PRASAD
RAJE DUSERA MAIDAH, ASTHA, DISTRICT
SEHORE, M.P.**

.....RESPONDENT

(BY MS. RASHI DUA, ADVOCATE)

WRIT PETITION No. 8220 OF 2022

Between:-

**KESHAV PRASAD RAJE S/O MAGJU
PRASAD RAJA, AGED ABOUT 50 YEARS,
OCCUPATION: WELDER, DEPARTMENT
OF PUBLIC HEALTH ENGINEERING, R/O**

**PRESENTLY C/O AJMALULLAH,
SIKANDAR BAZAR, AASHTA, TAHSIL
AASHTA, DISTRICT SEHORE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SANJAY RAM TAMRAKAR, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH THE SECRETARY, PUBLIC
HEALTH ENGINEERING
DEPARTMENT, MANTRALAYA,
VALLABH BHAWAN, BHOPAL (M.P.)**
- 2. DEPARTMENT OF PUBLIC HEALTH
ENGINEERING THROUGH ITS CHIEF
ENGINEER BHOPAL REGION, 7 NO.
BUS STOP BHOPAL, (MADHYA
PRADESH)**
- 3. EXECUTIVE ENGINEER,
DEPARTMENT OF PUBLIC HEALTH
ENGINEERING, SEHORE (M.P.)**
- 4. ASSISTANT ENGINEER, DEPARTMENT
OF PUBLIC HEALTH ENGINEERING,
SUB DIVISION AASHTA, DISTRICT
SEHORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MANHAR DIXIT, PANEL LAWYER)

Reserved on : 26.09.2022

Passed on : 31.10.2022

ORDER

Both petitions involving the same set of facts and circumstances were heard analogously and are being decided by this common order.

2. Earlier petition i.e. W.P. No.1102/2013 was filed by the State assailing the order dated 20.12.2021 passed by Labour Court No.2, Bhopal in Case No.5/I.D. Claim/09, whereby application preferred by the workman u/S.33-C(2) of the Industrial Disputes Act, 1947 (“ID Act” for brevity) was allowed directing payment of Rs.3,27,800/-, which arose out of the order dated 02.03.2002 passed by the same Labour Court in Case No.10/95/MPIR classifying the respondent/employee as permanent employee w.e.f. 31.01.1995 against the post of Hand Pump Mechanic with direction to pay him consequential benefit of admissible pay scale and other service benefits.

2.1 Other petition bearing No. W.P. No.8220/2022 is preferred by the workman seeking direction from this Court to release benefit flowing from the aforesaid order of the Labour Court passed u/S.33-C(2) of the ID Act.

3. It is pertinent to point out that in W.P. No.1102/2013 filed by the State, this Court did not grant any interim order in favour of the State. The benefit flowing from the order passed by the Labour Court u/S.33-C(2) of ID Act which is challenged in W.P. No.1102/2013 filed by the State has not yet reached the workman.

4. Bare facts giving rise to the present case are that the workman being aggrieved by failure of State and its functionaries to classify him as

permanent employee despite working as a daily wager since 1990 as Hand Pump Mechanic, approached Labour Court No.2, Bhopal by preferring Case No.10/95/MPIR by filing an application under the M.P. Industrial Relations Act, 1960 (“MPIR Act” for brevity)

4.1 The Labour Court by order dated 02.03.2002 (Annexure P/3 in W.P. No.1102/2013) directed that workman be classified as permanent employee on the post of Hand Pump Mechanic w.e.f. 31.01.1995 alongwith payment of salary in the admissible pay scale and other related service benefits.

4.2 Aggrieved by the aforesaid order dated 02.03.2002, the employer preferred an appeal u/S.65 of MPIR Act before Industrial Court, Bhopal, which was dismissed for having been filed with inordinate and unexplained delay of 7 years by order dated 01.07.2009 (vide Annexure P/2 in W.P. No.8220/2022).

4.3 Consequent thereto, the employer by order dated 08.04.2003 vide Annexure P/4 in W.P. No.1102/2013 *inter alia* classified the petitioner as a permanent employee.

4.4 However, the difference of salary flowing from the order of classification was not paid, which impelled the workman to file an application u/S.33-C(2) of ID Act vide Annexure P/5 which was registered as Case No.5/I.D. Claim/09 before Labour Court No.2, Bhopal.

4.5 Pursuant to the order of the Labour Court passed u/S.33-C(2) of ID Act, Deputy Labour Commissioner, Bhopal issued recovery certificate to

the Collector, Sehore for effecting recovery of amount of Rs.3,27,800/- (vide Annexure P/5 in W.P. No.8220/2022).

4.6 The employer inducted the workman into work charged and contingency establishment in the pay scale of 5200-20200+1900 Grade Pay on probation of two years on substantive post of Welder (vide Annexure P/7 in W.P. No.8220/2022).

4.7 Application filed u/S.33-C(2) of ID Act was allowed vide impugned order (Annexure P/1) on 20.12.2011 directing employer to pay Rs.3,27,800/-, difference of salary between the daily wages paid to petitioner and salary in the pay scale which became due to the workman on being classified as permanent employee.

4.8 Aggrieved by order dated 20.12.2011, the employer unsuccessfully invoked the power of superintendence of Industrial Court u/S.67 of MPIR Act, which was dismissed by order dated 09.04.2012 vide Annexure P/6 in W.P. No.1102/2013, on the ground that since order dated 20.12.2011 was passed under the ID Act, the remedy to the employer does not lie under the MPIR Act.

5. In the aforesaid factual matrix, grievance of the employer in W.P. No.1102/2013 is that once the workman has invoked the MPIR Act for being classified as a permanent employee, further remedy for execution of such an order could have been availed only under the provisions of MPIR Act and not under ID Act, and therefore, the impugned order passed by the Labour Court u/S.33-C(2) of ID Act is a nullity in the eyes of law.

6. On the other hand, grievance of workman in W.P. No.8220/2022 is that despite orders having been passed by the Competent Courts not only adjudicating the issue of classification in favour of workman but also directing the employer u/S.33-C(2) of ID Act to pay quantified amount of Rs.3,27,800/- to the workman, the benefits of these orders have not reached the workman despite expiry of more than 20 years from the order of adjudication and 11 years from the order of execution u/S.33-C(2) of ID Act.

7. The sole ground raised by learned counsel for State is that the workman having availed remedy under the MPIR Act for adjudicating his claim for classification and having obtained a favourable order, it was not open to the workman to have switched to a remedy under the ID Act to seek execution of the said order of adjudication passed under the MPIR Act.

8. It is an undisputed fact that employer in the instant case is Public Health Engineering Department which is one of the industries under the direct control of the State Government. By the amendment in MPIR Act carried out in 2000, all the industries carried on by or under the control of the State Government were excluded from application of MPIR Act. Amended Section 1-A of MPIR Act reads thus:-

“1-A. The provisions contained in this Act shall not apply to an industry being carried on by or under the control of the State Government”

9. Pertinently, challenge to the constitutional validity of the aforesaid amended Section 1-A of MPIR Act was repelled by the Division Bench of

this Court in the case of *M.P. Transport Workers Federation Vs. State of M.P. and another, 2009 (2) MPLJ 111*.

10. Thus, it is luminous that w.e.f. 2000, no industrial dispute could be raised by a workman employed in Public Health Engineering Department of the State Government by availing the provisions of MPIR Act.

10.1 Accordingly, what follows as a natural consequence is that in 2009 when the application u/S.33-C(2) of ID Act filed by the workman, which led to passing of impugned order dated 20.12.2011, the remedy for execution of the order dated 02.03.2002, was not available to the workman under the MPIR Act.

10.2 As such, the only remedy that was available to the workman was u/S.33-C(2) of ID Act, which was rightly availed by workman.

11. From the aforesaid discussion, it is evident that workman had no remedy for execution of order dated 02.03.2002 under the MPIR Act after 2000. Application filed u/S.33-C(2) of ID Act was rightly filed by the workman in the year 2009, and therefore, was rightly decided by the impugned order (Annexure P/1) in W.P. No.8220/2022.

12. It is surprising to note that the State while filing W.P. No.1102/2013 was unaware of the amendment brought about by the legislative which is a wing of the State. The ground that has been taken by the State thus appears to be not only frivolous but also vexatious since it gives an impression that the State left no stone unturned to prevent the benefit due under law to flow and reach the workman. The benefits which ought to have been received by the workman in the year 2002 have not yet reached

him despite elapse of 20 years. This is unfortunate. Action of the State and its functionaries defies all sense of logic and reasoning and is further abhorrent to the litigation policy of the State.

13. Accordingly, this Court is inclined to dismiss W.P. No.1102/2013 and allow W.P. No.8220/2022 in the following terms:-

(i) W.P. No.1102/2013 stands dismissed thereby upholding the order dated 20.12.2011 passed in Case No.5/I.D. Claim/09.

(ii) W.P. No.8220/2022 stands allowed.

(iii) Petitioners/State and its functionaries are directed to pay the quantified amount of Rs.3,27,800/- to the workman alongwith interest of 10% w.e.f. January, 2012 till payment.

(iv) Since W.P. No.1102/2012 filed by the State and its functionaries is found to be frivolous and vexatious depriving the low paid workman of his legitimate dues for nearly 20 years, this Court deems it appropriate to impose exemplary cost on the State, which is quantified at Rs.25,000/-, out of which Rs.20,000/- shall be credited in the bank account of workman through digital transfer and remaining Rs.5,000/- shall be deposited with M.P. State Legal Services Authority, Jabalpur, for having wasted precious time of this Court in adjudicating this avoidable piece of litigation which ought to have been resolved at the level of the State Government under the State Litigation Policy. The MP SL SA shall donate this amount to the Permanent Artificial Organ Transplantation Centre, Netaji Subhash Chandra Bose Medical College, Jabalpur.

14. The aforesaid direction be complied with within a period of 60 days from today, failing which the matter be listed under the caption of “Direction” as PUD for execution qua cost.

(SHEEL NAGU)
JUDGE

Sateesh