

IN TH E SUP R E M E COU R T OF IN D I A
 CIV I L AP P E L L A T E JU R I S D I C T I O N

CIV I L AP P E A L NO. 3378 OF 2009
 [Arising out of SL P (Civil) No. 5295 of 2007]

State of M. P. & Anr.

...Appellants

Versus

Md. Abrahin

... Respondent

J U D G M E N T

S.B. SIN H A , J :

1. Leave granted.

2. Respondent was appointed on the post of driver on daily-wage basis. He was initially appointed for 89 days. His services admittedly had not been regularized. He was not placed in the category of a permanent employee in terms of the Standing Order framed under Madhya Pradesh Industrial Relations Act, 1960 (for short "the Act").

3. A selection panel was prepared wherein the particulars of the employees in question were recorded. We may notice the relevant entries:

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2	Iqbal Singh Tutej a	8. 1. 4 6	-	Driv ing licen ce	27 .1. 80 "

4. A select list was prepared for appointment on a regular post of driver, upon taking into consideration cases of eight employees, relevant portion whereof reads as under:

"For the post of Driver on daily wage, employees have been considered. Total 8 cases of employees have been considered. 2 posts in Mandsour Sub-Division are vacant. One post of reserved quota and one post from general category has to be filled up. One post has to be filled up as there is no candidate from reserved quota.

1. Shri Iqbal Singh Tuteja
2. Shri Mohd. Ibrahim ..."

5. An application under Sections 61 and 62 of the Act was filed by the respondent on or about 11.07.1988 praying for his classification in permanent category on the post of driver. By reason of a judgment and order dated 6.10.1997, the Labour Court allowed the said application, opining:

- (i) As the appellants had classified Iqbal Singh Tuteja who was junior to him in permanent category, the respondent was discriminated against.
- (ii) Having regard to the admission made by the witnesses examined on behalf of the appellants that despite the respondent having been working since 22.09.1980 but denied the benefit of classification on a permanent post only because he was a daily-wage employee, the said action was not justified.
- (iii) As the appellants did not produce the records in its possession, an adverse inference should be drawn.
- (iv) As there was no difference in work of a driver as a daily wager

and a work charged employee or a regular employee, after the death of Iqbal Singh Tuteja, the appellant should have been placed in the permanent category of a driver.

It was held:

"8. On the basis of the above discussion, it is proved that the appointment of the applicant was prior to the opposite party No. 3 Iqbal Singh Tuteja i.e. prior to 22.9.80. The applicant being regular in the past and from 11.7.86 be given the benefits of pay and benefits of a regular driver."

6. The High Court, by reason of the impugned judgment, dismissed the writ petition filed by the appellants, stating:

"4. Respondent No. 3 Iqbal Singh has also died. Service book of the Respondent No. 3 has not been produced by the petitioners before the Labour Court, neither they have specifically stated that what was the date of engagement of the Respondent No. 3. It appears that they have deliberately suppressed this fact before the Court. After analyzing the aforesaid factual position the Labour Court has held that the present respondent in this petition is entitled for the post of regular driver with effect from 11.7.1986. This finding of the Labour has also been upheld by the Industrial Tribunal."

7. Mr. S.K. Dubey, learned senior counsel appearing on behalf of the appellants, would contend:

i. The Labour Court and consequently the High Court committed a serious mistake insofar as they failed to take into consideration that the respondent having not been appointed on a regular basis and in terms of the recruitment rules and furthermore having left his job for some time, and thus was offered the job of a daily-wager at a later stage, he could not have been classified in the permanent category.

ii. In any event, Iqbal Singh Tuteja being senior to the respondent, the Selection Committee cannot be said to have faulted in preparing a draft select list.

8. Mr. Annam D.N. Rao, learned counsel appearing on behalf of the respondent, on the other hand, would urge:

a. Iqbal Singh Tuteja having been in the seniority list below the respondent, there was no reason as to why he should have been discriminated against.

b. Appellants having not produced any document showing the respective working periods of two persons from 1980 onwards, the impugned judgment should not be interfered with.

9. It has not been denied or disputed before us that the respondent was appointed on a daily-wage basis. He used to be appointed as a contingent employee for 89 days.

The period of engagement of the respondent is stated to be as under:

1. From 22.09.1980 to 19.12.1980 on the post of driver
2. From 21.01.1981 to 28.02.1981 on the post of helper
3. From 1.07.1982 to 31.05.1983 on the post of driver

10. It is, therefore, not correct to contend that the respondent was appointed in the same category of employment for a long time. He had been appointed in different categories of appointment at different points of time and at different places. Furthermore, the documents produced by the parties before the Labour Court itself showed that whereas the respondent had been working since 22.09.1980, the aforementioned Iqbal Singh Tuteja had been working since 27.01.1980. Both were placed at Serial No. 1. His date of birth was 8.01.1946 whereas the date of birth of the respondent was 10.07.1957. Both were having their driving licences. If on that premise, the selection committee comprising of three senior officers of the appellants had classified the said Shri Iqbal Singh Tuteja in the permanent category, in our opinion, no exception could be taken thereto.

11. It is of some significance to note that even the respondent in his deposition stated that the said Iqbal Singh Tuteja was appointed with him on the post of driver. If that be so, his contention that he

was senior to him cannot be accepted.

Respondent contended that Iqbal Singh Tuteja was junior to him, but there was no basis therefor. Moreover, the question was not as to whether he worked on a daily wager or a work-charged employee, the question was with regard to the mode of appointment.

12. Appellant No. 1 is a 'State' within the meaning of Article 12 of the Constitution of India. In making offers of public appointment, it is necessary to follow the constitutional scheme laid down in Articles 14 and 16 of the Constitution of India. For the purpose of legal and valid recruitment, the provisions of the recruitment rules are required to be complied with. An appointment through side door being an appointment in violation of Articles 14 and 16 of the Constitution of India would be illegal. It has been so held by a Constitution Bench of this Court in Secretary, State of Karnataka and Others v. Umadevi (3) and Others [(2006) 4 SCC 1] [See also Official Liquidator v. Dayanand and Others (2008) 10 SCC 1, State of Bihar v. Upendra Narayan Singh & Others, 2009 (4) SCAL E 282.

13. The contention raised on behalf of the appellants is, furthermore directly covered by a decision of this Court in State of M. P. and Others v. Lalit Kumar Verma [(2007) 1 SCC 575]. Respondent therein was appointed on daily wages. His recruitment was not made in terms of the statutory rules. Even no offer of appointment was issued. On the premise that he had worked continuously for a period of more than six months, an award was passed by the Labour Court directing his classification on a permanent basis. The High Court also dismissed the writ petition filed by the appellants. This Court opined:

"12. The question which, thus, arises for consideration, would be: Is there any distinction between "irregular appointment" and "illegal appointment"? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is "State" within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.

17. The Labour Court, Industrial Tribunal as also the High Court, therefore, were not correct in directing regularisation of service of the respondent.

18. Our attention has been further drawn to the fact that by reason of an office order dated 26-4-2004, the award of the Labour Court as also the High Court had been implemented by classifying the respondent as permanent on the basis of daily wages clerk."

14. In view of the aforementioned authoritative pronouncements, the impugned judgment cannot be sustained which is set aside accordingly. However, in the event, if it is found that after the death of Iqbal Singh Tuteja the respondent was otherwise entitled to classification in the permanent category, the appellants shall be well advised to accord him the said status.

15. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

. J.

.....

[S.B. Sinha]

..... J .

[Dr. Mu kundakam Sharma]

New Delhi;
May 06, 2009
IT E M NO.1N

COU RT NO.4

SECT I O N XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIV I L AP P E A L NO. 3378 OF 2009
[Arising out of SL P(C) No.5295 of 2007]

STAT E OF M.P. & AN R.

Appellant(s)

VE R S U S

M D. A B R A H I N

Respondent(s)

Date: 06/05 / 2 009 This matter was called on for judgment today.

For Petitioner(s)

Mr. Vikas Upadhyay, Adv.
Mr. B.S. Banthia, Adv.

For Respondent(s)

Mr. Annam D.N. Rao, Adv.

Hon'ble Mr. Justice S.B. Sinha pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Dr. Justice Mu kundakam Sharma.

Leave granted.

The ppeal is allowed in terms of the signed judgment. However, in the facts and circumstances of the case, there shall be no order as to costs.

(A.S. Bisht)
Court Master

(Pushap Lata Bhardwaj)
Court Master

[Signed reportable judgment is placed on the file]