

CASE NO.:
Appeal (civil) 6430 of 2003

PETITIONER:
M P State Textile Corpn. Ltd.

RESPONDENT:
Mehendra & Ors.

DATE OF JUDGMENT: 11/04/2005

BENCH:
N Santosh Hegde & S B Sinha

JUDGMENT:
J U D G M E N T

N SANTOSH HEGDE, J.

This appeal arises out of a judgment of the High Court of Madhya Pradesh, Indore Bench, made in Writ Petition No.1974 of 2000 whereby the High Court by its order dated 17.9.2002 dismissed the writ petition filed by the appellant, challenging an award made by the Labour Court, Ujjain, dated 4.5.2000 in Case No.36 of 1999 whereby the said Labour Court allowed the application of the respondent-workmen herein and while holding that the respondent-workmen were employees of the appellant-Corporation, set aside their retrenchment made by Indore Textile Mills Ltd., Ujjain, and also directed the appellant to pay the salary and benefits at par that is available to the employees of the appellant-Corporation.

In this appeal, the appellant-Corporation contends that the respondent-workmen were recruited by the appellant-Corporation for and on behalf of Indore Textile Mills, Ujjain and since the said Mills was closed, services of the workmen were lawfully retrenched, hence, the Labour Court and the High Court erred in directing their reinstatement in the appellant-Corporation. It is nextly contended that assuming that the respondent-workmen were employees of the appellant-Corporation, still they were appointed on a personal pay-scale of each of these respondent-workmen as evidenced by their letter of appointment and their services were liable to be transferred in terms of the said letters of appointment, therefore, the Labour Court and the High Court were not justified in directing the payment of salary to these workmen on a scale which is otherwise available only to the workmen in the appellant-Corporation.

On behalf of the respondent-workmen it is contended that the workmen were appointed by the appellant-Corporation after regular procedure being followed and after interview and though they were transferred to other establishments under the appellant-Corporation like Indore Textile, Ujjain, they remained to be the workmen of the appellant-Corporation and their services could not have been terminated by Indore Textile, Ujjain assuming that that Mill had closed. In such an event, they are entitled to be transferred back to the parent body i.e. the appellant herein. It was also contended that they are entitled to the pay-scale of the appellant-Corporation that is being paid to the employees in the similar cadre in the appellant-Corporation. They also contended that there have been

instances of other workmen who were similarly selected like the respondent-workmen who have been transferred to the appellant-Corporation on a pay-scale available to the employees of the appellant.

We have heard learned counsel for the parties and perused the records. The respondent-workmen were appointed by the appellant-Corporation and their appointment letters are on record. One such appointment letter of respondent No.1 shows that the appellant-Corporation entertaining an application from him and after interviewing him appointed him as a Shift Assistant (Spinning) and posted him at Indore Textile, Ujjain on the terms and conditions mentioned in the said letter. The first of the terms stated that the said respondent will be paid a basic pay of Rs.850/- p.m. plus Industrial Dearness Allowance and other allowances as per the rules in the pay-scale of Rs.680-1050 plus House Rent Allowance @ 15% of the basic pay. Clause 3 of the terms of appointment says that the respondent-workmen were liable to be transferred in terms of the said letter of appointment to any unit managed by the Corporation directly or indirectly. A reading of the said letter of appointment along with the evidence led by the parties before the Labour Court clearly shows that the respondent-workmen applied for employment in the appellant-Corporation and it was the appellant-Corporation which entertained their applications, interviewed the said workmen and appointed them on the pay-scale mentioned in their letter of appointment. Under the said appointment letter, the appellant had retained its right to transfer the workmen to any unit managed by the appellant, directly or indirectly. From this material on record, it is clear that the workmen were appointed by the Corporation as its employees and were transferred or deputed to various Textile Mills under it, in the instant case, to Indore Textile, Ujjain, therefore, if Indore Textile, Ujjain, suffered a closure, the services of the respondent-workmen could not have been terminated by the management of Indore Textile, Ujjain, because the respondent-workmen were not its employees. Therefore, the Labour Court as well as the High Court were justified in coming to the conclusion that the respondent-workmen were the employees of the appellant-Corporation and their retrenchment by Indore Textile, Ujjain is without authority of law since they were not the employees or workmen of Indore Textile, Ujjain.

Coming to the next question whether the respondent-workmen are entitled to the pay-scale of Indore Textile, Ujjain, or the appellant-Corporation, the Labour Court and the High Court held that since the respondents were the workmen under the appellant-Corporation, they ought to be paid the pay-scale that is available to similarly situated workmen in the appellant-Corporation. We are unable to agree with the findings of the High Court and the Labour Court in this regard. It is seen from the letter of appointment that the respondent-workmen were appointed on certain terms and conditions which included a personal Pay to each one of the respondent-workmen, for example in case of first respondent herein, it was on a basic pay of Rs.850 plus Industrial D.A. and other allowances in the pay-scale of Rs.680-40-800-50-1200-60-1500 plus House Rent Allowance @ 15% of the basic pay. The respondent-workmen without demur accepted this pay and it remained to be their personal pay even after their posting in Indore Textile and this was not challenged by the workmen even though their appointment was made as far back as 1979. It is only for the first time when the services were retrenched along with the challenge to the retrenchment, a claim for the pay-scale

available in the appellant-Corporation was made as a consequential relief. We think the respondent-workmen who having accepted their employment on a contract, the terms of which specified the pay-scale of each of these workmen, cannot claim the pay-scale of the appellant-Corporation when their services were retrenched by Indore Textile, Ujjain. In our opinion, since the respondents accepted the pay-scale and did not challenge the same for more than a decade, it is not open for them to demand the pay-scale that may be available to similarly situated workmen in the appellant-Corporation. To that extent we are of the opinion that the Labour Court has erred.

For the reasons stated above this appeal is partly allowed while confirming the findings of the Labour Court and the High Court in regard to the relationship between the appellant and the respondents, and the direction to reinstate the workmen in the appellant-Corporation, the direction for payment of salary at par with the workmen of the appellant is set aside. We direct the appellant to pay to the respondent-workmen wages due in accordance with the pay-scale offered in their letter of appointment. This, however, will not prevent the respondent-workmen from seeking parity of pay with the other workmen of the appellant in future, if permissible in law.

With the above observations, this appeal is partly allowed.