

GAHC010202332022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./155/2022

ARABINDA BORO
S/O LATE DEBEN BORO
BENSIMARI, BAGANPARA, PO BAGANPARA, DIST BAKSA, ASSAM 781344

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF POWER, NEW
DELHI, PIN- 110001.

2:THE NATIONAL POWER TRAINING INSTITUTE
REP. BY THE DIRECTOR GENERAL
NATIONAL POWER TRAINING INSTITUTE
FARIDABAD
HARYANA.

3:THE DIRECTOR
NATIONAL POWER TRAINING INSTITUTE
NORTH EASTERN REGION
DAKSHINGAON
KAHILIPARA
GHY- 19.

4:THE ASSTT. DIRECTOR
NATIONAL POWER TRAINING INSTITUTE
NORTH EASTERN REGION
DAKSHINGAON
KAHILIPARA
GHY- 19

Advocate for the Petitioner : MR. P J PHUKAN, MR P P PHUKAN

Advocate for the Respondent : DY.S.G.I., MR. S P CHOUDHURY

Linked Case : WP(C)/301/2014

ARABINDA BORO
S/O- LT. DEBEN BORO
NPTI COMPLEX
DAKSHINGAON
KAHILIPARA
GHY- 19
DIST.- KAMRUP M
ASSAM.

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Advocate for : MR.H BARUAH

Advocate for : MR.S P CHOUDHURY appearing for THE UNION OF INDIA and 3
ORS

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing & judgment : 12.11.2024

J U D G M E N T & O R D E R (O R A L)

Heard Mr. P. J. Phukan, learned counsel for the review petitioner and Mr. S.P. Choudhury, learned counsel for the respondents.

2. This is a review petition filed by the petitioner against the Judgment and Order dated 26/08/2022 passed in WP(C) no. 301/2014. The grounds for filing the instant review petition has been cited mainly in paragraph nos. 4, 5, 6, 7 and 8 of the review petition and the same has been extracted there from for ready perusal.

“4) For that the Petitioner had been serving the NPTI directly in temporary capacity as Driver since 01.05.2009 till his illegal ouster from service on 31.12.2013. It would be worthwhile to mention here that the Respondents have even admitted in their Affidavits concerned that a vehicle ("Travera") was bought by the NPTI for its own use in 2009, engaging the Petitioner after the said purchase and it is really shocking as well as surprising that a Regional Office like the NPTI under the Govt. of India with its ever increasing load of official works (including physical transportations, keeping in view the prevailing safety and security aspects) has not taken any

initiative during the long spell of time for a regular sanctioned post of Driver, in tune with the Hon'ble Apex Court's Judgment in Piara Singh.

5) For that the Respondents have themselves admitted in their Affidavit concerned regarding the official quarter (wherein the Petitioner has stayed along with his family) that the Petitioner "was helped to share a shelter purely on temporary phase" which has been "in fact occupied by the petitioner".

6) For that by the impugned Memorandum dated 31.12.2013, the NPTI authority has sought to replace the Petitioner (serving in a temporary capacity) by a contractual employee engaged through a outside agency (as could be easily inferred from a perusal of the Financial Bid document for man-power service) and consequently the Petitioner has not been sought to be replaced by a regular employee, which is in total contravention of the Hon'ble Apex Court's various Judgments in this regard including that of Piara Singh.

7) For that the nature of the Petitioner's 2nd stint of engagement since 01.05.2009 has not been contractual as sought to be projected by the Respondents, with some misleading statements in their Affidavits. If the veil is withdrawn and facts are carefully examined, it will be crystal clear that the Petitioner had been serving the NPTI till his illegal termination as a temporary employee

of its own, with a newly purchased Travera vehicle and an official quarter to reside with his family (which are admitted facts as reflected in the Affidavits concerned as well as in the relevant Annexures). Further, the Hon'ble Apex Court's Judgment in Somesh Thapliyal is also clear about the bargaining power vested with the employer and the prayer in the Writ Petition mainly revolved around the Petitioner's non-ouster and continuation in service as a Driver under the NPTI, NER.

8) For that in the appertaining factual matrix regarding the nature of the Petitioner's engagement in the NPTI, the issuance of 15 days' prior notice before his termination was of a vital requirement in view of the Hon'ble Apex Court and this Hon'ble High Court's views in several cases including the cited cases reflected in the Judgment and Order dated 26.08.2022."

3. Referring to the grounds of the review petition Mr. P. J. Phukan, learned counsel for the review petitioner submits that the petitioner was engaged no doubt on contract basis but his employment having subsisted for a fairly long period of time, he is in the status of a temporary employee and therefore the respondents ought to have not terminated him from service and instead consider him for regularization. In support of his submission the learned counsel has relied upon the cases of (i) **Somesh Thapliyal V. HNB Garhwal University** (2021) 10 SCC 116 (ii) **Haryana V. Piara Singh** (1992) 4 SCC 118 (iii) **V.P. Ahuja v. State of Punjab and others** (2000) 3

SCC 239 (iv) **ABL International Ltd and Another V. Export Credit Guarantee Corporation of India Ltd and others** (2004) 3 SCC 553 and (v) **Momi Nath V. District & Sessions Judge, Golaghat and others** 2001 (2) GLT 426.

4. The learned counsel for the review petitioner thus submits that under the given facts and circumstances of the case as projected by the review petitioner in Judgment and Order dated 26/08/2022 may be recalled and the petitioner may be given the benefit of reinstatement.

5. Mr. S.P. Choudhury, learned counsel for the respondents on the other hand submits that from a perusal of the grounds taken by the review petitioner, there is no averment made that there is an error apparent on the face of the record that has calls for a review of the Judgment and Order dated 26/08/2022 passed by this Court. He submits that the issues raised by the review petitioner and the grounds taken had already been considered by this Court. Further considering the limited scope of review and the basic ingredients not being made out, the review petition should be dismissed.

6. I have heard the submissions made by the learned counsels for the parties, and I have perused the materials available on record.

7. Brief facts for the purpose of considering the review petition is that a review petitioner was engaged as a driver under the National Power Training Institute (NPTI), North Eastern Region, Guwahati, Assam, which is under the Ministry of Power, Government of India, through an outsourced agency i.e. M/S Mahesh Travels, Guwahati. Thereafter,

from on 01-05-2009, he was working directly as a driver under the NPTI without break. It is the case of the petitioner that the NPTI had purchased a Travera vehicle sometime in the year 2008 to 2009 for him to drive. While he was serving as such, an advertisement was floated in the local daily "Assam Tribune" dated 22.09.2013 by the NPTI inviting tender for providing manpower services on contract basis. Following the advertisement, a memorandum dated 31.12.2013 was issued by the Assistant Director of NPTI wherein it was indicated that the period of contract service of the petitioner as driver ended on 31.12.2013 and that the NPTI has awarded contract of supply of manpower including drivers to M/S Brahmaputra Enterprise, Beltola, Guwahati, w.e.f 01.01.2014 and that no further extension of the contract service of the petitioner would be considered. However, as a good gesture the NPTI instructed the M/S Brahmaputra Enterprise to engage the persons who had been working earlier on contract basis with the NPTI and the petitioner may also avail such opportunity. Aggrieved with such developments, the petitioner filed his writ petition.

8. Coming to the grounds taken by the petitioner particularly ground no. 4, it can be seen that according to the petitioner the respondents themselves had admitted in their affidavit that a vehicle Travera was bought by the NPTI for its own use in the year 2009 while engaging the petitioner after the said purchase. Despite availing the service of the petitioner for a long spell of time they failed to take into consideration the sanctioning of a regular post of driver in tune with the decision of the Apex Court in *Piara Singh (supra)*. The petitioner

has further taken the stand in ground no. 5 that the respondents have not denied the fact that they have allowed the petitioner and his family to stay in the official quarter on temporary basis while he was working with the respondents concerned. The ground no. 7 is basically a repetition of what has been taken in ground no. 4 and 5 that the petitioner had served for some period of time with the respondent authorities and therefore he can be only termed as a temporary employee and cannot be discontinued from his service as a contractual employee. Ground no. 6 is again in respect of claiming benefit as spelt out in the case of *Piara Singh (supra)*. Lastly, the ground taken by the petitioner in ground no. 8 is that issuance of 15 days notice prior or before his termination was mandated.

9. The aforesaid stand or ground raised by the petitioner in this review petition otherwise have been duly considered by this Court and for the sake of brevity, paragraph nos. 7, 8, 9, 10, 11 and 12 of the Judgment and Order dated 26.08.2022 may be extracted hereunder.

“[7.] As may be noticed, the claim of the petitioner is that he was working for the NPTI through a travel agency since the year 2006 and thereafter, directly under the NPTI w.e.f., 01.05.2009 till the time the impugned memorandum was issued on 31.12.2013. To substantiate his claim, the petitioner has annexed documents issued by the NPTI such as supply order of vehicle for hire, deduction of sales tax communicated to the travel agency and also testimonials stating that the petitioner is

employed temporarily by NPTI, Guwahati as driver. The respondents on their part have also annexed documents such as O.M dated 27.04.2009 by which, on the basis of the application submitted by the petitioner on 17.04.2009, he came to be engaged on daily wage basis @ Rs. 150/- per day, subject to a maximum of Rs. 4500/- a month. The initial engagement was for 3 months w.e.f, 01.05.2009 and that his service was terminable at any time without assigning any reasons whatsoever, by giving 15 days notice extending his service for 6 months from the specified date were issued on similar terms vide Office Orders dated 13.01.2010, 29.07.2010 & 28.07.2011 which are marked as Annexure-2, 3 & 4 respectively in the counter affidavit. The respondents have also annexed the declaration made by the petitioner that he is ready to serve the organization/NPTI as driver w.e.f. the date specified purely on temporary basis and on daily wage and that he will not refer the engagement for regularizing his service. The respondents have also annexed a Communication dated 11.09.2013 made to M/s Brahmaputra Enterprise communicating the letter of award for providing man-power services on contract basis and also a work order dated 19.12.2013 issued to the same agency for supplying the man-power specified in the said letter.

[8.] From the appreciation of the submissions made by

the learned counsels for the rival parties and importantly, the pleadings and the documents annexed in the writ petition, it can be seen that the petitioner was engaged by a travel agency in the year 2006 and he was assigned the work of a driver with the NPTI, Guwahati. While he was working as such, he came to be engaged by the NPTI on a daily wage basis w.e.f. 01.05.2009. The engagement of the petitioner was initially for a period of 3 months w.e.f. 01.05.2009 but was extended for time to time till the impugned Memorandum dated 31.12.2013 came to be issued. Although the petitioner claims that he is a casual and temporary employee but his engagement order otherwise indicates that he has been engaged on daily wage basis and for a specific period of time. In other words, the nature of such engagement is only contractual. The condition given in his engagement order that his service may be terminated at any time without assigning any reason whatsoever by giving 15 days notice can only be construed to be a notice if his engagement was to be cut short i.e., before completion of the engagement period of either 3 months or 6 months as indicated in the engagement order.

[9.] The Apex Court in Piara Singh & Ors. (supra) in the given facts of that case held that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee. He must be replaced only by a

regular selected employee. However, if an adhoc or temporary employee is continued for a fairly wrong time, the authorities should consider his case for regularization provided that he is eligible and qualified according to the rules with satisfactory service and that such an appointment does not run counter, reservation policy of a State. Coming to the present case, the petitioner has not been replaced by another contractual or for that matter, temporary employee. The NPTI has been availing the services of travel agency and other man-power agency to cater its requirement and the petitioner happens to be one of the drivers employed by such agency. Although, the petitioner came to be engaged by the NPTI on daily wages but as already noticed herein above, the same was only for a specific period of time and is therefore, a service rendered on contractual basis. Therefore, the case referred to by the petitioner is not found to be applicable to his case.

[10.] In the case of Somesh Thapliyal (supra), the Apex Court observed that he bargaining power is vested with the employer and the employees left with no option but to accept the conditions dictated by the authority. It is, therefore, true that the undertaking given by the petitioner cannot prevent him from claiming a regular employment or regularization. However, the fact remains that his employment/engagement was on a fixed pay and

for a specific period and therefore, the employer is not bound to give him a regular employment by regularizing his service.

[11.] As for the case of Neha S/o Suresh Patil (supra) and R.K Angousana Singh (supra) in view of the fact that it has already been held in the preceding paragraph that the issuance of 15 days prior notice before termination would only arise if the engagement of the petitioner was to be stopped before completion of the specific engagement period provided, the two decisions relied upon therefore are not found to be applicable.

[12.] Upon due consideration of the matter in its entirety and in view of the findings arrived at herein above, the petitioner cannot be said to have a legitimate grievance and accordingly, the writ petition is found to be devoid of merit and is dismissed. No cost."

10. From the above extract it may be seen that the grounds raised by the petitioner has been duly considered by this Court. This being a review petition it will not be open for this Court to once again embark upon hearing the matter on merit which otherwise is within the realm of an appellate Court. Therefore upon due consideration, I do not find merit in the review petition and accordingly, the same is dismissed.

JUDGE