

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14484 of 2013

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1. The Chief General Manager Bihar Circle (BSNL) G.P.O., Complex
 2. The General Manager, Telecom (BSNL), Gaya
 3. The Dy. G.M. (MTCE) E.T.R., B.S.N.L. Patna

.... Petitioner/s

Versus

1. Yogendra Singh Son Of Rajnandan Singh Resident Of Village - Dayal Chak, P.S. Maner, P.S. Bohpur, District - Patna
2. Union Of India Through Secretary, Ministry Of Telecommunication, New Delhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. HARENDRA PRASAD SINGH

For the Respondent/s : Mr. N. A. SHAMSI (A.S.G.)

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 24-03-2015

Heard learned counsel for the BSNL and learned counsel for the sole respondent. BSNL is aggrieved by the judgment and order 2.3.2012 passed in O.A. No. 182 of 2009 of the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the Tribunal) by which the Tribunal entertain the Original Application (O.A.) and set aside the termination order of the sole respondent.

Having heard learned counsels, we are of the view that case does not call for interference. The facts are not in dispute. Eight casual employees of BSNL were terminated. They were earlier considered for regularization but having been found not falling within the policy parameters, they were terminated. Out of eight, six approached the Tribunal in the year 2001. Their applications were allowed, termination orders were set aside, the Tribunal further directed the



authorities to issue notice to the said casual employees and after inquiry, take such action as may be permissible in accordance with law. It is not in dispute that those six are still continuing in employment. The sole private respondent, who was also terminated by the same very letter, having found that though he was also terminated by the same very letter, which had been set aside by the Tribunal, the benefit of rehearing and inquiry was not extended to him and he was not reinstated. He moved the Tribunal in the year 2004. The Tribunal holding that he had no jurisdiction to entertain the matter dismissed the application. He then, came to this Court and while the matter was pending before this Court, notification was issued conferring jurisdiction on the Tribunal to deal with matters in relation to BSNL and accordingly, the writ petition was withdrawn to move the Tribunal. The Tribunal, this time on being moved, entertained the application and allowed the same. He directed the reinstatement of the sole private respondent noticing that similar direction had earlier been issued with regard to six other persons who had been terminated by the same very letter. It is this order against which BSNL is before this Court in this writ petition.

In our view, the Tribunal was correct in holding that once the Tribunal had set aside the order of termination which was a composite order in relation to the eight persons, then BSNL ought to have given similar treatment to the remaining two persons, six had already got the relief from the Tribunal. This principle is consistent with what the Apex Court has held in the case of **Ashwani Kumar and Others v. State of Bihar and Others** since reported in **AIR 1997 SC page 1628** and in particular what has said in paragraph 17 thereof is as follows:

“.... Nor can we say that benefit can be made available only to 1363 appellants before us as the other



employees similarly circumscribed and who might not have approached the High Court or this Court earlier and who may be waiting in the wings would also be entitled to claim similar relief against the State which has to give equal treatment to all of them otherwise it would be held guilty of discriminatory treatment which could not be countenanced under Articles 14 and 16 (1) of the Constitution of India. Everything, therefore, must start on a clean slate....”

We would, therefore, not interfere with the order of the Tribunal, but, then Shri Harendra Prasad Singh, learned counsel for the BSNL submits that the Tribunal ought not to have directed reinstatement rather in the facts of the case, at best, what is the Tribunal could have ordered was that the order of termination being set aside, the sole private respondent being a casual employee, if upon inquiry it was found that he had worked for more than 240 days in a year within the jurisdiction of the concerned General Manager, then, he should be considered for regularization consistent with the policy of the BSNL.

Having considered the matter, this prayer is correct and fair. There cannot be automatic reinstatement of a casual employee. The policy was that all casual employees who had been worked for more than 240 days within a jurisdiction had to be taken up for consideration for their regularization. It is not those circumstances that the remaining six persons after inquiry being continued to work. The right of the sole private respondent to continue would be dependent upon such an inquiry and such a fact being established. Therefore, while not entertaining this writ petition against the order of the tribunal, we only hasten to add that reinstatement would not fall as a matter of course, it would be dependent upon inquiry where prior to termination, the sole private respondent had worked in any establishment within the jurisdiction of the concerned General Manager for

more than 240 days in a year and if fulfills other conditions, then he would be considered for regularization. Such inquiry should be completed within four months.

With this observation this writ petition is disposed of.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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