

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16440 of 2007

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Bharat Sanchar Nigam Ltd (A Govt. of India Enterprises) through the Chief General Manager, Telecom having its office at Sanchar Sadan, Budha Marg (Road) P.S. Kotwali Dist. Patna.

.... Petitioner/s

Versus

1. The Union of India, Ministry of Labour through Chief Labour Commissioner Patna
2. The State of Bihar through the Secretary, Labour Resources Department, Govt. of Bihar, New Secretariat Building, Vikash Bhawan, Bailey Road, Patna
3. Presiding officer, Industrial Tribunal, Patna
4. Sanjay Kumar Paswan son of Kameshwar Paswan resident of village Anand Vihar PO Anisabad P.S. Phulwarisharif, Dist Patna

.... Respondent/s

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Appearance:

For the Petitioner/s :	Mr. Harendra Pd. Singh
For Union of India. :	Mr. Ravindra Kr. Sharma, CGC
For the State	Mr. A.K. Keshari
For Respondent no.4	Mr. Bharat Bhushan

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

CAV JUDGMENT

Date: 24 -06-2015

1. This writ petition has been filed for quashing /setting aside the award dated 30.04.2007 passed by learned Presiding officer, Industrial Tribunal, Patna in Reference case no. 47 of 2003/ 02C of 2004 by which and whereunder learned tribunal directed the petitioner to reinstate respondent no. 4 on the post of peon within two months from the date of publication of award but without back wages and furthermore, it was observed by learned Presiding officer in the impugned award that respondent no. 4 deserved to be regularized on the post of peon under the management of the petitioner with effect from 01.05.2001 .

2. The claim of the respondent no. 4 is that he was orally appointed on the post of peon by the petitioner on payment of daily



wages at the rate of 36/- per day. After appointment, he worked at sub division 5th floor, Telephone Bhawan Patna-1 from 04.02.1999 to 30.04.2001 continuously. During the period of his work, headquarter of the petitioner asked for option from serving employees as to whether they wanted to continue their service in Government of India (erstwhile department of communication) or transfer in Bharat Sanchar Nigam Limited. Respondent no. 4 exercised his option and his name was also forwarded to the headquarter along with other workers. Subsequently thereto, name of respondent no. 4 was forwarded to the headquarter along with other workers for regularization of services but all of a sudden, respondent no. 4 was stopped from working with effect from 01.05.2001 and his payment was also stopped. He made representations but all went in vain and thereafter, he raised industrial dispute before the Assistant Labour Commissioner, Patna under the provision of Industrial Disputes Act, 1947. The Assistant Labour Commissioner, Patna initiated conciliation proceeding but ultimately, the aforesaid conciliation proceeding ended in failure due to attitude of the management of BSNL. Thereafter, the Central Government made a reference to Industrial tribunal for adjudication of the dispute of the parties in following terms:-

1) Whether the action of the management of BSNL, Patna in terminating the services of Sri Sanjay Kumar Paswan, workman in stead of regularizing him after working for 240 days in the services of BSNL, Patna, justified? If not, to what relief the workman is entitled ?.

3. Petitioner filed written statement stating therein that



respondent no. 4 was never employed on any vacant post nor any appointment letter was given to him and, as a matter of fact, he was only engaged on purely temporary daily wages worker and whenever his services was needed, it was taken and payment was made to him on hand written receipts. Furthermore, respondent no. 4 was working on daily rated **Mazdoor** basis and his wages were paid as per guidelines of the government and, therefore, respondent no. 4 had got no right to claim for regularization of his service. Furthermore, it was pleaded that respondent no. 4 was never appointed through any examination test or interview on any regular or vacant post and he worked merely as a part time casual worker and, therefore, there was no need to issue written termination order to him. It was also pleaded that since no appointment letter had been issued to respondent no. 4 by the competent authority, question of issuance of disengagement letter to respondent no. 4 by the management was not at all necessary. Furthermore, case of the petitioner before learned tribunal was that service of respondent no. 4 was not needed and accordingly, he was disengaged in the month of May, 2001, particularly, taking note of letter of the department of Telecom Service dated 12.02.1999 in which all heads of the administrative officers and administrative units were directed not to engage casual labourers after issuance of the aforesaid letter and to disengage those casual labourers, who were not eligible for temporary status on 08.01.1998. Furthermore, it was pleaded that respondent no. 4 was never in continuous service nor did work continuously for a period of 240 days or more in one calendar year.

4. Learned tribunal, having considered pleadings and

evidences adduced on behalf of the parties, passed the impugned award which has been challenged by the petitioner in this writ petition.

5. Learned counsel appearing for the petitioner would submit that tribunal wrongly interpreted reference in question and presumed that tribunal did not require to decide as to whether respondent no. 4 worked continuously for 240 days in a calendar year, particularly, in the circumstance, when the parties adduced evidence on the above stated point. Furthermore, learned counsel for the petitioner would submit that, no doubt, it is well settled principle of law that tribunal can not go beyond reference but in the present case, tribunal was bound to decide as to whether termination of respondent no. 4 was legal or not and before deciding the aforesaid question, the tribunal had to consider this fact as to whether respondent no. 4 had continuously worked for 240 days in one calendar year. Continuing his submissions, learned counsel for the petitioner would further submit that the tribunal did not consider the above stated fact and without taking note of evidences available on record, passed the impugned award which is not in accordance with law. Learned counsel for the petitioner would further submit that even if it is assumed that respondent no. 4 had worked 240 days continuously in one calendar year, then also only completion of 240 days of service in a calendar year is itself not a ground for regularization of his service, particularly, in the circumstance, when he was not appointed in accordance with the relevant rules. In support of the above stated contention, he relied upon the decisions **reported in AIR 2004 SC**



8439, (1977) 4 SCC 391, AIR 2005 SC 1790 and (2014) 7 SCC 190.



6. Learned counsel appearing for the petitioner would further submit that according to the case of respondent no. 4, he was orally appointed by the then Assistant engineer and, as a matter of fact, the then Assistant engineer was not competent to appoint respondent no. 4 as the then Assistant engineer was not appointing authority. Learned counsel for the petitioner referred the decision of **Secretary, State of Karnataka & others vs. Uma Devi and others reported in 2006 (4) SCC page I** and submitted that in the above stated case, it has been decided by the Apex Court of this country that merely because of temporary employee or casual rated worker is continuing for a time beyond the term of his appointment, he was not considered to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by the following a due process of selection as envisaged by the relevant rules.

7. Learned counsel for the petitioner drew my attention towards annexure 2 to the writ petition and submitted that department had already issued letter directing all administrative heads that no casual labourer would be engaged after 01.08.1998 and those casual labourers who were not eligible status on 01.08.1998 should be disengaged forthwith. Learned counsel for the petitioner pointed out that according to the case of respondent no. 4, he was orally appointed on 04.02.1999 and therefore, admittedly, he did not get temporary status and, therefore, he was disengaged in the light of letter dated 22.09.2000 (annexure 2). Learned counsel for the petitioner further



submitted that learned tribunal wrongly directed the petitioner to reinstate respondent no. 4 and regularize him with effect from 01.05.2001 though back wages were not awarded in favour of respondent no. 4. Learned counsel for the petitioner further submitted that even if this court comes to the conclusion that there was violation of section 25F of the Industrial Disputes Act, 1947, then also, respondent no. 4 could be compensated in terms of money in stead of reinstatement of regularization of his service. In support of his contention, he referred the case of **In-charge officer and another vs Shankar Shetty 2010 (9) SCC 126 as well as other decisions.**

8. On the other hand, learned counsel appearing for respondent no. 4 submitted that jurisdiction of tribunal in Industrial dispute is limited to the point, specifically, referred for its adjudication and the matter identical thereto and it is well settled principle of law that tribunal can not go beyond the term of reference. He further submitted that in this case, only point was referred to the tribunal by the terms of reference as to whether termination of service of respondent no. 4 in stead of his regularization after working 240 days was justified or not. He further submitted that admittedly, petitioner did not challenge the aforesaid reference before any court and, therefore, at this stage, the petitioner had got no right to challenge the terms of reference. He further submitted that learned tribunal rightly refused to go beyond the terms of reference because tribunal was simply required to adjudicate as to whether action of the management in terminating the service of respondent no. 4 in stead of regularizing him was justified or not ?. Learned counsel for the respondent no. 4



further submitted that it was admitted case of the petitioner before tribunal that respondent no. 4 was appointed as part time worker and worked for 240 days but he was terminated by the petitioner without complying with the provision of section 25F of the Industrial Disputes Act, 1947 and, therefore, learned tribunal rightly directed the petitioner to reinstate and regularize the service of respondent no. 4. He further submitted that even if no appointment letter was issued to respondent no. 4, then also, in view of the aforesaid admission petitioner can not take stand that respondent no. 4 had not worked under the management and furthermore, petitioner can not take this stand that appointment of respondent no. 4 was illegal/ irregular. He further submitted that name of respondent no. 4 along with other workers was sent to the headquarter for absorption but in stead of regularization of his service, he was disengaged and the aforesaid facts clearly go to show that department was in need of services of respondent no. 4 and, therefore, this court should not interfere into the findings of learned tribunal.

9. It has been admitted by the petitioner in his written statement/objection before learned tribunal that respondent no. 4 worked on temporary daily wages worker and whenever his service was required, his service was taken and payment was made to him on hand written receipts. Therefore, at least, it has been admitted by the petitioner that respondent no. 4 worked in the office of BSNL (Telecom) as part time worker and his wages were paid as per guideline of the government on daily wages rate. Therefore, even if no appointment letter was issued to respondent no. 4, then also, it is

apparent from the above stated admission of the petitioner that respondent no. 4 worked under the petitioner and his wages were paid.

It is admitted case of the petitioner that respondent no. 4 worked from 04.02.1999 to 30.04.2001 on the direction/order of the then Assistant engineer and furthermore, his name was recommended to the headquarter for absorption.

10. In Uma Devi case (supra), it has been held by the Hon'ble Apex Court of this country that no direction can be issued by the court for regularization of service unless employment itself was made regularly and in terms of constitutional scheme.

11. In the present case, appointment of respondent no. 4 was not in accordance with the rules and according to his case, he was only appointed on the direction of the then Assistant engineer who got no power /right to appoint respondent no. 4 in terms of existing rules and, therefore, it is apparent that appointment of respondent no. 4 was not in accordance with the rules. Furthermore, annexure 2 to the writ petition reveals that Telecom department directed all the administrative heads to disengage the services of those labourers who were not eligible for temporary status on 01.08.1998 and admittedly, respondent no. 4 did not get temporary status on 01.08.1998 as he was appointed after 01.08.1998. It has been held by the Apex Court of this country time and again that mere completion of 240 days in service is not itself a ground for regularization. Therefore, in my view, the service of respondent no. 4 could not be regularized in the light of annexure 2 to the writ petition and the petitioner rightly refused to regularize the service of respondent no. 4.



12. It is an admitted position that following reference was made for adjudication:-

1) Whether the action of the management of BSNL, Patna in terminating the services of Sri Sanjay Kumar Paswan, workman in stead of regularizing him after working for 240 days in the services of BSNL, Patna justified? If not, to what relief the workman is entitled ?.

13. From perusal of term of reference, it is apparent that tribunal had to decide as to whether termination of respondent no. 4 from service and refusal of regularization of his service were justified or not? Therefore, it is apparent from the aforesaid reference that tribunal had to consider as to whether termination of respondent no. 4 from his service as well as refusal of regularization were legal or not? Furthermore, the above stated term of reference clearly goes to show that tribunal was not required to decide as to whether respondent no. 4 had worked for 240 days in a calendar year or not because it has been mentioned in the aforesaid reference that respondent no. 4 had worked for 240 days in the service of the petitioner. Therefore, in my view, the learned tribunal rightly refused to look into the above stated fact as learned tribunal had got no jurisdiction to go beyond the terms of reference.

14. It is also an admitted position that before termination of service of respondent no. 4, provision of section 25F of the Industrial Disputes Act, 1947 was not complied with and, therefore, I am of the view that learned tribunal rightly came to the conclusion that termination of service of respondent no. 4 was not legal.

15. As I have already discussed that mere completion of 240



day in service does not give any right to respondent no. 4 to claim regularization of his service but as I find that learned tribunal rightly held that termination of service of respondent no. 4 was illegal. Therefore, now, it has to be seen as to whether respondent no. 4 should be reinstated on his post or should be compensated in terms of money.

16. The Apex Court of this country has already set at rest the aforesaid question and has consistently taken the view that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Furthermore, the Apex Court of this country has clearly laid down in catena of decisions in recent time that an order of retrenchment passed in violation of section 25F of the Industrial Disputes Act, 1947 may be set aside but an award of reinstatement should not, however, be automatically passed and compensation would meet ends of justice.

17. In the present case, admittedly, appointment of respondent no. 4 was made on 04.02.1999 and he was disengaged in the month of April, 2001 in the light of annexure 2 to the writ petition but before his disengagement/ retrenchment, provision as laid down under section 25F of the Industrial Disputes Act, 1947 was not complied with. Now, near about 14 years have already been elapsed. The respondent no. 4 was orally appointed by an incompetent authority and worked only for less than three years and, therefore, in my view, relief of reinstatement can not be justified rather monetary



compensation would meet the ends of justice and furthermore, I am of the opinion that Rs one lakh fifty thousand in lieu of reinstatement shall be just and proper.

18. Accordingly, this writ petition stands partly allowed to the above stated extent with direction to the petitioner to make payment of Rs one lakh fifty thousand to respondent no. 4 within three months from today, failing which the same shall carry interest at the rate of 9 per cent per annum. However, there shall be no order as to cost.

Shahid

(Hemant Kumar Srivastava, J)

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