

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1666 of 2014

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1. Nageshwar Prasad S/O Sah Bhagwan, Resident of Village- Purania, P.O- Neora, P.S- Bihta, District- Patna, Bihar.
 2. Shankar Prasad, S/O Jai Ram Prasad, Resident of Village- Nurpur Chandmari, P.O- Chandmari (Danapur), District- Patna, Bihar.

.... Petitioner/s

Versus

1. The Union of India Through The Secretary, Ministry of Defence, Government Of India, South Block, Delhi.
2. The Commander, H.Q. Jharkhand, Orrisa, Bihar Sub Area Danapur Cantonment, Patna, Bihar
3. Omesh Singh Rathore, Lieutenant Colonel, Officer Commanding 298 (I), Supply Platoon, Asc, Danapur, Cantonment, P.O- Danapur, District- Patna, Bihar.
4. The Assistant Director, Supply and Transport, H.Q. Jharkhand, Orrisa, Bihar Sub Area Danapur Cantonment, Patna, Bihar.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. BINDHYACHAL SINGH
& Mr. VIPIN KUMAR SINGH

For the Respondent/s : Mr. RAJESH KUMAR VERMA
(C.G.S.)

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 08-12-2015

Heard Sri Bindhyachal Singh, learned counsel for the
petitioners at length and learned counsel for the Union of

India.

1. This writ petition is directed against the order dated 25th of May 2011, passed in O.A. No. 681 of 2010 by the Central Administrative Tribunal, Patna Bench, Patna. The writ petitioners were unsuccessful applicants before the Tribunal.

2. The petitioners were engaged as L.P.G. Gas Delivery Boys and Clerk at Rabbit L.P.G. Gas Centre located within the Danapur Cantonment. They claimed that they were daily wage employees in the Army and therefore in terms of the Circular of the Army dated 22.08.2000, which granted benefits to temporary status casual labourers, they should be regularized in Defence Service; secondary to this, is their prayer that their services were wrongly terminated as Delivery Boy/Clerk. It appears that they had earlier moved the High Court and they were permitted to withdraw the writ petition to move appropriate forum. They then moved the Central Administrative Tribunal, Patna Bench, Patna, by the aforesaid original application. The application, upon contest, was dismissed as not maintainable and this is what has brought them before this Court.

3. We have heard the matter with consent of the

parties for final disposal of the writ petition at this stage itself.

4. Mr. Bindhyachal Singh, learned counsel appearing in support of the writ petitioners submits that the petitioners, being daily wage employees of the Gas Agency, located in the Cantonment and maintained and run by the Army Cantonment, would make them Government servant. Accordingly, being temporary/casual labourers, they would be entitled to be regularized according to Circular dated 22.08.2000, having worked for more than 10 years. Instead of this, they have been dismissed unceremoniously. In order to establish that they are Government servants, references have been made that whenever they have been given pay revision, it was with permission from authorities of Jabalpur or other places. They were issued security passes and cantonment cards. They have not produced their appointment letters either before the Tribunal, as noted by the Tribunal, nor before this Court. To us, that would be the first question. Whether they were in employment under in Central Government in any capacity? The answer must be emphatic 'No'. Firstly, we must see what is the nature of this Rabbit Gas agency. This is a Gas Agency set up by the

Regimental office to facilitate gas supply to officers and Jawans in the Cantonment Area. Being in the Regiment head quarters, its functionings are supervised and under the control of Army Officers posted in the Cantonment. One of the documents, relied by the petitioners, is to show that the pay revisions were done under the recommendation and approval received from Core head quarters. That document itself shows that the salary has to be paid out of profits made in the Gas Agency this is very important, for this clearly establishes that the remuneration which the petitioners received does come from the Central Government. It is a private arrangement amongst the defence personnels at the regimental level, meant for their own convenience. Any employment under the State would predicate, apart from others, not only a master- servant relationship as between an employee and the State, as distinct from an individual, but the post must be sanctioned, there must be cadre and the payment must come from the State. In the present case, there is no jural relationship as between the petitioner and the Central Government. Orders are passed by Army Officials merely because it is a convenient set up by the Officers themselves. It does not mean that the Officers are

representatives of the Central Government when they employed the petitioner or they dismissed them. Undisputedly, there is no cadre in which they worked, much less, a cadre under the defence Core. Considering these aspects of the matter, the claim of the petitioners to be regularized in Defence Service on the basis of the Circular aforesaid, which is meant for casual labourers employed in Defence Service can be of no avail.

5. So far as the dismissal is concerned, the petitioners were admittedly daily wagers. They were not dismissed; they were disengaged. In the same very letter, there is a mention that in view of the vacancy caused, fresh applications be called for, and the petitioners were also granted opportunity to apply afresh. At the Bar we are told that the petitioners did not apply, as they challenged the termination and sought regularization in the Defence Service. So far as disengagement is concerned, the order itself says that there had been an inquiry. Being daily wagers simpliciter, they had no right to the post, and as such they cannot contend that the disciplinary proceedings rules, as available to Defence personnel ought to have been followed

6. For the reasons aforesaid, we are not inclined to

interfere in the matter. The writ petition is, accordingly,
dismissed.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Anjana Mishra, J)

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