

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5219 of 2015

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1. The Union of India, through the Secretary to the Government of India, Ministry of Defence, South Block DHQ, P.O. New Delhi-11.
 2. The Commander of the Bihar Regimental Centre, Danapur Cantt. Danapur (Bihar).
 3. The Lt. Col. Quartermaster, Bihar Regimental Centre, Danapur Cantt. Danapur, Bihar.

.... Petitioner/s

Versus

1. Dipak Kumar, S/o- Shri Ram Chandra Singh, R/o- Village & P.O.- Dekpura, P.S.- Rahui, District- Nalanda, working as Casual Cook (Civil) under the Commander of the Bihar Regimental Centre, Danapur Cantt. Danapur (Bihar).
2. Raj Kishore, S/o- Shri Mewalal, R/o- Village-Mubarakpur, P.O.- Danapur, P.S.- Shahpur, District- Patna, working as Casual Cook (Civil) under the Commander of the Bihar Regimental Centre, Danapur Cantt. Danapur (Bihar).
3. Awadhesh Tiwari, S/o- Shri Suraj Tiwary, R/o- Village & P.O.-Banswan, P.S.- Shapur, District-Ara working as Casual Cook (Civil) under the Commander of the Bihar Regimental Centre, Danapur Cantt. Danapur (Bihar).
4. Sujit Razak, S/o- Shri Ramnath Rajak, R/o- Village and P.O.- Rajpur, P.S.- Rghunathpur, District- Siwan, working as Casual Cook (Civil) under the Commander of the Bihar Regimental Centre, Danapur Cantt. Danapur (Bihar).
5. Vinay Kumar, S/o-Shri Dinesh Kumar, R/o- Village-Shahpur Thakurbari,P.O. and P.S.- Shahpur, District- Patna.
6. Pradip Kujur, S/o- Shri Markus Kujur, R/o- Village- Harfoha, P.O.- Baskurcha,P.S.- Mahjadand, District-Latehar,working as Casual Cook (Civil) under the Commander of the Bihar Regimental Centre, Danapur Cantt. Danapur (Bihar).

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Kumar Priya Ranjan with
Mrs. Gunja, Advocates

For the Respondents : Mr. M.P. Dixit,
Mr. Sanjay Kumar Chaubey,
Mr. Shailendra Kumar and
Mr. Sunil Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 28-06-2016

The challenge in the present writ petition is to an order
passed by the Central Administrative Tribunal, Patna Bench, Patna

(hereinafter referred to as the 'Tribunal') on 25th April, 2013, whereby an Original Application filed by the applicants, respondents herein, was allowed quashing the termination order and directing the petitioners to re-engage the applicants on the same terms and conditions as were applicable to them.

The applicants were engaged as Casual Cook (Civil) under the Commander of the Bihar Regimental Centre, Danapur Cantonment, Danapur in October, 2010 and have continued to work upto August, 2012.

The stand of the petitioners was that the applicants were employed on casual basis and have not worked for more than 60 days continuously. It was also pointed out that no examination or interview was organized for selecting the applicants and they were employed on casual basis as and when their services were required. It is also pointed out that the terms of casual employee were explained to the applicants and, therefore, no temporary status can be granted to the applicants.

The Tribunal found that the applicants were engaged as casual employees by the Bihar Regimental Centre, Danapur Cantonment, Danapur and that the break in service was artificial. The Tribunal found that there is continuous requirement of services of casual employees and that it is not appropriate for the petitioners to

engage a set of persons for near continuous and longest period during which they not only end up becoming age bar from other employment avenues but at the risk of loss of their employment and for giving voice to their aspirations for better service benefit.

We find that the approach of the Tribunal is wholly illegal and unwarranted. The applicants before the Tribunal were casual employees, who worked, at best, as per their assertion, for less than a period of two years. Such casual employees were engaged, without any examination or interview and to meet emergent situation. It does not confer any right for absorption, regularization or further engagement. It does not confer any right to be re-engaged as well. The engagement against all public posts have to be done after complying with the principles of public employment i.e., public advertisement, giving opportunity to all eligible candidates to apply and to be considered for employment. Simply at one point of time, the applicants were engaged to discharge emergent duty will not confer any preferential right for absorption/re-engagement. The termination cannot be set aside, as they were engaged on purely casual basis. The order of the Tribunal is wholly unsustainable and the same is set aside.

However, before parting with, we may observe that the applicants will have a right to apply for the post as and when the

Department considers for filling up the posts in accordance with law.

The writ petition is allowed. The Original Application is dismissed with such observations.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P. Kumar

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04-07-2016
Transmission Date	N/A