

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7324 of 2015

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Mritunjay Kumar, son of Radha Krishna Das, resident of village & P.O. Naya Tola,
P.S. Naya Banka, District Banka (Bhagalpur), working as Daily Rated Mazdoor
under Bhagalpur Telecom District.

.... Petitioner

Versus

1. The Union of India, through Secretary, Ministry of Telecommunication, New Delhi.
2. The Chief General Manager, Bihar Circle (BSNL), G.P.O. Complex, Patna.
3. The General Manager, Telecom Department, BSNL, Bhagalpur.
4. The AGM (CM, NW, OPS & TX), BSNL, Bhagalpur.
5. The T.D.M., BSNL, Bhagalpur.
6. The D.E.T. (A & P), Office of the T.D.M., Bhagalpur.
7. The S.D.E. (Transmission), BSNL, Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Hamendra Prasad Singh, Senior Advocate
For the Respondents : Mr. Harendra Prasad Singh, Advocate
Mr. Santosh Kumar, Advocate

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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: 11-05-2016

The order dated 30th of January, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short, 'the Tribunal') in O.A. No.492 of 2010 is subject matter of challenge in the present writ petition whereby the claim of the petitioner for grant of temporary status and for his confirmation/regularization/appointment against a Group 'D' post remained unsuccessful.

2. As per the petitioner, he was engaged as daily rated Mazdoor in the Department of Telecom in the month of September,

1984. Since then he has worked continuously for large numbers of years, therefore, he has claimed that he is entitled to be conferred temporary status and subsequently entitled to be regularized against Group 'D' post.

2. The learned Tribunal found that the petitioner has worked only for 533 days during seven years from 1988 to 1994 and did not complete 240 days in a year. The work certificate annexed by the petitioner shows that he was engaged for 30 days in 1984, 15 days in 1985, 224 days per month from March to September, 1995, about 20 to 22 days per months from July, 2000 to April, 2001 and 15 days per month from May, 2001 to January, 2002. Thus, the petitioner has worked intermittently till 1995.

3. After keeping in view the work period and the judgment of the Hon'ble Supreme Court, such as State of Karnataka versus M. L. Kesari, (2010) 9 SCC 247, and Full Bench judgment of this Court in Ram Sevak Yadav & Anr. versus State of Bihar & Ors.(CWJC No.267 of 2010) and Umesh Ram versus State of Bihar (CWJC No.472 of 2010) both decided on 1st February, 2013, the Tribunal declined the claim of the petitioner for regularization.

4. The learned Tribunal further found that there is no allegation of *malafide* and that since the engagement of the petitioner was made as daily rated Mazdoor, there is no illegality if he has been

disengaged as there is no work.

5. Firstly, learned counsel for the petitioner submits that other similarly workers have been regularized whereas the petitioner has been discriminated. He has referred to Annexure-3 to contend that one Umesh Mandal and Shubhankar Mishr mentioned at serial nos.7 and 8 have been regularized as against the petitioner whose name appears at serial no.10.

6. The said document does not give the total number of days on which each of the workers worked though there is reference to work certificate for different periods. The petitioner could not point out that he made a specific grievance in respect of regularization of similarly situated employees by ignoring the claim of the petitioner. There was a vague averment that he has been discriminated against because other daily rated Mazdoors have been regularized. In absence of specific instance that who were the persons who were appointed in preference to the petitioner, there could not be any specific reply. Vague averment will get vague reply. Therefore, merely because there is a vague allegation that he has been discriminated against cannot be made a basis for passing an order in his favour when he has not proved to work even 240 days in a year.

7. The petitioner relies upon a Circular (Annexure-4) dated 10th of March, 2000 which contemplates of grant of temporary status.

However, it is mentioned that all those, who were recruited before 30th March, 1985 and 22nd June, 1988 and have worked continuously for one year at least, are granted temporary status. However, the work certificate furnished by the petitioner does not even remotely suggest that he has worked continuously for one year. Therefore, the said Circular is of no help to the petitioner.

8. The last argument of the learned counsel for the petitioner is based upon an order passed by a Division Bench of this Court in CWJC No.11818 of 2005 on 8th July, 2010. In the aforesaid case, the Court found that except verbal denial of the applicant's claim that he had not worked for 240 days in any years, no material was produced in support of such stand of the authorities. In the present case, there is specific averment regarding days put in by the petitioner and the specific document is produced by the authorities that the petitioner has not worked for 240 days in any year.

9. Consequently, we do not find any error on the order of the Tribunal which may warrant interference in writ jurisdiction of this Court. The writ application is, thus, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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