

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6203 of 2015

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Shamsher Ali, Son of Md. Gulab Rabbani, resident of Quarter No. OH - 73, New Colony, Post & Police Station - Khagaul, District - Patna (Bihar), Ex-Hot Weather Casual Labour, Office of the Divisional Audit Office, East Central Railway, Danapur.

.... Petitioner/s

Versus

1. The Union of India through the Principal Director of Audit, East Central Railway, Hajipur, District - Vaishali (Bihar).
2. The Senior Audit Officer (Admin), Office of the Principal Director of Audit, East Central Railway, Hajipur, District - Vaishali (Bihar).
3. The Senior Divisional Audit Officer, East Central Railway, Danapur (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram, Advocate
For the Respondent No. 1 to 3	:	Mr. D. K. Sinha, Sr. Advocate.
(Railways)	:	Mr. Satyeshwar Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 16-05-2016

Heard learned counsel for the parties.

The petitioner has moved this Court being aggrieved by order dated 1st May, 2014 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') by which O.A. No. 824 of 2012 filed by him has been dismissed.

The petitioner had filed the Original Application for quashing of order dated 26.06.2012 by which the representation filed by him, pursuant to the earlier order of the Tribunal passed in O.A. No. 111 of 2012, was rejected.

Learned counsel for the petitioner submits that he



was appointed as Hot Weather Casual Labour by order dated 08.06.2005 of the Divisional Audit Officer, East Central Railway, Danapur. Thereafter, his service was discontinued with effect from 01.11.2011 on the verbal order of the Auditor, Danapur against which he represented on 12.11.2011 to the Divisional Audit Officer, East Central Railway, Danapur. He submits that though his appointment was only in the Hot Weather Establishment, still, even after expiry of the summer season, he continued in the post in the same Establishment. It is submitted that the representation when not considered, he moved the Tribunal in O.A. No. 111 of 2012 and by order dated 04.04.2012, the same was disposed off with a direction to consider his representation dated 01.11.2011. Learned counsel submits that in terms of the order of the Tribunal, the respondent no. 3 has passed order on 26.06.2012 rejecting the claim of the petitioner for taking him back in duty. It is further submitted that similarly situated persons have been engaged by the respondents and the petitioner is being discriminated against.

Learned counsel for the respondents submits that the petitioner was initially engaged in the Divisional Audit Officer, East Central Railway, Danapur on 08.06.2005 as Hot Weather Casual Labour and worked till September, 2005 for a total of 66 days. Thereafter, he was engaged as Casual Labour in the office of the respondent no. 3 from October, 2007 to November, 2008, for a total of 238 days and further from April, 2010 to 10.05.2010



for only 27 days. Subsequent to the same, for performing Group-D related jobs, which the petitioner was also performing, contract was awarded to a private person on outsourcing basis from 01.12.2008 to 31.03.2009, which was extended till 31.03.2010 and thereafter with another agency from 11.05.2010 to 10.08.2010 and the same was extended from time to time and the petitioner was engaged by the contractor, and finally the contract was withdrawn from 28.10.2011, after recruitment of regular Multi Tasking Staff. It is submitted that the petitioner had worked only till 10th May, 2010 as Casual Labour and thereafter purely on contract basis with the contractor and thus after the termination of the contract, the representation submitted by the petitioner for putting him back in duty is not tenable.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we do not find any merit in the present writ application. The facts narrated on behalf of the respondents clearly go to show that the petitioner never worked under the respondents for the minimum required period of continuous employment for 240 days. Further, the petitioner may have been employed by the private contractor on an outsourcing basis, but the same can in no way be counted or given any weightage by the respondents. This being the position, the stand of the respondents cannot be faulted and has been rightly upheld by the Tribunal.

Accordingly, no ground having been made out warranting interference, the writ petition stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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