

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 785 of 2015

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1. Ram Binod Prasad Rai Son of Late Rajdeo Rai, resident of Village- Rahardiara, P.O. + P.S. Sonpur, District- Saran.
 2. Binda Rai Son of Late Sabhapati Rai (Ex. Substitute Khalasi) Resident of Village- Rahardiara, P.O. + P.S. Sonpur, District- Saran.
 3. Bishwanath Rai Son of Late Sitaram Rai (Ex. Substitute Khalasi) Resident of Village- Rahardiara, P.O. + P.S. Sonpur, District- Saran.
 4. Krishna Rain Son of Sri Ram Lagan Rai (Ex. Substitute Khalasi) Resident of Village- Pahleja Baraka Nayatola, P.O. + P.S. Sonpur, District- Saran.

.... Petitioner/s

Versus

1. The Union of India, through General Manager, E.C. Railway, Hajipur, Vaishali.
2. The Divisional Rail Manager, E.C. Railway, Sonapur, Saran.
3. The Divisional Rail Manager (P), E.C. Railway, Sonapur, Saran.
4. The Divisional Rail Manager (C & W), E.C. Railway, Sonapur, Saran.
5. Narendra Kumar Singh Son of Janki Singh Resident of Village- Rajapur, Chhittu Pakar Nayatola, Lahlad Chak, P.O. Nayagaon District: Saran. Presently working as Carriage Khalasi/Peon under D.M.E. (C&W). E.C. Railway, Sonapur, Saran.
6. Virendra Singh Son of Rameshwar Singh Resident of Village- Sheohar Mohari, P.O. Mohari, District- Sheohar. Presently working as Khalasi/Helper under (C & W.S), Carriage E.C. Railway, Muzaffarpur.
7. Abhimanyu Lal Rajak, Son of Yadro Lal Rajak, Presently working as Peon under D.E.E. E.C. Railway, Sonapur, Saran.
8. Raghu Nath Rajak Son of Jaggu Rajak, Presently working as Fitter (C&W) Narayanpur Anant, Muzaffarpur under CDO, E.C. Railway, Muzaffarpur.
9. Kalem Hussain Son of Late Gulam Hussain, Basic Fitter under C.D.O. E.C. Railway Muzaffarpur.
10. Sudarshan Prasad Son of Bhola Rai Resident of Village- Bathani Tola Nazarmira, P.O. + P.S. Sonpur, District: Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Mishra, Advocate.

For the Respondent/s : Mr. Anil Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE Mr. JUSTICE AHSANUDDIN AMANULLAH)

Date: 10.05.2016

Heard learned counsel for the parties.

Challenge in the present writ application is to the order dated 28th January, 2014 passed in RA/050/00001/2014 (O.A. No. 440 of 2010) as well as order dated 4th September, 2013 in O.A. No. 440 of 2010, both passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal').

The petitioners, being applicants before the Tribunal in the Original Application No. 440 of 2010, sought direction to the respondents to grant them time scale of pay from the dates they had acquired Temporary Status after completion of 120 days of continuous service in terms of Rule 204(d) of IREM Volumn-II and further for their re-engagement in service and to include their names in the panel list at par with their juniors, with all consequential benefits. Initially, the petitioners had moved the Tribunal in O.A. No. 424 of 1992 for engagement and regularization on permanent posts which was disposed off by order dated 20.02.2003 directing the authorities to enquire into the matter and pass appropriate order. Not being satisfied with the order, the petitioners filed C.W.J.C. No. 379 of 2006 before



this Court which was also disposed off by order dated 02.04.2007 observing that the writ petitioners being out of job since 1984 and in view of the findings recorded by the Tribunal that they had not completed continuous 120 days service even as Casual Workers, no useful purpose will be served to interfere with the matter again. However, while dismissing the writ petition, liberty was given to the petitioners to take up the matter before the authorities for consideration of their cases if any other similarly situated person or their juniors have already been considered. The representation filed pursuant to the same was rejected on 01.05.2008 and thus the petitioners moved this Court in M.J.C. No. 834 of 2008 alleging violation of the earlier order dated 02.04.2007 passed in C.W.J.C. No. 379 of 2006. The said M.J.C. No. 834 of 2008 was dismissed on 24.02.2010 and the petitioners approached the Tribunal for quashing the order dated 01.05.2008 in O.A. No. 440 of 2010 which was dismissed on 4th September, 2013 and the Review filed being RA/050/00001/2014 (O.A. No. 440 of 2010) was also dismissed on 28th January, 2014 leading to filing of the present writ application.

Learned counsel for the petitioners submitted that the petitioners, having completed 120 days, acquired Temporary Status in terms of the relevant Rules and were called for screening test for regularization against Group-D post by order dated 13th March, 1988. It was submitted that service of persons having worked for lesser period, compared to the petitioners, and also



being junior to them, have been regularized and also promoted, but the petitioners have been left out and thus there is discrimination. It was submitted that once juniors are regularized, seniors cannot be left out and on this score alone, the relief sought by the petitioners deserves to be granted. Learned counsel submitted that in terms of order dated 02.04.2007 passed in C.W.J.C. No. 379 of 2006, the respondents were to consider the case of the petitioner if other similarly situated persons or their juniors have already been considered. Learned counsel submitted that the authorities have wrongly passed order dated 1st May, 2008 rejecting their claim due to which O.A. No. 440 of 2010 was filed which was also erroneously dismissed and the Review petition filed was also not entertained on the ground that the points raised could only be considered in appeal. Learned counsel submitted that the petitioners, being advanced in age and other similarly situated and even less deserving having been granted benefits, the petitioners at least deserve similar treatment.

Learned counsel for the respondents submitted that the entire claim of the petitioners is misconceived since the basic requirement of having worked for 120 days continuously has not been fulfilled by them as admittedly they have worked for few days in broken spells which did not entitle them grant of time scale of pay. It was submitted that in the screening held in the year 1988, four categories of seniority lists were prepared being (a) list of working Casual Labourers engaged prior to 01.01.1981 (b)



list of Ex casual Labourers engaged prior to 01.01.1981 (c) list of working Casual Labourers engaged after 01.01.1981 and (d) list of Ex Casual Labourers engaged after 01.01.1981. It was submitted that the petitioners belonged to category (d) being Ex casual Labourers engaged after 01.01.1981 and the 22 persons selected through screening in the year 1988 belonged to category (a). It was submitted that the petitioners, thus, have neither been discriminated nor their cases have been overlooked as on facts they do not fulfill the criteria for being engaged. It was submitted that the petitioners repeatedly moving before the Tribunal and this Court have tried to keep alive a dead and stale issue.

Having considered the rival contentions, we do not find any merit in the writ application. The petitioners admittedly were engaged after 01.01.1981 and worked for a few days intermittently and the categorical stand of the respondents that they had also not been in continuous service for 120 days has not been controverted by the petitioners before the Tribunal which has also accepted such fact. Once this fact becomes established, the right for being regularized against a pay scale itself becomes untenable as the essential eligibility criteria has not been fulfilled by them. The stand of the respondents that the private respondents had completed 120 days of continuous working at the time of their screening has also not been controverted. Thus, the private respondents cannot be said to be junior to the petitioners inasmuch as the criteria was having completed 120 days of

continuous working, which clearly is not the case of the petitioners. The Court can also not overlook the fact that as per the stand of the petitioners themselves, they had not worked after 1984. Thus, at this stage, having remained disengaged for almost 32 years, we do not find that in the interest of justice the matter requires any interference.

For the reasons aforesaid, the writ application stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree

(Hemant Gupta, J)

P. Kumar
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