

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.12126 of 2017

- =====
1. Sunil Kumar Singh, son of Trivijay Prasad Singh.
  2. Bipin Kumar Singh, son of Ram Janam Singh
  3. Nagendra Paswan, son of Sudarshan Paswan.
  4. Braj Kishore Ram, son of Shiv Lal Ram.
  5. Mahendra Prasad, son of Dhanpat Sao.
  6. Smt. Niru Devi, wife of Late Jhakhari Singh.
  7. Deep Narayan Singh, son of Jai Narayan Singh.
  8. Girija Rai, son of Bali Rai.
  9. Sri Niwas Kumar, son of Shital Prasad.
  10. Raj Kumar Mehta, son of Ramashish Mahto.
  11. Ramjee Ram, son of Arjun Ram.

All the petitioners are working as D.R.M. under the Administrative Control of the Principal General Manager, Telecom, District- Patna, namely Bharat Sanchar Nigam Limited, Patna, Bihar.

.... .... Petitioner/s

Versus

1. The Chairman and Managing Director Bharat Sanchar Nigam Limited (Hereinafter referred to as BSNL) Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi.
2. The Chief General Manager, Telecom Bihar Circle, BSNL, Patna, Bihar.
3. The Principal General Manager, Telecom District Patna, BSNL, Patna, Bihar.
4. The Deputy General Manager (Admn.) O/O Chief General Manager, Telecom Bihar Circle, BSNL, Patna, Bihar.
5. The Assistant General Manager (Admn.) O/O Chief General Manager, Telecom Bihar Circle, BSNL, Patna, Bihar.
6. The Dy. General Manager (Admn.) O/O Principal General Manager, Telecom District Patna, BSNL, Patna, Bihar.
7. The Chief Accounts Officer, O/o Principal General Manager Telecom District Patna, BSNL, Patna, Bihar.
8. The Senior Accounts Officer, O/o {Principal General Manager, Telecom District Patna, BSNL, Patna, Bihar.



.... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. P. K. Shahi, Sr.Adv.

Mr. Kripa Nand Jha, Adv.

For the Respondent/s : Mr. Ashok Kumar Dubey, Adv.

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 13-11-2017**

Heard counsel for the parties.

2. Petitioners had approached the Central Administrative Tribunal, Patna Bench, Patna by filing O.A.661 of 2015. Their prayer was to quash the order dated 20.07.2015 as also to give direction for grant of benefit of temporary status Mazdoor to the petitioners since they have worked under the erstwhile Telecom Department and later on under Bharat Sanchar Nigam Limited for more than a decade or so. The Tribunal has dismissed the O.A. and, therefore, the writ application.

3. Large number of employees across the country had been hired by the Department of Telecom looking at the exigencies of work. Though, such hiring was supposed to be for limited period as well as time, but obviously the need for their continuance in that capacity remained from year to year and the Telecom Department as well as the Bharat Sanchar Nigam Limited could never really afford to



offload most of these hired employees.

4. Litigations started when regularization and conferment of certain status was demanded but not granted. Litigations also arose before the Hon'ble Apex Court. The Union of India came out with a scheme and the scheme has been extracted by the Tribunal in paragraph 2 of the impugned order.

5. So far as these petitioners are concerned, they have fought many rounds of litigations, but every time for one specious reason or the other the authorities of the BSNL have rejected their claim for regularization. The matter has been tested by the Tribunal earlier and the reasoning given by the authorities of the BSNL was found to be flawed and interfered with, with direction for reconsideration. However, this time, an order dated 20.07.2015 issued by the Deputy General Manager (Admn.), Patna Telecom District, Patna has not been interfered with. The Tribunal seems to have gone by the rationale and reasoning provided by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi.

6. After having given an extended hearing to learned senior counsel representing the petitioners as well as counsel for the BSNL, we do not agree with the decision and rationale provided by the Central Administrative Tribunal in rejecting the O.A. The reason for saying so is because the order of rejection contained in Annexure-



15 issued under the signature of the Deputy General Manager (Admn.) seems to be contradiction in terms and is required to be interfered on the ground that there is does not seem to be application of mind and the rejection seems to be for extraneous reasons.

7. We are justified in observing as above because certain past developments cannot be overlooked and wished away. It is the BSNL authorities themselves who as far back as on 17<sup>th</sup> March, 2004 issued a notification giving the petitioners full time casual labourer status with effect from 07.01.2004. This notification has been brought on record as Annexure-7 to the writ application. Once such a status has been conferred and acquired by the petitioners by a conscious decision of the respondent BSNL authorities and that notification still stands and finds mention even in the recommendation made by the Deputy General Manager (Admn.) himself in a communication dated 09.05.2013 addressed to the Chief General Manager (Telecom), Bihar Circle, Patna it cannot be ignored. This communication is Annexure-12 to the writ application. If Annexure-7 and Annexure-12 are put together then rationale and reasoning provided by the Deputy General Manager (Admn.) for rejection of the claim of the petitioners seems to be contradictory on the face of the impugned decision contained in Annexure-15, which was subject matter of challenge before the Tribunal.



8. Since these petitioners had acquired the status and had been converted as full time casual labourers then in terms of the circular of 2000 the next logical step for such employees was regularization. However, by trying to now provide a reason that there was no occasion to hire extra hands at the relevant time since there was no shortage of Group-D staffs and that is why their status cannot be converted into full time employee is trying to gaze into some kind of a time machine by the Deputy General Manager (Admn.) after 3 decades.

9. There is nothing reflected from the order contained in Annexure-15 that there are materials or data or facts to show that occasion for such hiring was not there. Merely saying so in the year 2015 that is almost 11 years after conferment of regular casual mazdoor status and after 30 years of such hiring is nothing but a speculative kind of reason provided which obviously makes it extraneous and cannot be accepted as the basis for justification for such rejection of the claim of the petitioners for regularization.

10. After reading Annexure-15, the reason provided by the Deputy General Manager (Admn.), we are satisfied that the respondent authorities have rejected the claim of the petitioners for sake of rejection and reason provided by them is imaginary. When put to the touchstone for testing the rationality of the decision making, it



does not have legs to stand.

11. Since petitioners had themselves been given the status by the notification of the respondent BSNL in the year 2004 of regular casual mazdoor the only things which is required to be done now by them is to apply the yardstick of the scheme which was very much in vogue at the relevant time and extended the benefit of regularization to the petitioners.

12. For the reasons above, we come to a conclusion that the order dated 20.07.2015 suffers from vice of non-application of mind and has been passed without considering the old decisions on the status of the petitioners by the Deputy General Manager (Admn.) himself and, therefore, needs to be interfered with and quashed.

13. For the same set of reason, as these aspects have not been considered by the Tribunal in its adjudication order dated 30.09.2016, which is a subject matter of challenge in the present writ application, the same is also required to be quashed and a direction is issued upon the Chief General Manager, Bihar Circle that he has a duty and obligation to apply the scheme for regularization. The factum of status of petitioners can no longer be opened and commented upon. Regularization seems to be the only option available to them.

14. The Chief General Manager therefore is directed that



a decision on the regularization of the petitioners must be taken within a period of three months from the date of production of a copy of this order.

15. Writ is allowed in terms of the above.

**(Ajay Kumar Tripathi, J)**

**(Rajeev Ranjan Prasad, J)**

Arvind/-

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