IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5933 of 2017

==========

Mahesh Pal Son of Sri Barudeo Pal, Resident of Village- Gulalpur, P.O. Bank, District Munger.

.... Petitioner

Versus

1. The Union of India, through the Secretary, Government of India, Central Board of Excise and Customs, New Delhi.
2. The Commissioner, Central Excise, Revenue Building, Birchand Patel Marg, Patna.
3. The Addl. Commissioner, (P & V), Central Excise, Revenue Building, Birchand Patel Marg, Patna- 1.
4. The Assistant Commissioner, Central Excise, Munger.
5. The Administrative Officer, Central Excise, Munger.

.... Respondents

==========

Appearance :

For the Petitioner	:	Mr. Gautam Bose, Sr. Advocate Mr. Rohit Mishra, Advocate Mr. Vikash Jha, Advocate Mr. Ajay Kumar, Advocate
For the U.O.I.	:	Mr. S.D Sanjay (Addl. Soc. Gen.) Mr. Kumar Priya Ranjan, C.G.C.

==========

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 27-07-2017

Heard learned Senior counsel for the petitioner and learned counsel for the Union of India.

The petitioner, in the present case, is aggrieved by order dated 9th December, 2011 passed in O.A. No. 567 of 2009 by Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Patna Bench, Patna, by which the Tribunal has refused to set aside the order dated 27.07.2009 passed by the

WEB COPY

Commissioner, Central Excise, Patna (respondent no. 2) rejecting the prayer of the petitioner for re-engagement and grant of temporary status.

The facts are not in dispute. The applicant was firstly engaged as casual labour (Faras) with effect from 05.07.1996 in the Department of Central Excise at Munger without reference to any advertisement or reference from the Employment Exchange. It is the case of the petitioner that he was engaged for six hours per day with effect from 05.07.1996 as Faras and the period of engagement was subsequently increased to 8 hours per day from July, 1999 to the year 2004.

Learned counsel for the petitioner submits that earlier a scheme dated 10th September 1993 was brought by the Department of Personnel, Government of India, which was circulated by the Central Board of Excise and Customs, Government of India, New Delhi. Under point no. 4 of the said scheme, it was indicated that temporary status would be conferred on all casual labourers in employment from the date of the office memorandum and who have rendered a continuous service of at least one year which means that they have been engaged for a period of at least 240 days (206

WEB COPY

days in the case of offices observing five days a week).

The petitioner in the present case refers one case of Dharmendra Kumar Azad and six others who had earlier moved the Tribunal in O.A. No. 358/1995, and in their cases, the Tribunal had directed that they should be converted with the temporary status as per the scheme of 1993. A unsuccessful challenge was given to the said order of the Tribunal before this Court in writ petition and subsequently to the Hon'ble Supreme Court in SLP.

The petitioner further relied upon one judgment of the Tribunal in O.A. No. 196/1999 (Ram Pravesh Thakur and others Vs. The Union of India and others), in which the benefit of temporary status was also given to the said Ram Pravesh Thakur and others, as the Tribunal found that they had completed the requisite number of working days as per the scheme of 1993 and they were ordered for regularization as per rule. The said order of the Tribunal was challenged before this Court and then before the Hon'ble Supreme Court, but the order of the Tribunal remained.

Learned counsel for the petitioner has relied upon the order passed by the Tribunal in the

WEB COPY

case of Ram Pravesh Thakur and others and has submitted before the Tribunal as well as before this Court that the petitioner should at least be given benefit of the said order in similar manner as has been given to the said Ram Pravesh Thakur and others. The Tribunal, however, did not find it in favour of the petitioner following the subsequent judgments of the Hon'ble Supreme Court particularly one in the case of ***State of Karnataka Vs. Uma Devi*** since reported in ***(2006) 4 SCC 1***. The learned Tribunal has in paragraph 20 of its judgment considered the view of the Hon'ble Apex Court in the case of Uma Devi and stated thus:

> "20. In regard to the contention of the applicant that he should be given the benefit as some others had got the benefit by virtue of the orders of this Tribunal which were upheld by the Hon'ble High Court and the Hon'ble Apex Court after the cases of Mohan Pal and Uma Devi, it may be mentioned that the Hon'ble Supreme Court in the case of Ambica Quarry Works V. State of Gujarat (1987) 1 SCC 213 observed thus:
>
> *The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord halsbury in Quinn v.*

WEB COPY

Leathem), 1901 Appeal cases 495."

Before this Court, Mr. Gautam Bose, learned Senior counsel submits that although the case of the petitioner would not be covered under the scheme of the year 1993 still he may be allowed the same benefit which were given to Ram Pravesh Thakur and others. Learned Senior counsel submits that although the petitioner is not in direct employment of the respondents, but he is one of the employees working in the said establishment as contract labourer under the contractor who is supplying contract labourers to the respondents.

The grievance of Mr. Bose, learned Senior counsel is in the nature of unlawful labour practice as he submits that the petitioner even though working in the establishment of the respondents but because he is not getting a temporary status, is not entitled for the benefit which has accrued to others.

Having considered the submission of learned Senior counsel, this Court is of the opinion that the benefit which were conferred upon Ram Pravesh Thakur and others by virtue of the judgment of the Tribunal which was not interfered with up to the

WEB COPY

Hon'ble Supreme Court cannot be extended to the petitioner by this Court. Firstly, for the reason that the facts situation of the present case, is totally different from that of Ram Pravesh Thakur and others. In the said case of Ram Pravesh Thakur and others, the Tribunal had found that they had completed the requisite number of working days as per the scheme of 1993, and, then, at the relevant time following the judicial pronouncements of the Hon'ble Apex Court, the Tribunal found that the benefit should be given to those applicants. Here the petitioner was admittedly not working when 1993 scheme came and now after Uma Devi's judgment of the Hon'ble Apex Court the petitioner cannot get the same benefit. Secondly, we find that the petitioner is not working in the establishment of the respondents as a casual labourer since the year 2005, and admittedly, he is now working as an employee of the establishment as a contractor, therefore, extending to the benefit of temporary status of an employee in the office of the respondents would not be justified. After the judgment of Ram Pravesh Thakur and others, the Hon'ble Supreme Court has, upon consideration of a number of case laws, the

WEB COPY

entire judgment, laid down the law as regards regularization/absorption of casual labourer employee. It is an admitted position that this petitioner was engaged without there being any advertisement that too after 2005 he is not working as an employee of the respondent. We cannot direct absorption of this petitioner in the services of the respondents in view of the settled proposition of law laid down by the Hon'ble Supreme Court.

The writ application has no merit and the same is dismissed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31.07.2017
Transmission Date	N.A.

WEB COPY