

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1766 of 2015  
IN  
Civil Writ Jurisdiction Case No. 16440 of 2007**

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Sanjay Kumar Paswan, Son of Kameshwar Paswan, Resident of Village- Anand Vihar, Post Office- Anisabad, Police Station- Phulwarisharif, District- Patna.

.... .... Appellant/s

Versus

1. Bharat Sanchar Nigam Ltd. (A Government of India Enterprises ) through the Chief General Manager, Telecom having its office at Sanchar Sadan, Budha Marg (Road), Police Station- Kotwali, District- Patna.
2. The Union of India, Ministry of Labour through Chief Labour Commissioner, Patna.
3. The State of Bihar through the Secretary, Labour Resources Department, Government of Bihar, New Secretariat Building Vikash Bhawan, Baily Road, Patna.
4. Presiding Officer, Industrial Tribunal, Patna.

.... .... Respondent/s

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**Appearance :**

|                      |   |                                                        |
|----------------------|---|--------------------------------------------------------|
| For the Appellant/s  | : | Mr. Vasudeo Ram, Advocate<br>Mr. Gajendra Prasad Yadav |
| For the Respondent/s | : | Mr.                                                    |

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI  
and  
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 19-01-2017

Heard learned counsels for the parties.

I. A. No. 7921 of 2015 is allowed. Delay of 26 days is condoned for the reasons stated in the condonation application.

Then matter is heard on the merits.

In Reference Case No. 47 of 2003 / 02C of 2004, the Industrial Tribunal, Patna directed Bharat Sanchar Nigam Limited (hereinafter referred to as “BSNL” for short) to reinstate the appellant



on the post of Peon within two months from the date of publication of Award but without payment of back wages. This Award, dated 30<sup>th</sup> of April, 2007, was challenged in a writ application filed on behalf of BSNL in C. W. J. C. No. 16440 of 2007, which came to be decided on 24.06.2015 by the Learned Single Judge. The Learned Single Judge after considering the rival contentions and submissions came to a considered opinion that looking at the manner in which the appellant came to be engaged, by an authority not competent to do so, contrary to the dictates and direction of the superior authorities, not to engage any casual labour after 01.08.1998 and that too without following any procedure, came to a considered opinion that it is not a fit case where reinstatement should be ordered, keeping in mind the settled principles of law laid down by the Hon'ble Apex Court in a series of decisions, which have been discussed in the impugned order of the Learned Single Judge. Not only the engagement of the appellant was without following any norms, but was that of a daily-wager at the rate of Rs. 36/- per day.

Since the appellant was not a regular employee reinstatement cannot be ordered as a matter of course, unless his services stood regularized. Regularization was not an issue anyway before the Industrial Tribunal.

In lieu of reinstatement, the Learned Single Judge directed the BSNL to make a payment of Rs. 1,50,000 /- (one lac and fifty thousand) only, which in the opinion of the Learned Single



Judge was an adequate compensation in favour of the appellant, because of non-compliance of Section 25 F of the Industrial Disputes Act by the respondents, while terminating him, which led to the litigation in question.

Since the Learned Single Judge has taken note of all the laws related to such facts and issue, as well as the principles, which have been laid down by the Hon'ble Apex Court that reinstatement are not a matter of right, in the given facts, compensation in lieu of reinstatement, is held to be valid by the Court.

The Appeal otherwise lacks merits, therefore, the same is dismissed in so far as reinstatement of the appellant is concerned. However, the compensation granted by the Learned Single Judge will accrue in favour of the appellant.

**(Ajay Kumar Tripathi, J)**

**(Nilu Agrawal, J)**

SKM/-

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