

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16365 of 2015

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1. Birendera Kumar, Son of Lakhan Prasad, resident of Mohalla- Ghushni Tand (Madhusudan Colony), P.O. Chand Chaura (Gaya), District- Gaya.
 2. Dinesh Kumar, Son of Sri Kalash Prasad, resident of Mohalla- Goval Bigha, P.O. Gaya, P.S. Raypur, District- Gaya.
 3. Ramjee Prasad, Son of Late Bhagwan Prasad, resident of Village- Khagri Bigha, P.O. Paraiya, Gaya, C/o Sri Kailash Prasad, Bengali Colony, Gawal Bigha, Paharitar, Gaya.
 4. Sita Ram Rajak, Son of Sri Babu Lal Baitha, resident of Village+Post Kerap, Rafiganj, District- Aurangabad, Bihar.
 5. Deo Saran Rajak, Son of Shree Ram Bhikhari Rajak, resident of Village+P.O. Karap, Via- Rafiganj, District- Aurangabad, Bihar.
 6. Satrudhan Kumar, Son of Nand Lal Bhagat, Barki Delha, Kharkhura Road, Gaya.
 7. Ajay Kumar, Son of Late Anil Prasad, resident of Village- Uparhuli, P.O. Paraiya, P.S.- Paraiya, District- Gaya.
 8. Sudama Prasad Rajak, Son of Sri Ram Bhikhari Rajak, resident of Rafiganj, District- Aurangabad, Bihar.
 9. Dilip Kumar, Son of Ram Lakhan Singh, resident of Village- Shephganj, P.O. Bake Bazar, District- Gaya, Bihar.
 10. Viveka Nand Kumar, Son of Sri Tulsi Prasad, resident of Village- Bihargai, P.O. Bhaluhar Chaugai, P.S. Raushanganj, District- Gaya.
 11. Shadhu Saran Yadav, Son of Sri Ram Kishun Yadav, resident of Village- Ghanshyam Bigha, P.O.+P.S. Muraliganj, District- Jehanabad.
 12. Uday Kumar, Son of Sri Ram Baran Bhagat, resident of Village- Nawatala, Gasalchak, P.O. Ilara, P.S. Bodh Gaya, District- Gaya.
 13. Pappu Ram @ Pappu Kumar, Son of Surendra Ram, resident of Village- Pundaul, P.O. Goh, District- Aurangabad.
 14. Arjun Kumar Ram, Son of Sri Ragho Ram, resident of Village- Jaddupur Bhadar, P.O. Samari, P.S. Naraliganj, District- Nawada, Bihar.
 15. Praveen Kumar, Son of Sri Avinash Saw, resident of Village- Tholi Bazar, P.O. Sugharee, District- Nawada, Bihar.
 16. Siya Ram Bhagat, Son of Sri Jagadish Bhagat, resident of Village- Shabaypur,



P.O. Fatehpur, District- Gaya.

17. Rajbansh Kumar, Son of Sri Sukhdeo Verma, resident of Village- Narayanpur, P.O. Sonwan, P.S. Ghoshi, District- Jehanabad, Bihar.
18. Sunil Kumar, Son of Sri Uday Singh, resident of Village- Godshar, P.O.+P.S. Ghoshi, District- Jehanabad, Bihar.
19. Nasiblal Pandit, Son of Shree Sahber Pandit, resident of Village- Kako, P.O. Kako, P.S. Kako, District- Jehanabad, Bihar.
20. Anuj Kumar, Son of Late Jay Prakash Narain, resident of Village+P.O. Nemdarganj, P.S. Akbarpur, District- Nawada.
21. Naresh Kumar, Son of Sri Badari Das, resident of Village- Sahwajpur, P.O. Barah, P.S. Punpun, District- Patna.
22. Arun Kumar, Son of Sri Mahadeo Mahto, resident of Village- Chanwari, P.O. Binda, P.S. Madaya, Barachatti, District- Gaya.

.... Petitioners

Versus

1. The Union of India through the Secretary, Ministry of Labour and Employments, New Delhi.
2. The General Manager, Bharat Sanchar Nigam Limited, Gaya.
3. The Chief General Manager, Telecom, Bihar Circle, Meghdoot Bhawan, G.P.O., Patna.
4. The S.D.E. (Administration), B.S.N.L. Office, G.M.T.D., Gaya.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Narayan Parbat, Sr. Advocate Smt. Renu Jha, Advocate
For Union of India	:	Mr. Sujeet Kumar Sinha, CGC
For BSNL	:	Mr. Ashok Kumar Dubey, Advocate Mr. Uma Shankar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-06-2017

The petitioners have filed the present writ application
for setting aside the order dated 30.04.2015 passed by the Presiding



Officer, Central Government Industrial Tribunal (No.2), Dhanbad by which Reference Case No. 22 of 2011 referred under Section 10(1)(d) of the Industrial Disputes Act, 1947 has been decided in favour of the Management and against the petitioners.

2. The petitioners raised their claim for regularization through the General Secretary of their Union before the Government of India, Ministry of Labour & Employment, New Delhi from where the case of the petitioners in exercise of power conferred under Section 10(1)(d) of the Industrial Disputes Act was referred to the Central Government Industrial Tribunal No.2, Dhanbad for adjudication of the following questions :-

“(i) Whether the action of the Management of BSNL, Gaya in not regularizing the alleged 51 workers out of a total of 97 casual workers engaged by them while regularizing the remaining 20 such casual workers is legal and justified or not ?

(ii) What relief the workmen are entitled to?.”

3. On receipt of the aforementioned reference from the Government of India, Ministry of Labour and Employment, New Delhi for adjudication of the dispute, Reference Case No. 22 of 2011 was registered and after hearing the parties, Central



Government Industrial Tribunal No.2, Dhanbad, vide award dated 30.04.2015 held as under :-

“... the action of the Management of BSNL, Gaya, in not regularizing the alleged 51 workers (list enclosed) out of total 97 casual workers engaged by them is quite legal and justified...”

4. The aforementioned award dated 30.04.2015 is under challenge in the present writ application filed under Article 226 of the Constitution of India.

5. The contention of the petitioners in the present writ application is that these petitioners along with 30 other workmen under wrong legal advice through their Union Secretary had moved before the Labour Commissioner raising their dispute regarding payment of minimum wages and regularization.

6. Mr. Mahesh Narayan Parbat, learned Senior Counsel appearing for the petitioners submitted that the Tribunal decided the case against the petitioners without appreciating the evidences adduced on their behalf. He submitted that the documentary evidences produced on behalf of the workmen were sufficient to prove that the workmen had completed more than 240 days in a calendar year. He submitted that the petitioners ought to



have filed their case before the Central Administrative Tribunal, but under wrong legal advice, the petitioners approached the Labour Court. He submitted that the petitioners are poor and illiterate persons and are not aware of the intricacies of law and they should not be allowed to suffer for choosing a wrong forum for redressal of their grievance. He submitted that the Tribunal committed an apparent error while adjudicating the reference made to it by not looking at the fact that 20 other similarly situated persons were regularized and some other applications of other similarly situated employees are pending before the Central Administrative Tribunal, Patna Bench, Patna.

7. *Per contra*, Mr. Ashok Kumar Dubey, learned counsel appearing on behalf of respondent nos. 2 to 4 submitted that this is not the stage when the petitioners can raise the issue of prejudice due to pursuing the remedy before a wrong forum. He submitted that the Tribunal has correctly appreciated the facts and law involved in the case. It has also appreciated the oral and documentary evidences adduced on behalf of the parties in correct perspective. He submitted that the workmen, who were engaged prior to 22.06.1988, were regularized under the policy decision of the Government of India and the case of the petitioners does not stand in any way similar to the case of the 20 causal workers, who



were regularized by the Management of Bharat Sanchar Nigam Limited. He contended that the persons, who were regularized, had fulfilled the criteria of regularization, hence, they were regularized and the persons, who were not regularized, did not fulfil the required criteria, so they were not regularized. He submitted that the petitioners failed to produce single chit of paper issued by the Management in their favour or in support of their claim that they had worked for more than 240 days in one calendar year. He submitted that out of the so-called 97 casual labourers, some had filed writ applications for the same cause like the petitioners of the present writ application vide CWJC No. 8750 of 2008, CWJC No. 8426 of 2008 and CWJC No. 13043 of 2007. Those cases were transferred to the Central Administrative Tribunal, Patna Bench, Patna. He submitted that the Central Administrative Tribunal dismissed those transferred applications finding no merit in the claims of the petitioners for regularization. He has produced the orders passed in T.A. No. 11 of 2014, T.A. No. 10 of 2014 as also T.A. No. 17 of 2014 by the Central Administrative Tribunal, Patna Bench, Patna in order to substantiate the submission that the Central Administrative Tribunal has also dismissed those transferred applications.

8. I have heard learned counsel for the parties and



perused the record.

9. It would be manifest from the record that during the course of proceedings before the Tribunal, workers examined two witnesses, i.e. WW1 Shyam Lal Prasad, the General Secretary of the Union and WW2 Virendra Kumar, one of the workers whereas the Management examined one Prakash Mandal (MW1) on its behalf. The Tribunal had recorded its findings in detail assigning reasons for such findings which are as under :-

“Mr. Shekhar Sharma, Id. Counsel for the Union/workmen has submitted that in pursuance of the GM, TD, Gaya’s letter No. E.292/Casual Labour/104 dt. 31.05.2001 (Ext.3 with objection), the SDE (Admn.) O/o the GM, TD, Gaya as per his letter dt.10.09.2002 (Ext.3/1 with objection) had sought formal (GOS) of the 531/The S.D.E./(10B) for submission of report in the Performa as required within a week; the SED (Admn.) of GM, TD Gaya as per his letter dt.20.09.2002 with copies to all Higher Authorities (Ext. W.3/2 with objection) invited application in prescribed Performa from amongst the casual labourers/DRMs having completed 240 days in any one year as on 31.03.2002 for grant of temporary status of Mazdoor, and lastly as per the letter dt.28.02.2003 of the Accounts Officer (C), O/o the GM,TD, Gaya to the SDE (Admn.) concerned with reference to the latter’s



letter dt.24.12.2002 (Ext. W.1 with objection), the applications of 97 persons received for verification were returned with report partially. Further, Mr. Sharma emphatically submitted that the Notice (letter) dt.24.01.2006 of the SDE (Admn.), O/o the GM, TD, Gaya, certifies that out of the applications received in the office from the people who were reportedly engaged by the Field Officers of the SSA, for regularization, only the nine applications of the persons were found complete in all respect, but the rest applications were advised to take back and submit their applications after completing all entries within three weeks times; and thereafter as per his letter dated 07.06.2006 of the SDE (Admn.) to the Chief Accounts Officer concerned (Ext.W.1/2 with objection) 37(thirty-seven) applications as Annexure-1 were sent to verify the mandays of the persons from the ACE-2 vouchers etc. and to return the same with number of days in each year for which payment made as per records concerned. It is also submitted by Mr. Sharma that only 20 workers, junior to the instant workmen, out of total 97 workers were regularized, but these instant workmen each in spite of their continuous working for more than 240 days in each of the years from 1993 to 2004 as evident from their documents (Ext. 2 series) as also proved by both the witnesses WW1 Shyam



Lal Pd., the General Secretary of the Union, and WW2 Virendra Kumar, one of the workmen, have not been regularized by the OP/Management, so the OP/Management cannot deny their regularization, and thus they are entitled to it.

6. Whereas Mr. Sushil Prasad, Learned Counsel for the OP/Management has categorically contended that all the alleged workers had no employer-employee relationship with the Management, as none of them was appointed or engaged as casual workers by the Management and all the alleged documents including Annex II (Ext. W.1/2) seem nothing except fabrications as asserted by MW1 Prakash Mandal, the Sub-Divisional Manager (Legal) with intent to get the relief, as the WW2 Virendra Kumar, one workman, has admitted that all the applications along with the period of the engagement after fulfilling themselves under their own signatures. Further, it is contended that the OP/Management has certain procedure for appointment of any person under the Management of the Post Office such as publication of a vacancy in the Daily News paper against the specified sanctioned post, forwarding the names of candidates through the Employment Exchange concerned etc. then issuance of appointment letter subject to the observation of



the constitutional guidelines over the reservation of the posts for SC,ST and Backward classes of the Society, thus the reference devoid of any merits is liable to be rejected.

7. On perusal of the materials available on the case record, I find that these 51 casual Labourers (as the list enclosed with the Reference) claimed having been included in the list of total 97 Labourers as per the letter dt.28.02.2003 of Accounts Officer (C) 0/o the G.M.T.D., Gaya (Ext. W.1 with objection) related to verification of their application about their names, mandays and working under Gaya SSA. But out of the total instant 51 alleged casual workers, only 20 workers' names appear to be included in the list of 97 workers as such :

Sl. No. of 51 workers' List of the instant Reference	Sl. No. 91 workers' List (Ex.W.1 with objection)
2. Virendra Kumar	23
3.Arjun Kumar Roy (Ram)	81
4.Ranjit Prasad	31
5.Dinesh Kumar	30
6.Sita Ram Rajak	32
7.Indradeo Rajak	33
10. Siya Ram Bhagat	80
11.Sadhu Saran Yadav	07
12. Ajay Kumar	52



13. Suresh Kumar	57
14. Birendra Chaudhary	51
18. Pramod Das	55
20 Bali Ram Prasad	58
21 Naresh Kumar	56
23. Raj Kishor Kumar	50
25 Lallu Prasad	26
26 Satyendra Prasad	29
27. Dilip Kumar	35
35. Raj Kumar	63
45. Shashank Shekhar Bhatta	64

Total 20 workers including twice named five workers namely S/Shri Ramjee Prasad, Arjun Kumar Ram (Roy), Sita Ram Rajak, Dinesh Kumar and Shashank Shekhar Bhatt under Sl. Nos. 13,14,18,30 and 34 of the Annex.1. Rest workers' names are beyond the aforesaid list of 97 (Ext.W.1 with objection), out of which 19+1 outsider Ramnath Prasad were verified of their names and mandays. But the instant workmen failed to prove the earlier appointment of aforesaid 20 labourers by the OP/Management. Apart from it, further out of total nine persons as per the photocopy of the SDE (Admn.) O/o the GMTD, Gaya letter dt.24.01.2006 (Ext.W.1/1 with objection), only the names of five persons S/Sri Lallan Prasad, Lallu Pd., Smt. Rekha Devi, Birendra Kumar and Shankar Ram under their Sl. Nos. 95, 26, 71, 23



and 93 respectively of aforesaid list of 97 workers appear to be included, but rest four ones not. The SDE (Admn.) B.S.N.L. O/o GM/TD, Gaya's letter dt.7.6.2006 (photocopy-Ext.1/2 with objection) refers to the enclosure of 37 applications as Annex.-1 which contains the names of only five workers noted above under the list of 97 persons. In the instant reference, the claim of the total 51 workmen appears to be mainly based on the list of 97 workers as enlisted according to the letter dt. 28.02.2003 of the Accounts Officer to the SDE (Admn.) (Ext. W.1 with objection). But unfortunately, the base letter nowhere else mentions the names of rest 31 workers as noted in the List enclosed with the Reference under adjudication. Under such circumstances the Reference is taken up for consideration of the issue of regularization concerning only aforesaid 20 workers as named in the present list of the Reference as noted in the aforesaid base letter. On verification of the Xerox copies/documents of aforesaid 20 workers, it is also evident that out of these twenty workers, four ones, namely, Shri Suresh Kumar, Birendra Choudhary, Bali Ram Prasad and Raj Kumar under Sl. Nos. 13, 14, 20 and 35 respectively have not produced or proved any of their documents in support of their claim.

8. So far as the regularization of rest sixteen of the aforesaid original 20 workers



concerned as noted in the aforesaid chart is concerned, none of them as casual workers had been in continuous service for a period of 240 days in any other case during a period of twelve calendar months preceding the date with the reference to which calculation is to be made as required as pre requisite to it under Sec. 25(a)(ii) of the Industrial Dispute Act, 1947. As all of these original workers have no specific their working days during the last calendar years preceding the date of reference in compliance of the aforesaid mandatory provision of the I.D. Act.

9. Mr. Shekhar Sharma, Ld. Counsel for the workmen has further submitted that in the case of denial of absorption or regularization in service to petitioner who was inducted into service of State Bank of Mysore as a temporary staff in 1985 and he was also intermittently employed on need based for such staff; in 1994-95, he claimed to have rendered more than 240 days of service in a calendar year, claiming to be included in “protected category”, and applied for absorption as a permanent employee; in the peculiar facts and circumstances, respondent Bank was directed to absorb the petitioner as a permanent employee in the sub-staff on the basis of having rendered service for more than 240 days during the said years as held by the Hon’ble Supreme Court in the case of H.R. Rajashekara



Vs. State Bank of Mysore & Other reported in 2012 (132) FLR 528 (DB). But in the instant reference, none of 16 original workers, namely, S/Shri Virendra Kumar, Arjun Kumar Roy (Ram), Ramjee Prasad, Dinesh Kumar, Sita Ram Rajak, Indradeo Rajak, Siyaram Bhagat, Shadu Saran Yadav, Ajay Kumar, Pramod Das, Raj Kishore Kumar, Naresh Kumar, Lallu Prasad, Satyendra Prasad, Dilip Kumar and Shashank Shekhar Bhatt under Serial Nos. 2 to 7, 10 to 12, 18, 23, 21, 25 to 27 and 45 respectively of the List enclosed with the Reference has any crystal clear of their continuous services during the period for 1993 to 2004 as per their pleaded evidence as contrasted with their Xerox documents.

Referring to 2012 (133) FLR 463 [All HC] [SB], Ram Chandra Yadav vs. State of U.P. & Ors., Mr. Sharma submitted that in reference to Rule 4 of the UP Regularization of Daily Wages appointment on Group D Post Rules 2001, the claim of the petitioner for regularization in service, being appointed on 1.1.1987 was rejected, then it was held by the Hon'ble High Court, Allahabad, that the petitioner was appointed on the said date and aforesaid rules clearly applied to him; the petitioners should have continued in service on the date of commencement of the rule; persons who were continuously working though with breaks were



required to be given the benefits of regularization; Rule does not contemplate uninterrupted continuous service; petitioner's continuance in the department from 1991 to 2001 even with break itself indicated the requirement of his service by the department, in facts and circumstances of the case, Respondents were directed to issue order for regular appointment in favour of petitioner (Para 5 to 7. Whereas in the present reference, none of the workers was appointed, neither any has continuance in the department from any specific period.

Further the plea of Mr. Sharma is that an Award was passed by Industrial Tribunal, directing the Management to treat the respondent as its regular employee from 1987-88, when admittedly juniors had been regularized; as the workman himself in his claim statement stated that he had been discriminated against by the Management by not regularizing him w.e.f. 01.04.1991-hence the Writ Petition was disposed of by modifying the Award to the extent that then the workman was granted the relief of regularization with that date, and not from 1987-88 as held in the case of Horticulture Deptt., Delhi vs. Rajinder Prasad & Ors. reported in 2012(132) FLR 926 (Delhi H.C.). But the instant Reference has no proof of admittedly junior having been regularized, so no question of any discrimination towards the casual workmen



arises.

None of the aforesaid ruling appears to be application to the factum of the case as it stands before me.

10. On the other hand, Mr. Sushil Prasad, Ld. Advocate for the OP/Management has contended that any of aforesaid casual workers has though no period of working for 240 days in a calendar year, yet he cannot claim any right of automatic regularization of their service-even in cases where there are regular posts and vacancies, procedure laid down for appointment has to be followed as held by the Hon'ble High Court, Jharkhand in the case of Eng. In.reg. Mgt of Food Corp of India vs. Union of India reported in 2008 (4) JLJR (para14).

11. In view of the aforesaid factual findings, I find the reference is devoid of any merits worth calling any. Therefore, it is, in the terms of the reference, hereby responded and accordingly awarded that the action of the Management of BSNL, Gaya, in not regularizing the alleged 51 workers (list enclosed) out of total 97 casual workers engaged by them is quite legal and justified, and there is no proof of regularization of remaining 20 such casual workers earlier. Hence the alleged workmen, if any, are not at all entitled to pay.”

10. It would be evident from the finding with



reasons recorded by the Tribunal that the so-called casual labourers failed to produce reliable evidence in order to support their claim that they had worked more than 240 days in one calendar year.

11. So far as the submission made by the learned Senior Counsel appearing on behalf of the petitioners that the petitioners ought to have filed their case before the Central Administrative Tribunal instead of approaching the Labour Court is concerned, this Court is of the opinion that this plea is being taken simply as lame excuse. The petitioners never raised any objection with regard to the jurisdiction of the Labour Court, rather they had fully participated in the proceedings before the Tribunal and adduced their evidence, but when the award was not passed in their favour, they are challenging the award taking shelter of jurisdiction and wrong legal advice.

12. Furthermore, from perusal of the orders passed by the Central Administrative Tribunal, Patna Bench, Patna in T.A. No. 11 of 2014, T.A. No. 10 of 2014 as also T.A. No. 17 of 2014, it would be evident that even Central Administrative Tribunal dismissed the claim of regularization of similarly situated workmen like the petitioners.

13. So far as the plea of the petitioners regarding the erroneous consideration of evidence by the Tribunal is concerned,



firstly, I see no merit in the submission of the petitioners and, secondly, this Court cannot sit in an appeal over the finding recorded by the Tribunal. The question of sufficiency of evidence will not be open before this Court.

14. While considering the limitation of powers of the writ Court under Article 226 of the Constitution of India with regard to the finding of fact on a petition for issuance of a writ of certiorari, the Supreme Court in *Syed Yakoob vs. K. S. Radhakrishnan* [AIR 1964 SC 477] succinctly held as under :-

“The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact



is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari.

In dealing with these category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court.”

15. In view of the ratio laid down by the Supreme Court in *Syed Yakoob, Appellant vs. K. S. Radhakrishnan* (Supra), when I look to the facts of the present writ application, I find that no patent error of law in the impugned award could be pointed by the learned Senior Counsel appearing on behalf of the petitioners. It has also not been shown that while recording findings, the Tribunal had refused to admit admissible material evidence or had erroneously admitted inadmissible evidence. What I find from perusal of the impugned award is that the evidences led on behalf of the parties have elaborately been dealt with by the Tribunal and



cogent reasons have been assigned for arriving at such finding. It is also not a case where the finding has been arrived at by the Tribunal on the basis of no evidence.

16. In that view of the matter, I am of the considered opinion that the question of sufficiency or adequacy of evidence will not be open by this Court for finding any fault with the award passed by the Tribunal.

17. In view of the discussions made above, I see no merit in this writ application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2017
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