

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14405 of 2016

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1. The Union of India through the Comptroller and Auditor General, New Delhi.
 2. The Principal Accountant General (Audit), Bihar, Indian Audit & Accounts Department, Birchand Patel Marg, Patna.
 3. The Sr. Audit Officer (Administration), O/o - the Principal Accountant General (Audit), Bihar, Indian Audit & Accounts Department, Birchand Patel Marg, Patna.

.... Petitioner/s

Versus

1. Sanjeet Kumar S/o - Sri Chandeshwar Ram R/o Mohalla - East Lohanipur, Rajendra Nagar, Road No. -2, District - Patna.
2. The Accountant General (Accounts & Entitlement), Bihar, Patna.
3. The Principal Director of Audit, E.C. Railway, Hajipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Madhuresh Prasad, Adv Mr. Om Prakash Mr. Abhay Kumar, Adv
For the Respondent/s	:	Mr. P.N. Sahi, Sr. Adv Mr. J.K. Karn, Adv Mr. H.K. Karn, Adv

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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: 20-03-2017

The office of the Principal Accountant General(Audit), Bihar are before this Court challenging the order dated 10th May, 2016 passed by the Central Administrative Tribunal, Patna in O.A. No. 050/00109 of 2014. They are aggrieved by the direction issued by the Tribunal to give weightage for the work experience to the private respondent for the matter of giving benefit of recruitment.



The submissions on behalf of the Union of India is that since the private respondent was a minor during the period he was engaged, no weightage can be given for that period and if weightage was not given for that period, no discrimination or arbitrariness emerges from the award of marks.

The submissions of the parties was considered by the Tribunal and crystallized in paragraphs 5 and 6 which are reproduced hereinbelow:-

“5. Heard the parties and considered their submissions/arguments/documents. The facts/views which emerge are as below.

[a] It is not disputed that the applicant has rendered service in the office of the respondents for a period of 251 days as a casual worker. It is also not disputed that this service was rendered during 2007 and 2008 when the applicant was below the age of 18 years. The basic issue for adjudication in this OA is whether the service can be counted for according weightage or marks while considering his appointment to group C post in Pay Band I [Rs. 5200-20200 with Grade Pay of Rs. 1800] in the office of the respondents.

[b] In regard to the above, it is noted that, by virtue of a circular dated 27.8.2010[relevant extract quoted above vide para 4], the respondents, while laying down the criteria for short-listing of candidates for the said recruitment, have provided for according marks for service rendered as casual worker. In terms of the said circular, the service rendered for 200 to 399 days as casual labour qualifies for 28 marks. In the normal course, an applicant who had rendered 251 days as casual labour is eligible for 28 marks, in terms of the above quoted circular.

[c] The respondents argue that since the service of the applicant as a casual work was during a period when he was below the age of 18 years, it cannot be counted for the purpose of according marks in terms of the circular. However, perusal of the said circular does not reveal any provision which stipulates that the service rendered by a person below the age of 18 years i.e. “boy service” is to be excluded/discounted while awarding marks for services rendered as a casual



worker. During the course of hearing, the respondents have not produced any document to establish that the boys service is to be excluded; nor does the written statement contain any document supporting their averment that “boy service” does not qualify for weightage or marks in terms of the circular dated 27.8.2010.

[d] To the extent the respondents had, by virtue of exercise of their own administrative powers, appointed the applicant as a casual worker during the period when he was below the age of 18 years and to the extent they have availed his service and paid for the same, their argument of ignoring this period of satisfactory service raises serious questions of equity, reasonableness and logic. That, in the circumstances, it would not be incorrect to conclude that this argument/action of the respondents virtually amounts to wanton exploitation of an employee who, given the large scale unemployment situation in the country, has no bargaining power vis-à-vis employer. That the respondents have opportunistically availed the services of the applicant and now seek to abandon him, exhibiting no pangs of social conscience and without relying upon any authorization or rule in this regard.

[e] A beneficial initiative has to be so interpreted as to make it in tune with the objective for which it has been formulated. In the circular dated 27.8.2010, the respondents have taken a beneficial approach to give weightage to service rendered as casual worker and award marks under the head “work experience” for the same. However, by their decision to exclude ‘boy service’ in the case of the applicant, they seem to be taking away from the left hand whatever benefit/consideration they have chosen to extend by their right hand. That they have chosen to do so without citing any applicable rule or specific reason, also leads one to the conclusion that the decision/action is capricious and arbitrary. This conclusion is further strengthened by the submission of the respondents themselves that they had initially awarded 28 marks to the applicant under the head “work experience” but had subsequently chosen to ignore/delete the same. Had they done so on the basis of any stipulated rules/guidelines, their bona fides would not have been questioned. Since they have chosen to do so without any documentary authority [at least none have been cited or submitted], their actions are clearly arbitrary and liable to invalidation.

[g] It is also noted that one vacancy for Scheduled Caste candidate is still lying vacant pursuant to conclusion of the recruitment process. The respondents argue that it will be filled in future along



with other vacancies by referring to the Staff Selection Commission. By making this argument, the respondents are obviously attempting to wash their hands of any liability which may accrue by virtue of their error in wrongly computing the total marks admissible to the applicant for 'work experience' and the consequential action which would emerge therefrom. Such an approach is neither tenable nor can be countenanced. It is axiomatic that by virtue of the default of one party the claims/right of the other party can neither be lost nor ignored. In other words, as has been famously observed in judicial rulings, no one can argue that "*I have committed a default and the right is lost because of that default*". In the result, the liability of the error must be borne by the party responsible for the error and rectification of the same should be attempted, wherever and to the extent possible.

[i] As regards the issue of referring the remaining vacancies to the Staff Selection Commission for future recruitment is concerned, it is noted that this Tribunal in its judgment in OA459 of 2012 has, inter alia held that such vacancies can be filled to rectify the acts of omission/commission and errors. That the spirit of the direction in the said OA has also been endorsed by the Hon'ble High Court of Patna in its judgment dated 28.7.2015 in CWJC no. 8820 of 2015.

6. In view of the above, this Tribunal holds that the respondents have established no substantive basis to exclude the service rendered by the applicant as casual worker inasmuch as they have abysmally failed to produce any document or rule in support of their decision. That the scheme for short listing of candidates, as per circular dated 27.8.2010, provides for awarding of marks for 'work experience' acquired through service on casual basis and that, in terms of the said circular, the applicant's service of 251 days qualifies for award of 28 marks. That, with the award of these marks, the applicant would have marks well about the cut off limit of 52 marks for SC candidates and would be deserving of consideration/appointment. That being the case, the respondents are directed to take further consequential action to consider and appoint the applicant against the one available vacancy for SC candidate within a period of three months from the date of receipt/communication of this order."

After going through the observations and decision rendered by the Tribunal, the Court is in agreement with the view



taken by the Tribunal that a beneficial initiative taken for the benefit of such daily wage employees has to be considered objectively. Weightage was required to be given for the work experience that is the period of work an employee has rendered under the petitioner and the technicality for which they themselves are at fault of engaging somebody who was less than 18 years of age cannot be held out by them to defeat the right of the private respondent from consideration.

The Tribunal’s direction, therefore, is in the spirit of the Constitution and the law. No interference, therefore is warranted with the order dated 10th May, 2016 passed by the Central Administrative Tribunal, Patna Bench.

The writ application stands dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23/03/2017
Transmission Date	NA

