IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.776 of 2016

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Shyam Sundar Son of late Kanchhi Ram 'Balmiki, Resident of Qtr. No. RN/173-174, Roharbandh, Sindri, Dhanbad working as Casual Labour Under the Commissioner, Central Excise & Service Tax, Ranchi Zone, Patna (Bihar)

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, North Block, New Delhi
2. The Commissioner, Central Excise, Patna
3. The Joint Commissioner (P & V), Central Excise (H), Patna
4. The Commissioner, Central Excise & Service Tax, Ranchi Zone, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. M. P. Dixit, Advocate
Mr. S. K. Dixit, Advocate
Mr. Sanjay Kumar Chaubey
Mr. Shailendra Kumar

For the Respondent/s : Mr. S. D. Sanjay, Sr. Advocate
Mr. Kumar Priya Ranjan, Advocate

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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: 16-01-2017

Heard learned counsels for the parties.

The Court is pained by the conduct of the respondents-Union of India, especially the Department of Central Excise in the manner the petitioner has been treated for almost three decades. His status is not better than a slave for all practical purposes, because he has worked unhindered from 27.08.1989 till date, but as a Casual Labour.

The claim of the petitioner is that looking at the length of service and after Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993, came into effect from 01.09.1993, the two conditions laid down therein was being fulfilled by the petitioner. He has put in more than 206 days in a year. He has been continuously in service since 1989 and continued to be so even after coming of the said scheme. Still the benefit did not accrue to the petitioner for the reason that a DOPTs office memorandum dated 12.07.1994 envisaged that any engagement as a casual employee should be through the process of an employment exchange.

The effort on the part of the petitioner, by moving the Central Administration Tribunal, Patna Bench, Patna, to beget a direction in this regard has also failed, because the Tribunal has taken a hyper technical view that since the petitioner's case was not sponsored by the employment exchange and he was hired by the respondents after death of his father on compassionate consideration, therefore, any direction would amount to violation of DOPTOM, dated 12.07.1994.

The submission of learned counsel for the petitioner seems to be correct that the 1994 OM of the DOPT cannot come in the way of regularization of the petitioner under the facts and circumstances of his engagement. He fulfills the requirements of regularization scheme. He has been in employment since 27.08.1989 and it is too late in the day now to throw the petitioner out on the roads on the technicality that the authorities hired him and engaged him without getting sponsored through the employment exchange.

Admitted fact is that there was compassion shown to the petitioner after the death of his father. There were compelling circumstances then for his hiring and now that compassion is sought to be taken away after almost three decades, emboldened by the decision of the Tribunal that the case of the petitioner was not sponsored by the employment exchange.

Since the petitioner fulfills the requirements and the conditions of the regularization scheme of 1993, otherwise, except with regard to sponsoring his candidature by the employment exchange, the same in normal facts and circumstances of the case cannot come in his way.

The writ application is allowed.

The impugned order passed by the Tribunal in O.A. No. 491 of 2011, dated 22.10.2014 is quashed with a direction upon the respondents that the case of the petitioner for granting him status of temporary status Mazdoor must be considered and a decision ought to be taken preferably within a period of eight weeks from the date of communication / production of a copy of this order..

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	18.01.2017
Transmission Date	