

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1034 of 2017

In

Civil Writ Jurisdiction Case No.16365 of 2015

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1. Dinesh Kumar, son of Sri Kailash Prasad, resident of Mohalla-Gopal Bigha, P.O. Gaya, P.S. Raypur, District- Gaya.
 2. Dilip Kumar, son of Ram Lakhan Singh, resident of Village-Shephganj, P.O. Banke Bazar, District- Gaya, Bihar.
 3. Vivekanand Kumar, son of Sri Tulsi Prasad, resident of Village-Bihargai, P.O. Bhaluhar Chaugai, P.S. Raushanganj, District-Gaya.
 4. Uday Kumar, son of Sri Rambaran Bhagat, resident of Village-Nawatala, Gasalchak, P.O. Ilara, P.S. Bodh Gaya, District- Gaya.
 5. Ajay Kumar, son of Late Anil Prasad, resident of Village-Uparhuli, P.O. Papraiya, P.S.- Papraiya, District- Gaya.
 6. Ramjee Prasad, son of Late Bhagwan Prasad, resident of Village-Khagri Bigha, P.O. Papraiya, District- Gaya, C/p Shri Kailash Prasad, Bangali Colony, Gowal Bigha, Paharitar, Gaya.
 7. Rajbansh Kumar, son of Sukhdeo Verma, resident of Village-Narayanpur, P.O.- Sonwan, P.S.- Ghoshi, District- Jehanabad (Bihar).
 8. Siyaram Bhagat, son of Shri Jagdish Bhagat, resident of Village-Shabaypur, P.O. Fatehpur, District- Gaya.

... .. Appellant/s

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.
5. Birendra Kumar, son of Lakhan Prasad, resident of Mohalla- Ghushni Tand (Madhusudan Colony), P.O. Chand Chaura (Gaya), District- Gaya.
6. Sita Ram Rajak, son of Sri Babu Lal Baitha, resident of Village and Post Kerap, Rafiganj, District- Aurangabad, Bihar.
7. Deo Saran Rajak, son of Shree Ram Bhikhari Rajak, resident of Village and P.O. Karap, Via- Rafiganj, District- Aurangabad, Bihar.
8. Satrudhan Kumar, son of Nand Lal Bhagat, Barki Delha, Kharkhura Road, Gaya.
9. Sudama Prasad Rajak, son of Sri Ram Bhikhari Rajak, resident of Rafiganj, District- Aurangabad, Bihar.
10. Sadhu Sharan Yadav, son of Sri Ram Kishun Yadav, resident of Village-Ghanshyam Bigha, P.O. and P.S. Muraliganj, District- Jehanabad.
11. Pappu Ram @ Pappu Kumar, son of Surendra Ram, resident of Village-Pundaul, P.O. Goh, District- Aurangabad.
12. Arjun Kumar Ram, son of Sri Ragho Ram, resident of Village- Laddupur Bhadar, P.O. Samari, P.S. Naraliganj, District- Nawada, Bihar.
13. Praveen Kumar, son of Sri Avinash Saw, resident of Village- Tholi Bazar, P.O. Sugharee, District- Nawada, Bihar.



14. Sunil Kumar, son of Sri Uday Singh, resident of Village- Godshar, P.O. and P.S. Ghoshi, District- Jehanabad, Bihar.
15. Nasiblal Pandit, son of Shri Sahber Pandit, resident of Village- Kako, P.O. Kako, P.S. Kako, District- Jehanabad, Bihar.
16. Anuj Kumar, son of Late Jay Prakash Narain, resident of Village and P.O. Nendarganj, P.S. Akbarpur, District- Nawada.
17. Naresh Kumar, son of Sri Badari Das, resident of Village- Sahwaspur, P.O. Barah, P.S. Punpun, District- Patna.
18. Arun Kumar, son of Sri Mahadeo Mahto, resident of Village- Chanwari, P.O. Binda, P.S. Madaya, Barachatti, District- Gaya.

... ... Respondent/s

with

Letters Patent Appeal No. 1186 of 2017

In

Civil Writ Jurisdiction Case No.16365 of 2015

1. Birendra Kumar, Son of Lakhan Prasad, Resident of Mohalla- Ghushni Tand, (Madhusudan Colony) P.O.-Chand Chaura (Gaya), District-Gaya
2. Arjun Kumar Ram, Son of Sri Ragho Ram, Resident of Village- Laddupur, Bhadar, P.O.-Samari, P.S.-Naraliganj, District- Nawada, Bihar.
3. Nasiblal Pandit, Son of Shri Sahber Pandit, Resident of Village- Kako, P.S.-Kako, District-Jehanabad, Bihar.
4. Anuj Kumar, Son of Late Jay Prakash Narain, Resident of Village and P.O.-Nendarganj, P.S.-Akbarpur, District-Nalanda.
5. Sudama Prasad Rajak, Son of Sri Ram Bhikhari Rajak, Resident of Rafiganj, District-Aurangabad, Bihar.
6. Praveen Kumar, Son of Sri Avinash Saw, Resident of Village- Tholi Bazar, P.O.-Sugharee, District-Nawada, Bihar.

... ... Appellant/s

Versus

1. The Union of India, through the Secretary, Ministry of Labour and Employment, New Delhi.
2. The General Manager, Bharat 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
5. Dinesh Kumar, Son of Sri Kailash Prasad, Resident of Mohalla-Gowalbigha, P.O.-Gaya, P.S.-Rampur, District-Gaya
6. Ramjee Prasad, Son of Late Bhagwan Prasad, Resident of Village-Khagri Bigha, P.O.-Papraiya, District-Gaya, C/P Shri Kailash Praasd, Bangali Colony, Gowalbigha, Paharitar, District-Gaya
7. Sita Ram Rajak, Son of Sri Babu Lal Baitha, Resident of Village and P.O.- Kerap Rafiganj, District-Aurangabad, Bihar.
8. Deo Saran Rajak, Son of Shree Ram Bhikhari Rajak, Resident of Village and P.O.-Kerap, Via-Rafiganj, District-Aurangabad, Bihar.
9. Satrudhan Kumar, Son of Nand Lal Bhagat, Barki Delha, Kharkhura Road, Gaya.



10. Ajay Kumar, Son of Late Anil Prasad, Resident of Village-Uparhuli, P.O.-Papraiya, P.S.-Papraiya, District-Gaya
11. Dilip Kumar, Son of Ram Lakhan Singh, Resident of Village-Shephganj, P.O.-Banke Bazar, District-Gaya
12. Vivekanand Kumar, Son of Sri Tulsi Prasad, Resident of Village-Bihargai, P.O.-Bhaluhar, Chaugai, P.S.-Raushanganj, District-Gaya.
13. Sadhu Sharan Yadav, Son of Sri Ram Kishun Yadav, Resident of Village-Ghanshyam Bigha, P.O. and P.S.-Muraliganj, District-Jehanabad.
14. Uday Kumar, Son of Shri Ram Baran Bhagat, Resident of Village-Nawatola, Gasalchak, P.O.-Hara, P.S.-Bodh Gaya, District-Gaya
15. Pappu Ram @ Pappu Kumar, Son of Surendra Ram, Resident of Village-Pundaul, P.O.-Goh, District-Aurangabad.
16. Siyaram Bhagat, Son of Shri Jagdish Bhagar, Resident of Village-Shabaypur, P.O.-Fatehpur, District-gaya.
17. Rajbansh Kumar, Son of 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. and P.S.-Ghoshi, District-Jehanabad, Bihar.
19. Naresh Kumar, Son of Sri Badari Das, Resident of Village-Sahwaspur, P.O.-Barah, P.S.-Punpun, District-Patna.
20. Arun Kumar, Son of Sri Mahadeo Mahto, Resident of Village-Chanwari, P.O.-Binda, P.S.-Madaya, Barachati, District-Gaya

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1034 of 2017)

For the Appellant/s	:	Mr. Alok Kumar Choudhary, Advocate Mr. Sanjay Kumar Sharma, Advocate
For the BSNL	:	Mr. Ashok Kumar Dubey, Advocate
For the Respondent/s	:	Mr. S.D Sanjay (Addl. Soc. Gen.) Mr. Uma Shankar Singh, Advocate Ms. Annushree, Advocate Mr. Sujeet Kumar Sinha, CGC

(In Letters Patent Appeal No. 1186 of 2017)

For the Appellant/s	:	Mr. Alok Kumar Choudhary, Advocate Mr. Sanjay Kumar Sharma, Advocate
For the BSNL	:	Mr. Ashok Kumar Dubey, Advocate
For the Respondent/s	:	Mr. S.D Sanjay (Addl. Soc. Gen.) Mr. Uma Shankar Singh, Advocate Ms. Annushree, Advocate Mr. Sujeet Kumar Sinha, CGC

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

8 03-10-2018

As both these appeals arise out of a common judgement and order passed by the Learned Single



Judge, both are heard and disposed off together by this common order.

Feeling aggrieved and dissatisfied with the impugned judgement and order passed by the Learned Single Judge dated 20.06.2017 in C.W.J.C. No. 16365 of 2015, by which the Learned Single Judge has dismissed the said petition and has confirmed the judgement and Award passed by the Industrial Tribunal (No. 2), Dhanbad, dated 30th of April, 2017, passed in Reference Case No. 22 of 2011, the original writ petitioners-casual workers/workmen have preferred the present Letters Patent Appeal.

That all the original writ petitioners were working as casual workers with the BSNL. At their instance, the industrial dispute was referred for adjudication to Central Industrial Tribunal, Dhanbad. The terms of reference was as under:

“(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?”

That on appreciation of evidence, the Tribunal found that none of the workmen have completed more



than 240 days in a calendar year and, therefore, they have not entitled to regularization. By the judgement and order dated 30th of April, 2015, the Industrial Tribunal held that the action of the Management of BSNL, Gaya, in not regularizing the services of the concerned casual workers, is quite legal and justified.

Feeling aggrieved and dissatisfied with the judgement and order passed by the Industrial Tribunal, Dhanbad, dated 30th of April, 2015, under Reference Case No. 22 of 2011, the concerned casual workers/workmen preferred the present writ petition being C.W.J.C. No. 16365 of 2015. By the impugned judgement and order, the Learned Single Judge has dismissed the said writ petition and has confirmed the judgement and Award passed by the Industrial Tribunal.

Feeling aggrieved and dissatisfied with the impugned judgement and order passed by the Learned Single Judge, the original writ petitioners have preferred the present Letters Patent Appeal.

Shri Alok Kumar Choudhary, learned Advocate appearing on behalf of the original writ petitioners has vehemently submitted that in the facts and circumstances of the case the Learned Single Judge erred in dismissing the petition, confirming the judgement and Award passed by the Industrial Tribunal



and the finding recorded by the learned Industrial Tribunal that none of the workmen have worked for more than 240 days in a calendar year.

It is further submitted by the learned counsel appearing on behalf of the appellants that as such both the learned Industrial Tribunal as well as the Learned Single Judge have committed a grave error in not considering the provisions of Section 25(B)(a)(ii) of the Industrial Tribunal Act.

It is submitted that if the aforesaid provision would have been considered, in that case it can be said that the concerned workmen has completed 240 days in a calendar year. No other submissions have been made.

Having heard the learned Advocates appearing for the respective parties and the judgement and Award passed by the learned Industrial Tribunal as well as the Learned Single Judge, at the outset, it is required to be noted that, as such, there are concurrent findings of fact, recorded by the High Court as well as the Industrial Tribunal that none of the casual workers have completed 240 days in a calendar year. The same being a finding of fact, the same is not required to be interfered by this Court in exercise of the Intra Court Appellate Jurisdiction.

Now, so far as the submission on behalf of the



original writ petitioners and the reliance placed upon Section 25(B)(a)(ii) of the Industrial Disputes Act is concerned, at the outset it is required to be noted that the aforesaid was neither pressed into service before the Industrial Tribunal nor even before the Learned Single Judge and the same is being raised for the first time in the present appeal. The aforesaid being a question of fact and, as such, how many days are required to be counted even while considering Section 25(B)(a)(ii) of the Industrial Disputes Act, would be a disputed question of fact, which cannot be considered for the first time before this Court in an Intra Court Appellate Jurisdiction.

There are concurrent findings of fact given by the learned Industrial Tribunal as well as the Learned Single Judge that none of the original writ applicants, who, as such, were casual labourers, completed 240 days in a calendar year.

For the reasons stated above, both these appeals deserve to be dismissed and are accordingly dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

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