

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.817 of 2018
In
Civil Writ Jurisdiction Case No.670 of 2002

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1. The Chairman Cum M.D. Head Office, National Insurance Company Limited, Calcutta.
 2. The Administrative Office (O.B.C. Cell) National Insurance Company Limited, Calcutta.
 3. The Regional Manager, Patna Regional Office, National Insurance Company Limited, Patna.
 4. The Divisional Manager, National Insurance Company Limited, Ranchi Patna Road, Hazaribagh.
 5. The Branch Manager, National Insurance Company Limited, Rajendra Nagar, Nawada, Bihar.

... .. Respondents/Appellant/s

Versus

Mahendra Kumar, Son of Ganesh Prasad, Resident of Mohalla Mangar Bigha, P.S. Nawada, District Nawada. Respondent/s

with
Letters Patent Appeal No. 816 of 2018
In
Civil Writ Jurisdiction Case No.6019 of 2004

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1. The Chairman Cum M. D. Head Office, National Insurance Company Limited, Calcutta.
 2. The Regional Manager, Patna Regional Office, National Insurance Company Patna.
 3. The Divisional Manager, National Insurance Company Limited, Ranchi Patna Road, Hazaribagh.
 4. The Branch Manager, National Insurance Company Limited, Rajendra Nagar, Nawadah, Bihar.
 5. National Insurance Company through the Managing Director Head Office.

... .. Respondents-Appellant/s

Versus

Mahendra Kumar, Son of Ganesh Prasad, Resident of Mohalla Mangal Bigha, P.S. Nawadah, District Nawadah. Respondent/s- Petitioner

Appearance :

(In both the Letters Patent Appeals)

For the Appellant/s	:	Mr. Rupak Kumar, Advocate
For the Respondent/s	:	Mr. Sandeep Kumar, Advocate
		Mr. Rohit Raj, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA



ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2019

Heard learned counsel for the appellants and the learned counsel for the respondent-petitioner Shri Sandeep Kumar. We had heard the matter yesterday and had passed the following order:-

“The appellant- National Insurance Company has come in appeals questioning the grant of relief by the learned Single Judge to the respondent-petitioner for treating him to be in service of the Company and then awarding him the minimum of pay scale with effect from 1st of January, 1993. The learned Single Judge has, however, in order to draw curtain over the litigation concluded that in stead of reinstating the writ petitioner or granting him any salary or backwages, a lumpsum amount of Rs.5,00,000/- be paid to the respondent-writ petitioner together with 20,000/- costs.

Learned counsel for the appellant-Company has advanced his submissions contending that the respondent-petitioner was engaged on casual basis due to shortage of Sub-staff and, therefore, this nature of engagement would not crystalize into anything further so as to allow the respondent-petitioner to claim regular wages or continuity in service or any other such co-related benefits.

Learned counsel for the respondent-petitioner prays that the matter be taken up tomorrow to enable him to answer the same.

Put up tomorrow.”



We have again today examined the entire facts and we find that the respondent-petitioner was appointed on a casual basis, but a recommendation was made for regular appointment keeping in view the requirement of the Bank. The said letter dated 05.08.1996, however, does not make any recommendation for regularization. The recital in the impugned judgement in Para 14 thereof to that effect is contrary to record.

The nature of casual engagement as a substitute of a Sub-Staff is evident from the document which has been filed as Annexure-8 to the writ petition. The request for regularization was not being considered as a result whereof the respondent-petitioner filed CWJC No.3498 of 2001 that was disposed of with a direction to the appellants to consider his request and pass an appropriate order. The claim was rejected on 8th of June, 2001 that came to be challenged in the writ petition giving rise to the present appeals.

The learned Single Judge has proceeded to treat the claim of the respondent-petitioner to be acceptable on the ground that the appellants could not have taken the benefit of the Constitution Bench Judgement in the case of ***Secretary, State of Karnataka and others Versus Umadevi & others***, reported in ***(2006) 4 SCC 1***, and on the other hand, the learned



Single Judge relied on a subsequent judgement in the case of **Maharashtra SRTC Vs. Casteribe Rajya Parivahan Karmchari Sanghatana**, reported in **(2009) 8 SCC 556** to hold that the order passed by the Appellant-Company denying the claim of the respondent-petitioner is unsustainable.

We find from the various paragraphs of the impugned judgement, including paragraph 24 in particular, where the learned Single Judge has considered the engagement of the respondent-petitioner to be that of a daily wager since 1991, and has then arrived at the conclusion that since he has worked for more than 240 days in one calendar year, he could not be dis-engaged without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947.

We are unable to sustain this part of the judgement, inasmuch as, the question of having worked for more than 240 days is a question of fact and its determination is dependent upon various documents and evidence which can only be gone into under the provisions of the Industrial Disputes Act if a proper claim is raised before it. There is no finding with regard to the nature of work being performed which was contested by the appellants as not being the same as any regular employee or on regular basis. The minimum of pay scale was therefore



inadmissible. The number of working days has also been contested and not admitted by the appellants. The learned Single Judge, therefore, could not have entered into this controversy and drawn a conclusion which does not appear to be justified, moreso, keeping in view the nature of the engagement of the respondent-petitioner as depicted as a casual engagement. Consequently, the impact of the engagement and the period of engagement were both questions of fact to be determined before the appropriate forum. The respondent-petitioner was not working against any sanctioned post which is evident from the letter dated 05.08.1996 and therefore any claim for regularization was inadmissible in law.

Learned counsel for respondent-petitioner has urged that this litigation has remained pending before this Court for the past almost two decades and, therefore, it will not be appropriate to relegate the respondent-petitioner to any alternative remedy. Learned counsel for the respondent-petitioner may be correct in his submission, but the fact remains that the nature of the controversy involved and directly in issue is about the status of employment and engagement of the respondent-petitioner which as noted above has been seriously disputed on the basis of the documents by the appellant-



Company. This, therefore, does not fall within the realm of any consideration in the exercise of jurisdiction under Article 226 of the Constitution of India and, therefore, we set aside the impugned judgement dated 22nd March, 2018 without prejudice to the rights of the respondent-petitioner to avail of any such remedy to establish his claim in accordance with law before the appropriate forum and in the event any such claim is raised, care will be taken to the principles mentioned in the provisions of Section 14 of the Indian Limitation Act as the writ petitioner, according to him, has been pursuing a bonafide litigation. In the event, any forum is approached, it is expected that an expeditious disposal shall ensue thereafter.

With the aforesaid observations, both the appeals stand disposed of.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

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CAV DATE	
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