

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17133 of 2016

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1. The Chief General Manager, Bharat Sanchar Nigam Limited, Meghdoot Building, G.P.O. Complex, Patna – 800001.
 2. The Pradhan Maha Prabandhak, Bharat Sanchar Nigam Limited, Telephone Bhawan, R-Block, Patna- 1.

... .. Petitioner/s

Versus

1. Sri Krishna Kumar Singh, Son of Sri Indrajit Singh, Village- Nirjampur, P.O.- Singhara, P.S.- Dulhin Bazar, District- Patna.
2. The Union of India through the Presiding Officer, Industrial Tribunal, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Harendra Prasad Singh, Advocate Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. S. R. Haque, Advocate Mr. Nawal Kishore Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 11-02-2019

Heard the parties.

In the present case, the petitioner is challenging the Award dated 03.06.2016 passed by the Industrial Tribunal, Patna in I.D. Case No. 09(C) of 2014/02 of 2011 by which the Tribunal has directed for regularization in services recorded a finding that other junior co-workers to the respondent no.1 have been regularized in service.

The respondent no.1, namely, Sri Kirshna Kumar Singh (workman) has claimed that he was appointed orally to discharge the duties of Lineman, Peon under Group-D at Telephone Exchange, Dulhin Bazar, Main Office under SDO, Danapur Rural. He was engaged as Lineman from 01.01.1992, used to discharge



the following duties of (a) Repair of Telephone Line, (b) Cable repair, (c) Charging of battery in Telephone Exchange, (d) Bringing Diesel Oil from Petrol Pump through *Thela* on the basis of coupon supplied by the Incharge of the Exchange and other sundry jobs of a Class IV employee and used to discharge the duties for 8 hours daily and for more time as per instruction of his superiors. He was paid wages @ Rs. 2,000/- per month from 01.01.1992 to 31.12.2000 and thereafter, wage was reduced. He was paid wages @ Rs. 1000/- from 01.01.2001 to 31.12.2005 and @ Rs. 500/- per month from 01.01.2006 to 31.12.2008. The payment was made through ACG17 Bill. After opening of Sub Divisional Office at Bikram, the control of Dulhin Bazar Telephone Exchange was shifted from Danapur Rural to Bikram. He has further claimed that Bharat Sanchar Nigam Limited formulated the schemes for regularization of the services of daily rated/ temporary workers on different occasion and the workers were required to submit their applications. This workman submitted his application for regularization / permanent absorption in the services of the Corporation. His name was forwarded to the higher authorities by the SDO, Telephone, Danapur along with other applications. The workman worked for over 10 years continuously. The case of workman was not considered for



regularization. The juniors or contemporary to the workman were considered for regularization. It has been claimed that uninterruptedly the workman had worked from 01.01.1992 to 31.12.2008 he was made to stop working from 01.01.2009. He represented to the Management for his reinstatement, but no positive step was taken by the Management. Claim has been made for reinstatement with back wages and other reliefs.

It appears that the workman has directly approached to the Tribunal under Section 2A (1) & (2) of Industrial Dispute (Amendment) Act, 2010 and whereafter the Tribunal has framed the following question:

“Whether the action of the management of Bharat Sanchar Nigam Ltd. in terminating the services of Sri Krishna Kumar Singh, a Lineman (Peon) under Group ‘D’, Telephone Exchange, Dulhin Bazar and not regularizing his services while regularizing the services of other Junior Co-Workmen, is legal and justified? If not, what relief(s) the workman is entitled to?”

Whereafter, the workman has filed the written statement where he has stated that he was terminated illegally from the services while discharging the duties as Class-IV employee and junior or contemporary, namely, Sanjay Kumar, Bhushan Prasad, Arun Kumar, Anil Bhagat and Binod Kumar have been regularized in Group-D and whereafter the Management has filed its written



statement wherein a plea has been taken that the workman, namely, Sri Krishna Kumar Singh never worked against permanent vacancy as permanent workman. The conciliation proceeding was conducted between the Management and the workman, but as the workman was never appointed against permanent vacancy, the said conciliation proceeding failed. It has been stated in paragraph 6 that the scheme from time to time was formulated by the Government. Some workman, who fulfilled the requirement were regularized but as the alleged, workman did not worked regularly and failed to satisfy the requirement for regularization, hence his services was not regularized, inasmuch as the workman was never appointed as regular staff under sanctioned post, hence there is no question for his termination and the statement regarding his termination is totally false.

The workman has brought on record the period he has discharged as well as the certificates which were granted to him by way of Exhibit – W to W1-16 to show that the period he has claimed is covered by this notification. So far the BSNL is concerned, they have not produced any witness to contradict the number of days which has been claimed by the workman. It is also very fantastic that during the argument, it has been claimed that the certificate is bogus but no one has come forward to



substantiate the statement raised by the petitioner-management, but learned counsel for the petitioner has pointed out that the period which has been mentioned in the certificate i.e. 01.01.1992 to 30.06.2009 but his claim is that he has worked from January, 1992 to 31.12.2008, itself shows that the certificate which has been produced has no legal sanctity, but learned counsel for the petitioner has not disputed the signature on the certificate granted by TTA Bikram, who has put his signature, and also not disputed the number of days, the workman had discharged his duty. In the written statement itself the Management has accepted that time to time the Government of India used to formulate the scheme of regularization of daily wager employee. In the entire written statement only, the claim has been made by the Management that he was not appointed on permanent basis against the sanctioned post but there is no denial of the work performed by the workman. To substantiate the claim, the workman has brought the different documents as exhibits W/1 to W/1-16, reflects number of days worked by the workman during the different period and the finding has been recorded that he has worked for 17 years as daily wages employee and his services has not been regularized.

One thing is much clear from the Award that the Tribunal has not declared the termination illegal but directly he has



given the direction of regularization in service and for regularization many factors are to be looked into and reliance can be placed on the judgment reported in **2006 (04) SCC 1 (Secretary, State of Karnataka & others Vs. Uma Devi and others)** and for illegal termination the tribunal is required to record a finding that whether he has worked for 240 days preceding 12 months from the date of termination, which is absent, and has also not recorded any finding that those persons, who have been named in the written statement and or in his oral evidence, are junior or contemporary to the respondent no.1. At the same time, the BSNL has also not brought any material to show that the case of the petitioner is different to those who have been regularized in service. If any person, junior to the workman having been regularized under the scheme then as an “Authority” within the meaning of Article 12 of the Constitution requires the same treatment should be given to him also as there is no finding recorded by the Tribunal of the illegal termination, so the straightway granting relief of regularization is completely illegal. It is also required to be looked into as to whether the Industrial Tribunal in exercise of power under Section 2A of Industrial Disputes Act can straightway pass an order of regularization.



Accordingly, the order passed by the Presiding Officer, Industrial Tribunal, Patna dated 03.06.2016 is quashed and the matter is remanded back to the Tribunal to pass a fresh award in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

However, the BSNL makes a prayer that as they have not produced any witness before the Tribunal to substantiate its claim, a liberty should be given to bring a witness in support of the case, but any witness cannot depose to enlarge or tangent to the pleading which he has made by way of written statement. This Court allows the prayer with aforesaid restriction.

The BSNL will not be entitled to file any additional or supplementary written statement but confine his evidence on the plea he has taken in the written statement.

Let the photocopy of the record received by this Court be returned to the Tribunal without any delay.

With the aforesaid observations and directions, this writ application stands allowed.

(Shivaji Pandey, J)

V.K.Pandey/
S. Katyayan

AFR/NAFR	NAFR
CAV DATE	15.02.2019
Uploading Date	NA
Transmission Date	NA

