

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25551 of 2019

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Mewalal Sah Son of Shri Ramchandra Shah, Resident of Village-Chakram
Das, P.S.-Vaishali, District-Vaishali.

... .. Petitioner

Versus

1. Union of India through its Managing Director Archaeological Survey of India New Delhi.
2. The Director General, Archaeological Survey of India, Government of India, 10 Janpath, New Delhi.
3. The Archaeological Superintendent, Archaeological Survey of India, Patna Circle, J.C. Road, Anta Ghat Patna.
4. The Assistant Superintendent Archaeological Survey of India, archaeological Museum, Vaishali.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar, Adv.
For the Respondent/s : Mr. S. D. Sanjay, Addl. Solicitor General
Mr. Ram Anurag Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 20-12-2019

Heard learned counsel for the petitioner and learned
counsel for the Union of India.

2. This application under Article 226 of the Constitution of India has been filed by the petitioner for quashing the order dated 16.05.2019 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short 'the Tribunal') in O.A. No. 50/1053 of 2012 whereby the claim of the petitioner to reinstate him in the capacity on which he was working since 1995 and to treat him in



continuous service from August, 2009 to the date on which his service was terminated has been rejected.

3. The contention of the learned counsel for the petitioner is that the petitioner was appointed on 27.11.1995 as a Class IV casual employee and was allotted the work for maintaining the garden of Vaishali Museum, Vaishali of the Archaeological Survey of India. After being appointed, the respondents took work from him in different capacities. For some time, he worked as a night watchman and some other time as a gardener or a clerk. The post on which the petitioner was working was a sanctioned post in the office of the respondents and for that a vacancy was also advertised inviting applications from the eligible candidates. He filled up application form for his appointment to the post of Class IV on regular basis. He was called for interview. However, after he appeared in the interview on 11.04.2007, he was not preferred for appointment and, subsequently, in the month of August, 2009, by an oral order, he was terminated from service. He contended that the Tribunal erroneously dismissed the application filed by the petitioner without assigning any cogent ground.

4. The respondents have contested the matter.



5. Mr. S.D. Sanjay, learned Additional Solicitor General appearing for the respondents submitted that the petitioner was never appointed against any sanctioned post. He did not work continuously in any capacity in the Museum. On several occasions, when the duty staff was on leave, work was taken from him on purely casual basis. He contended that the submission made by the petitioner that he continuously worked for about 13 years in the Museum is patently false. There is no evidence in support of such contention. According to him, in view of the materials on record, the Tribunal has rightly dismissed the original application filed by the petitioner.

6. We have heard the parties and perused the materials on record.

7. The petitioner has brought on record an undated order, as contained in Annexure-1 to the present writ petition signed by the Assistant Archaeological Superintendent, Archaeological Museum, Vaishali, which would show that the reliever, Vaishali Museum, Vaishali was directed that if the duty staff would be on leave, the services of the petitioner can be taken for the purpose of opening and closing the Museum under the supervision of senior watchman of the Museum. Certain certificates, which have also been issued by the Assistant



Archaeological Superintendent, Archaeological Museum, Vaishali have been brought on record, which would show that on certain occasions work was taken from the petitioner as a gardener in the Museum. There is nothing on record to show that the petitioner continuously worked in the Museum. That apart, casual employment in case of absence of a regular employee would not make the petitioner entitled to be absorbed on regular basis. The contention of the petitioner that pursuant to a regular vacancy he had applied but he was not appointed cannot also give any valid ground to the petitioner for being appointed against the vacant post. When a person gets employment on casual basis and the engagement is not based on proper selection, as recognized by the relevant rules, he is aware of the consequences of the appointment being casual in nature. Such a person cannot invoke theory of legitimate expectation. The State cannot legalise such appointment, as such appointment would be violative of Articles 14 and 16 of the Constitution of India.

8. Law in this regard is well settled. It is not the case of the petitioner that against any open advertisement, he was ever employed in the Museum in question. Off and on work taken from him cannot give him any vested right to be appointed. Such



appointment would apparently be a backdoor entry into service, which is not permissible in law.

9. The writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.12.2019
Transmission Date	

