

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2758 of 2019

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The Union of India through the Post Master General, Mahendra Prasad Rajak
North Bihar Circle, Gaushala Road, Muzaffarpur- 842002.

... .. Petitioner

Versus

1. The State of Bihar through the Labour Commissioner, Government of Bihar Patna, Niyojan Bhawan, Patna.
2. The Presiding Officer State Industrial Tribunal Patna.
3. The National Insurance Employees Association through its General Secretary, B M P Srivastava, J.P. Colony, Chandwara, Muzaffarpur, Bihar.
4. Sri Umesh Kumar Son of Baiju Ram, resident of Village Chandwara Soda Godown, Bharat Mata Gali, Muzaffarpur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mrs. Kanak Verma, Advocate
For the State	:	Mr. Raghwendra Kumar (SC 22)
For the Respondent No.4	:	Mr. Kaushalesh Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 18-01-2023

Heard Mrs. Kanak Verma, learned counsel
appearing on behalf of the petitioner, Mr. Kaushalesh
Choudhary, learned counsel for the respondent no.4 and Mr.
Raghwendra Kumar, learned counsel for the State.

2. By invoking the extraordinary writ jurisdiction
of this Court under Article 226 of the Constitution of India, the
petitioner seeks following reliefs:-

“(i) For quashing of the Award dated



24.02.2016 passed by Sri Bipin Dutta Pathak, the Presiding Officer, Industrial Tribunal, Patna in Reference No.04 of 2014 by virtue of which it has been held that workman Sri Umesh Kumar is in continuous service and workman has right to absorption having been engaged for the considerable period of time regularly even though on daily wages, and hence Management (Post Master General, North Bihar Circle, Muzaffarpur) is directed to given him a permanent status of a permanent regular employees with immediate effect with all consequential benefits after 09.08.2002.

(ii) For quashing of the impugned Notification no. L-40017/78/2013-1 R (DU) dated 06.02.2014 issued by the Respondent Government of India, Ministry of Labour, New Delhi whereby the Award passed by the Industrial Tribunal Patna Bihar under Reference no.04 of 2014.

(iii) For a declaration that the respondent workman not being covered by the definition of workman prescribed under the Industrial Dispute Act, 1947 the Reference of the dispute by the Respondent Ministry of Labour Government of India itself is illegal and without jurisdiction and bad in the eye of law.

(iv) For a declaration that the Reference of the dispute raised by the National Life Insurance Employees Association on behalf of the



Respondent workman itself being not an industrial dispute within the meaning of the Act, the impugned Award is bad in law and been passed without jurisdiction as such liable to be quashed by this Hon'ble Court and for any other relief(s) for which the petitioner may legally be found entitled to in the facts and circumstances of the present case.

3. The short facts which led to the filing of the present writ application is that the respondent no.4 was engaged/appointed on daily wages as Sweeper in the month of 1999 in the office of Head Post Office, Muzaffarpur.

4. From the materials on record, it is evident that on account of retirement of one Shri Ram Gopal Ram, who was working as sweeper, the post became vacant, against which the petitioner has been performing his duty of sweeper regularly. In the year 2002, the Senior Post Master, Muzaffapur issued a letter dated 03.08.2002, by which he recommended to grant temporary status to the respondent no. 4 and two other similarly situated persons, namely Sri Vishwa Vijay Kumar and Sri Brij Bhushan Prasad. On the basis of the aforesaid recommendation, the services of the respondent no.4 along with aforesaid two persons had given temporary status vide Order No. Sr. P.M./MISC/2002 dated 09.08.2002, a copy of which has been



annexed as Annexure-R/2. After working so many years, when the service of the respondent no.4 has not been regularized by the authority concerned, he filed representation before the Post Master General, North Region, Muzaffarpur, on 21.11.2011 submitting therein that he is possessing Intermediate qualification and has been working on vacant and sanctioned post of Sweeper on the basis of daily wages since 1999, in the meantime, the services of the several junior persons have been confirmed but his case has not been considered. Hence, he prayed for regularization of his services.

5. When the grievance of the respondent no.4 has not been redressed by the concerned authority, he approached before the Regional Labour Commissioner (Central), Patna on 04.12.2012. Thereafter, a notice was issued to the Senior Post Master, Muzaffarpur. In response to the aforesaid notice, he filed a reply negating the claim of the respondent no.4.

6. It would be relevant to mention here that on 06.02.2014, vide Notification No. L-40011/78/2013-IR (DU) dated 06.02.2014 issued by the Ministry of Labour, Government of India, the Central Government under clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). The



reference has been made as to “whether the workman has earned right of absorption having been engaged for a considerable period of time regularly even though on daily wages? and ‘whether the management of Post Master General, Northern Region should give him a permanent regular employees status with immediate effect? Respondent no.4 moved before the Central Government Industrial Tribunal No.2, Dhanbad, vide Reference Case No. I.D. 4 of 2014 on 08.03.2014 through the General Secretary and NLI Employees Association, Muzaffarpur. The aforesaid Reference Case has been transferred to the State Industrial Tribunal, Patna on 07.05.2014 and the Reference Case has been numbered as 17(C)/2014/04/2014. The notices were sent to the concerned parties and they have filed their respective written statements. Four witnesses have been examined on behalf of the Management whereas single witness has been examined on behalf of the workman (respondent no.4), the workman himself.

7. Considering the deposition of witnesses and the materials exhibits, the learned Presiding Officer of Industrial Tribunal, Patna, has passed an award directing the concerned authorities (petitioner) to grant status of a permanent regular employee to the respondent no.4. Paragraph-20 of the said



award is as follows:

“Considering all the aforesaid facts and circumstances and law cited in this case it is very clear that workman Sri Umesh Kumar is in continuous service and workman has right to absorption having been engaged for the considerable period of time and regularization even though working on daily wages and management of post master general, northern region should given him (the workman) a permanent regular employees status with immediate effects.”

8. Learned counsel for the Union of India while challenging the award dated 24.02.2016 vehemently submits that there are errors of record with respect to the fact that the respondent no.4 was engaged against permanent vacant sanctioned post whereas the fact is otherwise, he used to be engaged as daily wages employee and used to be paid salary by way of voucher and further he has raised that daily wager cannot be absorbed directly merely because he has worked for long unless his engagement is in terms of Articles 14 and 16 of the Constitution of India, placing reliance on the judgment of **Secretary, State of Karnataka And Others Vs. Umadevi (3) And Others reported in (2006) 4 SCC 1**. She further submits that respondent no.4 has been working as daily wager Mazdoor



from 1999. The Department of Posts, Government of India vide letter no. 66-52/92-SPB-1 dated 1.11.1995 subsequently amended vide letter no. 08.11.1995 clearly stipulated that engagement like casual labours after 01.09.1993 is not subject to be regularization in the Department. Thus, the Department has no liability of confirmant of temporary status to respondent no.4. She also submits that the Hon'ble Supreme Court in its judgment reported in **(2015) 5 SCC 786 [Durgapur Casual Workers Union And Others Vs. Food Corporation of India And Others]** has held that Uma Devi case has not overridden powers of Industrial and Labour Courts in passing appropriate orders. She lastly submits that compliance of the impugned award by the petitioner would amount to negation of the role of equality of opportunity to be given to the citizens in matters of employment, which would be expressly violative of Articles 14 and 16 of the Constitution of India.

9. Per contra, Mr. Kaushalesh Choudhary, learned counsel for the respondent no.4 by referring to the statements made in the counter affidavit as well as reply filed to the writ petition and the supplementary affidavit on behalf of the petitioner submits that from the materials available on record, it is admitted that the service of the respondent no.4 was given



temporary status way back in the year 2002, w.e.f. 09.08.2002 and, since then, he has been discharging his duty to the entire satisfaction of the authorities concerned. He has also drawn attention of this Court towards the instances where several persons, who were appointed on daily/casual basis, their services have been regularized/absorbed in different Departments but, discrimination has been caused to respondent no.4. He further submits that in the Reference Case No. 04/2014, the witnesses who were examined on behalf of the Management have also stated that the respondent no.4 has been working in its office as the permanent Sweeper, had already retired and, as such, it is apparent that the respondent no.4 was working against vacant and permanent post. In sum and substance, all the witnesses have admitted the fact of his working since 2000 as a Coolie/Sweeper and he was allowed minimum wages of pay-scale of Group "D" plus usual allowances admissible to the post. Mr. Choudhary next submits that the person along with whom the respondent no.4 has been given the temporary status, namely, Sri Brij Bhushan Prasad was also absorbed later on and who is presently working in the Department of Post and Telegraph. He also submits that the letter dated 01.11.1995, subsequently amended by the letter



dated 08.11.1995 issued by the Department of Post, Government of India, by which it is stated that any engagement like casual workers after 01.09.1993 is not subject to regularization in the Department, has never been adhered to, as the several casual/daily wages engaged between 21.01.1992-18.08.2007, their services have been regularized by the Department of Post, but with regard to the respondent no.4, the petitioner has taken a different stand. He lastly draws the attention of this Court towards the award passed by the Presiding Officer, Industrial Tribunal, Patna and vehemently submits that the same has been passed after taking into consideration the continuous service of respondent no.4 for a considerable period of time and, moreover, the Management had granted the temporary status to him since 09.08.2002. The award has been passed in accordance with law after taking into account the various judgments rendered by the highest Court of land wherein it has been held that “if the work is taken by the employer continuously from daily wages workers for a long number of years without considering their regularization for its financial gain as against employees legitimately claim, has been held as an unfair labour contract. In such a situation, a legal obligation is cast upon an employer if there be vacant post to fill it up with such workers



in accordance with law, if any.”

10. This Court has heard the learned counsel for the petitioner as well as the respondent no.4 at length and also given careful consideration to the award passed by the Industrial Tribunal, Patna and having seen the materials on record came to the conclusion that the respondent no.4 is in continuous service at the Head Post Office, Muzaffarpur since 1999 against the permanent perennial post of Sweeper on daily wage basis. There had never been any allegation against his disciplinary conduct and work culture and he had been allowed temporary status with other daily wagers/workman vide Memo No. Sr.PM/MISC/2002 dated 09.08.2002 issued under the signature of Senior Post Master, Muzaffarpur, Head Office. From the evidence of the Management witnesses, it also transpired that the cleaning work is done by daily wagers and respondent no.4 and one Raju Kumar were working as Sweeper. It also contended that in the aforesaid Memo dated 09.08.2002, the name of Sri Umesh Kumar (respondent no.4) was at the top. However, only one person Sri Brij Bhushan Prasad had made permanent but the respondent no.4 has never been given the status of permanent. The reliance made by learned counsel for the petitioner on a Constitution Bench judgment of the Hon'ble Supreme Court



rendered in the case of **Secretary, State of Karnataka (supra)**, in the opinion of this Court, strengthen the case of the respondent no.4 which observed that where a duly qualified person has been regularly appointed on daily wage basis against a sanctioned vacant post and has been continued for ten years or more, without intervention of any order of the Court or Tribunal, the question of regularization of service of such employees may have to be considered on merit.

11. Further the highest Court of the land in the case of **Durgapur Casual Workers (supra)** has been held that Uma Devi case has not overrideen powers of Industrial and Labour Courts in passing appropriate orders.

12. It would also be apt to observe that the Hon'ble Apex Court in the case of **Hari Nandand Prasad And Another Vs. Employer I/R To Management of Food Corporation of India And Another** reported in AIR 2014 SC 1848 has been pleased to observe in paragraph nos. 31 and 34 which are as follows:

“31. The Court in Maharashtra SRTC case [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] also accepted the legal proposition that courts cannot direct creation of posts, as held in



Mahatma Phule Agricultural University v. Nasik Zilla Sheth Kamgar Union [(2001) 7 SCC 346 : 2001 SCC (L&S) 1180] . Referring to this judgment, the Court made it clear that inaction on the part of the State Government to create posts would not mean an unfair labour practice had been committed by the employer (University in that case) and as there were no posts, the direction of the High Court to accord the status of permanency was set aside. The Court also noticed that this legal position had been affirmed in State of Maharashtra v. R.S. Bhonde [State of Maharashtra v. R.S. Bhonde, (2005) 6 SCC 751 : 2005 SCC (L&S) 907] . The Court also reiterated that creation and abolition of post and regularisation are purely executive functions, as held in a number of judgments and it was not for the court to arrogate the power of the executive or the legislature by directing creation of post and absorbing the workers or continue them in service or pay salary of regular employees. This legal position is summed up in para 41 which reads as under: (Maharashtra SRTC case [Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchhari Sanghatana, (2009) 8 SCC 556 : (2009) 2 SCC (L&S) 513] , SCC p. 576) “41. Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the



status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the courts.”

34. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In *U.P. Power Corpn. [U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh, (2007) 5 SCC 755 : (2007) 2 SCC (L&S) 258]*, this Court has recognised the powers of the Labour Court and at the same time emphasised that the Labour Court is to keep in mind that there should not be any direction of regularisation if this offends the provisions of Article 14 of the Constitution on which the judgment in *Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]* is primarily founded. On the other hand, in *Bhonde case [Food Corporation of India v. Union of India, (2005) 106 FLR 1171 : 2005 AIR Jhar R 1962]*, **the Court has recognised the principle that having regard to the statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi (3) case [State of Karnataka v.**



Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up permanent posts even when available and continuing to employ workers on temporary/daily-wage basis and taking the same work from them and making them do some purpose which was being performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice, as enumerated in Schedule IV of the MRTP and PULP Act, and it necessitates giving direction under Section 30 of the said Act, that the court would give such a direction.”

(emphasis supplied)

13. This Court would also observe that there is unexplained delay of almost three years in assailing the award passed by the Industrial Tribunal, Patna though no law of limitation has been prescribed for filing a petition under Article 226 of the Constitution but undisputedly the delay must be reasonable, as it may adversely affect the settled/crystallized rights of the parties.

14. The Hon'ble Supreme Court in the case of **Banda Development Authority, Banda Vs. Motilal Agarwal**



And Others reported in (2011) 5 SCC 394 has been pleased to observe in paragraph no. 18, which is as follows:

“18. In State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006] the Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held: (AIR pp. 1011-12, paras 17 & 21)

“17. ... It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. ... It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

21. ... The learned counsel is right in his submission that the provisions of the



Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.”

15. This Court cannot lose sight of the fact that writ against the award of the Industrial Tribunal can be filed on only limited grounds, *inter alia*, if the order suffers from an error of jurisdiction or breach of principles of natural justice or is vitiated by an error of law. However, no justifiable ground has been shown for interference. Even otherwise, the respondent no.4 has brought on record by filing reply to the supplementary affidavit filed on behalf of the petitioner giving instances of various persons whose services were absorbed in different Departments under the Post and Telegraph. Though, the



petitioner tried to controvert but finally failed to explain the facts of their absorption/regularization, having taken place.

16. In view of the discussions made herein above and the position obtaining in law, this Court does not find any ground to interfere in the award passed by the Presiding Officer, Industrial Tribunal, Patna.

17. Accordingly, the present writ application stands dismissed, sans any merit.

18. The petitioner is, therefore, directed to ensure the compliance of the award with all consequential benefits as has been granted in favour of the respondent no.4 forthwith.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	14-12-2022
Uploading Date	19-01-2023
Transmission Date	NA

