

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23449 of 2013

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Leayaquat Karim Son Of Late Saadat Karim Resident Of Karim Manzil,
Village - Saguna, P.O. - Danapur, P.S. - Danapur, District - Patna

... .. Petitioner/s

Versus

1. The Union Of India, through the Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi.
2. The Adjutant General Sakha Seva Mukhyalaya, MIA CIC (A) Addl. Dle General Of Man Power, Adjutant General's Branch, Army Head Quarters, DHQ, P.O. New Delhi - 110011
3. The Commander H.Q Jharkhand, Orissa, Bihar Sub-Area, Danapur Cantonment, District - Patna
4. Officer Commanding, 298 (I) Supply Platoon, Asc, Danapur Cantonment, P.O. - Danapur, District - Patna
5. The Assistant Director, Supply and Transport, H.Q. Jharkhand, Orissa, Bihar Sub Area, Danapur Cantonment, Patna
6. The In-Charge H.Q. Jharkhand , Orissa, Bihar Sub- Area, Danapur, Cantonment, Patna
7. The Officer-In-Charge, ASC, Rabbit Gas Agency, C/O 298 I Supply Platoon, Asc Danapur, Cantonment,

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Tiwary, Advocate
For the Union of India : Mr. Raj Kamal, CGC

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 23-06-2023

The present writ petition has been filed
seeking the following relief:-

*"That the petitioner prays for
the issuance of a writ of certiorari,
seeking quashing of letter dated
08.07.2010 issued under the
signatures of respondent no. 7
purportedly on the direction of the*



competent authority dated 30.06.2010 whereby the services of the petitioner stands terminated on the grounds that the petitioners appointment stands cancelled due to the fact that as per the agreement petitioners contract was to be renewed on 1" January 2003 which had not been done."

2. At the outset, the learned counsel for the respondent-Union of India has raised a preliminary objection regarding the maintainability of the present writ petition inasmuch as though the petitioner had challenged the order of termination of his services before the Central Administrative Tribunal, Patna by filing O.A.No.680 of 2010, which has stood dismissed, vide order dated 25.05.2011 and then the petitioner had preferred a review petition bearing Review Application No.20 of 2011, which has also stood dismissed, vide order dated 19.08.2013, but the said orders have never ever been challenged by the petitioner. Secondly, it is submitted that the present case is squarely covered by a judgment rendered by the learned



Division Bench of this Court in CWJC No.1666 of 2014 (**Nageshwar Prasad vs. The Union of India & Ors.**), paragraph nos.4 to 6 whereof are reproduced hereinbelow:-

“4. Mr. Bindhyachal Singh, learned counsel appearing in support of the writ petitioners submits that the petitioners, being daily wage employees of the Gas Agency, located in the Cantonment and maintained and run by the Army Cantonment, would make them Government servant. Accordingly, being temporary/casual labourers, they would be entitled to be regularized according to Circular dated 22.08.2000, having worked for more than 10 years. Instead of this, they have been dismissed unceremoniously. In order to establish that they are Government servants, references have been made that whenever they have been given pay revision, it was with permission from authorities of Jabalpur or other places. They were issued security passes and Cantonment cards. They have not produced their appointment letters



either before the Tribunal, as noted by the Tribunal, nor before this Court. To us, that would be the first question. Whether they were in employment under in Central Government in any capacity? The answer must be emphatic 'No'. Firstly, we must see what is the nature of this Rabbit Gas agency. This is a Gas Agency set up by the Regimental office to facilitate gas supply to officers and Jawans in the Cantonment Area. Being in the Regiment head quarters, its functionings are supervised and under the control of Army Officers posted in the Cantonment. One of the documents, relied by the petitioners, is to show that the pay revisions were done under the recommendation and approval received from Core head quarters. That document itself shows that the salary has to be paid out of profits made in the Gas Agency this is very important, for this clearly establishes that the remuneration which the petitioners received does come from the Central Government. It is a private arrangement amongst the defence personnels at the regimental



level, meant for their own convenience. Any employment under the State would predicate, apart from others, not only a master- servant relationship as between an employee and the State, as distinct from an individual, but the post must be sanctioned, there must be cadre and the payment must come from the State. In the present case, there is no jural relationship as between the petitioner and the Central Government. Orders are passed by Army Officials merely because it is a convenient set up by the Officers themselves. It does not mean that the Officers are representatives of the Central Government when they employed the petitioner or they dismissed them. Undisputedly, there is no cadre in which they worked, much less, a cadre under the defence Core. Considering these aspects of the matter, the claim of the petitioners to be regularized in Defence Service on the basis of the Circular aforesaid, which is meant for casual labourers employed in Defence Service can be of no avail.



5. So far as the dismissal is concerned, the petitioners were admittedly daily wagers. They were not dismissed; they were disengaged. In the same very letter, there is a mention that in view of the vacancy caused, fresh applications be called for, and the petitioners were also granted opportunity to apply afresh. At the Bar we are told that the petitioners did not apply, as they challenged the termination and sought regularization in the Defence Service. So far as disengagement is concerned, the order itself says that there had been an inquiry. Being daily wagers simpliciter, they had no right to the post, and as such they cannot contend that the disciplinary proceedings rules, as available to Defence personnel ought to have been followed

6. For the reasons aforesaid, we are not inclined to interfere in the matter. The writ petition is, accordingly, dismissed.”

3. The aforesaid aspect of the matter has not been refuted by the petitioner.



4. Having regard to the aforesaid facts and circumstances of the case and moreover, considering the fact that the present case is squarely covered by the judgment, rendered by the learned Division Bench of this Court in the case of **Nageshwar Prasad & Anr.** (supra), I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2023
Transmission Date	NA

