

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12899 of 2022

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Mahendra Thakur @ Mahendra S/o Late Kali Charan Resident of village and
P.O.- Sakrauli Bazar P.S. - Mata, District- Kushi Nagar (U.P.)

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railways,
Hazipur, Bihar.
2. The Divisional Railway Manager (Personnel) Samastipur Division,
Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amaresh Kumar Sinha, Advocate Mr. Pawan Kumar, Advocate Mr. Dinesh Kumar, Advocate
For the Respondent/s	:	Mr. Tuhin Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-08-2023

Heard learned counsels for the parties.

2. The present writ petition is filed by petitioner- Mahendra Thakur @ Mahendra. He was initially appointed as a casual labourer with the Respondent- Railway Department and his services were brought on temporary status in the year 1991. When he was holding the post of temporary status, his services were terminated on 31.07.1993 and it was subject-matter of Original Application No. 38 of 1994 before the CAT and it was set aside on 24.12.2001. Thereafter, petitioner was reinstated to



the post of temporary status, vide orders dated 21.03.2002 read with order dated 03.05.2002. In the meanwhile, similarly situated persons whose services had not been terminated and their services were regularized w.e.f. 31.12.1997. In this backdrop, petitioner has assailed the date of regularization i.e. 16.04.2009. Petitioner is stated to have approached the concerned Railway authorities to rectify the date of regularization from 16.04.2009 to that of 31.12.1997. There was inaction on the part of Respondent and in the result petitioner filed O.A. No. 20 of 2014 and it was disposed of with a direction to consider his representation. It was rejected on 17.04.2014 resulted in filing O.A. No. 406 of 2015 and it was dismissed on 29.03.2019.

3. Central Administrative Tribunal, Patna Bench, Patna (for short' CAT') proceeded to reject the petitioner's claim that he is not entitled to regularization on par with similarly situated persons w.e.f. 31.12.1997 instead of 16.04.2009 on the sole ground that insofar as quashing of termination order dated 31.07.1993 by the CAT was without authority of law/ without authority of jurisdiction. It is to be noted that respondents have accepted the earlier orders of the CAT insofar as quashing of termination order dated 31.07.1993, in other words, it has



attained finality. Therefore, CAT subsequently cannot take a decision that setting aside of the termination order dated 31.07.1993 was without jurisdiction of the CAT, as long as setting aside the termination order dated 31.07.1993 by the CAT order is not recalled, reviewed or set aside by higher forum and it has attained finality. Even such observation of the CAT is incorrect for the reasons that Apex Court in the case of ***Union of India & Others Vs. Deep Chand Pandey & Another*** reported in ***(1992) 4 SCC432*** it is held that casual labourer is entitled to approach CAT and not High Court.

4. The next question would be what is the fate of quashing of termination order dated 31.07.1993. Petitioner is entitled to all consequential service benefits including monetary benefits. At this stage, it is necessary to take note of Apex Court's decision rendered in the case of ***Shree Chamundi Mopeds Ltd. V/S Church of South India Trust Association Csi Cinod Secretariat, Madras*** Reported in ***(1992) 3 SCC 1***.

In para 10 it is stated as under:-

"10. In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become



economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. **Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed.** The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the



Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only



question that has been canvassed in Civil Appeal No. 126 to 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed." (*underline supplied*)

5. If the principle laid down by the Apex Court cited (*supra*) is taken note of in that event petitioner is entitled to all service and monetary benefits on account of quashing of termination order dated 31.07.1993. Petitioner being a low paid employee and he may be illiterate, therefore the official respondent cannot take undue advantage of such position and proceed to give a random date of regularization as on 16.04.2009. Similarly situated persons whose services have not been terminated and who were also having the temporary status as on 31.12.1997 they have been extended regularization benefit. In fact, junior to the petitioner, namely, Rabuddin Ansari and Dinesh Prasad have been regularized w.e.f. 31.12.1997. Petitioner has been discriminated in extending benefit of regularization.

6. No doubt, there is delay in claiming benefit of regularization w.e.f. 31.12.1997 that does not be a hurdle for the petitioner in the light of Apex Court's decision in the case of *M.R. Gupta V. Union of India & Others* reported in *AIR*



1996 SC 669, in other words, re-fixation of date of regularization would result in extending certain monetary benefits like ACP and other financial benefits including re-fixation of pay and pension. Therefore, CAT as well as official respondents have committed glaring error in not extending the petitioner the date of regularization as on 31.12.1997 on par with his immediate juniors read with the fact that petitioner's termination order was set aside by the CAT and it has attained finality. Further, it is noticed that the petitioner is stated to have attained the age of superannuation and retired from service. Taking note of these facts and circumstances petitioner has made out a case so as to interfere with the order dated 17.04.2014 of the Respondent- Railway Department and order passed in O.A. No. 406 of 2015 dated 02.04.2019. Hence, they are set aside. The concerned official respondents are hereby directed to re-determine the date of regularization of the petitioner from 16.04.2009 to that of 31.12.1997 and thereafter proceed to extend all service and monetary benefits on par with Rabuddin Ansari and Dinesh Prasad. The concerned respondents are hereby directed to extend all service and monetary benefits with reference to aforementioned persons within a period of four months from the date of receipt of this order. If the service



benefits and arrears of monetary benefits is not granted to the petitioner within the aforementioned period in that event he is entitled to litigation cost and it is quantified @ Rs. 50,000/-. The imposition of cost is taken note of with reference to Apex Court's decision rendered in the case of *Uflex Limited vs. Government of Tamil Nadu & Others* reported in *(2022) 1 SCC 165*.

7. The principle laid down by the Apex Court in the aforementioned case is that if the litigant was compelled to approach the judicial forum and if he succeeds he is entitled to litigation cost.

8. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.08.2023
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