

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.35 of 2021

In
Civil Writ Jurisdiction Case No.14740 of 2018

-
-
1. The Bharat Sanchar Nigam Limited through Chairman Cum Managing Director, Bharat Sanchar Nigam Limited, BSNL Corporate Office, New Delhi- 110001.
 2. The Assistant General Manager (Pers-III), Office of the Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited, BSNL Corporate Office, New Delhi- 110001.
 3. The Chief General Manager, Telecom, Bharat Sanchar Nigam Limited, Patna- 800001 (Bihar).
 4. The Assistant General Manager (Estt.), Office of the Chief General Manager, Telecom, Bharat Sanchar Nigam Limited, Patna- 800001 (Bihar).
 5. The General Manager, Telecom District Manager, Bharat Sanchar Nigam Limited, Darbhanga, (Bihar)- 846007.
 6. The Telecom District Manager, Bharat Sanchar Nigam Limited, Madhubani (Bihar)- 847402.
 7. The Divisional Engineer (Admn), Office of the Telecom District Manager, Bharat Sanchar Nigam Limited, Madhubani (Bihar)- 847402.
 8. The Divisional Engineer (Admn), Office of the Telecom District Manager, Bharat Sanchar Nigam Limited, Darbhanga, (Bihar)- 846007.

... .. Petitioner/s

Versus

1. Sudhir Kumar Jha son of Late Shiv Shankar Jha Regular Majdoor (Group-D), Bharat Sanchar Nigam Limited, under Madhubani SSA, District-Madhubani (Bihar).
2. Pawan Kumar Jha son of Late Rup Narayan Jha Regular Majdoor (Group-D), Bharat Sanchar Nigam Limited, under Madhubani SSA, District-Madhubani (Bihar).
3. Sipahi Singh son of Arjun Singh Regular Majdoor (Group-D), Bharat Sanchar Nigam Limited, under Madhubani SSA, District- Madhubani (Bihar).
4. Anant Jha son of Late Baldeo Jha Regular Majdoor (Group-D), Bharat Sanchar Nigam Limited, under Madhubani SSA, District- Madhubani (Bihar).

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Dubey, Advocate
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE PARTHA SARTHY



ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 19-07-2024

Heard learned counsel for the review petitioners.

2. This application has been preferred seeking review of the judgment dated 17.01.2020 passed in CWJC No.14740 of 2018. The said writ application was preferred seeking the following reliefs :-

“I. For issuance of an appropriate writ/writs, order/orders and/or direction/directions in the nature of certiorari for setting aside the order dated 02.01.2018 passed in O.A.No.050/00473 of 2017 by Hon’ble Central Administrative Tribunal, Patna Bench, Patna by which O.A. was disposed of with a direction upon the respondent authorities to hold supplementary Limited Departmental Competitive Examination (LDCE) for the present applicants on the same standard as held on 20.08.2017, within two months from the date of communication of this order and pass appropriate orders on the same, without appreciating the facts and policy decisions in this regard.

II. For any other relief/reliefs for which the petitioner is entitled in the eye of law.”

3. The learned Writ Court has dealt with the facts of the case in Paragraphs 3, 4 and 5 of the order under review, which are being reproduced hereunder for ready reference:-



“3. The facts of the case in brief are that the respondents were initially engaged as Daily Rated Mazdoors and were granted temporary status. While working under the temporary status, they were granted status of Regular Mazdoor vide order dated 18.07.2002. While working under the regular status they received chargesheet dated 04.02.2011 and were proceeded against departmentally. The proceedings against them concluded with order dated 05.03.2016 imposing penalty of lower stage in the existing time scale of pay by two stages for six months. During pendency of the disciplinary proceedings, a notification for Limited Departmental Competitive Examination (for short ‘LDCE’) for the post of Telephone Mechanic was notified but the respondents were not allowed to appear in examination going to be held on 28.09.2014 as they were not fulfilling the mandatory condition as stated in para 6(4) of the notification dated 01.08.2014. Feeling aggrieved by the decision of the petitioners, the respondents approached the Central Administrative Tribunal, Patna Bench, Patna (for short ‘Tribunal’) vide O.A/050/00684/2014. In the said case, the Tribunal vide order dated 25.09.2014 directed the petitioners to allow the respondents to appear in LDCE provisionally and keep their result in sealed cover. The respondents appeared in the examination but they did not qualify. Hence, vide order dated 05.12.2017, the original application was dismissed by the Tribunal as the same had



become infructuous. Subsequently, notification dated 03.06.2017 was issued for conducting LDCE examination 2017 and the date of examination was fixed on 20.08.2017 in order to fill up the vacancies for the post of Telecom Technician up to 31.3.2017. As per the provision in the recruitment rules of Telecom Technician circulated vide BSNL Corporate office letter dated 250-3/2012-PERS-III dated 19th September, 2012, the eligible employees were directed to submit their application form latest by 19.07.2017. The respondents submitted their application form in time, but the petitioners did not issue admit card to the respondents.

4. Being aggrieved by the non issuance of admit card, the respondents filed Original Application no.050/00473 of 2017 before the Tribunal.

5. The petitioners filed their written statement before the Tribunal in the said Original Application wherein it was pleaded that the respondents were engaged as daily wagers for some project as and when required and on completion of the project work they were disengaged along with several labourers. Being aggrieved with their disengagement they filed O.A.No.404 of 1998 which was heard together with batch of cases and were disposed of in 1999 with certain direction about maintaining seniority with liberty to the Department to make necessary enquiry as per law into the allegations regarding their initial engagement on the basis of forged records mentioned in their labour cards.



As per the order of the Tribunal, a High Power Committee was constituted to verify the genuineness of their claim of initial engagement. On enquiry, the High Power Committee came to the conclusion that the labour cards of the respondents contained forged and false signature of SDE/JJO and on enquiry from the authorized SDE/JJO of that period they denied about their signature in writing and submitted that the signature was not done by them. On the basis of enquiry a proceeding was initiated against the respondents under Rule 36 of BSNL CDA Rules, 2006 vide memo dated 19.6.2010. Meanwhile, as per the order of Tribunal, all the respondents, who were working as labourers in the Department were granted adhoc temporary status of labour and subsequently adhoc status of Regular Mazdoor. It was further pleaded that during pendency of departmental proceeding against them, notification was issued for conducting LDCE but the respondents were not allowed to appear in the examination as they were not fulfilling the mandatory condition as stated in para 6(4) of notification dated 1.8.2014. It was further pleaded that the departmental proceedings initiated against the respondents have been concluded and vide order dated 5.3.2016 penalties have been imposed upon them.”

4. The learned Writ Court has taken note of the order dated 02.01.2018 passed by the learned Tribunal disposing of



the original application with a direction to the respondent authorities to hold a supplementary examination for the respondents on the same standard as held on 20.08.2017 within two months from the date of communication of the order.

5. It was this order of the learned Tribunal which was sought to be challenged before the learned Writ Court. The petitioners raised the contention that since the respondents were neither adhoc Regular Majdoor nor adhoc Temporary Majdoor, they could not have been allowed to appear in the Limited Departmental Competitive Examination (in short 'LDCE') for the post of Telecom Technician. It was contended that the respondents were forged appointees who have no legal right to participate in the departmental examination.

6. The petitioners submitted before this Court that since the respondents had not attained the required eligibility to appear in the LDCE for the post of Telecom Technician as per mandatory Condition No. 6(4) prescribed by notification dated 01.08.2014, the direction issued by the learned Tribunal to arrange for a supplementary examination for them is liable to be set aside.

7. The learned Writ Court went through the provision



of Clause 6(4) of the notification dated 01.08.2014 and found that the said provision provided that the Casual Majdoors working in SSA units possessing 10th standard qualification and having been granted TSM status by the Department would be eligible to appear in the LDCE.

8. The learned Writ Court further found that provisional gradation list was prepared by Office of the General Manager, Telecom, District-Darbhanga dated 01.05.2001, as contained in Annexure '3' to the writ petition, which would show that the respondents were granted temporary status on provisional basis with effect from 01.08.1998. It was further noticed that vide office order dated 18.07.2007, as contained in Annexure '4' to the writ petition, the competent authority had conveyed the Office of the General Manager Telecom, District-Darbhanga his approval to grant Regular Mazdoor status to the respondents who were working as TSM on temporary or adhoc basis.

9. For the above reasons, the learned Writ Court found that the records of the petitioners itself suggest that the respondents were earlier TSM on adhoc and temporary basis and were approved to be conferred with the status of Regular Mazdoor on 18.07.2002.



10. While making submissions before this Court Mr. Ashok Kumar Dubey, learned Counsel for the review petitioners, has taken us through Annexure '4' of the review petition, which is a copy of the order dated 01.05.2001. It is submitted that this order was issued in order to implement the decision of the learned Central Administrative Tribunal for consideration of TSM/regularisation of Casual Mazdoors within department's norms and for that purpose a provisional/adhoc gradation list had been prepared based on the basis of the labour cards submitted in the Office as shown in the Annexure (in five pages for 191 Mazdoors). On the direction of the learned CAT, Patna, they were granted temporary status on provisional/adhoc basis with effect from 01.08.1998. This word 'adhoc basis' is the bone of contention. It is submitted before this Court that the respondents were not granted the status of 'TSM' rather they were 'TSM on adhoc basis'.

11. Learned counsel for the review petitioners submits that since Clause 6(4) of the notification requires that a Casual Mazdoor working in SSA units possessing 10th Standard qualification and having been granted 'TSM' status by the Department would be eligible for recruitment to the post of Telecom Mechanic now called Telecom Technician, the



respondents were not eligible to be considered under the said rule.

Consideration

12. We have gone through the records. The order of the learned Tribunal pursuant to which Annexure '4' to the review petition was issued, is available on the record. Paragraphs 16 and 16A the order of the learned Tribunal would be important to be taken note of hereunder and we do so:-

“16. In this connection, the learned counsel for the applicants referred to the earliest departmental scheme known as grant of “temporary status and regularisation scheme” issued by DOT, Government of India, New Delhi, vide circular letter No.(1) DOT circular No.269-10/89 STN dated 7.11.1989 (as at Annexure-A-15 of OA No.436 of 1998 and (ii) subsequent clarificatory letter No. DOT letter No.269-10/89; (iii) No.269-4/93- (STN II) dated 17.12.93 (as at Annexure-A-6 read with Annexure-A-7 of the OA No.402/98); (iv) Office order No.6(87) Estt. PPD 937 dated 24.8.90 of the Executive Engineer Postal Division, Patna (as at Annexure-A-2 of OA-599/96); (v) letter No. ST 37-1998 CL dated August, 1998 of the Chief Manager (Telecommunication), Bihar Circle, Patna (as at Annexure-A-15 of the OA



No.402/98 and (vi) O.M.No.49014/4/90-Estt. (C) dated 8.4.91 (as at Annexure- of the O.A.) and submitted that under the aforesaid schemes and the clarificatory letter/circular orders of the Respondents, the applicants are entitled to grant of temporary status and regularisation of their services, as they fulfil all the following conditions:-

- (1) They are currently employed*
- (2) They have rendered a continuous service of one year i.e. 240 days/206 days before 17.12.93;*
- (3) They were engaged prior to 22.6.88;*
- (4) They were not absent for more than 365 days preceding 17.12.93;*
- (5) They were recruited before 7.6.88 and, therefore even if otherwise than through Employment Exchange and had crossed the upper age limit prescribed for the post, provided, they are otherwise eligible for regular appointment in all other respects, they are entitled to the grant of temporary status.*

16A. The Respondents have not controverted provisions under rule for grant of temporary status and regularisation of the services of the applicants with the Respondents. There is also no denial of the facts of their fulfilling



*the aforesaid conditions in the streotype
Written Statements in all the O.As.”*

13. Having considered the case of the applicants in the said Original Application, some of whom are respondents in the present case, the learned Tribunal issued certain directions which are contained in paragraph ‘21’, which is reproduced hereunder:-

“21. In view of the aforesaid discussions of the factual and legal aspects of the matter involved, we dispose of all the aforesaid O.As. with the following directions:-

(i) The impugned termination notices/ orders dated 30.6.98 issued by the Respondents Department to the applicants are quashed,

(ii) Those of the applicants, who have been either disengaged and/or engaged under the interim orders of the Tribunal or otherwise shall continue to be engaged on the term and conditions as applicable to them;

(iii) Those of the applicants, who have been disengaged by the impugned order shall be re engaged with Continuity of service, but without back wages on the terms & condition as applicable to them;

(iv) The Respondents shall draw up a seniority list of the DRMS/Casual labours and assign them proper seniority with reference to their initial dates of engagement as well as length of service;

(v) The Respondents shall examine the question



of conferment of temporary status and regularisation of their services as per the relevant rules, the exercises relating to IV and V shall be completed within four months from the receipt of a copy of this order.

(vi) The Respondents shall, however, be at liberty to make necessary inquiry into the allegations regarding their engagement on the basis of alleged forged records and to take appropriate action in the matter in accordance with law.

In the facts and circumstances, there shall be no order as to costs.”

14. On bare reading of the order of the learned Tribunal, it would appear that there was a direction to the respondents to examine the question of conferment of temporary status and regularisation of the services of the applicants as per relevant Rules. Pursuant to this order, when the respondents who are the petitioners before this Court took up the exercise for conferment of temporary status and regularisation of the services of the applicants, they decided to confer temporary status but while issuing Annexure ‘4’ they came out with a word ‘TSM on adhoc basis’. They themselves further granted them the status of Regular Mazdoor. But, at this stage, they are trying to take benefit of their own wrong by pointing out that the applicants were not granted the status of ‘TSM’ rather they were ‘TSM on adhoc basis’.



15. We find from the discussions in the order of the learned Tribunal as well as the learned Writ Court that both have examined the entire pleadings on the record and the relevant recruitment Rules and then rightly concluded that the competent authority having conferred the status of ‘Regular Mazdoor’ to the respondents, have in fact taken them as ‘TSM’ and only thereafter they have been regularised to a higher rank.

16. We find no error of record in the judgment of the learned Writ Court.

17. This review application has no merit and is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Partha Sarthy, J)

avinash/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.07.2024
Transmission Date	

