IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12919 of 2023

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1. The Union of India Ministry of Finance, New Delhi 110070.
2. The Chairman, Ministry of Finance, Govt. of India, New Delhi 110070.
3. The Director General of Income Tax (HRD) CBDT 2nd Floor, Jawaharlal Nehru Stadium, New Delhi 110003.
4. The Principal Chief Commissioner of Income Tax (Bihar and Jharkhand), 1st Floor, Central Revenue Building, Birchand Patel Marg, Patna-800001.

... ... Petitioner/s

Versus

Bijay Kumar Singh S/o Late Dev Narayan Sing, resident of Village and P.O. Bishnupur, P.s. Patarghat, District Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Dr.Krishna Nandan Singh, ASG
Mr.Anshuman Singh, Advocate
Mr.Shivaditya Dhari Sinha, Advocate

For the Respondent/s : Mr.Rajesh Kumar Singh, Sr. Advocate
Mr.Manish Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 29-07-2024

Petitioners – Union of India and Income Tax Department have assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT') dated 01.02.2023 passed in O.A. No. 050/00221/2020. Grievance of the respondent insofar as rejection of his claim of regularisation on 4/5.02.2020 *vide* Annexure – 17 to the Original Application before the CAT. CAT allowed the original application of the respondent – *Bijay Kumar Singh* on 01.02.2023. Feeling aggrieved and dissatisfied by the orders of the CAT, the present writ petition is by Union of India and Income Tax Department.

2. Matter was heard from time to time. In fact on 05.12.2023, a detailed order has been passed and it reads as under:-

> *"The petitioners Union of India-Income Tax Department have assailed the order of the Central Administrative Tribunal dated 01.02.2023 passed in O.A. No.050/00221/2020.*
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> *2. Brief facts of the case are that respondent Bijay Kumar Singh and 9 others were initially appointed on casual basis in Training Institute, which is part and parcel of the Income Tax Department in the year 1999. Thereafter, in the year 2001, respondent Bijay Kumar Singh was appointed in a different wing of the Income Tax Department. On the other hand, the remaining 9 candidates continued in the Training Institute of the Income Tax Department. On administrative ground, Income Tax Department proceeded to wind up the Training Institute in the year 2006. In the result, 9 casual employees were displaced. Thereafter, they have invoked the remedy of filing application under Section 19 of the Administrative Tribunal Act before the Central Administrative Tribunal and got relief and it was the subject matter of litigation before the jurisdiction of the High Court and the matter was taken up to the Hon'ble Apex Court. In all the three judicial proceedings, Income Tax Department suffered orders. One of the issue involved in respect of those 9 persons are concerned, that Bijay Kumar Singh's services were regularized and factually, it was incorrect. In this backdrop, it is a fact that Bijay Kumar Singh was not regularized in Income Tax Department.*

Consequently, he has invoked remedy of filing Original Application under Section 19 of the Central Administrative Tribunal Act, 1985 before the Central Administrative Tribunal, Patna Bench, Patna. Tribunal allowed the respondent Bijay Kumar Singh's Original Application. Hence the present writ petition on behalf of the Income Tax Department. For the purpose of claiming regularization, Respondent Bijay Kumar Singh has not placed any policy decision of the concerned Department or the Government of India. He is only relying on the decision rendered in 9 others similarly situated persons. In the absence of Regularization Policy, it is not appropriate to adjudicate the matter in favour of the respondent Bijay Kumar Singh merely on the score that 9 other similarly situated persons have got judicial order in the absence of certain materials like regularization policy. Therefore, respondent Bijay Kumar Singh is hereby directed to produce relevant policy decision of the concerned department or the Government of India so as to examine his vested right to seek regularization other than the discrimination stated to have been meted out to him on par with the similarly situated 9 persons.

3. Relist this matter on 03.01.2024."

3. Thereafter, one more detailed order has been passed on 26.02.2024 and it reads as under:-

" Perused the supplementary affidavit dated 08.02.2024 filed on behalf of the petitioners along with Annexure – P3. The scheme of casual labourers followed by a temporary status and regularization was required to be undertaken in the present case insofar as respondent is concerned.

***2.** Petitioners are disputing validity of temporary status given to the respondent to the extent that an incompetent authority has* *passed a communication on 01.04.2002 namely Additional Administrator, Hazaribagh. It is also averred that respondent has not been extended monetary benefits with reference to temporary status stated to have been granted to the respondent with effect from 01.04.2002. Therefore, petitioners have not apprised this Court what is the monetary benefits on monthly basis to the casual employees and temporary status employees is not forthcoming. Assuming that if there is a higher monetary benefits as against temporary status and if it is not paid, whether respondent has approached the authorities in seeking monetary benefits attached to the post of temporary status or not? Further temporary status assigned to the respondent on 01.04.2002 had been withdrawn or cancelled for want of authority is not forthcoming.*

3. *Respondent is permitted to file counter affidavit to the supplementary affidavit filed on behalf of the petitioners along with Annexure – P 3 dated 10.09.1993.*

4. *Relist this matter on 11.03.2024.*

5. *At this stage, learned counsel for the petitioners submitted that respondent while working at Hazaribagh was transferred to Patna on 21.06.2001. In such circumstances, Additional Administrator, Hazaribagh has no supervision and control over the respondent so as to issue temporary status to him on 01.04.2022. Even on this point, learned counsel for the respondent has to apprise in the counter affidavit/reply to the aforementioned supplementary affidavit."*

4. Learned counsel for the petitioners submitted that for granting temporary status a scheme was evolved by the Government on 10.09.1993, Clause 3 read as under:-

"This scheme is applicable to casual labourers in employment of the

Ministries/Department of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railway, Department of Telecommunication and Department of Posts who already have their own schemes."

5. The scheme is called Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993. The scheme was came into force with effect from 01.09.1993. The aforementioned Clause 3 as on 01.09.1993, casual employees/workers in Railways, Department of Telecommunication and Department of Posts were also having identical scheme. The aforementioned scheme is not applicable to the respondent for the reasons that he has been appointed among others against casual employee posts on 07.05.1999 . On the other hand 9 others persons similarly situated who were continued in the Training Institute and their services were displaced resulted in filing of Original Application before the CAT and further before this Court and Hon'ble Supreme Court. In all the three litigations, petitioner-Department suffered orders. Resultantly, their services have been regularized after providing them temporary status. Whereas, the respondent whose services have been lend to other than Training Institute, his services were never displaced and his case remained isolated insofar as regularisation is concerned.

6. Additional Administrator, Hazaribagh issued a letter on 01.04.2002 read with 31.04.2004 by which respondent was given temporary status, such granting of temporary status to the respondent is concerned, it is contrary to Scheme, 1993 cited (supra). Therefore, respondent has not made out a case on merit as well as on the question of discrimination.

7. *Per contra*, learned counsel for the respondent resisted the aforementioned contention and a new point has been raised to the extent that his temporary status was granted by the Additional Administrator, Hazaribagh read with protection in O.M. No. 40011/6/2002-Estt. (c) dated 06.06.2002 in the light of judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India & Anr. Vs. Mohan Pal etc. in SLP (Civil) No. 2224/2000). This point was not appraised by the petitioners nor respondent before the CAT. What has been decided by the CAT is only to the extent discrimination among the respondent and 9 others. Therefore, in order to render justice, discrimination point shall be taken into consideration read with fact that respondent has protection under notification dated 06.06.2002 insofar as clarification to Scheme, 1993 and such clarification is in the light of Hon'ble Supreme Court decision cited (supra).

8. Heard learned counsels for the respective parties.

9. Respondent and 9 others were casual employee of the Income Tax Department. They were initially posted for discharging the duties of the casual employees post in the Training Institute. After sometime respondent services were drafted to another section or/wing of the department (other than Training Institute). The Training Institute was wound up resulted in displacement of 9 casual employees who have invoked remedy before the CAT under Section 19 of Administrative Tribunals Act, 1985. Their Original Applications were stated to have allowed.

10. Feeling aggrieved by the CAT order petitioners and department preferred writ petition and suffered an order. Resultantly, they have approached the Hon'ble Supreme Court in which also they suffered judgement. Consequently, 9 persons who have invoked remedy before CAT in the guise of displacing their services read with absorption/regularisation process was completed in the year 2014. On the other hand, respondent was isolated merely because his services were drafted to some other wing other than Training Institute, resultantly he was continued in other wing and he had no occasion to invoke any remedy before the CAT on par with 9 others. However, Additional Administrator, Hazaribagh granted temporary status to the respondent, such grant of temporary status to the respondent was without authority of law and the competent authority has not granted temporary status to the respondent. This issue was raised for the first time in the present *lis* on behalf of the petitioners-Department. However, even to this day whatever the orders passed of the Additional Administrator, Hazaribagh insofar as granting temporary status to the respondent and others have not been withdrawn or cancelled or reviewed by the competent authority. Even after lapse of about 20 years they are not permitted to review such order in view of the fact that much water has flown insofar as regularisation other than respondent, namely, 9 others.

11. We could have appreciated the contention of the petitioners-Department if the order dated 06.06.2002 read with Hon'ble Supreme Court decision in the case of Union of India vs. Mohan Pal etc. in which there was protection to such of those temporary status granted subsequent to 10.09.1993. On the other hand, respondent is entitled to protection of his temporary status despite the fact that temporary status awarded to the respondent by incompetent authority. Assuming that it was an incompetent authority order, the same was required to be set aside or reviewed in the manner known to law, till date such exercise has not been undertaken by the petitioners-department. Further, there was no fault on the respondent.

12. The respondent had a cause of action seeking regularization in the year 2014 as and when 9 others persons whose services were regularised pursuant to their litigation before CAT, High Court and Hon'ble Supreme Court. On the other hand, respondent slept over the matter for about nearly six years from the year 2014, the date on which 9 persons services have been regularised and he has invoked remedy before the CAT in O.A. No. 000221/2020, filed in the year 2020. No doubt, there is a ticklish issue to the extent that whether respondent is entitled to regularisation on par with 9 others, for the reasons that certain factual aspects are entirely different to the extent that 9 others who were working in the Training Institute. Training Institute was wound up resulted in displacement of their services and thereafter they have persuaded the matters for the re-instatement and regularisation, the entire process completed in the year 2013. Thereafter, their services were regularised in year 2014. Therefore, respondent even though he is not diligent in pursuing his right in the year 2014. resultantly he is not entitle to relief on par with 9 others, since certain 3rd party right must have occurred during the period from the year 2014 to 2020.

13. Be that as it may, having regard to the fact that he has invoked remedy before the CAT in filing O.A. under Section

19 of the Administrative Tribunals Act, 1985. At the best, he is entitled to regularisation from the date of filing O.A. No. 00221/2020. The concerned petitioners are hereby directed to regularise the services of the respondent from the date of filing Original Application before the CAT, i.e., 28.02.2020 and extend all his service and monetary benefits from the date of filing Original Application before the CAT till date, including fixation of pay, arrears of pay, revision of pay, increments from time to time and ACP and other MACP benefits, if any, in accordance with law.

14. The above exercise shall be completed within a period of four months from the date of receipt of this order. To the above effect order of the CAT dated 01.02.2023 passed in O.A. No. 0021/2020 stands modified.

15. Accordingly, the present CWJC No. 12919 of 2023 is allowed in part.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekkr/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.08.2024
Transmission Date	NA