

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6481 of 2012**

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1. BHARAT SANCHAR NIGAM LIMITED, Bihar Circle, Patna through the Chief General Manager, Telecommunication, Bihar Circle, Patna.
2. The General Manager, Bharat Sanchar Nigam Limited, Bhagalpur At Bhagalpur

... .. Petitioner/s

Versus

1. THE UNION OF INDIA through the Presiding Officer, Central Govt. Industrial Tribunal cum Labour Court No.1.
2. The Secretary, Mazdoor Samaj, Metro Tailors, Sah Market, Khalifabag, Bhagalpur
3. The Regional Labour Commissioner Central, Patna
4. Md. Jawed Azam Son of Late Hidayat Ali Resident of Mohalla- Tank Lane, Bhikhanpur, Gumti No. 3, P.S.- Kotwali, District- Bhagalpur
5. Md. Parwez Son of Late Issa Resident of Mohalla- Barahpura, P.S.- Kotwali, District- Bhagalpur
6. Bola Kumar Choudhary Son of Baldeo Prasad Choudhary Village- Shermari Ghar, P.O. P.S.- Pirpanti, District- Bhagalpur
7. Md. Asad Raza Son of Md. Samsad Raza Resident of Tank Lane, Bhikhanpur, P.S.- Kotwali, District- Bhagalpur
8. Md. Islam Son Of Late Anish Resident Of Mohalla- Sarai, P.S.- Kotwali, District- Bhagalpur
9. Md. Mumtaz Son Of Md. Mobin Resident Of Mustafapur, Mayaganj, P.S. - Barai, District- Bhagalpur
10. Kailash Choudahry Son Of Baldeo Prasad Choudhary Resident Of Village- Shermari, P.O. P.S.- Pirpanti, District Bhagalpur
11. Om Prakash Mishra Son Of Janardhan Mishra Resident Of Village- Mohanpur, P.S. - Pirpanti, District- Bhagalpur
12. Nawal Kishore Gond Son Of Suraj Narain Sah Mohalla- Husainabad, P.S.- Mirjanhat, District- Bhagalpur
13. Jiyut Prasad Gond Son Of Banshi Prasad Gond Resident Of Nayabazar, District - Buxar
14. Basir Ahmad Son Of Md, Panchu Miya Mohalla- Mustafapur, P.O. P.S. - Barari, District- Bhagalpur
15. Sayyad Amir Raza Son Of Late Sayed Sultan Nabi Raza, Kotwali, District- Bhagalpur
16. Shashi Kumar Son Of Mahendra Pandit Resident Of Taregana Gola, Kumhar Toli, P.S.- Musourhi, District- Patna
17. Md. Sahool Son Of Md. Abdul Gani Resident Of Bikrampur, P.S.- Mahgama, P.O.- Persa, District- GoddaJharkhand
18. Sayyad Sahid Raza Son Of Late Sayyed Sultan Nabi Raza, Bhikhanpur, P.S.- Kotwali, District- Bhagalpur



19. Md. Rashid Raza Son Of Late Sayyed Sultan Nabi Raza, Bhikhanpur, P.S.-  
Kotwali, District - Bhagalpur

... .. Respondent/s

with  
**Civil Writ Jurisdiction Case No. 7667 of 2012**

1. THE MANAGEMENT OF BHARAT SANCHAR Nigam Limited, through  
the Chief Central Manager, Bihar Telecom Circle, Sanchar Sadan, Sanchar  
Parishar, Buddha Marg, Patna
2. The General Manager (Telecom) Bhagalpur

... .. Petitioner/s

Versus

1. MD.RIZWAN ANSARI, S/o Sharafat Ansari R/O Zabbarchak, P.S.-Kotwali  
Tatarpur, Distt-Bhagalpur
2. Md. Afaque Ali Ahmad S/O Late Ali Ahmad R/O Mohalla-Tatarpur,  
Shahadat Hussain Lane, P.S.-Kotwali, Distt-Bhagalpur
3. Md. Istiyaque Ali S/O Late Ali Ahmad R/O Moh-Tatarpur, Shahadat Hussain  
Lane, P.S.-Kotwali, Distt-Bhagalpur
4. Md. Zulfiquar Ali S/O Md. Sarifuddin R/O Mustafapur, P.S.-Barari, Distt-  
Bhagalpur
5. Awdhesh Kumar S/O Sri Charan Choudhary R/O Upper Road, Sultanganj,  
P.S.-Sultanganj, Distt-Bhagalpur
6. Md. Meraj Ali S/O Md. Asghar Ali R/O Ishipur Barahat, P.S.-Pirpainti,  
Distt-Bhagalpur
7. The Union of India through The Presiding Officer, The Central Govt.  
Industrial Tribunal Cum Labour Dhanbad
8. The General Secretary, Executive Members of India , National Trade Union  
Congress Office of Paanitanki, Ghantaghar, P.S.-Kotwali, Distt-Bhagalpur
9. The Regional Labour Commissioner Central Patna

... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No. 6481 of 2012)

For the Petitioner/s : Mr.Harendra Prasad Singh, Advocate.  
For the UOI : Mr.N.A. Shamsi, ASGI  
For the Private respondents: Mr. Purushottam Kumar Jha, Advocate.  
Mr. Ram Naresh Jha, Advocate.

(In Civil Writ Jurisdiction Case No. 7667 of 2012)

For the Petitioner/s : Mr.Harendra Prasad Singh, Advocate.  
For the UOI : Mr. N. A. Shamsi, ASGI.  
For the Private Respondents: Mr. Mr. Purushottam Kumar Jha, Advocate.  
Mr. Ram Naresh Jha, Advocate.

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**



**ORAL JUDGMENT**

**Date : 25-07-2024**

Heard Mr. Harendra Prasad Singh, learned counsel appearing on behalf of the petitioners; Mr. N. A. Shamsi, learned counsel for the Union of India and Mr. Purushottam Kumar Jha, learned counsel along with Mr. Ram Naresh Jha, learned counsel for the private respondents.

2. Both the cases are being heard together considering the similar issue involved and are disposed of at the stage of admission.

3. In continuation of the order dated 18.07.2024, I am of the opinion that the in the Award dated 30.08.2011, the learned Central Government Industrial Tribunal No.1, Dhanbad has nowhere arrived at definite conclusion based on the material on record, proper analysis of the evidences, as well as, argument made by the respective counsels. I find that the Tribunal has only proceeded to record argument in Paragraph Nos. 2 to 9, of the order, which are reproduced hereinafter:

*“2. The case of the concerned workmen is that the names of the concerned workmen were sponsored by the Employment Exchange on the requisition made by the Telecom Deptt., Bhagalpur. The concerned workmen were engaged as casual mazdoors at Telecom Deptt. Bhagalpyr in the year 1984-85. The workmen shown in serial nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 16 have been engaged on 1.12.1984 and sl. Nos. 13 and 15 have been engaged on 1.1.1985 respectively. They had been terminated on 31.12.1996 without legal notices and without payment of notice pay as required under I.D.Act,*



1947 as such their termination is highly illegal in the eye of law. While they were in service during 1984 to 1996 they completed 240 days attendance in every calendar/financial year. The authorities of the telecom deptt. issued work certificates to the concerned workmen. They worked at Bhagalpur, Bettiah, Varanasi, Patna and Deoghar on payment of Rs.35/- to Rs.50/- per day as wages on 1<sup>st</sup> day of every month. They performed the duties of replacement of old telephone wires with new, digging earth and fixing new poles, replacing old and damaged poles with new, installing new telephone connections etc. While they were in regular engagement/service as casual mazdoors/daily rated mazdoors, the Govt. of India, Ministry of Telecom, New Delhi, introduced a scheme called as "Casual Labour (Grant of Temporary status and Regularisation scheme) 1989 vide DOT letter No.269-10/1989-ST dated 7.11.1989, letter dated 17.12.1990, letter dated 17.12.1993, and letter dated 31.10.1992 which were/are applicable to the concerned workmen. They fulfilled all terms and conditions required by the aforesaid scheme and they placed their demand before Telecom District Manager, Bhagalpur in March, 1996 to confer upon them the status of temporary Mazdoors and regularise their services in Telecom Deptt., Bhagalpur in terms of aforesaid schemes 1989 and 1993, but the management denied the same to the concerned workman.

Under the above facts and circumstances, it has been prayed that the Hon'ble Tribunal be pleased to answer the reference in favour of the concerned workmen and further be pleased to declare the termination of the concerned workmen as illegal, malafide, arbitrary and void and pass an order of reinstatement and regularisation of the concerned workmen in the service of B.S.N.L. Bhagalpur w.e.f. 7.11.1989 or 31.1.1996 with full back wages and other consequential benefits.

3. The case of the management of B.S.N.L. is that the concerned workmen had never been engaged by the Telecom Deptt. as casual labours in the year 1984-85 and hence the question of their termination does not arise. They have claimed that they have worked at Bhagalpur, Bettiah, Varanasi, Patna and Deoghar are not correct and if their claims are genuine they should produce the valid documents/even a labour card which entitled them to work from Bihar to U.P. as burden of proof lies upon the workmen to prove that they have worked



*more than 240 days in a year/in a calendar year continuously as decided by the Apex court in so many cases. It has been submitted that Govt. of India/Ministry of Telecom, New Delhi introduced a Scheme called as "casual labour (Grant of Temporary status and Regularisation Scheme) 1989 and onwards for the benefit and welfare of only those casual labours who are actually working with valid documents, rather they are claiming themselves as casual labours on the basis of gonus and fabricated work certificates. They had not raised any demand before the S.S.A. head for their regularisation but they are claiming that they had made their demand before the Telecom District Manager, Bhagalpur in March, 1996 while the post of Telecom District Manager was not existed in the year 1996. The statement of the concerned workmen in para 6 is false and concocted as the S.S.A. head had regularised the services of only those casual labours whose claims were covered under the existing D.O.T. circular without any discrimination or illegal favour. The concerned workman did not submit any demand before the competent authority i.e. before the S.S.A head/C.G.M.T. Bihar Circle/ DOT Govt. of India prior to filing the different O.A. before the CAT Bench Patna in the year 2000 and 2001 and after the receipt of the respective CAT's order the S.S.A. head Bhagalpur had constituted the high power screening committee under the chairmanship of the D.E. (Admm.) of the S.S.A. and as per the direction of CAT Bench Patna, had fully verified the work certificates submitted by the concerned workmen and after verifying the office records, it was found that their claims were not genuine and not covered under the DOT circulars 89 onwards, hence their claims were rejected and the reasoned speaking orders had been sent to the respective applicants under registered cover after the approval from the Circle Office, Patna by the S.S.A. head. It has been submitted that Mazdoor samaj Union is not a recognised Union, hence the secretary of this Union has no right to raise this industrial dispute. It has also been submitted that none of the concerned workmen had been ever engaged under the S.S.A. hence the question of completion of 240 days service in every year and illegal termination from service does not arise.*

*It has been prayed that the Hon'ble Tribunal be pleased to answer the reference in favour of the management holding that the concerned workmen are not entitled to any relief.*



4. *In rejoinder to the written statement of the management the workmen concerned have stated almost same things as have been stated in their written statement.*

5. *The management has produced MV-1, S.K.Mishra. The concerned workmen has produced -WW-1, Md. Asad Raza and -WW-2, Nawal kishore con.*

*The concerned workmen have proved documents as Exts.W-1 to W-16.*

6. *Main argument advanced on behalf of the concerned workmen is that they have worked with the management from 1.12.1984 to 31.12.96 when they have been stopped from work. They have worked with the management in different places at Betiah and also at other places with S.D.O.(Phone), Md. Salamat Ansari, who have also issued work certificate to them. Thus they have completed 240 days in each and every year from 1987 to 1993. Though the Telecom Deptt., Govt. of India directed all offices to grant temporary states to all the casual workers as per Ext.M-6, but the management denied the same to the concerned workmen. The management has given temporary status to their relatives and thereafter regularized their services illegally.*

7. *In this respect the management's representatives argued that these concerned workmen have never worked with the management and they were placed the inquiry committee and the said committee found that there is no appointment letters etc.*

*In this respect the management's witness, -MW-1, has stated in cross-examination that all the certificates were issued by these two officers and the signatures of these officers are genuine. Ext. W-5 is also admitted by the management and he stated that this is the list showing the relationship of the workmen who have been appointed by the management out of 120, as per Ext.W-5. It shows that the management's witness identified the certificates which have been issued to the concerned workmen by the management are genuine which is Ext.W-13. when the certificates issued by the management which is admitted by the management's witness, MW-1, there is no doubt that these certificates are false and forged which*



*has been argued by the management's representative.*

*It has also been argued on behalf of the workmen that the above witness, sri S.K.Mishra has stated in Reference no.37/2008 falsely. He admitted that Ashok Kumar Sinha had no authority to issue work certificates to workmen who have been regularized on the basis of certificates issued by sri Ashok Kumar Sinha, who is officer by the management. Ext.W-4 series, certificates issued by the management's officer are genuine because the signatures of above officers are admitted by the management's witness, MW-1 and he also admitted the list of 120 persons of Ext.W-5 who are relatives of the management's officers, who have been given temporary status. It only shows that the management does not want to give temporary status to the concerned workmen as per their own circular dated 7.11.1989. The concerned workmen have completed more than 240 days from 1984 to 1996 and they have filed their work certificates. Ext.W-13 series are also certificates issued by the management's officers moreover, the management argued that the enquiry was conducted regarding the concerned workmen for giving temporary status, but that enquiry report was not filed by the management.*  
*(emphasis supplied)*

8. On behalf of the management civil Appeal no.292 of 2009 arising out of SLP(C) No.7603/2006 has been referred in which Hon'ble Supreme Court held

- "One aspect needs to be clarified. There may be cases where regular appointments (not illegal appoints) as explained in S.V. Narayanappa (1967 I SCR 128), R. Manjundappa (1972 I SCC 409) and B.N.Nagarajan (1979 4 SCC 507) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this court in the cases aboveresferred to and in the light of this judgement in that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of



*tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."*

*Another law referred on behalf of the management VIII (2006) SLT 348 in which Hon'ble Supreme court held burden of proof not on employer and delay in making reference after long period of 9 years. High Court clearly lost sight of fact that claim was highly belated. No finding recorded by Labour court on this plea specifically raised.*

*Another law referred by the management is V (2006) SLT 585 in which Hon'ble supreme Court held that appointment on daily wage basis and not on regular post and disengagement not arbitrary. Management also referred IV(206) SLT 33 in which Hon'ble supreme Court laid down that when the workman was appointed on daily wages on supervisory post at instance of M.L.A. and their services terminated. Another law referred in 2006 (I) PLJR 26 in which Hon'ble supreme court laid down that the petitioner engaged on daily wages in exigencies of work by a Magistrate in charge who was not the authority to do so - Sometimes, in demand of exigency persons are engaged to work for some time purely on temporary basis to meet the load of work, but that does not confer any right.*

*9. On behalf of the concerned workman 2001(1) LLT 742 has been referred in which the Hon'ble Supreme Court laid down - "Industrial Disputes Act, 1947- Section 25-F-Termination of service -when the employee had put in more than 240 days of service in each year for several years and there was termination of his service in violation of the procedure Under Section 25-F of the Industrial Disputes Act, 1947. The employee would have to be reinstated on the same terms and conditions in which he was working." Another law referred on behalf of the workmen is 2000 Lab. I.C. 1494 in which Hon'ble Allahabad High court laid down – regularization of services of daily rated employees –*



*held keeping an employee on daily wages for continuously 18 years was violative of Article 14. The management was directed to regularize the services of such daily rated employees."*

*Another law referred on behalf of the workmen is 2002 Lab. I.C. 1568 in which Hon'ble Punjab and Haryana High Court laid down - "Industrial Disputes Act, 1947, Sec. 25F-non-production of records: Held that the party in possession of the document should produce the same even though the burden of proof may not be on that party. Non-production of record may lead to adverse inference. High Court quashed the finding of the Labour Court that workman worked for 175 days became that was not based on the muster roll, the production of which was withheld by the management."*

*Another law referred on behalf of the workmen is 2008 AIR SCW 3996 in which Hon'ble Supreme Court laid down*

*"Industrial Disputes Act (14 of 1947), sch.2, Item 6 Regularization of service Contractual workers - Disentitlement from claiming regularization - non inflexible rule workers appointed by ONGC initially through contractor Claim for regularization. Reference to Tribunal Finding of fact by Tribunal that workmen were employees of ONGC and not contract employees Being employees of OMGC workmen would be entitled to all benefits available in that capacity, and issue of regularization would pale into insignificance."*

*Another law referred on behalf of the workmen is 2008(3) JLJR 109 in which Hon'ble Jharkhand High Court laid down "Labour and Industrial Lava Regularization - workmen engaged by the petitioner company in its various Unite since past twenty years worked in various departments of petitioner company under direct control and supervision of officers of petitioner company- frequently transferred and posted in various departments - petitioner company cannot take advantage of dubious intermediaries like consumer co-operative stores on the plea of engaging contract labor-management adopted such practice only to avoid the liability of financial trappings as otherwise would be payable to the workmen if absorbed regularly there existed a direct relation- ship of employer and employee veil of contract employment cannot alter this fact no reason to interfere with impugned award of Tribunal passed in favour of*



*workmen.*

*(2001) 7 SCC 1: (2002) 4 SCC 609: (1996) 10 SCC 5991 (2000) 7 SCC 449 AIR 2003 SC 2658: AIR 1997 SC 1788 : (2007) 8 SCC 279: 1978 Lab. IC 1264: 2001 Lab.I.C.3656: 2006 Lab.I.C.1302: AIR 2007 SC 2509 Referred to." Also referred 1990 (II) LLJ 70 in which Hon'ble Supreme laid down Retrenchment Retrenchment "Industrial Disputes Act, 1947 Sec.2(00) Scope and connotation of the expression retrenchment. The expression retrenchment means termination of the services of the workman for any reason whatsoever, other than those expressly excluded by the definition in sec.2(00) of the act. The expression retrenchment does not mean only termination by the employer of the service of surplus labour for any reason whatsoever The expression 'retrenchment' is not to be understood in its marrow, natural and contractual meaning but is to be understood in its wider literal meaning to mean termination of service of workmen for any reason whatsoever."*

4. I also find that the learned Tribunal has not even discussed the reporters which were relied upon on behalf of the Workmen or by the Management and without applying its own independent mind, merely reiterated the arguments advanced by the respective parties and has concluded in Paragraph Nos. 10 and 11 proceeded to draw Award in favour of the respondents:

*"10. The evidence of the workmen shows that they have worked with the management and the management also issued circular in 1989 for giving temporary status to the workmen who have worked on casual basis and daily basis.*

*Considering the above facts, it shows that the concerned workmen are entitled to get temporary status as per management's Circular dated 7.11.1989.*

*11. Accordingly, I hold that the demand of the Mazdoor Samaz for grant of Temporary Status to Shri Md. Javed Azam and 15 others (as per Annexure mentioned in the order of reference) by the management of Chief General Manager, B.S.N.L..Patna/General Manager, Telecom,*



*B.S.N.L.. Bhagalpur is legal and justified. Hence, the concerned workmen are entitled to be reinstated in service from the date of their termination i.e. 31.12.1996 and they are entitled to get temporary status as per management's Circular dated 7.11.1989. The management is directed to implement the award within 30 days from the date of publication of the award."*

5. The question which falls for consideration is as to whether the order passed by the learned tribunal is an Award based on the judgment rendered in Reference Case No. 38 of 2008.

6. In this regard, I find apt to reproduce Section 2(9) CPC, *inter alia*, hereunder:

*"judgment" means "the statement given by the Judge on the grounds of a decree or an order."*

7. I find it also proper to reproduce Order XX CPC, which, *inter alia*, is as follows:

*"Order 20 rule (1) Judgment when pronounced.— The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:*

*Provided that where the judgment is not pronounced at once, every endeavor shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.]"*



*Order 20 rule (3) Judgment to be signed.—The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added, to save as provided by section 152 or on review.*

8. In this regard, I find that the similar was issue involved in the case of ***K.V. Rami Reddi vs Prema, reported in (2009) 17 SCC 308***, wherein the Hon'ble Supreme Court relying on the law laid down in the case of ***Balraj Taneja v. Sunil Madan reported in (1999) 8 SCC 396***, has, *inter alia*, held in Paragraph Nos. 41 and 42, which are reproduced hereinafter:

*“41. There is yet another infirmity in the case which relates to the ‘judgment’ passed by the Single Judge and upheld by the Division Bench.*

*42. ‘Judgment’ as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment*

*‘shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision’.*

*It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.”*

9. Under the aforesaid legal proposition, I hold that the order / Award dated 30.08.2011 cannot be sustained as the



learned Tribunal had not completed the judgment before it has delivered the decision. I, accordingly, direct that the parties are required to be heard afresh and the learned Tribunal shall deliver its judgment as early as possible. The parties have agreed to appear before the learned Central Government Industrial Tribunal on or before 09.09.2024 so that the date for argument can be fixed.

10. The writ petitions stand disposed of.

**(Purnendu Singh, J)**

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