



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO. 4164 of 2025

Principal General Manager (Telecom), Bharat
Sanchar Nigam Ltd.(BSNL), Nagpur and ors.

..Petitioners.

Versus

Zarir s/o Pesi Mawalwala and another.

..Respondents

Mr. (Dr)R.S.Sundaram, Advocate for petitioners.
Mr. P. D. Meghe, Advocate for respondent no.1.
Mr. S.A.Chaudhari, Advocate for respondent no.2.

CORAM :- SHREE CHANDRASHEKHAR, C. J. & ANIL S. KILOR, J.

DATE : 20th APRIL, 2026.

P C.

Heard learned counsel appearing for the parties.

2. Aggrieved by the order dated 28th June, 2024 in Original Application No.2139 of 2019, the Petitioner - BSNL through its Principal General Manager (Telecom) and other officers have approached this Court.

3. Dr. R. S.Sundaram, the learned counsel for the petitioner-BSNL submits that the decision of the Tribunal is based on the judgment in *Secretary, State Of Karnataka And others vs Umadevi And Others*¹ but the Tribunal overlooked a vital difference between ‘illegal appointment’ and ‘irregular appointment’. In *Umadevi (supra)* the Hon’ble Supreme Court held in para 53 as under:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 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 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 above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a 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 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 by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

4. The respondent-Employee was appointed as a Casual Labour on 21st January, 1986 and he was granted temporary status as Mazdoor with effect from 25th June, 1993. He was not regularized. On the other hand, he was terminated from service on 2nd November 2002 on the allegation of theft. The respondent approached Central Government Industrial Tribunal (for short, ‘the CGIT’), at Nagpur which framed the following reference :

‘Whether the action of the management of Divisional Engineer, Telecom, Microwave Project CTO Compound, Nagpur-I, in terminating the services of the workman Sh. Z. P. Mawalwala, TSM w.e.f. 2.11.2002 is legal and justified?’

5. Before the CGIT the parties led evidence and the CGIT held that the workman was not given opportunity to cross-examine the witness or led evidence in his defense. The CGIT

therefore held that the workman was not afforded sufficient opportunity to defend himself and interfered with the order of termination dated 2nd November, 2002. The CGIT held that the respondent is entitled for reinstatement with continuity in service and regularization within one month. However, the respondent was held not entitled for back wages.

6. The decision so rendered by the CGIT was challenged in Writ Petition Nos. 1721 of 2011 and 3055 of 2011 and a learned Single Judge of this Court interfered with the award to the limited extent that the direction issued by the CGIT for regularization of the respondent was set aside. The order dated 15th July, 2011 passed by the Writ Court has been affirmed in Letters Patent Appeal No. 347 of 2011 by an order dated 3rd October, 2011.

7. In the second round of litigation, the respondent raised a plea before the Central Administrative Tribunal (for short, 'the Tribunal') that he is entitled for regularization in view of the judgment in *Umadevi (supra)*. The respondent based his claim also on the ground that his juniors were regularized in service with effect from 1st April, 1996.

8. There is an award in favour of the respondent by virtue of which the respondent continued in service since 21st January 1986. This is well remembered that the adjudication by the Tribunal has attained finality and the findings of fact recorded by the Tribunal was not open to challenge before the CGIT in the second round of litigation. The petitioner-BSNL is bound by the findings recorded by the CGIT which were approved in the proceedings of Writ Petition Nos. 1721 of 2011 and 3055 of 2011 and Letters Patent Appeal No. 347 of 2011

9. In view thereof, the respondent cannot be held to be a person illegally appointed. This is also a matter of record that

the respondent continued in service by virtue of Award dated 20th January, 2011 and superannuated with effect from 30th November, 2020. Merely labelling the respondent as a casual labour, the Employer could not have resiled from its responsibility to treat its employee fairly. The submission made at the bar that the BSNL is a subsequent employer and therefore not responsible for an appointment of the respondent, cannot be accepted. The petitioner-BSNL shall be deemed to have become employer of the respondent by virtue of the decision in *Dhurandhar Prasad Singh vs. Jay Prakash and others*²

10. Writ Petition No. 4164 of 2025 is dismissed.

(ANIL S. KILOR, J.)

(CHIEF JUSTICE)

Andurkar.