

(2022) 08 GAU CK 0037

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 301 Of 2014, MC No. 999 Of 2014

Arabinda Boro

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 26-08-2022

Acts Referred:

Citation : (2022) 08 GAU CK 0037

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : H Baruah, S P Choudhury

Final Decision : Dismissed

Judgement

[1] Heard Mr. P J Phukan, learned counsel for the petitioner and Mr. S P Choudhury, learned CGC appearing for all the respondents.

[2.] The case of the petitioner briefly is that he was engaged as a driver under the National Power Training Institute (NPTI), North Eastern Region, Guwahati, Assam which is under the Ministry of Power, Govt. of India through an outsourced agency i.e, M/s Mahesh Travels, Guwahati. Thereafter, from 01.05.2009, he was working directly as driver under the NPTI without break. According to the petitioner, the NPTI also bought a Travera vehicle, sometime in the year 2008 to 2009 for the petitioner to drive.

[3.] While the petitioner was serving under the NPTI, an advertisement was floated in the Assam Tribune dated 22.09.2013 by the NPTI, inviting tender for providing man-power services on contract basis. Following the advertisement, a Memorandum dated 31.12.2013 was issued by the Assistant Director of NPTI wherein, it was indicated that the period of contract services of the petitioner as driver ended on 31.12.2013. It was further shown that the NPTI has awarded contract for supply of man-power including drivers to M/s Brahmaputra Enterprise, Beltola, Guwahati w.e.f. 01.01.2014 and that no further extension of contract service of the petitioner would be considered. However, as a good

gesture, the NPTI had instructed M/s Brahmaputra Enterprise to engage the persons who were working earlier on contract basis with NPTI and that the petitioner may also avail such opportunity. In fact, the same was already conveyed to him during the meeting held on 23.12.2013 in the presence of M/s Brahmaputra Enterprise. Aggrieved with such action, the petitioner is before this Court.

[4.] Mr. P J Phukan, the learned counsel submits that the petitioner was serving as a driver on temporary basis under the NPTI since the year 2006 through a firm/agency and thereafter, directly under the NPTI since 01.05.2009. His engagement as such continued until the impugned memorandum dated 31.12.2013 was issued. By the said impugned memorandum, the service of the petitioner which was on temporary basis was shown as contract service. That without any prior notice, the service status of the petitioner from casual/temporary basis was unilaterally changed as a contract employment and therefore, the arbitrary action of the respondents should be interfered with by this Court by directing them to take back the petitioner into service and consider his regularization. In support of his submission, the learned counsel has relied upon the following authorities:-

- (1) State of Haryana & Ors vs. Piara Singh & Ors., (1992) 4 SCC 118.
- (2) Somesh Thapliyal vs. Vice Chancellor H.N.B. Garhwal University & Anr., (2021) 10 SCC 116.
- (3) Neha S/o Suresh Patil vs. State of Maharashtra & Anr., 2002 (3) GLT 108.
- (4) R.K Angousana Singh vs. Sainik School Society & Ors., 2006 (1) GLT 717.

[5.] Appearing for the respondents Mr. S P Choudhury the learned counsel, by referring to the counter affidavit filed on 19.03.2014 submits that the petitioner was not engaged by NPTI as driver since 2006. In fact, NPTI hired vehicles through M/s Mahesh Travels (B) Ltd., Guwahati and the petitioner was engaged by the said travel agency for driving the vehicles hired by NPTI along with many other drivers. No wages were paid to the petitioner directly and that hire charges were paid to the travel agency. Subsequently, the petitioner was engaged purely on contractual basis w.e.f., 01.05.2009 for a period of 3 months initially vide Office Memorandum dated 27.04.2009 and thereafter, his engagement period was extended for specific periods till 31.12.2013, when the last memorandum was issued. The petitioner was paid wages at the daily rate fixed by the Regional Labour Commissioner of Assam from time to time and that he was never employed nor appointed as a driver on regular basis by following Government procedures and against any vacancy. In fact, there are no regular posts of driver sanctioned to the NPTI by the Govt. of India. The learned counsel submits that since the petitioner is only a contractual employee and therefore, he cannot claim continuity in service or regularization as driver under the NPTI. Under the facts and circumstances, the learned counsel submits that the writ petition has no merit and should be dismissed

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[7.] As may be noticed, the claim of the petitioner is that he was working for the NPTI through a travel agency since the year 2006 and thereafter, directly under the NPTI w.e.f., 01.05.2009 till the time the impugned memorandum was issued on 31.12.2013. To substantiate his claim, the petitioner has annexed documents issued by the NPTI such as supply order of vehicle for hire, deduction of sales tax communicated to the travel agency and also testimonials stating that the petitioner is employed temporarily by NPTI, Guwahati as driver. The respondents on their part have also annexed documents such as O.M dated 27.04.2009 by which, on the basis of the application submitted by the petitioner on 17.04.2009, he came to be engaged on daily wage basis @ Rs. 150/- per day, subject to a maximum of Rs. 4500/- a month. The initial engagement was for 3 months w.e.f., 01.05.2009 and that his service was terminable at any time without assigning any reasons whatsoever, by giving 15 days notice. Orders extending his service for 6 months from the specified date were issued on similar terms vide Office Orders dated 13.01.2010, 29.07.2010 & 28.07.2011 which are marked as Annexure-2, 3 & 4 respectively in the counter affidavit. The respondents have also annexed the declaration made by the petitioner that he is ready to serve the organization/NPTI as driver w.e.f. the date specified purely on temporary basis and on daily wage and that he will not refer the engagement for regularizing his service. The respondents have also annexed a Communication dated 11.09.2013 made to M/s Brahmaputra Enterprise communicating the letter of award for providing man-power services on contract basis and also a work order dated 19.12.2013 issued to the same agency for supplying the man-power specified in the said letter.

[8.] From the appreciation of the submissions made by the learned counsels for the rival parties and importantly, the pleadings and the documents annexed in the writ petition, it can be seen that the petitioner was engaged by a travel agency in the year 2006 and he was assigned the work of a driver with the NPTI, Guwahati. While he was working as such, he came to be engaged by the NPTI on a daily wage basis w.e.f. 01.05.2009. The engagement of the petitioner was initially for a period of 3 months w.e.f. 01.05.2009 but was extended for time to time till the impugned Memorandum dated 31.12.2013 came to be issued. Although the petitioner claims that he is a casual and temporary employee but his engagement order otherwise indicates that he has been engaged on daily wage basis and for a specific period of time. In other words, the nature of such engagement is only contractual. The condition given in his engagement order that his service may be terminated at any time without assigning any reason whatsoever by giving 15 days notice can only be construed to be a notice if his engagement was to be cut short i.e., before completion of the engagement period of either 3 months or 6 months as indicated in the engagement order.

[9.] The Apex Court in *Piara Singh & Ors. (supra)* in the given facts of that case

held that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee. He must be replaced only by a regular selected employee. However, if an adhoc or temporary employee is continued for a fairly wrong time, the authorities should consider his case for regularization provided that he is eligible and qualified according to the rules with satisfactory service and that such an appointment does not run counter, reservation policy of a State. Coming to the present case, the petitioner has not been replaced by another contractual or for that matter, temporary employee. The NPTI has been availing the services of travel agency and other man-power agency to cater its requirement and the petitioner happens to be one of the drivers employed by such agency. Although, the petitioner came to be engaged by the NPTI on daily wages but as already noticed herein above, the same was only for a specific period of time and is therefore, a service rendered on contractual basis. Therefore, the case referred to by the petitioner is not found to be applicable to his case.

[10.] In the case of Somesh Thapliyal (*supra*), the Apex Court observed that he bargaining power is vested with the employer and the employees left with no option but to accept the conditions dictated by the authority. It is, therefore, true that the undertaking given by the petitioner cannot prevent him from claiming a regular employment or regularization. However, the fact remains that his employment/engagement was on a fixed pay and for a specific period and therefore, the employer is not bound to give him a regular employment by regularizing his service.

[11.] As for the case of Neha S/o Suresh Patil (*supra*) and R.K Angousana Singh (*supra*) in view of the fact that it has already been held in the preceding paragraph that the issuance of 15 days prior notice before termination would only arise if the engagement of the petitioner was to be stopped before completion of the specific engagement period provided, the two decisions relied upon therefore are not found to be applicable.

[12.] Upon due consideration of the matter in its entirety and in view of the findings arrived at herein above, the petitioner cannot be said to have a legitimate grievance and accordingly, the writ petition is found to be devoid of merit and is dismissed. No cost.