

(2008) 01 PAT CK 0176
In the Patna High Court
Case No : LPA No. 750 of 2007

Ashok Kumar Singh

APPELLANT

Vs

The Bharat Sanchar Nigam Ltd. and Others

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2008) 3 PLJR 129

Hon'ble Judges : Rajesh Balia, C.J;V.N. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Having heard learned counsel for the appellant and considering the application filed u/s 5 of the Limitation Act, we are satisfied that the appellants were prevented by sufficient cause in filing the appeal within time. Accordingly, this application is allowed and delay in filing the appeal is condoned.

2. We have also heard learned counsel for the parties on merit of the appeal and find substance in the contention of the learned counsel for the appellant that the case of the appellant for the grant of temporary status after having service since 1997 has not been considered in right perspective under prevailing condition under which he was required to be considered.

3. The petitioner-appellant contention was that he had been in continuous service of the respondent-B.S.N.L since 1997 and had completed 240 days of continuous service in each calendar year at the time when he was so required to complete such working and was entitled to transition for temporary status from casual employees in terms of the scheme disclosed in letter dated 2nd April, 2001 which itself has been issued in furtherance of the earlier instruction dated 24th October, 2000 referred to in Annexure 2 and the appellant case has not been considered.

4. The appellant had approached in the first instance the Central Administrative

Tribunal, Ratna Bench vide O.A. No. 590 of 2003 which was decided by the order dated 24.7.2003. The Tribunal directed to file a fresh representation before B.S.N.L. and issued direction to B.S.N.L. to decide such representation by a speaking order within two months.

5. In pursuance of the aforesaid direction, the impugned order (Annexure 4 annexed to the writ petition) was made on 29.9.2003 rejecting the applicant's fresh representation. It refers to the scheme of temporary status of casual Mazdoor dated 1.8.1998 and after referring to the condition laid down in the scheme recorded that in this case the applicant has break period of 651 days which is more than a year and is not condonable.

6. We find that the appellant has completed 240 days working in the year 1998 itself as per respondents own version and was eligible to be conferred with temporary status on the commencement of the scheme. In other words, the only reason that prevailed the authorities was that the applicant has a break period of 651 days.

7. However, the order does say that since he was working and on completion of 240 days working in a year at that time the appellant became entitled for status of a temporary employee and that is relevant for the purpose of counting the existence of break period of service, if any. We find from the documents submitted by the respondents themselves that from October, 1997 to May, 1999 the petitioner-appellant had almost been working for full working days in a month and thereafter, worked also in working days in each month until February, 2001. Thus, there has not been any long breakage in service. In this connection it may be noticed that scheme was first introduced in 1998, envisages that the casual workman who has worked as on 1.8.1998 for 240 days was to be given temporary status for regularization. The petitioner did fulfill that criteria is apparent from respondents own documents." Thereafter, directions were issued on 4.4.2001 (Annexure-2) which inter alia speaks:-

"Please refer to this office letter cited under (i) above wherein you were requested to take action for regularization of casual mazdoors as per the instructions of DOT letter no. 269-94/ STN II dated 20.9.2000. Sanction of RM posts as per DOT norms and on the work load as on 31.3.2000 has been conveyed vide this office memo cited under (2) above.

You are now requested to take necessary action for regularization of C/Ls subject to the following conditions:-

1. Casual mazdoors to be regularized shall be on rolls as on 1.8.1998 with 240 days attendance in a year and should be working thereafter.
2. Break period if any either before 1.8.1998 or afterwards shall be considered as per the DOT ruling already communicated. Responsibility for verification of work days and condonation of break periods shall rest with the head of the SSA. Break periods after 21.10.1992 exceeding six months and upto one year to be sent to

this office for condoning by CGMT. If break period is more than one year after 21.10.92 such breaks can not be condoned and in such cases, date of re-engagement after the break period is to be taken as date of INITIAL engagement for the purpose of regularization".

8. Petitioner also became eligible to be regularized by giving him temporary status as by that time the petitioner's services were admittedly continuing and break in service if any was also condonable. Yet the respondents did not give the benefit of this scheme to petitioner.

9. Learned counsel for the respondent was also not able to explain whether there is break at that point of time when the casual labourers were very much eligible to be considered for conferment of temporary status or it is only when the authorities who decided to consider the conferment of temporary status notwithstanding that he might have been continuously worked for 3 to 4 years and thereafter there was some break in service. What is meant by break in service, whether it means the continuous absence or break in service for the specified period or even single day to be counted a break in service of not working in weekly holidays or paid holidays.

10. In absence of such material mere ipse dixit writing of the Officer that there is non-condonable break in service as on the date of order does not lead to any conclusion that the appellant petitioner had or had not come under temporary status of service on the given date.

11. Apparently no consideration of the break period after the petitioner has become eligible and entitled to be regularized by conferment of temporary status could be considered, because the respondents have failed to act in time. As on respondents own showing the petitioner had become entitled to be conferred with temporary status in 1998 as well as in 2001, his representation to consider in pursuance of direction of the Tribunal could not have been rejected by referring to subsequent fact, which too remain obscure.

12. Accordingly, the impugned order (Annexure-4) can not be allowed to sustain in law.

13. Learned counsel for the respondent in the circumstance has prayed that the matter may be referred to the Chief General Manager, B.S.N.L. to consider the case and pass appropriate order.

14. In the circumstance we accept this request and direct that the petitioner-appellant's case be decided by the Chief General Manager, B.S.N.L. within three months from the date of receipt/production of this order, after giving an opportunity of hearing to the petitioner.

15. Accordingly, the judgment under appeal is set aside, appeal is allowed. The impugned order, Annexure-4, is quashed with aforesaid directions. No costs.