
(2008) 11 PAT CK 0092
In the Patna High Court
Case No : CWJC No. 12680 of 2006

Nagendra Choudhary

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Citation : (2009) 4 PLJR 960

Hon'ble Judges : R.M. Lodha, C.J;Kishore K. Mandal, J

Bench : Division Bench

Advocate : Gautam Bose, for the Appellant; Ehtasham Ali Khan, for the Respondent

Final Decision : Dismissed

Judgement

1. This is second round of litigation at the instance of the petitioner before this Court. According to the petitioner, he was engaged as casual typist in the Patna Office of All India Radio with effect from 16th June, 1992. His engagement is said to have been discontinued with effect from 1st October, 2000. He challenged his disengagement by filing Original Application (O.A. No. 447 of 2002) before the Central Administrative Tribunal, Patna Bench, Patna (for short, "the Tribunal"). The original application was contested by the respondents. They set up a plea in the written statement that the appointment of the original applicant was on daily wage basis and since the sanctioned posts existed, his appointment came to be discontinued. It was also stated that the applicant could not be regularized as the vacancies have to be filled up through open selection.

2. The petitioner relied upon the scheme for regularization formulated by the Department of Personnel and Training in the year 1993 and it was submitted before the Tribunal that he is covered by said scheme and entitled to regularization. The Tribunal, by its order dated 6th August, 2004, allowed the Original Application and quashed and set aside the verbal termination order of the applicant dated 1st October, 2000 and directed the authorities to re-engage the petitioner as casual typist. Certain incidental directions were also given by

the Tribunal; it was, however, observed that the applicant would not be entitled for back wages.

3. The order of the Tribunal passed on 6th August, 2004 was challenged by the present respondent by filing a writ petition C.W.J.C. No. 510 of 2005 before this Court. This court allowed the writ petition vide order dated 11th May, 2006 and set aside the order of the Tribunal by holding that it was completely bad and unsustainable. This is what the Division Bench said in the order dated 11th May, 2006:

"We are, therefore, satisfied that the Tribunal based its order on a completely erroneous application of the Scheme to the case of the respondent and without arriving at a positive finding that the respondent had worked for 206 days during a calendar year prior to 1.9.1993. The impugned order is, therefore, completely bad and unsustainable. It is accordingly set aside and the matter is remitted to the Tribunal for a fresh consideration in light of this order and the decision of the Supreme Court in case of Mohan Pal (supra). As the dispute is based on purely a question of fact, it will be open to the parties to lead additional evidence on the issue."

4. Pursuant to the order of this Court dated 11th May, 2006, the matter was reconsidered by the Tribunal afresh. The Tribunal held that the applicant was not entitled to regularization of service as he was not recruited through the procedure provided for such recruitment. As regards petitioner's prayer that he was entitled to grant of temporary status and reinstatement on the ground that he had worked for 240 days, the Tribunal held that this fact has not been proved by him and having not proved that he had worked for 240 days in a year, he is not entitled to the relief of temporary status and regularization.

5. The order dated 25th August, 2006 is under challenge in this writ petition. The Senior Counsel submitted that as a casual typist the petitioner could not have produced any material in proof of the fact that he had worked for more than 240 days in the year preceding 1st September, 1993. According to the Senior Counsel, the petitioner wanted the relevant register to be presented by the respondents before the Tribunal as that would have shown that he had worked for more than 240 days in the year prior to 1st September, 1993.

6. We are afraid, the contention of the Senior Counsel cannot be accepted. It is, now, well settled that the burden is on the employee to prove by adequate evidence that he had worked for a particular number of days in a year. Annexure-5, upon which reliance has been placed by the Senior Counsel, hardly improves the case of the petitioner. The said letter has been written by the Prasar Bharti to the Director General, All India Radio in response to some letter received from Rashtrapati Bhawan Secretariat. The letter only records that petitioner had worked for 120 days and more for many years. It may be noticed here that this letter does not state that the applicant had worked for 240 days prior to 1st September, 1993. As a matter of fact, it was for this reason that this

Court while remanding the matter to the Tribunal, in its order, gave liberty to the parties to lead additional evidence on the issue as to whether the petitioner had worked for 240 days continuously in a calendar year prior to 1st September, 1993 or not.

7. For want of any material/evidence produced by the petitioner before the Tribunal that he had worked for 240 days during a calendar year prior to 1st September, 1993 (the date on which the scheme for grant of temporary status and regularisation of casual labourers formulated by the Department of Personnel and Training, came into effect), the petitioner failed to establish that he was entitled to any benefit under the scheme. In the circumstances, dismissal of the Original Application by the Tribunal does not suffer from any legal infirmity. The writ petition is devoid of any merit. It is dismissed accordingly.