
(2019) 04 PAT CK 0048

In the Patna High Court

Case No : Civil Review No. 478 Of 2018 In Civil Writ Jurisdiction Case No. 2336 Of 2018

Nand Kishore Das

APPELLANT

Vs

UNION OF INDIA Through The CMD And Ors

RESPONDENT

Date of Decision : 17-04-2019

Acts Referred:

Citation : (2019) 2 PLJR 906

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Rajeev Ranjan Prasad, J

Bench : Division Bench

Advocate : Suraj Narain Yadav, Pooja Shree, Annu Shree, Harendra Prasad Singh, Santosh Kumar

Final Decision : Dismissed

Judgement

The original writ petitioner is seeking review of the judgment dated 27.02.2018 passed in C.W.J.C.No. 2336 of 2018 by which this Court has up-held

the judgment dated 01.08.2017 of the Central Administrative Tribuna, Patna Bench, Patna (hereinafter referred to as "the Tribunal") passed in

O. A. No. 329 of 2014 and refused to direct the respondents to consider the case of the petitioner for regularization.

Learned counsel representing the petitioner has sought to impress upon this Court by contending that the long absence and break in service for five

years in case of the petitioner was not for his own fault rather the petitioner was not allowed to work by the respondents.

It is the submission of learned counsel for the petitioner that the learned Tribunal as well as this Court in the writ application could not consider the

fact that the Tribunal had by its judgment in O. A. No. 590 of 2009 directed the respondents to consider the case of the petitioner for regularization as

per rules and applicable scheme of the regularization contained in Letter no. ST/38-1/TSM/2000 dated 05.10.2007 but the case of the petitioner was

not considered in the light of the scheme of the regularization as per direction of the Tribunal.

In course of hearing learned counsel submits that in its judgment the learned Tribunal has observed that in terms of exception allowed in the case of

Secretary, State of Karnataka and Others Vs. Uma Devi and Others reported in (2006) SCC (L & S) 753 read with the judgment in the case of State

of Karnataka Vs. M.L. Kesari reported in (2010) 9SCC 247, petitioner's case for regularization deserves a consideration. It is with this finding

that the Chief General Manager, Telecom, Circle Patna was directed to reconsider the case of the petitioner as per rules and applicable scheme

keeping in view the observations made in the letter no. ST/38-1/TSM/2000 dated 05.10.2007. It is submitted that the petitioner has been discriminated

and has been refused similar treatment like others who were given the benefit of regularization.

On the other hand, learned counsel representing the BSNL submits that the order dated 13.02.2014 passed by the Chief General Manager, Telecom,

BSNL as contained in Annexure P/10 to the writ application is a well reasoned and a speaking order which goes through each and every

submissions of the petitioner.

It is submitted that the petitioner was engaged on contractual basis as a motor driver for running the new vehicle along with four others vide letter

dated 01.12.1993 for a period of three months. His contractual engagement had been extended till the regular recruitment is made vide letter dated

03.03.1994. The new Jeep which was being driven by the petitioner met with a serious accident causing death of one of the officers and the vehicle

was badly damaged that is not in running condition. Since the vehicle was not in running condition, the deployment of the petitioner was not required

and so his engagement was discontinued. After expiry of 5 years the petitioner came with the order dated 30.03.1999 passed by the Tribunal in O. A.

No. 109 of 1996 in which the learned Tribunal had directed to consider the case of the petitioner for his deployment as casual motor driver till the

regular appointment is made. It is in this background the petitioner was redeployed on 22.04.1999. Hence, the case of the petitioner is not identical to

his other colleagues mentioned in letter dated 01.12.1993. The petitioner was reengaged after a break of 5 years by virtue of the Court's order. It

is, thus, submitted that the deployment of the petitioner is not based on the requirement of the respondent rather it is absolutely a litigious deployment.

Hence, no case of discrimination may be said to be made out by the petitioner.

Having heard learned counsel for the petitioner and learned counsel representing the BSNL, we find that the petitioner is unable to make out a case

for review. It is apparent that the applicant was never appointed against the sanctioned vacancy and further this Court is convinced that the petitioner

was given fresh engagement with effect from 24.02.1999 after a break in service for five years only by virtue of the order of the Tribunal which was

clearly providing that his engagement will be as a casual motor driver till regular appointment is made. The petitioner cannot claim any right to be

regularized in the given facts and circumstances of the case.

We find no merit in this application. The application is accordingly, dismissed.