
(2007) 09 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 15802 of 2004

Ravindra Prasad

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Administrative Tribunals Act, 1965 — Section 14(2)
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)

Citation : (2008) 56 BLJR 367 : (2007) 4 PLJR 785

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and counsel for the Union of India.

2. This application has been filed by the petitioner for quashing the order terminating his service as Peon vide order dated 30.12.2003 contained in S.D.E. (Administration), Gaya, issued under the signature of respondent No. 3, S.D.E. (Administration) B.S.N.L. (Office of G.M.T.) Gaya. Further prayer of the petitioner is for a direction to the respondents to regularise his service and to give temporary status in view of Government Circular No. 292/Reott/11/R.M./49 dated 20.9.2002.

3. Petitioner's case is that he was engaged by the Telephone Department as casual Daily rated labourer to work as Peon in the Telephone Department in the year 2001 since then he was continuously performing his duty and regularly being paid his salary. Petitioner's claim is that he has continuously working for more than 800 days starting from the date of appointment till the date of termination.

4. Petitioner is claiming relief in view of the policy decision of the B.S.N.L. whereby it was decided that casual labourers who have completed 240 days in

any one year as on 21.3.2002 can apply in prescribed performa for grant of Temporary status Mazdoor. This policy decision was announced in pursuance of Sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rule, 1965. Petitioner had also applied for grant of Temporary Status peon in view of the letter dated 20.9.02 issued by the S.D.E. (Admn.), Gaya, but his claim was rejected by order dated 30.12.03 passed by the respondent No. 3 and it became operational with affect from that date as notice was served on 30.12.2003.

5. Petitioner challenged this order by filing O.A. Case No. 85 of 2004 before the Central Administrative Tribunal, Patna but the same was disposed of and the petitioner was permitted to withdraw the application by order dated 6.8.04, in view of the objections raised by the counsel for the respondent B.S.N.L.. The objection was that the Central Administrative Tribunal (hereinafter to be referred to as "CAT") has no jurisdiction to entertain this case in view of the fact that the Department of Telecom has now become BSNL which is s Body corporate and not notified u/s 14(2) of the Administrative Tribunal Act, 1965. In support of this contention a decision reported in 2004 (2) A.T.J. 11 B.N. Sharma v. U.O.I. and Ors. was referred. However, an order of stay passed earlier in favour of the petitioner was directed the continue, so far his continuation in service is concerned.

6. Counter affidavit has been filed on behalf of the respondents BSNL in which it has been stated that the petitioner had not completed 240 days in one calender year, i.e. prior to 31.3.02, hence the circular dated 22.9.02 is not applicable in the case of the petitioner. This is the reason that he was not found eligible for granting benefit of Temporary Status Mazdoor.

7. Petitioner has filed a supplementary affidavit and has also brought the decision of the Govt. of India in the Telecom Department relating to regularisation of the such casual workers who have completed more than 240 days in any one calendar years as contained in Annexure-2 to the this application, the committee constituted for the same consisting D.G.M. (F&A) G.M.D.T. Gaya (Chairman), D.E. (E-10B) GMDT Gaya (Member) and D.R. (Trans) GMDT Gaya (Member) met on 12.5.03 and went into details of the matter and saw the application/certificates and the mandatory records of the casual labourers. The Committee found that in five cases (including the case of petitioner) payments were made by A.O. (Cast) GMDT and it was decided that in all the five cases including the petitioner's case, payment and engagement orders have been passed, consideration should be for regularisation. Name of the petitioner stands at Sl. No. 4 of the list.

8. This application is being fallowed in view of the recommendations of the Committee as contained in Annexure-6 dated 12.5.03.

9. Counsel appearing for the B.S.N.L. submits that in View of the recommendation of the Committee petitioner's case is fit for regularisation, I find that in respect of recommendation of the Committee, an order terminating

service of the petitioner has been passed, ignoring the recommendation. Such order is completely against the respondent's own decision. In this view of the matter letter dated 30.12.2003 issued by the respondent No. 3 is held to be illegal and without Jurisdiction.

10. The order dated 30.12.2003 contained in Annexure-3 issued by the S.D.E. (Administration), B.S.N.L. (Office of G.M.T.), Gaya, is quashed. Respondent No. 3 is directed to regularise the service of the petitioner in the light of the recommendation of the Committee as contained in Annexure-6 and to give the petitioner temporary Status in view of the Government Circular No. 292/Reott/11/R.M./49 dated 20.9.2002.

11. This application is allowed.

12. Since counsel for the petitioner has submitted that petitioner is still working, if that is so, salary not paid to the petitioner must be paid, without any delay.