

**(2013) 08 RAJ CK 0028**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No"s. 5107 and 5190 of 2013

Union of India and Others

APPELLANT

Vs

Nena Ram

RESPONDENT

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**Date of Decision :** 27-08-2013

**Acts Referred:**

**Citation :** (2013) 08 RAJ CK 0028

**Hon'ble Judges :** Amitava Roy, C.J.;Arun Bhansali, J

**Bench :** Division Bench

**Advocate :** V.K. Mathur, for the Appellant; Vijay Mehta, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

1. These writ petitions have been filed by the Union of India and its functionaries aggrieved by order dated 01.01.2013 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ("the Tribunal") in Original Application Nos. 54/2012 and No. 68/2012 ("the applications"), whereby, the Original Application No. 54/2012 was allowed and the order dated 03.02.2012 passed by the Superintendent of Post Offices, Sirohi Division, Sirohi informing the respondent/applicant that in absence of any provisions his services cannot be regularized was quashed as being bad under the law and the petitioners/respondents were directed to regularize the services of the applicant/respondent as per the terms laid down in the Scheme and, in view of the said order, the termination order questioned in Original Application No. 68/2012 was quashed as bad under the law and it was directed that the applicant will be taken back on service and will mark attendance till regularization of his services take place. The brief facts of the petitions may be noticed thus: the applicant Nena Ram in Original Application No. 54/2012 approached the Tribunal with the averments that he was appointed as part time Waterman in the year 1986 in Head Post Office, Jalore; when his services were terminated, he filed Original Application No. 78/2010, which was allowed and termination was quashed and it was directed that he be regularized on filing a representation. Further averments were made in the application that

the applicant was entitled to temporary status and regularization and that rejection of his representation vide order dated 03.02.2012 refusing regularization was bad.

2. The application filed by the respondent/applicant was opposed by the petitioners/respondents and it was submitted that there was no sanctioned post of Waterman at Head Post Office, Jalore and only contingent paid employees were engaged on temporary basis, which services can be terminated at any point of time without any notice. It was denied that the applicant was appointed as part time Waterman and as there is no provision to regularize the services of part time contingent paid employees, he was rightly denied regularization.

3. Original Application No. 68/2012 was filed by the respondent/applicant against order dated 21.02.2012, whereby, he was directed not to attend the duties as part time contingent paid Waterman. The thrust of the application was that as refusal to regularize the services has already been questioned by filing Original Application No. 54/2012, the consequential impugned order dated 21.02.2012 also deserves to be quashed and he was entitled for reinstatement, back-wages and regularization. The stand of the petitioners/respondents in the said application was similar to that in Original Application No. 54/2012.

4. The Tribunal after hearing the parties posed an issue that the acid test for determination is that whether or not any worker is a full time Casual Labourer and reached a conclusion that applicant was appointed as part time Waterman and, therefore, he does not fall within this category. However, the Tribunal observing that no distinction has been made while granting temporary status between part time and full time employees and, in view of the mention of "temporary status would be conferred on the casual workers in employment as on 29.11.1989" in the Casual Labourers (Grant of Temporary Status and Regularization) Scheme dated 12.04.1991, the benefit of doubt goes to the applicant and, consequently, allowed the applications as noticed above.

5. The learned counsel for the petitioners while referring to paras 19 and 22 of the order impugned submitted that the order passed by the Tribunal is mutually contradictory. It was further submitted that the issue that part time Casual Workers are not entitled for regularization in terms of a similar scheme has been settled by Hon'ble Supreme Court in Secretary, Ministry of Communications and Others Vs. Sakkubai and Another, and, consequently, the judgment impugned deserves to be set aside.

6. Our attention was also drawn to the applications being I.A. Nos. 3952/2013 and No. 3953/2013 filed in D.B.C.W.P. No. 5107/2013 and I.A. No. 3950/2013 filed in D.B.C.W.P. No. 5190/2013 by the petitioners/respondents for placing on record certain documents in support of its contentions. No reply to the said applications has been filed by the applicant/respondent.

7. Replying to the contentions, learned counsel for the respondent submitted that the respondent/applicant has been performing his duties as Waterman since

1986 and to terminate his services after a passage of more than 25 years and denying the regularization is wholly unjust and, in terms of the Scheme dated 12.04.1991, the respondent/applicant is indeed entitled for regularization and the order impugned passed by the Tribunal does not call for any interference.

8. Having considered the submissions made by learned counsel for the parties and perusing the order impugned passed by the Tribunal, we are satisfied that the Tribunal has failed to examine the issue involved in the proper perspective by taken into account the facts, circumstances, Scheme and the law involved in the matter. We are also of the opinion that the documents sought to be placed on record by the petitioners in the present writ petitions are having material bearing on the issues involved in the matter.

9. Having considered the same, we deem it appropriate to set aside the impugned order dated 01.01.2013 passed by the Tribunal in Original Application Nos. 54/2012 and 68/2012. The applications are remanded back to the Tribunal for adjudication on merits afresh. The documents sought to be produced by the petitioners by way of interim applications may now be placed before the Tribunal. The writ petitions as well as the interim applications and the stay applications stand disposed of accordingly.