

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 290/00084/2017

Reserved on : 27.02.2019
Pronounced on : 14.03.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Pukhraj Sen son Shri Mohan Kishan Sen, aged about 53 years, resident of Moti Chowk, Opposite Mardiya Hospital, Jodhpur (Raj.). Presently working as Casual Labour at B.S.N.L. Office, Bhopalgarh.

...Applicant

(By Advocate: Shri Anirudh Purohit)

Versus

1. Bharat Sanchar Nigam Limited, through its Chief Managing Director, Harish Chandra Mathur Lane, Janpath, New Delhi.
2. The Chief General Manager, BSNL, Rajasthan Telecom Circle, Jaipur
3. General Manager Telecom District Jodhpur, Office of GMTD, Subash Nagar, Pal Road, Jodhpur

...Respondents

(By Advocate: Shri Kamal Dave)

ORDER

Per Mrs. Hina P.Sha, M(J)

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- "A- By an appropriate order or direction, the respondent may be directed to grant the applicant the regular pay under the pay scale for the post of Group D post from the date of his initial appointment with all consequential benefits.
- B- By an appropriate order or direction, the respondent may be directed to regularise the services of the applicant on the Group D post from the date of initial appointment.
- C- Any other order or direction, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.
- D- The cost of the O.A. may kindly be awarded in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are that he was initially appointed as casual labour in the year 1983, but his services were retrenched/ terminated on 31.12.1994. Against this termination, he approached the Labour Court, Jodhpur and vide award dated 3.12.2002 (Ann.A/1) learned Labour Court directed the respondents to reinstate the applicant in service with 50% back wages from the date of reference and that the services of the applicant shall be treated to be continuous without any break from the date of his initial appointment. This award was challenged by the respondents before the Hon'ble High Court by filing SB Civil Writ Petition No.2133/2003 and vide order dated 17.3.2005 (Ann.A/2), the Hon'ble High Court dismissed the Writ Petition. In pursuance of the order dated 17.3.2005, the applicant joined his duties on 17.5.2005. The applicant averred that since the Labour Court directed to treat the services of the applicant as

continuous without any break for all purposes, the respondents ought to have regularized his services and grant him regular pay scale of Group D post. For that purpose, the applicant has filed various representations (Ann.A/4) collectively. Without receiving any response from the respondents, the applicant also served notice for demand of justice through his counsel dated 15.7.2009 (Ann.A/5). The respondents have replied to the legal notice vide letter dated 22.10.2009 stating that the applicant was being paid daily wages due to the minor discrepancies in the number of monthly days for wages, but however as soon as the matter came into notice, the same is rectified and the applicant is paid monthly wages accordingly. Respondents had replied that the case of granting regular pay to the applicant is under process and will be settled as soon as post of R.M. is sanctioned from the competent authority. Despite this, the respondents have not granted regular pay to the applicant. The applicant has also mentioned about the internal correspondence of the respondents regarding compliance of the order of the Labour Court and stated that despite making assurances and in spite of long internal correspondence between the authorities, nothing concrete was done to finalize the case

of the applicant. Therefore, the applicant again raised his grievance before the Deputy Chief Labour Commissioner (Central), Ajmer. Ultimately upon failure of the conciliation proceedings, the matter was referred for adjudication before Central Industrial Dispute Tribunal Cum Labour Court as in spite of the order passed in his favour, he was still getting daily wages at meagre rate of Rs. 405/- and the case was registered as No. 15/2015, which the applicant has withdrawn with liberty to file the case before this Tribunal. The applicant also averred that the similarly situated person who was terminated was reinstated in the respondent Corporation in pursuance to order dated 18.8.1999 of the Labour Court and his services have been regularised and he is getting regular pay scale and other benefits. Thus, aggrieved by the inaction of the respondents, the applicant has preferred the present OA praying for regularizing his services and for regular pay scale.

3. The respondents by way of filing reply have stated that the applicant was engaged as casual labour on muster roll. The post of casual labour was neither permanent nor sanctioned. The award dated 3.12.2002 of the Labour Court has been implemented by the department and

applicant was reinstated and allowed benefits accruable in his favour. The respondents have also stated that regularization of casual labour is legally untenable in view of the judgment dated 10.4.2006 (Ann.R/2) of the Constitution Bench of the Hon'ble Supreme Court in Appeal (Civil) 3595-3612 of 1999 in the matter of Secretary, State of Karnataka vs. Uma Devi which has rendered the rules on regularization of casual labour of DOT (which were being followed in BSNL) legally untenable and hence, are not being followed in BSNL, any more. This view was upheld by the Hon'ble Supreme Court in a judgment dated 16.1.2009 in Appeal (Civil) No.292 of 2009 (Arising out of SLP (Civil) No.7803 of 2006 in the case of BSNL vs. Teja Singh (Ann.R/3).

By way of preliminary objection, the respondents stated that the applicant was holding the status of casual labour and not of a regular employee of BSNL, the grievance raised in the OA is not maintainable as the appropriate forum for adjudication of his grievance is Labour Court. The applicant preferred Writ Petition No.990/2009 wherein the Hon'ble High Court vide its order dated 9.11.2009 held that "In the case the petitioner will not get any relief then he will free to approach the Labour

Court or availed appropriate remedy except filing the writ petition, in the result the petition is dismissed.

The respondents have further stated that finally the BSNL HQ intimated vide letter No.5-2/2013-LE (Misc) (i) dated 30.09.2014 that "regularization of casual labours is not possible at this juncture in view of the decision of the Constitution bench of the Hon'ble Supreme Court dated 10.04.2016 in the matter of Uma Devi which has rendered the rules on regularization of Casual Labours of DOT (which were being followed in BSNL), legally untenable, and hence are not being followed in BSNL any more". Therefore, the respondents state that the department has acted in accordance with law and the relief sought by the applicant is not tenable and sustainable in the eyes of law.

4. We have heard Shri Anirudh Purohit, learned counsel for the applicant and Shri Kamal Dave, learned counsel for the respondents and perused the material available on record.

5. Admittedly, the applicant raised an industrial dispute No.12/2000 before the Industrial Disputes Tribunal cum Labour Court and the Labour Court vide award dated 3.12.2002 has held the termination as illegal and directed

the respondents to reinstate the applicant with 50% back wages from the date of reference. The Tribunal has also held that services of the applicant shall be treated as continuous from 31.12.1984. The said award was challenged before the Hon'ble High Court by way of S.B.Civil Writ Petition No. 2133/2003. The Hon'ble High Court dismissed the Writ Petition vide order dated 17.03.2005 observing that:-

"Having taking into consideration the contentions raised before me and the material placed alongwith the writ petition, I am of the opinion that no interference is called for by this Court in the award passed by the Labour Court. The Labour Court after judiciously applying its mind to the overall facts and circumstances of the case, has given concrete and specific finding while passing the impugned award."

Thereafter, it appears that the matter has attained finality as it is not the case of the respondents that they have challenged the above order of the Hon'ble High Court in any higher forum. After attaining the finality, the applicant was entitled to the benefits of pay and allowances as per the rules at the relevant point of time and accordingly, the applicant should have been considered for regular pay scale. From the material placed on record, it is also evident that the applicant has also filed SB Civil Writ Petition No.9901/2009 for claiming regular pay scale. The respondents informed the Hon'ble High Court that the matter is in active consideration before the higher

authorities and on the basis of this submission, the writ petition was dismissed vide order dated 9.11.2009, observing that in case the petitioner will not get the relief then he will free to approach the Labour Court or avail appropriate remedy except by filing writ petition. It is also noticed from the internal correspondence of the respondents that the matter was forwarded to the higher authorities for creating post of regular mazdoor, but of no avail. Now the respondents at a very belated stage vide letter dated 30.9.214 have taken a stand that in view of the Hon'ble Supreme Court judgment in the case of Secretary, State of Karnataka vs. Uma Devi, which has rendered the rules on regularisation of casual labours of DOT (which were being followed in BSNL) legally untenable, and hence are not being followed in BSNL any more. The respondents have not mentioned any reason as to why the case of the applicant was not considered after attainment of finality i.e. before the judgment of the Hon'ble Apex Court in the case of Uma Devi. The said stand of the respondents at this stage cannot be helpful as the award has already been passed by the Labour Court in favour of the applicant on 3.12.2002, which has been upheld by the Hon'ble High Court 17.3.2005, and the judgment in the case of Uma Devi

was passed on 11.4.2006. In these circumstances, the respondents should have given the benefit to the applicant on the basis of the award of the Labour Court, which has attained finality, but due to the lapses on the part of the respondents, the said benefits could not be granted to the applicant.

6. In view of above facts and circumstances of the case, we deem it proper to direct the respondents that after extending benefits on the basis of the award passed by the Labour Court, which has been upheld by the Hon'ble High Court vide order dated 17.3.2005, the case of the applicant shall be considered for regular pay scale/regularisation on the basis of the provisions applicable on the date of attaining the finality of the judgment. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

7. The OA stands disposed of in above terms with no order as to costs.

**(ARCHANA NIGAM)
ADMV. MEMBER**

**(HINA P.SHAH)
JUDL. MEMBER**

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