

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17211 of 2019

1. Nawal Kishore Singh, Son of Late Ramjee Singh, Working at present and Posted Indian Oil Corporation Ltd. (MD), Aviation Fuel Station, Jai Prakash Narayan International Airport, Patna- 800014, Bihar.
2. Sanjeev Kumar, S/o Sri Ram Rekha Mishra, Working at present and Posted Indian Oil Corporation Ltd. (MD), Aviation Fuel Station, Jai Prakash Narayan International Airport, Patna- 800014, Bihar.
3. Kaushal Kishore Singh, S/o Sri Permanand Singh, Working at present and Posted Indian Oil Corporation Ltd. (MD), Aviation Fuel Station, Jai Prakash Narayan International Airport, Patna- 800014, Bihar.
4. Rama Shankar Prasad, S/o Sri Shyam Kishore Prasad Singh, Working at present and Posted Indian Oil Corporation Ltd. (MD), Aviation Fuel Station, Jai Prakash Narayan International Airport, Patna- 800014, Bihar.
5. Rohit Kumar S/o Sri Ram Udgar Singh, Present and posted at Indian Oil Corporation Ltd. (MD) Barauni Terminal, Post Office- Barauni Refinery, District- Begusarai.
6. Rakesh Kumar, S/o Sri Anandi Singh, Present and posted at Indian Oil Corporation Ltd. (MD) Barauni Terminal, Post Office- Barauni Refinery, District- Begusarai.
7. Syed Mehdi Hassan S/o S.N.Jain, Working at the posted at Indian Oil Corporation Ltd. (MD), Patna Terminal, Village- Dhelwa (Sipara), Post Office- Lohia Nagar, Dist. Patna 800020, Bihar.
8. Niraj Kumar S/o Sri Pyarelal Srivastava, Working at the posted at Indian Oil Corporation Ltd. (MD), Patna Terminal, Village- Dhelwa (Sipara), Post Office- Lohia Nagar, Dist. Patna 800020, Bihar.
9. Rajiv Kumar Ranjan S/o Sri Raja Ram Singh, Working at the posted at Indian Oil Corporation Ltd. (MD), Patna Terminal, Village- Dhelwa (Sipara), Post Office- Lohia Nagar, Dist. Patna 800020, Bihar.
10. Sanjay Kumar Mishra S/o Sri C.K. Mishra Working at and posted at Indian Oil Corporation Ltd. (MD) Raxaul Depots, District- East Chamapran, Raxaul, 845305, Bihar.
11. Arun Kumar, S/o Suresh Pd. Singh, Working at and posted at Indian Oil Corporation Ltd. (MD) Raxaul Depots, District- East Chamapran, Raxaul, 845305, Bihar.
12. Mukesh Kumar S/o Sir Bisheshwar Singh, Working at and posted at Indian Oil Corporation Ltd. (MD) Raxaul Depots, District- East Chamapran, Raxaul, 845305, Bihar.
13. gopal Kumar S/o Late Sibalak Das, Working at and posted at Indian Oil Corporation Ltd. (MD) Raxaul Depots, District- East Chamapran, Raxaul, 845305, Bihar.
14. Ranjeet Kumar, S/o Sri Nathuni Singh, Working at and posted at Indian Oil Corporation Ltd. (MD), Aviation Fuel Station, Gaya International Airport, PO- Civil Aerodrome, Gaya, 823004, Bihar.
15. Abhishek Kumar, S/o Sri Talo Thakur, Working at and posted at Indian Oil



Corporation Ltd. (MD), Aviation Fuel Station, Gaya International Airport, PO- Civil Aerodrome, Gaya, 823004, Bihar.

16. Anil Kumar Singh, S/o Sri Ram Ji Singh, Working at and posted at Indian Oil Corporation Ltd. (MD), Aviation Fuel Station, Gaya International Airport, PO- Civil Aerodrome, Gaya, 823004, Bihar.
17. Arun Kumar S/o Sri Gopal Singh, Working at and posted at Indian Oil Corporation Ltd. (MD), Aviation Fuel Station, Gaya International Airport, PO- Civil Aerodrome, Gaya, 823004, Bihar.
18. Ranjeet Kumar Sharma S/o Late Janardan Singh, Working at and posted at Resident of Indian Oil Corporation Ltd. (MD), Aviation Fuel Station, Birsa Munda Airport PO- Hinoo, Dist. Ranchi, Pin - 834002, Jharkhand.
19. Bal Krishna S/o Kedar Nath Sinha, Working at and posted at Indian Oil Corporation Ltd. (MD) Indane Bottling Plant Phase IV BIADA, Post Office- Balidih Bokaro Steel City, PIBN- 827014, Jharkhand.
20. Arun Kumar S/o Late Ram Krishan Singh, At present working at and posted at posted in Indian Oil Corporation Ltd. (MD) Indane Bottling Platn Giddha, Bhojpur, Patna.
21. Vidya Sagar Rai, S/o Ganesh Rai, At present working at and posted at posted in Indian Oil Corporation Ltd. (MD) Indane Bottling Platn Giddha, Bhojpur, Patna.

... .. Petitioner/s

Versus

1. The Executive Director I/C (RS), Indian Oil Corporation Ltd. (MD) Regional Service, Eastern Regional Office, Indian Oil Bhawan, 2. Gariahat Road (South) Kolkata- 700068.
2. Chief General Manager (HR), Eastern Region, marketing Division Indian Oil Corporation Limited, Indian Oil Bhavan 2, Gariahat Road (South) Kolkata (W.B.) 700068.
3. The Executive Director BSO (Including Jharkhand) Indian Oil Corporation Ltd. (MD) Bihar State Office, Lok Nayak Bhawan, Dak Bunglow Road, 5th Floor, Patna- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukul Sinha, Adv
For the Respondent/s : Mr. Ankit Katriar, Adv

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT**

Date : 02-12-2022

Heard learned counsel for the petitioners and learned
counsel for Indian Oil Corporation.



2. The petitioners have approached this Court praying for issuance of directions to the respondent-corporation to treat them in the regular establishment in the grade of Junior Operator, Grade-I, from the date on which they were initially engaged as casual workers, i.e. 19.11.1998 and for all consequential benefits.

3. The petitioners were empanelled in the Approved List of Casual Persons (hereinafter referred to as ALCP for brevity). They were to be given job assignments at the locations, by maintaining their attendance in a separate register.

4. The issue regarding the petitioners' engagement as above was opposed by some unrecognised labour unions which led to institution of Reference Case No. 32 of 1999 before the Central Government Industrial Tribunal, Kolkata.

5. On 11.07.2011, the Central Government Industrial Tribunal at Kolkata held as follows:

22. In view of all the discussions made above, I am of the view that in the present reference the workmen union has miserably failed to establish that the action of the management in recruiting/inducting the 28 casual workmen, even though not being sponsored from the Employment Exchange was done unjustifiably nor it has



been proved by the workmen union that the action of the management in recruiting Shri Avik Pal ignoring the rights of handicapped sons of S/Shri B.K. Singh and S.B. Saha, employees of IOCL was also unjustified. In such circumstances, I am of the view that the workmen union of the present reference is not entitled to any relief.

6. The petitioners then filed CWJC No. 11651 of 2012 seeking the relief of regularization. Writ petition was disposed of on 22.08.2014 as follows:

11. In the facts and circumstances of the case, I am inclined to grant an opportunity to the petitioners to convince the Management that their cases for regularization would be covered under paragraph 50 of Uma Devi's case. In case, any such representation is made, the same would be duly considered.....

7. Another significant development in the present case is filing of writ petition bearing W.P. No. 4780 (W) of 2012 by the workmen of respondent-corporation challenging the award of Central Government Industrial Tribunal, Kolkata dated 11.07.2011. The writ petition was dismissed on 13.07.2017 (Annexure-9 to the writ petition). While dismissing the writ petition, the Kolkata High Court has taken note of the liberty



granted to the petitioners in their writ proceedings arising out of CWJC No. 11651 of 2012.

8. The legitimacy of the petitioners' empanelment as ALCPs and engagement thus attained finality whereafter they were offered appointment as Junior Operator (Grade-I) in the respondent-corporation under certain terms and conditions laid down in the letter of appointment.

9. The letter of appointment dated 31.07.2017 contains terms and conditions from which it is obvious that they are being appointed afresh on probation for one year. Subject to satisfactory period of probation, a letter of confirmation was to be issued to the petitioners. By this letter of appointment for the first time, they were placed in salary against a scale and other normal terms and conditions of regular employment. The appointment was also subject to verification process.

10. It is in this background that the petitioners have sought the relief, taken note of above.

11. The petitioners have stated that they have been confirmed in the regular establishment under the confirmation letters (Annexure-12 series to the supplementary affidavit filed by the petitioners), the last being dated 28.05.2019. After their confirmation in regular service, they have filed the instant writ



proceedings claiming the relief taken note of above.

12. Mr Mukul Sinha, learned counsel for the petitioners, submits that in view of the letter dated 19.11.1998 (Annexure-1) whereby they were empanelled, the memorandum of understanding between the management of the respondent-corporation and their employees' union dated 06.10.2007 (Annexure-5), and the letter dated 27.10.2014 (Annexure-14 of the writ petition), the petitioners have a legitimate expectation of being regularized from the date on which they were empanelled as ALCs. It is submitted that their case is covered by decision in the cases of (1) *The Direct Recruit Class-II Engineering Officers' Association & Ors. v. State of Maharashtra & Ors.* reported in *AIR 1990 SC 1607*, (2) *Director, Printing and Stationary Department, Uttar Pradesh Government Press & Ors. v. Motilal & Ors.* reported in *(2014) 11 SCC 470* and (3) *Gauri Shankar Pd. Rai v. Sajal Chakroborty, Chief Secretary, Government of Jharkhand & Ors.* reported in *(2015) 8 SCC 163*.

13. Mr Ankit Katriar has assisted the Court on behalf of the respondent-corporation. He submits that the submissions advanced on behalf of the petitioners are factually and legally untenable. The communication dated



19.11.1998, memorandum of understanding dated 06.10.2007, and the communication dated 27.10.2014 relied upon by the petitioners, do not give rise to any legitimate expectation for regularization. The petitioners were merely empanelled as ALCPs.

14. At the time of their empanelment, they were clearly informed in the note dated 03.11.1998 enclosed with communication dated 19.11.1998 that their further regularization may be considered “*in due course*” (*emphasis mine*). They were merely empanelled as casual labourers at the location throughout the State of Bihar. There was no assurance whatsoever for regularization. Petitioners, therefore, have no factual basis to claim that they had any legitimate expectation to claim regularization with effect from 19.11.1998.

15. The memorandum of understanding dated 06.10.2007 clearly contains a resolution which records the fact that the management of the respondent-corporation had, in clear and unambiguous terms indicated constraints in the matter of their request for regularization.

16. Having put forward this stand, it was stated that such plea will be considered at appropriate stage. The letter dated 27.10.2014 also clearly indicates that legitimacy of the



petitioners' empanelment as ALCPs was pending determination before the High Court of Kolkata and the same was accordingly communicated to the petitioners' counsel.

17. Representation, if any, held out by the respondent-corporation was only to the extent that the petitioners would be considered for regularization at an appropriate stage. Such futuristic representation by the respondents, from bare reading of the same, cannot be considered to be giving any kind of assurance for regularization with retrospectivity. The petitioners, for these reasons, cannot claim legitimate expectation for being regularization with effect from their empanelment as ALCPs.

18. It is also submitted that petitioners have accepted their regular appointment afresh on 31.07.2017 without any demur. They had undergone the probationary period after their appointment and also been confirmed in service. The issue therefore regarding their appointment had attained finality and petitioners, therefore, are estopped from claiming regularization with effect from 19.11.1998, or benefits from date prior to their appointment under letters dated 31.07.2017.

19. This Court would thus find that the



petitioners' empanelment under the order dated 19.11.1998 is as per the memorandum of understanding between the Respondent-Corporation Management and the Employees Union, as approved by the management under approval dated 03.11.1998. The approval dated 03.11.1998, records the entire factual background right from 1996, when earlier memorandum of understanding between the parties, containing a clause that a duly appointed committee visited the Barauni site and based on the same, matter of empanelment of about 28 workers at Barauni was required to be completed by 31st May, 1996. It further contemplated that thereafter their further regularization may be considered in due course. This, however, did not materialize in view of agitational activity undertaken by the labourers, which fact is also apprent from the approval dated 03.11.1998. The petitioners' empanelment is not pursuant to this exercise.

20. Subsequently, the understanding dated 25.05.1998 was arrived at between the Management and the Union, which after an examination of the matter culminated in approval for empanelment of 28 labours (26 at Barauni + 2 already working as contract labour at Jamshedpur AFS). It is based on this approval for engagement of casual labour at



Bihar locations, after verification of their antecedents that the petitioners have been empanelled in the approved list of ALCs. Neither in the approval dated 25.05.1998, nor the note dated 03.11.1998, leading to issuance of the order dated 19.11.1998 empanelling the petitioners, was there any clause in any manner assuring regularization. From reading of the note dated 03.11.1998 and the petitioners' order of empanelment, it is clear that the same only conferred casual labourer status to the petitioners, without any assurance of regularization. Thereafter, the memorandum of understanding dated 06.10.2007, relied upon by the petitioners, also does not make out a case of legitimate expectation for regularization. It is clear from bare reading of the same that the management had clearly indicated constraints in the matter of regularization. The memorandum of understanding merely recorded that regularization will be considered at "appropriate stage". This cannot be understood to be an assurance of regularization with retrospectivity. It clearly indicates that consideration would be at "appropriate stage" and has to be read in the context in which it is stated, which is apparent from paragraph 2 of the memorandum of understanding, which reads as follows:-

"2. The Union reiterated their request for early regularization of 26 ALCs. The Management



shared the sentiments of the Union and noted their request indicating certain constraints (emphasis mine) in the matter. It will be considered at appropriate stage (emphasis mine). However, the present practice of engaging ALCs for 19 days only in a month will discontinue.”

21. The three decisions of the hon'ble Apex Court in the case of (1) ***The Direct Recruit Class-II Engineering Officers' Association & Ors.***, (2) ***Director, Printing and Stationary Department, Uttar Pradesh Government Press & Ors.*** and (3) ***Gauri Shankar Pd. Rai*** (supra), relied upon by learned counsel for the petitioners are arising out of completely different facts and circumstances, and are of no avail to the petitioners.

22. The letter dated 27.10.2014 (Annexure-14), relied upon by the petitioners, also does not contain any assurance for regularization. The petitioners who were casual labourers, therefore, have not been able to make out any case for invoking the theory of legitimate expectation for regularization.

23. The offer of appointment dated 31.07.2017, which has been accepted by the petitioners, is for their appointment on the post of Junior Operator (Grade-I). It is subject to certain terms and conditions, as contained in the



appointment letter, including period of probation. The tone and tenure of the offer of appointment, as well as appointment letter, leaves no room for doubt that it is a fresh appointment on a post on which the petitioners have never worked prior to the offer of appointment. It is not the petitioners case that they have worked against the sanctioned vacant post of Junior Operator (Grade-I), at any point prior to issuance of the appointment letter dated 31.07.2017. For the said period, they have worked only as casual labourers by virtue of their empanelment in an approved list.

24. In the facts and circumstances above, the petitioners, prior to their appointment on 31.07.2017, were admittedly working as casual labourers. It has explicitly been held in the decisions of the Apex Court in the case of *Secretary, State of Karnataka and Others vs. Umadevi and Others* reported in (2006) 4 SCC 1 that theory of legitimate expectation cannot be successfully advanced by such temporary, contractual or casual employees for claiming regularization.

25. The relevant extract of decision in the case of *Umadevi* (supra) is being reproduced, which reads as follows:-



“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

.53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion



within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme. . . .”

26. The petitioners, otherwise also do not fulfill the requirements as per the said decision in the case of *Umadevi* (supra) at para 53 to otherwise claim regularization, as their casual services prior to their appointment on 31.07.2017 was not against any duly sanctioned vacant post. The totality of the circumstances, noticed above, leads the Court to conclude that no case is made out for regularization by the petitioners.

27. The writ petition is thus devoid of any merit and the same is dismissed.

(Madhuresh Prasad, J)

SUMIT/
SHASHANK-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.12.2022
Transmission Date	NA

