

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4873 of 2014

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1. Dr. Anshuman Singh S/O Sri Sudhansu Mohan Singh Resident Of Sushant, Near
Indraprastha Apartment, West Boring Canal Road, District- Patna.
2. Dr. Rajesh Kumar Sinha S/O Sri Ram Bila Singh Resident Of Shahganj, Nahar
Road, District- Patna. **Petitioners**

Versus

1. The Union Of India Through The Secretary, Nits, Department Of Higher
Education, Ministry Of Human Resources Department, Government Of India, New
Delhi.
2. The Deputy Secretary, Nits, Department Of Higher Education, Ministry Of
Human Resources Department, Government Of India, New Delhi.
3. The Director, National Institute Of Technology, Patna- Cum- Chairman,
Selection Committee, Nit, Ashok Raj Path, Patna.
4. The Registrar, National Institute Of Technology, Ashok Raj Path, Patna.
5. The Chairman, Board Of Governors Of National Institutes Of Technology, Patna.
..... **Respondents**

Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Advocate
For the Respondent/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Sanjay Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 07-08-2015

The petitioners, who are Assistant Professors in the departments of Civil Engineering and Mathematics, seek directions to the respondent authorities to place them in Academic Grade of Pay (AGP) of Rs.9000, as per recommendation of Screening Committee constituted by NIT, Patna pursuant to their application received under Career Advancement Scheme (CAS) in terms of circular, dated 14.3.2012 of Ministry of Human Resource Development (MHRD), Government of India and the 20th meeting of Board of Governors (BOG) of NIT, Patna held on 18.2.2013 and its resolution at paragraph 12, being BOG resolution

No.20.21 and 20.23 as well as resolution of BOG held on 5.7.2013.

2. The petitioners' case is founded on the premise that they have requisite academic and professional experience and required critical years of service for advancement to AGP of Rs.9000 as per MHRD letter, dated 18.8.2009 (Annexure-4), MHRD letter, dated 14.3.2012 (Annexure-3) and NIT, Patna own resolution of BOG dated 5.7.2013 (Annexure-7).

3. The petitioners have also brought to the notice of this Court, specific instances, of faculty members recommended for lesser AGP by the Screening Committee but allowed higher AGP in alleged violation of MHRD circular and own resolution of BOG of NIT, Patna.

4. The respondents NIT have filed counter affidavit and have justified their actions.

5. Before I consider the respective submissions advanced on behalf of the parties, it would be apposite to notice the academic and professional experience of petitioners, and the factors leading to issuance of advertisement inviting applications from the faculty members for advancement to higher grade under CAS.

Academic and Professional experience of Petitioner No.1

6. Petitioner No.1 has brazing track record in academics right from the days of matriculation. He qualified for IIT, New Delhi, from where he did his B.Tech in Civil Engineering in July, 1993 and thereafter M.



Tech in Environmental Science and Engineering in 1998 from Indian School of Mines. He completed his Ph.D in Civil Engineering (Environmental Engineering) from University at BUFFALO, State University of USA. He was a visiting Professor at NIT, Patna between February 2004 to December, 2005 teaching under Graduate Class in Environmental Engineering, Engineering Mechanics etc and joined NIT Patna on regular basis as Assistant Professor from 12.12.2005 in the department of Civil Engineering and has been serving since then. He also worked for Larsen & Tubro Infotech Limited between January 2000 to February, 2003 at Mumbai and New Jersey, USA and for Consulting Engineering Services (India) Limited between May 1998 to November, 1998.

Academic and Professional experience of Petitioner No.2

7. Petitioner No.2, too, equally had impressive records in academics. He did B.Sc (Maths) from Magadh University, Gaya and M.Sc in Mathematics from Patna University. He also completed his Ph.D from Patna University in the year 1998. He furthered his academic qualifications by acquiring PGDCAs from Bihar College of Engineering, Patna University, M.Sc (CS) from M.G.U., Rohtak and qualified in M.Phil examination from Alagappa University, Karaikudi in the year 2007. He joined NIT, Patna as Assistant Professor on 21.12.2005 and has been working since then in the department of Mathematics. Prior to



joining NIT, Patna, he taught in R.J.M. College, Patna between March, 1990 and December, 1995; worked for Science and Technology Department, Patna, Government of Bihar between December 1996 and March 2000; (iii) Guest Faculty with IGNOU and Xavier CC, Patna between January 2000 and November 2005.

8. Having set forth the academic and professional experience of the petitioners, I would like to indicate the circumstances leading to issuance of advertisement inviting applications from faculty members for advancement of AGP.

On 28/29.1.2004, the Bihar College of Engineering was converted into National Institute of Technology (NIT), Patna as an autonomous and fully funded Institute of Central Government to fulfill the demand of high quality under Graduate and Post Graduate Level of Education in Engineering and Technology in the State of Bihar. The promotions in NIT were regulated by CAS contained in guide lines issued by the MHRD from time to time. The CAS was an important and an essential component of faculty structures, whereby an individual faculty member could move to a higher designation and/or pay (AGP) in absence of any clear vacancy. However, the NIT including NIT, Patna had not undertaken the exercise for more than three years. Consequent upon the implementation of recommendation of 6th Central Pay Commission, the MHRD received a number of representations from faculty members



requesting for removal of anomaly in pay scales amongst faculty members. The MHRD took the issue in its meeting with BOG of NIT and constituted a Committee under the Chairmanship of Professor S.K. Sarangi, Director, NIT, Rourekela vide order dated 2.3.2010. The report submitted by the Committee was analysed at the level of MHRD and it was realized that the pay anomaly was intricately linked to the Recruitment Rules of NIT and promotion of faculty members under Career Advancement Scheme (CAS). In order to sort out the issue, a Special Committee was again set up by the MHRD by its letters dated 27.7.2011 and 23.8.2011. The Special Committee after detailed examination of the issue submitted its report to the Standing Committee of the Council of NIT in its meeting held on 15.11.2011. The Council of NIT in its meeting held on 18.11.2011 resolved to accept the recommendation of Sarangi Committee for implementation of CAS and Recruitment Rules of faculty in NIT as modified by the Standing Committee. Subsequent to the resolution of the NIT, still some representations were received for removal of anomalies, faculty promotions and conditions of service. The MHRD examined the representations with Chairperson of BOG and Director of NIT, and after due deliberation, general and specific guide lines were prescribed for promotion of faculty members of NIT under CAS vide letter, dated 14.3.2012 (Annexure-3), which was communicated to all the NITs,



which is annexed as Annexure-3. As per letter dated 14.3.2012 of MHRD, the NITs which had not conducted CAS interview for three years or more were directed that as a one time measure, the Selection Committee of the NITs may examine the scholastic contribution of faculty members and accordingly recommend the salary and AGP to which they would be entitled, based on the following criteria:-

(a) A critical number of years in the lower level or designation and/or AGP;

(b) Cumulative academic performance during the service period at the current level in terms of teaching and research output as well as sharing institutional responsibility, and

(c) Proficiency and knowledge in one's chosen field of research and training. Superior record in all these three fronts qualifies a faculty member for advancement to a higher level.

9. Earlier, the MHRD in its letter, dated 18.8.2009 (Annexure-4) addressed to all Central Funded Technical Institutes observed that the pay structures and designations of all centrally funded technical institutions would generally be the same, as per scheme of representation of teachers in University, as notified in its letter dated 31.12.2008. The letter provided for accelerated promotional benefits. Clause 2(b) of letter which is relevant in the context, provides for the norms and the critical number of years of service for promotion and advancement of AGP:

(i) The critical number of years of service for promotion from AGP of Rs.6000 to Rs.7000 was fixed as 3 years for those having Ph.D qualification;

(ii) Another three years at AGP of Rs.7000 for moving to AGP of Rs.8000 and

(iii) Another three years at AGP of Rs.8000 for moving to AGP of Rs.9000 for those possessing Ph.D.

10. Thus, as per 2009 letter of MHRD, the faculty members with Ph.D qualification were entitled to AGP of Rs.9000 after putting 9 years of relevant experience. At the AGP of Rs.9000, the designation of post of Assistant Professor would change to Associate Professor, which is a promotional post in the line. Similarly, ones having M.Tech qualification could enhance from AGP of Rs.6000 to Rs. 7000 and from Rs.7000 to Rs. 8000 and then to Rs.8000 to Rs.9000, after every five years of relevant experience at lower level. In view of letter dated 14.3.2012 of MHRD, directing the NIT to invite applications as a one time measure for granting promotion under CAS, whenever the same has not been done for three years or more, the NIT, Patna issued a notice on 6.11.2012 inviting applications from faculty members under CAS. The cut off date for the purposes of calculating critical years of service was fixed at 13.3.2012. The application form was to be submitted by 30.11.2012 to the concerned Head of Department. Subsequently, vide



notification, dated 19.3.2013 (Annexure-6), the cut off date for requisite qualification was extended to 31.3.2013. The BOG of NIT, Patna in its meeting dated 5.7.2013 vide resolution no. BOG 21.18 resolved that “for Career Advancement Scheme (CAS) for teachers having requisite experience (both at NIT Patna and at any other AICTE approved Institute taken together) to be considered up to the grade pay of Rs.8000/-. The teachers will be considered for being given AGP of Rs.8000/- provided they are enrolled for Ph.D course and have at least one journal paper published as a very special case”.

11. Simultaneously the advertisement too was published seeking applications for faculty post in different departments of NIT including Civil Engineering and Mathematics. The petitioners who were already working in the grade Assistant Professor at AGP of Rs.6000, filed their applications for consideration of grant of AGP of Rs.9000, in view of letter dated 18.8.2009, letter dated 14.3.2012 of MHRD and letter dated 5.7.2013 of NIT, Patna. For examining the cases of faculty members, the NIT constituted Screening Committee to scrutinize the applications as per the eligibility criteria. After due scrutiny of the petitioners' application, the Screening Committee recommended for advancement of petitioners' AGP to Rs.9000 under designation of Associate Professor. The petitioners' name figured at Sl. Nos. 10 and 37 respectively of CAS Scrutiny Committee's Report. As per the statute of NIT, different



Selection Committees were constituted for separate subject/department. About 100 faculty members were interviewed on 5.8.2013, 6.8.2013 and 7.8.2013, which were short listed/ recommended as eligible candidate for different AGP before the Selection Committee. As against AGP of Rs.9000, the petitioners were recommended for the AGP of Rs.8000/-. Being aggrieved, the petitioners have filed the instant writ application, seeking a direction to the respondents to place them in AGP of Rs.9000 as recommended by the Screening Committee and designate them as Associate Professors.

12. The petitioners state that they fulfill the norms of promotion and advancement to AGP of Rs.9000 in terms of the guide lines of MHRD contained in letters, dated 18.8.2009 and 14.3.2012 as well as resolution of BOG of NIT, Patna dated 5.7.2013. As per letter, dated 18.8.2009 of MHRD applicable to all centrally funded institution, the Assistant Professor possessing degree of Ph.D with regular service of 9 years would be eligible for moving to AGP of Rs.9000 from AGP of Rs.6000. As per resolution of BOG of NIT held on 5.7.2013, the teaching experience gained at any AICTE approved Institute would also be considered for grant of ACP. They profess more than 9 years of requisite experience in terms of letter dated 18.8.2009(Annexure-4), letter dated 14.3.2012 (Annexure-3) of MHRD and resolution dated 5.7.2013 of NIT, Patna.

13. To the contrary, according to the petitioners, many faculty members who did not fulfill the requisite criteria have been granted higher AGP, ignoring the recommendation of Screening Committee for lesser AGP. The specific instances are mentioned in paragraphs 34 to 37, of main writ petition and paragraphs 19, 20, 26 and 27 of the rejoinder to counter affidavit, which are quoted herein below for easy reference:

Writ petition:

“34. That the letter issued by the MHRD dated 14.03.2012 had insisted that a faculty member without Ph.D will not earn any enhancement of AGP unless he acquires a Ph.D Degree and inspite of the said direction of the MHRD several of the Assistant Professors viz. Anand Shankar, Jyoti Prakash of the Department of Information Technology have been given Grade pay of Rs.8,000/- even when they had been recommended, by the Screening Committee, for upgradation to Grade Pay of Rs.7,000/- alone and the said enhancement of the Grade Pay was made even when neither of them were Ph.D Degree holders.

35. That it is further stated that one Rajiv Kumar Mandal of the Department of Electrical Engineering too has been given the Grade Pay of Rs.8000/-, contrary to the recommendation of the Screening Committee for upgradation to Grade Pay of Rs.7,000/-, and inspite of the fact that he is not a Ph.D. Degree holder.

36. That further, one Dr. Baboo Rai, who had been recommended for upgradation to AGP of Rs.7,000/- by the Screening Committee, has also been given the Grade Pay of Rs.8,000/- even when his services in the NIT have not been regularized and he has been appointed against leave vacancy and there is an audit objection by the Principal Director of Audit (Central), Indian Audit and Accounts Department with regard to his continuance and de-facto regularization”.

Rejoinder to Counter affidavit:

“19. That it is stated that Sri Anand Shankar Tiwari, Sri Jyoti Prakash Singh and Sri R.K. Mandal were holding M. Tech Degrees as on the cut-off date of 31.03.2013 and had merely been enrolled for Ph.D course. It is submitted that the MHRD letter dated 14.03.2012 had specifically insisting that faculty members without Ph.D will not earn any enhancement of AGP unless they acquired the Ph.D Degree. The respondents have not answered the contention of the petitioners that as to why and under what circumstances they had been considered for grant of AGP inspite of there being a bar for the grant of the same in the letter dated 14.03.2012 and it appears that the respondents are trying to skirt the issue for it goes to show the fallacy in the process of recommendation of the Selection Committee.

20. That it is further stated that Sri Anand Shankar Tiwari, Sri R.K. Mandal, Dr. Jayant Ghosh and Sri Jyoti Prakash Singh have not put in the requisite number of years in the NIT for being considered for grant of the first of the AGP. It is submitted that in terms of the letter dated 14.03.2012 the entitlement to the first of the AGP would arise only after a faculty member has put in 3 years of service in the NIT itself. The aforesaid three faculty members do not fulfill the said criteria as they had joined NIT in the year 2011 and did not fulfill the requirement as on 31.03.2013.

26. That it is further submitted that the contention of the respondents in paragraph 24 of the counter affidavit that “any promotion in future will be done only through Selection Committee” stands negated by the Memo No.NITP/18/14 dated 16.04.2014 where the faculty member Dr. Gawrishankar has been granted enhancement of Academic Grade Pay of Rs.7000/- without even having to go through the process of facing the Selection Committee. Also, it is further submitted that in the resolution FC 24.9 of the 24th meeting of finance committee of NIT Patna dated 14.3.2014, two faculty members viz., Dr. Avijit Burman and Dr. Nilambar Kumar Singh were granted salary enhancement through pay protection without the recommendation of Selection

committee for their work experience at a private institute.

27.It is further submitted that all the three of the faculty members viz., Dr. A.G. Barman, Dr. Tasneem Parvin, and Dr. Mukesh Choudhary do not fulfill the requisite criteria of having put in the requisite number of years in NIT for being considered for grant of even the first of the AGP for they had all joined in the year 2011 and as such did not have the requisite three years as on 31.03.2013 for their consideration for grant of enhanced AGP”.

14. Lastly, the petitioners argued that holding of interview was a mere formality as over 100 internal and external candidates were examined over a period of three days, which period was highly insufficient to judge a candidate's objectivity. The Selection Committee had not formulated any parameter or had not set out any modality for evaluating merit by way of awarding points against academic achievement or under different heads, such as holding institutional/administrative responsibility, publication of papers in National and International journals, standard of experience etc.

15. The respondents at the outset have raised a preliminary objection with respect to the maintainability of the writ petition. They state that the petitioners cannot challenge the report of the Selection Committee consisting of Academicians and Experts. Further more, the Screening Committee is not a recommending body, rather its work is to scrutinize the applications as per eligibility criteria for short listing the candidates for appearing before the Selection Committee for final decision. They



deny of having given any undue favour to any of the candidates as mentioned in paragraphs 34 to 37 of the writ petition. They have no issues with the petitioners' contention that as per MHRD letter dated 14.3.2012, a faculty member with Ph.D will be eligible to move from AGP Rs.6000 to 7000 after three years, and from AGP of Rs.7000 to Rs.8000 after next three years, and from AGP of Rs.8000 to Rs.9000 after completion of another three years. But, according to them, at the time of filling up applications for CAS, the petitioners had completed only 7 years as faculty members at NIT, Patna as Assistant Professor at AGP of Rs.6000 and thus not entitled to AGP of Rs.9000.

16. The issue for consideration before this Court is whether the petitioners were entitled to AGP of Rs.9000 as per recommendation of Screening Committee of NIT for consideration of Selection Committee. The respondents have also raised an objection with respect to maintainability of writ petition that the petitioners cannot challenge the report of the Selection Committee consisting of academicians and experts. I would advert to this objection later on in this judgment. I will first address the issue whether the petitioners were entitled to AGP of Rs.9000 as per recommendation of the Scrutiny Committee of NIT for consideration of Selection Committee?

17. The norms for advancement of AGP in case of NIT, ISMU, IIIT, School of Planning and Architecture have been prescribed under clause

2(b) of letter, dated 18.8.2009 of MHRD which is quoted herein below:

“2. (b)(i) An Assistant Professor possessing the degree of Ph.D in the relevant discipline and with regular service of 3 years’ at AGP of Rs.6000/- p.m. shall be eligible for moving to AGP of Rs.7000/-p.m.

(ii) An Assistant Professor possessing the degree of Ph.D in the relevant discipline and with regular service of 3 years’ at AGP of Rs.7000/- p.m. shall be eligible for moving to AGP of Rs.8000/- p.m.

(iii) An Assistant Professor possessing the degree of Ph.D in the relevant discipline and with regular service of 3 years’ at AGP of Rs.8000/- p.m. shall be eligible for moving to AGP of Rs.9000/- p.m. and re-designated as Associate Professor”.

18. The MHRD while reiterating the guide lines contained in letter dated 18.8.2009 defined further norms for promotion of faculty members of NIT under CAS. The Board of Governors in its meeting held on 5.7.2013 had relaxed the criteria of requisite experience by accepting the experience gained outside NIT in AICTE approved Institute (Annexure-7). According to the NIT, the petitioner No.1 had more than 7 years of requisite experience on the cut off date i.e. 31.3.2013 as Assistant Professor in AGP of Rs.6000, which posts they had joined on 12.12.2005 and 21.12.2005 respectively.

19. I find that petitioner No.1 was a visiting Professor at NIT, Patna in between February, 2004 to December, 2005 teaching under graduate classes in Environmental Engineering, Engineering Mechanics, which has not been denied by the NIT, Patna. If the aforesaid period is added, the petitioner No.1 would be fulfilling the requisite critical years



(9 years) of teaching experience for advancement to AGP of Rs.9000. Prior to joining NIT, he worked for Larsen & Tubro Infotech Limited in between January 2000 to February. 2003 at Mumbai and New Jersey, USA and was also working for Consulting Engineering Services (India) Limited between May 1998 to November, 1998.

20. Besides this, the petitioner No.1 has brilliant academic records having qualified for IIT, New Delhi and having done M.Tech in Environmental Science and Engineering in the year 1998 from ISM and Ph.D in Civil Engineering (Environmental Engineering) from University at Buffalo, State University, USA.

21. In my view, the claim of petitioner No.1 that he had more than 9 years of requisite experience as relaxed under resolution dated 5.7.2013 of NIT, Patna, as against figure of little more than 7 years arrived at by the respondents, requires reconsideration. The matter is accordingly remitted to the NIT, Patna for fresh consideration within a period of two months from the date of receipt/production of a copy of this order.

22. The petitioner no.2 too had amazing academic record which are as follows:

- (i) M.Sc in Mathematics from Patna University;
- (ii) Ph.D from Patna University in the year 1998
- (iii) Acquired qualification in the nature of PGDCAs from Bihar College of Engineering, Patna University;
- (iv) M.Sc (CS) from M.D.U. Rohtak, Haryana;
- (v) Qualified M.Phil examination from Alagapa University, Karaikuri in the year 2007.

23. According to the respondents, petitioner no.2 had little more than 7 years of teaching experience at NIT, Patna as against requisite 9 years of teaching experience as Assistant Professor with Ph.D.

24. The petitioner no.2 claims that the respondents have not considered his working experience (i) in R.J.M. College, Patna between March, 1990 and December, 1995; working for Science and Technology Department, Patna, Government of Bihar between December 1996 and March 2000; (iii) Guest Faculty with IGNOU and Xavier CC, Patna between January 2000 and November 2005. According to him, before joining at NIT, Patna on 12.12.2005, he had more than 14 years of experience, thus eleven to twelve years in all more than the critical years required for advancement of AGP of Rs.9000 from AGP of Rs.6000 as Assistant Professor on the cut off date i.e. 31.3.2013.

25. In my view, the case of Petitioner No.2 too would require due reconsiderations in light of letters dated 18.8.2009 and 12.3.2012 of MHRD as well as resolution of NIT, Patna dated 5.7.2013.

26. So far as issue of maintainability is concerned, I would like to point out that the Court is conscious of the limits of judicial review while considering the decision of the Selection Committee, comprising of experts and academicians. I would entirely agree with the submission of the respondents that the Court would not sit as a Court of appeal nor it would function to scrutinize the evidence and consider the relative merit



of the candidates, as relied upon by the respondents in case of Basavalah (Dr.) vs. Dr. H.L. Ramesh & Ors and other analogous cases, reported in (2010) 8 SCC 372. However, if on the basis of materials available on record, it appears that a particular criterion set out in the norms for selection had escaped due considerations which may result into injustice, the Court can refer the matter for its reconsideration. In the instant case, the Screening Committee constituted by the NIT, had itself recommended for advancement of AGP of Rs.9000 to the petitioners. In the case of Dalpat Abasaheb Solunke etc.Dr. B.S. Mahajan & Ors, reported in A.I.R. 1990 SC 434 has observed that the decision of the Selection Committee can be interfered on grounds such as “illegality or patent material irregularity in the constitution of the Committee or procedure vitiating the selection proved mala fide affecting the selection etc.

27. Again the Hon’ble Apex Court in the case of Raj Kumar & Ors v. Shakti Raj & Ors, reported in (1997) 9 SCC 527 observed that in case of glaring illegalities the Courts can interfere in the selection matter.

The relevant extract of paragraph 16 of judgment is quoted herein below:

“16.But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conductor acquiescence has no application to the facts in this case.....”

28. The writ application is, accordingly, disposed of with an observation that the NIT, Patna would reconsider the case of the petitioners as to whether they passes the requisite critical years of experience for advancement to the AGP of Rs.9000 in light of letter dated 18.8.2009, 12.3.2009 of MHRD as well as resolution of NIT ,Patna dated 5.7.2013 within three months from the date of receipt/production of a copy of this order.

(Samarendra Pratap Singh, J)

Md.Jamaluddin Khan

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