

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7320 of 2014

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1. Basudeo Lal Son of Late Raghunath Lal Resident of Village : - Ujjanlalpur, Post Office : - Lohna Road, Police Station : - Sakkatpur, District : - Darbhanga, At present residing at N.I.T. Campus, Patna.
2. Lal Babu Son of Late Ram Khilawan Mistry Resident of Purandarpur, Muslim School Lane, Near Doja Lodge, Police Station - Pirbahore, District : - Patna.
3. Nageshwar Lal Son of Late Swaroop Lal Resident of Village : - Ujjanlalpur, Post Office : - Lohna Road, Police Station : - Sakkatpur, District : - Darbhanga, At present residing at N.I.T. Campus, Patna.

.... Petitioner/s

Versus

1. The National Institute of Technology , Patna, through its Director, National Institute of Technology, Patna.
2. The Registrar, National Institute of Technology, Patna.
3. The Board of Governors, through its Chairman, National Institute of Technology, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Adv

For the N.I.T. : Mr. Y.V. Giri, Sr. Adv, Mr. Satya Prakash Tripathy, Adv & Mr. Sanjay Kr Giri, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 19-02-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

“For issuance of an appropriate writ commanding the respondent National Institute of Technology, Patna to consider the case of the petitioners for promotion to the post of Electrical Mistry-cum-Engine Operator where they are working since 06.01.2005, which is a Class-III post.

For issuance of an appropriate writ commanding the respondent N.I.T., Patna to pay the minimum scale of Electrical Mistry/Engine Operator till the consideration of their cases for the regular promotion.”

3. Mr. Siyaram Sahi, learned counsel for the



petitioner in support of the aforementioned prayer has firstly contended that after the petitioners were inducted on the post of Ward Boy/Fireman of Bihar Engineering College which became National Institute of Technology and it was the conscious decision of the N.I.T (National Institute of Technology) to have utilized the services of the petitioner on Class-III post vide notification dated 06.01.2005 and therefore, not only the petitioners would be entitled for pay and emoluments on the post on which they were deputed under the order dated 06.01.2005, but in fact they would also be entitled for consideration of their case for promotion. In this regard, he has also submitted that earlier service condition of the petitioners were protected by the rules and regulations framed by the Patna University but then after their services have been taken over in the N.I.T., there is no service regulation and as such there would be no impediment in considering the cases of the petitioners for their promotion keeping in view that they were working for a long period of nine years. In this



regard, he has also placed reliance on the judgment of this Court dated 22.11.2011 in C.W.J.C No. 12250 of 2011 (Bhajan Prasad & Ors vs the N.I.T & Ors) as well as the order dated 12.10.2012 passed in C.W.J.C No. 15212 of 2012 (Basudeo Saw Vs the State of Bihar & Ors) and consequential notification issued by the N.I.T. dated 08.12.2014.

4. Mr. Y.V. Giri, learned senior counsel appearing on behalf of N.I.T., on the other hand has submitted that firstly, the petitioners appointment while their services, were taken over in the N.I.T. was for Ward Boy/Fireman which was a Class-IV post (Group-D) and therefore, any authorization of work by way of deputation in the order dated 06.01.2005, will not vest the petitioners with any right to continue on that post or claim salary of that post specially when the basic qualification for those posts are also not possessed by the petitioners. He has further submitted that the concept of promotion in service jurisprudence invariably connotes existence of a cadre and availability



of the promotional post. According to Mr. Giri, the same post of Ward Boy held by two of the petitioners and the post of Fireman held by 3rd petitioner (Nageshwar Lal) had no such cadre from which promotion can be given to the post of Electrician and as such the claim of promotion of the petitioners also is without any merit. Mr. Giri, finally has also sought to distinguish the judgment in the case of Bhajan Prasad (supra) by placing reliance on subsequent judgment of this Court dated 29.01.2015 in C.W.J.C No. 1621 of 2012 (Girdhar Gopal vs the N.I.T & Ors) as contained in Annexure-B to this writ application. According to him reliance placed by learned counsel for the petitioner either on the order of this Court in the case Basudeo Sah (supra) and secondly the order dated 08.12.2014 will have no similarity, inasmuch as, whatever was said in the case of Basudeo Sah (supra) was in relation to the post in which he had necessary qualification.

5. In the considered opinion of this Court consideration of the aforementioned submissions it will

have go to the root of the matter will have to examine the following issues:-

(i) Whether the petitioners have got any right against the posts on which they have been deputed to work by an order dated 06.01.2005, either in respect to their continuation on the said posts or getting salary of those post?

(ii) Whether the petitioners would be entitled for consideration of their cases for promotion on the post of Electric Mistri/Engine Operator on which they are said to be working by way of deputation?

(iii) Whether the precedent cases relied by Mr. Sahi in the case of Bhajan Prasad (supra) and Basudeo Sah (supra) will have any application to the facts and circumstances of this case so as to entitle them to get the minimum of the pay scale of the posts on which they are working ?

6. As with regard to the issue of promotion, this Court will have no difficulty in rejecting the case of the petitioners for a simple reason that for claiming



promotion in service jurisprudence, there has to be a cadre with both a feeder post and a promotional post. Nothing however has been brought on record by the petitioners to show that after N.I.T., has come into existence it has created a cadre of the post of Ward Boy/Fireman from which promotion can be given to the post of Electric Mistri/Engine Operator. There is infact complete want of any material to show that a Fireman can be promoted on the post of Engine Driver whereas there is also absence of cadre of ward boy for their promotion on the post of electrician and as such the claim of the petitioners for promotion must be and is hereby rejected.

7. As with regard to the rights claimed by the petitioners on account of their continuation on the post of Electric Mistri/Enginer Driver in view the notification of the N.I.T. dated 06.01.2005, firstly, it has to be noted that, that itself was a purely adhoc arrangement with the following stipulation:-

“Regular and casual employees of the Institute are deputed to work without any addition monetary benefit of the posts mentioned against their names as given . They are

directed to join their new assignment in the Department/Office mentioned against their names with immediate effect after getting relieved from existing assignment by respective controlling authorities. This be effective till further order. The respective controlling authorities will assign the duty in the section as per requirements.”

8. In the said order, it would also be found that soon after the N.I.T. had taken over the services of the employees of the Bihar College of Engineering, it had to start its functioning in an effective manner. Let it be noted that the notification of transfer of the employees was made on 28.01.2004, wherein, there was a concept of automatic take over of the services of the employees working whether on regular basis or contractual basis. To that extent, it would be useful to quote the notification dated 28.01.2004, which reads as follows:-

“ Notification

Consequent upon transfer of Bihar College of Engineering (B.C.E), Patna, Bihar from the jurisdiction of Patna University as contemplated by the Patna University Act, 1976 (Bihar Act 24 of 1976) with the consent of Patna University, Patna as well as the State Government of Bihar to the National Institute of Technology, Patna, Patna Society, a body registered under the Societies Registration Act (Act 21 of 1860) 1960, vide Registration No. 1284 dated 22.01.2014, the Government of India after careful consideration has decided to take over BCE, Patna as fully an Institute of the Central Government and rechristen it as National Institute of Technology, Patna with immediate effect.

2. The Institute would be integrated with other NITs

for academic administrative, management and financial purposes. The personnel and administrative, management and financial purposed. The Personnel and the assets-both moveable and immovable – of erstwhile Bihar College of Engineering which was hitherto under the control of Government of Bihar on the date of such transfer shall be deemed to have been transferred to the National Institute of Technology, Patna, Bihar.

V.S. Pandey

Joint Secretary to the Government of India

Phone: 23382298.”

9. As a matter of fact, soon thereafter the N.I.T., had by its first notification dated 07.05.2004 had also gone to indicate the provision of post as was admissible in the N.I.T. as per the AICTE norms and the adjustment of the working employees against those posts.

10. In this list, the name of the petitioner Lal Babu who was holding the post of Fireman was sought to be adjusted against the post of Workshop Attendant. Similarly the petitioner, Nageshwar Lal, Ward Servant in the Hospital was sought to be adjusted against the post of Durban and the petitioner, Babulal, working on the post of Ward Servant was sought to be adjusted on the post of Durban. This was the position on the date on



which the petitioner came in service of N.I.T., and therefore, whatever order was subsequently passed on 06.01.2005 directing the petitioners to work on any other post by way of temporary arrangement as indicated above would not amount to their holding substantive appointment against those posts for a simple reason that those posts also required possessing of certain qualification of passing of I.T.I and experience. As noted above, the petitioners either working as Ward Boy/Fireman and absorbed in the services of the N.I.T., as Durban, Ward Servant or Workshop Attendant, cannot claim to have thus possessed prescribed qualification on which some working arrangement was made by the order dated 06.01.2005.

11. At this stage, Mr. Giri has informed this Court that the aforesaid working arrangement on 06.01.2005 was not found to be proper and has already been cancelled and the petitioners stand reverted to the post on which their services were absorbed as per the order dated 07.05.2014 (Annexure-6).



12. Mr. Shahi, however, immediately objects such submission by taking a plea though the order may have been issued by the N.I.T., on 08.12.2004 vide Annexure-A to the supplementary counter affidavit but then this has not been given effect to because the petitioners still are holding the post on which their services were deputed by order dated 06.01.2005.

13. The aforementioned controversy whether the petitioners have been now brought back to their own post or are still continuing is quite unnecessary. The question in fact for deciding the issue in hand would be as to whether the petitioners have the requisite qualification to hold such post. As noted above, the petitioners did not have the requisite qualification for the posts on which they were deputed to work under temporary arrangement and therefore, whatever would be the working arrangement was made by the Registrar at the initial stage of the institute being taken over by the N.I.T that cannot be allowed to continue for an indefinite period and if that has not been sought to be

restored, this Court cannot hold the petitioners entitled for any right specially when they did not have the requisite qualification for the post.

One of the basic ingredient for even same wages by applying the doctrine of equal pay for equal work is the requirement of at least having qualification for the post.

Here in this case, neither the induction of the petitioners has been made in the prescribed manner nor they have the qualification and therefore, it would be difficult for this Court to even hold that they will be entitled to get payment of salary of those post held by them on deputation basis in view of the order dated 06.01.2005 which as noted above has already been cancelled on 08.12.2014.

14. Finally, reliance placed on the judgment of this Court in the case of Basudeo (supra) is also wholly misplaced because in that case Basudeo Saw was holding the prescribed qualification for the post and therefore this Court would find it difficult to follow the ratio laid down in the case of Basudeo Sao (supra) as

also the judgment in the case of Giridhar Gopal (supra).

15. As with regard to applicability of the order in the case of Basudeo Sao (supra), this Court will have no difficulty in holding that nothing was decided by this Court save and except the matter was remitted to the N.I.T., on which the claim of Basudeo Sao (Supra) of being given the post of L.D.C., despite his absorption in the N.I.T., on the post of Durban was allowed. As a matter of fact, the consequential order which was passed on 08.12.2014 the case of Basudeo Sao is not based on the judgment of this Court rather is based on the approval given by the N.I.T., in its resolution no. 26.6 in its 28th meeting on 28.11.2014. This Court is not aware as to what had transpired in the resolution of the N.I.T., dated 28.11.2014 but then if Basudeo Sao had the qualification of L.D.C., and the N.I.T., had given such post of L.D.C., that also cannot be done in the case of the petitioners because the petitioners as noted above, do not possess the prescribed qualification and experience for the post in question.





16. At this stage, Mr. Shahi has submitted that it would be a sheer exploitation if the respondents are not even directed to consider the case of the petitioners for grant of extra wages for the work done by them on the higher post for a period of nine years.

17. This Court is not aware as to whether there is similar provision of Rule-103 of the Bihar Service Code authorizing 20 per cent of extra emoluments for working against the higher posts but then if there be any such similar provision either in the N.I.T., or in the Service Rules, which has been adopted by the N.I.T., even from the Central Government, their cases should be considered for payment of 20 per cent of allowances Rs. 250 per month whichever is more in terms of Rule-103 of the Bihar Service Code or any other similar provision because at the end of the day it cannot be denied that these petitioners had not continued working on their own on the higher post but on the basis of the alternative working arrangement made by N.I.T. on 06.01.2005, which was allowed to continue for a period

of nine years before its being cancelled on 08.12.2014. Therefore, this Court will only give liberty to the petitioners to represent their cases individually for grant of the allowance to the extents 20 per cent of the pay or Rs. 250/- per month for the work done by them on the higher post between 06.01.2005 to 08.12.2014.

18. Subject to the aforementioned observation, liberty, this writ application fails and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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