

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1621 of 2012

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1. Girdhar Gopal S/O Awadesh Nandan Prasad Barial R/O Flat No. 202, Block No.C, Maa Jageshwari Tower, Main Road, Kankarbagh, Patna-800026, Police Station- Agam Kuan, District- 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
4. The Patna University, Through its Vice-Chancellor, Patna University, Patna
5. The Registrar, Patna University, Patna
6. The Secretary, Science And Technology, Government Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi
For the NIT : Mr. Y.V. Giri, Sr. Advocate
For the Respondent: : Mr. A.Ujjwal Sc-25
For the Patna University : Mr. Digvijay Singh.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 29-01-2015

The writ application filed under Article 226 of the Constitution of India seeks a direction commanding the respondents National Institute of Technology, Patna (for short “NIT”) to consider his case for promotion to the post of Assistant Librarian with effect from the date of vacancy with consequential benefits. The petitioner has further prayed that the respondent NIT be commanded to pay the salary of Assistant Librarian on which post the petitioner is working since 2004. During the pendency of this application, the petitioner superannuated w.e.f. 31.12.2013 on attaining the age of

superannuation. He was paid the scale of Senior Library Assistant. He has claimed salary of the post of Assistant Librarian.

Before constitution of the NIT, the Institution was known as Bihar College of Engineering (for short "BCE") operating under the Patna University. In 1981 vide Annexure-2, the petitioner was appointed as Senior Library Clerk on which post he was confirmed on 11.12.1982 . The Librarian functioning in the BCE superannuated w.e.f. 31.1.1993 and under the orders of the Principal dated 29.1.1993 (Annexure-4), the petitioner was directed to take over charge from him. According to him, the post of Library Clerk or Library Assistant is Class III post. The Staffs Appointment and Promotion Committee of Class III and IV of BCE considered the claim of the employees for grant of promotion. On concluding the exercise, the recommendation was made on 28.01.2004 (Annexure-8) for grant of promotion to eligible employees both under Class-III and Class-IV. The name of the petitioner was, however, not recommended therein. The Principal of BCE on his own vide communication dated 28.6.2003 (Annexure-5/1) wrote a letter to the Registrar of the University showing his no-objection to grant of such promotion to the petitioner if the same is found justified. In the said letter, the educational qualification of the petitioner was shown as M.A. with Bachellor of Library Science. By a notification dated 28.1.2004 (Annexure-8) the BCE was converted



into a fully funded institute of Central Government and renamed as NIT. The matter regarding his promotion, therefore, remained hanging. The NIT vide communication dated 12.10.2006 (Annexure-9) requested the Patna University to take decision on the previous recommendation made on 1.7.2003 (Annexure-5) for granting promotion. In the meanwhile, by an order dated 7.5.2004 (Annexure-10), the petitioner who was functioning as Library Assistant was deputed to function as Assistant Librarian without any additional monetary benefit on which post he started working. The claim of the petitioner for promotion could not be considered. The details of the restructured/re-designated posts along with pay-scale and qualification which exist in the NIT has been enclosed as Annexure-12 wherefrom it appears that for the post of Librarian re-designated as Library Information Officer Grade-I as also Library Information Officer Grade-II (in two different scales.) as approved by the Ministry of Human Resources Department, a person holding Post Graduate degree with Master in Library Science and having four years experience as Librarian and fully conversant with computerized management of library system was eligible to hold the post. Several posts, however, of Assistants in the Library re-designated as the post of Library Information Assistants in lesser grade was/were available for which the educational qualification was Bachellor degree with

Bachelor of Library Science with minimum three years experience and further having working knowledge of computer application in library environment.

The contention of the petitioner is that he holds the requisite qualification for the post of Assistant Librarian (re-designated as Library Information Officer Grade-II) and is entitled to be promoted on the said post which carries a higher pay scale of Rs. 6500-10500/- or the post of Library Information Officer Grade-I carrying pay-scale of Rs. 8000-13500/-. Several representations in this regard were filed by him which were not heeded to. A writ petition being C.W.J.C. No. 12250 of 2011 was filed by several employees of the erstwhile BCE now functioning under NIT for a direction to consider their cases for promotion from Class-IV to Class-III post in the NIT. The writ application was disposed of by order dated 22.11.2011 (Annexure-16) whereafter they have been granted such promotion by the NIT. The case of the petitioner, therefore, also requires to be considered for grant of promotion. Subsequently, another writ petition was filed in this Court vide C.W.J.C. No. 15212 of 2012 (Annexure-19) claiming promotion from Class-IV to Class-III post which was disposed of in the light of the order passed in C.W.J.C. No. 12250 of 2011. It has been contended that the petitioner of C.W.J.C. No. 15212 of 2012 has subsequently been granted the

promotion by the NIT. Alternatively, it has been submitted that if the petitioner is not granted the relief of grant of promotion then the respondent NIT should at least be directed to pay the minimum scale of pay of the post he discharged on deputation until his retirement.

Mr. Giri conversely submitted that the petitioner was appointed on substantive post falling under Class-III by the BCE. He was, however, permitted to take over charge of the higher post by the Principal when the Librarian of the BCE was about to superannuate. The Staffs Appointment and Promotion Committee did not recommend the case of the petitioner for promotion. This was on account of the reason that he was not educationally qualified therefor. The post of Librarian which has been re-designated in two categories i.e. Librarian Information Officer Grade-I and Librarian Information Officer Grade-II require post graduate degree with Master in Library Science plus four years experience as Librarian. Admittedly, the petitioner was not holding the said qualification. Although in the rejoinder, the petitioner has enclosed a certificate of having passed the Master of Library Science examination from Allagappa University in May, 2008 but no permission and/or leave was prayed and granted therefor. In his representations seeking payment of retiral benefits, the petitioner has, therefore, treated him as the Senior Library Assistant which is a Group-C post. He has referred in this regard to Annexure-



22. A person who has been deputed to discharge the duties of higher post in his own pay scale cannot as of right claim any monetary benefits and/or promotion particularly when he lacked educational qualification of the post. Insofar as the order passed by this court in C.W.J.C. No. 12250 of 2011 is concerned, it has been submitted that the case of the petitioner stands on different footing inasmuch as admittedly the Promotion Committee did not recommend his name for grant of promotion. The orders by which he was directed to take over charge of the post of Librarian under BCE and the subsequent order of deputation passed by the NIT shall not enure to the benefit of the petitioner as he lacked the educational qualification. Reliance in this regard has been placed on ***AIR 1981 SC 580***. The petitioner would also not entitled to payment of salary of the post of Assistant Librarian and/or Librarian Information Officer Grade I and/or Librarian Information Officer Grade-II on the principles of “*equal pay for equal work*” since equality in the work is referable to different factors one of them being the educational qualification of the post. Reliance in this regard has been placed on ***2004 (1) SCC 347 (Government of W.B. Vs. Tarun K. Roy)***.

Mr. Shahi has contended relying on ***2008 (1) PLJR 245 (Dr. Nitya Gopal Bandyopadhyay vs. State of Bihar)*** as also ***2008 (3) PLJR 144 (Prafulla Ranjan Shrivastava vs. State of Bihar)*** that

once the petitioner was commanded to hold the post even on deputation basis or working arrangement then payment of salary of the said post cannot be denied by the respondents particularly when he was permitted to work on the post for a long duration.

On a consideration of the rival submissions of the parties, it is explicit that the petitioner was functioning as the Library Clerk or Assistant in the BCE and was asked to take over charge of the post of Librarian in the wake of retirement of the Librarian. The matter concerning grant of promotion was taken up by the BCE but the case of the petitioner was not recommended. The petitioner has relied on Annexure-5/1 in order to contend that the same be treated as a recommendation. On bare perusal of Annexure-5/1, this Court finds that the Principal of BCE setting out the case of the petitioner treated him to be the Senior Library Clerk (Assistant) only noted that he was the sole claimant for the post of Librarian and registered his no objection in case such promotion is found fit and granted. Admittedly, no order was passed granting promotion to the petitioner on the post of Librarian or Assistant Librarian until change of status of BCE into NIT. True it is that under orders contained in Annexure-10, the petitioner although treated as Library Assistant was deputed to discharge the duties of Assistant Librarian on which post the petitioner claims to have continued until retirement but such



deputation would not inure to the advantage of the petitioner in claiming substantive promotion. Law in this regard is well settled. The another contention of the petitioner is that he should be directed to pay salary of the post of the Assistant Librarian or its equivalent under the re-structured/re-designated posts under NIT. Admittedly, he did not hold the educational qualification of the said post. There is a serious dispute with regard to the petitioner acquiring the Master degree in Library Science. The case of the petitioner is that he obtained such degree in May, 2008 whereas the stand of the NIT is that no permission and/or leave was sought and granted for acquiring the said qualification. In that context, the status of the petitioner as assumed by the petitioner himself becomes relevant. It appears, in his representation, he has treated himself as Senior Library Clerk/Assistant. This may be treated as an admission of his status. Taking into account the aforesaid facts, the claim of the petitioner for granting promotion to the post of Assistant Librarian or equivalent post in the NIT with effect from the date when he was deputed under the NIT to hold the post of Assistant Librarian on deputation basis cannot be granted. Even accepting the case of the petitioner, he did not hold the requisite qualification and experience for the post when he was deputed about which there is no dispute.

The next contention of the petitioner is that he should be



allowed to draw at least minimum scale of pay of the post held by him continuously although on deputation basis until his retirement requires to be considered. It has been emphatically argued on the basis of the pleadings subsequently brought on record by way of rejoinder that acquisition of the degree of Master of Library Science was informed to the NIT. The dispute only is whether such acquisition of degree of Master in Library Science was acquired after permission and/or grant of leave or not. However, the fact that the petitioner acquired the said degree/qualification is not much in dispute. In that case, the petitioner may be entitled for grant of minimum scale of the post he discharged under the orders of the NIT at least from June, 2008 until his retirement. Indisputably, the respondent NIT allowed the petitioner to perform on the post of Assistant Librarian after its conversion. The petitioner claims to have acquired the educational qualification for the said post which was in the knowledge of the NIT yet he was neither considered nor promoted but allowed to continue uninterruptedly on the said post. In this context, the order passed by this Court in C.W.J.C. No. 12250 of 2011 (Annexure-16) becomes relevant wherein this Court, considering the ratio laid down in *AIR 1986 SC 1571* and *AIR 1991 SC 101* directed for payment in the minimum of pay admissible to the post which in the present case is the post of Assistant Librarian or equivalent post thereof under the re-

structured/redesignated post/scale. However, the petitioner cannot be directed to be considered for promotion from the said date as admittedly his case was not considered and recommended by the Promotion Committee. The requirement of experience for holding the post shall also become relevant. This Court, therefore, does not find it appropriate to direct consideration of his case for promotion as prayed in this application. However, considering the facts and circumstances of the case emerging from the records and also the fact that the petitioner has now superannuated, it is directed that the respondent NIT shall pay the petitioner minimum scale of pay of the post of Assistant Librarian or equivalent/designated post thereof w.e.f. June, 2008 until his date of retirement. The other retiral benefits shall be payable to the petitioner treating him in the scale of pay of Senior Library Assistant/Clerk or equivalent post thereof.

Let the respondent calculate the differential amount payable as per the present order to the petitioner and authorize/pay the same as quickly as possible preferably within 02 months from the date of receipt/production of a copy of this order.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

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