

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7774 of 2014

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Baiju Kumar S/o Late Chandrika Prasad resident of Mohalla - Bhagirathi Lane,
Mahendru, Police Station - Sultanganj, District - Patna

.... Petitioner/s

Versus

1. The National Institute of Technology, Patna through the Director, National Institute of Technology, Patna
2. The Director, National Institute Technology, Patna
3. The Registrar, National Institute of Technology, Patna
4. The Secretary, Ministry of Human Resources Development, Department of Higher and Secondary Education, Govt. of India, Shastri Bhawan, New Delhi.

.... Respondent/s

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Appearance :

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

For the Resp. No. 1 to 3 : Mr. Y.V. Giri, Sr. Adv.

Mr. S.K. Giri, Adv.

For the Resp. No.4 : Mr. S.K. Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 19-05-2015

Heard learned counsel for the parties.

2. Having regard to the prayer of the petitioner in this writ application confined to the question of appointment of the petitioner on compassionate ground as would be more apparent from the following two reliefs sought in this writ application:-

"1(i) *For issuance of an appropriate writ for quashing the letter No; NITP/2240/10 dated 01.09.2010 issued by the Registrar Notional Institute of Technology, Patna whereby the claim of the petitioner for appointment on compassionate ground has been rejected contained in Annexure 7.*

(ii) *For issuance of an appropriate writ commanding the respondent N.I.T. Patna to appoint the petitioner on*

*compassionate ground against Class IV post under
N.I.T. Patna."*



this Court will have no difficulty firstly in holding that the impugned order dated 1.9.2010 refusing the appointment on compassionate ground on the basis that even the mother of the petitioner was appointed on compassionate ground is bad. Once an appointment of an employee takes place, the nature of appointment loses its colour and, therefore, if that person appointed on compassionate ground becomes part of the organization, his or her dependant cannot be refused the appointment on account of such appointment being on compassionate ground.

3. The issue however will not turn on at the aforesaid aspect because what ultimately at the end of the day, in view of exhaustive pleadings, has surfaced is the aspect of vacancy. It is here that the respondents seem to be quite confident on the basis of materials brought on record that there are only 26 posts of subordinate staff under the staffing pattern of the NIT as Group-D staff which is capable of being filled up by way of compassionate ground. It is the case of the respondents that at present there are 64 persons working as against these 26 posts and, therefore, there is no sanctioned post available on which the appointment of the petitioner on compassionate ground can be made.

4. Mr. Shahi had tried to explain this aspect by a number of



circumstances and materials. According to him, first of all, the Government of India order dated 17.8.2012 brought today in the counter affidavit filed by the respondent no.4 will leave nothing for speculation that 92 additional posts were created and, therefore, the plea of non-availability of sanctioned posts is not correct. He has further tried to highlight that only recently in the last year, 20 persons of Class-4 were promoted on Class-3 posts and, therefore, those vacancies have become available. Additionally, he also points out that five persons have also retired and, therefore, 25 vacancies are well in sight of the petitioner even after passing of the impugned order.

5. Mr. Giri, learned counsel for the NIT has, however, reiterated that as per the affidavit filed even in the year 2014, there have been 64 persons working against 26 sanctioned posts. This Court would not be in a position to reject this factual aspect specially when the issue now has become more than clear with regard to availability of the total sanctioned posts as explained by the respondents in their counter affidavit specially in view of Annexure-R4-A dated 17.8.2012 as well as Annexure-B of the counter affidavit of the respondent nos. 1, 2 & 3 containing the details of post sanctioned by Ministry of Human Resource Development for non-teaching post.

6. Thus, even if the submission of Mr. Shahi is accepted at its face value that 25 vacancies have emerged after passing of the



impugned order on account of promotion to the Class-4 employees on Class-3 posts and retirement of six of them, the net position again would remain that still there would be 39 persons in excess working against 26 posts. Accordingly, the aspect now sought to be developed with regard to 42 posts on the basis of reading of the Government of India communication, in fact, seems to be wholly misplaced because what Government of India ultimately has come out to say is in fact total strength and not confined to 26 posts. Here, the fact is that it is only 26 posts on which compassionate appointment can be made and therefore this Court does not find availability of sanctioned post as has also been clarified by the respondents. In that view of the matter, this Court would not be in a position to direct for appointment of the petitioner on compassionate ground, inasmuch as, it is well settled in law that no appointment can be made on compassionate ground if there be no availability of vacant sanctioned post.

7. Thus, for the reasons indicated above, this application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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