

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13225 of 2014

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1. Dr. Lal Bahadur Roy, FIE Son of Sri Jaldhar Roy Resident of 301, Madhukunj Apartment, Near Forest Office, Nehru Nagar, P.S. Patliputra, District- Patna.

2. Dr. Shambhu Sharan Mishra Son of Late Shiv Shankar Mishra Resident of 303, Bhawani Palace, Anandpuri, P.S.- Sri Krishna Puri, District- Patna.

3. Dr. Sawal Kishore Singh Son of Sri Ambika Prasad Sharma Purvi Laxmi Nagar, Khemnichak, P.S.- Ram Krishna Nagar, District- Patna.

4. Dr. Vivekanand Singh Son of Late Bhubneshwar Prasad Singh Resident of Professor Quarter, NIT Campus, Ashok Raj, Path, P.S.- Pirbahore, District- Patna.

5. Dr. Om Prakash Son of Sri Ram Das Resident of Professor Quarter, NIT Campus, Ashok Raj, Path, P.S.- Pirbahore, District- Patna.

6. Dr. Amar Nath Sinha Son of Sri Nawin Kumar Ambastha Resident of Flat No. 311/c. Jyotipuram Apartment, Jagdeo Path, Golabar, Bailey Road, P.S.- Shastri Nagar, District- Patna. **Petitioner**

Versus

1. The Union of India through the Secretary (Higher Education), Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi.

2. The Deputy Secretary (N.I.T.'S) Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi.

3. The Chairman, Board of Governors of National Institutes of Technology, Ashok Raj Path, Patna.

4. The Director, N.I.T. Patna- cum- Chairman Selection Committee, National Institute of Technology, Ashok Raj Path, Patna.

5. Board of Governor's of National Institute of Technology through its Registrar, Ashok Raj Path, Patna.

6. National Institute of Technology, Patna through its Registrar, Ashok Raj Path, Patna. **Respondents**

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Appearance :

For the Petitioner/s : Mr. Amar Nath Singh, Advocate
 For the Respondent/s : Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 30-03-2015

The instant writ application is against the order, dated 17.6.2014 issued under the signature of the Registrar, NIT Patna directing recovery of excess amount paid to Assistant Professor given AGP of Rs.9000 in place of Rs.8000 and designated them as Associate

Professors without putting in three years service in old pay scale of Rs.12000-420-18300 or AGP of Rs.8000 as per resolution No. BOG No.20.23 (viii) of BOG, NIT, Patna, dated 18.2.2013 (Annexure-5). The amount sought to be recovered from the petitioners is mentioned herein below:

- i) Dr. Lal Bahadur Roy - Rs.11,10,472.00
- ii) Dr. Vivekanand Singh - Rs.10,45,506.00
- iii) Dr. Om Prakash - Rs.10,15,913.00
- iv) Dr. Sawal Kishore Singh -Rs.11,33,358.00
- v) Dr.Amar Nath Singh - Rs.10,93,224.00
- vi) Dr. Shambhu Sharan Mishra-Rs.11,67,108.00

2. It would be apt to quote herein below the relevant extract of the resolution No. BOG No.20.23 (viii) of BOG, NIT, Patna, dated 18.2.2013 (Annexure-5) leading to the issuance of impugned recovery for easy reference:

“VIII. Approval is given for recovery to be made in suitable installments of the amounts paid to the Asstt. Professors given Rs.9000/- AGP and designated Associate Professors on their joining at the Institute after 01.01.2006 and before August 2009 without putting in 3 years of service in their old scale of appointment as Asstt. Professor at the Institute as per clause (k) of Govt. of India, MHRD letter No.F.33-7/2011-TS.III dated 14th March, 2012 read with letter No.F.No.23-1/2008. T.S.II dated 18th Aug.2009 of Govt. of India, MHRD, New Delhi clause 2b(iii). The Director of the Institute is authorized to fix suitable installments for recovery of the excess amount paid to such faculty members so that it does not burden them much”.

3. The case of the petitioners in short is as follows:

The petitioners applied for appointment in NIT, Patna for the post of Assistant Professor in the pay scale of Rs.12000-18300 in different faculties pursuant to the open advertisement in the year 2005. Petitioner nos.1 (Dr. Lal Bahadur Roy), 4 (Dr. Vivekanand Singh) and 5 (Dr. Om Prakash) were selected and appointed as Assistant Professors vide letter, dated 8.12.2005 on which post they joined on 20.1.2006, 12.1.2006 and 30.3.2006 respectively. Petitioner No.2 Dr. Shambhu Sharan Mishra was appointed as Assistant Professor on 18.8.2008 and joined the post on 18.8.2008. Petitioner No.3 Dr. Sawal Kishore Singh was appointed as Assistant Professor on 7.3.2008 and joined the post on 30.4.2008, whereas petitioner no.6 Dr. Amar Nath Singh was appointed as Assistant Professor on 7.3.2008, and joined the post on 1.5.2008.

4. The petitioners have given details of their earlier posting in different institutions in the supplementary affidavit filed on 19.8.2014. The petitioners state that before 1.1.2006, there were three grade of teachers, namely, Lecturer (Entry point), Reader/Assistant Professor (Intermediary) and Professor (highest). After 1.1.2006 because of restructure of pay scale w.e.f. 1.1.2006 itself, the teachers are now designated Assistant Professor in place of Lecturer (Entry point),

Associate Professor in place of Assistant Professor (Intermediary) and Professor as the highest. On these premises, the petitioners contend that as they had joined as Assistant Professor after 1.1.2006, they would be treated as Associate Professor in view of the re-structuring of post of Assistant Professor as per 6th PRC as Associate Professor.

5. They state that they are direct recruit to the post of Associate Professors and as such resolution no.20.23 (viii) of NIT, Patna, dated 18.2.2013 and clause 4 (k) of resolution, dated 14.3.2102 and clause 2(b)(iii) of letter, dated 18.8.2009, both of Ministry of Human Resource Development Department of Higher Education (hereinafter referred to as 'the MHRD') would not apply as their case is not one of promotions under Career Advancement Scheme. Clause 4 (k) of letter, dated 14.3.2012 of MHRD, New Delhi and clause 2(b)(iii) of letter, dated 18.8.2009 again of MHRD, referred to in resolution of Board of Governors of NIT, Patna, relevant in the context are quoted herein below:

Extract from letter dated 14.3.2012:

“4(k). Any promotions or enhancement of Pay Band or Grade Pay already implemented by the Institute should be got reviewed which examined by the Board by a duly constituted Selection Committee immediately. Any increment paid over the beginning of the scale of Associate Professor to those Assistant Professor who did not complete three years, is to be recovered from future pay”.

Extract from letter dated 18.8.2009:

“2(b)(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”.

6. Mr. Amarnath Singh, learned counsel while adopting the arguments of Mr. Vinod Kanth, learned Senior Counsel appearing for the other case, namely C.W.J.C. No. 12014 of 2014, submits that the petitioners herein have some more additional points than the petitioner of C.W.J.C. No.12014 of 2014. He submits that even assuming that the respondents have rightly understood Annexures-4, 5 and 6, still the entire reduction would not be permissible in their case as they have some teaching experience in centrally funded institute prior to joining the NIT between 2006 to 2008. The dates for grant of pay scale of Associate Professor would differ and each of them would be deemed to have completed three years of teaching experience as Associate Professor much prior to 1.1.2009.

7. The petitioners have also based their claim on the following grounds:

(i) The resolution of the Board of Governors (hereinafter referred to as ‘the BOG’) of NIT, Patna contained in paragraph 20.23 (viii), dated 18.2.2013, contained in Annexure-13, was meant for such faculty

Member, who was given the benefit of promotion under the Career Advancement Scheme, which is not applicable to the likes of the petitioners, who are direct recruit as Associate Professor.

(ii) The likes of petitioners cannot be treated, as having been promoted as Associate Professor from the post of Assistant Professor, as they in essence joined after 1.1.2006 in the revised 6th PRC scale of Rs. 37400-67000 which was replacement scale of pre-revised scale of Vth PRC of Rs.12000-18300 in which they were appointed..

(iii) The impugned recovery is consequence of misreading of clause 'k' of resolution dated 14.3.2012 (Annexure-6) which was referable to promotion under Career Advancement Scheme and that their case fell beyond the purview of guide lines.

8. A counter affidavit has been filed on behalf of respondent Nos. 3 to 6 on 2.8.2014, 2.9.2014 and 3.9.2014. The respondents state that none of the petitioners worked in any NIT as a teacher prior to joining NIT, Patna as Assistant Professor. The working experience of the petitioners prior to joining the NIT, Patna is as follows:

(a) Petitioner No.1 initially worked as part time lecturer in RIT Jamshedpur from November, 1984 to July, 1985 and again from February 1987 to July 1987. At the time the petitioner was working as part time lecturer in RIT, Jamshedpur, it was a State controlled Regional Engineering College and not an NIT. Before joining at NIT,

Patna the petitioner No.1 was posted at Water & Land Management Institute, Patna as an Assistant Engineer in the pay scale of Rs.10000-15200.

(b) Petitioner No.2 prior to joining NIT, Patna worked in NERIST and held the post of Assistant Professor in the pay scale of Rs.12000-18300.

(c) Petitioner No.3 worked in a constituent Engineering College of a Private University before joining the Institute which has got no weight-age.

(d) Petitioner No.4 worked at National Institute of Hydrology, Rurkee as a Scientist-C in the pay scale of Rs.10000-15200, which is also not equivalent to NIT.

(e) Petitioner No.5 was working as Lecturer in Delhi College of Engineering in the pay scale of Rs.8000-13500 prior to joining at NIT P and not as Senior Lecturer.

(f) Petitioner No.6 worked as Lecturer in BIT, Mesra in the pay scale of Rs.8000-13500, which is a private Engineering College and not a NIT.

9. The respondents assert that petitioner no.5 wrongly stated that he was working as Senior Lecturer in Delhi College of Engineering in the pay scale of Rs.8000-13500. The respondents state that none of the petitioners worked as Assistant Professor in any NIT prior to joining in



NIT, Patna. Although, petitioner no.2 worked as Assistant Professor in NERIST (Central Government Institute) in the pay scale of Rs.12000-18300, the Institute is not a NIT. Furthermore, the petitioners were never appointed as Associate Professor in NIT, Patna. They were erroneously given AGP of Rs.9000 in Pay Band of Rs.37400-67000 and designated as Associate Professors vide notification dated 22.10.2010 from the date of joining. They petitioners could not have been designated as Associate Professor in the Pay Band of Rs.37400-67000 with AGP of Rs.9000 as they had not put in 3 years service as Assistant Professor with AGP of Rs.8000 in NIT, Patna, The Board of Governors, NIT Patna as such vide its resolution dated 18.2.2013 granted approval for recovery of the amount paid to the Assistant Professors given Rs.9000 AGP and Designated Associate Professors on their joining at the Institute after 1.1.2006 without putting in 3 years of service in their old scale of appointment as Assistant Professors at the Institute as per clause 4 (k) of Govt. of India, MHRD, letter dated 14.3.2012 read with clause 2b(iii) of letter, dated 18.8.2009 of MHRD.

10. From the pleadings of the parties, it is evident that petitioner no.2 was posted as Assistant Professor in NERIST (Central Government Institute) in the pay scale of Rs.12000-18300 prior to joining NIT, Patna on 18.8.2008. In this view of the matter, the case of petitioner no.2 requires re-consideration. It is expected that the

respondent NIT would take a decision in this regard after giving hearing to petitioner No.2 within a period of two months from the date of receipt/production of a copy of this order.

11. So far as other petitioners are concerned, the issues involved in this writ application is similar to the issues involved in the C.W.J.C. No.12014 of 2014 (Dr. (Mrs) Kalpana Sinha vs Union of India & Ors) wherein order, dated 17.6.2014 issued under the signature of Registrar, NIT, Patna directing recovery too was in challenge as in the present case. The aforesaid writ application bearing C.W.J.C. No.12014 of 2014 has been dismissed vide order dated 30.3.2015 with observations mentioned therein. The decision rendered in C.W.J.C.No.12014 of 2014(Dr. (Mrs) Kalpana Sinha vs Union of India & Ors) would govern in this writ application as well.

12. This writ application is, accordingly, disposed of.

(Samarendra Pratap Singh, J)

Md.Jamaluddin Khan

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