

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4068 of 2015**

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1. Ajay Kumar Gupta Son of Sita Ram Gupta @ Sita Ram Gupta @ Sita Ram Sah, Resident of Village- Janmohammadpur, P.O. Kalgiganj, P.S.- Kahalgaon, District- Bhagalpur
  2. Abhimanyu Kumar Arya son of Durga Prasad Singh Resident of Village- Ekchari, P.S. Kahalgaon, District- Bhagalpur
  3. Shreedhar Kumar Son of Machcho Singh Resident of Village + P.O.- Ekchari, P.S. Kahalgaon, District- Bhagalpur
  4. Subodh Kumar Singh Son of Babulal Singh Resident of Village- Chakaraju (Ekchari), P.S.- Kahalgaon, District- Bhagalpur
  5. Usha Pal D/O Jagat Narayan Pal Resident of Village- Kushapur, P.S. Kahalgaon, District- Bhagalpur
  6. Kumari Indu Choudhary W/o Narad Muni Mandal, Village- Kushapur Pal Tola, P.S.- Kahalgaon, District- Bhagalpur
  7. Chandan Kumar Son of Jagat Narayan Pal, Resident of Village- Kushapur, Pal Tola, P.S. Kahalgaon, District- Bhagalpur

.... .... Petitioner/s

Versus

1. The Union of India through General Manager, N.T.P.C., Kahalgaon, Bhagalpur
2. The General Manager, N.T.P.C. Bhawan Scope Complex Area, Lodhi Road, Delhi
3. The General Manager, N.T.P.C., Kahalgaon, District- Bhagalpur
4. Senior Officer (HR), Kahalgaon Super Thermal Power Project
5. Collector, Bhagalpur
6. Special Land Acquisition Officer, Bhagalpur .

.... .... Respondent/s

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**Appearance :**

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|---------------------------|---|------------------------------------------------------|
| For the Petitioner/s      | : | Mr. Rajendra Prasad Yadav, Adv                       |
| For respondent nos. 5 & 6 | : | Mr. Kundan Bahadur Singh SC-22                       |
| For the U.O.I.            | : | Mrs. Kanak Verma, C.G.C                              |
| For NTPC                  | : | Mr. Anil Kumar Sinha, Adv and Mr. Ankit Katriar, Adv |

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**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**  
**ORAL JUDGMENT**

3      15-04-2015                      Heard learned counsel for the parties as with

regard to the following reliefs, prayed in this writ

application:-

*“For a direction to the respondents to complete the recruitment procedure for the eight posts of Artisan Trainee (C&I) vide notification no. 264/10*

*dated 12.1.2010 which is exclusively to be recomited from amongst land Austee candidates only.*

*For a further direction to the resonvents to complete the aforesaid procedure before acting upon the advertisement no. 01HR recruit.....2015.”*



2. Learned counsel for the petitioners in support of the aforementioned prayer has basically concentrated on the aspect that since certain vacancies were sought to be filled up by the Kahalgaon Unit National Thermal Power Corporation (hereinafter referred to as the NTPC) by sending a the requisition to the employment exchange, Bhagalpur on 12.01.2010, and those vacancies have not been filled up as yet, a direction should be issued to the Respondents conclude that selection process even now. specially when NTPC, Kahalgaon in its counter affidavit has itself admitted that the process could not be completed on account of pendency of litigation.

3. This Court would find it difficult to issue such direction because an advertisement by itself does not create any right. There may be any number of compelling reasons under which even after issuance of



advertisement or requisition, the employer can decide not to fill up the post. Here in this case whatever explanation has come in the paragraph nos. 7 and 8 of the counter affidavit, do furnish sufficient explanation for not filling up those posts. Paragraph nos. 7 and 8 of the counter affidavit in this regard reads as follows:-

*“That it is stated and submitted that the respondents ought to have mentioned eight posts of artisan trainee instrument mechanic (C&I) which has not been mentioned in the advertisement as contained in Annexure R/4 of the counter affidavit to inspite of their statement para 8 that they have advertised eight posts of C&I which were requisition from employment exchange exchange 2010.*

*That the other statement made in Counter Affidavit are matter of records. However, it is stated that due to delay in recruitment procedure as stated in counter affidavit the petitioner and may other candidates for no faults on their part and hence in the facts and circumstances of the case it will be interest of the justice the petitioner and other candidate who were eligible for applying in pursuance to advertisement dated 12.1.2010 be given liberty to apply against the advertised posts in 2015.*

4. In view of the above, this Court will have no difficulty in rejecting the first prayer of the petitioners for filling up those 8 posts of Artisan Trainee (C&I), to be filled up on the basis of the earlier procedure undertaken by way of taking recourse to employment exchange. This Court while holding so is also mindful



of the judgment of the Apex Court in the case of **State of Orissa & Anr. v. Mamata Mohanty** reported in **2011(3) SCC 436**, wherein, the procedure of employment or recruitment through employment exchange in isolation has been deprecated and it has been held that all the posts must be advertised in the newspaper. Therefore, whatever may have been done in the year 2010, the respondent authorities of the NTPC after the judgment of the Apex Court in the case of **Mamta Mohanty (supra)** have to now fill up vacancies as per the law laid down in the aforesaid case.

5. That apart the petitioners cannot be heard to say anything about that selection process much less seeking mandamus for filling up those vacancies, inasmuch as, they had never filed their application in the employment exchange. The submission of learned counsel for the petitioners that though the petitioners wanted to file the application but the same was not accepted therefore has to be only noted for its being

rejected.

6. The authorities of NTPC were not required to take application and such application was to be collected by the employment exchange. Nothing has been brought on record by the petitioners that after employment exchange had been requisitioned by the authorities of NTPC vide its letter dated 12.01.2010, the employment exchange actually had advertised those vacancies and in fact had advertised such vacancies in the newspaper. As per the 1966 Rules governing employment exchange binds employment exchange to publish the advertisement in newspapers, if the vacancy requisition is more than five in number. In that view of the matter when there is nothing on record to show that employment exchange had ever sought to even take steps for filling up those post by issuance of an advertisement in the newspaper, this Court would find it difficult to now revive that redundant process of employment through employment exchange.





7. As a matter of fact, there is sufficient explanation by the authorities of the NTPC in going for a fresh advertisement. The employer in fact has to reassess its requirement and that has been done by the NTPC after the judgment of the Apex Court and today explanation of 8 posts out of 17 posts are sought to be filled up by an advertisement published, as contained in Annexure-2 to this writ application. The submission that out of 8 posts only three are of the old lot and remains in existence will again make no difference because reassessment has to be made by the employer as per its own need. Merely, because at one point of time in the year 2011, 8 posts were sought to be filled up among them, only three are required to be filled up, this Court cannot allow to revive those 8 posts to be filled up, through the mode of employment exchange.

8. The submission of learned counsel for the petitioners relating to relaxation of age of the petitioners has also be only noted for its being rejected. The

petitioners were not the applicants to the earlier requisition of the year 2010 and therefore, none of them would be entitled for age relaxation having regard to regulations framed by N.T.P.C. by providing maximum age of 37 years for general candidates and 42 and 45 years for the reserved category candidates.

9. Had the petitioners or anyone of them at least been applicant to the earlier advertisement, this Court would have considered the issue of age relaxation for the person concerned because but as none among the petitioners was an applicant there would be also no question of directing the authorities of the NTPC to give the age relaxation to the petitioners in course of making fresh selection and appointment on the basis of their advertisement in the year 2015, by way of Annexure-2 to the writ application.

10. That being so, this writ application fails and is, accordingly, dismissed.

Ranjan/-  

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**(Mihir Kumar Jha, J)**