

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21392 of 2013

- =====
1. Abrar Khan Son Of Md. Nasimuddin Khan Resident Of Village - Mahuwal, P.S. Hussainganj, District - Siwan
 2. Ajay Kumar Son Of Dr. Sheo Prasad Singh Resident Of New Purendrapur, Babu Path (Do Pulwa), P.S. Jakkanpur, District - Patna
 3. Jawed Alam Son Of Md. Jalaluddin Resident Of Sangram Colony, Opposite I.T.I. Digha , P.S. Digha, District - Patna

.... Petitioner/s

Versus

1. The Union Of India Through The Director Of National Institute Of Technology (Nits), Government Of India, Ministry Of Human Resources Development (Department Of Higher Education)
2. The Chairman, Board Of Governance (Bog), National Institute Of Technology (N.I.T.), Patna
3. The Director, National Institute Of Technology (N.I.T.), Patna
4. The Registrar, National Institute Of Technology (N.I.T.), Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ajoy Kumar Chakraborty, Adv.
For the Respondent/s : Mr. N. A. Shamsi (A.S.G.)
For the Resp. 2 to 4 : Mr. Y.V. Giri, Sr. Adv.
Mr. S.K. Giri, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-08-2016

Heard learned counsel for the parties.

In this case, the petitioners are Lab Assistants claiming pay-scale of 5000-8000 claiming that they are being discriminated and are being paid the scale of pay of Rs. 3200-4900. Before conversion as one of the (unit) college of N.I.T., the present institution was a college of Engineering known as Bihar College of Engineering under the Patna University. All regular employees posted there were governed by the Patna University Act. There the pay-scale and their promotion including superannuation were governed by the provision of Patna University Act and statutes framed



there under but, vide notification dated 28.1.2004, the Bihar Engineering College has been converted and became one of the unit (college) of the National Institute of Technology (N.I.T.). These petitioners have been appointed after the conversion of the college as an unit (college) of N.I.T. in the year 2004 and claiming that they should be given the pay-scale of Rs. 5000-8000 on the ground of discrimination and, for that, the Government has brought notification dated 18.11.2009 which shows supersession of Notification no. NITP/187/07 dated 7.12.2007, the pay of the following non-teaching employees of the Institute has provisionally been fixed with effect from 28.1.2004 and the pay-scale has been shown of Lab Assistant as 5000-8000 and he has submitted that similar notification has been made by the Bihar Gazette dated 21.1.2010 with respect to Muzaffarpur Institute of Technology is giving the scale of pay of Rs. 5000-8000 to the Lab Assistant. He has further submitted that similarly the Karnataka Institute of Technology has also given the pay-scale of Rs. 5000-8000 to Lab Assistants which is completely apparent from the notification dated 5.3.2012 has been made effective from 1.4.2004. On the strength of those notifications, the petitioners submit that they are entitled to the scale of pay of Rs. 5000-8000.

Learned counsel for the N.I.T. submits that the petitioners constitute a different class as their entry in the institute is subsequent to the conversion as unit of N.I.T. and, so much so, the advertisement on the basis of which the petitioners have been appointed itself mentions the pay-scale would be given to the petitioners knowing it well of their proposed pay-

scale, applied for the post and so much so accepted the appointment without any demur.

Learned counsel for the N.I.T. submits that the pay-scale fixed by the National Institute of Technology vide notification dated 13.11.2009 vide Annexure-3 is not applicable to the petitioner as those notifications have been applicable only to those employees who were appointed by Bihar College of Engineering governed by Patna University Act and notification issued by the N.I.T. Karnataka is similar to the notification issued by the N.I.T., Patna and Notification of State of Bihar dated 21.1.2010 is relating to Muzaffarpur Engineering College cannot be made applicable or be set an example in view of the fact that employees of M.I.T. are govern by separate law i.e. Bihar University Act. Learned counsel for the respondents has drawn attention that benefit has been given to all retired persons those who have retired in between 2004 and 2005. He further submits that they are the employee of the Bihar College of Engineering and after take-over, they became employee of the N.I.T. So far the petitioners are concerned, they constitute a different class. They cannot compare themselves to the employees or the persons who have entered into service in the Bihar College of Engineering and subsequently made an employee of the N.I.T.

Having considered the rival contentions, one thing is very clear that in the advertisement, the pay-scale was mentioned wherein it was mentioned that the persons appointed as Lab Assistant would be entitled to payment of 3200-4900. These petitioners, who have been appointed

directly to the N.I.T., cannot compare to the employees who have entered into service of Bihar College of Engineering as they were being governed by the Patna University Act and statutes framed there under. The claim that the N.I.T. can not take any decision impinging upon their right and interest and, as such, the claim of the petitioners to have pay-scale at par with the employee of the Bihar College of Engineering converted later on to the N.I.T. cannot be accepted in view of the fact that the advertisement making it very clear the position of pay-scale, the reliance placed upon by the petitioners to the M.I.T., Muzaffarpur cannot be pressed into service in the present case as they are the employee of the Bihar University, they would be governed by the Bihar University Act and so much so the pay-scale of Karnataka N.I.T. has been enhanced in the similar manner with respect to those who were the employees of the State later on converted as employee of the N.I.T. In that view of the matter, the claim for pay-scale of Rs. 5000-7000 is not proper and cannot be accepted.

This application is, accordingly, dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.08.2016
Transmission Date	NA