

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.359 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 20706 of 2011
Along with
Interlocutory Application No. 1688 of 2015
And
Interlocutory Application No 1689 of 2015

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Dr. Narayan Vikas, son of Prof. Dr. S.N. Prasad, resident of Road No. 1 C, Rajendra Nagar, P. S . Kadam Kuan, District - Patna - 800016, (Professor, Department of Computer Science and Engineer, the National Institute of Technology, Ashok Raj Path, Patna.)

.... Appellant/s

Versus

1. Union of India through Secretary, Human Resources Development Department, New Delhi.
2. National Institute of Technology, Ashok Rajpath, through its Director
3. The Registrar, National Institute of Technology , Ashok Raj Path, Patna
4. Shri U.C. Ray, father name not know to the petitioner, Director, National Institute of Technology, Ashok Rajpath, Patna.
5. Shri Vidya Sagar, father name not known to the petitioner, Registrar, National Institute of Technology Ashok Rajpath, Patna.

.... Respondent/s

with

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Letters Patent Appeal No. 652 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 20706 of 2011
Along with
Interlocutory Application No 2807 of 2015

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1. The National Institute of Technology, Ashok Rajpath through its Director.
 2. The Registrar, National Institute of Technology, Ashok Rajpath, Patna.

.... Appellant/s

Versus

1. Dr. Narayan Vikas, son of Prof. Dr. S.N. Prasad, resident of Road No. 1C, Rajendra Nagar, P.S.- Kadam Kuan, District- Patna - 800016, (Professor, Department of Computer Science and Engineer, the National Institute of Technology, Ashok Raj Path , Patna).
2. The Union of India through Secretary , Human Resources Development Department , New Delhi,
3. Sri U.C. Ray, father name not known to the petitioner, Director, National Institute of Technology, Ashok Raj Path , Patna.
4. Sri Vidya Sagar, father name not known to the petitioner, Registrar , National Institute of Technology, Ashok Rajpath, Patna.

.... Respondent/s

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Appearance :
(In LPA No. 359 of 2015)

For the Appellant/s : Mr. S.K.P. Sinha, Advocate.

For the Respondent/s : Mr. Y.V.Giri, Sr. Advocate.
Mr. S.K.Giri, Advocate.

(In LPA No. 652 of 2015)

For the Appellant/s : Mr. Y.V.Giri, Sr. Advocate.
Mr. S.K.Giri, Advocate.

For the Respondent/s : Mr. S.K.P. Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 16-05-2016

Re. : Interlocutory Application No 1689 of 2015 in

L.P.A. No. 359 of 2015

The application is for condonation of delay of 105 days in filing of the appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 105 days in filing of the appeal is condoned.

3. Interlocutory Application stands disposed of.

Re. : Interlocutory Application No 2807 of 2015 in

L.P.A. No. 652 of 2015

The application is for condonation of delay of 178 days in filing of the appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 178 days in filing of the appeal is

condoned.

3. Interlocutory Application stands disposed of.

Re.: L.P.A. No. 359 of 2015 and L.P.A. No. 652 of 2015

This order shall dispose of Letters Patent Appeal no. 359 of 2015 filed by the writ petitioner against the order dated 06.08.2014 passed in CWJC No. 20706 of 2011 and Letters Patent Appeal No. 652 of 2015 filed by the National Institute of Technology (hereinafter referred to as the "NIT"), the respondent in the writ application against the order dated 04.08.2014 recorded in the judgment dated 06.08.2014 passed by the learned single Bench in CWJC No. 20706 of 2011.

2. The brief facts, leading to both appeals, are that the writ petitioner was appointed to the post of Professor in Computer Science and Engineering on 08.12.2005. The letter of appointment contemplates that the writ petitioner will be on probation for a period of 02 years from the date of appointment, which may be extended at the discretion of the competent authority, failure to complete the period of probation to the satisfaction of the competent authority, will render the writ petitioner liable to discharge from service. It further contemplates that the writ petitioner will have to produce the original of Degree/Diploma certificate (Matriculation onwards) of educational qualification (attested copies should be produced to retain at the

Institute).

3. It was on 28.10.2011, the writ petitioner was served with a notice of termination of his services. The notice reads as under:

“ As you have failed to produce the original papers of your Bachelor’s, Master’s and Ph.D. Degree and Original paper for proof of past service despite being advised accordingly through Institute letter nos. NITP/7726/09 dated 21.01.09, NITP/631/09 dated 16.06.09, NIT/303/10 dated 10.05.2010, NIT/3490/10 dated 01.12.2010 and NITP/3873/10 dated 29.12.2010 by the Registrar of the Institute under directions of the two Committees constituted by the BOG of the Institute from time to time to proceed against you in various acts of indiscipline at the Institute on your part as reported to the BOG of the Institute from time to time and also to consider your intransigence in not producing necessary documents before the Registrar Office for verification so that your Service Book can be completed by the Institute and your service at NIT Patna can be confirmed.

Finally through letter of Director bearing no. DR/NITP/167/11 dated 07.10.2011 under orders of the BOG of the Institute vide resolution no. BOG 16.13 empowering the Director to take action against you, you were required to show cause by 14.10.2011 why your services at NIT Patna should not be terminated for the reasons enumerated in the Director’s letter but this letter issued by the Director of the Institute remained undelivered to you because of you not turning up in the department from 07.10.11 to 13.10.11 without any leave getting sanctioned by you from the department and refusing

to take delivery of the Director's letter on 14.10.11 when you turned up in the department at 3.40 PM and the letter of the director was returned undelivered by the department to the director on 14.10.11.

Your behaviour in not complying with the instructions contained in various letters of the Registrar and the Director of the Institute as enumerated above clearly shows that you do not possess the required qualification for being recruited to the post of Professor in the department of Computer Science and Engineering, the qualification for which is as follows in the advertisement for recruitment to the post of Professor of Computer Science & Engineering at the time of your recruitment:

*"Ph.D. degree with the first class degree at Bachelor's or Master's level in the **appropriate branch in Engineering/Technology** with 10 years of experience in Teaching/Industry/Research out of which 5 years must be at the level of Assistant Professor and/or equivalent".*

Other aspects of your behaviour at the Institute viz not coming to the Institute in time, keeping absent from Institute without getting any leave sanctioned from the department constitute grave acts of indiscipline which also are condemnable for any teacher of the Institute and are against conduct rules for Institute employees & teachers as per NIT Statutes, 2009 (Central Civil Services (Conduct) Rules 1964).

Hence, your services at the Institute as Professor in Computer Science and Engineering are

terminated with effect from afternoon of 31.10.11 because of you not possessing the requisite qualification for the post of Professor of Computer Science and Engineering and for your grave acts of absenteeism from Department without any leave taken, for irregular reporting in the department and for refusing to receive letters from authorities of the Institute as issued from time to time."

4. It is the said order which was challenged by the writ petitioner before the learned Single Bench. The learned Single Bench passed an order on 04.08.2014 directing the writ petitioner to hand over the original documents, which he had brought in Court in support of his qualifications, to the Director, NIT personally in the Chamber of the Registrar General of the High Court itself. After giving such direction, the learned single Bench found that the order dated 28.11.2011 is *ex facie* stigmatic and punitive in nature and has been passed without holding a proper enquiry, therefore, the order was quashed. But subsequently, on the same day, when the Court was about to rise, it was communicated to the Court that the writ petitioner had refused to hand over the original documents in support of his qualification to the Director of the NIT. It is thereafter the matter was taken up on 06.08.2014 and the writ petition was dismissed with cost.

5. Firstly, we shall take up the Letters Patent Appeal No. 652 of 2015 which has been filed by the National Institute of Technology against an oral order passed by the learned single Bench

on 04.08.2014 as reproduced in the order dated 06.08.2014.

6. Mr. Y.V. Giri, learned senior counsel appearing on behalf of the appellant-NIT, has pointed out that the terms and conditions of the employees of the NIT are governed by the first Statute of the N.I.T. published on 23.04.2009. As per the Clause- 24 of the Statute relating to general terms and conditions of the service of permanent employees, the appointments to the post under the NIT are required to be made on probation for a period of one year after which period, if confirmed, the appointee shall continue to hold his office subject to the provisions of the NIT Act and the Statutes. The relevant clause reads as under:

“24 (i) Subject to the provisions of the Act and the Statutes, all appointments to posts under the Institute shall be made on probation for a period of one year after which period the appointee, if confirmed, shall continue to hold his office subject to the provisions of the Act and the Statutes, till the end of the month in which he attains the prescribed maximum age for teaching posts, for technical non-teaching and ministerial and administrative posts as the case may be: Provided that the appointing authority shall have the power to extend the period of probation of any employee of the Institute for such periods as may it may deem fit.”

7. Learned counsel for the appellants refers to the judgment in the case of **Head Master, Lawrence School, Lovedale v.**



Jayanthi Raghu & Another reported as (2012) 4 SCC 793 to contend that unless the order of confirmation is passed, the applicant will continue to be on probation since the rules did not contemplate automatic confirmation after the expiry of the maximum period of probation. It is also argued that when a finding is returned that the applicant has not furnished the documents, it cannot be called to be stigmatic as it is the narration of events leading to the termination of service and not the basis of the order. Reference was made to in the case of *State of Punjab v Bhagwan Singh* reported as (2002) 9 SCC 636.

8. A perusal of the letter of appointment shows that the applicant was appointed on probation. There is no condition in the letter of appointment that the services would be confirmed on completing the period of probation. Neither Rule 24 of the statutory Rules contemplates such consequence. Therefore, in terms of the judgment in case of *Lawrence School* (supra), the applicant cannot be said to be confirmed employee. The Court held as follows:-

“18. In State of Punjab v. Dharam Singh the Constitution Bench, after scanning the anatomy of the Rules in question, addressed itself to the precise effect of Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961. The said Rule stipulated that the total period of probation including extensions, if any, shall not exceed three years. This Court referred to the



earlier view which had consistently stated that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. Under these circumstances, an express order of confirmation is imperative to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is difficult to hold that he should be deemed to have been confirmed.

38. Had the rule-making authority intended that there would be automatic confirmation, Rule 4.9 would have been couched in a different language. That being not so, the wider interpretation cannot be placed on the Rule to infer that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period as that would defeat the basis purpose and intent of the Rule which clearly postulates "if confirmed". A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed."

9. In view of the said fact, the writ applicant cannot be deemed to be a confirmed employee merely because he has completed

two years of probation in terms of letter of appointment as there was no order of confirmation passed.

10. In respect of the finding recorded by the learned Single Bench that the order dated 28.10.2011 is stigmatic and punitive in nature, suffice is to state that the communication in the letter of termination is the assessment of the performance of the writ applicant and is foundation of the order. Therefore, it cannot be said to be stigmatic. In ***Bhagwan Singh*** (supra) the Court has held as follows:

“4. This aforesaid order to the extent is stated that the officer was unlikely to prove a good police officer, was in terms of the relevant Rule 12.21 applicable to the respondent. In our view, when a probationer is discharged during the period of probation and if for the purpose of discharge, a particular assessment of his work is to be made, and the authorities referred to such an assessment of his work, while passing the order of discharge, that cannot be held to amount to stigma.

5. The other sentence in the impugned order is, that the performance of the officer on the whole was “not satisfactory”. Even that does not amount to any stigma.”

11. In view of the said fact, we find that the order of the learned Single Bench, recorded on 04.08.2014, as reproduced in the order dated 06.08.2014, cannot be sustained in law and; therefore, is set aside.

12. Now coming to the Letters Patent Appeal No. 359 of



2015 filed by the writ petitioner, learned counsel for the appellant vehemently argued that the order passed is on account of *mala fide* act of the Registrar and the Director of the Institute, therefore, the order is not sustainable. On the other hand, Mr. Giri has pointed out that the communication addressed to the writ petitioner from time to time were in terms of the decision of the Board of Governors, therefore, to say that the Director or the Registrar acted in a *mala fide* manner is not tenable. The said officers have to communicate the decision of the Board of Governors to the writ petitioner and; therefore, the writ petitioner is not justified to interfere that it is *mala fide* act of the said officer. In particular, reference was made to the communication dated 10.08.2010, Annexure-11 wherein a notice was issued to the writ applicant consequent to 14th Board of Governors meeting held on 23.01.2010 asking the Director to issue a show cause notice to the writ petitioner to explain as to why the process of termination of his service from the NIT should not be initiated on account of not producing the required certificates in the office of the Registrar for verification and completion of service book. The writ petitioner has replied to such notice on 20.08.2010. Thus, he was aware of the fact that his original certificates are sought in pursuant to the decision of the Board of Governors, but still the writ petitioner has not produced the original certificates. Since, the writ petitioner refused to produce

the original certificates for verification even though such condition was part of the letter of appointment and even after communication of this fact, there cannot be any illegality in the termination of his service during probation.

13. In view thereof, Letters Patent Appeal No. 359 of 2015 is dismissed and that of Letters Patent Appeal No. 652 of 2015 is allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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