

**THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1311 of 2014**

**Arising out of**

**Civil Writ Jurisdiction Case No. 891 of 2014**

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Kartik Lal Son of Late Maksudan Sah, Resident of Village - Kharagpur, P.S. Sonbarsa Kacheri (Chapram Kothi), District – Saharsa . .... Petitioner / Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna
  2. The Senior Administrative Officer, All India Institute of Medical Science, Ansari Nagar, New Delhi - 110029
  3. The Director, Indira Gandhi Institute of Medical Science, (IGIMS), Sheikhpura, Patna
  4. The Chief Administrative Officer, Indira Gandhi Institute of Medical Science (IGIMS), Sheikhpura, Patna
- ..... Respondents / Respondents
- =====

**Appearance:**

For the Appellant/s : Mr. Banwari Sharma and  
Mr. Shiv Kumar, Advocates.

For the Respondent-State: ----

For the AIIMS : Mr. Binay Kumar Pandey, Advocate.

For the IGIMS : Mr. Sunil Kumar Singh, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date: 11-07-2017**

Heard Sri Banwari Sharma, learned Advocate, along with Sri Shiv Kumar, Advocate for the appellant, Sri Sunil Kumar Singh for the Indira Gandhi Institute of Medical Science (respondent no. 3 & 4) and Sri Binay Kumar Pandey, learned advocate for All India Institute of Medical Science (respondent no. 2).

The appellant in the present case is aggrieved by the order dated 21.01.2014 passed in CWJC No. 891/2014 by a learned Single Judge of this Court whereby the learned Single Judge has been pleased to dismiss the Writ Application preferred by the present



appellant.

The case of the appellant is that he was engaged as a daily wager on a vacant and sanctioned post of Laboratory Attendant (Grade-II) and was getting salary on daily wage basis pursuant to letter no. 3516 dated 03.10.1997 issued under signature of the Chief Administrative Officer, IGIMS, Patna (Annexure-1 to the writ application) . The appellant's name along with some other daily wagers were examined for purpose of regularization as the Hon'ble High Court in CWJC No. 5913/2003 directed the authorities to consider the case of the petitioners in the said Writ Application and to decide their suitability for the concerned job. The Standing Selection Committee, on going through the qualification / experience, fitness, reservation and sanction of post, recommended regularization of total 10 petitioners of the writ out of 18. An Office Order bearing no. 1593 dated 25.03.2009 has been enclosed as Annexure-2 showing that the name of the petitioner appears at Sl. No. 5 in the list of 10 persons who were regularized with immediate effect on Class III & IV posts and in the pay scale mentioned against their respective names. A perusal of Annexure-2 would show that this petitioner being a reserved category candidate was regularized against the Group 'D' post of Laboratory Attendant (Grade-III) in the pay scale of Rs. 2650-4000/-.



The appellant accepted the regularization but later on filed representations, as contained in Annexure-6 series to the Writ Application, calling upon the Director, IGIMS, Patna to allow him the pay scale of Rs. 3050-4590/-. He relied upon an information received under the Right to Information Act showing that in the All India Institute of Medical Science, New Delhi, the pay scale of Laboratory Attendant (Grade-II) is Rs. 3050-4590/- under the 5<sup>th</sup> Central Pay Commission and even though the candidates who were possessing qualification of Matric pass, they were allowed the scale of pay of the Laboratory Attendant (Grade-II). The appellant filed the Writ Application for a direction to the respondents to grant and pay the revised pay scale of Rs. 3050-4590/- of the Laboratory Attendant (Grade-II) which is said to have been already approved by the All India Institute of Medical Science, New Delhi vide Annexure-3 to the Writ Application. A further direction was sought to implement the said approved pay scale from the date of the notification dated 27.03.2006 to which the petitioner was entitled to and the respondents be directed to pay the consequential benefits.

A perusal of the impugned order passed by the learned Single Judge would show that the grievance of the petitioner was that he was though assigned the post of Laboratory Attendant Grade-III, (Group 'D'), the scale of pay should have been allowed to him as that



of Laboratory Attendant (Grade-II) as applicable in the All India Institute of Medical Science (AIIMS).

On behalf of the Indira Gandhi Institute of Medical Science, it was contended that the petitioner – appellant cannot make out a case of ‘Equal Pay for Equal Work’ by borrowing the concept from AIIMS, especially when the recommendation of the 5<sup>th</sup> Central Pay Commission, which has been relied upon by the petitioner – appellant, refers to a different Grade, namely, Grade-II and not Grade-III of the post of Laboratory Attendant. It was also submitted that the qualification of the petitioner – appellant being only Matriculation with Science, the pay scale which was given to the Laboratory Attendant of AIIMS having Graduate qualification cannot be *ipso facto* made applicable in the case of the petitioner – appellant. The learned Single Judge came to the conclusion that the pay scale has to be given as per the order dated 25.03.2009 by which the services of the petitioner, initially engaged on daily wages, was sought to be regularized. The learned Single Judge has taken notice of the fact that as per the direction of the Hon’ble Patna High Court, the suitability of the concerned job was to be gone into, therefore, if the petitioner’s salary was fixed for the post of Laboratory Attendant by placing him in Grade-III (Group ‘D’) which will make him a Class IV employee, he cannot claim salary being given at that point of time to a



Laboratory Attendant, Grade-II in All India Institute of Medical Science. It was also noticed that under the information furnished, the authority has made it clear that there are two types of qualifications laid down for the post of Laboratory Attendant. For B.Sc the pay scale of Rs. 3050-4590/- is assigned. It is available to Graduate Laboratory Attendants. The appellant admittedly is Matriculate with Science.

Learned counsel appearing on behalf of the appellant submits that the learned Single Judge has committed an error in not appreciating that the petitioner - appellant was working as a daily wager against the post of Laboratory Attendant (Grade-II), therefore, even on his regularization he should have been allowed the same post and the pay scale attached thereto. Learned counsel further submits that in any case the authority should have considered his representations.

Learned counsel for the IGIMS submitted that the learned Single Judge has rightly concluded that the petitioner being a Matriculate and having been regularized against the post of Laboratory Attendant (Grade-III) as per his suitability cannot claim the pay scale of Rs. 3050-4590/- which is allowed to Laboratory Attendant (Grade-II) in AIIMS.

We have considered the rival submissions of the parties. The learned Single Judge has rightly decided the issues raised by the



petitioner – appellant in the present case. It is his own case of the petitioner – appellant that he was engaged as daily wager, thus, his engagement as daily wager even though as Laboratory Attendant (Grade-II) would not entitle him to be appointed against the said post. As per the direction of the High Court, the cases of the petitioner and others were considered and the committee constituted for this purpose examined the suitability of a candidate for the job. The petitioner – appellant being a Matriculate has been regularized against the vacant post of Laboratory Attendant (Grade-III) and the applicable pay scale attached to the said post in Grade-III has been duly allowed to the petitioner – appellant. In our opinion, the petitioner – appellant has failed to establish any legal right to claim the pay scale of Laboratory Attendant (Grade-II) and, hence, the order passed by the learned Single Judge needs no interference. The appeal has no merit and the same is dismissed.

**(Rajeev Ranjan Prasad, J)**

I agree.  
**Ajay Kumar Tripathi, J.-**

**(Ajay Kumar Tripathi, J)**

Dilip, AR

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