

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12769 of 2010

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Rajesh Kumar Singh S/O Sri Brahmdeo Mahto R/O M.I.G.132, Kankarbagh
Colony, P.S.Kankarbagh, Distt-Patna

... .. Petitioner/S

Versus

1. The State Of Bihar
2. The Principal Secretary Cum Commissioner, Labour Resources Department
Govt. Of Bihar, New Secretariat, Patna
3. The Director, Employment And Training Govt. Of Bihar, New Secretariat,
Patna
4. The Controller Of Examinations, Industrial Training Institutes, I.T.I.Campus
Digha Ghat, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Surendra Kr. Singh, Adv. Mr. Prashant Kumar Singh, Adv.
For the Respondent/s	:	Mr. Chitranjan Sinha, PAAG-2 Mr. Sudish Kumar, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 02-05-2018

Heard learned counsel for the parties.

In the present case, the limited grievance has been made for payment of salary of the post of Technical Assistant as he has claimed that right from beginning of his appointment and still he is discharging the duty of Technical Assistant.

It appears from the record that the petitioner had moved before this Court in C.W.J.C. No. 11250 of 2010 wherein he has made a claim for his regularization in service as Technical Assistant wherein the Court has given direction to take decision on the representation filed by the petitioner, whereafter, the representation of the petitioner having been rejected vide Memo No. 4422 dated 31.12.2010, whereby and whereunder, the



Principal Secretary has refused to recognize the petitioner as Technical Assistant having said that the cadre of Technical Assistant vis-a-vis Clerk are two separate cadres and the person, who has been appointed as Clerk, cannot be regularize in the pay-scale of Technical Assistant, thereby rejected the representation, for that the petitioner has a liberty if so advised, he may take legal course as is available in law but, here, the question is for payment of salary for the period he has discharged the duty on the post of Technical Assistant. For that, certain facts are necessary to be looked into.

The petitioner was selected for B.Sc. Engineering and was admitted in Engineering College, Gaya. The Department of Labour Employment and Training, Government of Bihar had issued an advertisement on 4.12.1989, 10.3.1990, 20.4.1990 and 28.5.1990 for appointment of Class-III and IV posts. The petitioner successfully cleared the competitive examination and was appointed as Clerk, was posted at I.T.I., Katihar vide Memo No. 849 dated 27.12.1991. As the petitioner was holding the qualification of B.Sc. Engineering, though he was appointed as Clerk but, the Principal of the Institute started taking the work from the petitioner of Technical Assistant, whereafter, the petitioner was transferred and posted in the year 1992 in Bettiah



I.T.I., in the year 1995 again, the petitioner was transferred from Bettiah I.T.I. to Regional Inspecting Center. As the petitioner was taking classes of Training Institute, he made an application to Director for his absorption as Technical Assistant, thereafter, when transfer was made on 30.6.1998, the petitioner was posted against the vacant and sanctioned post of Technical Assistant and, accordingly, he joined the said post on 3.7.1998. by another order vide memo no. 1890 dated 3.8.1998, the petitioner was posted as Technical Assistant in his own scale. On 27.1.1999, the petitioner filed representation before the Director for his absorption in the cadre of Technical Assistant on the ground that the petitioner was holding the qualification, having experience of long working on the post of Technical Assistant which was duly recommended by the Examination Controller Employment and Training on 27.1.1999. The representation of the petitioner passed through several officials, lastly the record of the petitioner was placed before the Director who vide noting dated 22.2.1999 has approved the absorption of the petitioner on the said post. In pursuance thereof, the order vide Memo No. 448 dated 26.2.1999 was issued, thereby, the petitioner was absorbed against the vacant sanctioned post of Technical Assistant but, all-through the petitioner has been paid the salary of Clerk. Though he has made several



representations and sought enhancement of scale from 4000-6000 to 5500-9000 but, nothing concrete result came out. The petitioner filed writ application, C.W.J.C. No. 11250 of 2010 in which the Court has recorded its finding with respect to his claim of absorption as Technical Assistant. It is relevant to quote relevant portion of the aforesaid judgment which reads as follows:-

“The counter affidavit of the respondents specifically acknowledges the correctness and genuineness of the order dated 26.2.1999 absorbing the petitioner as Technical Assistant. It then seeks to explain it as purely an administrative arrangement to assert that the petitioner by inadvertence has been described as a Technical Assistant.

The Court on a bare reading of the order dated 26.2.1999 find no ambiguity in it in so far as the issue of absorption is concerned. The stand of the respondents in their counter affidavit further satisfies the Court that the respondents do not appear to be very clear themselves of the status of the petitioner and the recitals contained in their own order. On absorption on the post of Technical Assistant quite simply the petitioner became a Technical Assistant. If he became a Technical Assistant it is difficult to understand how his pay scale was fixed on the Lower post of Clerk. The counter affidavit does create an anomalous situation. This Court is not satisfied from the pleadings in the counter affidavit that the respondents have been able to explain that the petitioner is not a Technical Assistant but a Clerk. The issue appears to be raising purely administrative matters. The Court therefore appropriately refers the matter to the Principal Secretary cum Commissioner, Labour Resources Department to pass a reasoned and speaking



order on what post the petitioner has been working since 26.2.1999 and whether his absorption has been cancelled till date. If the petitioner has been working as Technical Assistant and stood absorbed in that capacity on 26.2.1999, quite naturally the petitioner is entitled to due protection of his status even in an order of transfer.

The Court is left with no option but to pass an order of the present nature in view of the materials contained in the counter affidavit which were hardly beneficial to the Court in resolving the controversy.

Let the Principal Secretary, Labour Resources Department pass an appropriate, reasoned and speaking order with regard to the petitioner within a maximum period of one month from the date of receipt/production of a copy of this order.

It shall be open for the petitioner to seek interim directions from the Principal Secretary so that his claims are not made infructuous even before a final decision is taken.

The writ application stands disposed.”

Ultimately, the case of the petitioner stood disposed. Here in the present case, the only question is with regard to entitlement of pay of Technical Assistant. As the issue of absorption would be dealt with, another proceeding is not required to be gone into or to give its finding about the correctness of the view taken by the Principal Secretary, Labour Employment. Admittedly there is no denial of the fact that the petitioner has worked right from beginning as a Technical Assistant and is still working on the said



post, though not appointed on substantive basis to that post but, long and perennial manner he has been discharging the duty of Technical Assistant having higher salary, he cannot be deprived of the same. If a person is asked to discharge the duty for stop gap arrangement or for a certain temporary period, in such circumstances, the person, who has been discharging the duty, will not be entitled to salary of the higher post. In this regard, reliance may be made on the judgment in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair; AIR 1999 SC 838, Prafulla Ranjan Shrivastava Vs. The State of Bihar; 2008 (3) PLJR 144; Sudeb Kumar Mookherjee vs The State Of Bihar & Ors.; 2012 (1) PLJR 408.

In view of the fact that the petitioner has been discharging the duty of Technical Assistant all through right from beginning, he cannot be deprived of the salary for the period he has worked that too for a very long period, cannot be said that it was only a temporary arrangement or ad-hoc arrangement but, has been working on the post of higher salary perennially and still he has been discharging the duty of Technical Assistant.

In that view of the matter, this Court is of the view that though his claim for substantive regularization has been rejected which is separate matter, is not to be considered in the present



case and one thing is very clear that the petitioner will be entitled to salary of the post of which he has been discharging the duty and, accordingly, this Court directs the respondents to make payment to the petitioner of the post of Technical Assistant from the period he has been discharging the duty of Technical Assistant.

This writ application is, accordingly, allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	MA
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