

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5086 of 2012**

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1. Pramod Kumar Shrivastava Son Of Late Siyaram Prasad At Present Posted Lab. Assistant (Machanical) Engineering, N.I.T., Patna Mahendru  
2. Syed Mokhtar Hussain Son Of Late Syed Akhtar Hussain At Present Posted Lab-Assistant Department Of Physics, N.I.T., Patna ... .. Petitioner/s

Versus

1. The State of Bihar Through Science And Technology, Government of Bihar, Patna  
2. The Director, Science And Technology, Government of Bihar, Patna  
3. The National Institute of Technology Through Its Director, National Institute of Technology of Patna  
4. The Director, National Institute of Technology, Government of Bihar, Patna  
5. The Registrar, National Institute of Technology, Government of Bihar, Patna  
6. The Patna University Through Its Vice-Chancellor, Patna University, Patna  
7. The Registrar, Patna University, Patna ... .. Respondent/s
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**Appearance :**

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|----------------------|---|----------------------------|
| For the Petitioner/s | : | Mr. Siya Ram Shahi         |
| For the Respondent/s | : | Mr. Apurva Kumar, Advocate |
| For the NIT          | : | Mr. Y.V. Giri, Sr. counsel |
| for the University   | : | Mr. Digviya, Advocate      |

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**  
**ORAL JUDGMENT**

**Date : 26-11-2018**

Heard Mr. Siya Ram Shahi, learned counsel appearing on behalf petitioners, Mr. Y.V. Giri, learned senior counsel of the NIT, Mr. Digvijay, learned counsel appearing on behalf of Patna University and Mr. Apurva Kumar, learned counsel for the State.

2. The instant writ application has been filed for a direction to the respondents to grant pay scale of Rs. 9300-34800 with grade pay of Rs. 4200 of pay band-2 on the basis of recommendation of sixth pay commission with effect from 1.1.2006.

3. The relevant fact for the purpose of deciding present writ application lies in a narrow campus.



4. Petitioner no.1 was appointed as Secretariat Assistant on 14.10.1988 whereas petitioner no.2 was appointed as Technical Assistant on 5.3.1987. The petitioners continued to be contractual/daily wages employees of the Bihar College of Engineering. Their cases were under consideration for regularization, in the meanwhile, the Bihar College of Engineering was converted as NIT vide notification dated 28.1.2004. After conversion of Bihar College of Engineering as NIT, the petitioners and others filed C.W.J.C. No. 12364 of 2001 for regularization of their cases. The C.W.J.C. No. 12364 of 2001 was allowed vide order dated 18.4.2008. The relevant part of the order is quoted below:-

**“Much emphasis has been placed by counsel appearing on behalf of the N.I.T. in the case of Secretary, State of Karnataka and others vs. Uma Devi, (2006) 4 S.C.C. 1 wherein the Supreme Court has held that the equality in “public employment is the basis feature of our constitution and since the rule of law is the core of our constitution, a court certainly be disabled from passing an order upholding the violation of Article 14 or in ordering the looking the need for comply with the requirements of Article 14 read with Article 16 of the Constitution”. It has further been held that an employee engaged on daily wages or casual basis or a temporary employee**



cannot claim, as a matter of right, absorption in regular service. While discussing all these aspects at paragraph 53 the Supreme Court has held that persons who are duly qualified working against sanctioned post without the intervention of the court for ten years or more and are not appointed illegally, have a right to be considered for appointment against those vacant and sanctioned posts.

As noticed above in this particular case the petitioners have been appointed against sanctioned posts and not the posts created for the purpose of fulfilling the temporary needs of the C.R.W.S. by following the procedure laid down for such appointment and as such the petitioners' case for absorption in regular service is fit to be considered by the N.I.T. In Uma Devi's case, the court had directed that the State Government should regularize all such persons as a one time measure.

I, therefore, do not see any reason why the N.I.T. should not consider the regularization of the petitioners who were appointed by the erstwhile Bihar College of Engineering against sanctioned posts after following all the procedures laid down for making such appointment and fulfilling the requirement of Articles 14 and 16 of the Constitution. The fact that they were appointed for a particular project should not stand in the way of regularization of the



**petitioners as the posts in the N.I.T. are still vacant and are in excess of the persons who are working as casual/daily wages/on probation.**

**In the aforesaid facts and circumstances I direct the respondent N.I.T. and its officers specially the Registrar to consider the case of the petitioners for regularization in terms of what has been observed and held in the aforesaid order.**

**This writ petition is allowed to the extent indicated above.”**

5. After the order in C.W.J.C. No. 12364 of 2001 the NIT, Patna issued notification contained in Annexures-5 and 6 appointing the petitioners on the post of Lab. Assistant in Mechanical Engineering Department of NIT and Lab Assistant (physics) respectively vide Annexure-5 and 6 they have been granted pay scale vide office order dated 11.1.2010 in the pay band -1 and grade pay 2000.

6. Mr. Shahi, learned counsel appearing on behalf of the petitioners would submit with reference to Annexure-11 and 12 that the Patna University issued notification granting revised pay band and grade pay as well as NIT, Patna. Referring to Annexure-12 he submits that NIT Patna vide Annexure-12 has granted the revised pay scale and granted the benefit of pay protection to the erstwhile Lab Assistant whose services were taken over in the NIT, Patna.



7. Referring to Annexures-11, 12 and 15 he submits that petitioners would be entitled to the same pay scale which was admitted to the similarly circumstanced those Lab Assistants who have come from Patna University (Bihar College of Engineering).

8. On behalf of the respondents, Mr. Y.V. Giri, learned senior counsel submitted that those who have been appointed by way of direct recruit have been granted pay scale of 3200-4900 with grade pay of 2000 and since the petitioners have been made regular Lab Assistants in terms of direction of this Court vide Annexure-5 they have been granted the same pay scale which was admissible to Lab Assistant in NIT.

9. He referred to the judgment of LPA Court passed in LPA No. 1825 of 2016 to contend that LPA Court only protected the interest of those Lab Assistants who were drawing higher pay scale when their service was taken over by the NIT as pay protection was admissible to the employees who were drawing higher pay scale. He submitted that the same benefit cannot be extended to the petitioners for the reason that petitioners were not drawing higher pay scale at the time when service of the petitioners was taken over in NIT. He contended that if the direct recruit are entitled to pay scale 3200-4900 and grade pay of 2000



petitioners cannot be granted higher scale than the direct recruit. Referring to Annexure-15, he submits that a conjoint reading of Annexure-5 and 15 it would indicate that petitioners would be entitled to the pay scale admissible to Lab Assistant in NIT with effect from the date when the favourable recommendation was made for regular appointment of the petitioners with effect from 4.12.2008.

10. Mr. Sahi has tried to distinguish the case of the petitioners from the appellants in LPA No. 1823 of 2016. He submitted that direct recruit Lab Assistants are entitled to pay scale admissible to direct recruit and on regularization the petitioners would be entitled to the treatment at par those whose service were taken over by NIT.

11. On consideration of the rival contention, the Court is of the view that those who were drawing salary on account of their service was taken over by NIT, they were entitled to pay protection. Their cases stand on different footing and pay protection is always admissible as eventualities in the service jurisprudence.

12. So far as the claim of the petitioners for regularization is concerned, regularization is on a particular post and on account of regularization individual is entitled to pay



scale admissible to the post and he is not entitled to the treatment at par with those whose service were taken over by NIT and those whose case has been considered for grant of pay protection. The eventualities of pay protection is not available to the petitioners as petitioners were appointed on regular basis vide Annexure-5 . However, nomenclature of regular appointment was altered vide notification contained in Annexure-15 as regularization with effect from 4.12.2008 but that expression regularization ipso facto cannot confer them pay protection at par with those employees who were drawing higher pay scale at the time of take over of their service in NIT. The petitioners on regularization with effect from 4.12.2008 would be entitled to the pay scale admissible to the Lab Assistants in the NIT with effect from 4.12.2008.

13. The Court is of the considered view that parity in the pay scale with those who were drawing higher pay scale at the time of take over of their service in NIT is not admissible to the petitioners as the other employees of BCE were drawing higher pay scale on the date when their service was taken over in the NIT. In fact, petitioners have been granted the benefit of continuous service as one time measure pursuant to the judgment of the Apex Court **in the case of Secretary, State of Karnataka**



**and others vs. Uma Devi, (2006) 4 S.C.C. 1** and in view of the judgment of the Constitution Bench, the Court is of the considered view that the petitioners are only entitled to the benefit of regular pay scale on the post of Lab Assistants with effect from 4.12.2008 which is available on the post of Lab Assistant in NIT.

14. Necessary decision on the pay scale admissible to the petitioners on 4.12.2008 may be taken by the respondents within a period of four months from the date of receipt/production of a copy of this order.

15. It is made clear that pay scale of Lab Assistant in NIT is to be extended to the petitioners.

16. With the aforesaid, the writ petition stands disposed of.

**(Anil Kumar Upadhyay, J)**

Ravi/-

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