

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18619 of 2014

Syed Mokhtar Hussain Son of Late Syed Akhter Hussain at present posted as Laboratory Assistant, Department of Physics, N.I.T., Patna at permanent R/o P.O. Aurangabad Saraiya, Via - Tilouthu, P.S. Amjhore, Dist - Rohtas Bihar.

... .. Petitioner/s

Versus

1. The Union Of India, through the Secretary, Ministry of Human Resources Development, Department of Secondary and Higher Education, Shastri Bhawan, New Delhi.
2. The National Institute of Technology, Patna through its Director, N.I.T., Patna.
3. The Director National Institute of Technology, Patna.
4. The Registrar, National Institute of Technology, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate
For the N.I.T.	:	Mr. Y. V. Giri, Sr. Advocate
	:	Mr. S.K. Giri, Advocate
For the U.O.I	:	Mr. Sujeet Kumar Sinha, C.G.C.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 02.02.2024

Heard Mr. Siya Ram Shahi, learned counsel for the petitioner, Mr. Y. V. Giri, learned senior counsel for the respondent-National Institute of Technology assisted by Mr. S.K. Giri and Mr. Sujeet Kumar Sinha, learned Central Government Counsel for the Union of India.

2. The present writ petition has been filed for quashing the letter no. NITP/1653/14 dated 27.06.2014 (*Annexure-12*) issued by the respondent no.3 whereby the representation dated 31.03.2014 filed by the petitioner in the light of the order dated 12.03.2014 passed in C.W.J.C. No.



24092 of 2013 has been rejected. Learned counsel for the petitioner further prays for issuance of the appropriate direction upon the respondent to put the petitioner in the pensionable service as petitioner is not a new appointee in the service of National Institute of Technology (hereinafter referred to N.I.T.) Patna rather his service has been observed in the N.I.T. w.e.f. 28.01.2004. Learned counsel for the petitioner submits that pursuant to an advertisement issued by the Coordinator, Transportation Engineering, B.C.E. Patna on 21.01.1987, the petitioner was initially appointed as Technical Assistant on 05.03.1987 by the Co-ordinator, Transportation Engineering Section, Department of Civil Engineering in the erstwhile Bihar College of Engineering, Patna on the consolidated pay of Rs.600 per month and petitioner has given joining on 12.03.1987. The matter with regard to regularization of the service of the petitioner was pending before the Patna University. The Government of India issued a notification dated 28.01.2004 then Bihar College of Engineering converted into National Institute of Technology, Patna.

3. Learned counsel for the petitioner further submits that prior to the conversion of the Bihar College of Engineering, Patna into National Institute of Technology Patna,



the petitioner and 16 others similarly situated persons have filed CWJC No. 12364 of 2001 before this Hon'ble Court for regularization of their services. The aforesaid writ petition was allowed on 18.04.2008 with certain directions to the respondent-NIT Patna to consider the case of the petitioners for regularization.

4. Learned counsel for the petitioner submits that on 15.05.2008 11th meeting of the Board of Governors of N.I.T., Patna was held at Delhi and directed the Registrar, N.I.T. to consider regularization of service of 11 persons named in this case against vacant posts in the institute as per the qualification and board as also advised the N.I.T. Patna to implement the order as per its provisions.

5. Learned counsel for the petitioner further submits that the service of the petitioner was regularized as Laboratory Assistant, Department of Physics vide office Letter No. NITP/214/09 dated 21.12.2009 issued under the signature of the respondent no.4 and subsequently vide Letter No. NITP/237/10 dated 11.01.2010 the pay scale of the petitioner has been fixed in the revised pay structure (6th CPC) of Pay Band-1 (Rs.5200-20,200 with Grade Pay Rs.2,000) w.e.f. 30.12.2009.



6. He further submits that the Ministry of Human Resources Development, Department of Secondary and Higher Education, Government of India, has introduced a new pension scheme based on defined contribution in lieu of the GPF-cum-Pension Scheme for new entrants recruited in Central Government Service on or after 01.01.2004 and it has been also directed that who has been recruited on or after 01.01.2004 will also be governed by the New Pension Scheme and pursuant to the aforesaid decision of the Government of India, the petitioner has been put under the non-pensionable service.

7. Learned counsel for the petitioner submits that the petitioner is entitled under law to get his service rendered as daily wages employee should be counted for the purpose of putting him into a pensionable service. The petitioner was retired from the service on 31.06.2017.

8. Learned counsel for the petitioner in support of his submission has placed reliance upon the judgment of the Hon'ble Supreme Court passed in the matter of *Nagar Mahapalika, Kanpur Versus. Vibha Shukla (smt) and Others reported in (2007) 15 SCC 61*, para 16 & 20 of which are quoted hereinbelow;

16. Respondent 1 was appointed during the period 18-8-1975 and 30-9-1976 on temporary basis. Such an



appointment was not made in terms of sub-section (11) of Section 16-E of the 1921 Act. There is nothing to show that there existed a clear vacancy or she was appointed in terms of the Act. Procedures for appointments under the 1921 Act and the 1959 Act are different. The Selection Committees constituted under both the Acts are also different. The terms and conditions of the teachers appointed under the two Acts are also different. It is, thus, difficult to accept the findings of the Tribunal as affirmed by the High Court that the said provisions would apply to the case of the first respondent herein.

20. Furthermore, it is trite that regularisation is not a mode of appointment. It has been so held by a Constitution Bench of this Court in, State of Karnataka v. Umadevi (3). The principle enunciated by the Constitution Bench of this Court in Umadevi (3) has inter alia been applied by this Court in Post Master General v. Tutu Das (Dutta) stating as under:

(SCC p. 322, paras 12-13)

“12. What was considered to be permissible at a given point of time keeping in view the decisions of this Court which had then been operating in the field, does no longer hold good. Indisputably, the situation has completely changed in view of a large number of decisions rendered by this Court in last 15 years or so. It was felt that no appointment should be made contrary to the statutory provisions governing recruitment or the rules framed in that behalf under



a statute or the proviso appended to Article 309 of the Constitution of India.

13. Equality clause contained in Articles 14 and 16 of the Constitution of India must be given primacy. No policy decision can be taken in terms of Article 77 or Article 162 of the Constitution of India which would run contrary to the constitutional or statutory schemes."

9. He further placed reliance upon the judgment of the Hon'ble Supreme Court passed in the case of ***State of Bihar versus Sheela Devi & Ors. reported in 2013(4) PLJR 557***, para 11 & 12 of which are quoted hereinbelow;

"11. The view was reiterated in (2006)9 SCC 406 (K.T. Veerappa vs. State of Karnataka):-

"16.....The benefits having been given to 23 employees of the University in compliance with the decision dated 21.6.1989 recorded by the learned Single Judge in WPs Nos. 21487-506 of 1982, it was expected that without resorting to any of the methods the other employees identically placed, including the appellants, would have been given the same benefits, which would have avoided not only unnecessary litigation but also the movement of files and papers which only waste public time."

12. The issue for addition of work charge duration after absorption making the service pensionable was considered in (2009)14 SCC 793 (Dakshin Haryana Bijli Vitaran Nigam vs. Bachan Singh)



observing as follows:-

“19. The Court in Kesar Chand case (1988 Punjab 265) (FB) held that the period of service spent by an employee on work-charged basis prior to his regularisation, should be taken into consideration for determining his qualifying service. This part is contained in para 19 of the judgment and reads thus: (Kesar Chand case)

“19.... It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who eligible for pension and those who started as work- charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

A Full Bench judgment of the Punjab and Haryana High Court in Kesar Chand case was carried before this Court by way of filing a special leave petition. This Court



dismissed the said special leave petition."

10. In view of the aforesaid, the petitioner is entitled for old pension scheme and the respondents are wrongly treated the petitioner as new recruited in the NIT and respondents may be directed to issue pension of retirement benefit in favour of the petitioner treating the petitioner as his initial appointment was in the year, 1987.

11. Learned senior counsel for the NIT and learned counsel for the Union of India, on the other hand, vehemently opposes the prayer and submits that the petitioner cannot claim that he may be treated as the old employee, in fact pursuant to the direction of this Hon'ble Court passed in C.W.J.C. No. 12364 of 2001 and M.J.C. No. 785 of 2009, the petitioner was appointed as Lab Assistant (Physics) in the regular pay scale against the sanctioned post of Lab Assistant (Physics) vide M.H.R.D. Government of India Letter No. F.11 1/2006-TS.III dated 17.03.2006 w.e.f the date when the petitioner joined the service.

12. Learned counsel for the respondent further submits that the petitioner has accepted the Annexure-5 and even in the contempt proceeding he has not taken liberty to challenge the Annexure-5 of the writ petition and even in the



present writ proceeding he has not challenged Annexure-5,
which is reproduced hereinbelow.

**NATIONAL INSTITUTE OF TECHNOLOGY PATNA
ASHOK RAJPATH, PATNA-800005.**

No. NITI/214/09

Date 21-12-2009

OFFICE ORDER

In compliance of Hon'ble Patna High Court order in CWJC case No. 12364/01 and consequent contempt case in the Hon'ble Patna High Court MJC No.785 of 2009, Sri Syed Mokhtar Hussain S/o Late Sri Syed Akhter Hussain, At & P.O.: Aurangabad Saraiya via Tilouthu, District. Rohtas (Bihar) is appointed as Lab Assistant (Physics) in the regular pay-scale against sanctioned post of Lab Assistant (Physics) vide MHRD, Gol letter No.F.11-1/2006-TS.III dated 17-03-2006 with effect from the date when he will join the institute service.

Sri Syed Mokluar Hussain is required to join his duties immediately.

Memo No. NITP/2948-53109

Copy to:
1. All Deans
2 All HoDs
3. Sri Syed Mokhtar Hussain
4. Secy. to Director
5. P.A.to Registrar
6. Account Section

By order of Director
REGISTRAR
21/12/07

REGISTRAR

The principle of estoppel can be invoked in this
case against the petitioner. The respondent no.3 has rightly



rejected the claim of the petitioner to not put him into the old pension scheme in place of the national pension scheme because the petitioner was joined the service in the respondent-NIT after the direction of this Hon'ble Court in CWJC No. 12364 of 2001 and MJC No. 785 of 2009 w.e.f. 30.12.2009.

13. He further submits that after the order dated 18.04.2008 passed in C.W.J.C. No. 12364 of 2001, the services of the petitioner was regularised by the N.I.T., Patna on 21.12.2009 from the date of joining on the post of Laboratory Assistant which was later on modified on 09.04.2015 w.e.f. 04.12.2008 and the services of the petitioner was regularised by N.I.T., Patna w.e.f. 04.12.2008. The notification of the Central Government dated 05.07.2005, by which the National Pension Scheme was introduced w.e.f. 01.01.2004. The notification dated 05.07.2005 speaks about the new entrants recruited in the Central Government Services on or after 01.01.2004. The said scheme shall be applicable in case of the petitioner and even the petitioner has not challenged the office order dated 21.12.2009 (*Annexure-5*) which was subsequently modified by the order dated 09.04.2015 (*Annexure-13*) by which the date of joining of the petitioner is amended as 04.12.2008 in place on 30.12.2009.

14. In view of the aforesaid, it is admitted case of



the petitioner that petitioner has never challenged the order dated 21.12.2009 (*Annexure-5*) by which the petitioner has been appointed in the N.I.T. pursuant to the direction of this Hon’ble Court and even in the present writ proceeding the petitioner has not choosen to challenge the order dated 21.12.2009. So, the N.I.T. has rightly rejected the claim of the petitioner to put him into Old Pension Scheme in place of the National Pension Scheme because the petitioner was admittedly joined in service of the respondent-N.I.T. after the introduction of the National Pension Scheme (01.01.2004). After the joining in the N.I.T. the authority had deducted the contribution amount from his salary treating the petitioner as a new recruitee after the introduction of the national pension scheme and even the petitioner has never objected for the same. There is no infirmity in the order impugned and respondents have rightly rejected the claim of the petitioner.

15. Accordingly, this writ application is dismissed.

(Rajesh Kumar Verma, J)

ajay/-

AFR/NAFR	NAFR
CAV DATE	05.01.2024
Uploading Date	02.02.2024
Transmission Date	NA

