

## **Sudhansu Shekhar Vs National Institute of Technology, Chairman, Board of Governors, R.I.T., Director, National Institute of Technology and Incharge Director, National Institute of Technology**

**Court:** Jharkhand High Court

**Date of Decision:** Sept. 16, 2009

**Citation:** (2010) 124 FLR 554

**Hon'ble Judges:** Dabbiru Ganeshrao Patnaik, J

**Bench:** Single Bench

### **Judgement**

D.G.R. Patnaik, J.

Petitioner in this writ application has challenged the order dated 17.02.2005 (annexure-11) passed by the Director,

National Institute of Technology, Jamshedpur whereby the services of the petitioner have been terminated from the date of issuance of the

impugned order. While praying for quashing the impugned order, the petitioner has also prayed for issuance of a direction to reinstate him on the

post of Clerk-cum-typist in the Department of Mathematics under the respondent National Institute of Technology.

2. Heard learned Counsel for the petitioner and learned Counsel for the respondent National Institute of Technology.

3. Facts of the petitioner's case in brief are that the petitioner's father Late Sachidanand Malick was employed on the post of Assistant in the

R.I.T., Jamshedpur. During the period of his service in the year 1987, the petitioner's father was sent on deputation to B.I.T. Sindri to work on the

post of Registrar. He died in harness on 16.10.1988. Upon the employee's death, his widow namely the petitioner's mother filed a representation

before the concerned authorities of the respondent N.I.T. for providing a job on compassionate grounds to her son, namely the petitioner, and also

to pay the death-cum-retiral benefits payable in the account of the deceased employee.

4. The representation was forwarded by the concerned authorities to the Secretary, Science and Technology, Government of Bihar and awaiting

appropriate instruction on the same, the respondents had engaged the petitioner on daily wage basis in September, 1990.

However, in January, 1991, his services were discontinued. The petitioner submitted his representation praying for his absorption in service on

compassionate grounds and in response, by a letter dated 12.12.1991 (Annexure-3), the petitioner was directed to appear before the Selection

Committee for interview and test. The Committee, on finding him qualified, recommended his name for regular appointment.

Pursuant to the recommendation of the Selection Committee, the concerned authorities of the respondents by letter dated 13.09.1993 (annexure-

4), addressed to the petitioner's mother, informed her that respondent Institute has decided to appoint the petitioner in the institute on

compassionate ground. However, such offer was made conditional and subject to vacating the quarter allotted to the deceased employee by the

Institute.

On such assurance being given, the petitioner's mother vacated the quarter and thereafter prayed for the grant of compassionate appointment. The

respondents however refused to appoint the petitioner whereupon the petitioner's mother filed a writ application vide C.W.J.C. No. 3772 of

1998(R) before this Court.

While disposing of the writ application, this Court had directed the respondent Institute to consider the petitioner's claim for compassionate

appointment within the time stipulated. When the order was not complied with, a contempt petition was filed and during the pendency of the

contempt petition, the respondents had granted appointment on compassionate ground to the petitioner by appointment letter dated 09.07.2001

(annexure-6/A).

Almost two years later, the respondent No. 3 by letter issued, directed the petitioner to produce documents/informations relating to the petitioner's

appointment on compassionate grounds, within one month from the date of receipt of the aforesaid letter (Annexure-6/A). The petitioner submitted

his replies through proper channel to the respondent No. 3. Almost two years later, by notice dated 07.01.2005 (Annexure-5), the respondent

No. 3 directed the petitioner to show cause as to why his services should not be terminated.

The petitioner submitted his show cause replies within one week from the date of receipt of the show cause notice.

Despite the show cause replies submitted by the petitioner, the respondent No. 3, by the impugned letter dated 17.02.2005 (Annexure-11),

informed the petitioner that his replies being found not satisfactory, his services were terminated.

5. Assailing the impugned order, learned Counsel for the petitioner submits that the impugned order is totally illegal, arbitrary and in violation of the

principles of natural justice. Learned Counsel explains that the impugned order has been passed unilaterally by the respondents without affording

adequate opportunity to the petitioner of being heard and even without supplying to the petitioner the relevant documents on the basis of which the

decision to terminate the services was taken.

6. In the counter affidavit filed on behalf of the respondent N.I.T., the stand taken is that the decision of terminating the services of the petitioner

was taken on the basis of the observations of this Court vide order dated 24.01.2002 in a writ petition being W.P.(S) No. 680 of 2002 filed by

one Mithilesh Kumar and under which, certain directions were given in the following terms:

...If one or other person have been given appointment after long delay say after about 12 years of the death in recent past, say within last one year

or some person has been illegally appointed giving wrong information, petitioner may bring the same to the notice of the Principal, R.I.T.,

Jamshedpur, who will take care. In such case, if any illegality is found in the matter of appointment, the authority after notice to the concerned

party, may pass an appropriate order.

Learned Counsel for the respondents would submit that the aforesaid writ petitioner Mithilesh Kumar, had addressed a representation to the

Principal of the Institute claiming that several employees, including the petitioner of the present case, have been illegally appointed on

compassionate grounds.

Upon receipt of the complaint, the concerned authorities of the respondent Institute had constituted a Committee to look into the question of

legality and propriety of the appointment of the candidates made on compassionate grounds after long delay, and it was on the basis of the report

submitted by the Committee indicating that the appointment granted to the petitioner was after a considerable delay and therefore not legal, the

Board of Governors of the Institute had taken the decision to terminate the services of the petitioner. However, before proceeding to terminate the

services, a show cause notice was issued to the petitioner. The explanation offered by the petitioner for the delay having not been found

satisfactory, the decision for terminating his services was accordingly taken.

7. From the rival submissions, the undisputed facts which emerge are as follows:

(a) The petitioner's father was an employee under the respondent R.I.T. and he died in harness in October, 1988.

(b) Within less than one year from the date of death of the employee, his widow namely the petitioner's mother, had submitted her representation

for grant of compassionate appointment to her son namely the petitioner.

(c) The representation was duly considered by the respondent Institute and after subjecting the petitioner to face the Selection Committee and

undergo the requisite test and viva-voce before the Selection Committee, the respondents had agreed to offer appointment to the petitioner on

compassionate grounds and had communicated such decision to the petitioner's mother by letter dated 13.09.1993 though such offer was with a

rider that she should vacate the quarter of the Institute which was initially allotted to the deceased employee.

(d) Even though the petitioner and his mother had vacated the quarter, the respondents refused to grant appointment to the petitioner.

(e) On being compelled, the petitioner's mother filed a writ application and when a contempt proceeding was initiated, that the respondents had

finally granted appointment to the petitioner on 09.07.2001 and the petitioner was allowed to continue in service thereafter for almost two years.

8. It is apparent from the above facts that the claim for compassionate appointment was made on behalf of the petitioner by his mother, within less

than one year of the date of demise of her husband. It was the respondent Institute which had delayed in taking an appropriate decision on the

claim for compassionate appointment and the matter continued to linger from 1989 to 1993 when the respondents had finally decided to offer

compassionate appointment to the petitioner. Such offer was however made conditional subject to the vacating the quarter allotted to the deceased

employee, even though the retiral benefits payable in the account of the deceased employee was not released forthwith and paid to the petitioner's

mother and even though under the scheme for compassionate appointment, no such condition could have been imposed. When even after vacating

the quarter, the petitioner was not granted appointment, the petitioner's mother had filed a writ application and it was only in compliance of the

order passed therein and during the pendency of the contempt proceeding, that the respondents had finally granted appointment to the petitioner in

July, 2001.

9. It appears from the impugned order that the petitioner's appointment was cancelled purportedly in pursuance of the directive of this Court

contained in its order dated 24.01.2002 passed in W.P.(S) No. 680 of 2002 and in the corresponding order dated 07.03.2003 passed in the

contempt (Civil) Case No. 866 of 2002.

10. In the contempt case above referred, this Court while allowing further time to the opposite parties, namely the respondents herein, to comply

with the Court's earlier order passed in the writ application filed by Mithilesh Kumar, had directed the respondents/opposite parties to issue show

cause notices to such of the "illegal appointees" seeking explanation as to why their services be not terminated because of illegal appointment on

compassionate grounds. Upon receipt of such replies, the respondents/opposite parties were required to find out whether anyone or others has

been appointed illegally against the scheme and after much delay or not. One week's time was allowed for such scrutiny and thereafter, the matter

to be placed before the Board of Governors for issuance of appropriate orders in accordance with law.

11. On a bare perusal of the aforesaid order, it appears that the direction to the respondents was to find out "whether anyone or other has been

appointed illegally against the scheme and after much delay".

12. As observed above, the application for compassionate appointment of the petitioner was submitted before the respondent authorities within

less than one year of the date of demise of the husband of the petitioner's mother. Initially, the representation was submitted before the concerned

authorities of B.I.T., Sindri on the belief that since petitioner's father was employed on deputation in the B.I.T., Sindri, and later, on being directed,

similar representation was filed before the authorities of the respondent R.I.T., Jamshedpur. In response, the respondents had engaged the services

of the petitioner, albeit on daily wages on and from 22.09.1990, but thereafter terminated his services from 06.01.1991. It was ultimately in

compliance with the order of this Court passed in the writ application filed by the petitioner's mother that the respondents had, after subjecting the

petitioner to the tests before the Selection Committee, had decided to appoint the petitioner pursuant to the recommendation of the Selection

Committee and had communicated such decision to the petitioner's mother by their letter dated 13.09.1993, but even then the appointment was

not given and ultimately, in pursuance of the order passed by this Court in the writ application filed by the petitioner and the corresponding

contempt application, that the respondents had granted the appointment to the petitioner on 09.07.2001. Furthermore, such appointment was

made after complying with the Rules and Bye-laws of the respondent Institute prescribed for the grant of compassionate appointment and on the

recommendation of the Selection Committee/Compassionate Appointment Committee.

13. From the above facts, it is apparent that even though the grant of appointment was delayed, but neither the petitioner nor his mother can be

blamed for such delay as because the delay was occasioned only on account of the inaction on the part of the respondent authorities. Even

otherwise, since the appointment was ultimately granted in compliance with the order of this Court passed in the earlier writ application filed by the

petitioner's mother, such appointment cannot be deemed or considered to be an illegal appointment. The order passed by this Court in the

contempt proceeding in Mithilesh Kumar's case, on a much later date i.e. on 07.03.2003 was with a direction to re-consider the cases of illegal

appointees. The order did not relate to the cases of legally appointed candidates.

14. In the light of the above facts and circumstances, I am satisfied that the impugned order by which the petitioner's service has been terminated,

is perverse, illegal and against the principles of natural justice and cannot be sustained. Accordingly, this application is allowed. The impugned

order dated 17.02.2005 (annexure-11) is hereby quashed. The concerned authorities of the respondents are directed to reinstate the petitioner on

the post which he had held on the date of passing of the impugned order within one month from the date of this order.

Since there is no pleading of the petitioner in his writ application that from the date after termination of his services he was not gainfully employed

elsewhere, the respondents shall pay 50% of the back wages to the petitioner, computed from the date of issuance of the impugned order till the

date of reinstatement.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent.