

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1067 of 2022

1. Sri Subhajit Deb,

Son of Lt. Susanta Deb, resident of Shibnagar College Road Extension, P.O. Agartala College, P.S. East Agartala, Sub-Division-Agartala, District- West Tripura, Pin-799004, holding the post of Assistant Professor, Department of Civil Engineering, National Institute of Technology, Agartala, West Tripura, Pin-799046, Age-58

2. Smt. Nabanita Bhowmik,

Daughter of Lt. Nitya Gopal Bhowmik, resident of Ramnagar Road No.6-7, T.G Road, P.O. Ramnagar, P.S. West Agartala, Sub-Division-Agartala, District-West Tripura, Pin-799002, holding the post of Assistant Professor, Department of Civil Engineering, National Institute of Technology, Agartala, West Tripura, Pin-799046, Age-56

3. Sri Dhrubajyoti Bhowmik,

Son of late Dilip Kumar Bhowmik, resident of Badharghat, Matripalli, P.O. A.D. Nagar, P.S. Amtali, Sub-Division- Agartala, District-West Tripura, Pin-799003, holding the post of Assistant Professor, Department of Computer Science & Engineering, National Institute of Technology, Agartala, West Tripura, Pin-799046, Age-57

4. Smt. Dipika Debnath,

Daughter of Sri Haridhan Debnath, resident of Dhaleswar Road No.7, P.O. Dhaleswar, P.S. East Agartala, Sub-Division- Agartala, District- West Tripura, Pin-799007, holding the post of Assistant Professor, Department of Civil Engineering, National Institute of Technology, Agartala, West Tripura, Pin-799046, Age-58

---Petitioners

Versus

- 1. The Union of India,**
Represented by the Secretary, Ministry of Education,
Department of Higher Education, having his office at
Shastri Bhawan, New Delhi.
- 2. The Secretary,**
Ministry of Education, Department of Higher Education,
having his office at Shastri Bhawan, New Delhi.
- 3. The National Institute of Technology,**
Represented by its Director, having his office at Shastri
Bhawan, New Delhi.
- 4. The National Institute of Technology, Agartala,**
Represented by its Director, having his office at Barjala,
Jirania, West Tripura, Pin-799046.
- 5. The Registrar, National Institute of Technology,
Agartala,** having his office at Barjala, Jirania, West
Tripura, Pin-799046
- 6. The Dean (Faculty Welfare),**
National Institute of Technology, Agartala, having his
office at Barjala, Jirania, West Tripura, Pin-799046

---Respondents.

For the Petitioners	:	Mr. Somik Deb, Sr. Advocate Mr. K. Debnath, Advocate
For the Respondents	:	Mr. B. Majumder, Dy. SGI
Date of hearing	:	24.02.2023
Date of delivery of Judgment & Order	:	23.05.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH**JUDGMENT & ORDER**

By means of filing the present writ petition, the petitioners, who had been serving under the National Institute of Technology, Agartala, Tripura as Assistant Professor (on contract) since the year 2010 have challenged their reduction in status with reduced pay structure.

2. Factual Backgrounds:-

2.1. All the 4(four) petitioners were engaged to the post of Assistant Professor (on contract) on consolidated pay under the National Institute of Technology, Agartala, Tripura after their successful participation in the selection process at different point of times in response to various advertisements issued time to time by National Institute of Technology, Agartala, Tripura (for short, "NIT, Agartala").

2.2. The petitioner, Sri Subhajit Deb was engaged in Civil Engineering Department on a consolidated pay of Rs.29,000/- per month vide memorandum dated 06.08.2010 with certain terms and conditions which are as under:-

"Memorandum

*The Director, NIT Agartala, pleased to offer the contractual engagement of **Sri Subhajit Deb in Civil. Engg.** on the following terms and conditions to serve as Contractual*

Assistant Professor and other works as and when assign to him by the competent authority.

TERMS AND CONDITIONS

- 1. He will receive a consolidated amount of Rs.29,000/- (Twenty nine thousand) only p.m. may be paid subject to satisfactory appraisal report from concerned Head of Deptt.*
- 2. His contractual engagement is valid up to 3(Three) Months with effect from date of joining.*
- 3. He will entitle for TA/DA whenever he will be deputed for official duties outside of his head quarter.*
- 4. Since this is a contractual engagement the medical reimbursement facility could not be allowed to him.*
- 5. He will avail the normal holidays and C.L. as applicable to NIT Agartala. Any other leave is not applicable to him "except no pay basis".*
- 6. His letter of acceptance be submitted along with his joining report, within 7 days from the date of this letter.*
- 7. The allotment of subject/class will be decided by concerned Head of Deptt.*
- 8. The contract may be terminated by giving 30(thirty) days notice from either side.*

*Sd/- illegible
(Dr. D. Bhattacharjee)
05.08.2010
Registrar"*

2.3. The petitioner, Smt. Nabanita Bhowmik also was engaged against the post of Assistant Professor (on contract) in Civil Engineering Department on a consolidated pay of Rs.29,000/- per month vide order dated 04.12.2012 for a period of almost 7(seven) months of similar terms and conditions as that of Sri Subhajit Deb, the petitioner no.1. One of the added conditions is that *"the future extension*

can be provided depending upon the recommendation of the HOD/ Branch In-Charge/Section In-Charge and satisfactory performance.”

2.4. Similarly, Mr. Dhrubajyoti Bhowmik and Smt. Dipika Debnath were engaged against the posts of Assistant Professor (on contract) in the Department of Computer Science & Civil Engineering respectively vide letters of engagement dated 28.03.2013 and 30.09.2014 on consolidated pay of Rs.30,000/- per month and Rs.35,000/- per month respectively.

2.5. On satisfactory performance, the period of contractual engagements of the petitioners were time to time extended with enhanced consolidated pay to the extent of Rs.51,032/- along with additional increments.

2.6. Lastly, vide memorandum dated 26.08.2022, the engagements of the petitioners were extended for a further period of 6(six) months on monthly consolidated pay, but, under the following fresh terms and conditions:-

- “1. The engagement is not against any sanctioned post.*
- 2. The engagement will be subject to discontinuance at any point of time without assigning any reason if exigency of service does not require it or the interest of the institution is not served to the satisfaction of the engaging authority and that engagement will not confer any right of continuation or confirmation under any circumstances.*
- 3. If anyone wants to leave the organization, he/she has to give one month notice failing which he/she is required to pay one*

month's consolidated amount to be drawn by him/her at the time of submission of such notice.

- 4. You will perform all other works as and when assigned by the Competent Authority of NIT Agartala.*
- 5. You will be entitled for TA/ DA whenever deputed for official duties outside the Head Quarters, as applicable to NIT Agartala.*
- 6. You will be entitled to avail the normal holidays and 04 days C.L. and 5 days Special Leave during the engagement period. Any other leave is not admissible.*
- 7. You will not be entitled to any Medical Reimbursement /LTC from NIT Agartala.*
- 8. If any dispute arises between an employee and the NITA, the decision of Competent Authority, of NIT Agartala will be final and binding.*

Sd/- illegible

26.08.2022

Dean(F/W)"

2.7. Under the aforesaid memorandum dated 26.08.2022 (Annexure-8 to the writ petition), for the first time, the 2(two) of the petitioners have been designated as "Temporary Asstt. Prof." and other 2(two) were designated as "Temporary Faculty" with consolidated monthly salary of Rs.50,000/- per month.

2.8. The grievances of the petitioners are two-folds:-

- (a). *Firstly*, change of designation from "Asstt. Prof. (on contract)" to "Temporary Asstt. Prof." and "Temporary Faculty" and,
- (b). *Secondly*, reduction of consolidated monthly salary to Rs.50,000/- from 51,032/- plus increments.

2.9. It is Pertinent to mention herein that last consolidated monthly salary of the petitioners no.1, 2, 3 and 4 were Rs.66,903.00, Rs.58,687.00, 58,687.00 and Rs.53,584.00 respectively.

3. Submissions on behalf of the petitioners:-

3.1. Mr. Somik Deb, learned senior counsel appearing on behalf of the petitioners submitted that the petitioners were first engaged as Asstt. Prof. on contractual basis in consonance with Draft Recruitment Rules for Faculty-NIT, dated May, 2010 (for short, “Draft RR, 2010”) prescribing mode of recruitment in the schedule. This “Draft RR, 2010” was followed by “NIT Faculty Recruitment Rules, 2011” (for short, “Recruitment Rules, 2011”) for “Faculty” of NITs, which prescribed minimum qualification and experience for faculty positions of National Institutes of Technology (under the **standard-3 tier rigid faculty structure**).

3.2. Mr. Deb, learned senior counsel had tried to draw my attention to the Schedule of “Draft RR, 2010”, where against column no.9 ‘Method of Recruitment’ was prescribed as “*By direct recruitment, failing which on deputation, failing which on contract for a maximum tenure of 5 years*”. The prescribed qualification for Asstt. Prof. on contractual basis was mentioned as “*M.Tech/ M.Phil with first class or qualification with Master or Bachelors degree in appropriate discipline.*”

3.3. The pointer of his submission is that all the petitioners were recruited on the basis of “Draft RR, 2010” followed by Model Recruitment Rules, 2011 where there is specific provision for appointment of faculty of Asstt. Prof. and faculties on contract basis in respect of various disciplines.

3.4. The sudden change of their designation, and re-designating them as Temporary Asstt. Prof. and Temporary Faculty with reduced consolidated monthly salary and reduction of their status without assigning any reason could not be countenanced and was contrary to National Institute of Technology Act, 2007 (Act No.29 of 2007) as amended from time to time including its amendment under notification dated 21.07.2017 (for short, “Statutes 2017”).

3.5. Mr. Deb, learned senior counsel emphasized that “Statutes 2017”, prescribed the requirement of Ph.D. for the first time as an essential qualification to fill up the post of Assistant Professor (on contract). According to learned senior counsel for the petitioners, the post of Assistant Professor (on contract) is a statutory post as embodied in “Draft RR, 2010” and “Model Recruitment Rules,2011”. Mr. Deb, learned senior counsel contended that ‘Statutes 2017’ cannot operate retrospectively.

4. Submissions on behalf of the respondents:

4.1 On the other hand, Mr. B. Majumder, learned Dy.SGI of India contended that the advertisements issued by the NIT authority for engaging contractual faculty only to meet the requirements of the Institute arose from time to time. These advertisements were for purely contractual engagement and not for filling up vacant post of Assistant Professor. Learned Dy.SGI further contended that the engagement of the petitioners were subject to discontinuation at any point of time without assigning any reason if exigency of service did not require it or the interest of the Institute was not served to the satisfaction of the engaging authority and that engagement would not confer any right of continuation or confirmation under any circumstance. However, learned Dy.SGI admitted that extension of the engagement of the petitioners was based on the performance as assessed by the HOD of the concerned department.

4.2 Learned Dy.SGI most emphatically submitted that the Draft RR of MHRD circulated in May, 2010 is only a draft document as it had not been notified and hence, the petitioners could not take recourse to it. He further emphasized that as per “Statutes 2017”, Ph.D. qualification has been made mandatory for the post of Assistant Professor (on contract). For that reason, the contention raised by the petitioners that they were engaged under valid Recruitment Rules had no

legal basis and as such liable to be rejected. Learned Dy.SGI had defended the re-designation of the petitioners and the reduction of pay structure for the reason that those recommendations were approved by the NIT, Agartala. He further submitted that since the petitioners had no requisite qualification, their pay had been reduced.

5. Analysis:

I have considered the submissions of learned counsel appearing for the parties. The principal question to be decided in the present writ petition filed by the petitioners is whether re-designation of the petitioners with reduction of pay structure suffers from the vice of arbitrariness and the relevant notifications issued for this purpose is liable to be quashed.

5.1 The National Institute of Technology Act, 2007 [here-in-after referred to as “the NIT Act, 2007”] came into force w.e.f. 6th June, 2007. **Section 3(h)** defines “*notification*”, which means a notification published in the Official Gazette. **Section 3(i)** defines “*prescribed*” which means prescribed by rules made under this Act. Under **Section 3(k)** “**Schedule**” means the schedule annexed to the Act.

5.2 Section 26 of the NIT Act, 2007 postulates that:

(1) The first statute of each Institute shall be framed by the Central Govt. with the prior approval of

the Visitor and a copy of the same shall be laid as soon as may be before each House of Parliament.

(2) The board may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner provided in this Section.

(3) Every new Statute or addition to the Statutes or any amendment or repeal of the Statutes shall require the previous approval of the Visitor who may grant assent or withhold assent or remit it to the board for consideration.

(4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor.

5.3 Section 32(2)(b) empowers or authorises the Council to lay down policy regarding cadres, method of recruitment and conditions of service of employees.

5.4 Ministry of Human Resource Development (Department of Higher Education) [for short, MHRD] vide notification dated 23rd April, 2009 created the “First Statutes for all the National Institutes of Technology, 2009” [here-in-after referred to as the “First Statutes, 2009”]. This First Statutes was created in exercise of powers conferred by sub-section (1) of section 26 of the “NIT Act, 2007” by the Central Govt., with prior approval of the Visitor. Under this “First Statutes, 2009” the “Act” is defined under Section 2(1)(a), which means the NIT Act, 2007. Under **Section 2(i) “rules”** means *the rules made under Chapter-III of*

the Act and “**Schedule**” means schedule annexed to these Statutes [section 2 (j)].

5.5. **Section 23** of “the NIT Act” prescribes that *posts other than the post on contract basis shall be filled up by the Selection Committees by issuance of publication of advertisements or by promotion from amongst the members of staff of the Institute.* **Section 23(8)** stipulates that- “*where a post is to be filled up on contract basis or by invitation, the board may constitute such ad hoc Selection Committee, as circumstance of each case may require*”.

5.6. The MHRD had framed “Draft RR, 2010”. **Rule 3** prescribes ‘*Method of Recruitment and other matters*’. **Rule 7** deals with “*Other conditions of service*” and stipulates that “*the other conditions of service of the Faculty for which no specific provisions have been provided in these rules shall be regulated in accordance with such rules as are, from time to time, applicable as per the First Statutes of NITs. For matters not covered by the Statutes, the Central Govt. Rules shall be applicable.*” This “Draft RR,2010” consists of ‘**SCHEDULE**’, contemplating Recruitment Rules [RRs] for the post of Assistant Professor/Associate Professor and Professor in NIT. **Rule 11** prescribes “*Minimum Qualification and Experience*”, and for regular appointment of Assistant Professor, requisite qualification of *Ph.D. Degree (with first*

class degree at Bachelors or Master's level) in appropriate discipline has been prescribed. Noticeably, for contractual appointments, it is prescribed that one must have M.Tech/M.Phil with first class or equivalent grade at Masters or Bachelors degree in appropriate discipline. Therefore, under the said “Draft RR,2010”, Ph.D. degree is not a required qualification for engagement/appointment in the post of Assistant Professor (on contract).

5.7. In pursuance of the said “Draft RR,2010”, the MHRD had framed “Model Recruitment Rules,2011” for Faculty of NITs and these rules were called the “NIT Faculty Recruitment Rules, 2011” [here-in-after referred to as “NIT Faculty RR,2011”]. **Rule 2** of “NIT Faculty RR, 2011” defines ‘Act’ which means ‘NIT Act,2007’. “Statutes” means the *First Statutes of the NITs and the Statutes subsequently framed by the respective NIT or framed by the MHRD* and “Faculty” means the *Professor, Associate Professor and Assistant Professor of the NITs* [**Rule 2(d)**]. **Rule 4** of “NIT Faculty RR, 2011” prescribes that *Faculty without Ph.D degree shall be regarded on contract basis for a fixed period not exceeding 5 years.*

5.8. **Rule 9** of “NIT Faculty RR 2011” stipulates that the *Rules mentioned in the “NIT Faculty RR 2011” may be amended by the Board of Governors of the respective NIT for reasons to be recorded in writing. The amended rules shall not be applied retrospectively and shall take*

effect only after they are approved by the MHRD. This “NIT Faculty RR 2011” consists of a ‘SCHEDULE’ relating to ‘Recruitment Rules (RRs) for the Post of Assistant Professor, Associate Professor and Professor of NITs. Rule 11(a) of the schedule of the “NIT Faculty RR,2011” prescribes that ‘candidates of M.Tech degrees may be appointed as Assistant Professors, on contract basis only’.

5.9. Under the caption “*Prescribed Minimum Qualification and Experience for Faculty Positions of National Institutes of Technology*”, there is specific post designated as “*Assistant Professor (on contract) with Grade Pay of Rs.6000/- PB3 + 2 increments*”. The prescribed essential qualification is M.Tech for the post.

5.10. Annexure VI to the ‘Schedule’ of the “NIT Faculty RR,2011” postulates specific procedure and circumstances for appointment of “*Faculty on Contract*” which lays down that --“*when regular Faculty positions cannot be filled, to Board at its discretion, may fille up sanctioned Faculty positions “on contract”, where the terms of separation will be far easier than those who are regular Faculty. Other facilities and mode of selection, to the extent possible, will be same as those for regular Faculty. Examples of contractual Faculty will include Assistant Professors without Ph.D degree under the 3 tier system....*”.

5.11. It further defines “*Temporary Faculty*” which stipulates that -- “*the Director may record temporary faculty*” against sanctioned posts to tide over serious shortage of faculty to handle UG and PG teaching load. This will be possible only in department where the number of faculty in position, not counting teachers on allowing leave, is below 0.75 X normal strength....”

5.12. The “NIT Act, 2007” has been amended in the year 2012 by Act No. 28 of 2012 as notified on 8th June, 2012 and the said Act called as “The National Institutes of Technology (Amendment Act) 2012” [here-in-after referred to as “the NIT Amendment Act,2012”]. Under this “NIT Amendment Act, 2012”, the “NIT Act,2007” will be referred to as the “Principal Act”. Further, amendment has been carried out changing the nomenclature of the ‘Act’ and under **Section 3** of the “NIT Amendment Act, 2012”, it is notified that ‘in Section 1 of the Principal Act, in sub-section(I) for the words “National Institutes of Technology”, the words, “National Institutes of Technology, Science Education and Research shall be substituted”, that means, in view of the “NIT Amendment Act,2012”, the nomenclature of the ‘NITs’ is changed and it is re-named as “National Institutes of Technology, Science Education and Research”.

5.13. The “National Institutes of Technology, Science Education and Research Act, 2007” [here-in-after-referred to as the “Principal

Act”] has been further amended by the Act No. 9 of 2014 w.e.f. 4th March, 2014 and is called as “*National Institutes of Technology, Science Education and Research Amendment Act, 2014*”.

5.14. Again, in exercise of powers conferred by sub-section (3) and sub-section(4) of Section 26 of the Principal Act [29 of 2007], the Central Govt. with prior approval of the Visitor has amended the “First Statutes, 2009” which is called as “*Statutes, 2017*”. Under **Section 12** of the ‘*Statutes, 2017*’ it is prescribed that ‘*for the purposes of appointment in the Institute, ‘Statutes 23’ of the Principal Statutes has been amended and it is notified that the rules as approved by the Council or Central Govt. shall apply.*’ Under **Section 12(b)** ‘*Statutes 23(4)*’ of the Principal Statutes has been substituted in the manner as under:

“(4) The Selection Committee, for filling posts under the Institute (other than the posts on contract basis) by advertisements or by promotion from amongst the members of the staff of the Institute, shall be constituted in such a manner as laid down by the Central Govt. or Board from time to time by ordinances”.

5.15. Under ‘*Schedule E*’ of the “*Statutes, 2017*” qualification for Assistant Professor (on contract) has been amended, and Ph.D. degree is prescribed. Under Clause (2) of **Note No.1** of the said ‘*Schedule E*’ stipulates that “*all new entrants shall have Ph.D. degree in the relevant*

or equivalent discipline and shall have first class in the preceding degrees.”

5.16. At the foot of ‘*Schedule E*’ by way of inserting a ‘**NOTE**’ it is clarified that “the Principal Statutes were published in the Gazette of India, Extraordinary, Part II, Section I, sub-section (i) vide Notification No.G.S..R 280(E), dated the 23rd April, 2009 and subsequent amendment was published in the Gazette of India, Extraordinary, Part II, Section 1, sub-section(i) vide Notification No.G.S.R. 837 (E), dated 5th November,2015.

5.17. Now, coming into the merits of the present case, and keeping in view the aforesaid provisions of law governing the appointment of Assistant Professor (on contract) with a specific pay band, it becomes apparent that the appointment of the petitioners as Assistant Professor (on contract), on different dates of the year 2010 and further extension of the petitioners cannot in any way be said to be illegal, as submitted by the Director of NIT, Agartala who was present in the court in person on the date of hearing at the request of this court. His submission in respect of the fact that the petitioners were not appointed by the Selection Committees as stipulated in the “NIT Act, 2007”, in my opinion, has no force on the ground that Section 23(8) of the “First Statutes,2009”, the post of Assistant Professor (on contract) can be filled up by constituting an *ad hoc* Selection Committee. Again, from the

‘Schedule’ attached to “Draft RR 2010”, it comes to fore that under this Recruitment Rules, the requisite qualification for appointment to the post of Assistant Professor on contractual basis is M.Tech/M.Phil with first class or equivalent grade on Masters and Bachelors degree in appropriate discipline. It is specifically mentioned in the ‘Schedule’ that for regular appointment to the post of Assistant Professor Ph.D. degree was necessary. Furthermore, the post Assistant Professor (on contract) as it is encapsulated in the “Draft RR,2010”, “Recruitment Rules,2011”, “NIT Faculty RR,2011” and the “Statutes 2009 & 2017” undoubtedly, in my considered view, be said to be or recognized as a statutory post and also finds place in the “First Statutes,2009” [Statutes 23(8)]. In addition, Statute 28 of the “First Statute, 2009” categorically deals with the method of “Appointments on Contract”. It reads as under:

“28. APPOINTMENT ON CONTRACT

- (1) Notwithstanding anything contained in these Statutes, the Board with the prior approval of the Visitor may in special circumstances appoint an eminent person on contract for a period not exceeding 5 years.*
- (2) Subject to the provisions of the Act, the Board may appoint any person on contract in the prescribed scales of pay and on terms and conditions applicable to the relevant post for a period not exceeding 3 years.*
- (3) For making such appointments, the Chairperson, Board of Governors shall constitute such ad hoc Selection Committee, as the circumstances of each case may require. Provided that such constitution of committee shall be reported to the Board for confirmation.*

5.18. In the case in hand, for filling up the vacant post of Assistant Professor, in various disciplines, in the NIT, Agartala, the Registrar, issued various advertisements from time to time. Pursuant to such advertisements, the petitioners participated in their respective selection process and were selected for appointment in their respective posts. Subsequently, the Registrar, NIT, Agartala issued offers of appointments to the post of Assistant Professor (on contract), in various departments, in favour of the petitioners. After a certain period of time and based on the approval accorded by the competent authority the contractual services of the petitioners were extended and they were holding such posts continuously till their status was altered to “Temporary Faculty” with simultaneous reduction of their pay structures. The petitioners submitted representations for reconsideration of restoration of their earlier salary along with the granted increments, but, those representations were not addressed to by the respondents. Annexure-VI of the “First Statutes 2009” deals with both “Faculty on Contract” and “Temporary Faculty” [**Annexure-7** to the writ petition, pages 140 -141 respectively].

For convenience, it is reproduced here-in-below again:

“Faculty on Contract”

When regular faculty positions cannot be filled, to Board at its discretion, may fill up sanctioned faculty positions “on contract”, where the terms of separation will be far easier than those of regular faculty. Other facilities and mode of selection, to the extent possible, will be same as those for regular faculty. Examples of contractual faculty will include Assistant Professors without Ph.D. degree under the 3 tier system.....”

“Temporary Faculty”

The director may recruit “Temporary faculty” against sanctioned posts to tide over serious shortage of faculty to handle UG & PG teaching load. This will be possible only in departments where the number of faculty in position, not counting teachings on long leave, is below 0.75 X normal strength....”

5.19. On conjoint reading of the above, in the opinion of this court, the nature and purpose of appointment of Assistant Professor on contract) and the recruitment of “Temporary Faculty” is quite different having distinguished features. The post of Assistant Professor (on contract) is filled up against sanctioned faculty positions when the post of “Family” cannot be filled up regular basis. The purpose of recruitment of “Temporary Faculty” is to meet/overcome serious shortage of faculty to handle UG and PG teaching load, that is, contingent to certain situations.

5.20. On careful scrutiny of the “Statutes, 2017”, it is evident that the prescribed qualifications (Ph.D.) as required for appointment of Assistant Professor (on contract) cannot be enforced against the Assistant Professor who have already been holding the post of Assistant Professor (on contract). From ‘**Note 1**’ of the “Statutes,2017”, it is apparent that this prescribed qualification (Ph.D.) is applicable in respect of “**new entrants**” in the NIT and this expressed clarification clearly suggests that the “Statutes,2017” has not been given retrospective effect and thus, it protects the service of the contractual Assistant Professors appointed under the Principal Statutes and Rules thereunder. As such, the impugned notifications dated 14.07.2020 & 26.08.2022 altering the status of the petitioners with reduction of pay structures is wholly illegal, arbitrary and inconsistent to that of the “Statutes, 2017”.

5.21. *It is further well-settled that unless an Act or Rule expressly or by necessary implication is made to have been given retrospective effect or shows the intention of the legislature to affect existing rights, such amended Act or Rules must be held to be prospective and cannot curtail the existing rights of the persons appointed under the Original Act or Rules [Ref. P. Mahendran & Ors. Vrs. State of Karnataka & Ors. along with another connected writ petition, (1990) 1 SCC 411].*

[Emphasis supplied]

5.22. In addendum, the above analysis of this court is further fortified in view of the clarification made by MHRD vide communication dated 31.01.2018 (though not submitted by learned counsel appearing for the parties) as regards controversy arising out of the requirement of Ph.D. under “Statutes,2017” for appointment in relevant or equivalent discipline. The said communication dated 31st January,2018 [Ref. F.No.33-9/2011-TS.III] may be reproduced hereunder, for convenience, in verbatim:

*“F.No.33-9/2011—TS.III
Government of India
Ministry of Human Resource Development
Department of Higher Education*

*To
The Director,
National Institute of Technology,Rourkela,
Rourkela—769008(Odisha).*

*Subject:- Clarification on Recruitment Rules for Faculty of
NITs and IEST-regarding.*

Sir,

I am directed to refer to National Institute of Technology, Rourkela’s letter No.NITR/RG/2018/L/0170 dated 23rd January,2018 on the subject mentioned above and to state that the condition of first class in preceding degrees was published in the Gazette of India on 24th July,2017 as per decision of the Council. As per the new RRs notified in the Gazette, the new entrants are required to have Ph.D. in relevant or equivalent discipline and shall have first class in the preceding degrees.

2. In above context, the new entrant means a candidate who is not existing faculty of concerned NIT. Therefore, existing faculty will not be considered as new entrant. Apart from this, there will not be any distinction between the external and internal candidates with regard to the requirement of qualification and experience. It is requested to kindly adhere to the RRs notified in the Gazette on 24th July,2017 by the Ministry.

3. *This issues with the approval of the competent authority in the Ministry.*

Yours faithfully,

Sd/-

[K. Rajan]

Under Secretary to the Government of India”

5.23. In the above clarification, it is clearly stated that required qualification of Ph.D. in relevant or equivalent discipline under “Statute,2017” for filling up the post of Assistant Professor (on contract) at respective disciplines will be applicable to new entrants and “new entrant” means a candidate who is not an existing faculty of concerned NIT. Therefore, such existing faculty will not be considered as “new entrant”. So, I may unhesitatingly hold that the petitioners being the existing Assistant Professor (on contract) cannot be treated as new entrants.

5.24. More importantly, “Statutes,2017” is not in supersession or in derogation of the provisions of the “First Statutes,2009”. “Statutes, 2017” is an amendment to the “First Statutes, 2009”. At the cost of repletion, it is significant to notice that at the foot of the “Statutes, 2017” by way of incorporating a “**NOTE**”, the framers of the Statutes have clarified that the Principal Statutes were published in the gazette of India vide notification number G.S.R. 280(E), dated 23rd April,2009 and subsequent amendment was published vide notification number G.S.R. 837 (E) dated, 5th November,2015, meaning thereby, one is not

overlapping to another as tried to be projected by the respondents in the present controversy.

5.25. In the light of above propositions, the impugned orders issued by the competent authorities of the respondents in alteration/reduction of the status of the petitioners designated them as “Temporary Faculty” or “Temporary Assistant Professor” with reduction of pay structure and placing their services against non-sanctioned post from their original engagement against sanctioned posts are wholly illegal, arbitrary and inconsistent with the ‘Statutes, 2017’ and cannot be sustained in law. In furtherance thereof, *it is settled principle of law that one set of contractual employees cannot be replaced/substituted by another fresh set of contractual employees.*

5.26. Applying the aforesaid principle, in the instant case, the petitioners having held the post of Assistant Professors appointed on contract basis cannot be replaced/substituted by another set of contractual employees on the ground that new qualification (Ph.D.) appended to by the amended Statutes [“Statutes,2017”] does not erase or wipe out the qualification prescribed under “NIT Faculty Statutes,2009” i.e. the Principal Statute and Rules thereunder, where, for filling up the post of Assistant Professor (on contract), Ph.D. was not the requisite qualification. As such, *the posts of Assistant Professor (on contract) held*

by the petitioners cannot be replaced/substituted by another set of Assistant Professor (on contract) merely because new recruitment policy prescribes higher qualification for the same post. However, this right of contractual Assistant Professor will be limited uptill the posts are filled up on regular basis. **[Emphasis supplied]**

Needless to say, by now, the petitioners having served the respondents satisfactorily as Assistant Professor for the last 13 (thirteen) years have already gained substantial experience to provide quality teaching to the students. So, the appointment made under First Statute, 2009 cannot be disturbed/dislodged in any manner whatsoever. Of course, the respondents have every right to fill up the unfilled vacant posts of Assistant Professor (on contract) by the candidates having Ph.D. degree as prescribed under “Statutes,2017”.

5.27. The above propositions made by this court, in the context of the present case, gets support from sub-section (3) of Section 34 of the Principal Act, which mandates that Parliament may make modification or annul in a provision of the Act or Rules made thereunder, but, any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule. In light of this, the placement of the petitioners against non-sanctioned posts from sanctioned posts of Assistant Professor (on contract) is, according to this court not only contrary to Section 34(3) of the Principal

Act [“Statutes,2009”], but also inconsistent to the intention of the framers of the Statutes.

5.28. In the light of the above provisions, *the appointments of the petitioners made under “Draft RR, 2010” and “NIT Faculty RR, 2011” cannot be disturbed or dislodged in view of the “Statute,2017”.* This proposition is further fortified from **Rule 9** of “NIT Faculty RR, 2011”, where it is specifically stated that the Recruitment Rules may be amended but the amended rules shall not be applied retrospectively.

[Emphasis supplied]

5.29. There is yet another aspect to be noticed, in the context of the present controversy. It is an admitted fact that the petitioners were appointed in pursuance of advertisements where educational qualification was prescribed. Those advertisements were notified in terms of the Recruitment Rules that were prevailing in the year 2009 i.e. rules framed under the “First Statutes, 2009”, the “Draft RR, 2010”, and the “NIT Faculty RR, 2011” there-under. The petitioners were found to be eligible and were otherwise qualified in accordance with the relevant rules, and the terms contained in the advertisements.

5.30. As I said earlier, in the instant case also the “Statutes,2017” does not postulate any such provision where it has been

given retrospective effect affecting the existing rights of the persons appointed under the “First Statutes, 2009” that is the “Principal Statutes” and the Recruitment Rules made thereunder, rather, *sub-section (3) of Section 34 of the “Principal Act,2007” clearly mandates that any modification or amendment will not affect or prejudice in any way to the validity of anything previously done under that rule, which existed at the relevant point of time.*

[Emphasis supplied]

5.31. Another important aspect relevant to mention herein that the respondents while issuing the impugned Memorandum dated 26.08.2022 converting the services of the petitioners from the sanctioned posts of Assistant Professor (on contract) to the non-sanctioned posts of “Temporary Faculty” and “Temporary Assistant Professor” wholly ignored the relevant provisions embodied in “NIT Act,2007” read with the relevant Recruitment Rules and Statutes thereof as extracted and discussed in the preceding paragraphs in detail, which, in the opinion of this court, is *per se* irrational, unwarranted, arbitrary and capricious and is, therefore, liable to set aside and quashed.

5.32 Lastly, I have also considered the submission of learned Dy.SGI that the instant writ petition filed by the petitioners is barred by the principle of *constructive res judicata* in view of the judgment and

order passed in WP(C) 342 of 2018 [*Dr. Sagnik Pal & Ors. Vrs. The NIT & Ors.*] where one of the petitioners of the present writ petition was also a party to the earlier round of litigation. On perusal of the facts stated in that writ petition, it appears that by way of filing the aforementioned writ petition the petitioners had urged for issuance of writ of certiorari for setting aside an advertisement dated 22.09.2017 and sought for regularizing to the post of Assistant Professor. But, in the instant writ petition, the petitioners have challenged the alteration of their status of Assistant professor (on contract) from their original post of Assistant Professor (on contract) and cause of action of the present writ petition arose when the Memorandum dated 26.08.2022 had been issued by the competent authority of the respondents whereby and whereunder the respondents have reduced their status with reduction of pay structure, that is, their fresh engagement vide communications dated 14.07.2020 [Annexure-4 to the writ petition] on consolidated pay of Rs.50,000/- per month. In view of this, according to this court, the present writ petition is not barred by the principles of *constructive res judicata* and accordingly, this submission of learned Dy.SGI is repelled.

6. Conclusion:

For the reasons stated and discussed above on the relevant Acts and Rules vis-à-vis the Principal Statutes [“Statutes,2009”] qua the

amended Statutes [“Statutes,2017”], this writ petition stands disposed with the following directions:-

- (i) The respondents are directed to restore the initial engagement or original status of the petitioners as Assistant Professor (on contract) within 7(seven) days from the date of receipt of the copy of this judgment, revoking or rescinding the Memorandum dated 26.08.2022 [Annexure-8 to the writ petition];
- (ii) the reduction of pay structures of the petitioners is declared as illegal and arbitrary;
- (iii) fresh engagements of the petitioners vide communications dated 14.07.2020 [Annexure-4 to the writ petition] determining their salary on consolidated pay of Rs.50,000/- is hereby declared as *void ab initio and non est* and the respondents are directed to restore their last pay structures;
- (iv) the salaries of the petitioners including arrears, if any, shall be disbursed within 30 days from the date the petitioners place a copy of this judgment to the Director, NIT, Agartala;
- (v) the Memorandum dated 26.08.2022 [Annexure-8 to the writ petition] putting their services against non-

sanctioned post changing their designation from Assistant Professor (on contract) to “Temporary Faculty” or “Temporary Assistant Professor” stands set aside and quashed; and

- (vi) the respondents are at liberty to make fresh engagements/appointments in terms of “Statutes,2017” against the vacant posts without disturbing engagements/appointments of the petitioners as Assistant Professor (on contract) till regular appointments are made against the posts of Assistant Professor.

AND

- (vii) However, the prayer of the petitioners to pass a direction upon the respondents for regularization of their services as Assistant Professor with regular pay scales is hereby rejected.

JUDGE