

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.58 of 2023

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

.....Appellant(s);

Versus

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,
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,
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,
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

.....Respondent(s)

For Appellant(s)	: Mr. Bidyut Majumder, Deputy SGI.
For Respondent(s)	: Mr. Somik Deb, Sr. Advocate, Mr. P. Chakraborty, Advocate, Mr. Abir Baran, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Date of hearing & Judgment: **05.08.2024**

Whether Fit for Reporting: **YES**

JUDGMENT & ORDER (ORAL)

Heard Mr. Bidyut Majumder, learned Deputy SGI for the appellants-Union of India and Mr. Somik Deb, learned senior counsel for the writ petitioners/respondents herein.

2. The appellants-Union of India is aggrieved by the impugned directions passed by the learned Writ Court at para-6 in WP(C) No.1067 of 2022 which reads as under:

“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.”

3. The relevant undisputed service details of the petitioners regarding their entry in service are at paragraphs 2 to 2.7 of the impugned judgment which are being extracted into our order for the purposes of avoiding repetition:

“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. Dhruvajyoti 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.”

4. The memorandum dated 26.08.2022 compelled the petitioners to approach the Writ Court with two grievances – one relating to change of designation from “Assistant Professor (on contract)” to “Temporary Assistant Professor” and “Temporary Faculty” and the other relating to reduction of consolidated monthly salary to Rs.50,000/- from Rs.51,032/- plus increments. Learned Writ Court, upon hearing the parties and the pleadings on record, also dealt with the provisions of the National Institute of Technology Act, 2007, the notifications issued from time to time by the Ministry of Human Resource Development (Department of Higher Education) [MHRD, *for short*], the Draft Recruitment Rules, 2010, the Model Recruitment Rules, 2011, the NIT

Amendment Act, 2012, the Statutes of 2009 which is later called as “Statutes of 2017” amended with prior approval of the Visitor under sub-section (3) and sub-section(4) of Section 26 of the Principal Act [29 of 2007] and proceeded to hold that these petitioners were selected under various advertisements from time to time and engaged on contract basis on the post of Assistant Professor in various departments. Their contractual services were extended and they have held their post continuously till their status was altered to “Temporary Faculty” with simultaneous reduction in their pay structures. Their representation for restoration of their status and salary were not addressed compelling them to approach this Court.

5. The learned Writ Court, after scrutiny of the Statutes of 2017, held that the requirement of prescribed qualification (Ph.D) required for appointment of Assistant Professor (on contract) cannot be enforced against the Assistant Professors who have already been holding the post of Assistant Professor (on contract) under the Statutes of 2017. By virtue of the letter dated 31.01.2018 issued by the MHRD, such prescribed qualification of Ph.D is applicable to “new entrants” in the NIT and cannot be given retrospective effect. As such, the impugned notifications dated 14.07.2020 and 26.08.2022 altering the status of the petitioners with reduction of pay structures is wholly illegal, arbitrary and inconsistent with that of the Statutes of 2017. The learned Writ Court also held that the Statutes of 2017 is not in supersession or in derogation of the provisions of the “First Statute, 2009” but only an amendment. In that light, the learned Writ Court applied the principle that one set of contractual employees cannot be replaced/substituted by another fresh set of contractual employees on the ground that new qualification (Ph.D) is

required to be fulfilled by them. It also observed that the writ petitioners were initially appointed upon fulfilling the essential educational qualifications as prescribed under the advertisement. The Writ Court also negated the contention of the Union of India that the writ petition suffered from principles of constructive *res judicata* since in the earlier writ petition being WP(C) No.342 of 2018 and other connected matters though only one of the writ petitioners was a party, but the challenge thereto was for setting aside an advertisement of 22.09.2017 and seeking regularization to the post of Assistant Professor. In the instant petition, they have challenged the alteration of their status of “Temporary Assistant Professor” or “Temporary Faculty” to their original post of Assistant Professor (on contract) and as such, the cause of action is independent and maintainable. Based on these analysis and findings, the impugned directions were issued under para-6 of the impugned judgment which have been copied hereinabove.

6. We have heard learned Deputy SGI for the Union of India and learned senior counsel for the writ petitioners at length. During course of submission, learned counsel for the parties have drawn the attention of this Court to the NIT Act, the Statutes, the MHRD letter and other documents referred to by the learned Writ Court including their letters of initial engagement and the impugned letters dated 14.07.2020 and 26.08.2022.

7. Upon hearing learned counsel for the parties and upon perusal of the records, at the outset it needs to be indicated that the initial engagement of the writ petitioners was through a walk-in interview for filling up of the posts of Assistant Professor on contractual basis upon fulfillment of the prescribed qualifications with desirable Ph.D. Therefore, Ph.D was not an essential

qualification. It is also true that these writ petitioners/respondents herein got suitable extensions from time to time and continued on their contractual engagement till issuance of the impugned letters. The letter of initial engagement of one of the writ petitioners namely Sri Subhajit Deb dated 06.08.2010 is extracted hereunder:

**National Institute of Technology Agartala
Agartala -799 055 (Tripura)**

No. NITA-2(177-Estt)/2007/cont./3131-35

Dated:- 06/08/2010.

MEMORANDUM

The Director, NIT Agartala, pleased to offer the contractual engagement of Sri **Subhajit Deb in Civil. Engg.** on the following terms and condition 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 re-imbursement 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.

(Dr. D. Bhattacharjee)
Registrar

8. The impugned letter dated 14.07.2020 is also extracted hereunder:

**National Institute Of Technology Agartala
AGARTALA-799046 (Tripura)**

No.F.NITA.2(166-Estt)/Cont./Teaching/2020/14906-09

Date: 14/7/2020.

To,
Mr. Subhajit Deb, Asstt. Professor,
Department of Civil Engineering
NIT Agartala.

Subject: Engagement on Contractual basis.

Based on the recommendation of HOD and approval accorded by the Competent Authority, you are hereby engaged as Assistant Professor, in the Department of

Civil Engineering at NIT Agartala on purely contractual basis for the period from 03-07-2020 to 30-06-2021 on the following terms and conditions:

1. You will be paid consolidated amount of Rs.50,000/- (Rupees fifty thousand) only per month subject to satisfactory performance appraisal from the concerned Head of the Department/Sectional Head.
2. You will be entitled for TA/DA whenever deputed for official duties outside the Head Quarters, as applicable to NIT Agartala.
3. You will not be entitled to any Medical Reimbursement /LTC from NIT Agartala.
4. You will be entitled to avail the normal holidays and C.L. / Special Leave as applicable to NIT Agartala. Any other leave is not admissible.
5. You will perform all other works as and when assigned by the Competent Authority of NIT Agartala.
6. 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 appointing authority and that engagement will not confer any right of continuation or confirmation under any circumstances.
7. If you want to leave the organization, you have to give one month notice failing which you are required to pay one month's consolidated amount to be drawn by you at the time of submission of such notice.
8. Your continuance on the post is subject to satisfactory performance time to time at NITA.
9. Your engagement is not against any sanctioned post.
10. If any dispute arises between employee and the NITA that will be settled mutually, If the dispute is not settled mutually, the matter will be referred to the Ministry of Human Resource & Development, GOI and the decision of the MHRD shall be and binding.

Dean (FW)

9. By this letter, the consolidated pay of the petitioner was reduced to Rs.50,000/-. By another impugned memorandum dated 26.08.2022, the status of the petitioners were changed. The memorandum dated 26.08.2022 is also extracted hereunder:

National Institute of Technology Agartala
AGARTALA-799046 (Tripura)

No.F.NITA. 2(166-Estt)/Cont/Teaching/2020/6008-12

Date 26/08/2022

MEMORANDUM

Sub : Engagement on contractual basis.

Based on the recommendation of the Moderation Committee and subsequent approval of the Competent Authority, 74 (Seventy-four) No. of candidates are hereby engaged in the respective department on purely contractual basis for a period of 06 (Six) months with a monthly consolidated salary as shown against each in the Annexure-I along with the following terms & 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 05 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.

Dean (F/W)

10. The names of these petitioners occur at serial numbers 3, 7, 9 & 11 in list attached to the said memorandum which shows them as “Temporary Assistant Professor” or “Temporary Faculty”. By the impugned judgment, the learned Writ Court held that the reduction of their consolidated pay during the period of extension of their contractual service and change in their nomenclature was not proper in the eye of law. The other impugned directions which also have offended the appellants-Union of India are contained at paras 6(v) and 6(vi) quoted above. The learned Writ Court, while quashing the memorandum dated 26.08.2022, held that there services cannot be changed to non-sanctioned posts while changing their designation. The learned Writ Court while further granting liberty to the respondents-Union of India to make fresh appointments in terms of Statutes of 2017 against vacant posts directed that the engagements/appointments of the petitioners as Assistant Professor (on contract) shall not be disturbed till regular appointments are made against the post of Assistant Professor.

11. Mr. Bidyut Majumder, learned Deputy SGI for the Union of India, submits that these petitioners were never appointed against sanctioned posts.

Their appointment letters and the impugned letters all clearly show that their engagements were on contractual posts extendable from time to time. As such, that part of the impugned direction is also incorrect and not tenable on facts and in law. He further submits that direction of the learned Writ Court to continue the services of these petitioners on contract basis till regular appointments are made against the post of Assistant Professor under the Statutes of 2017 is not tenable in law as the writ petitioners have not been engaged on sanctioned permanent posts. Their engagement being on non-sanctioned posts on contract basis, recruitment exercise to fill up permanent posts and continuation of the writ petitioners on contractual posts both cannot be mixed together.

12. We find substance in the submission of learned Deputy SGI for the Union of India as is evident from the nature and terms & conditions of the appointment of these petitioners. Apart from that sub clause (ii) of Clause 24 of the Procedure for Selection of Faculty in NIT System to the Recruitment Rules for Faculty positions in NIT [Page-146 to 153 of the memo of appeal] prescribes the period of contract initially for three years extendable by two more years only on recommendation of a valid Selection Committee. Sub-Clause (iv) thereof further provides that if during contract period, an incumbent shows poor progress on his Ph.D work or dereliction of duty in teaching, the contract may be terminated prematurely after an enquiry by the ACoFAR, with at least one external expert. The tenure being contractual in nature would also be terminated without further extension as the nature of such tenure based contractual appointment provides for. Therefore, the learned Writ Court while holding that the conversion of their designation from Assistant Professor (on contract) to “Temporary Faculty” or “Temporary Assistant Professor” was not

proper, while further holding that their services were against sanctioned posts. Its observation that changing their status to non-sanctioned posts was not warranted on facts and in view of the terms of engagement of these petitioners. The engagement of these petitioners on contract basis did not confer a right of regularization as it was for a tenure extendable upon satisfactory performance for certain period. The National Institute of Technology has extended their services considering the fact that the teaching may not suffer in the absence of a faculty, but that cannot clothe a contractual employee with the legal right of being regularized in service. If the engagement of the writ petitioners were on contractual basis and not against any sanctioned posts which are separately provided under the NIT statute and the Schedule annexed to the Recruitment Rules, the NIT could not be restrained from disengaging the contractual employees like the writ petitioners till regular appointment of Assistant Professor is made against the sanctioned vacant posts. As observed hereinabove, their engagements could be brought to an end on completion of their tenure or could also be terminated by the employer on poor and unsatisfactory performance.

13. Having held so, we are however in agreement with the findings of the learned Writ Court so far as the change of status of the writ petitioners from Assistant Professor (on contract) to “Temporary Faculty” or “Temporary Assistant Professor” has been occasioned since under the relevant Rules and the notifications brought on record, “Temporary Faculty” as conceived under Annexure-VI of the same Recruitment Rules for Faculty Position in the NIT stipulate different conditions under which the Director can recruit Temporary Faculty against sanctioned post to tide over serious shortage of faculty to handle

UG and PG teaching load. The faculty on contract is separately provided under the said Annexure-VI relating to adjunct, honorary, chair, emeritus, contractual, visiting, ad-hoc and temporary faculty. The reduction in their consolidated pay was also unsustainable as that would have amounted to change in the contractual terms of service in a unilateral manner. Therefore, on both these counts, this Court is in agreement with the findings of the learned Writ Court. Those directions, therefore, do not need any interference. However, as held hereinabove, the impugned directions at paragraphs 6(v) and 6(vi) are interfered in the matter indicated hereinabove. Those directions at para 6(v) and 6(vi) are accordingly set aside.

14. With these observations, the instant appeal stands disposed of. Let it be indicated that the status of the writ petitioners were restored during pendency of this appeal. In case any arrears of remuneration remained pending for the period of their contractual engagement, the same should be paid within a reasonable period of four weeks.

Pending application(s), if any, shall stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

Pijush/

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