

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12014 of 2014

1. Dr. (Mrs.) Kalpana Sinha wife of Rakesh Dhari Sinha, resident of Dharhara House, Road No.3 Magistrate Colony, P.O. Ashiyana Nagar, P.S. Rajeev Nagar, District - Patna – 800025 **Petitioner**

Versus

1. The Union of India, through the Secretary, N.I.T's. Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi
 2. The Deputy Secretary, N.I.T's. Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi
 3. The Director, N.I.T. Patna - cum - Chairman Selection Committee, National Institute of Technology, Ashok Raj Path, Patna
 4. National Institute of Technology, Patna, through its Registrar, Ashok Raj Path, Patna
 5. The Chairman, Board of Governors of National Institutes of Technology Ashok Raj Path, Patna
 6. Board of Governors of National Institutes of Technology, Ashok Raj Path, Patna **Respondents**

Appearance :

For the Petitioner/s : Mr. Vinod Kanth, Sr. Advocate
 Mr. Rajesh Kumar, Advocate
 For the Respondent/s : Mr. A.S.G.
 Mr. Y. V. Giri, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 30-03-2015

The petitioner prays for quashing of office order contained in Memo No. NITP/1431-37, dated 17.06.2014 (Annexure-1), by which a sum of Rs.10,64,469/- has been directed to be recovered from the salary on the premises that on account of wrong fixation of pay, excess amount than what was due, was paid to the petitioner w.e.f. 01.01.2006.

2. The impugned order, dated 17.06.2014 is a sequel to



the resolution of Board of Governors of N.I.T., Patna, dated 18.2.2013 (Annexure-13) adopted vide Agenda No.VIII of BOG/20.23, whereby approval was accorded for recovery of amount paid to Assistant Professors, given AGP of Rs.9000 and designated as Associate Professors, on their joining at the Institute, after 1.1.2006, and before August, 2009 without putting in three years of service in the old scale of appointment as Assistant Professor at the Institute, in view of clause 4(k) of letter, dated 14.3.2012 (Annexure-14) read with Clause 2(b)(iii) of letter, dated 18.8.2009 (Annexure-11) both of Ministry of Human Resources Department (hereinafter referred to as 'the MHRD'). The resolution dated 18.2.2013 (Annexure-13) is quoted herein below for easy reference:

“VIII. Approval is given for recovery to be made in suitable installments of the amounts paid to the Asstt. Professors given Rs.9000/- AGP and designated Associate Professors on their joining at the Institute after 01.01.2006 and before August 2009 without putting in 3 years of service in their old scale of appointment as Asstt. Professor at the Institute as per clause (k) of Govt. of India, MHRD letter No.F.33-7/2011-TS.III dated 14th March, 2012 read with letter No.F.No.23-1/2008. T.S.II dated 18th Aug.2009 of Govt. of India, MHRD, New Delhi clause 2b(iii). The Director of the Institute is authorized to fix suitable installments for recovery of the excess amount paid to such faculty members so that it does not burden them much”.



3. Clause 4(k) of letter, dated 14.3.2012 of MHRD, New Delhi and clause 2(b)(iii) of letter, dated 18.8.2009 again of MHRD (at Page 76 and Page 60 respectively) which are referred to and relied upon in resolution of Board of Governors of NIT, Patna are quoted herein below:

Extract from letter dated 14.3.2012:

“4(k). Any promotions or enhancement of Pay Band or Grade Pay already implemented by the Institute should be got reviewed which examined by the Board by a duly constituted Selection Committee immediately. Any increment paid over the beginning of the scale of Associate Professor to those Assistant Professor who did not complete three years, is to be recovered from future pay”.

Extract from letter dated 18.8.2009:

“2(b)(iii)- An Assistant Professor possessing the degree of Ph.D in the relevant discipline and with regular service of 3 years’ at AGP of Rs.8000/- p.m. shall be eligible for moving to AGP of Rs.9000/- p.m. and re-designated as Associate Professor”.

4. The relief prayed for the petitioner are primarily on the following grounds:

(i) The resolution of the Board of Governors (hereinafter referred to as ‘the BOG’) of NIT, Patna contained in paragraph 20.23 (viii), dated 18.2.2013, contained in



Annexure-13, was meant for such faculty Member, who was given the benefit of promotion under the Career Advancement Scheme, which is not applicable to the likes of the petitioner, who are direct recruit as Associate Professor.

(underlining is mine for emphasis)

(ii) The likes of petitioner cannot be treated, as having been promoted as Associate Professor from the post of Assistant Professor, as she effectively joined on 30.1.2006 in the revised 6th PRC scale of Rs. 37400-67000 which was replacement by scale of Vth PRC of Rs.12000-18300.

(iii) The impugned recovery is consequence of misreading of clause 4(k) of resolution dated 14.3.2012 (Annexure-14) which was referable to promotion under Career Advancement Scheme and that her case fell beyond the purview of guide lines.

(iv) The regulation of AICTE, dated 22.1.2010 contained in Annexure-F to the counter affidavit of the NIT would not apply to the NIT, Patna which is a deemed University.

5. The case of respondent NIT in short is, that the petitioner was never appointed as Associate Professor, but as



an Assistant Professor and only such Assistant Professors who have put in 3 years of service in the AGP of Rs.8,000/- would alone be considered as Associate Professor in the pay band of Rs.37,400-67,000. In support of the submissions, learned counsel for the NIT relied upon the following documents:

- (i) Letter dated 31.12.2008 contained in Annexure-9;
- (ii) Letter dated 18.8.2009 contained in Annexure-11;
- (iii) Regulations dated 22.1.2010 of AICTE contained in Annexure-F to the counter affidavit of the MHRD.

6. Before we consider the submissions of the parties, it would be apposite to notice the facts of the case:

(a) The petitioner all along had been a bright scholar. She passed Matriculation Examination in 1st Division in 1976. She did B.A. with English (Hons) and M.A. in English, all in 1st class, from Patna University, in the year 1980 and 1982 respectively. She was awarded Ph.D from Patna University in 1999. She attended a number of seminars, both at national and international level.

(b) In 1993, she was appointed as Lecturer on the recommendation of Bihar State Universities (Constituent Colleges) Service Commission by the Patna University and her



services were placed in the erstwhile Bihar College of Engineering, and after 7 years she was granted senior scale of Lecturer w.e.f. 29.9.1999 in the scale of Rs.10,000-15200. The Bihar College of Engineering was converted into National Institute of Technology, Patna w.e.f. 28/29.1.2004. On request of NIT, Patna University allowed the petitioner to continue in the service of NIT and approved her lien vide letter dated 13.5.2004, reiterated vide letter dated 28.1.2006.

(c) In the year 2005, an open advertisement was issued by the NIT, Patna for appointment of Assistant Professor in subject of English, in the department of Humanities and Social Sciences, in the scale of Rs.12,000-18300, along with appointments to the post of Lecturers in some other faculties as well. The petitioner applied, and was selected for appointment as Assistant Professor, in English, in the scale of Rs.12,000-18300 vide appointment letter, dated 8.12.2005 (Annexure-6). The petitioner joined on 30.1.2006 as Assistant Professor in the department of Humanities and Social Sciences, duly accepted on 8.2.2006. It is evident from Annexure-7 that along with the petitioner, two more teachers were appointed as Lecturers in the scale of Rs.8000-13500.



(d) The MHRD, on the recommendation of the 6th P.R.C. and after taking into consideration the recommendation of UGC in its letter dated 31.12.2008, (Annexure-9) addressed to UGC, directed for revision of pay scale of teachers and equivalent cadre in colleges and Universities. It was directed that their shall be only three designations in respect of teachers in the Universities and Colleges, i.e. namely (i) Assistant Professor (ii) Associate Professor and (iii) Professor.

7. The pay structure for different categories of teachers and equivalent positions were indicated in clause 2(a)(i) to clause 2(a)(xviii) of letter dated 31.12.2008 of MHRD. Clause 2(a)(i), 2(a)(vi), 2(a)(vii), 2(a)(viii), 2(a)(ix) and 2(a)(x), of letter dated 31.12.2008 which would be relevant are quoted herein below:

“ 2(a)(i) Persons entering the teaching profession in Universities and Colleges shall be designated as Assistant Professors and shall be placed in the Pay Band of Rs.15600-39100 with AGP of Rs.6000. Lecturers already in service in the pre-revised scale of Rs.8000-13500, shall be re-designated as Assistant Professors with the said AGP of Rs.6000.

2(a)(vi) The pay of the incumbents to the posts of Lecturer (senior scale) (i.e. the un-revised scale of Rs.10,000-15200) shall be re-designated as Assistant Professor, and shall be fixed at the appropriate stage in Pay Band of Rs.15600-39100

based on their present pay, with AGP of Rs.7000.

2(a)(vii) Assistant Professors with completed service of 5 years at the AGP of Rs.7000 shall be eligible, subject to other requirements laid down by the UGC, to move up to the AGP of Rs.8000.

2(a)(viii) Posts of Associate Professor shall be in the pay Band of Rs.37400-67000, with AGP of Rs.9000. Directly recruited Associate Professors shall be placed in the Pay Band of Rs.37400-67000 with an AGP of Rs.9000, at the appropriate stage in the Pay Band in terms of the conditions of appointment.

2(a)(ix) Incumbent Readers and Lecturers (Selection Grade) who have completed 3 years in the current pay scale of Rs.12000-18300 on 1.1.2006 shall be placed in Pay Band of Rs.37400-67000 with AGP of Rs.9000 and shall be re-designated as Associate Professor.

2(a)(x) Incumbent Readers and Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs.12000-18300 on 1.1.2006 shall be placed at the appropriate stage in the Pay Band of Rs.15600-39100 with AGP of Rs.8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade)/Reader, and thereafter shall be placed in the higher Pay Band of Rs.37400-67000 and accordingly re-designated as Associate Professor”.

8. The MHRD vide letter, dated 4.6.2009 addressed to the Secretary, UGC forwarded authenticated fitment table 1 to 9 for fixation of pay, as per their positions on 1.1.2006, in various categories of posts as indicated in the table.



9. The MHRD again vide letter, dated 18.8.2009 (Annexure-11) issued a direction to all the Directors of Centrally Funded Technical Institutes including IITs and NITs, in respect of scheme of revision of pay of teaching and other staff in accordance with 6th Central Pay Commission.

Clause 2 of letter, dated 18.8.2009 states that pay structure and designations for all Centrally Funded Technical Institutions will generally be the same as per the scheme of revision of pay of teachers etc. in Universities, etc. as notified by the Ministry of HRD vide letter, dated 31.12.2008.

Clause 2(b) (iii) states that an Assistant Professor possessing the degree of Ph.D and with regular service of 3 years at AGP of Rs.8000 pm shall be eligible for moving to AGP of Rs.9000 and re-designated as Associate Professor.

Clause 2(b)(iii) is quoted herein below:

“2(b)(iii)- An Assistant Professor possessing the degree of Ph. D in the relevant discipline and with regular service of 3 years’ at AGP of Rs.8000/- p.m. shall be eligible for moving to AGP of Rs.9000/- p.m. and re-designated as Associate Professor”.

10. The AICTE in exercise of its power conferred under sub-section (1) of Section 23 read with section 10(i) and (v) of AICTE Act, 1987 framed Regulations, 2010 which was

notified on 22.1.2010. Clause (viii), (ix) and (x) of the notification which are relevant in the context is quoted herein below:

“(viii) Posts of Associate Professor shall be in the Pay Band of Rs.37400-67000, with AGP of Rs.9000. Directly recruited Associate Professors shall be placed in the Pay Band of Rs.37400-67000 with an AGP of Rs.9000, at the appropriate stage in the Pay Band in terms of the conditions of appointment.

(ix) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who have completed 3 years in the pre-revised pay scale of Rs.12000-18300 on 1.1.2006 shall be placed in Pay Band of Rs.37400-67000 with AGP Pay of Rs.9000 and shall be re-designated as Associate Professor.

(x) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs.12000-18300 on 1.1.2006 shall be placed at the appropriate stage in the Pay Band of Rs.15600-39100 with AGP of Rs.8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade), and thereafter shall be placed in the higher Pay Band of Rs.37400-67000 and accordingly re-designated as Associate Professor.”

11. In pursuance of MHRD letter, dated 18.8.2009 and the decision of the BOG of NIT, Patna, the petitioner was placed in revised pay scale of Rs.37400-67000 with AGP of Rs.9000 w.e.f. 30.1.2006 and designated as Associate Professor.



12. In the meanwhile, the MHRD received a number of representations from the faculty members of the NIT on implementation of the CAS with respect to pay anomalies etc. In order to resolve the issues, the MHRD constituted a Committee under the Chairmanship of the Director, NIT, Raurekela for removal of pay anomalies. The MHRD after examining the report submitted by the Committee in consultation with the Chairperson of BOG and Directors of NIT, issued general and specific guidelines, in its letter, dated 14.3.2012. Clause 'k' of letter dated 14.3.2012 which is relevant in the context has already been quoted above.

13. The BOG of NIT, Patna in its meeting dated 18.2.2013 adopted a number of resolutions. As a sequel to the letter, dated 12.3.2012 of MHRD (Annexure-14), the NIT vide Agenda No. VIII of BOG 20.23, approved for recovery of the amount paid to the Assistant Professor giving Rs.9000 as AGP and designating them as Associate Professor, on their joining at the Institute after 1.1.2006 and before August, 2009 without putting in three years of service in the old scale of appointment as Assistant Professor at the Institute, in view of letter dated 18.8.2009. Consequently, the NIT, Patna vide memo dated



17.6.2014 (Annexure-1) directed for recovery of excess payment from the salary of the petitioner and other six teachers who are petitioners in connected C.W.J.C.No.13225 of 2014 (Dr. Lal Bahadur Roy & Ors v. State of Bihar & Ors) in suitable installments, as she was given Rs.9000 AGP in place of Rs.8000, without putting in three years of service in the old pay scale of Rs.12000-18300 or AGP of Rs.8000. The amount directed to be recovered from salary of the petitioner amounting to Rs.10,64,469/-.The letter dated 17.6.2004, as contained in Annexure-1, is under challenge in this writ application as well as in C.W.J.C.No.13225 of 2014 filed on behalf of six other teachers.

Submissions of the Petitioner:

14. According to the petitioner, the classification of teachers in the colleges and universities used to be as follows:

- i) Lecturer (which used to be feeder cadre of initial grade)
- (ii) Reader (either by promotion or through direct recruit)
- (iii) Professor (either by promotion or through direct recruitment)

After revision of pay, in pursuance of 6th Central Pay



Revision Scale, the classification of the teachers in Colleges and Universities became as follows:

- (i) Assistant Professor
- (ii) Associate Professor
- (iii) Professor

15. The petitioner contends that the revised pay of different grade of teachers were detailed in letter, dated 4.6.2009 of MHRD at Annexure-10. For example, the scale of Rs.12,000-18200 was to be replaced by Rs.37,400-67000 with a Grade Pay of Rs.9000/-. Further more, the Government of India in the MHRD vide letter dated 18.8.2009, (Annexure-11), clarified that pay structures and designations of centrally funded technical institution. generally to be the same. as per scheme of pay of teachers etc. in the Universities, as notified by the MHRD vide letter, dated 31.12.2008 (Annexure-9). As such, the NIT vide memo dated 22.10.2009 (Annexure-12) placed the petitioner in revised scale of Rs.37,400-67000 with AGP of Rs.9000 and re-designated her as Associate Professor w.e.f. 30.1.2006.

16. The petitioner, thus, states that before 1.1.2006, there were three grade of teachers, namely, Lecturer (Entry



point), Reader/Assistant Professor (Intermediary) and Professor (highest). After 1.1.2006 because of restructure of pay scale w.e.f. 1.1.2006 itself, the teachers are now called Assistant Professor in place of Lecturer (Entry point), Associate Professor in place of Assistant Professor (Intermediary) and Professor as the highest. On these premises, the petitioner contends that as she had joined as Assistant Professor after 1.1.2006 on 30.1.2006, she would be treated as Associate Professor in view of the re-structuring of post of Assistant Professor as per 6th PRC as Associate Professor.

17. The petitioner thus claims to be a direct recruit as Associate Professor and her case cannot be treated as one of promotion. The case of the petitioner is also crystallized in paragraphs 19, 20 and 21 of the writ petition, which are quoted herein below:

“19. That thus it is a clear case that the petitioner cannot be treated to have been promoted as Associate Professor from the post of Assistant Professor. Even otherwise, it would be ridiculous and preposterous, that a teacher, who is already in the scale of Rs.37,400-67,000, being the scale of Associate Professor would, again be in the line of promotion as Associate Professor.

20. That it appears that some promoted Associate Professors were granted higher pay by mistake than their entitlement as per aforesaid letters/instructions.



On 18.02.2013, the Board of Governors of NIT P, resolved to recover the amount paid to such associate Professors, who were given the AGP of Rs.9,000 and were designated as Associate Professor, on their joining at the institute after 01.01.2006, without putting in three years of service in their old scale of appointment as Assistant Professor at the Institute, as per clause "k" of Govt. of India letter dt. 14.03.2012, read with Govt. of India, MHRD, letter dt.18.08.2009.

21. That the aforesaid resolution is meant for those who are holding the post of Associate Professor5s, on promotion under the Career Advancement Scheme, as will be apparent from the letter dt. 14.03.2012, the reference of which has been given in the resolution. The letter relates to candidates promoted under the Career Advancement Scheme (CAS). Hence this cannot be applicable in the case of directly recruited Associate Professor".

18. The petitioner also contended that as post of Assistant Professor, as per 6th PRC was re-structured as Associate Professor, she would be reckoned as born in the cadre on 30.1.2006 as direct recruit as Associate Professor. According to her, one becomes a member of service, only on the date, when he or she is born in the cadre. Reliance was placed on decision of the Hon'ble Apex Court in the case of ***Prafulla Kumar Swain v. Prakash Ch. Mishra, reported in 1993 Suppl (3) SCC 181 at paragraphs 29 and 30.*** She states that her case is not comparable with case with respect to four



such recruited Assistant Professors contained in another resolutions of even date as they had joined the NIT before crucial date of 1.1.2006 and as such, were admitted to AGP of Rs.8000 in terms of clause 2(a)(ix) & (x) of Annexure-9.

19. The petitioner also argued that AICTE has no jurisdiction to frame regulations with respect to pay scales, service conditions and qualifications for the teachers in Technical Institution and as such the Regulation, 2010 to the extent is without jurisdiction. Elaborating her submissions, the petitioner submits that NIT, Patna is a University and grants degree which is prerogative of a University.

20. Referring to the decision of the Apex Court in Association of Management of Private Colleges vs. AICTE, reported in (2013)8 SCC 271, she submits that the inspection and regulatory power of AICTE vis-a-viz University and their constituent and affiliated colleges under sections 10 to 12 is only advisory and recommendatory and that too with respect to Technical Education. Further more, if there is non-compliance, the AICTE cannot enforce and issue any sanction but can only bring it to the notice of UGC. She further submits that the AICTE Act cannot belittle and destroy authority of autonomy



of other statutory body and superimpose itself upon them. Thus, in no circumstances, the AICTE could have laid down service conditions of teachers of NIT which is a deemed University.

21. The petitioner had also filed Interlocutory Application bearing I.A. No. 5993 of 2014 for initiating *suo moto* contempt proceeding against respondent No.3 and also the Registrar of National Institute of Technology, Patna for making false statement in the counter affidavit filed by them. The petitioner in paragraph 4 of the petition stated that respondent No.3 has annexed a document dated 9.10.1998 in the counter affidavit which has been annexed as Annexure-A, which provided the pay scale of 6 category of teachers, in which, there is a reference of Associate Professor. In the said affidavit, he has deliberately made a false statement that prior to 1.1.2006, posts of Associate Professor existed during currency of Vth PR.C. to demolish her case. Further more, again with ill intention and malice, he has suppressed the cover letter dated 9.10.1988.

Submissions of NIT:

22. The respondents have filed counter affidavit on



31.7.2014 and supplementary counter affidavit on 19.8.2014. The respondents have also filed reply to the I.A. No.5993 of 2014 by filing second counter affidavit. The respondents dispute the contention of the petitioner that she was appointed to the post of Associate Professor as a direct recruit and that she would not come within the purview of clause 'k' of letter, dated 14.3.2012 of MHRD and clause 2(b)(iii) of letter, dated 18.8.2009. They state that by mistake vide notification, dated 22.10.2010, the petitioner was given AGP of Rs. 9000 from the date of joining on 30.1.2006 and re-designated as Associate Professor from that date. They state that the petitioner was appointed as Assistant Professor in the NIT on 8.12.2005 (Annexure-6) in the department of Humanities and Social Sciences in the scale of Rs.12,000-18300. She joined on the post on 30.1.2006.

23. They state that as per sub-clause (ix) of Clause 2(a) of letter, dated 31.12.2008 of MHRD clarified by further vide letter, dated 18.8.2009, the incumbent Assistant Professor who have completed three years in the pay scale of Rs.12000-18300 on 1.1.2006 shall be placed in the Pay Band of Rs.37400-67000 with AGP of Rs.9000 and shall be re-designated as



Associate Professor. Clause 2(ix) of letter, dated 31.12.2008 and clause 2(b)(iii) of letter, dated 18.8.2009 of MHRD are being reproduced herein below for easy reference:

Letter dated 31.12.2008 of MHRD(Annexure-9):

“2(ix) Incumbent Assistant Professor and Incumbent Lecturers (Selection grade) who have completed 3 years in the pre-revised pay scale of Rs.12000-18300 on 1.1.2006 shall be placed in Pay Band of Rs.37400-67000 with AGP Pay of rs.9000 and shall be re-designated as Associate Professor”.

Extract from letter dated 18.8.2009 of MHRD (Annexure-11):

“2(b)(iii)- An Assistant Professor possessing the degree of Ph.D in the relevant discipline and with regular service of 3 years’ at AGP of Rs.8000/- p.m. shall be eligible for moving to AGP of Rs.9000/- p.m. and re-designated as Associate Professor”.

24. The respondents further state that the regulations of AICTE notified on 22.1.2010 also mandate that the incumbent Assistant Professor and incumbent Lecturer (Selection grade) who have completed three years in the pre-revised pay scale of Rs.12000-18300 on 1.1.2006, shall be placed in the Pay Band of Rs.37400-67000 with AGP of Rs.9000 and shall be re-designated as Associate Professor, otherwise they would be placed at the appropriate stage in the Pay Band of Rs.15600-39100 with AGP of Rs.8000, till they



complete three years of service in the grade of Lecturer (selection grade). The NIT committed an obvious error by giving her AGP of Rs.9000 in the Pay Band of Rs.37400-67000 designating her as Associate Professor w.e.f. the date of her joining on 30.1.2006. Many such anomalies came to the notice of the MHRD, which vide clause 'k' of its letter, dated 14.3.2012 directed for necessary corrections. The mistakes as such were rectified vide resolution, dated 18.2.2013 of NIT and the consequential order of recovery, dated 17.6.2014(Annexure-1) has been passed.

25. The respondents in the affidavit dated 31.7.2014 submit that MHRD vide letter dated 9.10.1988 revised the pay scale of the various teaching post in the Technical Education Sector at the degree level. As per letter dated 9.10.1988, there were six category of teaching post in the Fifth Pay Commission as follows:

(i) Lecturer; (ii) Lecturer (Senior scale); (iii) Lecturer (Selection grade); (iv) Assistant Professor; (v) Associate Professor and (vi) Professor

Subsequently, the MHRD, vide letter dated 31.12.2008, revised the pay of teacher and equivalent cadre in University



and colleges as per recommendation of 6th Central Pay Commission. They state in paragraph 7 of the counter affidavit that from perusal of clause 1(i), it appears that earlier six post of teaching staffs were reduced to three posts i.e. Assistant Professor, Associate Professor and Professor.

26. The respondents further state that as per clause 2(a)(vi) of letter dated 31.12.2008 (Annexure-9), the pay of incumbent to the post of Lecturer (unrevised scale of Rs.10,000-15200) shall be re-designated as Assistant Professor and would be fixed in the Pay Band of Rs.15600-39100 with AGP of Rs.7000. As per clause 2(a)(vii), the Assistant Professors who completed service of five years at the AGP of Rs.7000/- would be eligible to move to AGP of Rs.8000/-. It was directed that the post of Associate Professor shall be in Pay Band of Rs.37400-67000 with AGP of Rs.9000/-. As per clause 2(a)(ix), the incumbent Readers and Lecturers (Selection Grade) who have completed three years in the current pay scale of Rs.12,000-18300 on 1.1.2006, shall be placed in Pay Band of Rs.37400-67000.

27. The respondents further submit that the letter, dated 4.6.2009 contains Fitment table of various scales of the



teachers and equivalent cadres for conversion of the revised scale from recommendation of 5th CPC to 6th CPC. As per Table 3 and 4, earlier Readers and Lecturers in the selection grade with less than three years of service had separate revised pay scale and the Readers and Lecturers (selection grade) with three years of service were given different revised pay scale. The letter dated 4.6.2009 has been placed on record both by the writ petitioner as Annexure-10 to the writ petition and by the N.I.T. as Annexure-C to the counter affidavit.

28. In view of the pleadings of the parties, the following issues arise for consideration:

i) Whether the petitioner was a direct recruit to the post of Associate Professor?

ii) Whether the NIT P is a University or a Technical Institute of national importance established under NIT Act?

iii) Whether AICTE is vested with authority under AICTE Act, 1987 to regulate pay scale and service condition of NIT P?

(iv) Whether the respondents have committed the Contempt of Court by making false statement?

29. Issue No.1:

Whether the petitioner was a direct recruit to the post of Associate Professor?

According to the petitioner, before 1.1.2006, the grade of College/University teachers were three, and still they are three, but with different nomenclatures. Prior to 1.1.2006 they were called Lecturer (entry point), Reader/Assistant Professor (Intermediary) and Professor (highest). After 1.1.2006 in view of recommendations of 6th PRC, they are called Assistant Professor in place of Lecturer by a new name (which is an entry point); Associate Professor in place of Assistant Professor (as Intermediary) and the Professor as the highest. Thus, if there are three grade of teachers, one would be at entry point, the last being the highest and between them there has to be essentially one as Intermediary. As such, the argument of the petitioner is that if someone was selected for appointment as a direct recruit after 1.1.2006 on Intermediary grade of Assistant Professor, then after re-structuring w.e.f. 1.1.2006, *ipso facto* would be deemed to have been appointed as direct recruit on the Intermediary post of Associate Professor. The petitioner's case is that she joined on 30.1.2006 as Assistant Professor which in view of re-structuring as per 6th PRC is to



be treated as Associate Professor.

30. In my view, the submissions of the petitioner is devoid of merit in view of letter, dated 31.12.2008 and letter dated 18.8.2009 of MHRD contained in Annexures-9 & 11. Though, the letter, dated 31.12.2008 indicated the scheme of revision of pay of teachers and equivalent cadre in University and Colleges, the same was also made applicable to the Centrally Funded Technical Institution including NIT vide clause 2 of letter, dated 18.8.2009 (Annexure-11). I would now elaborately examine the guidelines and directives contained in the letter.

(a) Clause 2(a) (viii) of letter, dated 31.12.2008 states that directly recruited Associate Professor shall be placed in the Pay Band of Rs.37400-67000 with AGP of Rs.9000. Clause 2(a)(ix) states that incumbent Readers and Lecturers (Selection Grade), who have completed three years in the current pay scale of Rs.12000-18300 on 1.1.2006, shall be placed in the Pay Band of Rs.37400-67000 with AGP of Rs.9000 and shall be re-designated as Associate Professor.

(b) Clause 2(a)(x) of the said letter dated 31.12.2008 states that incumbent Readers and Lectures



(Selection Grade), who had not completed three years in the pay scale of Rs.12000-18300 on 1.1.2006, shall be placed at the appropriate stage in the Pay Band of Rs.15600-39100 with AGP of Rs.8000, till they complete three years of service in the grade of Lecturer (Selection Grade)/Reader, and thereafter shall be placed in the higher Pay Band of Rs.37400-67000, and accordingly re-designated as Associate Professor.

(c) Clause 2(a)(vii), 2(a)(viii), 2(a)(ix) and 2(a)(x)

are reproduced hereinbelow for easy reference:

2(a)(vii) Assistant Professors with completed service of 5 years at the AGP of Rs.7000 shall be eligible, subject to other requirements laid down by the UGC, to move up to the AGP of Rs.8000.

2(a)(viii) Posts of Associate Professor shall be in the pay Band of Rs.37400-67000, with AGP of Rs.9000. Directly recruited Associate Professors shall be placed in the Pay Band of Rs.37400-67000 with an AGP of Rs.9000, at the appropriate stage in the Pay Band in terms of the conditions of appointment.

2(a)(ix) Incumbent Readers and Lecturers (Selection Grade) who have completed 3 years in the current pay scale of Rs.12000-18300 on 1.1.2006 shall be placed in Pay Band of Rs.37400-67000 with AGP of Rs.9000 and shall be re-designated as Associate Professor.

2(a)(x) Incumbent Readers and Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs.12000-18300 on 1.1.2006 shall be placed at the appropriate stage



in the Pay Band of Rs.15600-39100 with AGP of Rs.8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade)/Reader, and thereafter shall be placed in the higher Pay Band of Rs.37400-67000 and accordingly re-designated as Associate Professor”.

31. The letter, dated 4.6.2009 of MHRD contains fitment table of various scales of teachers and equivalent cadre for conversion of revised scales from recommendation of 5th PRC to 6th PRC. As per tables 3 & 4 earlier Reader/Lecturer in the selection grade with less than three years of service, had separate revised pay scales, and the Readers/Lecturers (selection grade) with three years service were given different revised pay scale. The letter, dated 4.6.2009 has been annexed both by the petitioner and the respondents as Annexure-10 to the writ application and Annexure-C to the counter affidavit filed by the respondents.

32. The letter, dated 18.8.2009 (Annexure-11) exclusively covers the pay revision for Centrally Funded Technical Institution like NIT, Patna. Clause 2 of Annexure-11 states that the pay structure and designation for all Centrally funded institution will generally be the same as per the scheme of revision of pay of teachers and Universities as notified in



letter dated 31.12.2008 (Annexure-9) and clarifications issued thereon from time to time. It was further mentioned in clause 2 that in case of NIT, ISMU, IIITs and SPAs, accelerated promotional benefits would be given by maintaining the UGC pay structure and designations. As per sub-clause (iii) of clause 2(b) an Assistant Professor possessing the degree of Ph.D with regular service of 3 years' at AGP of Rs.8000 per month shall be eligible for moving to AGP of Rs.9000 per month and re-designated as Associated Professor.

Clause 8(iv)(a) states that Assistant Professors in pre-revised scale of Rs.12000-18300 with Basic Pay ranging from Rs.12000/- to 15780/- per month, will be placed at the minimum of Rs.30000/- per month. However, for those incumbents with pre-revised basic pay of more than Rs.15,780/-, their revised pay would be determined by multiplying the existing pay as on 1.1.2006 by a factor of 1.86. The clause does not state or indicate directly or indirectly that Assistant Professor appointed in pre-revised scale of Rs.12000-18300 would automatically be re-designated as Associate Professor or be given Pay Band of Rs.37400-67000 with AGP Rs.9000.



33. Thus, as per schemes of revision of pay and the grade contained in directives of MHRD contained in Annexuresd-9 and 11, the Assistant Professor appointed in the pre-revised scale or corresponding revised scale have to remain on the same scale for three years from the date of appointment and only thereafter they can be re-designated as Associate Professor with pay scale of Rs.37400-67000 with AGP of Rs.9000. The petitioner was appointed as Assistant Professor in the unrevised pay scale of Rs.12000-18300 vide letter dated 8.12.2005, on which post he joined on 30.1.2006. In view of the directives of the MHRD, the petitioner could not have been placed in the Pay Band of Rs.37400-67000 with AGP of Rs.9000 and re-designated as Associate Professor without completing 3 years in the pay scale of Assistant Professor. It is not material whether the petitioner joined after 1.1.2006 or prior to 1.1.2006 pursuant to her appointment as Assistant Professor vide letter dated 8.12.2005. What is important is that for being designated as Associate Professor in the Pay Band of Rs.37400-67000, one has to continue in post of Assistant Professor for 3 years. The petitioner gave joining on 30.1.2006 as Assistant Professor and as such she could not



have been given the grade of Associate Professor w.e.f. that date. The case of the petitioner would be not of direct recruit as Associate Professor, but a direct recruit as an Assistant Professor and as such would be duly covered under clause 2(b)(iii) of letter dated 18.8.2009 of MHRD contained in Annexure-11 as well as clause 4(k) of letter dated 14.3.2012 of MHRD. The issue, as such, is decided accordingly against the petitioner.

34. Here I may state that the respondents additionally in support of their contention that the petitioner was not a direct recruit as Associate Professor has also relied upon the regulations framed by the AICTE by notification, dated 22.1.2010(Annexure-F to the counter affidavit filed on behalf of respondent Nos. 1 and 2) covering the field of pay scales, service conditions and qualification for the teachers and other academic staffs in Technical Institutions, which is being implemented uniformly by all Technical Institutions in India. As per regulation (ix) the incumbent Assistant Professor and incumbent Lecturers (Selection Grade) who have completed 3 years in pre-revised pay scale of Rs.12000-18300 on 1.1.2006 shall be placed in the Pay Band of Rs.37400-



67000 with AGP of Rs.9000 and shall be re-designated as Associate Professor.

As per regulation (x), the incumbent Assistant Professor and incumbent Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs.12000–18300 on 1.1.2006, shall be placed at an appropriate stage in the Pay Band of Rs.15600-39100 with AGP of Rs.8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade), and thereafter shall be placed in the higher Pay Band of Rs.37400-67000 and accordingly re-designated as Associate Professor.

35. According to the petitioner, the said regulation would not be applicable in her case for two reasons; firstly it would not apply to Universities which is an autonomous body. The petitioner's Institute is a deemed University and thus beyond the purview of rigors of AICTE regulation. Secondly, the AICTE, under section 10(i) of the AICTE Act has no jurisdiction to lay down pay scale and service conditions of a teacher, more so, as a term 'teacher' has not been defined.

36. I would examine this aspect while dealing Issue No. III. For the present, it would be suffice to observe



that I have already held that notwithstanding 2010 Regulations, the letter dated 31.12.2008 of MHRD (Annexure-9) and letter dated 18.8.2009 of MHRD (Annexure-11) would govern the scheme of revision of pay of teachers and equivalent cadres of Universities, colleges and Technical Institution like NIT Patna. It would be apt to state that clause 1(a)(i) to 1(a)(xvii) of 2010 Regulations of AICTE with respect to revised pay scales and career advancement scheme for different categories of teachers i.e. Assistant Professor, Associate Professor and Professor is para materia with clause 2(a)(i) to 2(a)(xvii) of letter, dated 31.12.2008 (Annexure-9) of MHRD. This takes us to the next issue.

37. Issue Nos.2:

Whether NIT Patna is a University or technical institution governed under NIT P Act?

38. The case of petitioner is that NIT Patna grants degree and has all the trappings of a University and is a deemed University under the UGC Act, 1956. The case of the respondents is that it is an Institute imparting technical education under NIT Act, 2007 and AICTE Act, 1987.

39. The issue, would require noticing of three Acts,



namely, National Institute of Technical Act, 2007, University Grant Commission Act, 1956, AICTE Act. 1987.

NIT(P Act and Legislative History leading to its enactments:

Initially, on recommendation of Engineering Personnel Committee (EPC) set up by the Planning Commission in 1955, eight Regional Engineering Colleges (RECs) were established in different regions of the country in early sixties as joint and co-operative ventures of the Central and State Governments to provide required technical manpower for industrial projects, being contemplated during the 2nd Five-Year Plan. These Institutes were registered as autonomous bodies under the Society Registration Act, 1860 and affiliated to the State Universities in their respective regions. Gradually Seventeen Regional Engineering Colleges (RECs) were established in various States as a joint and co-operative venture. Each REC was to function as an all-India institution, admitting students and recruiting faculty from all parts of the country. However, 50% of the seats were reserved for students of State in which REC was set up. The object of the REC was to create required technical manpower by providing under graduate education



and training in different branches of engineering and technology and to function as pace setters and to provide academic leadership to the technical institutions in their respective regions. In 2003, the Seventeen RECs were rechristened as National Institute of Technology and taken over as fully funded institutes of the Central Government and granted deemed University status. The Central Government later on in addition to these, took over three other Institutes including Bihar Engineering College, Patna and converted them into National Institute of Technology on 28.1.2004. Thus, the total number of NITs has gone up to 20.

In 2007, National Institute of Technology Act, 2007 was enacted by the Parliament to provide common statutory frame work for all NITs.

40. As per section 3(g) of the NIT Act 'Institute' would mean any of the institutions mentioned in col. 3 of the Schedule. Section 4 states that each of the Institutes mentioned in the schedule shall be a body corporate having perpetual succession and a common seal and shall, by name, sue and be sued.

41. The NIT does not define 'University'. However, the



UGC Act and AICTE Act throw some light on the terms and its meaning.

42. The University Grants Commission Act, 1956 (hereinafter referred to as 'the UGC Act') was enacted with an object to make provisions for the coordination, determination of the standard in Universities and for that purpose to establish University Grant Commission.

43. Section 2(f) of the UGC Act, 1956 defines University to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission. Section 2(f) is quoted herein below:

“2(f) “University” means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act”.

44. As per Section 3 of UGC Act, the Central Government may on advice of the Commission, declare, by notification in the official gazette, that any institution, other



than a University, shall be deemed to be a University for the purposes of this Act, and all the provisions of this Act would apply to such institution as if it were a University. Section 3 is quoted herein below:

“3. Application of Act to institutions for higher studies other than Universities.- The Central Government may, on the advice of the Commission, declare, by notifications in the Official Gazette, that an institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2”.

45. Section 4 of the Act empowers the Central Government to establish UGC for carrying out the purpose of the Act. Section 22 of the UGC Act states that right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, or any institution specially empowered by an Act of Parliament to confer or grant degrees. Section 22(1) which is relevant in the context is quoted herein below:

“22. Right to confer degrees.- (1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under

section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

46. The petitioner has argued that NIT is a deemed University under section 3 of the UGC Act and as such the guide lines of AICTE would be only recommendatory and advisory. Elaborating his submissions, Mr. Vinod Kanth, learned Senior Counsel submits that the word “as if” occurring in Section 3 of the UGC Act creates a legal fiction though in reality the position may not be so, but for the purposes of the Act of the Legislature, one is required to be treated so. In support of his submission, learned counsel has relied upon a decision in the case of ***Rajasthan State Industrial Development and Investment Corporation and another v. Diamond & Gem Development Corporation Limited & anr.*** reported in (2013) 5 SCC 470. The relevant extract of paragraph 26 of the judgment is quoted herein below:

“26. The words “as if” create a legal fiction. But it, when a person is “deemed to be” something, the only meaning possible is that, while in reality he is not that something, but for the purposes of the Act of legislature he is required to be treated that something, and not otherwise. It is a well-settled rule of interpretation that, in construing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on the basis of which alone such fiction can operate. The words “as if” in fact show the distinction between two



things and such words must be used only for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created”.

47. There cannot be any dispute to the proposition of law laid by the Hon’ble Apex Court. Here, I find that the petitioner has not brought any material on record to demonstrate that the NIT P is established as a University or recognized so, by the Commission under section 2(f) of the UGC Act. Merely because NIT (P) grants degree, it would not be considered an University, because as per section 22 of the UGC Act, the power to confer degree is not only confined to an University, but also to an institution specially empowered by Act of Parliament to confer or grant degree. The NIT 2007, is one such Act of Parliament, which has empowered Institute under the Act to grant degree, diplomas and other academic distinction or title. There is nothing on record to come to the conclusion that the Central Government on the recommendation of the UGC has granted deemed University status to NIT (P) under section 3 of the UGC Act as in case of other 17 RECs which was re-christened as NITs.

48. On the other hand, as per section 2(h) of the AICTE



Act, a ‘technical institution’ means an institution, not being a University. It is not in dispute that the NIT P essentially is a technical Institute and imparts technical education. Section 2(h) of AICTE Act,1987 is quoted herein below for easy reference:

“2(h)- “technical institution” means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions”.

49. I find that NIT (P) is admittedly not established as University either under Central, Provincial or a State Act or recognized by the Commission, as per Section 2(f) of UGC Act. Further more, there is no material to support the petitioner’s contention that it has been declared a deemed University by Central Government, by notification in official gazette. It continues to be a technical Institute under the NIT P Act, 2007 of national importance for providing instructions and research in different branches of engineering and technology for academic excellence in technical education. This issue no.2 is accordingly decided.



50. **Issue No.3:** whether AICTE established under AICTE Act, 1987 can lay down pay scale and service condition of teachers of NIT P?

Legislative History of AICTE:

51. The AICTE has been established by the Central Government under section 3 of the AICTE Act, 1987 for carrying out the purposes of the Act. The AICTE has been set up with a view to proper planning and coordinated development of the Technical Educational System throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

52. The establishment of AICTE can be traced back to the year 1945. It was set up in 1945 by the Central Government resolution as a national expert body to advise the Central Government and the State Government for ensuing the coordinated development of technical education. It was noticed that a number of Poly Techniques came up in complete disregard of AICTE. Thus, in 1981 the AICTE came to the



conclusion that it should be vested with statutory power to regulate the standards of technical education. The national working group was set up to chalk out the role of AICTE to play its role effectively. As such, the Central Government enacted the AICTE Act, 1987 for laying down norms and standards for technical education and it came into force by notification of the Central Government on 28.3.1988.

53. The petitioner's case is that the AICTE Act does not confer power on the Council to lay down pay scale and service condition of teachers of NIT (P). The function of Council is elaborated under section 10 of the AICTE Act and Section 23 of the Act confers power on the Council to make regulations with respect to subject matter mentioned therein. The Council necessarily has to act within the ambit and four corners of its power conferred under the law.

54. The petitioner as such asserts that the Regulations, 2010 framed by the AICTE laying down pay scales and service conditions of teachers of NIT P transgresses its statutory limit and the same would not be required to be followed in matters of fixation of pay scales, service conditions including promotion, enhancement under career advancement schemes



etc.

55. In reply, learned counsel for the NIT submits that the AICTE has ample powers under section 10(i) and 10(v) and regulation 23 of the AICTE Act to frame pay scales and service conditions of teachers of technical Institute.

56. In view of diametrically opposite stand with respect to scope and extent of power of AICTE in matters of pay scales and service conditions of teachers of the Institute (NIT P), it would be necessary to notice the AICTE Act itself. The purpose of the Act is set out in its preamble, which reads as under:

“An Act to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith”.

57. Section 3 of the AICTE Act, 1987 deals with establishment of the Council. Section 3(i) vests power in the Central Government to establish a Council by the name of the All India Council for Technical Education, by notification in the Official Gazette.



58. Section 10 of the AICTE Act deals with functions of the Council. Section 10(i) and (v) with which we are concerned are quoted herein below:

“10(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

10(v) perform such other functions as may be prescribed”.

59. Section 23 confers power on the Council to make regulations by notification in the official gazette to carry out the purposes of the Act. Sub-section (2) of Section 23 states that the Council in particular and without prejudice to the generality of the foregoing power, can make regulations providing for all or any of the matters enumerated therein. It is evident from the provisions of the Act that the Council is conferred with power to make regulations not only with respect to the five subject matters enumerated in sub-section 2 of Section 23, but can also frame regulations to carry out the purpose of the Act. The only bar on exercise of such power is that such regulations so framed, should not be inconsistent with the provisions of the Act. Sub-section (1) & (2) of section

23 are quoted herein below:

“23 Power to make regulations.- (1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the Rules generally to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) regulating the meetings of the Council and the procedure for conducting business thereat;

(b) the terms and conditions of service of the officers and employees of the Council;

(c) regulating the meetings of the Executive Committee and the procedure for conducting business thereat;

(d) the area of concern, the constitution, and powers and functions of the Board of Studies;

(e) the region for which the Regional Committee be established and the constitution and functions of such Committee.

60. It would appear from conjoint reading of sub-section (1) & (2) of Section 23, that sub-section (2) is illustrative and not exhaustive. Sub-section (2) supplements section 23(1), as the sub-section starts with the clause, ‘in particular and without prejudice to the generality of the foregoing power’. The term ‘forgoing power’ in no mistaken term has an obvious reference to power under sub-section (1) of section 23 which is to carry out the purpose of the Act.



61. Learned counsel for the NIT argued that the power to lay down norms and standards for ‘staff pattern’ and ‘staff qualification’ are wide enough to cover pay scales and service conditions of the teachers to achieve the object for which AICTE Act was enacted.

62. The term ‘staff pattern’ would refer to staff structures, its norms, hierarchy, the staff and students ratio etc. The term ‘staff qualification’ as per its literal meaning refers to eligibility condition for a staff. The eligibility condition would differ as per pattern of staffs i.e. Assistant Professor, Associate Professor and Professor etc. The term ‘staff qualification’ can include academic qualifications, candidate’s expertise/credentials, academic and professional experience etc. For instance, if an Assistant Professor is considered for the post of Associate Professor, the Council can lay down both academic qualifications as well as teaching experience as an Assistant Professor for consideration to the post of Associate Professor. As per Kelson Pure Theory of Law the term “norms” has to be understood to be laying down elaborate system for an object and purpose to be achieved. The term “standard” as per Black’s Law Dictionary refers to a model



which has been accepted as correct by custom, consent or authority.

63. The power to lay down 'norms and standards' for 'staff pattern', 'staff qualification', 'quality instructions' has to be understood in terms of purposes of the Act, which is to achieve coordinated development of the Technical Education System throughout the country and proper maintenance of norms and standards of technical education and promotion of qualitative improvement for proper maintenance of norms and standard in the technical education system. The standard of education would depend upon standard of teaching. The purpose of enacting AICTE Act was to ensure availability of competent teachers for teaching in these Institutions by providing for better scale of pay and promotional avenues. In view of the foregoing reasons, in my view, the power to lay down norms and standards for 'staff pattern', 'staff qualification', 'quality instructions' under section 10(i) of AICTE Act, 1987 would also include within its ambit the power to lay down uniform pay structures throughout the Country to achieve the purpose of this Act.

64. The interpretation of clause (i) of Section 10 was



also came for consideration before a Division Bench of the Delhi High court in the case of Govt. of NCT of Delhi vs Suresh Chand Vashist & Ors (W.P.(C) No.10640 of 2009 and other analogous casers). While interpreting the ambit and scope of Section 10(i), the Division Bench of Delhi High Court held that power to lay down norms and standards for courses, curriculum, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations must include power to prescribe service conditions of staff of technical institutions. Paras 25 and 26 of the judgment is quoted herein below:

“25. As per clause (i) of Section 10 which provides that AICTE is empowered to ‘lay down norms and standards for courses, curriculum, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations’ and hence must include power to prescribe service conditions of staff of technical institutions. The expression ‘staff pattern’ occurring in clause (i) of Section 10 is wide enough to include within its ambit service conditions of staff of technical institutions.

26. We may incidentally note that the Preamble to AICTE Act, contents whereof have been noted in 1 above, as also decisions of Supreme Court reported as Govt. of A.P. v. I.B. Educational Society (2005) 3 SCC 212, Jaya Gokul Educational Trust v Commissioner and Secretary to Govt., Higher Education Deptt Thiruvanthapuram AIR 2000 SC 1614 and State of



Tamil Nadu v Adhiyaman Educational & Research Institute (1995) 4 SCC 104 law down that AICTE shall have primacy in the matter of technical education in this country”.

65. Again in the case of Federation of Indian Polytechnic Teachers Organization v. Director, Technical Education, reported in 2001 Lab I.C. 3964, the learned Single Judge observed that the ‘norms and standards’ which has to be laid under the AICTE Act, 1987 necessarily have to be uniform in the country without which coordinated and integrated development of the technical education all over the country would not be possible. The learned Judge further observed that the standard of education would depend upon standard of teaching and in order to achieve qualitative improvement of such education in relation to plan quantative growth, the standard of education has to be very high. The standard of education would in turn depend upon the standard of teaching. The purpose of enacting AICTE Act was to ensure availability of competent teachers while providing better scale of pay and promotional avenues. The relevant extract of paragraph 14 is quoted in herein below:

“14. It is well settled that entries in the schedule of the Constitution have to be given wide



construction. The expression “co-ordinate” and “determination of standard in ...Technical Education” have to be understood in the widest amplitude. The standard of education would depend on standard of teaching. It has been explained earlier that the purpose of enacting AICTE was to ensure availability of competent teachers for teaching in these institutions by providing for better scale of pay and promotional avenues. When Adhiniyam, 1962 was enforced no provision was made for staff pattern. The different sections of the Adhiniyam, which deals with various aspects in detail, do not permit the State Government to frame any rule or regulation for teachers of the technical institutions. It was in 1990 that the State Government while providing for officers recruitment and conditions of service to be applied to Uttar Pradesh Technical Education Gazetted Officers service provided for three-tier structure for teaching staff. Since the staffing pattern for teachers was already covered by AICTE, the State Government could not provide contrary to it. The argument of the learned standing counsel that the two Acts were not on the same subjects, therefore, cannot be accepted”.

66. Thus, as observed in the afore going paragraphs, the power under section 10(i) of the AICTE Act, to lay down norms and standard of staff pattern, staff qualification and qualitative instructions etc. would also include power to lay down pay structures of staff/teachers of NIT, Patna in order to the achieve the purpose of the Act of co-ordinated development of technical education system uniformly



throughout the country.

67. Here I would like to clarify that the AICTE would have no competence to frame regulations under section 22 read with section 10(i) of the Act with respect to pay scales and the service conditions of teachers of a University or its colleges and to that extent I am in agreement with the submission of learned counsel for the petitioner. There is a complete dichotomy between the University and Technical Institution, as the latter (technical institution) excludes University. A University or the colleges constituent or affiliated either aided or unaided, even imparting technical education is guided by its own Act and UGC Act. The AICTE can issue guide lines, instructions for ensuring proper maintenance of norms and standards in technical education. The University and the Colleges would be required to comply with the standard of Technical education laid down by the AICTE. However, AICTE would not have power of direct action except bringing non-compliance of its instruction to the notice of UGC. The Hon'ble Apex Court in the case of Association of Management of Private Colleges (supra) observed that though the AICTE can lay down standards of



technical education, where technical education is imparted in the University or its colleges, the AICTE cannot belittle or destroy authority or autonomy of its statutory body like UGC Act and the control would be only advisory or recommendatory. But in my view, if the technical institution is not an University, the provisions of AICTE Act would fully apply and the ACITE would be within its right to take all steps for ensuring coordinated and integrated development of technical education and standard for performing its functions under the Act.

68. I would like to point out that NIT Act, 2007 confers power with the Board of every Institute to make statutes under section 13(2) of the Act. Section 25 of the NIT P Act, 2007 states that subject to the provisions of the Act, the statutes may provide for all or any of the subject matter mentioned therein. Clause (g) of Section 25 which would be relevant in the context covers classification, the method of appointment and determination of terms and conditions of the service of teachers and other staff of the Institute. In view of Section 25(g), the Board can make statutes as regard to classification, the method of appointment and determination of



terms and conditions of the service of teachers. The case of NIT is that AICTE can make regulation with respect to service conditions of staff/teachers. One may argue that Statutes framed for determining the service conditions of staff/teacher under NIT Act, 2007 may conflict with those framed by AICTE. As I have already answered the issues involved in this case, I need not go into the issue whether section 10(i) of the AICTE Act would include power to lay down service condition and leave it open for an appropriate case.

69. This takes me to the last issue whether the NIT has made a false statement in its affidavit dated 31.7.2014 and has made suppression of facts.

70. The gist of the allegations of the petitioner is incorporated in paragraphs 4 and 5 of I.A. No.5993 of 2014 which is quoted herein below:

“4. That a Counter Affidavit has been filed on behalf of Respondents 3-6, duly sworn by one, Krishna Kumar Tiwary, claiming himself to be, as Registrar of the NIT Patna. In this Counter Affidavit, a document has been annexed as Annexure A, dt. 9th. Oct. 1998, which provides the pay scales for 6 category of teachers, in which, there is a reference of Associate Professor. Additionally an assertion has been made in the counter affidavit, that there exist, prior to 1.1.2006, posts of Associate Professor, during the currency of Vth. Pay commission. This is a false statement and has deliberately been made, in order to



demolish the petitioner's case that there was no post of Associate professor during that period. Not only this, the ill intention and malice of registrar, will be evident from that the fact that he suppressed the cover letter dt. 9.10.1988 of which the said annexure was an appendix and which could have revealed the actual facts. Thus it is with an ill intension, malicious, deliberate and willful suppression, with ill intension to defeat the petitioner's case.

5. That the petitioner has given the reply to the said affidavit and has dealt the matter in details, in her affidavit, in reply to the counter affidavit, and has explained the circumstances, which goes to show that the suppression is willful, deliberate and well designed to deprive the petitioner from getting justice. Registrar is the custodian of all the documents and he works under the Director of the Institute. It is obvious that both are working in collusion with each other. Hence both are equally guilty. All the statements made in the affidavit in reply, filed on behalf of the petitioner, is also taken for the purposes of this petition for initiating suo-motu proceeding of contempt”.

71. Respondent No.3 in its second supplementary counter affidavit sworn on 25.8.2014 denies the allegations in paragraphs 6 and 7 of the supplementary counter affidavit as misconceived. Respondent No.3 states that Annexure-A to the counter affidavit was filed to demonstrate before this Court the post available for teaching faculty and the pay scale as per recommendation of 5th C.P.C. He submits that the covering letter was addressed to the Secretary dealing with technical



education of all States and Union territories to inform them about the revision of pay scales of teachers in Engineering College and other degree level technical education, as per recommendation of 5th CPC which has not much concern with the present case. As such only relevant portion was attached. The respondent states that the intention was not to mislead or conceal anything from this Court. A copy of the covering letter has been annexed as Annexure-D.

72. Respondent No.3 in paragraph 7 states that the post of Associate Professor was not totally abolished and the same was existing for one who were already appointed and working as Associate Professor and paid as per the revised pay scale under 5th CPC. It was stated that further recruitment to the cadre was stopped. The faculty position which was existing in NIT P has been annexed as Annexure-E to the counter affidavit filed on 19.8.2014 which has been wrongly described as Annexure-A.

73. In view of the submissions of the respondent, I hold that there was no deliberate attempt on the part of the respondent to mislead or conceal any fact from this Court. I am equally satisfied from the explanations provided in the

second counter affidavit that has been no intention to make false statement. This issue is decided accordingly.

74. In the result, I do not find any merit in this writ application. It is, accordingly, dismissed. However, there will be no recovery from the petitioner for a period of one month.

75. Before parting with the record of this case, I would express my deep sense of appreciation to Mr. Vinod Kanth, learned Senior Counsel, and Mr. Y.V. Giri, learned Senior Counsel for their valuable assistance.

(Samarendra Pratap Singh, J)

Md.Jamaluddin Khan

AFR

U			
---	--	--	--