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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 305 OF 2017

The Chairman,
All India Council for Technical Education,
Nelson Mandela Marg, Old JNU Campus
Vasant Kunj, New Delhi

...Petitioner

Vs.

1. Mrs. Asha Prakash Tanawade ,
r/o. Flat No. 405, Bldg. No.L-2A,
Lotus CHS Ltd., Pratiksha Nagar,
Sion (E), Mumbai 400 022.

2. Mr. Yallappa Shivaji Patil,
r/o. A-404, Suyog Apartment,
Co.op.Hsg. Society Ltd.,
E-61, Sector 3, Kharghar,
Navi Mumbai.

3. The Principal Nodal Centre,
“National Technical Manpower
Information System Govt. Polytechnic
Campus, Kherwadi, Ali Yavar
Jung Marg, Bandra (W),
Mumbai 400 051.

4. Director/Head, Lead Centre,
Institute of Applied Manpower
Research, Plot No.25, Sector
No.A-7, Institutional Area,
Nerela, Delhi – 110 040.

5. Union of India
Through Secretary, Government
of India, M/o Human Resource
Development, Department of
Higher Education (T) 128,
“C” Wing Shastri Bhawan,
New Delhi – 110 115.

...Respondents

**WITH
CHAMBER SUMMONS NO.18 OF 2017
IN
WRIT PETITION NO. 305 OF 2017**

The Chairman,
All India Council for Technical Education,
Nelson Mandela Marg, Old JNU Campus
Vasant Kunj, New Delhi

...Applicant

In the matter between :-

The Chairman,
All India Council for Technical Education,
Nelson Mandela Marg, Old JNU Campus
Vasant Kunj, New Delhi

...Petitioner

Vs.

1. Mrs. Asha Prakash Tanawade ,
r/o. Flat No. 405, Bldg. No.L-2A,
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New Delhi – 110 115.

...Respondents

.....

Mr. Abhijeet A. Joshi, Advocate for the petitioner.

Mr. Shyam A. Deshpande, Advocate for respondent Nos. 1 and 2.

Mr. B.K. Ashok along with Mr. Dhanesh R. Shah, Advocate for
the respondent No.5/UOI.

.....

**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

RESERVED ON : 19th DECEMBER, 2017.

PRONOUNCED ON : 21st MARCH, 2018.

JUDGMENT (PER M.S. KARNIK, J.) :-

The petitioner – All India Council for Technical Education has filed this petition challenging the order dated 17th August, 2016 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A.No.268 of 2015 and O.A.No.269 of 2015. The Tribunal was pleased to allow the O.As. filed by the respondent Nos.1 and 2 thereby directing release of all arrears of salary and allowances. The Tribunal was pleased to extend the benefits as recommended by the 6th Pay Commission and in terms of Revised Pay Rules payable with effect from 1/1/2006 till 31/3/2013. The Tribunal was also pleased to direct the Ministry of Human Resource Development and respondent No.5 - Union of India herein and the petitioner to take steps to absorb respondent Nos.1 and 2 immediately in any of the Institutes of MHRD or AICTE, in the event the replaced scheme NISTECHR is not operating from the Nodal Centre at Mumbai.

2. The facts in the nutshell are these :-

The respondent No.1 filed O.A.No.268 of 2015 before the Tribunal. She was appointed as a 'Research Associate' on temporary basis until 31/3/2002 at the Nodal Center of National Technical Manpower Information System ('NTMIS' for short) functioning at the Technological Institute, Matunga, Mumbai.

3. The respondent No.2 filed O.A.No.269 of 2015 contending that she was appointed on 2/5/2001 as a 'Personal Assistant' on a purely temporary basis upto 31/3/2002 at the "NTMIS" functioning at Polytechnic Campus, Bandra, Mumbai.

4. The NTMIS was set up in 1983 by the respondent No.5-Union of India, Ministry of Human Resource Development to generate and maintain a reliable database for planning and expansion of technical education in the country. This scheme was transferred to the petitioner – All India Council for Technical Education (AICTE) in 1993 and was being

implemented through Institute of Applied Manpower Research (IAMR), New Delhi. The IAMR was set up by the Planning Commission in 1962 to evolve methods and techniques for manpower assessment, to advance knowledge on all aspects to Human Resource Development and to provide advisory services for Manpower Research. For execution of this scheme, all over India Nodal Centres were selected and staff were appointed to work in the Nodal Centre. The appointment letters were issued on the letterhead of NTMIS and the Principal of the Technological Institute as Co-Chairman of the NTMIS Scheme.

5. Before the Tribunal it was the case of the respondent Nos.1 and 2 that they were regularly appointed and their service books were also maintained. They were getting yearly increment and paid subscription towards provident fund which was only permissible to the regularly appointed employees. The petitioner issued an order dated 21/5/1999 addressed to all the Heads of Nodal Centres was integral to technical education planning and administration in the country. All Heads of Nodal Centres were

requested to extend all such facilities which were normally applicable to the corresponding employees of Host Institution to the Nodal Centre staff.

6. The grievance of the respondent Nos.1 and 2 before the Tribunal was that they have been rendering their services diligently and regularly in the Nodal Centre under the NTMIS Scheme but they have been denied the due pay and allowances and other service benefits. The respondent Nos. 1 and 2 were paid upto March 2013 but the petitioner did not release the revised pay under the 6th Pay Commission.

7. The respondent No.5 – Ministry of Human Resource Development took a stand before the Tribunal that the respondent Nos. 1 and 2 received the payment till 31/3/2013 and thereafter, the Nodal Centre at Mumbai was closed down permanently and for good as per the MOU relied by the petitioner – AICTE. After the closure of the Nodal Centre, the question of payment of dues does not arise.

8. The Nodal Centre viz. respondent No.3 – NTMIS took a stand before the Tribunal that respondent No.3 is a State Organization. The State Organization refused to absorb or redeploy the respondent Nos. 1 and 2 in the State Organisation. According to respondent No.3, the respondent Nos.1 and 2 have been working in the permanent posts of Research Associate and Personal Assistant respectively since the date of their respective appointment in the said posts. Their salary was stopped from 1/4/2013. As the respondent No.3 was the Head of the Host Institute, it expressed its inability to absorb the respondent Nos.1 and 2 by a letter dated 9/12/2013 addressed to the respondent No.5 – Union of India. The respondent No.3 addressed a letter dated 31/12/2013 to the respondent No.5 HRD Ministry that the entire funding of NTMIS was done by the petitioner -AICTE. The respondent No.5 was created and nurtured by the petitioner and HRD Ministry. All the liabilities of respondent No.3- NTMIS staff would be of the AICTE and respondent No.5 - MHRD. The State Government did not regulate the service conditions of the staff nor the monetary

benefits of the staff working in Nodal Centre. In these circumstances, the Ministry of HRD was requested to deploy and adjust the NTMIS staff in the institution/organization of petitioner - AICTE or Ministry of HRD.

9. Learned Counsel for the petitioners assailed the order passed by the Tribunal. According to learned Counsel for the petitioners, the petitioners are not liable to absorb respondent Nos. 1 and 2. He submitted that in the absence there being any sanctioned post with AICTE question of absorbing respondent No.1 and 2 does not arise.

10. Learned Counsel for respondent No.1 and 2 supported the order passed by the Tribunal.

11. Heard learned Counsel. To examine the issues relating to erstwhile NTMIS of AICTE a committee under the chairmanship of Professor I.K. Bhat, Director MNIT, Jaipur, was constituted. The Committee (hereinafter called as "Bhat

Committee”) submitted its report dated 4/8/2012. The Bhat Committee also addressed the issue of identification of the number of permanent regular staff of the Nodal Centres, to explore the possibility of adjusting them in their respective Institute or nearby Institute of MHRD or AICTE. Each case was examined. It would be material to reproduce the extract of the report :-

“1. After welcoming the members of the committee, the Chairman reiterated the terms of reference of the committee as ;

- a. to identify the actual number of permanent regular staff of the Nodal Centers of NTMIS based on appointment letters, etc.
- b. to explore the possibility of adjusting them in their respective institute or nearby institute of the MHRD or AICTE, and

Since IAMR & AICTE would be entering into an MoU on the project basis, the possibility of engaging them by IAMR may also be explored.

2. As per the deliberations of the meeting dated June 8, 2012, the information was sought from all the Nodal Centres of the NTMIS Scheme related to the sanctioned four project positions, namely Project Officer (PO), Computer Operator cum Programmer (COCP), Research Associate (RA) and Personal Assistant (PA) in response to the request sent . The same has been complied and was presented before the committee.

3. The committee deliberated on the information provided

related to each Nodal Centre under NTMIS scheme. It looked at the possibility of absorption. It was of the opinion that only those staff member who have more than five years of uninterrupted service on any of the four sanctioned project positions should only be considered for any possible absorption at the respective institutes where the Nodal Centre exists.

4. Based on this criteria, the committee examined each case and such cases were tabulated as Annexure I. The Committee was of the view that due to their long association with the scheme many of them have crossed the age limit for consideration in any government job and as such the committee recommends that such candidates be considered for absorption at appropriate level in the respective institutions/organizations where these Nodal Centres are operating against the vacant positions. In case such positions are not available the Institutions may get additional positions created and such candidates considered.

5. Since these Nodal Centres are operating at various Institutions/organizations where different set of staff structure, minimum qualification and different norms for the recruitment are operational, the Committee recommends that this decision be taken by the respective institutions/organizations where these staff members are going to be considered for absorption.

6. It is recommended that the ministry may write to these institutions/organizations for possible absorption of these staff members in their organizations, giving relaxation of the age and

also weightage to the experience. The institutes may be asked to hold the selection committee meeting at an earlier and not later than three months for their consideration.”

12. It is pertinent to mention here that the names of the staff working in different Nodal Centres under NTMIS was annexed to the Bhat Committee's Report. It is not in dispute that the names of the respondent Nos.1 and 2 figure in the said chart. Upon submission of the Bhat Committee's report, nine members' Committee under the Chairmanship of Secretary, MHRD held a meeting on 22/1/2013. Having regard to the recommendations made in the Bhat Committee's report, in the said meeting it was decided that the Host Institution shall consider for absorption of the NTMIS staff against suitable posts based on their educational qualification after giving age relaxation. It was further held that in case the host institution was a State funded institution (not Centrally Funded Institution), the nearby MHRD Institution may be requested to consider for absorption of the staff. From the Minutes of the meeting held on 22/1/2013 under the Chairmanship of the

Secretary, MHRD, a discussion was held for finalization of MoU for National Information System for Technical Human Research (NISTECHR) and absorption of NTMIS staff in presence of nine members. The Minutes of the said meeting indicate that NTMIS could exist till 31st March, 2013. A new Scheme named as “National Information System for Technical Human Research” (NISTECHR) would come into effect from 1/4/2013 through the MoU signed between AICTE and IAMR on project basis. The staff engaged in the earlier Nodal Centres in the project NTMIS would be considered for absorption in the host institution against suitable posts based on their Educational Qualification and Experience as recommended by the 'Bhat Committee'. It was decided that the existing employees may be given age relaxation for the vacant posts existing in the host institution for which they should be considered. In case the host institution was a State funded institution (not Centrally Funded Institution), the nearby MHRD Institution might be requested to consider for absorption of the staff. If no suitable post or vacant post was available in such an Institution, Supernumerary post may be

created. If any staff could not be absorbed by the Host/MHRD Institutions, then they would be engaged in the new scheme by IAMR. This provision has to be specifically mentioned in MoU of NISTECHR.

13. Though the Tribunal has already reproduced the extracts from the said Minutes of the meeting held on 22/1/2013 in para 13 of its order, it would nonetheless be material to reproduce the Minutes which reads thus :-

“Based on the discussions in the meeting, the following decision were taken :

The present NTMIS Scheme would exist till 31st March, 2013.

II. a. A new Scheme named as National Information System for Technical Human Research (NISTCHR) would come into effect from 1st April 2013 through an MoU to be signed between AICTE and IAMR on project basis.

b. A new MoU would be signed between AICTE and IAMR preferably during second week of February, 2013. Chairman, AICTE will submit a revised MoU in the first week of February 2013 incorporating the following :

(i) The period of MoU should be initially for this Plan Period,

(ii) A Committee would be set up under the Chairmanship of Additional Secretary (T) for coordination which can meet once in six month or whenever necessary.

III. a. The staff engaged in the earlier Nodal Centres in the project NTMIS should be considered for absorption in the host institution against suitable posts based on their Educational Qualification and Experience as recommended by the Bhat Committee. The existing employees may be given an age relaxation for the vacant posts existing in the host institutions for which they shall be considered.

b. In case the host institution is a state funded institution (not Centrally Funded Institution), the nearby MHRD Institution may be requested to consider for absorption of the staff.

c. If no suitable post is vacant/available in such an Institution, Supernumerary post may be created.

d. If any staff could not be absorbed by the Host/MHRD Institution, they will be engaged in the new scheme by IAMR. This provision would be specifically mentioned in MoU of NISTCHR.

e. Necessary approval from IFD of the Ministry shall be taken for deployment of such staff in case supernumerary posts need to be created”.

14. The Ministry of Human Resource Development addressed a letter to the Director/Head of the Institutions of Nodal Centres for the current status about the redeployment. Respondent No.3 – Nodal Centre by letter dated 10th February, 2015 informed that respondent No.1 and 2 were recommended to the Competent Authority of the State Government. According to respondent No.3 the entire funding of respondent No.3 was

done by petitioners and it was created and nurtured by the petitioners and Ministry of Human Resource Development. All the liabilities of respondent No.3 and staff was that of the petitioners and respondent No.5 – MHRD. It was not within the domain of the State Government. A request was therefore made to redeploy/adjust the staff of respondent No.3 under AICTE or Ministry of Human Resource Development.

15. Respondent No.5 Ministry of Human Resource Development issued a communication dated 7/5/2013 on the subject being "Implementation of new Scheme ' National Information System on Technical Human Resource' (NISTECHR). The same reads thus :-

"1. An MoU has been signed on 7th March, 2013 between All India Council for Technical Education (AICTE) and Institute of Applied Manpower research (IAMR) shall be valid for 12th plan period i.e. upto F.Y. 2016-17. It would be effective from 1st April, 2013 to replace the existing NTMIS Scheme between AICTE and IAMR.

2. AICTE and IAMR are requested to intimate the status of the following :-

I. AICTE may intimate all the Nodal Centres about the position of the NTMIS scheme.

II. The Assets and Liabilities of the erstwhile NTMIS

Scheme will be utilised for the new NISTECHR Scheme by IAMR. However, the details of the Asset are to be submitted to AICTE by IAMR.

III. IAMR is directed to engage the former staff of the NTMIS Scheme as recommended by the Bhatt Committee for the execution of NISTECHR Scheme till they are Re-deployed/Adjusted in the respective Nodal Centres as decided in the meeting held on 22nd January, 2013.

IV. No new staff will be engaged in the new NISTECHR Scheme on permanent basis by IAMR.

V. AICTE may take appropriate action based on the Bhatt Committee report.

VI. Several communications were received at MHRD from Nodal Centres and IAMR for the non-settlement of payment of NTMIS Scheme which has been forwarded to AICTE time to time. AICTE is directed to take necessary action as applicable.”

16. The petitioners by a letter dated 20/5/2013 addressed to the respondent No.3 – Nodal Centre informed that the existing NTMIS scheme had been replaced through an MoU signed between AICTER and IAMR effective from 1/4/2013. The assets and liabilities of the NTMIS scheme would be utilized for the new NISTECHR scheme by IAMR. Based on the Bhatt Committee's recommendations and the decision taken thereon the Tribunal was of the view that after stoppage of NTMIS

Scheme, the petitioners and respondent No.5 are liable to absorb respondent No.1 and 2 and to pay their salary after 31/3/2013. The Tribunal has recorded that in the letter of AICTE it is specifically mentioned that existing NTMIS scheme was replaced by the NISTECHR and the assets and liabilities of the NTMIS Scheme was to be utilized for the new scheme and therefore, the petitioner cannot avoid the liability to absorb the staff of NTMIS in the new scheme NISTECHR. It is further found that in terms of the letter dated 20/5/2013, respondent Nos.1 and 2 being staff under NTMIS project in the Nodal Centre, their dues towards salary according to the 6th Pay Commission which became effective from 1/1/2006 was also a liability of the NTMIS which was to be transferred to the new scheme NISTECHR in terms of the letter of AICTE.

17. It would be material to note that the staff of the NTMIS appointed in different Nodal Centre of different States filed OAs before the Tribunal.

18. We have gone through the findings of the Tribunal. Based on the recommendations of the Bhat's Committee and the decision of the Nine Member Committee meeting held on 22/1/2013 the Tribunal came to the conclusion that the intention of the petitioner or the respondent No.5 was never to take away their job or throw respondent Nos.1 and 2 in lurch. We may reproduce the relevant findings of the Tribunal's order which reads thus :

“45. From the minutes of the nine members committee's meeting held on 22.01.2013, it is also evident that the intention of the respondent No.1 or respondent No.2 i.e. MHRD or AICTE was never to take away their job or throw them at lurch without making arrangement of alternative appointment for the applicants. Such committee had given a serious efforts to find out the ways and means of keeping these staff working in the NTMIS project in different Nodal Centres in the following manner :-

(a) To absorb them in the project work under the replaced Scheme of NISTECHR

OR

(b) absorption in the Host Institution against suitable posts based on their educational qualification and experience as recommended by Bhat Committee, if required by age relaxation in vacant posts

OR

(c) If the Host Institution was a state funded Institution, the nearby MHRD Institution may be requested to consider the absorption of the staff.

The said committee clearly recommended that the Host Institution was a state funded Institution. They would not have any liability to absorb the staff of

erstwhile NTMIS project and only the nearby MHRD would be requested to absorb this staff. Additionally, it was recommended that if no suitable post or vacant post was available in such an institution of MHRD, supernumerary post may be created.

46. The claim of the applicants in these OAs is that they have been still attending the office, discharging their duties but they are not getting any payment from 2013 onwards. On the contrary, the defence of the respondent Nos.1 and 2 is that the scheme as well as Nodal Centre closed down w.e.f. 31.03.2013. Therefore, there is no period upto 2015 as claimed by the applicants. It is bounden duty of the Ministry of Human Resource Development as well as AICTE to consider absorption of these applicants in suitable posts according to their qualification in any Central Institute fully funded by Ministry of Human Resource Development or any Institute run by AICTE in strict compliance of the decision of their own committee dated 22.01.2013 referred to herein above.

47. It is also relevant to mention that the nine members committee held the meeting on 22.01.2013 to implement Bhat Committee's report which was also self explanatory. The said nine members committee only held that so far as Nodal Centres were concerned, in the event they were state funded Institute, they would not have any liabilities to absorb the staff of erstwhile NTMIS project and only the nearby MHRD Institutes would be required to absorb the staff. It was also recommended that if no suitable post or vacant post was available in such an Institutes of MHRD, supernumerary posts may be created. It is also evident from the communications that the NTMIS was decided to be replaced by NISTECHR Scheme pursuant to MoU between AICTE and IMAR.

48. We find that in these cases, the respondent No.3 being a state funded Institute, their omission or commission is not amenable to the jurisdiction of Central Administration Tribunal. As such, in spite of recommendation of Bhat Committee *inter alia* to absorb the applicants in Nodal Centres, we cannot give any direction to the Nodal Centre run and funded by State of

Maharashtra. However, the Ministry of Human Resource Development may take appropriate steps in this regard to comply with recommendations of Bhat Committee.”

19. We also find that Gauhati High Court while dealing with the Writ Petition filed by some employees similarly situated issued appropriate directions for absorption of the petitioners therein based on the recommendations of the Bhat Committee report and in view of the decision dated 21/1/2013 taken thereon.

20. The respondent No.5 has not filed any petition against the Tribunal's order. The order has attained finality in so far as the respondent No.5 is concerned. The Tribunal by well considered order has allowed the O.A. We agree with the findings recorded by the Tribunal. We therefore do not find any reason to interfere with the order passed by the Tribunal.

21. The Writ Petition is dismissed with no order as to costs. The Chamber Summons does not survive and the same is accordingly disposed of.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)