

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Union of India and others

...Respondents.

6. CWP No.15088-2018

Dr. Avijit Kumar Paul and others

....Petitioners.

Versus

Union of India and others

...Respondents.

7. CWP No.9240-2018

Dr. Ashwani and others

....Petitioners.

Versus

Union of India and another

...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by: Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Anurag Goyal, Advocate
for the petitioners
(in CWP-9240, 11055, 12384, 18805-2018).

Mr. Tribhuvan Dahiya, Advocate
for the petitioners (in CWP-5516-2018).

Mr. Chetan Mittal, Sr. Advocate with
Mr. Vishal Garg, Advocate
for respondent No.1 UOI.

Mr. Anil Chawla, Advocate
for respondent No.1 (in CWP-15088, 13974, 18805-2018).

Mr. Shivoy Dhir, Advocate
for respondent No.1 (in CWP-11055 and 12384-2018).

Ms. Sheenu Sura, Advocate,
for respondent No.1 (In CWP-9240-2018)

Mr. A.S.Virk, Advocate,
for respondent-National Institute of Technology, Kurukshetra.

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SHEKHER DHAWAN, J.

The above titled seven writ petitions pertain to selection and appointment to the posts of Associate Professors in different disciplines in National Institute of Technology, Kurukshetra (hereinafter referred to as the “**respondent-Institute**”). As the common questions of law and facts are involved in all these cases, with the consent of the parties, the same are being taken up together, and are being disposed of by this common judgment. For facility of reference, facts are being taken from CWP No. 18805 of 2018 **Dr. Ram Kumar Tittal and others Vs. Union of India and others.**

2. Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing the impugned recommendations/advisories for the post of Associate Professors in the respondent Institute, dated 28th and 29th June, 2018, Annexure P/15 (Colly.); and for issuance of directions to the official respondents to follow the guidelines/clarifications issued by the Ministry of Human Resource Development (for short, “MHRD”) alongwith the Statute and to consider the petitioners as eligible for the post of Associate Professors in the Grade Pay of Rs.9500/- by counting their experience as per the notifications/clarifications issued by MHRD and their credit points as per Note – 2 given in the Statute. Further, the respondents be restrained from giving their own interpretations to the clarification issued by MHRD. The respondent-Institute issued advertisements bearing No. 14/2012 and 5/2013 in the month of June, 2012 and April, 2013

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respectively inviting applications for different posts of Assistant Professors. All the petitioners, who were qualified for the said post, i.e. Assistant Professors, applied for the same. They were called for interview and on the basis of their performance, their names were recommended for the post of Assistant Professors. The selection and appointment of the petitioners was on the basis of Model Recruitment Rules, 2011 wherein the post of Assistant Professor in the Grade Pay of Rs. 7000/- was a regular post with Ph.D. Qualification, whereas the post of Assistant Professor in the Grade Pay of Rs. 6000/- was a post on contract basis. However, after completion of Ph.D., the Assistant Professor appointed on contract basis in the Grade Pay of Rs.6000/- was supposed to be regularized.

3. In exercise of powers conferred by sub-section (1) of Section 26 of the National Institute of Technology Act, 2007 (for short, "**the Act**"), the Central Government with the prior approval of the visitor framed the 1st Statute for all the National Institute of Technology spread at different places in the country and under Statute 23, the procedure for appointment has been given. The very 1st Statute of NIT was thereafter amended vide notification dated 21.07.2007 and the promotion is to be as per Schedule-'E'. As per the 1st Statute (Amendment) 2017, Statute 23 (5) of the Principal Statute has been amended and the gist of the rule is that for appointment to the post of Associate Professors, one has to have Ph.D. Degree and six years of experience after Ph.D, out of which 3 years of experience should be as Associate Professor with Grade Pay of Rs.8000. The said mandatory rule has been given go-bye by the MHRD by way of

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relaxing/one time relaxation vide letter dated 06.10.2017. The said letter is absolutely illegal, arbitrary and unconstitutional. On the basis of said letter, advertisement No. 3/2018 (Annexure P/7) was issued on 10.1.2018 whereby 36 posts of Associate Professors in the Grade Pay of Rs.9500 were advertised containing qualifications and experience and as per the said advertisement, Annexure P/7, a candidate was required to have Cumulative Essential 50 Credit Points (CECP) and the criteria for calculating the Credit Points was given in Note – 2.

4. Some of the petitioners challenged the sanctity of the advertisement as well as letter dated 6.10.2017 issued by MHRD and filed writ petitions. The action on the part of the respondents in making the selection process as opaque as possible, was challenged and vide order dated 7.5.2018 passed by this Court in CWP No.11055 of 2018, selection for the post of Associate Professor in the grade pay of Rs.9500 in pursuance to the advertisement Annexure P/8, was stayed.

5. In pursuance of the order passed by this Court on 7.5.2018, respondent-Institute uploaded a list of all the applicants for the post of Associate Professors in pursuance to the advertisement No. 3/2018 dated 10.1.2018 on the website. After uploading of list of eligible/ineligible candidates, the effected candidates were permitted to submit their response within two weeks and different committees were constituted for different subjects and finally while considering the objections raised by the petitioners, decisions were taken declaring them ineligible by putting the same reason of ineligibility i.e., inadequate experience or Credit Point less

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than 50. The petitioners have also given the details of eligibility and experience of the candidates who are petitioners before this Court and who have been held to be ineligible despite the fact that they are otherwise eligible. Even the list of eligible candidates was not uploaded on the website for the reasons best known to the respondents and the present writ petition for quashing the impugned recommendations/advisories for the post of Associate Professors in the respondent Institute has been filed with further prayer to issue a writ in the nature of Mandamus directing the respondents to follow the guidelines/clarifications issued by the Ministry of Human Resource Development alongwith the Statute and to consider the petitioners as eligible for the post of Associate Professors in the Grade Pay of Rs.9500/- by counting their experience as per the notifications/clarifications issued by MHRD and their credit points as per Note – 2 given in the Statute. Petitioners have also sought directions to respondent no.1 to constitute a Special Committee so as to evaluate the advisories given by NIT and the reasoning therein and further the MHRD be directed to constitute its own Screening Committee and Interview Committee without any interference of respondents No. 4 and 5.

6. On these facts, contesting respondents No.1 to 6 have filed a joint written statement taking preliminary objections that the Government of India enacted the National Institute of Technology Act, 2007 in order to declare NITs to the Institution of National importance. All the appointments of the staff in every institute mentioned in the schedule of the Act has to be made in accordance with the Act as well the procedure laid down in the

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statutes for all the NITs and the same was notified on 23.04.2009. The Ministry of Human Resource Development (MHRD), Government of India, framed the recruitment Rules. Statute 23 of the 1st statute was amended. The amendment in the 1st Statute of NIT and guidelines were placed before the Board of Governors in its 43rd meeting held on 23.01.2018. The respondent-institute issued advertisement No.3 of 2018 (Annexure R-2/1) whereby 36 (UR) posts of Associate Professors in various departments were advertised. It is also important to mention here that clarifications/amendment issued by MHRD are applicable to one and all and the petitioners cannot have any grievance on this account. The Screening Committees were formed for screening in accordance with the qualifications, experience and credit points as provided in the NIT Statute (Amended). 2017. There was three level screening and short listing of applicants as per the recruitment Rules and the same was followed. As the total number of eligible candidates in every department was very less, as such short listing amongst the eligible candidates was not necessitated. The recommendations of the AcoFAR were placed before the apex level Committee for consideration. As per the respondents, the petitioners are working as Assistant Professors in various departments and they had been appointed as Assistant Professors in AGP of Rs.7,000/- in the year 2013-2014 and have experience of 4-1/2 years. All the petitioners are not eligible for the posts of Associate Professor as per the advertisement Annexure R-2/1 either under 1st Statute amendment dated 21.07.2017 Annexure R-2/2 or under the letter dated 06.10.2017 Annexure R-2/3 issued by MHRD on

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the recommendations of the Anomaly Committee as neither they are in the AGP of Rs.8,000/- nor they have requisite experience as internal candidate. Some of the petitioners filed CWP-9240-2018 in this Court and while issuing notice of motion therein, order was passed on 18.04.2018 “that the selection and appointment pursuant of the advertisement No.3 of 2018 would be subject to the result” of the writ petition. Similar order was passed by this Court in CWP-11055-2018 on 29.05.2018.

7. In compliance of order dated 29.05.2018 passed by this Court, list of all the applicants who had applied for the posts of Associate Professors in response to the advertisement No.3 of 2018 in various disciplines/ departments whether eligible or ineligible, was placed on the website of the institute on 11.06.2018. All the ineligible candidates were required to file their objections by 25.06.2018 either by E-mail or by speed post. In all, there were total 78 ineligible candidates in various disciplines/ departments, out of which only 30 candidates filed the objections. Their objections were to be considered by the concerned Screening Committee. Accordingly, the Screening Committee considered the objections of the ineligible and the recommendations of the Screening Committee were approved by the Director of the Institute on 13.07.2018. Out of total 299 sanctioned posts, 176 posts have been filled up on regular basis and there are 123 vacant posts and the existing vacancies are adversely affecting the working of the respondent-institute. In these circumstances, advertisement for recruitment of 36 posts of Associate Professors in different departments was issued. The respondents have prayed that the writ petition is without

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any merit and the same be dismissed.

8. Learned senior counsel representing the petitioners, learned senior counsel representing Union of India and learned counsel appearing for other respondents have been heard at length.

9. Learned senior counsel for the petitioners contended that as per the advertisement issued for appointment to the 36 posts of Associate Professors, the qualification of Ph.D. plus three years' experience with Rs.8,000/- Grade Pay was required. The said Grade Pay was amended by circular of MHRD. As per Annexure P/2, petitioner Dr. Ashwani is in the Academic Grade Pay of Rs.7000/-. As per Schedule "E" attached to the notification dated 21.07.2017 (Annexure P/5), the following qualification is required:-

"Schedule 'E'

Qualification and other terms and conditions of appointment of Academic Staff.

Sl No.	Designation, Pay Band and Academic Grade Pay	Essential Qualification	Essential Requirements	Cumulative Essential Credit Points
(1)	(2)	(3)	(4)	(5)
1.	Associate Professor Pay Band-4 with Grade Pay of Rs.9500 with a minimum pay of Rs.42800	Ph.D.	Six years after Ph.D. of which at least three years at the level of Assistant Professor with Academic Grade Pay of Rs.8000; Or nine years total working experience, of which three years should be after Ph.D., with at least three years at the level of Assistant Professor with Academic Grade Pay of Rs.8000	50

* The relevant qualifications, experience and other terms and conditions of selection are prescribed in Schedule 'E' of NITs Statute

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amended 2017.

- * MHRD notification F.No. 33-9/2011-TS.III dated 6th October, 2017: regarding one time relaxation in relevant Recruitment Rules shall be applicable for promotion of existing Assistant Professor to Associate Professor of the NIT Kurukshetra.”

10. As per letter issued by MHRD dated 06.10.2017 (Annexure P/6), the Anomaly Committee has examined various issues and the approval was accorded as follows :-

Sl. No.	Issues/ Anomalies	Recommendations approved
(i)	Regarding promotion of existing Assistant Professor to Associate Professor	The following one time relaxation in the relevant Recruitment Rules for existing faculty members are approved:- <u>Schedule E (Sl No.4 - pertaining to Associate Professor</u> (i) Six years after Ph.D of which at least three years at the level of Assistant Professor with Academic Grade Pay of Rs.8000/- may be read as Six years after Ph.D. At the level of Assistant Professor. (ii). An existing faculty member with 09 years total working experience, of which three years should be after Ph.D., with at least three years at the level of Assistant Professor with Academic Grade Pay of Rs.8000/- may be read as Nine years of total working experience with Ph.D at the level of Assistant Professor.

11. However, NIT, Kurukshetra issued list of ineligible candidates dated 22.05.2018 and in the remarks column, it was mentioned that that Credit Points are less than 50 in cases of Dr. Chalak Hanuman Devidas, Dr. Jashandeep Singh and Sh. Rajiv Kumar besides inadequate experience and against the name of Dr. Yogesh Aggarwal, it was mentioned “External Candidate” and there is no vacancy available.

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12. Learned senior counsel for the petitioners further submitted that vide recommendations dated 28.06.2018 (Annexure P/15), the AcoFAR observed as under:-

- “(a) The duration of work as Post-Doctoral Fellowship (PDF) such as DAAD, INSPIRE etc., done by a candidate in India or abroad is not to be counted as experience towards the essential experience requirement in terms of RR and subsequent MHRD clarifications.
- (b) In the light of above (a), the credit points earned will only be counted after joining the service.”

13. Further clarifications in the matter were issued by MHRD vide Annexure P/20 dated 20th/23rd April, 2018 whereby it was clarified that the teaching and research experience in the reputed academic Institute or Research and Development Labs or relevant Industry may also be considered in case of Associate Professors as has been done in the case of other faculty position.

14. While arguing on these points, learned senior counsel representing the respondents contended that the National Institute of Technology (NIT), Kurukshetra having been enacted by Government of India under the National Institute of Technology Act, 2007, the appointments of the staff in every institute mentioned in the schedule of the Act has to be made as per the Schedule appended to the Act as well as procedure laid down in the Statute for all the NITs as notified on 23.04.2009. The recruitment rules were duly framed by MHRD. However, Statute 23 of the 1st Statute was amended vide notification dated 21.07.2017 and the amendment and guidelines were placed before the

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Board of Governors in itself 43rd meeting held on 23.01.2018. Vide advertisement No.3 of 2018 (Annexure R-2/1), 36 posts of Associate Professors were advertised. The eligibility of the candidates was determined in accordance with the qualifications, experience and credit points. Screening and short listing of applicants was done at three different levels as per the recruitment Rules. All the petitioners were appointed as Assistant Professors in AGP of Rs.7,000/- in the year 2013-2014 and as such, they are not having the requisite experience rather, have experience of 4-1/2 years and hence the petitioners are not eligible for the posts of Associate Professor as per the advertisement Annexure R-2/1. In compliance of order dated 29.05.2018 passed by this Court, list of all the applicants who had applied for the posts of Associate Professors in response to the advertisement No.3 of 2018 in various disciplines/departments whether eligible or ineligible, was placed on the website of the institute and the objections submitted by 30 candidates were considered by the concerned Screening Committee.

15. Learned counsel representing respondents No. 2 to 6 also took the plea that as per the orders issued by this Court on 29.5.2018, selection and appointment pursuant to the advertisement No. 3 of 2018 were stayed and in fact, that is adversely affecting the working of the Institute as they are causing shortage of academic staff. The selection process was strictly as per the Statute and recruitment rules of the Institute and guidelines issued by MHRD on different dates. Accordingly, all the eligible candidates are being called for interview.

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16. Learned counsel representing respondents No. 2 to 6 has also contended that all the eligible candidates, as per the relevant rules and guidelines issued by MHRD on different dates, shall be called for interview. In case any person is still aggrieved, he/she shall be well within their rights to challenge the final selection list and the respondent-Institute be allowed to fill up the posts so that the academic work of the Institute may not suffer.

17. Learned senior counsel representing respondent No.1 also contended that respondent Institute be allowed to proceed further with the appointment process which is being held in accordance with the Statute/rules and guidelines issued by MHRD on different dates.

18. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that most of the facts are not disputed. The eligibility for appointment i.e., qualifications and experience for faculty recruitment in various departments as contained in advertisement No. 3/2018 (Annexure P/7) are as under:-

“(B) **Qualifications and Experience for faculty recruitment in various Departments**

Sl No.	Designation,Pay Band and Academic Grade Pay	Essential Qualification	Essential Requirements	Cumulative Essential Credit Points
(1)	(2)	(3)	(4)	(5)

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1.	Associate Professor Pay Band-4 with Grade Pay of Rs.9500 with a minimum pay of Rs.42800	Ph.D.	Six years after Ph.D of which at least three years at the level of Assistant Professor with Academic Grade Pay of Rs.8000; Or Nine years total working experience, of which three years should be after Ph.D., with at lease three years at the level of Assistant Professor with Academic Grade Pay of Rs.8000	50
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- The relevant qualifications, experience and other terms and conditions of selection are prescribed in Schedule 'E' of NITs Statute amended 2017.
- MHRD notification F.No. 33-9/2011-TS.III dated 6th October, 2017: regarding one time relaxation in relevant Recruitment Rules shall be applicable for promotion of existing Assistant Professor to Associate Professor of the NIT, Kurukshetra.”

19. All the candidates seeking appointment were required to have 50 Credit Points which are to be evaluated as per Credit Point System, mentioned in Note -2. The same is reproduced below:-

“**Note – 2 Credit Point System**

The following shall be the credit point system:-

S. No.	Activity	Credit Points
1.	One external Sponsored Research and Development Projects completed or ongoing or patent granted	8 credit points per project or 8 credit points per patent as inventor (in case of more than one person in a Project, the Principal Investigator gets 5 credit points and the rest to be divided equally among other members)
2.	Consultancy Projects	2 credit points @ Rs.5 lakhs of consultancy, subject to maximum of 10 credit points.

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3.	Ph.D. completed (including thesis submitted cases)	8 credit points per Ph.D. student (in case there are more than one supervisor, then the Guide (1st Supervisor) gets 5 credit points per student and the rest to be divided equally among other supervisors.
4.	One Journal paper in Science Citation Index or Scopus (Paid Journals not allowed)	4 credit points per paper since the last promotion. First author or Main Supervisor will get 2 credit points and rest will be divided among others.
5.	One Conference paper indexed in Science Citation Index or Scopus or Web of science Conference or any internationally renowned conference	1 credit point per paper up to a maximum of 10 credit points. First author or Main Supervisor will get 0.6 and rest will be divided amount the rest.
6.	Head of the Department, Dean, Chief Warden, Professor Incharge (Training and Placement), Advisor (Estate), Chief Vigilance Officer, PI (Exam), TEQIP (Coordinator)	2 credit points per semester up to a maximum of 16 credits points since the last promotion.
7.	Warden, Assistant warden, Associate Dean, Chairman or Convener institute academic committees, Faculty In charge Computer Center or Information and Technology Services or Library or Admission or student activities and other Institutional activities.	1 credit point per semester up to a maximum of 8 credit points since the last promotion.
8.	Chairman and Convener of different standing committees and special committee (Ex officio status will not be considered). Faculty-in-charges (Each for one year duration) of different units or equivalent.	0.5 credit point per semester up to a maximum of 3 credits points since the last promotion.
9.	Departmental activities identified by head of the Department like lab in charges, or department level committee for a minimum period of one year.	0.5 credit point per semesters up to a maximum of 3 credits points since the last promotion.

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10.	Workshop of Faculty Development Program or short terms courses of minimum of 05 working days duration offered as coordinator or convener.	2 credit points per course up to a maximum of 8 credits points since the last promotion.
11.	For conducting national programs like Global initiative of Academic Networks etc. as course Coordinator Program of two weeks duration. Program of one week duration.	2 credit points per course up to a maximum of 4 credit points since the last promotion. 1 credit point per course up to a maximum of 2 credit points since the last promotion.
12.	National or International conference organized as Chairman or Secretary.	3 credit points per program up to a maximum of 6 credit points since the last promotion.
13.	Length of service over and above the relevant minimum teaching experience required for a given cadre.	2 credit points per semester with maximum of 10 credit points since the last promotion.
14.	Establishment of New Lab(s).	4 credit points since the last promotion.
15.	Theory Teaching of over and above 6 credit hrs. course	1 credit point or credit hrs. up to a maximum of 6 credit per points since the last promotion.
16.	Post Graduate Dissertation guided	0.5 credit point per project to a maximum of 10 credit points since the last promotion.
17.	Under Graduate Projects	0.25 credit point per project up to a maximum of 4 credit points since the last promotion.
18.	Text or Reference Books published on relevant subjects from reputed international publishers.	6 credit points per book up to a maximum of 18 credit points since the last promotion.
19.	Text or Reference book published on relevant subjects from reputed national publishers or book chapters in the books published by reputed international publishers.	2 credit points per unit up to a maximum of 6 credit points since the last promotion.
20.	Significant outreach Institute out activities.	1 credit point per activity up to a maximum of 4 credit points since the last promotion.

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21.	Fellow, IEEE, FNA, FNAE, FNASc	10 credit points
22.	Placement percentage (only for the placement cell officers of Faculty incharge of placement)	
	Above 85%	4 credit points per year upto a maximum of 20 credit points since the last promotion.
	75%-84% (% to be based on total number of students passing out and single job offer)	2 credit points per year upto a maximum of 10 credit points since the last promotion.

21. Thereafter MHRD has issued certain clarifications on the basis of recommendations of Anomaly Committee and these are certainly applicable to all the candidates applying for the said post and the respondent-Institute is bound to consider those qualifications and strictly follow them for appointment to the posts of Associate Professors and to call all the eligible candidates for interview and complete the selection process.

22. As regards the plea taken by the respondent-Institute that there are total 299 sanctioned posts, out of which 176 posts have been filled up on regular basis and there are 123 vacant posts and thus, advertisement for recruitment of 36 posts of Associate Professors in different departments posts was issued as there is acute shortage of academic staff in the Institute and the academic work of the Institute is suffering, and this Court had passed the interim order thereby staying the selection process, considering of the urgency explained in the matter, no purpose would be served by staying the selection process at this stage. Accordingly, the present writ petitions are being disposed of with the directions to the respondents:-

- (1) To consider all the candidates, who have applied for the

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post of Associate Professors in response to the advertisement No. 3/2018 (Annexure P/7) and decide their eligibility strictly in accordance with the advertisement and clarifications issued by MHRD on different dates regarding eligibility of the candidates and evaluating the Credit Points and to complete the selection process.

- (2). It is made clear that the petitioners will be well within their rights to challenge the final list, if aggrieved and the appointments so made by the NIT shall be subject to the points raised in the writ petition.

23. With these observations, all the writ petitions stand disposed of.

(SHEKHER DHAWAN)
JUDGE

September 17, 2018.
Komal/som

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes