

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WP 14012 (W) of 2017

Biplab Mukherjee & Ors.

-Vs.-

Indian Institute of Engineering, Science & Technology & Ors.

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WP 1209 (W) of 2014

Before: The Hon'ble Justice Arijit Banerjee

For the petitioners : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Ms. Nandini Mitra, Adv.
Mr. Sanjay Saha, Adv.
Ms. Sreyashi Chatterjee, Adv.

For the University : Mr. Subrata Mukhopadhyay, Sr. Adv.
Ms. Daisy Basu, Adv.
Ms. Basabi Raichoudhury, Adv.

For the State : Mr. Jahar Lal De, Adv.
Ms. Mitali Mukherjee, Adv.

For the Union of India : Mr. Indrajeet Dasgupta, Adv.
Mr. Kaushik Chanda, Ld. A.S.G.
Mr. Ujjwal Kr. Ray, Adv.

Heard On : 30.06.2017, 05.07.2017, 10.07.2017,
12.07.2017, 02.08.2017, 01.09.2017,
14.09.2017, 20.09.2017, 27.10.2017,
02.02.2018, 03.05.2018, 11.07.2018,
12.12.2018, 19.12.2018, 16.01.2019,
06.02.2019, 14.02.2019, 05.12.2019
& 10.12.2019

CAV on : 10.12.2019

Judgment On : 16.09.2020

Arijit Banerjee, J.:

1. These two writ petitions were taken up for hearing together and are being disposed of by this common judgment and order. In WP No.1209 (W) of 2014 (in short, 'the first writ petition'), the petitioners have prayed for a writ in the nature of *mandamus* commanding the respondents to implement the order of the Vice-Chancellor of the Bengal Engineering & Science University (in short 'BESU'), Shibpur, Howrah, dated 11 July, 2013. In WP No.14012 (W) of 2017 (in short, 'the second writ petition'), the petitioners have prayed for quashing of Office Order No.2375/D(AA)/17 dated 5 May, 2017, issued by the Assistant Registrar, Indian Institute of Engineering, Science & Technology (in short, 'IEST'), Shibpur, Howrah, on the basis of the directive of the Director, IEST, Shibpur. IEST is the successor-in-interest of BESU. The undisputed facts of the case leading to these writ petitions are as follows.

2. At all material times, the petitioners were employees of BESU. They were direct recruitees. The petitioners first approached this Court by filing WP No.20396 (W) of 2011 (***Biplab Mukherjee & Ors. v. State of West Bengal & Ors.***) challenging an alleged anomaly in the Gradation List published in respect of the employees of BESU. By an order dated 18 January, 2012, this Court held that preparation of Gradation List is

essentially the job of the University and the High Court under Article 226 of the Constitution of India cannot interfere for the purpose of setting aside such a Gradation List as it would entail going into facts of each individual for assessing their *inter se* seniority. This Court granted liberty to the petitioners to move the Vice-Chancellor of BESU and appraise him of their grievances by filing a fresh representation. The Vice-Chancellor was directed to consider such representation on its own merits by passing a reasoned order in accordance with law.

3. Pursuant to the said order, the petitioners made a fresh representation dated 29 March, 2012 to the Vice-Chancellor of BESU. By a detailed order dated 11 July, 2013 the Vice-Chancellor disposed of such representation. In the said order it was observed, *inter alia*, as follows:

“5. Creation of supernumerary or ex-cadre posts at different tiers for promotion of absorption government employees and for promotion of employees directly recruited by the University

a) Some supernumerary (or ex-cadre) posts at different tiers should be created for

- (i) Absorption of erstwhile allotted government employees in University service, their merger in common gradation list and subsequent promotion to higher promotional post.*
- (ii) Promotion of employees directly recruited by the University when, in a tier of the cadre, some absorbed employees are in position in some or all of regular promotional posts within the subdivided quota of posts (allocated for employees directly recruited by University) in that tier.*

b) Following should be the conditions for creation of

these supernumerary posts:

- (i) These supernumerary posts will not be regular sanctioned posts of the University but are ex-cadre posts.*
- (ii) A supernumerary promotional post would be personal to the concerned promoted employee. Till he/she holds any post in any tier of the cadre in supernumerary capacity, the last regular post held by the promoted employee shall remain vacant if the post in the base tier or the vacancy shall be dealt as temporary if the post is in a promotional tier.*
- (iii) A supernumerary promotional post relinquished by an existing incumbent, on account of his/her shifting to regular promotional post in the same tier or promotion to regular post in next higher tier or resignation or superannuation or death or otherwise, shall be abolished.*
- (iv) Not to create supernumerary post in a tier unnecessarily when there is/are vacancy/vacancies of regular posts of that promotional tier.*
- (v) When there is no employee eligible for promotion, as per rules, in either of the abovementioned notional group-lists of a tier in the cadre, the entire vacant promotional posts in the next higher tier shall be filled in the from eligible employees of the other group-list of the same tier following rules/norms issued by the Government for state-aided universities in this behalf and reservation policy of the State.*
- (vi) Any sanctioned regular promotional post of a given tier, within the quota notionally allocated for employee directly recruited by the University, left vacant after lateral shifting of such directly recruited employees from supernumerary posts to regular posts and after grant of promotion as per rules to eligible such*

directly recruited employees shall be filled in lateral transfer of absorbed employees from supernumerary post to regular post.

.....

9. Supernumerary promotional post of employees directly recruited by University

a) To make promotional prospects, of employees directly recruited by the University at par with employees of other State-aided universities some supernumerary promotional posts in any tier may be created for employees directly recruited by the University, as and when required to fulfillment of the following two conditions –

- (i) The number of employees in the lower/feeder tier eligible for promotion, as per rules, exceeds available vacant regular posts within the respective subdivided quota in the promotional tier, and*
- (ii) In the promotional tier, one or more of erstwhile allottees are in position in posts within subdivided quota of regular promotional posts allocated for employees directly recruited by the University.*

b) However, at any time the number of such supernumerary promotional posts in a tier, for employees directly recruited by the University, shall be limited to the number of absorbed employee placed in position in promotional posts, in that tier, allocated for employees directly recruited by University.

c) Promotion to such supernumerary promotional posts shall be made, from eligible employees directly recruited by the University, following rules/norms issued by the Government for state-aided universities in this behalf and reservation policy of the State Government.”

4. Being aggrieved by non-implementation of the Vice-Chancellor's recommendations as regards promotion of the petitioners who were direct recruitees, by creation of supernumerary posts, the petitioners filed the first writ petition. On the said writ petition, an interim order dated 21 January, 2014 was passed by a Learned Single Judge, which reads, inter alia, as follows:

"The Court is in dark about the present position of the matter, which was referred before the State Government. However, justice would be sub-served if an interim order is passed directing the University authorities to take appropriate steps strictly in terms of the order passed by the Vice-Chancellor, which was approved by the Executive Council. It is also not in dispute that in other similar cases this type of order was implemented by the University.

Accordingly, I direct the University authorities to implement the order of the Vice-Chancellor. This execution of the order would not create any equity in favour of any of the writ petitioners. This would be subject to the result of this writ petition.

The respondents are permitted to file affidavit-in-opposition by four weeks, reply, if any, by two weeks thereafter. Liberty to mention for early hearing."

5. Pursuant to the said order, the Office of the Registrar, IEST, issued fourteen promotional orders, all dated 16 June, 2014, in terms of G.O. No.2426-Edn(U)/17/10/1985 issued by the Higher Department, Government of West Bengal, granting promotion to fourteen direct recruitees including the petitioners from the post of Junior Superintendent to the post of Senior Assistant with effect from 11 July, 2013.

6. BESU was upgraded into a Central Institute and became IEST in terms of Section 5A of The National Institutes of Technology, Science Education and Research (Amendment) Act, 2014. Sub-sections (c) & (d) of Section 5A of the said Act read as follows:

“(c) all the rights and liabilities of the Bengal Engineering and Science University, Shibpur shall be the rights and liabilities of the Indian Institute of Engineering Science and Technology, Shibpur.

(d) every person (including Director, officers and other employees) who is employed in the Bengal Engineering and Science University, Shibpur, immediately before the date of commencement of the National Institutes of Technology, Science Education and Research (Amendment) Act, 2014, shall, on and after such commencement, become an employee of the Indian Institute of Engineering Science and Technology, Shibpur and shall hold his office or service by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of the commencement of the National Institutes of Technology, Science Education and Research (Amendment) Act, 2014, as if the said Act had not been brought into force and shall continue to do so until his employment is terminated or until such tenure, remuneration, terms and conditions are altered by the Statutes or Ordinances:

Provided that the tenure, remuneration, terms and conditions of service of such person shall not be altered to his disadvantage without the previous approval of the Central Government;

Provided further that any reference to the Chancellor and the Vice-Chancellor of the Bengal Engineering and Science University, Shibpur in any law, instrument or other document made before the commencement of the said Act, shall be construed as a reference to the Visitor and the Director, respectively, of the Indian Institute of

Engineering Science and Technology, Shibpur.”

7. An Office Order No.2375/D(AA)/17 dated 5 May, 2017 was issued by the Office of the Dean, Administrative Affairs, IEST, Shibpur to the effect that in view of the observations from the Office of the Principal Director of Audit, Central, Kolkata, Government of India vide Para 7.1 for the year 2015-16 and other relevant documents and the direction of Ministry of Human Resources Development (in short, ‘MHRD’) for settlement of outstanding audit para, the promotional orders, all dated 16 June, 2014 which were passed in respect of the fourteen direct recruitees, were being kept in abeyance till relevant concurrence is received from MHRD, Government of India, in this regard. This office order dated 5 May, 2017 is the subject matter of challenge in the second writ petition.

8. When the second writ petition was moved, an interim order dated 18 May, 2017 was passed staying the operation of the impugned office order dated 5 May, 2017, till the end of June, 2017. Such interim order was extended from time to time. On 12 July, 2017 an order was recorded by this Court which reads as follows:

“Heard the learned counsel for the parties.

Interim order that is subsisting is due to expire tomorrow.

However, having heard the learned counsel for the parties, I am not inclined to extend the interim order since MHRD has already passed an order. However, the learned Additional Solicitor General appearing on behalf of the Union of India and Mr. Mukherjee appearing on behalf of the University assure this Court that no adverse steps will be taken insofar as the petitioners are concerned for a period of three weeks from date or until further order,

whichever is earlier.

Mr. Additional Solicitor General, Mr. Mukherjee and Mr. De also submit that in view of the order passed by the MHRD this writ petition has become infructuous and if at all, the petitioners have a fresh cause of action. This statement is strongly opposed and disputed by Ms. Mitra appearing on behalf of the petitioners.

Let affidavit-in-opposition be filed within a week from date. Reply, if any, be filed within five days thereafter.

List the matter under the heading 'Hearing' on July 25, 2017 at 3:30 p.m."

9. Appearing for the petitioners, Mr. Bikash Ranjan Bhattacharya, Learned Senior Advocate, submitted that the observations/findings of the Vice-Chancellor in his order dated 11 July, 2013 were arrived at on the basis of the Rules which were in force from time to time. Such decision could not be subject to the decision of MHRD or any other Authority. He further submitted that the present case does not involve creation of new posts but fitment of the existing employees in supernumerary posts to remedy the mistake committed by the University when its status was upgraded from Shibpur Engineering College to BESU and then again further upgraded to the status of a Central Institute. According to Learned Senior Counsel, the Vice-Chancellor was authorized by the Court to take his own decision and such decision not having been challenged by anybody and having reached finality, the benefit conferred on the petitioners by such decision cannot be kept in abeyance.

10. Mr. Bhattacharya drew my attention to a Letter dated 7 June, 2017 addressed by the Under Secretary (NITs), Department of Higher Education,

MHRD, Government of India to the Director of IEST, the material portion whereof reads as follows:

"I am directed to refer to your communication no.106/06 dated 17th May, 2017 wherein it was requested for reply of Ministry of HRD w.r.t. issue of promotion of 14 employees in IEST Shibpur.

*The incumbents have also approached the court vide WP No.14012 of 2017 (**Shri Biplab Mukherjee & Ors. v. IEST & Ors.**) in the High Court of Calcutta for stay of operation of the Office Order No.2375/d(AA)/17 dated 5 May, 2017. The Union of India has also been made party in the Writ Petition.*

The case was last heard on 18.05.2017 and the Hon'ble Court passed an interim order suspending the Institute order dated 05.05.2017 for a limited period. As per the advice of the Advocate, the Institute authority has to restore back those employees to their original position i.e. Jr. Superintendent till 30.06.2017 or until further orders from the Court.

It is also added that the Audit report of the CAG for the year 2015-16 in para 7.1 stated the following:

"Eventually, Institute promoted 23 Sr. Assistants to the higher post of Junior Superintendents against 10 sanctioned posts. Further, Institute gave promotion to 02 Cyclostyle Operators against one sanctioned post. Thus Institute promoted 14 (13+1) employees without availability of sanctioned post and allowed higher pay and allowances irregularly. Director, IEST Shibpur approved the promotional proposal subject to the concurrence of the MHRD. Further, Executive Council (21st meeting) recommended that the implementation of promotional benefit will be finalized subject to concurrence of the MHRD."

In this regard, it is to inform that the matter regarding promotion of 14 Senior Assistants to Junior Superintendent has been examined in the Ministry and found that the observations of CAG Auditors are correct

considering the fact that the Institute had been sanctioned only 10 Junior Superintendent posts which was already been filled up. No promotions can be given in the absence of sanctioned posts.”

The said letter issued on behalf of MHRD has been brought on record by the petitioners by way of a Supplementary Affidavit affirmed on 25 July, 2018, wherein the said letter has also been sought to be made subject matter of challenge in the second writ petition.

11. Learned Senior Counsel further submitted that the communication of MHRD is contrary to the spirit of the Vice-Chancellor's order passed on the basis of direction of this Court, without examining IEST's legal right to create supernumerary posts, personal to the incumbents, without permission of MHRD. Learned Senior Counsel also drew my attention to a Letter dated 12 May, 2017 issued by MHRD in relation to another case involving the employees of IEST (***Shri Tapan Kumar Das & Ors. v. State of West Bengal & Ors.*** in WP 9774 (W) of 2017). In that case the petitioner had challenged the notices issued by IEST calling upon the petitioners to refund alleged overdrawal amounts. In this connection, in a Letter dated 12 May, 2017 written by the Under Secretary to the Government of India to the Director of IEST, at Paragraph 5, it was stated as follows:

“The present matter is purely administrative matter of the services of the employees of the IEST, Shibpur. As per the provisions of NITSER Act, 2007, the Board of Governors of the IEST, Shibpur is the competent authority to decide the case of the petitioners. The Ministry of Human Resources Development has no role to play in the matter enlisted above.”

12. Mr. Bhattacharya also drew my attention to a Memo dated 28 September, 2011 issued by the Higher Education Department, Government of West Bengal to the Vice-Chancellors of all Universities granting partial relaxation to the Universities to take decisions in the matters of pay fixation or financial benefits as per Government or Court orders. It was submitted that in at least 112 cases, the Executive Council of erstwhile BESU awarded promotions and granted Career Advancement Scheme (CAS) benefits to non-teaching staff without the concurrence of MHRD.

13. In short, Mr. Bhattacharya submitted that IEST is an autonomous body and is free to take administrative decisions concerning its employees including the issue of promotion of employees, without the approval or consent of MHRD.

14. Appearing for the Union of India, Learned Additional Solicitor General submitted that the Vice-Chancellor had no power to create supernumerary posts. Admittedly, the petitioners were not promoted to sanctioned posts. The office of the Principal Director of Audit had pointed out that fourteen employees of IEST were promoted without availability of sanctioned posts. Accordingly the orders of promotion were kept in abeyance.

15. According to Learned Additional Solicitor General it is not the case of the petitioners that the concurrence/permission of the State Government (and subsequently that of the MHRD) was not required. The petitioners themselves have contended that neither the State Government nor MHRD took any action pursuant to communication made on behalf of IEST. The resolution of the Executive Council of IEST dated 6 June, 2014 clearly

records that the matter would be sent to MHRD for concurrence. MHRD has not given its approval to the promotions of the petitioners. The promotions granted were upon undertakings furnished by the petitioners to the effect that they were accepting the promotions subject to concurrence of MHRD, Government of India. Since MHRD has not given its concurrence, the promotions of the petitioners cannot stand. At best, the refusal of MHRD to give concurrence, may amount to a fresh cause of action for the petitioners. The petitioners may challenge such decision of MHRD in accordance with law. The present writ petition should be dismissed.

16. A joint Affidavit-in-Opposition has been filed on behalf of the respondent nos.1 to 6. The respondent no.1 is IEST and the respondent no.6 is the Union of India. In the said affidavit, the stand taken is that since MHRD has not approved the promotions of the petitioners, the order dated 24 January, 2014 passed by this Court in the first writ petition should be vacated thereby, resulting in nullification of the promotions of the petitioners. It is stated in Paragraph 3(q) of the said affidavit that since MHRD has rejected the case of the petitioners, *"It is not possible for the University Authority to take the burden of extra financial liability"*.

However, in the written notes of argument filed on behalf of IEST, the stand is completely different. IEST has supported the case of the petitioners.

Court's View

17. The respondent institute being the IEST, prior to 16.02.1993, was

known as Bengal Engineering College, Shibpur. It was an Engineering College under the Government of West Bengal and its employees were Government Employees. In 1993 the college was elevated to the status of a Deemed University and was renamed as Bengal Engineering College (Deemed University) (in short, 'BE College, D.U.') vide Notification dated 14 December, 1992. By an order dated 17 February, 1993, the State Government transferred to BE College, D.U., all posts sanctioned by it for different departments/sections of the erstwhile BE College prior to 6 February, 1993. With effect from 1.10.2004, the Deemed University was further upgraded and was granted the status of a fully State Aided University and was renamed as Bengal Engineering & Science University, Shibpur (in short, 'BESU'). This was done in terms of the Bengal Engineering & Science University, Shibpur, Act, 2004. The BESU was upgraded into a Central University and became IEST in terms of the Section 5A of The National Institutes of Technology, Science Education and Research (Amendment) Act, 2014.

18. The petitioners had joined BESU as direct recruitees on various dates between January, 1994 and March 1997.

19. Vide Memo dated 25 July, 2008, the State Government accorded approval of one time relaxation of qualification of 84 Government Employees allotted to BESU, Shibpur, facilitating their absorption against re-designated posts in the university service of BESU. Vide Memorandum dated 12 August, 2010, the State Government issued guidelines for absorption of erstwhile employees of BE College in the university service of BESU. One of

the Clauses of the said Memorandum was that the absorbed employees would be senior to those who have been directly recruited by BESU after 16.02.1993. They would also retain their *inter se* seniority as it was prior to 16.02.1993 in the erstwhile BE College.

20. It may be noted here that three Government Employees namely, Shri Arun Kumar Ghosh, Shri Ratiranjan Sarkar and Shri Tapan Kumar Ghosh who were not employees of BE College as on 16.02.1993, were appointed in three promotional posts in BESU, as allottees, on promotion from the then Common Gradation List of LDC (Lower Division Clerk) Cadre. The petitioners were aggrieved by allotment of the said three employees. The petitioners were also aggrieved by the retrospective relaxation of academic qualifications of the allotted employees which resulted in the said allottees becoming senior in the Common Gradation List issued by the University authorities on 28.02.2011.

21. The petitioners were further aggrieved because, as they perceived, their promotional avenue was plugged as a result of the issuance of the Common Gradation List and promotions given thereafter till August, 2001.

22. In the aforesaid factual scenario the petitioners moved an application under Article 226 of the Constitution of India being WP No.20396 (W) of 2011 for quashing of the Common Gradation List of Clerical Cadre and praying for publication of two different Gradation Lists of Clerical Cadre of BESU, one comprising of direct recruitees to the university service and the other comprising of erstwhile Government Employees who were absorbed in BESU with effect from 16.02.1993. This application was disposed of by a

Learned Judge by an order dated 18 January, 2012 which I have noted above. Pursuant to such order, the then Vice-Chancellor of BESU passed an order dated 11 July, 2013, the material portion whereof, pertaining to the promotional issue of direct recruitees, has been extracted above.

23. Since the order of the Vice-Chancellor was not being implemented, WP No.1209 (W) of 2014 (the first writ petition) was filed. Pursuant to an interim order dated 24 January, 2014, the operative portion whereof I have extracted above, the Office of the Registrar, IEST, (BESU having become a Central Institute in the meantime), issued 14 promotional orders, all dated 16 June, 2014, granted promotion to 14 direct recruitees including the petitioners from the post of Junior Superintendent to the post of Senior Assistant with effect from 11 July, 2013. The petitioners joined the promotional posts and stated working. However, the petitioners were made to give an undertaking to the effect that they were accepting the order of promotion subject to concurrence of MHRD, Government of India.

24. The Memo dated 5 May, 2017 which is the subject matter of challenge in the second writ petition, issued by the Office of Dean, Administrative Affairs, IEST, directed that all the promotional orders dated 16 June, 2014 be kept in abeyance till relevant concurrence is received from MHRD, Government of India. The short question is whether this could be done?

25. IEST is the successor-in-interest of BESU. As per Section 5A(c) of The National Institutes of Technology, Science Education and Research (Amendment) Act, 2014, all rights and liabilities of BESU became rights and liabilities of IEST. As per Section 5A(d) of the said Act all employees of

BESU as on the date when the 2014 Act came into force, became employees of IEST at the same remuneration, on the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters. The first proviso to the said Sub-section prescribed that the tenure, remuneration, terms and conditions of service of such a person shall not be altered to his disadvantage without the previous approval of the Central Government.

26. The order dated 11 July, 2013 passed by the Vice-Chancellor of BESU was so done in terms of an order of this Court when the petitioners had first moved this Court in 2011. This Court was of the view that issues relating to Common Gradation List including the issue as to whether or not there should be separate Gradation Lists for existing employees who were absorbed into university service and direct recruitees, were administrative issues which should be left to the University Authorities for decision. Accordingly, this Court authorized the Vice-Chancellor of BESU to take a decision in the matter. The Vice-Chancellor took a decision on 11 July, 2013 on various aspects including the aspect of promotion of direct recruitees like the petitioners. Such decision of the Vice-Chancellor has not been challenged by anybody. I do not see why such decision should not be implemented. No apparent reason is there for denying the petitioners the promotional benefit recommended by the Vice-Chancellor. In fact, the recommendation of the Vice-Chancellor was given effect to by issuing the promotional orders dated 16 June, 2014 albeit pursuant to the interim order dated 21 January, 2014 passed by this Court in the first writ petition,

subject to the result of that writ petition and without creating any equity in favour of the petitioners.

27. The only point raised on behalf of the Union of India is that there are no sufficient sanctioned promotional posts. The promotional benefit has been extended to the petitioners without there being sanctioned promotional posts. Hence, the promotions of the petitioners have to be undone.

28. I am of the view that this argument of the Union of India is not sound. The recommendation of the Vice-Chancellor is that the direct recruits who are eligible for promotion, be granted promotion, by creating requisite number of supernumerary posts. 'Supernumerary post' is a term of art, well recognized in service jurisprudence. It is a permanent post and Government of India's own instructions relating to creation of such posts occur under the definition of permanent posts given in Fundamental Rule 9(22) from which it would emerge, *inter alia*, that a supernumerary post is created due to non-availability of a regular permanent post. Such post is personal to the Officer for whom it is created and stands abolished as soon as the Officer for whom it was created vacates it. (Please see – ***D.K. Reddy & Anr. v. Union of India: (1996) 10 SCC 177***). Hence, absence of sanctioned or regular posts cannot *per se* be an impediment to creation of supernumerary posts. In fact, supernumerary posts may be created in appropriate cases, at the basic level or at a promotional level, where a candidate deserves to hold such post but there is no such sanctioned or regular post available. In the present case, the facts are such that the posts to which the petitioners have been promoted may well be treated as supernumerary posts. On the question of

creation of supernumerary posts while I am conscious that creation of posts is the prerogative of the executive, in order to meet special exigencies, such a course of action can be resorted to by the High Court in its writ jurisdiction. After all, it is the endeavour of the Writ Court to do conscionable justice and the jurisdiction that it exercises is equitable in nature. Equity steps in and comes to the aid of a deserving party when law has to stop and cannot help him any further.

29. However, another point raised on behalf of the Union of India appears to be having more substance. The Union says that the promotion of the petitioners was subject to the concurrence of MHRD. This is what everybody understood. Even the petitioners accepted this by signing undertakings to the effect that their promotions were subject to the concurrence of MHRD. By the communication dated 7 June, 2017, which has been brought on record by way of a supplementary affidavit filed by the petitioners, the MHRD has recorded its disagreement to the petitioners having granted promotions. Learned Additional Solicitor General (since elevated to the Bench of this Court) argued that the MHRD in its wisdom has decided not to give its concurrence to the promotions of the petitioners. Such decision may be good or bad. However, such decision is not the subject matter of challenge in the present writ petitions. The writ petitioners having accepted their promotions subject to the concurrence of MHRD and MHRD having decided not to accord approval to the promotions, the same cannot be given further effect and must be kept in abeyance. According to Learned Counsel, at best the decision of MHRD recorded in its Letter dated 7 June, 2017

furnishes a fresh cause of action to the petitioners. On this issue, Learned Senior Counsel for the petitioners submitted that IEST including its predecessors-in-interest are/were autonomous bodies and free to take their independent administrative decisions without the consent of MHRD. Although MHRD may be in overall control of IEST, the administrative decisions concerning appointments of teaching/non-teaching staff are to be taken by the Board of IEST. In this connection my attention was drawn to an order dated 29 July, 2019 issued by the MHRD, Department of Higher Education, Government of India to the Director and Registrar of IEST wherein it is stated, *inter alia*, as follows:

“IEST Shibpur is an autonomous organization governed by the NITSER Act, 2007. The appointment & any other administrative matter of any teaching/non-teaching staff shall be done by the Board of IEST.”

In other words, according to Learned Counsel for the petitioners the promotions of the petitioners do not require the concurrence of MHRD to be valid.

30. The argument advanced on behalf of the petitioners is attractive. However, the fact remains that the petitioners accepted their promotions with the undertaking that the same would be subject to the concurrence of MHRD. The interim order of this Court passed in the first writ petition also recorded that the promotions granted to the petitioners would be subject to the decision in the writ petition and would not create any equity in their favour. Rightly or wrongly MHRD has decided not to give its concurrence to the promotions of the petitioners. Such decision of MHRD is not the subject

matter of challenge in either of these writ petitions. In the supplementary affidavit whereby the petitioners brought MHRD's Letter dated 7 June, 2017 on record, there is a mere statement at Paragraph 19 that the communication of the MHRD dated 7 June, 2017 cannot be sustainable in law and is liable to be set aside and/or quashed. However, no substantive grounds have been pleaded in support of such statement. I have serious doubts as to whether or not a decision of an Authority taken subsequent to institution of a writ petition can be made the subject matter of challenge in that writ petition by filing a supplementary affidavit. It is to be noted that the supplementary affidavit was filed by the petitioners on 25 July, 2018. The affidavit-in-opposition was filed by the respondent nos.1 to 6 on 18 July, 2017. The said respondents did not get an opportunity to deal with the contents of the supplementary affidavit filed by the petitioners. I am of the view that in the facts and circumstances of this case, it would be proper for the petitioner to challenge the communication dated 7 June, 2017 issued by MHRD by way of a fresh writ petition, if they are so advised. I am not inclined to enlarge the scope of the present writ petitions by making the aforesaid communication a subject matter of challenge in these writ petitions.

31. However, I am told that the petitioners have been working in the promotional posts since June, 2014 and such status has not been interfered with in view of the interim order passed in the second writ petition and/or pendency of that writ petition. While granting liberty to the petitioners to challenge the communication of MHRD dated 7 June, 2017, in my opinion,

some breathing space should be granted to the petitioners since they have been discharging their duties in the promotional posts for more than last six years. This would only be fair and just.

32. Accordingly, I direct that the present employment/service status of the petitioners shall continue for a period of four (4) months from date or until such time a competent forum passes an order touching the service status of the petitioners, whichever is earlier. Needless to say, that the observations made in this Judgment as regards the autonomy of IEST or its predecessor-in-interest are *prima facie* and I have not decided the issue as to whether or not concurrence of MHRD is required for validly promoting the petitioners. This issue is not the subject matter in either of the two writ petitions.

33. WP No.14012 (W) of 2017 and WP No.1209 (W) of 2014 are accordingly disposed of. There will be no order as to costs.

Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arijit Banerjee, J.)