

**Dr. Asit Kumar Chongdar & Ors
Versus
Union of India & Ors**

Mr. Rameneesh Guha Thakurta,
... For the petitioners.

Ms. Susmita Saha Dutta,
... For the Union of India.

Mr. Subrata Mukhopadhyay,
Ms. Basabi Roy Chowdhury,
... For the respondent Nos. 3 to 5.

Mr. Bibek Jyoti Basu, ... For the State.

Supplementary affidavit filed by the petitioners be kept with the records.

In this writ petition, the writ petitioners, inter alia, has prayed for the following relief :

“A. A writ of and/or in the nature of Certiorari do issue, calling on the Respondents and each of them particularly the 1st Respondent to certify and transmit the records of the case so that this Hon’ble Court may on perusal of the same do conscionable justice to the case and your Petitioners including by directing release of pensionary benefits to the petitioners at rates of 1st respondent w.e.f. March 04, 2014.”

Respondent No. 1 in this writ petition is the Central Government.

Admittedly, the petitioners were employees of Bengal Engineering and Science University, Shibpur (in short ‘BESU’). It is also admitted that all of them retired on or before March 4, 2014.

The Bengal Engineering & Science University

(BESU), was brought within the ambit of the National Institute of Technology, Science, Education, Research Act, 2007 (in short 'NITSER Act') w.e.f. March 4, 2014.

Section 5A in the said Act was introduced w.e.f. March 4, 2014. It reads as follows:

5A. Effect of incorporation of Bengal Engineering and Science University, Shibpur.—On and from the commencement of the National Institutes of Technology, Science Education and Research (Amendment) Act, 2014 (9 of 2014)— (a) any reference to the Bengal Engineering and Science University, Shibpur in any law, contract or other instrument shall be deemed as a reference to the Indian Institute of Engineering Science and Technology, Shibpur;

(b) all property, movable and immovable, of or belonging to the Bengal Engineering and Science University, Shibpur, shall vest in the Indian Institute of Engineering Science and Technology, Shibpur;

(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 (9 of 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;

(e) Vice-Chancellor of the Bengal Engineering and Science University, Shibpur shall be the Director of the Indian Institute of Engineering Science and Technology, Shibpur till such date the Central Government appoints new Director for the Indian Institute of Engineering Science and Technology, Shibpur;

(f) any examination conducted by the Bengal Engineering and Science University, Shibpur immediately before the commencement of the National Institutes of Technology, Science Education and Research (Amendment) Act, 2014 (9 of 2014) for admission or award of degrees shall be valid examination and shall be deemed to have been conducted by the Indian Institute of Engineering Science and Technology, Shibpur.

There is no doubt that the employees of BESU, who were in service before March 4, 2014, in view of Section 5(d) of the Act, would be governed by the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters to which they were entitled to before the commencement of the Act.

Again it needs to be noticed that in furtherance of the

‘NITSER Act, 2007’ the First Statute of the IEST was framed. Section 28 (8) of the said First Statute provides as follows :

8. Provident fund and pension schemes.-

“ The Central Government shall assume the liability of pension in respect of those employees who retire after conversion of erstwhile Bengal Engineering and Science University to the Institute and after takeover, the existing employees of the Institute shall be given options regarding their service conditions and accordingly the pension liabilities shall be under :-

- i. The liability for payment of existing pensioners covered under State Pension Rules shall continue to be on the State Government. However, the liability for repayment of pension for such employees who shall superannuate after the date of conversion of Bengal Engineering and Science University to the Institute will vest on the Central Government.”
- ii. Therefore, the pensioners who have been retired before the conversion of BESU into IEST, would continue to be governed by Service Conditions specified by the State Government of West Bengal.”

Therefore, the Union is right in contending that who have retired before the conversion of BESU into IEST would continue to be governed by the service conditions as specified by the State of West Bengal

The submission on behalf of the petitioners that the petitioners were allowed to exercise their option by the IEST to come within the purview of the Central Civil Services Pension Rules, 1972 does not attract any merit. If IEST at all allowed them to give such option, it

was absolutely inconsequential. I also do not accept the contention of the petitioners that some other institutes have allowed similarly circumstanced employees to opt for Central Civil Services Pension Rules, 1972 and therefore, the petitioners also should be extended the same benefits. The rights of the petitioners has to be seen in the light of 'NITSER Act, 2007' and the First Ordinance of IEST. I have already discussed that the said Act ('NITSER Act, 2007) and the First Statute do not entail the relief as prayed for by the petitioners in this writ petition.

In that view of the matter, I am of the opinion that there is no scope to claim retiral dues including pension at the rate of the Central Government by the petitioners.

Accordingly, WPA 29389 of 2017 is dismissed.

Let urgent certified copies of this order, if applied for, be given to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)