

W.P.(MD)Nos.11456, 14579 & 17723 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.08.2023

PRONOUNCED ON : 08.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.11456, 14579 & 17723 of 2023

and

W.M.P(MD)Nos.9944, 9945, 12339, 12340, 14797 & 14799 of 2023

1.W.P(MD)No.11456 of 2023:-

M/s.Teachers Association of NIT,
Represented by its General Secretary
No.9, 22nd Street,
NITT Quarters,
NITT,
Trichy – 15.

... Petitioner

Vs.

1.The Under Secretary to the Government of India,
Ministry of Human Resource Development,
Now renamed as Ministry of Education,
Department of Higher Education,
Sasthiri Bhavan,
New Delhi.

2.The Chairperson,
Board of Governors,
The National Institute of Technology,
Trichy.



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3.The Director,
The National Institute of Technology,
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned office memorandum passed by the 1st respondent in his proceedings F.No.33-9/2011-TS, III dated 16.04.2019 and quash the same in respect of the clarification at Serial No.16 alone and consequently directing the respondents to consider the members of the petitioner association for promotion to the next higher posts in terms of the provisions of National Institute of Technology Act, Science Education and Research Act, 2007 and National Institutes of Technology statutes within a time frame fixed by this Court.

For Petitioner	: Mr.B.Saravanan Senior Counsel for Mr.D.Kirubakaran
For R – 1	: Mr.K.Govindarajan Deputy Solicitor General
For RR 2 & 3	: Ms.Maria Roseline Standing Counsel

2.W.P(MD)No.14579 of 2023:-

R.Mohan

... Petitioner

Vs.



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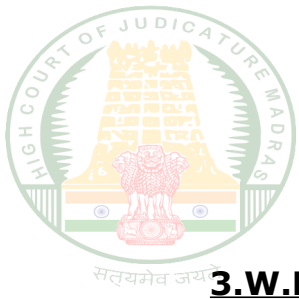
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- 1.The Under Secretary to the Government of India,
Ministry of Human Resource Development,
Now renamed as Ministry of Education,
Department of Higher Education,
Sasthiri Bhavan,
New Delhi.
- 2.The Chairperson,
Board of Governors,
The National Institute of Technology,
Trichy.
- 3.The Director,
The National Institute of Technology,
Trichy.
- 4.The Registrar (i/c),
The National Institute of Technology,
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned notification for faculty recruitment dated 14.06.2023 issued by the fourth respondent and quash the same as illegal and arbitrary.

For Petitioner	: Mr.B.Saravanan Senior Counsel for Mr.D.Kirubakaran
For R – 1	: Mr.K.Govindarajan Deputy Solicitor General
For RR 2 to 4	: Ms.Maria Roseline Standing Counsel



W.P.(MD).Nos.11456, 14579 & 17723 of 2023

3.W.P(MD)No.17723 of 2023:-

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M/s.Teachers Association of NIT,
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No.9, 22nd Street,
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Vs.

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COMMON ORDER

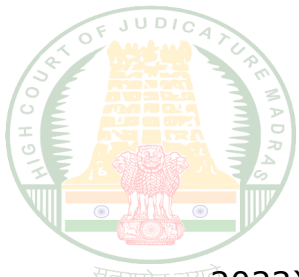
“It is neither a 'legal' nor a 'constitutional' concept. It is both ethical and a scholarly idea. This approach ignores the fact that in a democratic Society like ours, legislators are ultimately Sovereign and have the authority to debate and decide on educational policy, including higher education”.

**- Justice Gajendragadkar Committee Report
(UGC, 1971)**

1.Prelude:

1.1.The National Institute of Technology (NIT), Tiruchirappalli has distinguished itself on the national scene by being ranked first among all NITs and ninth among all the Technical Institutes in the Country by the National Institute Ranking Framework (NIRF

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2023) of the Government of India. Established as the Regional Engineering College (REC) in 1964, the salubrious campus became NIT, Tiruchirappalli in 2004 and is an autonomous Institution under Ministry of Education, Government of India. The President of India is the visitor of the Institute.

1.2.The members of the staffs of the National Institute of Technology, Tiruchirappalli are classified into academic staffs, technical staffs and administrative and other staffs. The academic staff consists of the Director, Deputy Director, Professor, Associate Professor, Assistant, Professor, Lecturer, Professor training and placement and such other academic posts, as may be decided by the board of NIT, Trichy from time to time.

1.3.The petitioner Association is a society registered under the Societies Registration Act in Reg.No.251 of 2010. The members of the petitioner society are the academic staffs working in the National Institute of Technology, Tiruchirappalli. The National Institute of Technology, Tiruchirappalli based on a clarification issued by the Government of India, Ministry of Human Resource Development, Department of Higher Education with respect to the implementation of



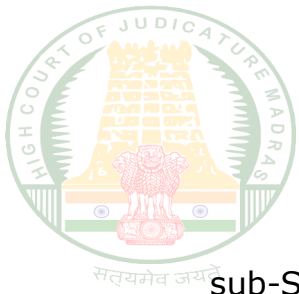
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recruitment rules for faculty of NITs and IEST dated 16.04.2009, has proceeded to issue an advertisement, inviting applications from qualified candidates for faculty positions in Departments of NIT, Tiruchirappalli by direct recruitment, on 14.06.2023. Such an exercise has caused apprehension in the minds of the Petitioner Association members that it would lead to denial of promotion of the members of the petitioner society, since once the candidates from open market are appointed in the existing vacancies, that would result in denying the right of the members of the Petitioner Association to be considered for promotion permanently. Challenging the executive intervention in the institutional autonomy of NIT, Tiruchirappalli, three Writ Petitions are filed one after the other. This is the nutshell of W.P(MD)Nos.11456,14579 & 17723 of 2023.

2. Facts:

2.1.The National Institutes of Technology across the country are governed by the provisions of the National Institutes of Technology Act, 2007 (Act 29 of 2007) (hereinafter referred to as 'the Principal Act, 2007) and the National Institute of Technology statutes. In exercise of the powers conferred by sub-Section (3) and



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sub-Section (4) of Section 26 of the Principal Act, 2007, with the prior approval of the Visitor (President of India), the Central Government made the First Statutes of National Institutes of Technology in the year 2009. The First Statutes of National Institute of Technology, 2009 (hereinafter referred to as 'the First Statutes, 2009') apply to all National Institutes of Technology and came into force on the date of publication in the official gazette.

2.2. Section 24 of the Principal Act, 2007 provides that all appointments of staff of every institute shall be made by the board in accordance with the procedure laid down in the statutes, if the appointment is made on academic staff in the post of lecturer or above. Section 26 of the Principal Act, 2007, empowers the Central Government to frame the first statutes of each National Institute of Technology, with a prior approval of the Visitor and copy of the same shall be laid before the House of Parliament. Section 26(2) of the Principal Act, 2007 provides that the board may, from time to time, make new or additional statutes or may amend or repeal the statutes in the manner provided in the Section. Section 26(3) of the Principal Act, 2007 provides that any amendment to the statutes shall require prior approval of the Visitor.



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2.3. Statute 23(1) of the First Statutes, 2009, reads that the post at the institute shall be filled by advertisement on all India basis, provided that the ratio between the direct recruitment and the promotion posts, for the posts, other than that of the director or a deputy director shall be as per the recruitment rules. Statute 23(4) of the First Statutes, 2009 reads that the selection committees, for filling posts under the institute (other than the posts on contract basis) by advertisement or by promotion from amongst the members of staff of the institute, shall be constituted in such manner as laid down by Ministry of Human Resource Development, Department of Higher and Secondary Education, Government of India or board from time to time by ordinances. Statute 23(5) of the First Statutes, 2009, read that the selection committee shall be constituted for filling up the posts in the institute by advertisement or by promotion from among the members of the staff of the Institute. Statute 23(9) of the First Statutes, 2009 reads that where a post is to be filled by promotion from among the members of the institute or temporarily for a period, not exceeding 12 months, the procedure for the same shall be as specified by the ordinances.



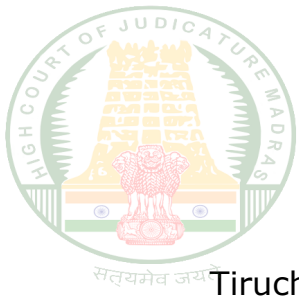
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2.4. In the meanwhile, the Central Government amended the First Statutes of the National Institute of Technology in the year 2017, in exercise of the powers conferred by Section 26(3)&(4) of the Principal Act, 2007. Schedule 'E' was introduced by the First Statutes of the National Institutes of Technology (Amendment) Statutes, 2017 (hereinafter referred to as 'the Amendment Statutes, 2017') prescribing qualification and other terms and conditions of appointment of academic staff in terms of statute 23(5)(a). Note 1.1 of schedule 'E' of the Amendment Statutes, 2017, read that any change in grade pay will be through open advertisement and on recommendation of duly constituted selection committee, except where is specifically exempted in these rules. Note 1.5 of the Amendment Statutes, 2017 reads that for the departments which are not having any vacancy, movement in higher Academic grade pay or cadre shall be carried out as per specified selection process, but it will be restricted to only for serving faculty members of the respective departments.

2.5. The first respondent in all three cases is the Under Secretary to the Government of India, Ministry of Education, Department of Higher Education, the second respondent being the Board of Governors of the National Institute of Technology,

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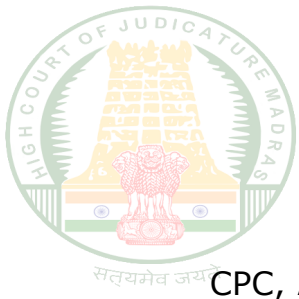


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Tiruchirappalli, represented by its Chairman and the third respondent is the Director of the National Institute of Technology, Trichy. The fourth respondent is the Registrar (i/c), The National Institute of Technology, Trichy in W.P(MD)Nos.14759 & 17723 of 2023.

2.6.The first respondent on 16.04.2019 issued the impugned office memorandum and at serial number 16 clarification has been issued regarding the term “promotion” used in the Recruitment Rules, namely schedule 'E' in the Amendment Statutes, 2017 to the effect that as per schedule 'E' of the Amendment Statutes, 2017, 23(5)(a) Note 1.1, any change in the Academic Grade Pay (AGP) in sixth Central Pay Commission (CPC)/level in seventh CPC, is through direct recruitment through open advertisement. Therefore, the term “promotion” used in RR’s /guidelines/MHRD communications should be read as “appointment through direct recruitment”. In furtherance to that, on 14.06.2023 the fourth respondent issued the impugned notification, inviting applications from the qualified Indian Nationals/Overseas Citizens of India (OCIs) with excellent academic background and commitment to quality, teaching and research, for faculty positions in Department of NIT, Trichirappalli, to fill up the post of Assistant Professor (Grade-II) at the pay level 10 and 11 in seventh



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CPC, Assistant Professor (Grade-I) at the pay level 12, in seventh CPC, Associate Professor pay level 13A2 in seventh CPC and professor Pay level 14A in seventh CPC. In total 64 posts in various departments of NIT are sought to be filled up by virtue of the impugned notification dated 14.06.2023 issued by the fourth respondent.

2.7.The impugned clarification/executive order dated 16.04.2019 has been issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India clarifying the implementation of recruitment rules for faculties of NITs and IIST as per the recommendations of the oversight committee. Though the Principal Act, 2007, the First Statutes, 2009 and the Amendment Statutes, 2017 provides for promotion of the staff working in NITs, the same has been nullified by an executive order in the form of clarification issued by the first respondent by introducing the expression "by appointment through direct recruitment" in the place of the expression "promotion". Following which, the fourth respondent issued the impugned notification, dated 14.06.2023 inviting applications for the posts of faculties of various categories in NIT, Trichy. Hence the petitioner society filed W.P(MD)No.11456 of 2023 challenging the impugned clarification, dated 16.04.2019. A serving



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Assistant professor in the Department of Computer Science and Engineering as petitioner has filed W.P(MD)No.14579 of 2023 challenging the impugned notification of the fourth respondent, dated 14.06.2023 inviting applications for direct recruitment of faculties in NIT, Trichy. Further, the petitioner society also filed W.P(MD)No.17723 of 2023, challenging the impugned notification of the fourth respondent, dated 14.06.2023.

3.Issue:

3.1.Whether by the first respondent's impugned memorandum dated 16.04.2019, the idea of promotion conceived in the provisions of the Principal Act, 2007, the First Statutes 2009 and the Amendment Statutes, 2017 has been completely abandoned?

3.2.Whether the statutes which provides for promotion of teaching staff working in NIT Trichy has been nullified by an executive order passed by the first respondent by introducing the expression "appointment through direct recruitment" in the place of the "promotion"?



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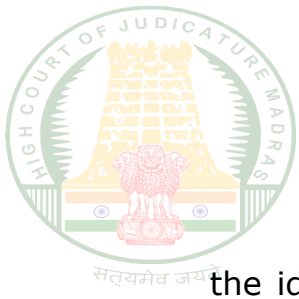
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3.3.whether the impugned notification dated 14.06.2023 issued by the fourth respondent is illegal, arbitrary and in violation of Section 24 of the Principal Act, 2007 and Statute 23(1)(4)&(5)(a) of the First Statutes, 2009 and the Amendment Statutes, 2017?

4.Submissions:

4.1.The learned Senior Counsel for the petitioner contended that, a combined reading of the provisions of the Principal Act, 2007, the First Statutes, 2009 and the Amendment Statutes, 2017 makes it clear that the appointment of post in the Institute shall either be by direct recruitment or by promotion from amongst the members of the staff of the institute and such appointment shall be made by the selection committee constituted in the manner as laid down by the Central Government or by board by ordinances. Statute 23(5)(a) of the Amendment Statute, 2017 provides that the qualification and other terms and conditions of appointment of academic staff excluding directors or promotion shall be as specified in schedule E. A combined reading of note 1.1 and note 1.5 of schedule E of the Amendment Statutes, 2017, would make it clear that even in the absence of vacancies, an incumbent can be moved to a higher academic grade pay by the selection committee and note 1.5 actually gives effect to

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the idea of promotion amongst the staff members already working in the institute in terms of statute 23 of the First Statutes, 2009.

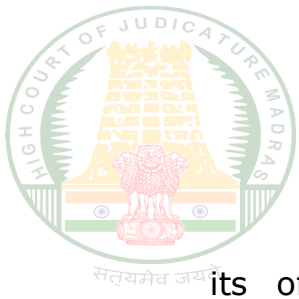
4.2. He further contended that, by the impugned order passed by the first respondent dated 16.04.2019, the idea of promotion conceived in the provisions of the Act and statutes has been completely abandoned and given a go-bye. Though the statutes provides for promotion of the staff working in the institutes, the same has been nullified by an executive order passed by the first respondent by introducing the expression "appointment through direct recruitment" in the place of expression "promotion". Therefore the statute which has got force of law applicable to the second respondent institute is sought to be amended by an executive order issued by the first respondent. That apart, the accrued right of the members of the petitioner society cannot be taken away even by a subsequent amendment of the statutes. The clarification issued in serial number 16 of the impugned office memorandum is an executive order by which the accrued right of the members of the petitioner society to be considered for promotion cannot be taken away and hence the said impugned office memorandum is null and void and the same is liable to be quashed as illegal.



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4.3. The learned senior counsel further submitted that, the notification for faculty recruitment dated 14.06.2023 issued by the fourth respondent is in violation of the provisions of the Principal Act, 2007 and the First Statutes, 2009 and hence the said notification is liable to be set aside as null and void. He further submitted that Section 24 of the Principal Act, 2007 makes it abundantly clear that all appointments of the staff of every institute except the director and deputy director, shall be made in accordance with the procedure laid down in the statutes. Section 26 of the Principal Act, 2007 provides for the procedure to amend the statutes. Such amendment of statute applicable to NITs are subject to the assent of the Visitor. Therefore as long as the existing statute is not amended and as long as the amended statutes are not notified after obtaining assent from the Visitor, the fourth respondent is bound to follow the provisions of the existing statutes as per the provisions of the existing statute applicable to the second to fourth respondents, the vacancies in the academic staff shall be filled up both by direct recruitment and promotion according to the ratio as per the recruitment rules. Therefore the impugned notification for appointment of candidates by direct recruitment is influenced by the proceedings of the first respondent in



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its official memorandum dated 16.04.2019 and contrary to the provisions of the statute applicable to NIT Trichy and hence the impugned notification for faculty recruitment dated 14.06.2023 is liable to be quashed as legal and arbitrary.

4.4. Per contra, the learned Deputy Solicitor General of India appearing for the first respondent vehemently contended that, the petitioners ought to have understood that amendment of statutes, that is the First Statutes of National Institute of Technology Amendment Statutes, 2017 includes schedule 'E' and the amendment to Statute 23(5)(a) should not be read in isolation leaving schedule 'E', which clearly mandates that any change in the grade pay will be through open advertisement and on recommendation of the duly constituted selection committee. Hence without challenging the schedule 'E' of the Amendment Statutes, 2017 the petitioners have no locus standi to challenge the impugned clarification issued by the first respondent and the impugned notification issued by the fourth respondent.



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4.5. Even in the absence of clarification dated 16.04.2019, the rule position is very clear. Note 1.1 to the schedule 'E' as well as the tabular column in schedule 'E' of the Amendment Statutes, 2017 would amply prove the requirement of open advertisement. In so far as the existing permanent faculty members are concerned, under note 1 various benefits are given and career advancement scheme is available for the stagnated persons. The impugned clarification of the year 2019 is challenged belatedly. Further the reason behind note 1.1 to schedule 'E' of the Amendment Statutes, 2017 is that to provide NIT, Trichy with qualitative academic program and hence direct recruitment with talent is required to retain the best in the academic standard. Hence the impugned notification and the impugned clarification need not be interfered.

4.6. The learned Counsel appearing for the respondents 2 to 4 categorically stated that, subsequent to the issuance of the impugned clarification dated 16.04.2019, 4 recruitment processes were conducted at the Institute. In 2017, there was a recruitment for the post of Assistant Professors, Associate Professor and Professor. In 2019, there was recruitment for the post of Professors and Assistant Professors. In the recruitment process that was held for the post of

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Associate Professors and Professors in 2017, 4 external candidates were recruited and they reported for duty in the cadre of Professor and Associate Professor. The members of the petitioner association who have participated in the recruitment process that was held for the post of Associate Professors and Professors in the year 2017 are now estopped from challenging the clarification issued in point 16 of the impugned office memorandum dated 16.04.2019 .The members of the petitioner association would be considered for movement to higher grade pay through selection process and the direct recruitment as and when they become eligible to apply for the same.

4.7.The word 'promotion' used in statute 23 should be read with reference to the staff of the Institute excluding 'Academic Staff". Members of the petitioner association come under the category of "Academic Staff". As far as academic staff are concerned, any vacancy arising in the posts classified as Academic posts, the same has to be filled up only by way of Direct Recruitment. This is the rule position not only in the present flexible 4 tier cadre structure, but also in the erstwhile rigid 3 tier faculty structure. In fact this is the rule position, even in respect of colleges coming under the purview of UGC and AICTE Regulations.

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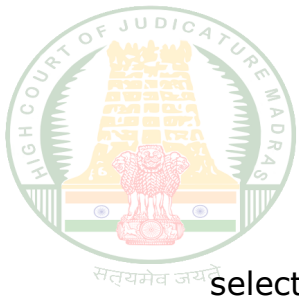
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4.8.Under the erstwhile 3 tier rigid faculty structure, CAS (Career Advancement Scheme) was introduced at the institute with effect from 10.01.2004. Under the Career Advancement Scheme, an individual faculty member can move to a higher designation and / or pay (AGP) in the absence of a clear vacancy. A CAS promotion may be given to a serving faculty member on satisfying two essential criteria simultaneously. a) Completion of specified number of years of service in the same institute in a lower designation or AGP, and b) Being selected by a valid Selection Committee using the same criteria, procedure and common interview as prescribed for directly recruited candidates (internal or external) and being included in a common panel. There shall be no legal or social distinction between a faculty member selected against a clear vacancy or in the absence of one under CAS. Both are deemed to be directly recruited. There shall be no retrospective promotion, neither real nor notional.

4.9.The new recruitment rules for the teaching faculty, which had been introduced vide Schedule E of the first statutes, in Note 1.1 clearly provide that any change in grade pay will be through open advertisement and on recommendation of duly constituted

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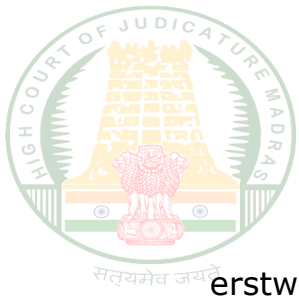
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selection committee except where specifically exempted under these rule. Further Note 1.5 of Schedule E clearly stipulates that for the departments, which are not having any vacancy, movement in higher Academic Grade Pay or cadre shall be carried out as per specified selection process, but it will restricted to only for serving faculty members of the respective department. Therefore, a bare reading of the provisions of Note 1.1 & Note 1.5 along with the provisions of Schedule E would make it clear that the new recruitment rules while making changes to the eligibility conditions and selection criteria to be adopted while making recruitment to the academic posts has retained the rules with regard to selection process to be adopted for recruitment in case of clear vacancies and in case of recruitment of internal candidates in the absence of vacancies.

4.10.In short, the rules under the Career Advancement Scheme regarding selection of serving faculty by a valid selection committee using the same criteria, procedure and common interview is retained under the new recruitment rules. Under the 3 tier rigid cadre structure, there was no distinction in between a faculty member selected against a clear vacancy or in the absence of one under CAS. Both were deemed to be directly recruited. Therefore even under the

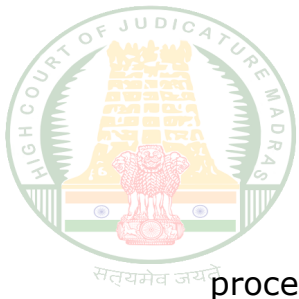
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erstwhile 3 tier rigid cadre structure, the selection of faculty under the then Career Advancement Scheme was only considered as Direct Recruitment.

4.11. Even though the concept of promotion as understood in service jurisprudence is not available to academic staff of the institute, the upward movement of an incumbent to higher AGP/designation through selection process in the absence of clear vacancy in the present 4 tier flexible cadre structure and under CAS in the erstwhile 3 tier rigid cadre structure was called as promotion in official communications and references. Even though the term "promotion" was used to denote the upward movement of the faculty in the present 4 tier flexible cadre structure and under CAS in the erstwhile rigid 3 tier cadre structure in the absence of clear vacancies, the said term cannot be given an expanded meaning to confer the academic staff with the right of promotion to the higher posts in the teaching cadre. Such rights were never available to the teaching faculty either under the earlier 3 tier rigid cadre structure or under the present 4 tier flexible cadre structure. As the use of the word "promotion" to denote the upward movement of faculty in the absence of clear vacancies was causing confusion in NITs and as the selection

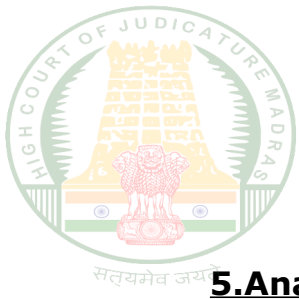


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process adopted for permitting the upward movement of internal candidates in the absence of vacancies in the departments and the selection process adopted for filling up vacancies in the teaching posts from external and internal candidates were one and same, the first respondent had accepted all the clarifications issued by the oversight committee in respect of the term "promotion" used in recruitment rules.

4.12.The very fact that the vacancies in the higher positions of the teaching cadre at the institute were filled up only by way of Direct Recruitment even after the notification of first statutes of NIT on 24.07.2017, would falsify the vexatious claim made by the petitioner that the idea of promotion was conceived for teaching faculty in the provisions of NIT Act and statutes and that the same was sought to be nullified by the impugned clarification issued by the first respondent. The allegations that the statutes, which has got the force of law is sought to be amended by executive order are denied as false and misconceived allegations and hence the impugned notification and impugned memorandum/clarification need to be interfered.



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5.Analysis:

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5.1. The entire controversy in all the three Writ Petitions reels around the contention of the petitioners that, though the Principal Act, 2007, the First Statutes, 2009 and the Amendment Statutes, 2017 provides for promotion of the academic staff working in NIT, Trichy, the same has been nullified by an executive order / clarification passed by the first respondent by introducing the expression "by appointment through direct recruitment" in the place of the expression "promotion", thereby the idea of promotion conceived in the provisions of the Principal Act, 2007 and the statutes have been completely abandoned.

5.2. To substantiate their respective contentions, the petitioner interpreted note 1.1 and note 1.5 of the schedule 'E' of the Amendment Statutes, 2017 that, though note 1.1 of schedule 'E' of the Amendment Statutes, 2017 provides that any change in the grade pay will be through open advertisement, note 1.5 makes it clear that the departments which are not having any vacancy movement in higher academic grade pay or cadre shall be carried out as per specified selection process, but it will be restricted to only for serving faculty members of the respective departments. Therefore note 1.5 makes it

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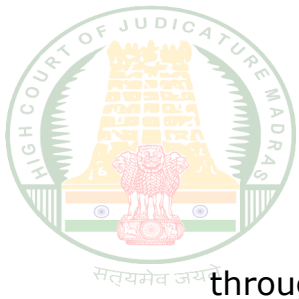
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clear that even in the absence of vacancies, an incumbent can be moved to higher academic grade pay by the selection committee and therefore it could be concluded that note 1.5 gives effect to the idea of promotion among the academic staff members already working in the institute in terms of Statute 23 of the First Statutes 2009 and the Amendment Statutes, 2017.

5.3. Per Contra the respondents submitted that the members of the petitioner society are trying to give a distorted meaning to the word promotion used in statute 23(5)(a) and deliberately misreading the provisions contained in note 1.1 of schedule 'E' of the Amendment Statutes, 2017 to claim imaginary rights of promotion to higher posts. By conjoint reading of Statute 23(5)(a) along with the schedule 'E' of the Amendment Statutes, 2017, it is abundantly clear that for the appointment of Associate Professor, Professor the selection process must be through open advertisement.

5.4. Precisely the controversy revolves around the attempt of the respondents in categorically interpreting the Notes 1.1 appended to Schedule 'E' of the Statute 23(5)(a) of the Amendment Statutes, 2017 that any change in academic grade pay will be only

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through open advertisement and the concept of "promotion" is not available to academic staffs of NIT, Trichy, even though the Statute 23(5)(a) of the Amendment Statutes, 2017 provides that the qualification and other terms and conditions of appointment of academic staffs (excluding director) or promotion shall be as specified in Schedule 'E'. The explanation that the term "promotion" in statute 23(5)(a) cannot be given an expanded meaning to confer academic staff with the right of promotion to the higher posts in the teaching cadre has added fuel to the controversy. The declaration of the respondents that such rights were not at all available at any point of time to the academic staffs in NIT, Trichy has culminated in filing these Writ Petitions.

5.5. For better appreciation, the legal history of the National Institutes of Technology should be traced. In this regard the evolution of the Principal Act, 2007, the First Statutes, 2009 and the Amendment Statutes, 2017 gains significance. The preamble of "The National Institutes of Technology Act, 2007 (No.29 of 2007) reads as follows:-

"An Act to declare certain institutions of technology to be Institutions of national importance and to



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provide for instructions and research in branches of engineering, technology, management, education, sciences and arts and for the advancement of learning and dissemination of knowledge in such branches and for certain other matters connected with such institutions.”

On the year of enactment of the Principal Act, 2007, there were 20 National Institutes of Technology across India, as mentioned in the list of Central Institutions incorporated by the Schedule into the Act. Today, as per the list, there are 31 NITs. The venturous Principal Act, 2007, in Section 2 propounds the objects of the various Institutions listed in the schedule of the Principal Act, 2007. The inquisitive object is to make each such institute as an Institution of National Importance. For such purpose each of the Institutes listed in the Principal Act, 2007, was incorporated into a body corporate having perpetual succession and a common seal.

5.6.The Powers and duties of these Institutes are elaborated in Section 6 of the Principal Act, 2007 and the same reads as follows:-



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"6.(a) to provide for instruction and research in such branches of engineering and technology, management, education, sciences and arts, as the Institute may think fit, and for the advancement of learning and dissemination of knowledge in such branches;

(b) to hold examinations and grant degrees, diplomas and other academic distinctions of titles;

(c) to confer honorary degrees or other distinctions;

(d) to fix, demand and receive fees and other charges;

(e) to establish, maintain and manage halls and hostels for the residence of students;

(f) to supervise and control the residence and regulate the discipline of students of the Institute and to make arrangements for promoting their health, general welfare and cultural and corporate life;

(g) to provide for the maintenance of units of the National Cadet Corps for the students of the Institute;

(h) to institute academic and other posts with the prior approval of the Central Government, and to make appointments thereto excluding the Director and the Deputy Director;

(i) to frame Statutes and Ordinances and to alter, modify or rescind the same;



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(j) to deal with any property belonging to or vested in the Institute in such manner as the Institute may deem fit for advancing the objects of the Institute;

(k) to receive gifts, grants, donations or beneficiaries from the Government and to receive bequests, donations and transfer of movable or immovable properties from testators, donors or transferors, as the case may be;

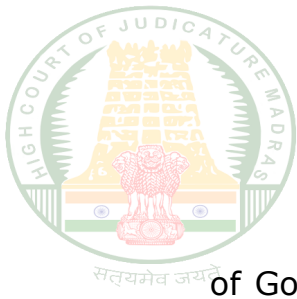
(l) to co-operate with educational or other institutions in any part of the World having objects wholly or partly similar to those of the Institute by exchange of teachers and scholars and generally in such manner as may be conducive to their common objects;

(m) to institute and award fellowships, scholarships, exhibitions, prizes and medals;

(n) to undertake consultancy in the areas or disciplines relating to the Institute; and

(o) to do all such things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Institute."

The primordial power/duty of the Institutes is to frame Statutes and Ordinances and to alter, modify or rescind the same. That apart, the power to institute academic and other posts with the prior approval of the Central Government and to make appointments also vests with the Institutes. Section 10 of the Principal Act, 2007, declares (a) a Board



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of Governors; (b) a Senate; and (c) such other authorities as may be declared by the Statutes to be the authorities of the Institute.

5.7.The substantive provision of Section 25 of the Principal 2007, postulates that the mandatory statutes to the Institutes would in turn provide for the following matters:-

- "(a) the conferment of honorary degrees;*
- (b) the formation of departments of teaching;*
- (c) the fees to be charged for courses of study in the Institute and for admission to the examinations of degrees and diplomas of the Institute;*
- (d) the Institution of fellowships, scholarships, exhibitions, medals and prizes;*
- (e) the term of office and the method of appointment of officers of the Institute;*
- (f) the qualifications of teachers of the Institute;*
- (g) the classification, the method of appointment and the determination of the terms and conditions of service of teachers and other staff of the Institute;***
- (h) the constitution of pension, insurance and provident funds for the benefit of the officers, teachers and other staff of the Institute;*



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**(i) the constitution, powers and duties
of the authorities of the Institute;**

(j) the establishment of residence of students of the Institute and the levying of fees for residence in the halls and hostels and of other charges;

(k) the conditions of residence of students of the Institute and the levying of fees for residence in the halls and hostels and of other charges;

(l) the allowances to be paid to the Chairperson and members of the Board;

(m) the authentication of the orders and decisions of the Board;

(n) the meetings of the Board, the Senate, or any Committee, the quorum at such meeting and the procedure to be followed in the conduct of their business."

5.8.Statutes are the tools of institutional autonomy conceived by the Principal Act, 2007. In a democratic Country like India, institutional autonomy and academic freedom with its own checks and balances, rules the roost of Higher Education system. No doubt, democracy would be enriched when higher education institutions imbibe these principles. Therefore Section 26 of the Principal Act, 2007 further mandates how statutes ought to be made and the procedure is extracted as follows:-



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"26.(1) The first Statutes of each Institute shall be framed by the Central Government with the prior approval of the Visitor and a copy of the same shall be laid down as soon as may be before each House of Parliament.

(2) The Board may, from time to time, make a new or additional Statutes or may amend or repeal the Statutes in the manner provided in this Section.

(3) Every new Statute or addition to the Statutes or any amendment or repeal of Statutes shall require the previous approval of the Visitor who may grant assent or withhold assent or remit it to the Board for consideration.

(4) A new Statute or a Statute amending or repealing an existing Statute shall have no validity unless it has been assented to by the Visitor."

5.9. That apart, for all the Institutes listed in the schedule of the Principal Act, 2007, a central body called Council was established by the Central Government as per Section 30 of the Principal Act 2007. The general duty of the Council shall be to co-ordinate the activities of all the Institutes, to play an advisory role to the Institutes and to lay down policy regarding **cadres, methods of recruitment and conditions of service of employees** etc and to perform by or under the Principal Act, 2007.



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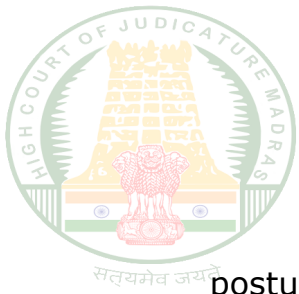
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5.10. In exercise of the powers conferred by sub-Section (1) of section 26 of the Principal Act, 2007, **the Central Government with the prior approval of the Visitor framed a mandatory statute called "The First Statutes of the National Institutes of Technology" dated 23.04.2009.** The First Statutes, 2009 compels certain things to be done in a certain manner without deviation. In line with Section 10 of the Principal Act, 2007, Statute 3 of the First Statutes, 2009, codifies the authorities of NITs as follows:-

"3.Authorities:-

- (i) **the Board of Governors** are constituted under Section 11 of the Act;
- (ii) **the Senate** as constituted under Section 14 of the Act;
- (iii) **the Finance Committee,** as constituted under First Statute 10; and
- (iv) **the Building and Works Committee** as constituted under First Statute No.12."

It is pertinent to underline here that, neither the Central Government nor the Central body named Council of Institutes are encapsulated in the list of authorities. Precisely, Section 10 of the Principal Act, 2007 read with Statute 3 of the First Statutes, 2009,



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postulates institutional autonomy as the basic structure of the organisation of NITs. UNESCO defines institutional autonomy as "a degree of self-governance, necessary for effective decision making by Institutes of higher education regarding their academic work standards, management and related activities".

5.11. Section 24 of the Principal Act, 2007 read with Statute 23 deals with Appointments in NITs.

(i) Section 24 of the Principal Act, 2007 reads as follows:-

"24.All appointments of the staff of every Institute, except that of the Director and Deputy Director, shall be made in accordance with the procedure laid down in the Statutes by-

(a) the Board, if the appointment is made on the academic staff in the post of Lecturer or above or if the appointment is made on the non-academic staff in any cadre the maximum of the pay scale for which exceeds rupees ten thousand five hundred;

(b) the Director, in any other case."



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(ii) Statutes 23(1),(2),(3),(4)(5)&(9) of the First Statutes, 2009 are extracted as follows:

"23.Appointments:-

(1) *The posts at the Institute shall be filled by advertisement on all India basis:*

*Provided that the **ratio between the Direct Recruitment and Promotion posts for posts** other than that of the Director of the Deputy Director shall be as per the recruitment rules.*

(2) *The reservation of posts shall be in accordance with the rules of the Central Government.*

(3) *For the purposes of appointments, the rules applicable to of the Central Government employees shall apply.*

(4) *The Selection Committees, for filling posts under the Institute (other than the posts on contract basis) **by advertisement or by promotion** from amongst the members of staff of the Institute, shall be constituted in such manner as laid down by Ministry of Human Resource Development Department of Higher and Secondary Education, Government of India or Board from time to time by ordinances.*



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(5) Selection Committees for filling up of posts under the Institute (other than on contract basis) **by advertisement or by promotion** from amongst the members of staff of the Institute shall be constituted in the following manner namely:

(a) the Selection Committees for recruitment of Academic Staff (excluding the Director and the Deputy Director), or for promotion shall be as under:

- | | |
|--|------------|
| (1) Director or Deputy Director | - Chairman |
| (2) Visitor's Nominee | - Member |
| (3) two nominee of the Board one
being an expert, but other than
a member of the Board | - Member |
| (4) One expert nominee of senate
from outside the Institute | - Member |
| (5) Head of Department concerned
(for other than the post of Professor) | - Member |

.....

(9) **Where a post is to be filled by promotion from amongst the members of the Institute** or temporarily for a period not exceeding twelve months, the procedure for the same shall be as specified by ordinances."



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5.12.While so, the Principal Act, 2007 was amended by "The National Institutes of Technology (Amendment) Act, 2012 (herein after referred to as "the Amendment Act, 2012"). The Amendment Act, 2012, substituted the long cause title of the Principal Act, 2007 as "National Institutes of Technology, Science, Education and Research". Following which the First Statutes, 2009 was amended by the First Statutes of the National Institutes of Technology (Amendment) Statutes, 2017, dated 21.07.2017.

(i) Amendment to Statute 23 of the Amendment Statutes, 2017 are extracted as follows:

12.In Statute 23 of the Principal Statutes.-

(a) for sub-statute (3), the following shall be substituted, namely:-

"(3) For the purposes of appointments in the Institute, the rules as approved by the Council or Central Government shall apply".

(b) for sub-statute (4), the following shall be substituted, namely:-

*"(4) The Selection Committees, for filling posts under the Institute (other than the posts on contract basis) **by advertisement or by promotion from amongst the members of staff of the Institute,** shall be constituted in such*



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manner as laid down by the Central Government or Board from time to time by ordinances”.

(c) In sub-statute (5), for clause (a), the following shall be substituted, namely:-

“(a) the qualification and other terms and conditions of appointment of Academic Staff (excluding Director) or promotion shall be as specified in Schedule 'E' and the Selection Committee for making recommendations for appointment of Academic Staff (excluding Director) shall consist of the following members, namely:-

- | | |
|--|------------|
| (1) Director or Deputy Director | - Chairman |
| (2) Visitor's Nominee | - Member |
| (3) two nominee of the Board one
being an expert, but other than
a member of the Board | - Member |
| (4) One expert nominee of senate
from outside the Institute | - Member |
| (5) Head of Department concerned
(for other than the post of Deputy
Directory and Professor) | - Member” |

(ii) Schedule 'E' of the Amendment Statutes, 2017 along with notes 1.1 & 1.5 are extracted as follows:



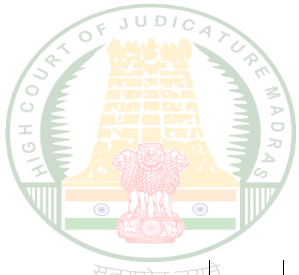
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"Schedule 'E'

[See Statute 23(5)(a)]

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

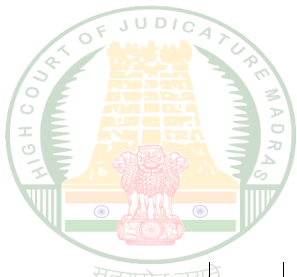
Sl. No.	Designation, Pay Band and Academic Grade Pay	Essential Qualification	Essential Requirements	Cumulative Essential Credit Points
(1)	(2)	(3)	(4)	(5)
1.	*Assistant Professor (On contract) Pay Band-3 with Grade Pay of Rs.6000	Ph.D	NIL	NIL
2.	*Assistant Professor (On contract) Pay Band-3 with Grade Pay of Rs.7000	Ph.D	One year post Ph.D experience of Teaching and Research in Institution of repute or Industry	10
3.	*Assistant Professor Pay Bank-3 with Grade Pay of Rs.8000 with a minimum pay of Rs. 30000	Ph.D	Three years after Ph.D or six years total teaching and research experience in reputed academic Institute or Research and Development Labs or relevant Industry	20



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4.	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
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5.	Professor Pay Band-4 with Grade Pay of Rs.10500 with minimum pay of Rs. 48000	Ph.D	Ten years after Ph.D or thirteen years total working experience, out of which seven years should be after Ph.D at least three years at the level of Associate Professor with Academic Grade Pay of Rs.9500 or four years at the level of Associate Professor with Academic Grade Pay of Rs.9000 or combination of Rs.9000 and Rs.9500 or equivalent in an Institution of repute or Research & Development lab or relevant Industry.	80
6.	Professor (Higher Administrative Grade Scale) Rs. 67000-79000	Ph.D		150



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Note 1:

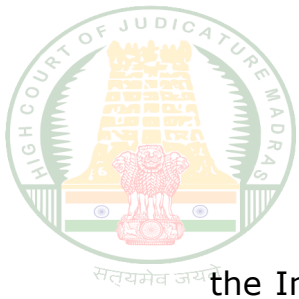
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(1) Any change in the grade pay will be through open advertisement and on recommendation of duly constituted selection committee, except where specifically exempted in these rules.

.....

(5) For the departments which are not having any vacancy, movement in higher Academic Grade Pay or cadre shall be carried out as per specified selection process but it will be restricted to only for serving faculty members of the respective departments."

5.13.Thus, a combined reading of the First Statutes, 2009 and the Amendment Statutes, 2017 would be essential to understand the anomalies and intricacies in the matters of appointment and conditions of service of faculty of the Institutes. The Statutes 23(1) of the First Statutes, 2009 provides for a ratio between the direct recruitment and promotion posts for the posts other than of the Director or Deputy Director as per the recruitment rules. Statute 23(5) of the First Statutes, 2009 and Statute 23(5)(a) of the Amendment Statutes, 2017 provides for filling up of posts under the institute by advertisement or by promotion from amongst the members of staffs of



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the Institute. Hence note 1.1 & 1.5 of Schedule 'E' of the Amendment Statutes, 2017 should not be read deviating from the mandates of the statutes, but should be read in consonance to the statutes.

5.14.An Act is a legislative proclamation codifying the existing body of law, while statute is the law itself. Under the rule of interpretation in India, the court try to interpret statute on the literal, ordinary, popular and common meaning of the word and phrases. This rule postulates that it is the duty of the court to expand the law as it stands and not to modify, alter or quantify it's language.

5.15.The Principal Act, 2007 and the corresponding statutes together provides a legislative mandate. Section 24 of the Principal Act, 2007 mandates that all appointments of staff except of the Director and Deputy Director in NITs should be made in accordance with the procedure laid down in the Statutes. It is the Statutes which provides for the classification, the method of appointment and the determination of the terms and conditions of service of Teachers and other staff of the Institute as per Section 25 of the Principal Act, 2007. Section 26 of the Principal Act, 2007, envisages how statutes ought to be made.



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5.16.The Board of Governors of NITs under Section 26(2) of the Principal Act, 2007 may from time to time make new or additional statutes or may amend or repeal the Statutes by resolving the same by the Board in the form of recommendations and place the same before the Hon'ble President of India for approval and assent, in the capacity of the visitor of NITs, in accordance with the provisions of Section 26(3) and 26(4) of the Principal Act, 2007. Any new or additional statutes or amendment or repeal of statutes shall require the previous approval of the Visitor. The Visitor may (i) grant assent or (ii) withhold assent or (iii) remit it to the Board for consideration. In case of grant of assent by the Visitor, the Board shall forward the approved notifications with a request to notify the amendments or additional statutes or new statutes or repeal of statute in Gazette. After notifying the same in Gazette as per statute 1.3 of the First Statutes, 2009, the same shall be placed before the Board of Governors for the adoption and implementation of the provisions contained therein.



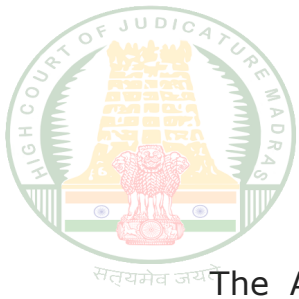
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5.17.The Central Government in exercise of the powers conferred by sub-Section (1) of Section 26 of the Principal Act, 2007, with the prior approval of the Visitor framed the First Statutes of the National Institutes of Technology dated 23.04.2009. Thereafter, Amendment to the First Statutes of the NITs dated 21.07.2017 was further carried out in exercise of the powers conferred by sub-Section (3) and (4) of Section 26 of the Principal Act, 2007 with the prior approval of the Visitor. The First Statutes, 2009 and the Amendment Statutes, 2017 are the facet of the Principal Act, 2007 and the statutes takes its roots from the Principal Act, 2007. The statutes particularizes the generality in the Principal Act, 2007 and identifies in a constitutional sense 'equality of opportunity" in matters of employment and appointment of staffs, including academic staff, technical staff and Administrative and other staffs in NITs. The word "employment" being wider, there is no dispute that it takes within its fold, the aspects of promotions to posts above the stage of initial level of recruitment.

5.18.Statutes 23(1) and 23(5)(a) of the First Statutes, 2009 mandates that the vacancies of the academic staffs shall be filled by advertisement in all India basis providing for the ratio between the Direct Recruitment and Promotion posts as per the recruitment rules.

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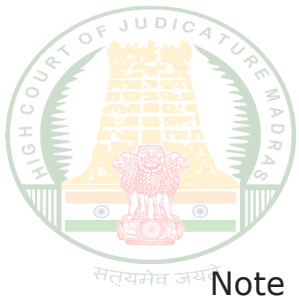
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The Amendment Statutes, 2017, brought in amendment in Statute 23(5)(a) mandating that the qualification and other terms and conditions of appointment of Academic Staff **or promotion** shall be specified in Schedule 'E'. Note 1.1 to Schedule 'E' of the Amendment Statutes, 2017, provides that any change in grade pay will be through open advertisement and on recommendation of duly constituted selection committee.

5.19. The Department of Higher Education, Ministry of Human Resource Development, Government of India by its impugned memorandum, dated 16.04.2019 in serial No.16 clarified that the word **"Promotion"** used in Recruitment Rules / Guidelines / MHRD communications should be read as **"Appointment through Direct Recruitment"**. Challenging the clarification in serial No.16 of the said memorandum dated 16.04.2019, W.P(MD)No.11456 of 2023 came to be filed. The formidable contention of the petitioners is that the statutes which has got force of law applicable to the second respondent institute is sought to be amended by an executive order issued by the first respondent. The respondents defended the said contention by relying upon Note 1.1 of Schedule 'E' of the Amendment Statutes, 2017, that 'dehors' the impugned clarification in serial No.16,

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Note 1.1 of Schedule 'E' of the Amendment Statutes, 2017 has already done away with the word "promotion" and any change in grade pay will be through advertisement.

5.20. Now the issue to be decided is as to:-

"(i) Whether the impugned clarification of the first respondent dated 16.04.2019 in serial No.16 an executive order which supersedes the mandates of the available statutes on "promotion" in NIT, Trichy?

(ii) Whether Note 1.1 in Schedule 'E' of the Amendment Statutes, 2017, itself has done away with the word "promotion" dehors the impugned clarification dated 16.04.2019?"

5.21. The Hon'ble Apex Court in the case of **Jagdish Prasad Vs. State of Rajasthan and others** reported in **AIR 2011 SC 3189**, while dealing with a case pertaining to Rajasthan Transport Service Rules, 1979 and its schedule, has held as follows:-

"21. It is a settled principle of law that the Schedule of the 1979 Rules has to be in conformity



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with, and is required to advance the object of the primary statutory provision. Thus, a schedule cannot in any way wipe out the statutory provisions of the Act in effect and spirit.

.....

24..... In the case of Union of India and another Vs. Hemraj Singh Chauhan and others reported in [(2010) 4 SCC 290] this Court while dealing with somewhat similar situation held as under:

"35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution."



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25.It is equally true that the rule of fairness in Government action is an essential feature. However, such fairness has to be founded on reasons. Usually, the providing of Reasons demonstrates the concept of reasonableness but where the statutory rules provide the circumstances and criteria, ambit and methods by which the selection should be governed, they would become the yardstick of fairness."

5.22.The Hon'ble Apex Court in the case of **Sant Ram Sharma Vs. State of Rajasthan and others** reported in **AIR 1967 SC 1910**, has held as follows:-

"7..... It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."



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5.23.The Hon'ble Apex Court in the case of **Union of India and another Vs. Ashok Kumar Aggarwal** reported in **(2013) 16 SCC 147**, has held as follows:-

"58. A Constitution Bench of this Court while dealing with a similar issue in respect of executive instructions in Sant Ram Sharma v. State of Rajasthan & Ors., AIR 1967 SC 1910, held:

"7.....It is true that the Government cannot amend or supersede statutory Rules by administrative instruction, but if the Rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the Rules already framed."

59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide: Union of India & Ors. v. Majji Jangammayya & Ors., AIR 1977 SC 757; P.D. Aggarwal & Ors. v. State of U.P. & Ors., AIR 1987 SC 1676; Paluru Ramkrishnaiah & Ors. v. Union of India & Anr., AIR 1990 SC 166; C. Rangaswamaiah & Ors. v. Karnataka



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Lokayukta & Ors., AIR 1998 SC 2496; and JAC of Airlines Pilots Association of India & Ors. v. The Director General of Civil Aviation & Ors., AIR 2011 SC 2220).

60. Similarly, a Constitution Bench of this Court, in Naga People's Movement of Human Rights v. Union of India., AIR 1998 SC 431, held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions."

The discussions in the aforesaid Judgments mandates that the Government cannot amend or supersede statutory rules by administrative instructions or executive orders. Such administrative instructions even if issued without contravening the statutory rules shall supplement the statutory rules, but not supplant the same. No doubt, vide impugned memorandum dated 16.04.2019, the first respondent in clarification in serial No.16 has substituted the word "promotion" with the words "appointment through direct recruitment". The said exercise totally supplants the existing promotion policy provided by Section 24 and 26 of the Principal Act, 2007 read with Statutes 23(1) and 23(5)(a)(1) of the First Statutes, 2009 and the Amendment Statutes, 2017 respectively.



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5.24.As far as the submission of the respondents that dehors the impugned clarification dated 16.04.2019, Note 1.1 of Schedule 'E' of the Amendment Statutes, 2017 itself has done away with the word "promotion", I am inclined to rely upon the observation of the Hon'ble Apex Court in ***Aphali Pharmaceuticals Limited Vs. State of Maharastra and others*** reported in ***(1989) 4 SCC 378***, the relevant portion of which is extracted as follows:-

"29.This brings us to the question of interpretation of the Act and the Schedule with the Explanation, in view of the submission that the Explanation could not have rendered item 3(i) of the Schedule redundant. Was there any change of intention of the Legislature in this regard?

30.A Schedule in an Act of Parliament is a mere question of drafting. It is the legislative intent that is material. An Explanation to the Schedule amounts to an Explanation in the Act itself. As we read in Halsbury's Laws of England, Third Edition, Vol. 36, para 551: "To simplify the presentation of statutes, it is the practice for their subject matter to be divided, where appropriate, between sections and schedules, the former setting out matters of principle, and introducing the latter, and the



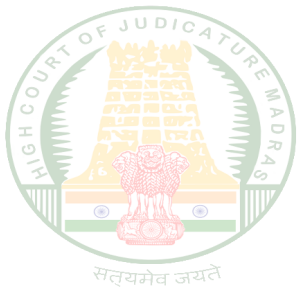
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*latter containing all matters of detail. This is purely a matter of arrangement, and a schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced." The schedule may be used in construing provisions in the body of the Act. It is as much an act of Legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the schedule and the enactment the enactment is to prevail and if any part of the schedule cannot be made to correspond it must yield to the Act. Lord Sterndale, in *Inland Revenue Commissioners v. Gittus*, [1920] 1 K.B. 563 said:*

"It seems to me there are two principles of rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for the purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find in the



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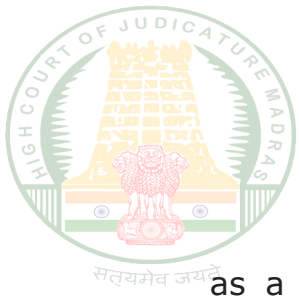


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language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act."

31.The above observation was not disapproved in appeal (1921) 2 A.C. 81. However, the basic principle is that in case of a conflict between the body of the Act and the Schedule, the former prevails."

5.25.Thus it is no more res integra that, the Schedules are parts of the statute itself and may be looked in by the Courts only for the purpose of interpreting the main body of the statute. A schedule is an appendix attached to any act, supplementing the legislation with additional information. Hence, while interpreting the schedules, aid may always be drawn from the main body of the Act to find out the true spirit of the Act. That apart, whenever there is a conflict between the main statute and the appended schedule, the statute must be read



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as a whole and one provision of the Act should be construed with reference to the other provisions in the same statute, so as to make a consistent enactment of the whole statute. Precisely when the statutes provides for a ratio between Direct Recruitment and promotion posts categorically, Note 1.1 of Schedule 'E' of the Amendment Statutes, 2017 shall not be interpreted so as to do away with the term "promotion" contradicting with the Statutes thereby depriving the petitioners' fundamental right to be considered for promotion as guaranteed under Article 16(1) of the Constitution of India. Under the facts and circumstances of this case, I have no hesitation to hold that the impugned memorandum/clarification of the first respondent dated 16.04.2019 is certainly an administrative direction which supersedes the mandates of the Principal Act, 2007, the First Statutes, 2009 and the Amendment Statutes, 2017 and hence the same is liable to be quashed as *per se* illegal in W.P(MD)No.11456 of 2023.

5.26.The next issue to be decided is the legality of the impugned notification for faculty recruitment dated 14.06.2023 issued by the fourth respondent Institute inviting applications for recruitment of 64 posts of Assistant Professor (Grade-II) in pay level 10 in 7th CPC, Assistant Professor (Grade-II) in pay level 11 in 7th CPC, Assistant

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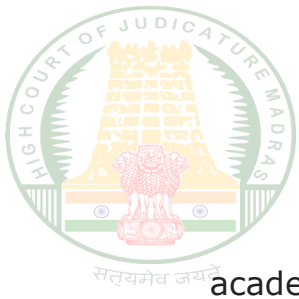


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Professor (Grade-I) in pay level 12 in 7th CPC, Associate Professor in pay level 13A2 in 7th CPC and Professor in pay level 14A in 7th CPC. W.P(MD)Nos.14579 and 17723 of 2023 are filed assailing the said notification.

5.27.The sum and substance of the contention of the petitioner in W.P(MD)No.14579 of 2023 and the petitioner Association in W.P(MD)No.17723 of 2023 is that the recruitment notification of the fourth respondent dated 14.06.2023 is illegal, arbitrary and in violation of the provisions of the Principal Act, 2007 and the applicable Statutes of NIT, Trichy. Section 24 of the Principal Act, 2007 makes it abundantly clear that all appointments of staff of every NITs except Director and Deputy Director shall be made in accordance with the procedures laid down in the Statute. Section 26 of the Principal Act, 2007 provides for the procedure to amend the statute. Such amendment of statute applicable to NITs are subject to the assent of the visitor. Therefore, as long as the existing statute is not amended and as long as the amended statutes is not notified after obtaining assent from the visitor, the fourth respondent is bound to follow the provisions of the existing statutes. As per the provisions of the existing statute applicable to the respondents 2 to 4, the vacancies in the



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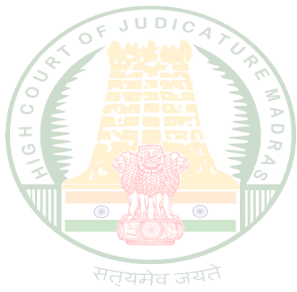
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academic staff shall be filled up both by direct recruitment and promotion according to the ratio as per the recruitment rules.

5.28. But even before the disposal of these Writ Petitions in a hurry burry manner, the second respondent Board brought in the Notification to amend the First Statutes of NIT, Trichy, called the First Statutes of the National Institutes of Technology (Amendment) Statutes, 2023 (hereinafter referred as to 'the Amendment Statutes, 2023') with the prior approval of the Visitor. By way of the said Amendment Statutes, 2023, the word "promotion" is omitted and the relevant portion is extracted as follows:-

*"4. In the principal Statutes, in Statute 23-
(a) in sub-statute (5), in the opening portion,
the words "or by promotion" shall be omitted".*

Following which, the same was published in the Gazette on 08.07.2023 giving full effect to the same.



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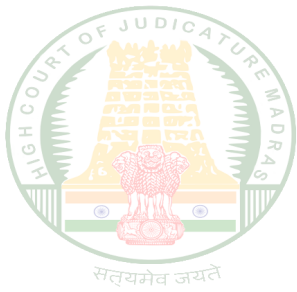
5.29.Now, the pertinent question to be decided is that:-

“(i) In the light of the Amendment Statutes, 2023, whether the impugned notification of the fourth respondent, dated 14.06.2023 could be upheld. and

(ii) Whether a subsequent statutory amendment could validate a prior recruitment notification retrospectively?”

5.30.The learned Senior Counsel appearing for the petitioners assailed the entire amendment process as per se illegal. Relying upon the Judgment of the Hon'ble Apex Court in **Babaji Kondaji Garad and Ors. Vs. Nasik Merchants Co-operative Bank Limited** reported in **1984 (2) SCC 50**, he submitted that when a statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be found in the statute. Referring to the official memorandum of the first respondent dated 26.05.2023, the learned Senior Counsel appearing for the petitioner submitted that the Amendment Statutes, 2023 was not notified as required by Section 26 of the Principal Act, 2007. For better appreciation, the said communication is extracted as follows:-

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E.No.35 -7/2022 TS III
Government of India
Ministry of Education
Department of Higher Education

Shastri Bhawan, New Delhi,
dated, the 26th May, 2023

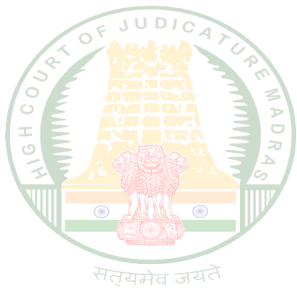
To

1. The Directors of all 31 NITs; and
 2. The Director, IEST – Shibpur (West Bengal)
- Subject:- Amendment in the statutes of 30 NITs, IEST-Shibpur and NIT.

Sir / Madam,

I am directed to refer to this Ministry's letter F.No. 35-5/2017-TS.III dated 27th October, 2020 (Copy enclosed) on the above mentioned subject.

2. All the 31 NITs and IEST-Shibpur have already conveyed the resolutions / recommendations of the Board of Governors of their Institutes under Section 26(2) of the NITSER Act, 2007 for facilitating amendments in the Statutes of NITs, IEST-Shibpur and NIT-Andhra Pradesh and placing same before the Hon'ble President of India for approval and assent, in capacity as the Visitor of these Institutions, in accordance with provisions under Section 26(3) and (4) of the NITSER Act, 2007.
3. In this context, it is informed that the Hon'ble Visitor of NITs and IEST-Shibpur has approved the amendments in the Statutes of NITs IEST-Shibpur and NIT-Andhra Pradesh in terms of provisions under Section 26(3) and (4) of the NITSER Act, 2007.
4. The English and Hindi versions of approved notifications are forwarded through email with a request to notify the amendments in Gazette at any early date and



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subsequently place the amended Statutes before Board of Governors for its adoption and implementation of the provisions contained therein.

Yours faithfully

Encl.: as above

(XXXX)

Deputy Secretary to the Government of India

Tel: 23384159

Copy to:-

- 1. The Registrars of all 31 NITs; and*
- 2. The Registrar, IEST-Shibpur (West Bengal)."*

5.31.The learned Senior Counsel appearing for the petitioners claimed that as per Section 26(1)(2)(3)&(4) of the Principal Act, 2007, after the framing of the First Statutes, 2007 by the Central Government with the prior approval of the Visitor, it is the Board of Governors (whose authority emanates from Section 10 of the Principal Act, 2007, read with Statute 3 of the First Statutes, 2009) with whom certain powers and functions under the Principal Act, 2007 and Statute 5 of the First Statutes, 2009 are entrusted with. The Central Government cannot meddle with the institutional autonomy of the NITs by issuing executive instructions. The official communication of the first respondent dated 26.05.2023, in its 1st para refers to another



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communication of the first respondent, dated 27th October, 2020, a perusal of which would bring to light, the way the institutional autonomy of the NITs are crippled in violation to the mandates of the Principal Act, 2007 and the relevant Statutes. The said communication of the first respondent dated 27.10.2020 was addressed to the Directors of all NITs. For more clarity about the case in hand, the relevant portion of the same is extracted as follows:

F.No.35 – 5 /2017 – TS.III
Government of India
Ministry of Education
Department of Higher Education

Shastri Bhawan, New Delhi,
dated, the 27th October, 2020

To

- (i) The Directors of all 31 NITs; and
- (ii) The Director, IEST, Shibpur (W.B.)

Subject:- Amendments in the Statutes of NITs and IEST, Shibpur - request to convey recommendations of the Board of Governors of the Institute – regarding.

Sir/Madam,

I am directed to refer to this Ministry's communication F.No.33-9/2011-TS.III dated 16th April, 2019 (copy enclosed) vide which the clarifications, as per recommendations of the Oversight

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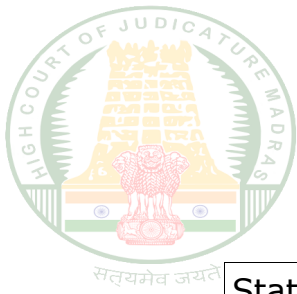


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Committee constituted to look into further issues / anomalies in the Faculty Recruitment Rules notified on 24th July, 2017, were conveyed to all the NITs and IEST, Shibpur for its adoption and implementation.

2. As mentioned in para 3 of the aforesaid communication, the recommendations of the Oversight Committee were divided into two categories viz., (i) clarifications on existing RRs; and (ii) amendments in RRs notified on conveyed to the NITs and IEST, Shibpur, however, the amendments linked with point (ii) were placed under the Council of NITSER in its 12th meeting held on 25th September, 2019. The Council of NITSER in its above meeting approved the recommendations of the Oversight Committee and authorized the Ministry to carry out necessary amendments in the Statutes of NITs and IEST, Shibpur for smooth implementation of Faculty Recruitment Rules (2017). The minutes of the Council's meeting were conveyed vide our letter No.F. 35-9/2019-TS.III dated 26th December, 2019.

3. In accordance with the decisions of the Council of NITSER taken in its 11th and 12th meetings, respectively, the following amendments are to be carried out in the Statutes of NITs and IEST, Shibpur:-



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Statutes No.	Existing Provisions	Gist of Amendments
23(5)(a)	The qualification and other terms and conditions of appointment of Academic staff (excluding Director), or promotion shall be as specified in Schedule 'E' and the Selection Committee for making recommendations for appointment of Academic Staff (excluding Director) shall consist of the following members, namely:-	Considering the amendments approved by the Council in its 12th meeting held on 25.09.2019 and keeping in mind the requirement of incorporating the clarifications, issued in past, under the ambit of the Statutes in exercise of provisions under Clause (3) of Statute 23, it is proposed to substitute Schedule 'E' of Statutes of NITs, IIEST-Shibpur and NIT-Andhra Pradesh. While incorporating above, the revised Schedule 'E' shall comprise following recommendations of Oversight Committee, as approved by the Council:- (a) one-time relaxation to all regular Faculty = 50 years with Ph.D to be eligible for mapping to higher positions with lesser credit points; (b) amendment in qualifications in RRs for Faculty in Architecture/Planning; and (c) replacement of words "since the last promotion" with words "since the last appointment" in Schedule 'E' of the Statute 23(5)(a) of Statutes of NITs and IIEST.



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5.32.A combined reading of the impugned clarification of the first respondent dated 16.04.2019, the consequent communication the first respondent dated 27.10.2020 and 26.05.2023 would elucidate how a new amendment, namely "The First Statutes of the National Institutes of Technology (Amendment) Statutes, 2023" is notified by the various NITs including NIT, Trichy. The tabulation devised below would elaborate how the power given to the NITs, by the mandatory statutes to do certain specific things were forbidden by the first respondent, by deviating from the prescribed mandates, in making the statutory amendment, namely the Amendment Statutes, 2023.

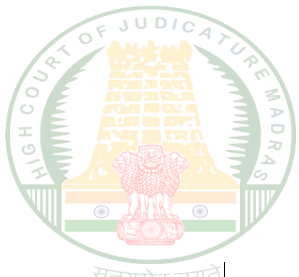
Sl. No.	Date	1 st respondent Central Government	Council of NITSER	Board of NITs
1.	15.05.2018	Constituted oversight Committee to look into further issues / anomalies in the revised Recruitment Rules (RRs) notified for faculty on 24.07.2017.		
2.	May, 2018	NITs were directed to forward left out anomalies.		



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3.	19.01.2019	Oversight Committee meeting held and made recommendations to the first respondent.		
4.	19.01.2019	Recommendations of Oversight Committee are on (i) clarifications on existing revised Recruitment Rules and (ii) Amendments in revised Recruitment Rules notified on 24.07.2017.		
5.	16.04.2019	Impugned clarification containing 17 items including clarification 16 – clarifying to read the term “promotion” as “Appointment through Direct Recruitment” issued by the first respondent.		
6.	November, 2019	Clarification on revised Recruitment Rules and Amendments in Recruitment Rules, 2017 communicated by the first respondent to the Council.		



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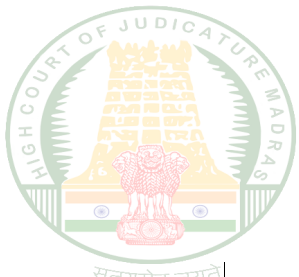
7.	25.09.2019		The Clarifications and proposed amendments were placed before the Council of NITSER in its 12 th meeting approved the recommendations of the Oversight Committee constituted by the Ministry / first respondent.	
8.	26.12.2019		The minutes of the Council communicated to all NITs.	
9.	27.10.2020	The first respondent's communication to all NITs regarding the approval of the Oversight Committee's recommendation by NITSER Council.		



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10.	14.12.2020			The Board of NIT, Trichy in its minutes of the 61 st meeting resolved that the amendments to be carried out in the Statutes of NITs and IEST as per para 3 of the Ministry of Education communication vide F.No. 35-5/2017 – TS.III dated 27.10.2020 be adopted.
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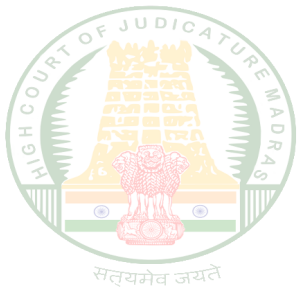


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11.	26.05.2023	Communication from the first respondent that the resolutions / recommendations of the Board of Governors of NITs under Section 26(2) of the Principal Act, 2007 was placed before the Visitor for approval and assent under Section 26(3) and (4) of the Principal Act, 2007 and duly approved and sent for notifying in Gazette.		
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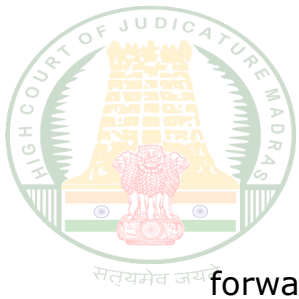
Pursuant to the approval of the resolution for amendment of statutes by the Board of Governors of NIT, Trichy on 14.12.2020, the said First Statutes of the National Institutes of Technology (Amendment) Statutes, 2023 vide National Institutes of Technology, Tiruchirappalli, notification dated 14.06.2023 with the prior approval of the Visitor, obtained in May, 2023, was sent to the Gazette for notification on 05.07.2023 and was notified / published in Gazette on 08.07.2023, thereby giving statutory force to the same. It is significant to observe here that, the Board of Governors issued the impugned recruitment notification and the NIT (Amendment) Statutes, 2023 simultaneously on the same day, that is, 14.06.2023.



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5.33.The Board of Governors being the prime authority of NITs is empowered by Section 13(1), 13(2)(a), 13(2)(c) and 13(2)(d) of the Principal Act, 2007, to decide on **questions of policy** relating to the administration and working of the Institute, **make statutes** and institute and appoint persons to academic as well as other posts in the Institute. Under Section 13(3) of the Principal Act, 2007, the Board has the power to appoint such committees, as it considers necessary for the exercise of its powers and the performance of its duties under the Principal Act, 2007. Hence it is crystal clear that, it is not the first respondent Ministry, but the Board of Governors of the respective NITs which should have constituted an Oversight Committee to look into the issues/anomalies in the revised Recruitment Rules (RRs) notified for faculty on 24.07.2017. The recommendations constituted by the Oversight Committee of the respective NITs should have been placed before the highest policy making/advisory body of NITs, namely the Council of National Institute of Technology, Science and Research (NITSER). The council of NITSER as **mandated by Section 32** of the Principal Act, 2007 should have co-ordinated the recommendations of the various NITs and on the basis of which should have laid down a policy regarding the anomalies in the revised Recruitment Rules, 2017. Thereafter, the minutes of the Council of NITSER should have been



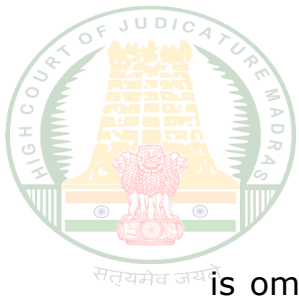
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forwarded to all NITs and the first respondent. Only then, the respective Board of Governors of the various NITs should have resolved resolutions pertaining to the captioned subject and should have placed before the Visitor for approval. But nothing as narrated above transpired. On the other hand, the first respondent Ministry usurped the Board's powers of constituting committees and making statutes, by conceiving a trajectory path by its own way dictating the Council of NITSER and the Board of Governors of the various NITs, as to what should be resolved. The crisp, non-speaking resolution of the Board of Governors, NIT, Trichy, dated 14.12.2020 following para 3 of the first respondent's communication dated 27.10.2020 would suffice to prove this. Hence this Court is of the considered view that, the entire exercise of carrying out amendment to the First Statutes vide the Amendment Statutes, 2023 was not done in accordance to the procedure established by law. The entire exercise was done violating the procedure established by the Principal Act, 2007 and the First Statutes, 2009.

5.34. Now the significant aspect to be decided by this Court is as to whether the Amendment Statutes, 2023 by which, in Statute 23 (5) (a), in the opening portion, the words "or by promotion"

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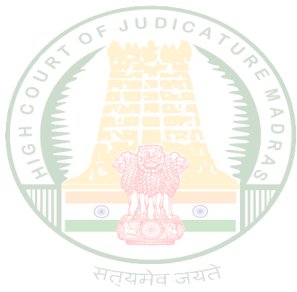
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is omitted, is done in accordance to the principle contained in **Taylor Vs. Taylor (1875) [1 Ch.D.426]**?. The Hon'ble Apex Court in the case of **Noor Mohammed Vs. Khurram Pasha** reported in **AIR 2022 SC 3592** has held as follows:-

"13..... It is well known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in Nazir Ahmad v. King Emperor AIR 1936 Privy Council 253 (2), a Bench of three Judges of this Court made following observations in State of Uttar Pradesh Vs. Singhara Singh and Others reported in AIR 1964 SC 358:-

7.In Nazir Ahmed case, MANU/PR/0111/1936 : 63 Ind. App 372 : AIR 1936 PC 253 (2) the Judicial Committee observed that the principle applied in Taylor Vs. Taylor [(1875) 1 Ch D 426, 431] to a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden...."



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5.35.Once the First Statutes were framed on 23.04.2009 by the Central Government, the predominant role of the Central Government in the making of Statutes of NITs ceases. The power to make new or additional Statutes or amend or repeal of Statutes may from time to time vest fully with the respective Board of Governors of the NITs. After framing of the First Statutes, 2009, neither the Central Government nor the Council of NITSER has any role in the making of statutes. They play a sheer advisory role on the basis of the policy laid by the Council of NITSER. But while making the amendment in the First Statutes, 2009, by notifying the Amendment Statutes, 2023, it is seen, as explained supra in the tabulation, that the recommendations of the Oversight Committee constituted by the first respondent Ministry were placed before the Council of NITSER, following which, the first respondent Ministry further communicated the minutes of the Council of NITSER to all the NITs. In furtherance to the same, the Board of Governors of all NITs resolved **to carry out amendment as per para 3 of the Ministry of Education Communicated vide proceedings dated 27.10.2020 to be adopted**. Thus the first respondent Ministry has taken a lead role by usurping the powers and duties of the authorities of the Institute, that is, the Board of



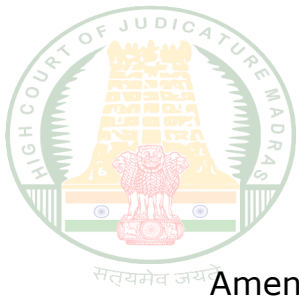
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Governors and reducing the said statutory authority of the NITs as the rubber stamps of the first respondent. The first respondent and the policy making advisory body, that is, the Council of NITSER have acted without Statutory authority crippling the authority and powers of the Board of Governors of all NITs.

5.36. In view of the above analysis, it is needless to say that the statutory authority given to the Board of Governors of NITs to make / amend Statutes in a particular way as mandated in Section 26 of the Principal Act, 2007, has not been done in that way, but the said powers being usurped by the first respondent is a forbidden interference, taking away the institutional autonomy guaranteed to all NITs under the Principal Act 2007, the First Statutes, 2009 and the Amendment Statutes 2017.

5.37. Be that as it may, since the Amendment Statutes, 2023, which came into effect on the date of its notification on 08.07.2023 has not been challenged in any of these Writ Petitions, now the final question to be decided is whether a recruitment process commenced by a prior recruitment notification dated 14.06.2023 shall be carried out on the basis of a subsequent statute namely, the

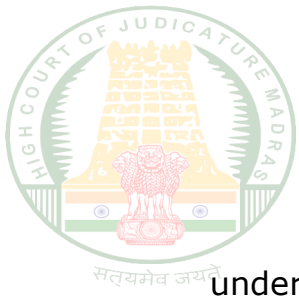


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Amendment Statutes, 2023, which came into effect with effect from 08.07.2023 giving retrospective effect?.

5.38.The learned Senior Counsel appearing for the petitioners emphatically relying on the Judgment of the Hon'ble Apex Court in **the Employees State Insurance Corporation Vs. Union of India (UOI) and others** reported in 2022 (11) SCC 392 submitted that any part of the recruitment advertisement which is contrary to the statutory rules has to give way to the statutory prescription. He propounded that when there is a variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence. Here is a case where the fourth respondent Institute vide it's impugned recruitment notification dated 14.06.2023 has invited applications from qualified candidates in violation of Section 24 of the Principal Act, 2007, the First Statutes, 2009 and the Amendment Statutes, 2017. When the statutes applicable to the fourth respondent mandates that the vacancies of the academic staffs shall be filled up either by direct recruitment or by promotion according to the ratio, all 64 academic posts in various departments of the fourth respondent are sought to be filled up by direct recruitment denying the right of promotion of the members of the petitioner association /petitioner which is guaranteed



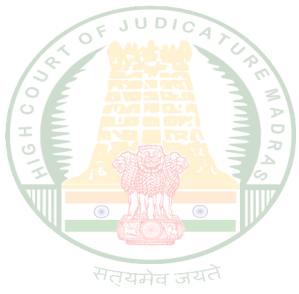
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under the governing statutes and hence the impugned notification is liable to be quashed.

5.39.The learned counsel appearing for the respondents 2 to 4 refuted the contentions of the learned Senior Counsel appearing for the petitioners by elaborating that the term “promotion” in statute 23 of the First Statutes, 2009, should be read with reference to the staff of the institute excluding “Academic Staff” and asserted that both the erstwhile rigid 3 tier faculty structure under the Career Advancement Scheme and the present flexible 4 tier cadre structure provides only to fill up vacancies classified as Academic posts to be filled up only by way of Direct Recruitment. This is the rule position even when the fourth respondent Institute functioned as the Regional Engineering College (REC) from 1964. To substantiate the same, G.O.Ms.No.155, Higher Education (J1) Department, dated 01.02.1990 was placed before me and the relevant portion of which is extracted as follows:-

“(e) Recruitment:- Appointment to the posts of Lecturers, Assistant Professors, Professors, Principal, Librarians and Directors of Physical Education /



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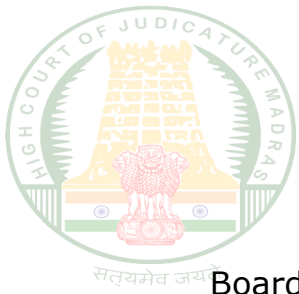


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Physical Education Instructors shall be by open selection on the basis of merit as per prescribed qualifications and experience."

5.40.No doubt, though the mandates of the Principal Act, 2007 and the applicable statutes provides for promotion of Academic Staff, by one way or other, the NITs across India adopted procedures deviating from the relevant statutes from time to time in the matter of promotion of the academic staffs. The impugned recruitment notification dated 14.06.2023 has explicitly done away with the promotion process by inviting applications for direct recruitment. Unless and until the term "promotion" in statute 23(5)(a) of the Amendment Statutes, 2017 is omitted by way of an amendment, the impugned recruitment notification dated 14.06.2023 is a clear case of violation of the Principal Act, 2007 and the relevant statutes.

5.41.In the meanwhile, the entire anomaly has been rectified by the respondents by the notification of the Amendment Statutes, 2023, dated 14.06.2023 which came into effect on 08.07.2023, wherein an amendment "omitting" the word "promotion" in Statute 23(5)(a) has been carried out by the second respondent



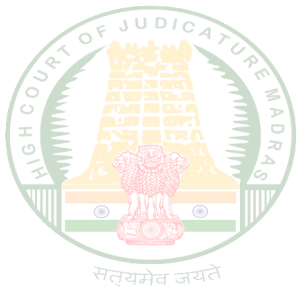
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Board. Now, the question is whether the appointments of the academic posts that fell vacant prior to the Amendment Statutes, 2023 would be governed by the old statutes or the Amendment Statutes, 2023?

5.42.It is needless to state that there is no right for an employee outside the rules governing the services. It is true that the origin of Government service is contractual. But once appointed to his post, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The extent of which the law is context to bring the matter within the sphere of status, is a matter depending on considerations of public policy. The Hon'ble Apex Court in the case of **Roshan Lal Tandon Vs. Union of India (UOC)** reported in **AIR 1967 SC 1889** has dealt with this issue and the relevant portion of which is extracted as follows:-

"9.We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his

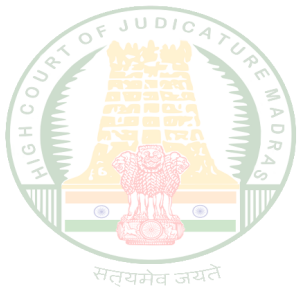


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disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor



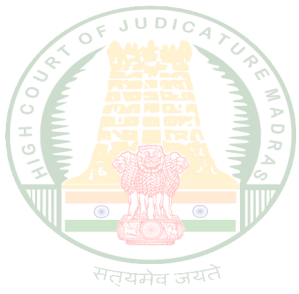
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under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

"So we may find both contractual and status-obligations produced by the same transaction. the one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations de- fined by the law, itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of



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contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by mining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."

10.(Salmond and Williams on Contracts, 2nd edition p. 12).

5.43.This Court recognized a pertinent factor on the basis of which the respondent Institute refrain from filling up the vacancies as per Section 23(5)(a) of the Amendment Statutes, 2017 and the Principal Act, 2007. The reason mentioned in this case is betterment of the academic cadre. In a recruitment by State, there is no right to be appointed but only a right to be considered fairly. Conditions of service



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including matters of promotion are governed by extant rules. There are no vested rights independent of the Rules governing the service. The petitioners in W.P(MD)No.11456 and 17723 of 2023 claim their right to be considered fairly for promotion on the basis of the Principal Act, 2007, the First Statutes, 2009 and the Amendment Statutes, 2017. In W.P(MD)No.14579 of 2023, this Court has quashed the impugned clarification memorandum of the first respondent, dated 16.04.2019, as the same was issued in violation of the main statutes and the Principal Act, 2007. Hence, both the writ petitions in W.P(MD)No.11456 and 17723 of 2023 filed challenging the recruitment notification dated 14.06.2023 of the fourth respondent gains significance, for the reason that the petitioners claim that the said notification is issued violating the mandate of Section 24 of the Principal Act, 2007. During the pendency of all these three Writ Petitions, the fourth respondent has duly notified the Amendment Statutes, 2023, by which the word “promotion” in Statute 23(5)(a) has been omitted, giving fresh lease of life to the respondents. However, the question whether the vacancies are to be filled up as per the earlier statutes which were available prior to the impugned recruitment notification dated 14.06.2023 or by way of the newly implemented Amendment Statutes, 2023, is no more res integra in view of the law



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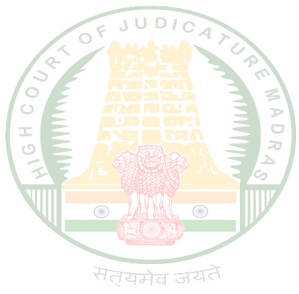
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laid down by the Hon'ble Apex Court in ***Y.V.Rangaiah and others Vs. J.Sreenivasa Rao and others*** reported in **(1983) 3 SCC 284**, that the recruitment should be made adopting the earlier statutes and the subsequent Apex Court Judgment in the case of State of ***Himachal Pradesh and others Vs. Raj Kumar and others*** reported in **2023 (3) SCC 773**, overruling ***Y.V.Rangaiah's case (cited supra)***.

5.44.The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objectivity can be ensured is for all promotions to be made entirely on grounds of seniority. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. The problem therefore is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able man? The question is how to find a correct balance between seniority and merit in a proper promotion policy.

5.45.In the introduction to the study of Public Administration, 4th Edition, pp 380-83, Leonard D.White has stated as follows:-

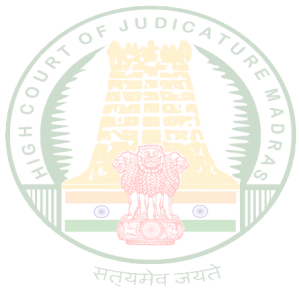
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"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole Organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the Promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment. Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level. it is a dangerous guide. It does not follow that the employee longest in service in a particular trade is best suited for promotion to a higher grade; the very opposite may be true".



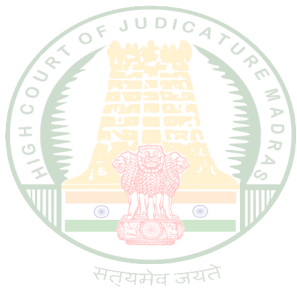
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5.46.It is in this background that the employment of a public servant is to be understood. Though the relationship between the members of the petitioner society / petitioner and the respondent originates in a contract of appointment, by virtue of the Constitutional constraint, coupled with the legislative and executive Rules governing the service, the relation attains a unique position, as being a 'status' as against a contract. The Hon'ble Apex Court in the case of ***State of Himachal Pradesh and others Vs. Raj Kumar and others*** reported in ***(2023) 3 SCC 773***, following the principle laid down in ***Roshan Lal Tandon's case (cited supra)*** has arrived at the following propositions:-

"10. The principle laid down in Roshan Lal Tandon's case is followed in a number of decisions of this Court. The following are the propositions emanating from the principles laid down in these precedents.

(i) Except as expressly provided in the Constitution, every person employed in the civil service of the Union or the States holds office during the pleasure of the President or the Governor (Article 310). Tenure at pleasure is a constitutional policy for rendering services under the state for public interest and for the public good, as explained in Tulsiram Patel (supra).



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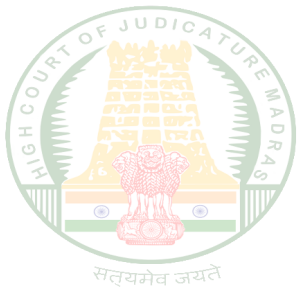
(ii) The Union and the States are empowered to make laws and rules under Articles 309, 310 and 311 to regulate the recruitment, conditions of service, tenure and termination. The rights and obligations are no longer determined by consent of the parties but by the legal relationship of rights and duties imposed by statute or the rules. The services, thus, attain a status.

(iii) The hallmark of status is in the legal rights and obligations imposed by laws that may be framed and altered unilaterally by the Government without the consent of the employee.

(iv) In view of the dominance of rules that govern the relationship between the Government and its employee, all matters concerning employment, conditions of service including termination are governed by the rules. There are no rights outside the provision of the rules.

(v) In a recruitment by State, there is no right to be appointed but only a right to be considered fairly. The process of recruitment will be governed by the rules framed for the said purpose.

(vi) Conditions of service of a public servant, including matters of promotion and seniority are governed by the extant rules. There are no vested rights independent of the rules governing the service.



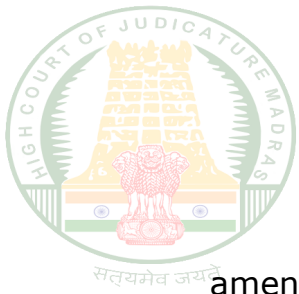
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(vii) With the enactment of laws and issuance of rules governing the services, Governments are equally bound by the mandate of the rule. There is no power or discretion outside the provision of the rules governing the services and the actions of the State are subject to judicial review.

11. In view of the above principles, flowing from the constitutional status of a person in employment with the State, we have no hesitation in holding that the observations in Rangaiah that posts which fell vacant prior to the amendment of Rules would be governed by old Rules and not by new Rules do not reflect the correct position of law. We have already explained that the status of a Government employee involves a relationship governed exclusively by rules and that there are no rights outside these rules that govern the services. Further, the Court in Rangaiah's case has not justified its observation by locating such a right on any principle or on the basis of the new Rules."

5.47.The Hon'ble Apex Court in the aforesaid case has considered a large number of decisions that distinguished ***Y.V.Rangaiah's case (cited supra)*** and observed that there is no rule which specifically mandates that the vacancies prior to the



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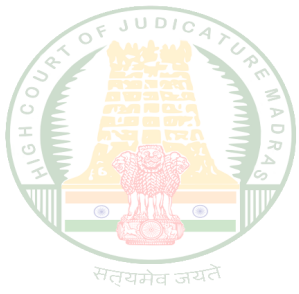
amendment must be filled as per the Rules that existed and not the new rules. The operative portion of the same is extracted as follows:-

"36. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.

2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being



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considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit.⁶¹ The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

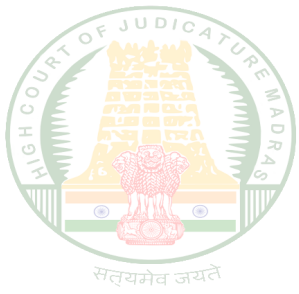
4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.

.....

37.3.....For clarity and certainty, it is, therefore, necessary for us to hold;

(a) The statement in Y.V. Rangaiah v. J. Sreenivasa Rao that, "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules", does not reflect the correct



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proposition of law governing services under the Union and the States under part XIV of the Constitution. It is hereby overruled.

(b) The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services."

5.48. Returning to the facts of the present case, in view of the implementation of the Amendment Statutes, 2023 by which the word "promotion" is omitted in statute 23(5)(a) with effect from 08.07.2023, in the light of the Hon'ble Supreme Court Judgment discussed supra, can this Court uphold the recruitment process commenced vide the impugned recruitment notification of the fourth respondent dated 14.06.2023?. It is pertinent to mention here that the Amendment Statutes, 2023 is not challenged by the petitioners. Even if the New Amendment Statutes, 2023, dated 14.06.2023, notified on 08.07.2023 is not challenged, the impugned recruitment notification dated 14.06.2023 is not legally sustainable. The reason is that, the entire amendment of the Amendment Statutes, 2023 is made violating the procedure established by the Principal Act, 2007 and the First Statutes, 2009, as a result of which the said amendment process



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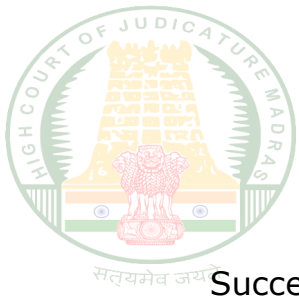
stands vitiated making the same nugatory. That apart, when the Principal Act, 2007 and the First Statutes, 2009, requires the amendment to the First Statutes, 2009 to be made in a particular manner, making of the amendment in some other manner is forbidden. I reiterate, the amendment process is bad, hence the amendment.

6.Epilogue:

6.1.The success of the technology-based industry led to high demand for technical and scientific education. Due to the enormous costs and infrastructure involved in creating globally respected Indian Institutes of Technology, in 2002, the Ministry of Human Resource Development decided to upgrade all the Regional Engineering Colleges across to “National Institutes of Technology” instead of creating IITs.

6.2.The various NITs function autonomously and such autonomy facilitate the NITs to create their own curricula and adapt rapidly to the changes in the educational requirements. Stringent faculty recruitment and industry collaboration contributes to the High

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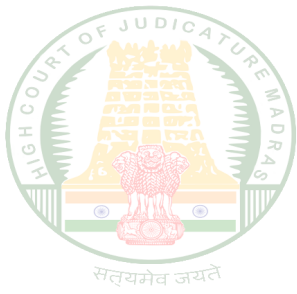


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Success rate of NITs. Institutional autonomy carries with it the obligation to nourish the democracy responsible for the existence and flourishing of these Institutions. This is especially true now when so many voices are clamoring for higher education to be the instrument of Technological and Scientific Development, contributing towards the betterment of a self-sustained economy. NITs can be such instruments. In this case, though the Amendment Statutes, 2023 has been made keeping in mind that quality is the paramount in higher education, the same is nugatory due to it's procedural lapses. Had the Amendment Statutes, 2023 been made in the manner, it ought to have been done, the impugned recruitment notification dated 14.06.2023 could have been proceeded with. Now the same has no statutory force.

6.3.I formidably conclude that in such a premier public education Institution, highest merit should rule the recruitment and promotion policy.



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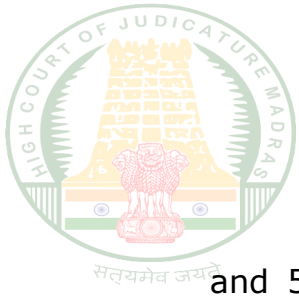
7.In fine,

(i) The impugned clarification of the first respondent dated 16.04.2019 is hereby quashed as illegal and violative of the Principal Act, 2007, the First Statutes, 2009 and the Amendment Statutes, 2017 and accordingly, **W.P(MD)No.11456 of 2023 is partly allowed.**

(ii) As the Statutes to amend the First Statutes of National Institutes of Technology, Tiruchirappalli, namely, the First Statutes of the National Institutes of Technology (Amendment) Statutes, 2023, has been made violating the procedure established by the Principal Act, 2007 and the First Statutes, 2009, this Court concludes that the entire amendment process is vitiated.

(iii) 'Dehors' the Amendment Statutes, 2023, reading the main statute and the appended Schedule 'E' of the Amendment Statutes, 2017, as a whole and one provision of the statute and the Principal Act, 2007, this Court, hereby conclude that the impugned recruitment notification of the fourth respondent dated 14.06.2023 stands quashed as far as the recruitment of the posts in Sl.Nos.2, 3, 4

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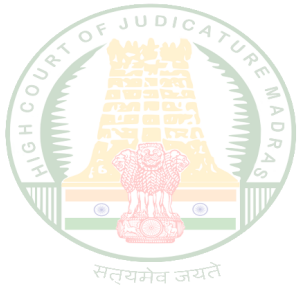
and 5 as tabulated in page 1 of the said notification. **Accordingly,**

W.P(MD)Nos.14579 and 17723 of 2023 are partly allowed.

There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

08.08.2023

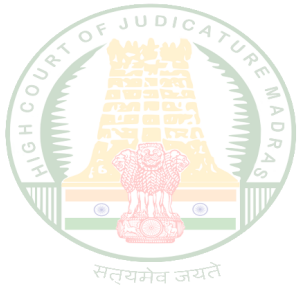
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W.P.(MD).Nos.11456, 14579 & 17723 of 2023

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To

- 1.The Ministry of Human Resource Development,
Under Secretary to the Government of India,
Now renamed as Ministry of Education,
Department of Higher Education,
Sasthiri Bhavan,
New Delhi.
- 2.The Chairperson,
Board of Governors,
The National Institute of Technology,
Trichy.
- 3.The Director,
The National Institute of Technology,
Trichy.
- 4.The Registrar (i/c),
The National Institute of Technology,
Trichy.



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W.P.(MD).Nos.11456, 14579 & 17723 of 2023

L.VICTORIA GOWRI, J.

ps

Pre-Delivery Order made in
**W.P.(MD)Nos.11456,
14579 & 17723 of 2023**

08.08.2023