

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

Reserved on : 09.05.2024
Date of Decision : 31.05.2024

1. CWP No. 15972 of 2023 (O&M)

Dr. Subrata Ghosh and others		...Petitioners
	Versus	
The Union of India and others		...Respondents

2. CWP No. 354 of 2024 (O&M)

Dr. Hanuman Devidas Chalak and others		...Petitioners
	Versus	
Board of Governors and others		...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Prateek Pandit, Advocate, for the petitioners
in CWP No. 15972 of 2023.

Mr. I. S. Pabla, Advocate, for the petitioners
in CWP No. 354 of 2024.

Mr. Vivek Singla, Advocate and
Ms. Uravashi Singh, Advocate, for respondent nos. 2 and 3
In CWP No. 15972 of 2023.

Mr. A. S. Virk, Advocate and
Mr. Sanjeev Kumar, Advocate, for respondent nos. 1 to 3
In CWP No. 354 of 2024.

Mr. Anil Chawla, Senior Panel Counsel
for respondent no. 1 – Union of India in CWP No. 15972 of 2023
and for respondent no. 4- Union of India in CWP No. 354 of 2024.

Mr. Ravinder Malik, Advocate, for respondent nos. 6 to 9
In CWP No. 354 of 2024.

Mr. Sameer Sachdeva, Advocate, for the added respondents
In CWP No. 15972 of 2023.

SANJEEV PRAKASH SHARMA, J.

CWP No. 15972 of 2023 has been preferred by the Associate
Professors/ Professors working as Teaching Faculty in Dr. B. R. Ambedkar



National Institute of Technology, Jalandhar, while the other CWP No. 354 of 2024 by the Assistant Professors in different departments of the National Institute of Technology, Kurukshetra.

FACTS

2. Several central funded institutes of engineering were converted / re-named as National Institute of Technology after promulgation of National Institute of Technology Act, 2007. The First Statute for all the National Institute of Technology was notified on 23.04.2009 by the Ministry of Education. Later on the Ministry of Education notified the First Statutes of the National Institute of Technology (Amendment) Statutes, 2017 vide gazette notification dated 24.07.2017. Since there were several anomalies, which had crept in the gazette notification dated 24.07.2017, certain communications /relaxation/ guidelines were issued for this purpose by the Ministry of Education vide circulars dated 13.09.2017, 06.10.2017, 17.11.2017, 30.11.2017, 04.12.2017, 31.01.2018 and 16.04.2019. A one time relaxation to Schedule-E was made vide circular of 06.10.2017 and 17.11.2017.

3. On the basis of the aforesaid circulars, advertisement No.3/2018 was issued on 10.01.2018 incorporating the recommendations made by the Anomaly Committee as conveyed vide letter dated 06.10.2017. Thus, for Associate Processors following provisions of the Schedule-E were replaced:-

“Schedule E & no. 4 pertaining to Associate Professor

1. *Six years after Ph.D of which at least three years at the level of Assistant Professor with Academic Grade Pay of Rs. 8000/-.*

may be replaced by

1. *Six years after Ph.D at the level of Assistant Professor*

2. *An existing faculty member with 09 years total working experience, of which three years should be after Ph.D with at least three years at the level of Assistant Professor with Academic Grade Pay of 8000/-*

may be replaced by

2. *Nine years total working experience with Ph.D at the level of Assistant Professor.”*

4. Respondent no. 5 and others applied for the post of Associate Professors. She along with others was placed in the merit list and recommended for appointment on 27.11.2018 by the Selection Committee. In the meanwhile, the writ petitioners and others challenged the letter/notification dated 06.10.2017 which has changed the eligibility criteria for the purpose of granting promotion benefits in CWP No. 9240 of 2018 – **Dr. Ashwani and others vs Union of India and another** and seven other cases, CWP No. 18805 of 2018 – **Dr. Ram Kumar Tittal and others vs Union of India and others** as the lead case.

5. The Single Judge vide its judgment dated 17.09.2018 allowed the writ petitions directing the official respondents to consider all the candidates, who had applied under advertisement no.3/2018 with further direction that their eligibility shall be decided strictly in accordance with the advertisement and clarifications issued by MHRD from time to time and after evaluating the credit points.

6. The order of the Single Judge was subject matter of LPA No. 1482 of 2018 - **Dr. Ashwani and others vs Union of India and another**. The Division Bench vide order dated 05.12.2019 quashed the letter dated 06.10.2017 and the order passed by the Single Judge dated 17.09.2018. It further directed the respondent-institute to offer appointment letters without applying the relaxation

qualification in terms of the notification of the MHRD dated 06.10.2017 holding that the orders issued vide letter dated 06.10.2017 relaxing the qualification from the Schedule, could not have been done as the same were issued without authorization of the Visitor, namely, the President of India. As per rules, the amendment in the Statutes could be done only after taking the prior assent of the Visitor. As no approval had been taken from the Visitor, the selection conducted based on notification dated 06.10.2017 was held to be unjustified.

7. Review application was filed by the Union of India, which was ultimately dismissed by this Court vide order dated 07.10.2020. Another group of faculty members challenged the order of Division Bench before the Supreme Court but their SLP was also dismissed on 17.01.2022.

8. Thereafter, the First Statutes of the National Institute of Technology (Amendment) Statutes 2023 was notified on 14.06.2023 which was brought into force from the date of its publication in the official gazettee i.e. on 30.06.2023. These were applicable to the National Institute of Technology, Kurukshetra. The National Institute of Technology, Kurukshetra Statutes 2017 was brought into force and the relaxation earlier granted vide letter dated 06.10.2017 was incorporated in the Statutes after taking approval of the Visitor of the NIT Kurukshetra while exercising powers sub-section (2) of Section 26 of the National Institute of Technology, Science Education and Research Act, 2007.

9. Similarly the First Statutes of National Institute of Technology (Amendment) Statutes 2023 were notified on 07.06.2023 for Dr. B. R. Ambedkar National Institute of Technology, Jalandhar and were brought into force vide their publication in the official gazette on 12.06.2023.

10. Several posts were exempted from the purview of personal interview. Qualifications for the posts of Associate Professor and Professor, which were earlier incorporated in the letter dated 06.10.2017 and 17.11.2017 were notified after taking approval from the Visitor. Several entries in the Schedule-E of the Principal Statutes were substituted. For the purpose of the present case, it would be apposite to quote the entries, which were substituted in the principal Statutes in Schedule-E against serial number 4(d), serial number 5 (e) and serial number 6 (f). The same reads as under:-

“(d) against serial number 4,-

(i) for entries in column (2), the following entries shall be substituted, namely:-

"Associate Professor in Level-13A2 of the Pay Matrix of the 7th Central Pay Commission or any other corresponding pay scale or pay level approved by the Central Government or the Council, as the case may be.";

(ii) for entries in column (4), the following entries shall be substituted, namely:-

"Six years after Ph.D. of which at least three years experience at the level of Assistant Professor Grade-I in Level-12 of the Pay Matrix of the 7th Central Pay Commission or any other corresponding pay scale or pay level approved by the Central Government or the Council, as the case may be, or equivalent in an Institution of repute or Research & Development lab or relevant industry; or nine years total working experience, of which three years shall be after Ph.D. and with three years experience at the level of Assistant Professor Grade-I in Level-12 of the Pay Matrix of the 7th Central Pay Commission or any other

corresponding pay scale or pay level approved by the Central Government or the Council, as the case may be, or equivalent in an Institution of repute or Research & Development lab or relevant industry.";

(e) against serial number 5, -

(i) for entries in column (2), the following entries shall be substituted, namely:-

"Professor in Level-14A of the Pay Matrix of the 7th Central Pay Commission or any other corresponding pay scale or pay level approved by the Central Government or the Council, as the case may be.";

(ii) for entries in column (4), the following entries shall be substituted, namely:-

"Ten years after Ph.D. or thirteen years total working experience, out of which seven years shall be after Ph.D. and with three years experience at the level of Associate Professor in Level-13A2 of the Pay Matrix of the 7th Central Pay Commission or four years at the level of Associate Professor in Level-13A1 or combination of Level-13A1 and Level-13A2 or equivalent in an Institution of repute or Research and Development lab or relevant industry.";

(f) against serial number 6,-

(i) for entries in column (2), the following entries shall be substituted, namely:-

"Professor (Higher Administrative Grade) in Level-15 of the Pay Matrix of the 7th Central Pay Commission or any other corresponding pay scale or pay level approved by the Central Government or the Council, as the case may be.";

(ii) for entries in column (4), the following entries shall be substituted, namely:-

"Six years as Professor in Level 14 or equivalent or Level 14A or equivalent or a combination of service in Level 14 and Level 14A in an Institute of National Importance:

Provided that upto a maximum of 40% of the total number of Professors in position, after rendering regular service of six years as Professor may be granted Higher Administrative Grade scale after fulfilling the eligibility conditions and on the recommendations of duly constituted Selection Committee."

Further following substitutions have been made:-

"(8) The qualifications and other terms and conditions of appointment of academic staff as specified under Schedule 'E' shall be read in conjunction with the guidelines or clarifications issued with the approval of the Council on 13th September, 2017; 30th November, 2017; 4th December, 2017; 31st January, 2018; 20th April, 2018; and 16th April, 2019.

(9) The one-time relaxation or measures for the then stagnated and eligible faculty of the National Institute of Technology, Kurukshetra shall be as per the relaxations issued with the approval of the Council vide communications dated the 6th October, 2017 and 17th November, 2017:

Provided *that one-time relaxation or measures contained in the communications dated the 6th October, 2017 and 17th November, 2017 shall have no validity and stand exhausted after the first round of recruitments initiated after issuance of those one-time relaxations or measures and shall not have any validity for subsequent rounds of recruitment of the faculty in the National Institute of Technology, Kurukshetra."*

Similar provisions, as mentioned above, were notified for Dr. B. R. Ambedkar NIT, Jalandhar.

11. The notifications were challenged before this Court in the present writ petitions and vide order dated 31.07.2023, the High Court stayed the operation of Section 9 of the notification dated 14.06.2023. Similar provision was stayed in both the cases.

In view of the above, the petitioners and the respondents were denied higher posts.

Submissions of the petitioners

12. Learned counsel for the petitioners contends that once this Court had found the action of granting relaxation to be bad in law, there was no occasion to issue the notification which has been done only to overturn the judgment of this Court upheld by the Supreme Court. The action of the respondents in making the amendment is, therefore, challenged on the ground of over reaching the process of the Court. It is the submission that what could not be achieved directly cannot be done indirectly.

13. Learned counsel for the petitioners further submits that the rule which was amended, has been given retrospective effect. In other words, those who have been selected on the basis of the letter dated 06.10.2017 under the advertisement no. 3/2018, like respondent no.5 in CWP No. 15972 of 2023, would get the relief, which otherwise she was not entitled to.



14. It is further submitted that the rule making authority is not empowered to frame a rule which will have an affect of setting aside the law down by the High Court.

15. Thirdly the petitioners submission that the rule seeks to create a class within a class by relaxing the rule.

Submissions of the respondents

16. Learned counsel for respondent no. 5 objected to the *locus standi* of the petitioners stating that they were neither eligible in terms of the letter dated 06.10.2017 nor even after amendments made in the 2023. Their only purpose is to stall the appointments for the post of Associate Professors. It is stated that the benefit of one time relaxation has been availed by 1400 faculty members of 31 NITs all over India.

17. Learned counsel for respondent no. 5 further submits that reason for setting aside the circulars was solely based on the ground that the Visitor, namely, the President of India had not granted its prior approval. Since the notification dated 14.06.2023 is in terms of the NIT Act 2007 and has been issued after prior approval of the Visitor in terms of Section 26 of the Act, the respondents ought to be allowed to be granted the benefit. The NITs Jalandhar and Kurukshetra have supported the new notification dated 14.06.2023 as the same is duly approved and notified. There should be no difficulty in making the promotions now in terms of the earlier circular of 2017.

18. Learned counsel for the respondents have relied upon **Sree Sankaracharya Univesity of Sanskrit and others vs Dr. Manu and**

another 2023(9) SCALE 21 which lays down that clarificatory statutes would have retrospective operation. He also relied on Commissioner of Income Tax, Bombay vs Podar Cement Private Limited (1997) 226 ITR 625 (SC), Allied Motors (P) Limited vs Commissioner of Income Tax, Delhi 1997 (3) SCC 472, State of Bihar vs Ramesh Prasad Verma (2017) 5 SCC 665 and Zile Singh vs State of Haryana (2004) 8 SCC 1.

19. Learned counsel for the respondent-institutes submitted that the notifications dated 14.06.2023 and 07.06.2023 issued for NIT Kurukshetra and Jalandhar respectively have not been given any retrospective effect and would be applied prospectively. Once the notification has been issued after due approval of the Visitor, it does not lie in the mouth of the petitioners to allege that the notifications and the amendments made are illegal. They rely on provisions of Section 26 of the Act of 2007 in support of the submission that the Statutes have been amended in terms of the order passed by removing the mischief. Earlier letter dated 06.10.2017 had been issued without seeking approval. While now approval from the President of India has been undertaken.

20. Learned counsel for the respondent-institutes further submits that Clause 9 of the notification mentions about the earlier circulars as they have been given approval now by the Visitor. It is submitted that earlier this Court had not quashed the contents of the letter on merit but it was only on account of the procedural mistake. However, as now the Visitor had granted the sanction, there would be no sanctity of law if the action is taken.

21. It is further submitted that notification has been issued now on 21.04.2024 and all the persons who are eligible can apply. He, thus, prays that the respondent-institutes should be allowed to proceed with the selection process in terms of the notifications and the interim order passed by the Court be vacated.

Our analysis and conclusion

22. While in the earlier round of litigation, this Court had primarily set aside the relaxation in qualifications granted vide letter dated 06.10.2017 on the ground that no prior approval had been taken from the Visitor in terms of Rule 26. We find that now approval has been duly taken and accordingly the Statutes have been amended providing the relaxation itself under the Rules, as noticed (supra).

23. So far as mentioning the earlier circulars in the amendment is concerned, we find that merely a mischief in the circulars issued from time to time in 2017, 2018 and 2019 (supra) was with regard to non-approval of the Visitor. Once the said mischief has been removed, the relaxation/ recommendations would now have force of law. Section 26 (3) and (4) of the National Institutes of Technology, Science Education and Research Act 2007 reads as under:-

“26. Statutes how made.- (1) xx xx

(2) xx xx xx

(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.”

24. From the above provisions, it is apparent that once the Visitor has granted the assent, the new Statutes of 2023 shall be applicable from the date of publication in the official gazette and the respective Institutes would be free to make selection accordingly.

25. It is now settled that rule making authorities can frame rules which may have retrospective effect. In the case of **Sree Sankaracharya Univesity of Sanskrit** (supra), the Apex Court after considering the law culled out the following principles:-

“52. From the aforesaid authorities, the following principles could be culled out:

- i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.*
- ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.*
- iii) An explanation/clarification may not expand or alter the scope of the original provision.*
- iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to*

analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.”

26. Applying the law as laid down hereinabove to the facts of the present case, we find that the amendment has been brought into force from the date it was notified in the gazette as per Section 1(3). Thus, the qualification for promotion and experience have been substituted with effect from the date of the gazette notification was issued and would apply prospectively. Thus, Section 5 Clause (d) (e) and (f) making amendments in Schedule-E would have to be treated and considered prospectively.

27. On careful reading of paragraphs 8 and 9 of note (i) and (iii) and proviso thereto (supra), it is apparent that the same speaks of incorporating the guidelines, clarifications and relaxation of rule as provided in the letter dated 13.09.2017, 06.10.2017, 17.11.2017, 30.11.2017, 04.12.2017, 31.01.2018 and 16.04.2019, for the purpose of making selection henceforth. Thus, it cannot be said that the notification is in any manner retrospective in nature. It only incorporates the guidelines, clarifications and relaxations earlier issued for the purpose of examining the qualification and other terms and conditions of appointment of academic staff, which would be done in terms of the new entries made in Schedule-E as per Clause (d)(e) and (f) (supra).

28. Further the contention of counsel for the petitioners is that the amendment has been made to over turn the judgment of this Court, which has been upheld by Supreme Court. However, we find that the argument is

to be noted for rejection as it is settled law that law making authorities can frame rules after removing the mischief pointed out by the Court which makes a rule ineffective or illegal. As we have quoted the part of the order passed by the Division Bench earlier, which reflects that the Court set aside the rule introduced vide letter dated 06.10.2017 solely on the ground that the assent of the Visitor had not been taken but now, as the same is with the approval of the Visitor in terms of Section 26 (2), the amendment made in the Statutes cannot be said to be illegal solely on the ground of assent as it reiterates the earlier rule but after following the provisions of Section 26 (3) and 26 (4). The challenge to the rule, therefore, fails.

29. In **Madras Bar Association vs. Union of India**, (2022) 12 SCC 455, the Supreme Court examined whether law can be made to protect or to remove the basis of a judgment and it was held as under:

“43. The permissibility of a legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:

- a) *The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment.*
- b) *Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. (Lohia Machines Ltd. And Anr. v. Union of India and Ors. (1985) 2 SCC 1987).*
- c) *The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the*

validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.

- d) *Nullification of mandamus by an enactment would be impermissible legislative exercise [See: S. R. Bhagwat and Ors. v. State of Mysore, (1995) 6 SCC 16]. Even interim directions cannot be reversed by a legislative veto [See: Cauvery Water Disputes Tribunal, 1993 Supp (1) SCC 96 and Medical Council of India v. State of Kerala and Ors., (2019) 13 SCC 185].*
- e) *Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the Rule of law and of Article 14 of the Constitution of India.”*

30. In **Dr. Jaya Thakur vs. Union of India** (2023) 10 SCC 276, the Supreme Court held as under:-

“It could, thus, clearly be seen that this Court has held that the effect of the judgments of this Court can nullified by a legislative act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.”

31. Following the aforesaid two judgments, the Supreme Court in **NHPC Limited vs State of Himachal Pradesh Secretary and others** 2023

(12) SCALE 301 observes as under:-

“11. What follows from the aforesaid judicial precedent is, a legislature cannot directly set aside a judicial decision. However, when a competent legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the same is a valid legislative exercise provided it does not transgress on any other constitutional limitation. Such a legislative device which removes the vice in the previous legislation which has been declared unconstitutional is not considered to be an encroachment on judicial power but an instance of abrogation recognised under the Constitution of India. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be removed, thereby resulting in a fundamental change of the circumstances upon which it was founded.

12. The power of a legislature to legislate within its field, both prospectively and to a permissible extent, retrospectively, cannot be interfered with by Courts provided it is in accordance with the Constitution. It would be permissible for the legislature to remove a defect in an earlier legislation, as pointed out by a constitutional court in exercise of its powers by way of judicial review. This defect can be removed both prospectively and retrospectively by a legislative process and previous actions can also be validated. However, where a legislature merely seeks to

validate the acts carried out under a previous legislation which has been struck down or rendered inoperative by a Court, by a subsequent legislation without curing the defects in such legislation, the subsequent legislation would also be ultra-vires. Such instances would amount to an attempt to 'legislatively overrule' a Court's judgment by a legislative fiat, and would therefore be illegal and a colourable legislation."

32. While concluding the aforesaid case, the Supreme Court in the aforesaid judgment **NHPC Limited** (supra), held as under:-

15. The Constitution of India precludes any interference by the legislature with the administration of justice and judicial determination of the validity of a legislation. The power of abrogation is to be exercised in the light of the said Constitutional mandate. The legislative device of abrogation must be in accordance with the following principles which are not exhaustive:

- i. There is no legal impediment to enacting a law to validate a legislation which has been held by a court to be invalid, provided, such a law removes the basis of the judgment of the court, by curing the defects of the legislation as it stood before the amendment.*
- ii. The validating legislation may be retrospective. It must have the effect that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the court at the time of rendering its judgment.*
- iii. Retrospective amendment should be reasonable and not arbitrary and must not be violative of any Constitutional limitations.*
- iv. Setting at naught a*

decision of a court without removing the defect pointed out in the said decision is opposed to the rule of law and the scheme of separation of powers under the Constitution of India. v. Abrogation is not a device to circumvent an unfavourable judicial decision. If enacted solely with the intention to defy a judicial pronouncement, an Amendment and Validation Act of 1997 may be declared as ultra-vires.”

33. Thus, we find that while the legislature or rule making authority does not have the power to frame a rule stating that a decision of a Court is null and void nor it has a power to declare interpretation of law to be bad, it has a power to remove the defect due to which the earlier law framed by it was quashed or set aside by the Court. If the defect is removed and new law is framed by following due procedure, the new law cannot be quashed merely because it repeals the earlier law but after removing the defect. At the same time, such a law would not in any manner correct the action taken under the earlier defective law.

34. Applying the aforesaid law to the facts of the present case, it is apparent that the selection which were conducted under advertisement no. 3/2018 cannot be given approval by the new amendments made in the Statutes. Even the counsel for the respondent-institutes have stated that the amendments would be prospective, therefore, now they would be free to issue new advertisement in accordance with the amendments granting due relaxation in the Schedule for the purpose of selection for the post of Associate Professor and Professor.

35. In other words, the authorities would be free to conduct afresh exercise by inviting applications of all eligible candidates in terms of the



new amendments made vide notification dated 30.06.2023 for the post of Associate Professor and Professor. All the persons who are eligible for applying, would be considered. The petitioners and the respondents would be, therefore, entitled to be considered accordingly as per their work experience and other educational qualifications.

36. All the stake holders will also be entitled to be considered afresh for which now the respondent-Institute shall take steps, proceed and conclude the exercise within a period of four months from today. The advertisements issued by the respondent-institute would, accordingly, be modified / corrected and applied. The stay order passed by the Court dated 31.07.2023 stands vacated.

37. This order shall be effective for both the respondent-institutes. The writ petitions are accordingly disposed of in the aforesaid terms.

38 All pending applications shall stand disposed of.

39. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

31.05.2024
vs

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No