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

CWP-25837-2023

Reserved on :26.04.2024

Date of Pronouncement :01.05.2024

RUBY CHAUHAN

..... Petitioner

Versus

NATIONAL INSTITUTE OF TECHNOLOGY Respondent**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Mr. Tejpal Dhull, Advocate
for the petitioner (s).

Mr. A.S. Virk, Advocate
for the respondent (s).

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of :

(i) appointment letter dated 17.10.2023 (Annexure P-14) to the extent she has been allowed to continue in her service for one odd semester.

(ii) order dated 23.12.2022 (Annexure P-6) whereby she was relieved from service.

2. The respondent is a deemed university under NIT Act, 2007. The respondent makes appointment of teaching staff on permanent, contract, temporary and ad hoc basis. In 2017, the respondent advertised posts of Assistant Professor on contract basis. The petitioner pursuant to said advertisement applied for the post advertised. She came to be selected by Selection Committee and was offered appointment on

temporary basis in the department of Computer Engineering.

3. The respondent vide advertisement No.21/2017 invited applications for 81 posts of Assistant Professors in the grade pay of ₹6000/7000/- on contract basis. The minimum qualification prescribed was Ph.D. The petitioner as well as other similarly situated employees preferred Civil Writ Petition 28626 of 2017 before this Court assailing aforesaid advertisement. This Court vide order dated 15.12.2017 issued notice of motion and stayed further process initiated pursuant to the aforesaid advertisement. The respondent in August' 2022 withdrew aforesaid advertisement and issued fresh advertisement No.8/2022 for recruitment of Assistant Professors possessing qualification of Ph.D. It is apt to notice here that petitioner is M.Tech., thus, she was not eligible to apply for the said post. She preferred Civil Writ Petition 20547 of 2022 before this Court assailing aforesaid advertisement. This Court issued notice of motion and further directed to maintain status quo regarding the service of the petitioner till the final result of the selection is declared. The respondent made appointments against aforesaid advertisement and vide communication dated 23.12.2022 discontinued contract of the petitioner. The respondent discontinued service of petitioner as well as similarly situated contractual employees on the ground that regular appointments have been made.

4. The contractual employees, whose services were discontinued, approached this Court by way of Civil Writ Petition 993 of 2023 and Civil Writ Petition 1140 of 2023. This Court vide interim order dated 18.01.2023 and 19.01.2023 respectively, directed the respondent to consider the petitioners to continue in service, subject to availability of

work load. It was further made clear that petitioners would have prior right for appointment in case, the respondent-institution intends to re-issue any advertisement for appointing Guest Faculty or by any other nomenclature as has been done vide advertisement issued in October' 2022 which is stated to be subsequently withdrawn. It is apposite to notice here that petitioner did not assail her relieving order dated 23.12.2022.

5. The respondent in June' 2023 issued rolling advertisement No.17/2023 for the recruitment of Assistant Professor, Grade-I (Level-12) and rolling advertisement No.18/2023 for the posts of Assistant Professor, Grade-II (Level-10). There was no last date for filing application. The respondent was of the opinion that appointment would be made as and when vacancy arises. The respondent appointed 18 candidates and out of which 13 were appointed as Assistant Professor, Grade-II (Level-10) and 5 as Assistant Professor, Grade-I (Level-12). The stand of the petitioner throughout the litigation is that Grade-II (Level-10) post is a contractual post. The respondent is of the opinion that appointment against aforesaid posts is a regular appointment and minimum qualification is Ph.D.

6. The respondent vide advertisement dated 21.09.2023 advertised 12 posts of Guest Faculty in the department of Computer Engineer. The petitioner preferred Civil Writ Petition 21888 of 2023 before this Court assailing validity of aforesaid advertisement. The said writ petition came to be disposed of vide order dated 29.09.2023 with liberty to petitioner to apply for the advertised post. The respondent was directed to consider case of the petitioner in terms of interim order dated

18.01.2023 passed by this Court in Civil Writ Petition No. 993 of 2023.

7. Despite order dated 29.09.2023 passed by this Court in CWP 21888 of 2023, the petitioner was not appointed, thus, she filed CWP 23247 of 2023 before this Court. She claimed that respondent has shown her at serial No.8 and 6 candidates have been permitted to join as Guest Teacher whereas 12 vacancies were advertised. The petitioner, during the pendency of CWP 23247 of 2023, came to be appointed vide appointment letter dated 17.10.2023. In the appointment letter, it was made clear that appointment is on lecture basis and every lecture will carry remuneration of ₹1500 per hour plus 10% extra for examination related work, subject to maximum ₹57,700 per month. The petitioner is assailing said appointment letter on the ground that she has been permitted to continue only for one odd semester and endeavour of respondent is to replace her by another contractual employee.

8. This Court issued notice of motion on 17.11.2023 and by interim order dated 11.12.2023 directed that till the next date of hearing, no order shall be passed against the petitioner.

9. Mr. Tejpal Dhull, Advocate submits that many persons were appointed against advertisement No.18/2023 and they are still working. They were appointed on contract basis. The appointment of those persons on contract basis indicates that respondent has replaced one set of contractual employee by another set of contractual employee. The respondent despite availability of sufficient work has relieved petitioner and many similarly situated teachers. The respondent has assigned teaching job to Ph.D. scholars which is impermissible in law. The Board of Governors (for short 'BOG') in its meeting considered question of

availability of teaching staff and found that there is need of more teachers. The BOG was of the opinion that 163 posts of teaching staff are available and need to be filled up. The different advertisements of respondents indicate that M.Tech. candidates may also be appointed on the post of Assistant Professor. So, there is no embargo to appoint M.Tech. qualified candidates. The requirement of Ph.D. is not absolute, thus, petitioner deserves to be continued. The respondent is availing services of Ph.D. scholars which indicates that there is need of teaching staff. The respondent cannot depute Ph.D. scholars for teaching purpose.

10. Per contra, Mr. A.S. Virk, Advocate submits that petitioner is concerned with department of Computer Engineering. The BOG has discussed status of teaching staff of entire institute. The respondent has assigned lectures based job to 6 teachers and all of them have already been relieved and they are not assigned further lectures on account of non-availability of work load. Ph.D. scholars who are not getting fellowship cannot be permitted to teach, however, Ph.D. scholars getting fellowship are bound to teach classes. Even M.Tech. students getting scholarship/fellowship are also eligible to deliver lectures. The contention of petitioner is that Ph.D. scholars despite getting fellowship can only do lab work is factually incorrect.

11. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

12. The conceded position emerging from the record is that petitioner is M.Tech. qualified and she is pursuing Ph.D. She, for the first time, was appointed in the respondent-institute in 2017 on contract basis. She came to be relieved w.e.f. 23.01.2023 vide order dated 23.12.2022.

The respondent time to time has invited applications for appointment of Assistant Professors, Grade-II (Level-10) on contract basis. In the advertisement as well as appointment letters, it has been pointed out that their appointment is on contract. The petitioner by letter dated 17.10.2023 was appointed on lecture basis and she was not appointed either on contract or permanent basis. The respondent has made appointments of Assistant Professors (Level-10) after following due process prescribed for permanent appointment. The respondent is of the opinion that these appointments are not contractual whereas petitioner is of the opinion that every appointment of Assistant Professors (Level-10) is contractual because respondent has no authority to make appointment on permanent basis.

13. From the pleadings, conceded facts and arguments of both sides, the following questions arise for adjudication by this Court;

- (i) Whether respondent can make appointment of Assistant Professors (Level-10) on permanent basis?
- (ii) Whether petitioner can claim continuity of service?
- (iii) Whether Ph.D. scholars who are getting fellowship can be permitted to take classes?

14. Hon'ble Supreme Court in '**Hargurpartap Singh Vs. State of Punjab**' 2007 13 SCC 292 has observed that one set of contractual employees should not be replaced by another set of contractual employees. As per petitioner, she is a contractual employee and has been replaced by another contractual employee.

15. The respondent is governed by National Institutes of Technology, Science, Education and Research Act, 2007 (for short '2007

Act’). Section 8 of the 2007 Act provides for teaching at institutes, 9 for expression ‘visitor’, 24 for appointment of the staff of every institute and 26 for procedure to make statutes. The aforesaid sections are reproduced as below:

Sections 8- Teaching at Institutes

All teaching at each of the Institutes shall be conducted by or in the name of the Institute in accordance with the Statutes and Ordinances made in this behalf.

Sections 9- Visitor

- (1) The President of India shall be the Visitor of every Institute.*
- (2) The Visitor may appoint one or more persons to review the work and progress of any Institute and to hold inquiries into the affairs thereof and to report thereon in such manner as the Visitor may direct.*
- (3) Upon receipt of any such report, the Visitor may take such action and issue such directions as he considers necessary in respect of any of the matters dealt with in the report and the Institute shall be bound to comply with such directions within reasonable time*

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Section 24-Appointments

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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Section 26- Statutes how made

(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 as soon as may be before each House of Parliament.

(2) 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.

(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.”

From the reading of above quoted sections, it is evident that President of India is ‘Visitor’ of every institute. All appointments are made in accordance with procedure laid down in the statutes and first statute shall be framed by Central Government and thereafter Board may make new or additional Statutes subject to prescribed procedure

16. In exercise of powers conferred by Sub-Section (2) of Section 26 of 2007 Act, the Central Government by Notification dated 23.04.2009 made ‘The First Statutes of the National Institutes of Technology’ (for short ‘First Statutes’). The Central Government amended first statutes of NIT by notification dated 21.07.2017 and thereafter 14.06.2023. Clauses of ‘First Statutes’ are titled as ‘Statute’ and sub-clause as ‘sub-statute’. In the First Statutes of National Institute of Technology, there was no specific statute which used to prescribe minimum qualification for the Associate/Assistant/Professor. Statute 22 of First Statutes provides for classification of the members of staff, 23

provides for appointments, 24 provides for general terms and conditions of service of permanent employees and 28 provides for appointments on contract. The relevant extracts of Statutes 22, 23, 24 and 28 are reproduced as below:

“22. CLASSIFICATION OF THE MEMBERS OF THE STAFF:

(1) Except in the case of employees paid from contingencies, the members of staff of the Institute shall be classified as under :-

- i. **Academic staff:-** 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 from time to time;*
- ii. **Technical staff:-** System Manager, System Analyst, Programmer, Librarian, Workshop Superintendent, Assistant Workshop Superintendent, Foreman, Technician, Instructor, Laboratory Assistant, Mechanic, Overseer, Technical Assistant, Draftsmen, and such other technical posts as may be decided by the Board from time to time; and*
- iii. **Administrative and others staff:-** Registrar, Deputy Registrar and Assistant Registrar, Accounts Officer, Audit Officer, Estate Officer, Executive Engineer, Assistant and Junior Engineer, Medical Officer, Medical Assistant, Horticultural Assistant/ Officer, Office Superintendent, Security Officer, Stores Officer, Store Keeper, Office Assistants, Data Entry Operators and such other Administrative and other staff as may be decided by the Board from time to time.*

(2) Posts classified as Academic staff shall be vacation posts only.

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 or

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.*
 - (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 Committee 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*
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- (8) *Where a post is to be filled on contract basis or by invitation, the Board may, constitute such Adhoc Selection Committee, as circumstances of each case may require.*
- (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.

- (10) *Notwithstanding anything contained in these Statutes, the Board shall have the power to make appointments of persons having special skill or knowledge to suit the emergent need of the department or centre and in such emergent situation, the appointment shall be for a period of 12 months.*

[Inserted by amendment of 2017]

24. (As amended by notification dated 21.07.2017)

**GENERAL TERMS AND CONDITIONS OF
SERVICE OF PERMANENT EMPLOYEES**

Permanent employees of the Institute shall be governed by the following terms and conditions:-

- (i) *Subject to the provisions of the Act and the Statutes, all appointments to posts under the Institute shall be made on probation for a period of one year after which period the appointee, if confirmed, shall continue to hold his office subject to the provisions of the Act and the Statutes, till the end of the month in which he attains the specified maximum age for teaching posts, for technical non-teaching and ministerial and administrative posts as the case may be:*

Provided that the appointing authority shall have the power to extend the period of probation of any employee of the Institute for a period not exceeding one year.

28. APPOINTMENTS ON CONTRACT

- (1) *Notwithstanding anything contained in these Statutes, the Board with the prior approval of the Visitor may in special circumstances appoint an eminent person on contract for a period not exceeding 5 years.*
- (2) *Subject to the provisions of the Act, the Board may appoint any person on contract in the prescribed scales of pay and on terms and conditions applicable to the relevant*

post for a period not exceeding 3 years.

(3) For making such appointments the Chairperson, Board of Governors shall constitute such adhoc Selection Committee, as the circumstances of each case may require.

Provided that such constitution of committee shall be reported to the Board for confirmation.

17. From the conjoint reading of different statutes of aforesaid First Statutes, it comes out that normal rule of appointment of teaching staff is appointment on permanent basis, however, in special circumstances, the Board notwithstanding anything contained in statutes may make appointment of eminent person on contract for a maximum 5 years period and subject to the provisions of the Act, on contract for a period not exceeding 3 years basis. For the purpose of appointment on permanent basis, a Selection Committee consisting of Chairman and 4 Members is constituted. The appointment of teaching staff on contract basis can be made by ad hoc Selection Committee.

18. The Central Government apart from First Statutes, framed NIT Faculty Recruitment Rules, 2011. The said rules came to be substituted by NIT Faculty Recruitment Rules, 2013. The BOG of the institute had to accept/adopt these rules. The respondent i.e. NIT, Kurukshetra adopted 2013 Rules in 33rd meeting of BOG held on 04.06.2014. Rule 2(d) of 2013 Rules defines expression 'faculty', Rule 4 provides for appointment on 'deputation/contract' basis. Paragraph 11 of schedule prescribes basic principles of Faculty Recruitment, terms and conditions as well as procedure for appointment of honorary, contractual, ad hoc and temporary faculty are prescribed in the Guidelines. The rules also provide for 4 tier flexible faculty structures in place of 3 tier rigid

faculty structure. Relevant extracts of 2013 Rules are reproduced as below:

“2 Definitions:

(d) “Faculty” means the Professor, Associate Professor and Assistant Professor of the NITs.

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4. Deputation / Contractual Appointments: Faculty, who are appointed on contractual basis, shall be for a fixed period not exceeding five years.

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11. Basic principles of Faculty recruitment

(a) A Ph.D. Degree shall be the minimum qualification for a regular faculty position in NIT.

19. Guidelines annexed with 2013 Rules which have been adopted by Board of Governors provide for procedure for selection in NIT; Distribution of Faculty posts amongst the department; honorary, chair, contractual, visiting and ad hoc faculty. The relevant extracts of guidelines with respect to honorary, contractual and temporary faculty are reproduced as below:

Adjunct, Honorary, Chair, Emeritus, Contractual, Visiting,
Ad hoc and Temporary Faculty

In addition to its regular faculty, an institute may augment its intellectual capital by hiring additional scholastic resource through different types of secondary faculty positions. Such faculty members contribute significantly to the department in terms of sharing teaching tasks and enhancing research output. Academic contributions and decisions (e.g award of grades) of such faculty members shall have the same legal validity as those of regular faculty members. The primary purpose of hiring adjunct, honorary, chair, emeritus and visiting faculty is to receive the honor of hosting distinguished professionals and academicians, and

not off-loading of routine teaching activity. In contrast, the primary purpose behind hiring ad-hoc, temporary or contractual faculty is to provide routine teaching services, particularly when adequate number of regular faculty are not available.

The appointing authority of adjunct, honorary and chair professors shall be the senate while that for emeritus professors and contractual faculty shall be the BOG considering that in the latter case Government money needs to be spent on salary. Director may appoint ad hoc and temporary faculty, who need to be given appointment at short notice and do not constitute a long term responsibility of the institute. The following guidelines will given the administrative details of hiring additional faculty.

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Faculty on Contract

When regular faculty positions cannot be filled, to Board at its discretion, may fill up sanctioned faculty positions “on contract” where the terms of separation will be far easier than those of regular faculty. Other facilities and mode of selection, to the extent possible, will be same as those for regular faculty. Examples of contractual faculty will include Assistant Professors without Ph.D. degree under the 3 tier system or Assistant Professors during the first 3 years after Ph.D. under the 4 tier system, faculty considered in absentia, and distinguished professors and engineers/scientists who have retired from other organizations.

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“Temporary Faculty

The director may recruit “Temporary faculty” against sanctioned posts to tide over serious shortage of faculty to handle UG & PG teaching load. This will be possible only in departments where the number of faculty in position, not

counting teachers on long leave, is below 0.75x normal strength. The candidates need to have at least a Master’s degree in Engineering or a doctorate in science/humanities with first class [60% marks or (GPA 6.5/10)] at both bachelor’s and master’s level. Selection can be made on recommendation of a committee of faculty members that must include at least one internal board member and one faculty member of another department. Presence of an external subject expert is not essential.”

20. Annexure I of letter dated 15.01.2014 of Ministry of HRD, Department of Higher Education, NITs Divisions prescribes minimum qualification and experience for faculty position under four tier flexible faculty structure. The relevant extracts of said Annexure are reproduced as below:

*Prescribed Minimum Qualification and Experience for
Faculty Position of
NATIONAL INSTITUTES OF TECHNOLOGY
(Under four tier flexible faculty structure)*

<i>Designation, Pay Band and Academic Grade pay</i>	<i>Essential Qualification</i>	<i>Relevant Experience</i>	<i>Other Essential requirement.</i>	<i>Additional Desirable requirement</i>
<i>Assistant Professor (On contract) PB-3 with Grade Pay of ₹6000/-+07 additional non- compounded increments.</i>	<i>Ph.D.</i>	<i>None</i>	<i>None</i>	<i>One publication in an SCI Journal.</i>
<i>Assistant Professor (On contract) PB-3 with Grade Pay; ₹7000/-</i>	<i>Ph.D.</i>	<i>1 year.</i>	<i>One paper accepted for publication in SCI Journal.</i>	<i>Two papers in SCI Journals or one patent; may be based on Ph.D. work.</i>

21. Letter dated 23.08.2013 is Annexure II of Ministry’s letter

dated 15.01.2014. Norms of four tier cadre structure for faculty post form part of aforesaid letter dated 23.08.2013. The relevant extracts of norms of four tier structure are reproduced as below:

“Norms of 4-tier Cadre Structure of Faculty posts in the National Institutes of Technology (NITs)

<i>Sr. No .</i>	<i>Designation, Pay Band and Academic Grade Pay</i>	<i>Essential Qualification and Relevant Experience</i>
1.	Assistant Professors (On contract) PB-3 of ₹15600-39100 with AGP of ₹6,000/- p.m.	<i>(I)Assistant Professors to be recruited on contractual basis are not part of the regular faculty cadre in NITs. Appointment at this level may be made on contract basis to enable bright young Ph.D.s scholars to teach and earn experience in premier institutions.</i> <i>(II) At the entry level they may be placed in Pay Band PB-3 of ₹15600-39100 with Academic Grade Pay (AGP) of ₹6000/- p.m. with seven non-compoundable advance increments.</i> <i>(III) To encourage fresh Ph.D.s to join the teaching system, at least 10% of the total faculty strength should be recruited at this level. However, relaxation in respect of educational qualifications could be given upto 25% of total Assistant Professors recruited. The reasons for such relaxations should be duly recorded and reported to the Board of Governors of the respective institutions.</i> <i>(iv) After one year of post Ph.D. experience, these Assistant Professors shall be. placed in the AGP of ₹7,000/- p.m.</i>

22. Paragraph 24 of Annexure IV of 2011 Rules used to provide for recruitment of faculty without Ph.D. It provided that if sufficient numbers of meritorious candidates with Ph.D. are not available, candidate with M. Tech degree may be recruited as Assistant Professor on contract with AGP of ₹6,000/- only. The contract will be initially for a period of 3 years extendable by more years only on the recommendations of valid Selection Committee. Paragraph 24 is reproduced as below:

“24. The following provisions will govern the selection and service conditions of new faculty recruited without a Ph. D. Degree

(i) If sufficient numbers of meritorious candidates with Ph. D. degree are not available in any discipline or sub-discipline, candidates with M. Tech degree may be recruited as Assistant Professor on contract with AGP of Rs.6000.00 only.

(ii) The contract will be initially for a period of three years, extendable by two more years only on recommendation of a valid Selection Committee.

(iii) Such faculty, after joining the departments, must be enrolled in the Institute's own Ph. D. programme or be deputed to another Institute at the discretion of the Director, after considering the internal facilities available and the expertise needed in the department. The Institute will make available to the faculty the required equipments, consumables and travel support.

(iv) During the contract period, if an incumbent shows poor progress on his Ph. D. work or dereliction of duty in teaching, the contract may be terminated prematurely after an enquiry by the ACoFAR, with at least one external expert. Necessary clauses to this effect must be built into the contract at the beginning of the appointment.

(v) On award of Ph. D. degree, an incumbent will be given regular position with effect from the date of original contract appointment with probation of one year after

regularisation. For all future records, the starting point of service will be the date on which the contract service started originally.

(vi) During the contract period, the appointee will be put in pay band PB-3 with at least 2 non-compounded increments (for M. Tech. degree). He will also be entitled to the usual increments and allowances, and to all other benefits such as P. F., Pension, future gratuity etc. at par with the facilities extended to regular faculty.”

[Emphasis Supplied]

The aforesaid paragraph is not forming part of 2013 Rules.

The reason seems to be prescription of Ph.D. minimum qualification for all posts. The Government in various rules of 2011 as well as guidelines had permitted appointment of candidates with M. Tech. whereas 2013 Rules and guidelines provide for only Ph.D.

23. From the perusal of aforesaid Rules and Guidelines, it can be gleaned that endeavour of institute is always to appoint candidates with Ph.D. degree and in the absence of availability of meritorious candidates, candidate with M.Tech. degree could be appointed under 2011 Rules on contract basis, however, under 2013 Rules even ad hoc appointments cannot be made of M.Tech. qualified. The respondents at the most can recruit M.Tech. candidates as ‘temporary faculty’.

24. The respondent prior to 2017 prescribed qualification for different posts by way of Rules and Guidelines, however, by notification dated 21.07.2017 prescribed by way of Schedule ‘E’. For the said purpose, Statute 23 of principal Statutes i.e. First Statutes was amended. Amended sub-statute (4) & (5) of Statute 23 are reproduced as below:

“(4) The Selection Committee, for filling posts under the Institute (other than the posts as contract basis) by advertisement or by promotion from amongst the members of

staff of the institute shall be constituted in the manner as laid down by the Central Government or Board from time to time by ordinances.

(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:-

- (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 the Department concerned
(For other than the post of
Deputy Director and Professor) -Member"*

[Emphasis supplied]

25. Sub-statute (4) of statute 23 provides that Selection Committee except for the post on contract basis shall be constituted in the manner as laid down by Central Government. Sub-statute (5) of statute 23 provides that qualification and other terms & conditions of appointment of academic staff shall be as specified in Schedule 'E'. The Selection Committee making recommendations for appointment of academic staff consists of Chairman and 4 Members. The relevant extracts of Schedule 'E' are reproduced as below:

Schedule 'E'

[See Statute 23 (5) (a)]

Qualification and other terms and conditions of appointment of Academic Staff

Sr. 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 Band-3 with Grade Pay of Rs.8000 with a minimum pay of Rs.30000	Ph.D	Three year after Ph.D or six year total teaching and research experience in reputed academic Institute or Research and Development Labs or relevant Industry.	20

Note-1 (As amended)

“(1) Any change in the pay scale shall be through an open advertisement and on the recommendations of the duly constituted Selection Committee, except where specifically exempted in these Statutes;

Provided that the Assistant Professor Grade-II appointed on contract basis in the Institute shall be, on successful completion of one year of service in Level-10 of the Pay Matrix of the 7th Central Pay Commission, may be upgraded to Level-11 of the Pay Matrix of the 7th Central Pay Commission or any other corresponding pay scale or grade pay or pay level, if found suitable by a duly constituted Selection Committee, but not through open advertisement.”

[Emphasis Supplied]

25.1 The NIT has further amended Schedule ‘E’ of principal statute by way of notification dated 14.06.2023. The amendment has been made in Column No.2 of Serial No.1 and 2 of said schedule. The amended Column No.2 of Serial No. 1 and 2 is reproduced as below:

Serial No.1

“Assistant Professor, Grade-II (to be appointed on contract basis) in Level-10 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.”

Serial number 2

“Assistant Professor, Grade-II (to be appointed on contract basis) in Level-11 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.”

26. From the conjoint reading of 2007 Act, First Statutes, Recruitment Rules 2011, Recruitment Rules 2013 and guidelines issued thereunder, the following salient features are culled out:

- (i) The Parliament introduced 2007 Act to efficiently and uniformly manage National Institutes of Technology.
- (ii) In the year 2009, in exercise of power conferred by 2007 Act, Government introduced First Statutes.
- (iii) For recruitment of faculty, the Government framed 2011 Rules which came to be substituted by 2013 Rules. There are guidelines alongwith rules which prescribe terms and conditions as well as qualification for appointment of teaching staff.
- (iv) Prior to 2017, the qualification and other terms & conditions of appointment of academic staff were prescribed by way of rules and guidelines.
- (v) By 2017 amendment, the Government introduced schedule ‘E’ in the first statutes.

27. Government amended First Statutes by notification dated 21.07.2017. Schedule 'E' prescribing qualification and other terms & conditions of appointment of academic staff came to be introduced. The serial No.1 and 2 of said schedule has been further amended by notification dated 14.06.2023. The Serial No.1 and 2 provide for appointment of Assistant Professor with Grade pay of ₹6,000/- or ₹7,000/-. The expression 'Assistant Professor' is followed by expression 'on contract'.

28. The petitioner has vehemently pleaded that appointment of Assistant Professor with Grade pay of ₹6,000/- or ₹7,000/- cannot be made on regular/permanent basis. The respondent has no choice except to make appointment on contract basis. It is hereby clarified that Grade pay of ₹ 6,000/- and ₹ 7,000/- represent Level 10 & 11 respectively. This Court finds itself unable to conceive her argument. The appointment of faculty members cannot be made on the basis of mere schedule. The schedule prescribes qualification and essential requirements, however, it cannot determine nature/status of a post. Sub-statute 28 provides that Board with the approval of Visitor in special circumstances may appoint an eminent person on contract for a period not exceeding 5 years. It further provides that Board may appoint any person on contract, in the prescribed scales of pay and on the terms and conditions applicable to the relevant post, for a period not exceeding 3 years. Sub-statute (10) of Statute 23 provides that Board shall have power to make appointment of persons having skill or knowledge to suit the emergent need of Department or Centre and the appointment shall be for a period of 12 months. Sub-statute (8) of Statute 23 provides that where a post is filled

on contract basis or by invitation, the Board may constitute ad-hoc Selection Committee. For sake of convenience and at the cost of repetition, sub-statute (8) & (10) of 23 and Statute 28 of First Statutes as amended are reproduced as below:

“23. APPOINTMENTS

(8) Where a post is to be filled on contract basis or by invitation, the Board may constitute such Adhoc Selection Committee, as circumstances of each case may require.

(10) *Notwithstanding anything contained in these Statutes, the Board shall have the power to make appointments of persons having special skill or knowledge to suit the emergent need of the department or centre and in such emergent situation, the appointment shall be for a period of 12 months.*

XXX

XXX

XXX

XXX

28. APPOINTMENTS ON CONTRACT

(1) Notwithstanding anything contained in these Statutes, the Board with the prior approval of the Visitor may in special circumstances appoint an eminent person on contract for a period not exceeding 5 years.

(2) Subject to the provisions of the Act, the Board may appoint any person on contract in the prescribed scales of pay and on terms and conditions applicable to the relevant post for a period not exceeding 3 years.

(3) For making such appointments the Chairperson, Board of Governors shall constitute such adhoc Selection Committee, as the circumstances of each case may require.

Provided that such constitution of committee shall be reported to the Board for confirmation.”

29. Sub-statute (5) of Statute 23 provides that there shall be a Selection Committee for filling posts under the institute other than on

contract basis. The post can be filled up by advertisement or by promotion. The conjoint reading of sub-statute (5) & (8) of Statute 23 and Statute 28 makes it clear that appointment on contract basis may be made by Board though an ad hoc Selection Committee. In case of appointment of an eminent person, Board has to seek prior approval of Visitor and in other cases, Board may appoint subject to provisions of the Act. It is apt to notice that 2007 Act does not create embargo in making such appointments. The appointment on a post other than 'on contract basis' can be made by Selection Committee which consists of 5 members including one member of Visitor i.e. President of India.

30. Section 24 of 2007 Act provides that all appointments shall be made by Board in accordance with the procedure laid down in the Statutes. The First Statutes as discussed above clearly provides for appointment on contract basis in special or exceptional circumstances. A fortiori, the appointments, in general, shall be made on permanent basis. The petitioner is harping its argument on the basis of expression 'on contract' used in the column (2) of schedule 'E' of First Statutes. The said schedule cannot be read in isolation. It ought to be read in conjunction with 2007 Act and First Statutes as amended as well 2013 Rules read with Guidelines which clearly provide for appointment 'on contract basis' in exceptional circumstances. Resultantly, the Schedule 'E' ought to be read in the manner that Assistant Professor (level-10 or 11) may be appointed by Board through ad-hoc committee in exceptional circumstances. In general, all appointments shall be on permanent basis. No appointment of other posts i.e. Additional Professor or Professor can be on contract basis.

Note enclosed to aforesaid Schedule 'E' provides that pay scale shall be changed through open advertisement, however, pay scale of Assistant Professor on contract may be upgraded from Level-10 to Level-11 without open advertisement. This vindicates stand of the respondent that 'on contract' is nomenclature but Level 10 & 11 Assistant Professor are generally appointed on permanent basis.

31. Paragraph 24 of Annexure IV of 2011 Rules used to provide for appointment 'on contract' of candidates without Ph.D. It was further provided that on completion of Ph.D. degree, an incumbent will be given regular position w.e.f. the date of original contract appointment. It indicates that appointment is not truly 'on contract'. The said paragraph has been omitted from guidelines of 2013 Rules. The simple reason is prescription of minimum qualification Ph.D. degree for all posts. The expression 'faculty' as defined by Rule 2 (d) includes Assistant Professor. It means for all purposes, post of Assistant Professor is part of faculty and it cannot be treated as a contractual post.

32. The respondent has made and further during the course of arguments confirmed that appointments of Level 10 & 11 of Assistant Professors shall be made by duly constituted Selection Committee. It indicates that appointments of Level 10 & 11 Assistant Professors are not always contractual appointments. The respondent is having sanctioned posts. The respondent in case of emergent situation may make appointment on contract, ad-hoc or temporary basis. The guidelines enclosed with 2013 Rules, re-confirm mandate of Statute 23 (10) and 28 of First Statutes. In view of legal position and averments of respondent, it is hereby held that appointment of Assistant Professor (Level-10 & 11) is

permanent, if made by duly constituted Committee and after following due procedure. If the appointment is made by ad-hoc Selection Committee and without following due procedure, it would be 'on contract'.

33. A Constitution Bench in ***Secretary, State of Karnataka and Others v. Uma Devi and Others, (2006) 4 SCC 1*** has deprecated practice of appointment of staff on contract, ad hoc or temporary basis. The Court has observed that State should avoid making appointments on temporary, ad hoc or contract basis, though, in exceptional circumstances or emergent situation, the possibility of such appointments cannot be ruled out. The Court even has asked the States to regularize such employees who have completed 10 years of service as one time arrangement. The relevant extracts of judgment of Supreme Court in ***Uma Devi (supra)*** are reproduced as below:

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is

discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

[Emphasis Supplied]

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way

of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.”

[Emphasis Supplied]

34. Pursuant to aforesaid judgment, Union and the State Governments made regularization policy and many employees who had completed 10 years of service by 2006 were regularized.

35. The view expressed by Constitution Bench in ***Uma Devi (supra)*** has been reiterated by Supreme Court in its subsequent judgment in ‘***Official Liquidator v. Dayanand and Others***’, (2008) 10 SCC 1. The Court has reminded authorities to avoid backdoor entry in the name of temporary, part time or contractual appointments.

The sum and substance of afore-cited judgments is that the State should make endeavour to appoint staff on regular basis and avoid appointment on temporary, ad hoc or contract basis because these appointments are made without following prescribed procedure and entail backdoor entry.

36. The petitioner indirectly is claiming that despite her being appointed on contract or lecture basis should not be relieved and should be permitted to continue. It is respondent who has to decide its need. The respondent in the normal course, as observed above, cannot make appointment on ad hoc or temporary basis. The respondent in the wake of non-availability of teaching staff or any other reason, if at one point of time, has made appointment on temporary or lecture basis, it does not

create right in favour of any candidate. He or she has no right to stall the process of appointment of teaching staff on regular basis. As observed above, the appointment of Assistant Professor (Level 10 & 11) can be made on regular basis, thus, neither her contention that no appointment of Assistant Professor (Level 10 & 11) can be made on permanent basis nor her claim to continue despite her appointment on lecture basis, can be countenanced.

37. In the wake of above discussion and findings, it is hereby held that respondent has right to make appointment of Assistant Professor (Level 10 & 11) on permanent basis and petitioner has no right to claim continuity of service just because she was appointed to advert with an urgent situation.

38. The petitioner claims that Ph.D. scholars or M.Tech. Students receiving fellowship/scholarship cannot be assigned teaching load in priority to contractual or temporary faculty. The Ph.D. scholars can be assigned lab work and cannot be assigned teaching load.

COCPC-118-2024 is listed alongwith present petition. The respondent in reply to said contempt petition has submitted that full time Ph.D. scholars receiving fellowship are mandatorily required to be given upto 8 hours teaching load per week as per Ministry of HRD policy, thus, the institute has rightly assigned teaching load to Ph.D. scholars getting institute fellowship. The relevant extracts of reply dated 27.02.2024 filed in response to contempt petition are reproduced as below:

“3. That it is relevant to mention that the persons engaged on per lecture basis are allotted lectures as per the requirement of the Department in a particular semester. The teaching load varies as per the scheme approved by the

Senate. In the even semester, teaching load drastically reduces as students proceed for internship outside the institute and thus the requirement of faculty members also reduces.

4. That full time Ph.D Scholars receiving Institute fellowship are mandatorily required to be given upto 08 hours teaching load per week as per MHRD policy, likewise Post Graduate students admitted through centralized counseling (CCMT) are paid scholarship and are also required to devote upto 08 hours teaching load per week as per MHRD policy.

5. That the Head, Computer Engineering assigns the teaching load in the following order of precedence :-

- i) All regular faculty members.*
- ii) All Full time Ph.D Scholars and M. Tech Students receiving Institute Fellowship/Scholarship.*
- iii) Contract/Temporary Faculty.*
- iv) If the teaching load still remains then the Department requests for Guest Faculty as per the requirement and they are assigned teaching load accordingly.*

It is relevant to mention that no part time/sponsored Ph.D Scholars or M. Tech Students are assigned any teaching load. In view of the less requirement of work load in the even semester, there was no requirement to assign any work load to Guest Faculty whereas there was requirement of 64 hours in the odd semester which had been assigned to 06 Guest Faculties including the Petitioner. A detailed break-up of total load and the teaching load distribution among the Regular/Contract/Temporary/ Guest Faculty along with the Ph.D/M. Tech Scholars receiving the Institute fellowship for the past Four Semesters is annexed herewith as Annexure-R/3.”

d) Support for doctoral programmes by the Ministry of HRD be termed as Research/Teaching/Assistantship, the rate of this assistantship shall be enhanced to bring it to the DST/CSIR level contingency at a rate of Rs.20000 per annum per scholar (enhanced form Rs.1000 to bring parity with CSIR system) would be available to the Departments of IITs to meet departmental expenses on research related activities for the doctoral students. All scholars getting Research/Teaching Assistantship would be required to put in at least eight hours of research or teaching in the Institute. Enhanced rates shall be as follows.

Qualifying degree		First 2 years	For next 2 years
BE/B.Tech./M.Sc. Equivalent	Or	Rs.8000 pm	Rs.9000 pm
ME/M.Tech./MBBS Equivalent	or	Rs.9500 pm	Rs.10000 pm

[Emphasis Supplied]

40. From the perusal of reply and aforesaid quoted instructions of Ministry of HRD, it is evident that respondent can assign 8 hours per week teaching load to Ph.D. scholars who are getting fellowship. The assigning of teaching load to Ph.D. scholars is part of policy of Ministry of HRD. The respondent is paying scholarship to Ph.D. students, thus, they have every right to frame policy with respect to their study and conduct. The petitioner cannot claim that no teaching load should be assigned to Ph.D. scholars. Assigning of teaching load to Ph.D. scholars is a matter of business between respondents and Ph.D. scholars. The petitioner has no *locus standi* to raise her finger to their arrangement.

41. In the wake of above discussion and findings, this Court concludes:

- (i) The respondent can make appointment of Assistant Professor (Level 10 & 11) on permanent basis apart from contract basis.

- (ii) The petitioner has no right to claim continuity. She can be replaced by a regularly appointed teacher.
- (iii) The respondent can assign teaching load to Ph.D. scholars as per policy and guidelines issued by Ministry of HRD.

42. The present petition is bereft of merit and deserves to be dismissed and accordingly dismissed. It is hereby made clear that dismissal of present petition would not inhibit respondent to engage petitioner in future, on contract/ad hoc/temporary basis, if she meets requisite conditions. The respondent, within 15 days from the date of receipt of certified copy of this judgment, shall clear outstanding dues, if any, of the petitioner.

43. Before parting with this judgment, I would hasten to add that a number of petitions are coming up before this Court on account of contractual, ad hoc or temporary appointment of teaching staff by respondent. Education is foundation of every country and teachers play vital role in nation building. It is unfortunate that teachers not only of respondent organization but of States are fighting on roads or in the courts either for their appointment or terms and conditions of service. The respondent ought to make appointments on regular basis and avoid appointment on contract, temporary and ad-hoc basis.

(JAGMOHAN BANSAL)
JUDGE

01.05.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>