

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)342 of 2018

WP(C)343 of 2018

WP(C)367 of 2018

WP(C)342 of 2018

1. Dr. Sagnik Pal,
son of Biplab Pal,
resident of Village-39, Sakuntala Road Extn,
Palace Compound, P.O. Agartala, P.S. West Agartala,
District : West Tripura

2. Dr. Saptadip Saha,
son of Sri Deepak Rn. Saha,
resident of Masterpara, Town Pratapgarh,
P.O. Agartala, P.S. West Agartala, District : West Tripura

3. Dr. Nabarun Biswas,
son of Kalipada Biswas,
resident of North Joynagar,
P.O. Agartala, P.S. West Agartala,
District : West Tripura

4. Dr. Ashis Acharjee,
son of late Debendra Acharjee,
resident of Village-79,
Health Quarters Type 2, No.15,
Agartala, P.O. Kunjaban, P.S. New Capital Complex,
District : West Tripura

5. Dr. Parthasarathi De,
son of Durgaparasanna De,
resident of Village- Palace Compound,
North Agartala, A.M.C., P.O. Agartala,
P.S. East Agartala, District : West Tripura

6. Dr. Abhishek Paul,
son late Ashuranjan Paul,
resident of Village-Bhati Abhoynagar,
Cantonment Road, P.O. Agartala, P.S. West Agartala,
District : West Tripura

7. Dr. Bishop Debbarma,
son of late Manindra Debbarma,
resident of Village-1/133, Jagat Rampur,
P.O. & P.S. Jagat Rampur, District : West Tripura

8. Dr. Aparesh Datta,
son of Arun Datta,
resident of Village-42, Ward No.9,
Kali Nagar, P.O. & P.S. Belonia,
District : South Tripura

9. Dr. Sudev Das,
son of Gopal Ch. Das,
resident of Village-No.1,
Nagchandra Para, I.C.D.S. Centre,
P.O. & P.S. Belonia, District : South Tripura

10. Dr. Swarup Biswas,
son of Swaraj Biswas,
resident of Village-1/227,
Ward No.1, Near Teliamura H.S. School,
P.O. Karailong, P.S. Teliamura, District : West Tripura

11. Dr. Joydeep Roy,
care of Sri Nirmal Chandra Roy,
resident of Village-Mohanpur, P.O. Majlishpur,
P.S. Ranirbazar, District : West Tripura

-----Petitioner(s)

Versus

1. The National Institute of Technology, Agartala,
represented by its Registrar,
P.O. & P.S. Jirania, District : West Tripura

2. The Registrar,
National Institute of Technology, Agartala,
P.O. & P.S. Jirania, District : West Tripura

3. The Director,
NIT Agartala, P.O. National Institute of Technology,
P.S. Jirania, District : West Tripura, PIN : 799046

----- Respondent(s)

WP(C)343 of 2018

1. Sri Debashis Podder,
son of Sri Dulal Podder,
resident of Village & P.O. West Laxmibill,
P.S. Bishalgarh, District : Sepahijala Tripura

2. Sri Diptanu Dey,
son of Sri Haradhan Dey,
resident of Village & P.O. Indranagar,
P.S. East Agartala, District : West Tripura

3. Sri Rupam Gupta Roy,
care of late Pulin Behari Deb,
resident of Village- Joynagar,
P.O. Agartala, P.S. West Agartala,
District : West Tripura

4. Sri Kishore Kumar Dhar,
son of late Swapan Kumar Dhar,
resident of Village-Vivekananda Lane No.5,

North Badharghat, P.O. A.D. Nagar,
P.S. A.D. Nagar, District : West Tripura

5. Smt. Tannistha Pal,
daughter of Prasanta Kumar Pal,
resident of Village-North Joynagar,
P.O. Agartala, P.S. West Agartala,
District : West Tripura

6. Smt. Lalita Kumari,
daughter of late Rajendra Prasad,
resident of Type IV Quarter, Front of
Gramin Bank NIT Campus,
P.O. & P.S. Jirania, District : West Tripura

7. Sri Subhajit Deb,
son of Shantu Deb Modak,
resident of Village-Shibnagar College Tilla,
P.O. Agartala College, P.S. East Agartala,
District : West Tripura

-----Petitioner(s)

Versus

1. The National Institute of Technology, Agartala,
represented by its Registrar,
P.O. & P.S. Jirania, District : West Tripura

2. The Registrar,
National Institute of Technology, Agartala,
P.O. & P.S. Jirania, District : West Tripura

3. The Director,
NIT Agartala, P.O. National Institute of Technology,
P.S. Jirania, District : West Tripura, PIN : 799046

----- Respondent(s)

WP(C)367 of 2018

1. Sri Santanu Chakraborty,
care of Subal Chakraborty,
resident of Village-Jhakurmura,
P.O. & P.S. Sonamura,
District : Sepahijala Tripura

2. Smt. Jhinuk De,
daughter of Tapan De,
resident of Village-Noagoan Krishnanagar,
P.O. Kunjaban, P.S. West Agartala,
District : West Tripura

3. Sri Manojit Roy,
son of late Surjya Mohan Roy,
resident of Village-Kalyani, Water Supply Road,
P.O. College Tilla, Agartala,

P.S. East Agartala,
District : West Tripura

4. Sri Biswajit Paul,
son of Sri Bhakta Ch. Paul,
resident of Village-Pratapgarh (Pal Para),
P.O. Pratapgarh, P.S. East Agartala,
District : West Tripura

5. Sri Mantu Das,
son of Sri Joy Gopal Das,
resident of Village-Gobindapur-East,
P.O. & P.S. Kailashahar, District : Unakoti Tripura

6. Smt. Pinki Majumder,
daughter of Sri Indu Bhusan Majumder,
resident of Dhaleswar Agartala, P.O. Dhaleswar,
P.S. East Agartala, District : West Tripura

7. Smt. Susmita Roy,
daughter of Sri Sanjit Kumar Roy,
resident of Village-A.D. Nagar, Road No.8,
Near Kalibari, P.O. & P.S. A.D. Nagar,
District : West Tripura

8. Smt. Jayasree Chakraborty,
daughter of late Rakhal Chakraborty,
resident of Village-North Badharghat,
P.O. & P.S. A.D. Nagar, District : West Tripura

9. Smt. Sayanta Chakraborty,
daughter of Santi Bhusan Chakraborty,
resident of Village-Ramnagar Road No.2,
P.O. Ramnagar, P.S. West Agartala,
District : West Tripura

10. Sri Subharaj Paul,
care of Nepal Chandra Paul,
resident of Village-Dharmanagar,
P.O. & P.S. Teliamura,
District : Khowai Tripura

11. Sri Abhijit Baidya,
son of late Rakhal Baidya,
resident of Village-West Charakbai,
P.O. & P.S. Baikhora, District : South Tripura

12. Sri Jayanta Debnath,
son of Sri Gopal Ch. Debnath,
resident of Chanban, Udaipur,
P.O. & P.S. R.K. Pur, District : Gomati Tripura

Versus

-----Petitioner(s)

1. The National Institute of Technology, Agartala,
represented by its Registrar,
P.O. & P.S. Jirania, District : West Tripura

2. The Registrar,
National Institute of Technology, Agartala,
P.O. & P.S. Jirania, District : West Tripura

3. The Director,
NIT Agartala, P.O. National Institute of Technology,
P.S. Jirania, District : West Tripura, PIN : 799046

----- Respondent(s)

For Petitioner(s)	:	Mr. A. Bhowmik, Adv.
For Respondent(s)	:	Mr. B. Majumder, C.G.C.
Date of hearing	:	27.02.2019
Date of delivery of Judgment & Order	:	31.05.2019
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

By means of these writ petitions being WP(C) No.342 of 2018 [Dr. Sagnik Pal & Others versus The National Institute of Technology, Agartala & Others], WP(C) No. 343 of 2018 [Sri Debashis Podder & Others versus The National Institute of Technology, Agartala & Others] & WP(C) No. 367 of 2018 [Sri Santanu Chakraborty & Others versus The National Institute of Technology, Agartala & Others], the petitioners have urged for issuance of Writ of Certiorari for setting aside the advertisement dated 22.09.2017 [Annexure-25 in WP(C)No.342 of 2018]. That apart, it has been urged that in terms of the model recruitment Rules for faculty of NIT [Annexure-1 in WP(C)No.342 of 2018] their services shall be regularized in the post of Assistant Professor on their obtaining of

Ph.D. Degree, in the course of their service in the post of Assistant Professor on contract or to extend their period of contract by the required period for completing Ph.D. Degree for purpose of regularization. It has been also urged that by a Writ of prohibition, the respondents be directed not to discontinue the services of the petitioner in the post of Assistant Professor [on contract basis]. Further, it has been urged to stay the further implementation of the advertisement dated 12.09.2017.

2. At the outset, it has to be noted that the petitioners in WP(C)No.342 of 2018 have completed their Ph.D. after their engagement on contract basis. The petitioners in WP(C)No.343 of 2018 are on the verge of completion of their Ph.D. The petitioners in WP(C)367 of 2018 were appointed as the Assistant Professor on contract basis in the branch of Science and Humanities unlike the petitioners of the other writ petitions who belong to the branch of engineering. The petitioners No.2,3,6,7,8,11 and 12 of the writ petition being WP(C)No.367 of 2018 were recruited on contract basis without Ph.D. degree and the petitioners No.1,4,5 and 9 were recruited on contract basis with Ph.D. degree. But the petitioners No.2,3,6,7,8,11 and 12 have completed their Ph.D. on their engagement on contract basis. Only the petitioner No.10 in WP(C)No.367 of 2018 has not been given any opportunity to complete Ph.D. even though, he had submitted a representation to the competent authority. According to the petitioners, for their engagement as Assistant Professor on contract basis, a transparent selection process was followed. The due selection committee under Statute 28(3) of the NIT was formed for this purpose. In the advertisement for such selection, it had been provided that the

persons who would like to apply for the said engagement must have M.Tech. in various disciplines for Engineering and master degree with 1st class in physics, mathematics and chemistry. It had been categorically provided that Ph.D. would be preferred. According to the petitioners, their engagement on contract basis has been made under the NIT Faculty Recruitment Rules, 2011, inasmuch as they were appointed without Ph.D. on contract basis. The petitioners are serving in the NIT Agartala without interruption and continuously for a period of more than six years.

3. There is no dispute in the bar that Ph.D. degree is the minimum qualification for a regular faculty position in NIT. The candidates who are engaged without Ph.D. may only be engaged as Assistant Professors on contract basis. By the said NIT Faculty Recruitment Rules, 2011, which according to the petitioner, has come into force NIT shall provide the necessary facilities such contract faculty to complete their own Ph.D. either within the institute or outside. A deficiency in respect of granting extension to such facility, however, will not be a ground for award of regular post without a Ph.D. degree. The petitioners, however, have acceded that if they registered poor progress on their Ph.D. work, there shall be an enquiry by a committee as provided under the said Rules, 2011. The committee shall be constituted by one external expert. Rule 24(5) of the said Rules provides that on award of Ph.D. degree an incumbent will be given regular position with effect from the date of engagement on contract with provision of one year probation after regularization. Only those rules have enabled the respondents to engage the petitioners without Ph.D. degree as the contract faculties. It has been further provided by Entry 24 (v) of the NIT Faculty Recruitment

Rules, 2011 that on award of Ph.D. degree, an incumbent will be given regular faculty position with effect from the day of their engagement on contract with one year probation after regularization.

4. By filing the reply, the respondents have clearly denied that NIT Faculty Recruitment Rules, is adopted or applicable in NIT Agartala. In this regard, the petitioners have stated that the First Statute under the NIT Act was enacted in the year, 2009 and thereafter, Ministry of Human Resource Development (MHRD) framed the NIT faculty recruitment rules from time to time (3-tier) and thereafter, NIT Faculty Recruitment Rules (4-tier) on 2014 which are admittedly not part of the Statute. Ultimately, the NIT Faculty Recruitment Rules (4-tier) was challenged before Allahabad High Court. That high court has, according to the petitioner, held that the recruitment rules have to be in the form of Statute. Only thereafter, the NIT issued the (4- tier) recruitment Rules in the year 2017 in the form of Statute. The petitioners have asserted that NIT Agartala in the intervening period had applied the NIT Faculty Recruitment Rules, 2011. Now, the NIT cannot disown their responsibility emerging out of the said recruitment Rules, 2011.

5. Mr. A. Bhowmik, learned counsel appearing for the petitioners has strenuously argued that if the petitioners are recruited under the said Rules of 2011, they have right to be regularize under Entry 24(5) of the said rules on completion of their Ph.D. In this context, Mr. Bhowmik, learned counsel for the petitioner has made a reference to the communication of Ministry of Human Resource Development [MHRD] dated 17.07.2017 [Annexure-10 to the rejoinder filed by the petitioners]. The entire text of the said communication may be reproduced for purpose of reference :

**F.No.2-5/2017-TS.III
GOVERNMENT OF INDIA
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
DEPARTMENT OF HIGHER EDUCATION**

New Delhi, the 17th July, 2017

To
The Director
Motilal Nehru National Institute of Technology,
Allahabad, Uttar Pradesh

Subject : Clarification regarding confirmation of Assistant Professors who were appointed in NITs on contract as per provisions contained in Model recruitment Rule (MRR) for faculties in NITs-regarding.

Sir,

This Ministry had received a reference from MNNIT, Allahabad seeking clarifications regarding applicability of the provisions of NIT Faculty Recruitment Rules, 2011 on assistant Professors who were appointed in the Institute on contract as per provisions contained in above said Rules prior to the implementation of 4-Tier Flexible Faculty Structure. These Asst. Professors were not having Ph.D. degree at the time of their contractual recruitment following the provisions of 3 Tier System for Faculty recruitment in NITs.

2. One of the conditions of the contract signed between the appointees and the Institute was that as the appointee do not possess a Ph.D. degree which is an essential requirement, the post is offered initially for period of three years which can be further extended by another two years on the recommendations of a valid Selection Committee. In the mean time the appointee will have to acquire Ph.D. degree, failing which the contract may not be extended beyond the period of five years. However, his/her services would be automatically regularized on the same post in the same Pay-Band and the same AGP from the date of his/her acquiring the Ph.D. degree within the stipulated period.

3. Therefore, a clarification was sought by MNNIT, Allahabad whether such faculty can be regularized as per the rules and conditions of the appointment letter/contract or not in view of the fact that 4-Tier Flexible Faculty Structure is in vogue.

4. This matter was examined in this Ministry in consultation with D/o Legal Affairs, M/o Law & Justice, the regularization of such Assistant professors (mentioned in Institute's letter dated 7th February, 2017) may be carried out as per the terms and conditions of the appointment letter and Recruitment rule prevailing at that point of time.

6. The Board of Governors of the Institute may take further necessary action in this matter.

**Yours faithfully,
Not illegible
(Anil Kumar Singh)
Under Secretary to
the Government of
India
Ph :23384897**

6. Mr. Bhowmik, learned counsel has introduced the basic facts. In the advertisement against which the petitioners were appointed, the essential qualification sought for by NIT was M. Tech

with 1st class in various disciplines for Engineering and for the Science and Humanities, the candidates were required to have Master Degree with 1st class in Physics, Mathematics and Chemistry. The degree of Ph.D has been indicated as the preferable qualification. The said advertisement dated 07.07.2011 [Annexure-2 to the writ petition] has laid down the various requirements for engagement as Assistant Professor on contract for several branches. According to Mr. Bhowmik, learned counsel, it is clear that the said advertisement was issued in terms of the NIT Faculty Recruitment Rules, 2011, only those rules enable the NITs to recruit faculties without Ph.D degree on contract basis.

7. There is no dispute that all the petitioners are appointed as Assistant Professor on contract basis and they are continuing for 6/7 years in the said position. Entry-11 of the Schedule which laid down the basic principles of faculty recruitment provides that a Ph.D shall be the minimum qualification for a regular faculty position in NIT. Candidates with M.Tech degrees may be appointed as Assistant Professors on contract basis only. The institute will strive to provide necessary facilities to such contract faculty to complete their own Ph.D either within the institutes (if facilities exist) or outside. Any deficiency in extension of such facility, however, will not be a ground for award of regular post without any Ph.D degree. Entry-24(iv) and (v) of the schedule to the NIT Faculty Recruitment Rules, 2011 provide as follows :

"24(iv) During the contract period, if an incumbent shows poor progress on his Ph.D work or dereliction 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.

24(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 regularization. For all future records, the starting point of service will be the date on which the contract service started originally."

It may conveniently be noted here that no such clauses surfaced in the contract.

8. Mr. Bhowmik, learned counsel appearing for the petitioner has submitted that the NIT Faculty Recruitment Rules, 2011 have enabled the NIT to recruit the faculties without Ph.D on contract basis. After such recruitment on contract basis, NIT is under obligation to extend all facilities to the contract faculties for completing their Ph.D within the institute or without. Entry 24(iv) of the schedule provides that if the incumbent shows poor progress on his Ph.D programme or dereliction of duties in teaching, the authority may, after inquiry, as prescribed, may terminate the said engagement on contract. Entry-24(v) provides that on award of Ph.D, an incumbent will be given regular position with effect from the date of the engagement on contract with probation for one year after regularization.

9. With reference to the statement made by Mr. B. Majumder, learned CGC, which he made in the opening remarks, that NIT Faculty Recruitment Rules, 2011 as referred to by the petitioner has not been adopted or applied in any manner for recruitment of faculties or the contract faculties. Mr. Bhowmik, learned counsel appearing for the petitioner has submitted that the First Statute under the NIT Act was enacted in the year 2009. Thereafter, the Ministry of Human Resource Development [MHRD] framed the NIT Faculty Recruitment Rules from time to time. In 2011, NIT Faculty Recruitment Rules (3-tier) was enacted, whereas NIT Faculty Recruitment Rules (4-tier) was enacted in 2014 but those were not in

the form of the Statute. The NIT Faculty Recruitment Rules, (2014) was challenged in the Allahabad High Court which has held that the recruitment Rules are to be 'in the form of Statute'. Thereafter, those rules were made in the year 2017, in the form of the Statute.

10. According to Mr. Bhowmik, learned counsel appearing for the petitioner, NIT Faculty Recruitment Rules, 2011 was given effect to by NIT during the intervening period and hence, NIT cannot disown the obligation under the NIT Faculty Recruitment Rules, 2011 nor NIT can deny that the rules have been enforced. Since the contract recruitments of the faculties (Assistant Professor) took place in the year 2011 it has to be deemed that the NIT Faculty Recruitment Rules, 2011 was in force at the relevant point of time. As the recruitments are made on contract in the faculty position, all the rights and privileges created by the said rules, 2011 shall apply in the case of the petitioners. Thereafter, reference has been made to the letter dated 17.07.2017 as reproduced above to bolster the claim of the writ petitioner for their regularization. Without regularizing the petitioners who were recruited as the contract faculty, the NIT, Agartala has floated an advertisement on 12.09.2017 [Annexure-25 to the writ petition] seeking application from the eligible persons for filling up of the vacant post of Assistant Professor including the Assistant Professors on contract [in the scale in PB-3]. The said advertisement, according to the petitioners, has given rise to the present controversy.

11. Mr. Bhowmik, learned counsel while making his final statement to close his submission has made a reference to the definition of 'temporary faculties' and 'contract faculties'. He has referred the definition as made in NIT Faculty Recruitment Rules,

2009. According to those rules, the faculty on contract means faculty recruited by the selection board against the sanctioned faculty position where regular faculty cannot be recruited. The temporary faculty means faculty recruited when the number of faculties in a department becomes 0.75 of the normal strength owing to long leave etc. Thus, the temporary faculties are recruited against the situation vacancies not against the sanctioned faculty position. The temporary faculties were recruited for a maximum of 5 semesters. It has been also mentioned that the recruitment in a post on contract basis is made by the ad hoc selection committee in terms of statute 28 (3) of the NIT Act. For recruitment to the regular faculty position, the selection committee is constituted under statute 23(5) of the first Statute of the NIT. The petitioners, therefore, prays for their regularization.

12. Mr. B. Majumder, learned CGC in order to elucidate has submitted that NIT Agartala is a statutory body created by the National Institutes of Technology, Science, Education and Research Act, 2007. The said act was amended in the year 2012 and 2014. He admits that the institute is within the meaning of state under Article 12 of the Constitution of India. The First Statutes were framed in the year 2009 and the same was amended by the notification dated 24.07.2017. No other amendment was carried out in the said period. In terms of the said section of NITSER Act, the Board of Governors under section 10 is the authority of the Institute. The Board of Governors has the power of general superintendence and control under Section 13(1) of the NITSER Act. Under Section 17(2) and 24 of the NITSER Act the administrative arrangement has been laid. It has been asserted that in the Statute it has been provided that the

employment advertisement has to be made and thereafter, out of the eligible candidates, the suitable candidates will be selected by the selection committee, formation of which has been prescribed under the Statute. It has been categorically asserted in the reply filed by the respondent-NIT thus :

"The petitioners fall under the category of temporary employees and with terms and conditions of service mentioned in the appointment letters for contractual engagements as per Section 27 of the NIT statutes. The terms and conditions of the contractual engagement of the petitioners, do not have any provision for regular appointment or to regularize the contractual service."

13. It has been further asserted that the advertisement dated 12.09.2017 have been issued in accordance of the mandatory requirement under Section 23(1) of the NIT Statutes for recruitment of the NIT faculty at Agartala in the due scale of pay, meaning the recruitment of Assistant Professors is an exercise for appointing Assistant Professors against the approved cadre. Hence, the advertisement dated 12.09.2017 is for a completely different purpose. The nature of engagement of the petitioners is in the realm of contract, with consolidated monthly pay as temporary employees.

14. In para-10 of the reply the respondents No.1 and 2 have categorically stated that Model Faculty Recruitment Rules, 2011 cannot have the status of the recruitment Statutes [see Allahabad High Court judgment for his purpose] as framed under Section 25 of the NITSER Act. The NIT Faculty Recruitment Rules, 2011 as referred by the petitioners cannot be binding, inasmuch as, those were not adopted by the NIT Agartala nor pare material provisions are entered in the Statute. According to the respondents, the petitioners fall under the category of temporary employees and their service conditions are guided by Statute 27 of the NIT Statutes. The

recruitment Statutes as amended had been notified under Section 27 of NITSER Act on 24.07.2017 in the Gazette of India. It has been also asserted by the respondents that there was change of nomenclature of Assistant Professor on contract while implementing the 7th CPC recommendation in NIT Agartala, but for that, the core issue as adverted in this writ petition will not take a different contour.

15. In Para 12 of the reply, it has been averred that the petitioners have submitted their application for recruitment in response to the advertisement dated 12.09.2017 and therefore, they have accepted the validity of the recruitment process by their conduct and now, they cannot challenge the said advertisement dated. As per the advertisement dated 12.09.2017, the Ph.D is the minimum qualification for teachers along with other qualifications as prescribed by the NIT Statutes [Schedule-E] for quality teaching and research and for fulfilling the other objectives of NITs. Thus, there is no question of deviating from the essential requirement of the Statute. It appears that the direct recruitment for filling up the vacancies can be made by the selection committee as constituted in terms of Statute 23 of the First Statute of National Institute of Technology, as amended. The said selection committee, however, can only recommend for selection against the post "other than the post on contract basis". The said selection committee cannot recommend for the post to be filled up on contract or for purpose of recruitment on contract of the temporary employees [see Section 27 of the said Statute]. Section 28(3) of the NIT Statutes provides that for making such recruitments [on contract], the chairperson of the Board of Governors shall constitute such ad hoc selection committee, as the circumstances of each case may require provided that such

committee shall report to the Board for confirmation. Thus, the recruitment on contract is to be made under Statute 28 of the NIT Statute, as amended.

16. Thus the NIT respondents have categorically stated that no Statute is in force in NIT Agartala nor the terms and conditions of the engagement envisage regularization from the engagement on contract as a matter of right. In this regard, it has been clearly stated that even the Minutes of 24th meeting of Board of Governors, NIT Agartala held on 25.08.2012 does not lend any support to the petitioner as those recommendations were not accepted by observing that the existing and prevailing norms were to be followed. That apart, during pendency of the writ petition, by the notification dated 25.02.2019, the recruitment process in respect of Assistant Professor on contract with AGP Rs.6000/- and Assistant Professor on contract with AGP Rs.7000/- has been cancelled with leave of this court. Thus, the prayer in respect thereof has become infructuous.

17. The questions now fall for consideration are (i) whether this court can restrain the respondent from discontinuing the petitioners in the post of Assistant Professor on contract basis and (ii) whether the petitioners are entitled to regularization in the post of Assistant Professor on award of Ph.D degree from the date of their initial engagement on contract with all service benefits including seniority? For purpose of claiming such right, the petitioners have relied on the NIT Faculty Recruitment Rules, 2011 [Anenxure-1 to the writ petition] where it has been provided as under :

"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 causes 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 regularization. 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 added]

Even in that Statute, the following provisions are available in respect of faculty on contract and temporary faculty :

"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.

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 0.75 x 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.

Duration of appointment shall be one semester to start, and may be extended on semester to semester basis on recommendation of the HOD. Maximum duration of appointment in the entire career of a person shall be limited to 5 semesters. A consolidated remuneration, proportional to the assigned duties may be worked out on mutual agreement. The temporary faculty may be permitted to work full time or part time depending on the remuneration paid to him. In addition to the consolidated remuneration, director may, at his discretion, extend residential accommodation, telephone, travel and other facilities."

18. As the respondents have categorically stated that the engagement on contract basis of the petitioners are either regulated under Statute 27 of the First statute or by the terms and conditions of the engagement. To have the perspective fact [further elucidated] it would be apposite to extract the terms and conditions appended to the engagement letters of the petitioners, one of such letter dated 04.01.2016 [Annexure-3 to the writ petition being WP(C)No.342 of 2018 is taken for reproduction]. The terms and conditions of the engagement are as follows :

"1. You will receive a consolidated amount of Rs.40,000/-(Rupees Forty thousand) only per month to be paid subject to satisfactory appraisal report from the concerned Head of the Department/Branch Head.

2. You have to submit certified copies of all testimonials/certificates and other necessary credentials to your Head/Branch/Section In-charge along with originals for verification.

3. Your will be entitled TA/DA whenever deputed for official duties outside the Head Quarters.

4. Your will not be entitled to any Medical Reimbursement.

5. Your will avail the normal holidays and C.L./Special Leave as applicable to NIT Agartala. Any other leave is not applicable to you.

6. You will perform all other works as and when assigned by the Competent Authority of NIT Agartala.

7. The engagement will be subject to discontinuation at any point to time without assigning any reason if exigency of service does not require it or the interest of the Institution is not served to the satisfaction of the engaging authority and the engagement will not confer any right of continuation or confirmation under any circumstances.

8. If you want to leave the organization, you have to give at least one month notice."

19. That apart, the petitioners have asserted in response to the reply filed by the respondents No.1 and 2 that between 2009 and 2017, NITs introduced two recruitment rules viz.3-tier recruitment rules in the year 2011 and 4-tier recruitment rules in the year 2014 but without introducing them as Statute. Allahabad High Court has set aside the Recruitment Rules, 2014 and as consequence thereof, NIT, Allahabad has enforced the Recruitment Rules, 2011. By the letter dated 17.07.2014 [Annexure-10 to the rejoinder filed by the petitioner] MHRD informed that regularization of the contract faculty can be carried out in terms of the Model Recruitment Rules, 2011 [Annexure-1 to the writ petition]. Thus, it cannot be accepted that the petitioners are temporary employees and they do not have any right to get regularization in terms of the Model Recruitment Rules, 2011.

20. Mr. Bhowmik, learned counsel has emphasized that in the advertisement which was published under Section 23(1) of the NIT Statute for engagement of the faculty on contract, nowhere it had been mentioned that the post of the petitioners were temporary. According to him, the respondents have been trying to misguide this

court. The petitioners, however, have denied the contention that the selection committee for engagement was not constituted under Statute 23(5)(a) and hence, it has to be deemed that the engagement of the faculty on contract was so made under the Model Recruitment Rules, 2011.

21. At this stage, it is necessary to point out that the petitioners have repeatedly asserted that they were engaged on contractual basis having M.Tech degree or the required post graduate degree and after appointment, most of them have completed their Ph.D. In terms of the NIT Faculty Recruitment Rules, 2011 by operation of which they were appointed, they shall be regularized from the date of their initial engagement if they obtained Ph.D. degree, with all financial benefits like seniority etc. According to the petitioners, by the advertisement dated 12.09.2017 [Annexure-25 to the writ petition] the respondents had adverted for the post of Assistant Professor with the sole intention to disengage the petitioners and hence, the said advertisement is oppressive in nature and is not sustainable under Article 14 of the Constitution of India. By the order dated 03.04.2018, this court had given the protection to the petitioner in the following manner :

"In the meanwhile the respondents may continue with the selection process which has been initiated pursuant to the advertisement dated 12.09.2017 (Annexure-25) in reference to Sl. No.1(1 & 2) at page-70, but shall not publish/notify the final select/merit list without prior permission of the court."

With leave of this court, the said advertisement dated 12.09.2017 has been recalled so far the category of Assistant Professor on contract is concerned, and the recruitment process has been terminated without selecting anyone with leave of the court.

22. From a keen reading of the averments and the letter dated 17.07.2017 [Annexure-10 to the rejoinder filed by the petitioners] and on appreciation of the submission of the learned counsel for the parties, this court is confronted with following further questions :

(i) Whether the petitioners were recruited as Assistant Professor on contract on consolidated pay based under the Model Recruitment Rules, 2011 or they were recruited against the permanent post on contract or they are liable to be regularized on their obtaining Ph.D. from the date of initial engagement on contract and (ii) Whether the petitioners were appointed under First Statute of the National Institute of Technology [see Statute-27], whereby it is provided that the service of a temporary employee shall be liable to termination at any time by notice of one month in writing, given either by the employee to the appointing authority or by the appointing authority to the employee or under the terms and condition of service as such as may be specified by the appointing authority in their letter of engagement and (iii) Whether the petitioners have any general right to claim regularization irrespective of the Statutes?

23. In the communication dated 17.07.2014 as reproduced above, it is apparent that one of the conditions of the contract signed between the appointees and the Institute was that as the appointee does not possess a Ph.D. degree which is an essential requirement, the post is offered initially for a period of three years which can be further extended by another two years on the recommendations of a valid Selection Committee. In the mean time, the appointee will have to acquire Ph.D. degree, failing which the contract may not be extended beyond the period of five years. However, his/her services would be automatically regularized in the same post in the same Pay-

Band and the same AGP from the date of his/her acquiring the Ph.D. degree within the stipulated period.

24. From the letter of engagement, it appears that no such term has been incorporated in the said letter of engagement. In contrast, specific terms are embodied including that the contract may be terminated by giving thirty days' notice from either side. In the face of the specific statement made by the respondents in their reply that Model Recruitment Rules, 2011 [Annexure-1 to the writ petition] was not and never acted upon for those contractual engagements made in favour of the petitioners. The petitioners on the contrary have failed to show that their appointments were made under the said Model Recruitment Rules, 2011, which is also referred as NIT Faculty Recruitment Rules, 2011. As such, the direction and observation as made in the letter dated 17.07.2014 will be of no help to the petitioners. It is apparent that the engagement of the petitioners were made under Section 27 of the First Statute by stipulating terms and conditions of such engagement and hence, the petitioners cannot claim regularization following the letter dated 17.07.2014 or by virtue of stipulation made under the NIT Faculty Recruitment Rules, 2011. Their services are to be guided by the said Statute 27 or under the terms and conditions as laid in the engagement letters. Further, the petitioners do not have any general right to claim regularization inasmuch as in **Secretary, State of Karnataka versus Uma Devi (3) and Others** reported in **(2006) 4 SCC 1** the apex court has underlined the guiding principles as under :

"34. 27. In A. Umarani v. Registrar, Cooperative Societies and Ors. (2004)7 SCC 112 a three judge bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments

would be illegal and cannot be regularized by the State. The State could not invoke its power under Article 162 of the Constitution to regularize such appointments. This Court also held that regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a statutory Act or the Rules framed thereunder. Regularization furthermore cannot give permanence to an employee whose services are ad hoc in nature. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularization."

Thus, this court is of the view that the petitioners do not have any indefeasible right to be regularized in the post of the Assistant Professor from their engagement on contract as stated, nor are they entitled to continue in such engagement as long as they are not regularized subject to their acquisition of Ph.D. etc.

25. It appears from the additional counter affidavit filed by the respondents No.1, 2 and 3 on 18.02.2019 that all the petitioners have applied for the recruitment in terms of the employment notice dated 12.09.2017 and some of them have left the institute after resignation. Even though, the selection process which had been initiated by the advertisement dated 12.09.2017 [Annexure-25 to the writ petition] has been recalled for the present category concerned, by the notification No.F.NITA.2(472-Estt)/2017/(Part File)/14494 dated 25.02.2019. As stated, the relief as regard interference with the employment notice dated 12.09.2017 has become infructuous.

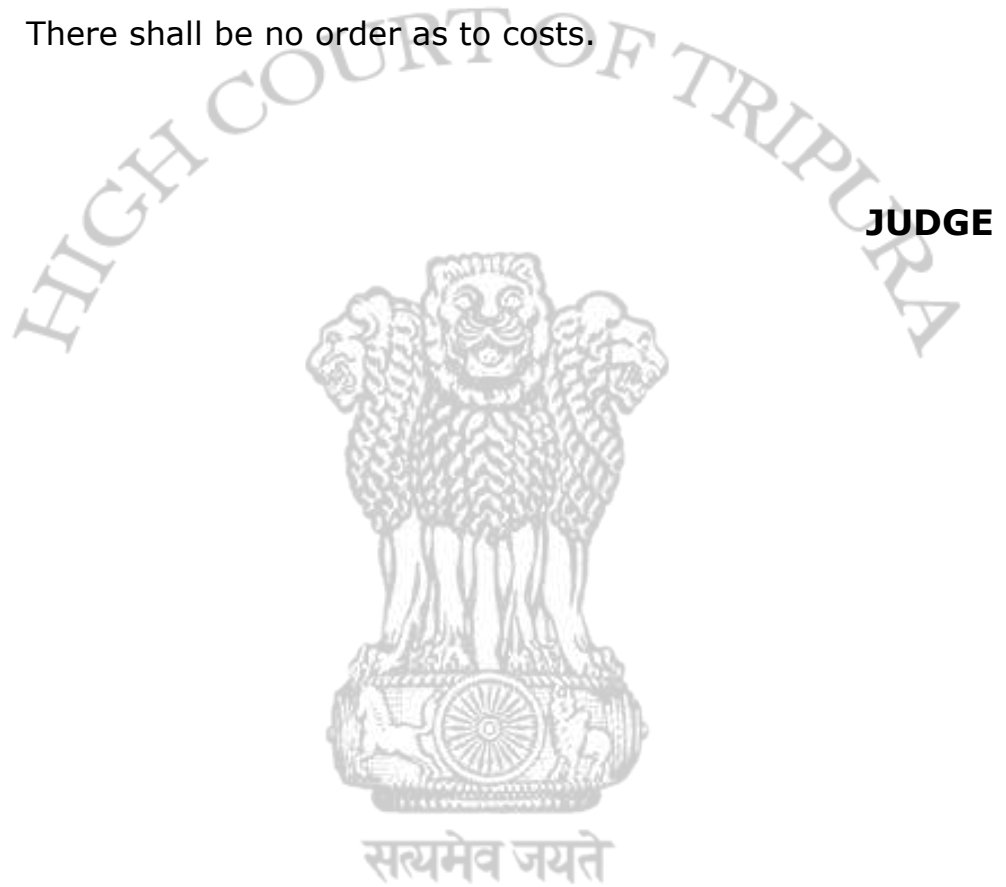
26. However, this court is persuaded to hold that having regard to the view expressed by the apex court in **Hargurpratap Singh versus State of Punjab** reported in **(2007) 13 SCC 292** that a set of contractual employees cannot be replaced by another set of contractual employees and they have to continue to work till regular selection is made. Hence, the respondents are restrained from initiate any selection process for engagement of Assistant Professor on

contract against the vacancies which are occupied by the petitioners. However, vacancies emerged for resignation or termination on the basis of performance appraisal may be filled up by the respondents. This restraint order shall survive till the regular selection in those posts are made.

In terms of the above, this writ petition is partly allowed.

Interim order, if any, stands vacated.

There shall be no order as to costs.



JUDGE