

HIGH COURT OF TRIPURA
AGARTALA
WP(C)No.1298 of 2017

Sumanta Chakrabarti,
son of Sri Hiranmay Chakrabarti,
resident of Ramkrishna Mission Road,
Town Bardowali, P.O. Agartala,
P.S. West Agartala, District : West Tripura

---- Petitioner(s)

Versus

1. The Union of India,
represented by its Secretary,
Ministry of Human Resource and
Development, Government of India,
Shastri Bhawan, New Delhi-110001

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

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

4. The Chief Vigilance Officer,
National Institute of Technology, Agartala,
P.O. & P.S. Jirania, District : West Tripura

5. The Board of Governors,
represented by its Chairperson,
National Institute of Technology, Agartala,
P.O. & P.S. Jirania, District : West Tripura

---- Respondent(s)

For Petitioner(s) : Mr. A. Bhowmik, Adv.

For Respondent(s) : Mr. B. Majumder, Asst. S.G.
Mr. S. Mahajan, Adv.

Date of Hearing : 02.03.2021
Date of Judgment & Order : 31.05.2021
Whether fit for reporting : NO

**BEFORE
HON'BLE MR. JUSTICE S. TALAPATRA**

Judgment & Order

When National Institute of Technology, Agartala issued the employment notification dated 06.09.2010 for appointment to the post of Deputy Registrar, the petitioner was serving in the Tripura State Pollution Control Board, Department of Science and Technology and Environment, Government of Tripura as Assistant Environmental Engineer. As the petitioner was eligible for appointment to the post of Deputy Registrar (Administration) for conforming to the qualification and experience as declared by the notification dated 06.09.2010, *he had applied for the post of Deputy Registrar (Administration)*. Since the eligibility of the petitioner is not under controversy, for sake of brevity, detailed notes are *avoided*.

2. Having been recommended for appointment by the Selection Committee and approved by the Board of Governors (BOG in short), NIT, Agartala the petitioner was appointed as the Deputy Registrar (Administration) by the letter of appointment dated 21.07.2011 [Annexure-1 to the writ petition] and the petitioner joined the said post by filing the joining report dated 12.08.2011 [Annexure-2 to the writ petition]. The petitioner was confirmed in the said post by the memorandum No.NITA.2(355-Estt)/2011/8516-19 dated 04.12.2012 [Annexure-3

to the writ petition] as the Deputy Registrar (Administration), NITA. In para-7 of the writ petition, as amended, it has been averred by the petitioner that the Director, NIT, Agartala or NIT issued a memorandum under No.F.NITA.2(335-Estt)/2011/4204-05 dated 23.07.2013 [Annexure-4 to the writ petition] informing that the pension of the petitioner shall be governed by the Central Civil Services (Pension) Rules, 1972 and the leaves under CCS(Leave) Rules, 1972. Further, it has been stated that the petitioner is entitled to have the benefit of counting of his past service w.e.f. 16.03.1996 to 11.08.2011 for all purposes including leave, pensionary benefits and gratuity etc. At times, the petitioner was given the responsibility of Registrar and the petitioner discharged all duties to the full satisfaction of the competent authority. At times, the petitioner was also in charge of the Registrar, National Institute of Technology, Manipur.

3. All on a sudden, the petitioner received a letter dated 11.03.2016 [Anenxure-8 to the writ petition] whereunder he was informed that as per instruction of the Director, NIT Agartala, it has been decided to investigate certain issues through the respondent No.4 with regard to certain 'allegations' brought against the petitioner. The allegations are shortly as follows :

- (a) The petitioner does not have the minimum qualification for the post of Deputy Registrar as he did not have the Masters Degree in any discipline but the petitioner was only having Bachelors Degree in Engineering.
- (b) The petitioners Ph.D. Degree is not genuine and the thesis submitted by the petitioner in BITS Pilani is a case of plagiarism.
- (c) the petitioner had falsely and with malicious intention enrolled his name under the old pension scheme, even though, the employees who are recruited after 2004 will not be entitled for old pension scheme.

The petitioner responded immediately by filing a reply on 15.03.2016. The petitioner had pointed out that in the employment notification for recruitment of non-teaching staff dated 06.09.2010, the essential qualification for the post of Deputy Registrar (Administration) had been laid down as follows :

- "(a) A first class Master's Degree in Business Administration/Science/Commerce/Arts or Bachelor's Degree in Engineering with excellent Academic record and desirable qualification was –**
(b) Degree in Management/Law.
(c) Age below 45 years as on 30/9/2010.
(d) Pay in the scale of Rs.15600-39100/- PB-3, Rs.7600."

4. It is not in dispute that the petitioner was having the Bachelors Degree in Civil Engineering with 1st class from Tripura Engineering College in 1993 and the degree of Bachelor of Law in 1998 from Tripura University. Thus, the petitioner was eligible to be appointed as Deputy Registrar (Administration) in NIT, Agartala.

5. The petitioner has categorically stated that BITS, Pilani awarded him the Ph.D on 06.01.2016, but the respondent No.3 has refused to enter the said Ph.D in his service record. The petitioner had, in due course, submitted the letter enclosing the provisional Ph.D. certificate issued by the Birla Institute of Technology and Science (BITS), Pilani to the respondent No.3 on 01.02.2016 with a request to record the said qualification in his service book. The Ph.D. work of the petitioner was innovative and genuine and on the basis of the Ph.D. work, the petitioner published papers in the International and National Journals. However, a fact-finding committee was constituted by the notification dated 11.07.2016 [Annexure-20 to the writ petition]. But what the fact finding committee inferred is still unknown to the petitioner. On 24.07.2016, the Ph.D. degree was formally conferred to the petitioner in the convocation of BITS, Pilani held on 24.07.2016. The petitioner filed

the reminder for recording his Ph.D. in his service book. In respect of the third allegation that the petitioner by manipulation has recorded his name in old pension scheme which was in force for the employees who were appointed before 01.01.2004, the petitioner has categorically stated that by the office order dated 12.09.2011 [Annexure-26 to the writ petitioner], the petitioner was provided his protection of pay taking into account his past service. This order has protected the petitioner's service length that he served in Tripura State Pollution Control Board from 16.03.1996 till the joining at NIT, Agartala. By the said protection, his date of appointment was saved as 16.03.1996. Thus, the petitioner is entitled to get all the benefits accruing from the day of his appointment i.e. 16.03.1996. In para-24 of the petition, the petitioner has averred as under :

"The appointment of the petitioner in National Institute of Technology was on lien, from the Tripura State Pollution Control Board under the Department of Science, Technology and Environment, Government of Tripura and at the time of appointment of the petitioner, it was provided that the petitioner will be covered by the old pension scheme and GPF absorption and confirmation of the office orders issued by the Director on 04.12.2012 and 23.07.2013."

The enquiry against the petitioner was initiated on the basis of an anonymous complaint. But according to the CVC's manual, on the basis of anonymous complaint, no action shall be initiated, but the said enquiry against the petitioner was initiated by the Chief Vigilance Officer. By the office order dated 06.01.2016 issued by the respondent No.3, the said enquiry was initiated.

6. The petitioner had filed a representation on 15.03.2016 against the said action by stating that the allegation brought against him are totally false, baseless and malafide. The petitioner has categorically asserted that he took admission in

the Ph.D. programme in BITS, Pilani after obtaining the no-objection certificate from his previous employer and obtained the Ph.D. Degree.

7. The petitioner has further pointed out in the writ petition that he had completed five years of service in NIT, Agartala on 11.08.2016 and Ministry of Human Resource Development by their letter No.1-32/2006-U.II/U.I(ii) dated 31.12.2008 has clearly provided that on appointment of Deputy Registrar the pay of the incumbent shall be fixed in pay band of Rs.15,600-39,100/- with grade pay of Rs.7,600/-. The said Deputy Registrar shall move to the pay band of Rs.37,400-67,000/- with grade pay of Rs.8,700/- after completing five years of service. But the said incumbent shall continue to be designated as the Deputy Registrar. The said letter of MHRD will also apply to the employees and officers of NIT, Agartala. The Director, TC, MHRD, Government of India informed all the Directors of Centrally funded technical institutes for implementation of the said scheme, but with a rider those incumbent should possess the requisite qualification and the experience, which the petitioner had. The petitioner had further referred to the newly framed recruitment rules for non-teaching post where the essential qualification for recruitment to the Deputy Registrar was delineated. In the letter of MHRD dated 05.02.2014 [Annexure-31 to the writ petition] the qualification and experience of the Deputy Registrar has been changed to Master Degree in any discipline with at least 50% marks with equivalent Grade-B in the UGC 7 point scale from the recognized university or the institute. The essential and desirable experience have been re-calibrated. For purpose of reference, the relevant part of

the letter dated 09.03.2020 [Annexure-30 to the writ petition] as issued by the Ministry of Human Resource Development (MHRD) is extracted :

"IV. Revision of pay of Registrar, Deputy Registrar and Assistant Registrars

For the incumbents on this post, the revised pay in pursuance of this Ministry's letter no.1-32/2006-U2/U1(ii) dated 31st December 2008 should be allowed only to those possessing the qualifications and experience as prescribed in the above said Order. Further, for Deputy Registrars placement in the revised pay in PB 4 with GP of Rs. 8700 will be applicable only on completion of 5 years service either in the pre-revised scale of pay of Rs.12000-18300 or in the Revised pay in PB-3 with GP of Rs.7600."

[Emphasis added]

8. In the letter dated 05.02.2014 [Annexure-31 to the writ petition] it has been also mentioned that the respective Board of Governors shall adopt RRs in tune therewith. Thus, even on 05.02.2014, as it evinces RRs were not finalized. In this context, the petitioner has in para-33 has asserted categorically that the petitioner was appointed as the Deputy Registrar (Administration) prior to those RRs came into force. Thus, so far the petitioner's eligibility/qualification is concerned that will be guided by the resolution of the Board of Governors, NIT Agartala as adopted in its 16th meeting held on 26.09.2010 on the basis of which, the said employment notification for recruitment of Deputy Registrar (Administration) was issued inviting applications from the eligible candidates.

The petitioner had all the qualifications for the post of Deputy Registrar (Administration)/ Deputy Registrar but the petitioner's pay was not upgraded on his completion of five years of service.

9. Even though, the outcome of inquiry initiated by the respondent No.3 through the Chief Vigilance Officer and another enquiry which was instituted by informing a committee to look into the allegations as regards the Ph.D. Degree of the petitioner, was not known to the petitioner, but on 25.01.2017 [Annexure-35 to

the writ petition] NIT, Agartala issued Integrity Certificate under No.F.NITA2(444-Estt)/2016/11351-53 in favour of the petitioner, where it has been certified that the petitioner, the Deputy Registrar (Administration) of NIT Agartala performed his duties efficiently since his joining in NIT, Agartala on 12.08.2011 and he never received any punishment/warning for any lapse in NIT, Agartala and nothing has been observed against his integrity. Further, a vigilance clearance certificate was issued under No. F.NITA.2(444-Estt)/2016/11351-53 dated 25.01.2017 [Annexure-36 to the writ petition] by the Chief Vigilance Officer, NIT Agartala and the Registrar, NIT, Agartala [Annexure-36 to the writ petition] which certified that no vigilance case or disciplinary proceeding or criminal proceeding is pending or contemplated against the petitioner, the Deputy Registrar of NIT Agartala. Those certificates have taken consideration of the entire service period under NIT, Agartala.

10. It may not be out of place to state that the petitioner had also applied to the post of Controller of Examination in Tripura University by enclosing those certificates. Despite those certificates having issued, while forwarding his application, some unwarranted and baseless comments were made against the petitioner without any foundation. The petitioner believes that for those comments he was not selected for the said post of Controller of Examinations. But later on, the petitioner has been appointed as Registrar of Maharaja Bir Bikram University on 01.03.2017. The petitioner was released with lien for a period of two years from the post of Deputy Registrar (Administration) NIT Agartala. The lien has expired and the petitioner has been confirmed in the post.

11. The petitioner has stated that the inquiries as instituted against him was completely malafide and without any tenable basis. The Board of Governors in their meeting held on 27.12.2017 i.e. after the petitioner's leaving the said institute, had taken a resolution under item No.42.5 that the qualification of the petitioner shall not be ungraded in the service book by entering the Ph.D. degree and the petitioner cannot get the pay upgradation on completion of five years of service as per 6th CPC. Further, the petitioner will not be allowed to get GPF and pensionary benefits under CCS (Pension) Rules, 1972. The minutes of the meeting held on 27.12.2017 is available with the writ petition as Annexure-41. According to the petitioner, the said resolution is absolutely illegal, arbitrary and liable to be set aside and quashed. The petitioner in para-42.3 has categorically stated that he had almost completed the Ph.D. programme when he was serving under Tripura Pollution Control Board on obtaining no objection certificate and that he had clearly mentioned in his application for the post of Deputy Registrar (Administration) NIT, Agartala by stating that he had been pursuing his Ph.D. degree from BITS, Pilani. After obtaining the Ph.D degree, the petitioner had intimated the fact to the respondent No.3 on enclosing the provisional Ph.D. certificate, as already stated. The petitioner had all the requisite qualifications as per the employment notification dated 06.09.2010 and as such he is entitled to get the scale upgradation for his completion of five years of service as per the 6th CPC norms. That stagnation relief cannot be denied to him. The petitioner has expressed his serious grievance in respect of denying the benefit of GPF and the pensionary benefits under the old pension scheme, in suppression of the office order dated 12.09.2011 whereby it

was clearly stated that the petitioner shall be granted the benefit of the past service. That decision was communicated to the petitioner when his lien was alive. In the appointment letter of the petitioner dated 21.07.2011, it has been provided that 'for in-service candidates' appointed under NIT, pay protection will be given and they will be governed by the rules of FR/SR. Further, when the petitioner was confirmed by the memorandum dated 04.10.2012, it was provided that the pay of the petitioner in his previous service will be protected after receipt of the service book from the petitioners previous employer. By the memorandum dated 27.03.2013, it had been provided that the service of the petitioner shall be governed by the CCS (Pension) Rules, 1972 and CCS (Leave) Rules, 1972 and further the petitioners past service will be counted for leave and pensionary benefits. Thus, the petitioner, according to his right to the benefits of GPF and pensionary benefits under old pension scheme etc. have been accepted by NIT, Agartala. In the context of these facts, by means of this petition, the petitioner has urged this Court for granting the reliefs as noted below :

- (i) to set aside the malicious proceeding, enquiry initiated against the petitioner by the confidential note dated 11.03.2016;
- (ii) to direct the respondent No.3 to enter his Ph.D. degree in his service records;
- (iii) to grant the petitioner, the pay band of Rs.37,400-67,000/- with graded pay of Rs.8,700/- for his completion of five years of service as the Deputy Registrar(Administration) in the scale of Rs.12,000-18,300/- with the grade pay of Rs.7,600/- with arrears;

(iv) to prohibit the respondents from taking away the benefits of getting pension under the old pension scheme and maintaining the GPF what were expressly extended to the petitioner at the time of his confirmation in NIT Agartala;

(v) to set aside the decision of the Board of Governors (BOG) of NIT, Agartala under item No.42.5 more particularly under No.42.5.1, 42.5.2 and 42.5.3 as taken in the 42nd meeting of BOG held on 27.12.2017 as circulated by the notification dated 08.01.2018.

12. The respondents No.1, 2, 3 and 4 filed their counter affidavit on 06.12.2017 and stated that provision of protecting the petitioners last pay does not mean providing all benefits relating to his past service. It had been categorically mentioned in his appointment letter that institute has the New Pension Scheme (NPS), now National Pension Scheme for the employees joining after 01.04.2004 and for in-service candidates, their appointments under the institute will entail pay protection. That protection will be governed under FR/SR. They have specifically stated that nowhere in the appointment letter, it had been mentioned that the petitioner will get pensionary benefit under CCS (Pension) Rules, 1972 or benefits of the GPF from NIT, Agartala. Moreover, as the petitioner was not enjoying such benefits in his previous service at the time of joining NIT, Agartala he cannot claim such benefits. Under the previous employment, the petitioner was having EPF benefit, not GPF benefit. Therefore, the petitioner was eligible for NPS as he joined NIT Agartala after 01.04.2004. According to those respondents, the petitioner continued his Ph.D programme without approval of NIT, Agartala. They have asserted in their reply [referred before as the counter-affidavit] that by mistake the officials of NIT Agartala made mention of GPF, instead of EPF in the memorandum dated 04.12.2012. At that time the petitioner was in-charge of Registrar of NIT

Agartala. They have asserted that no decision can be taken without getting the service book or on presumption that the pensionary and GPF benefits were recorded in such service book. They have admitted that in the memorandum dated 04.12.2012 it was clearly mentioned as follows :

"He (i.e. the petitioner) will get all pensionary benefit, leave etc. in counting his earlier service subject to the availability of service book and other related documents."

13. It has been also stated in their reply that though the petitioners personal file was maintained at NIT, Agartala, the Director (in-charge) who was not engaged or appointed by the visitor, but engaged by the then Director of NIT, Agartala did not have any statutory powers as per NITSER Act to take such decision on file. But there is no reference in the reply that the petitioner did take any decision in respect of those benefits. They have further expressed their reservation that the petitioner ought not have forwarded any note to the Director (in-charge) without mentioning the provisions of the Act and Statutes of NIT, Agartala. Moreover, the then Director (in-charge) did not have any power to take decision or issue the memorandum dated 23.07.2013. So far their objection about the Ph.D. degree of the petitioner is concerned, it appears that the same was based on the assumption that the petitioner did not have any Master Degree and BITS, Pilani admitted him to the Ph.D programme based on his B. Tech (Bachelor's degree). The petitioner also continued the Ph.D. programme without any permission from NIT, Agartala. But they have admitted that with the joining letter the papers relating to the petitioner's continuance of Ph.D. programme was submitted to them but they have denied that with the application for recruitment, the petitioner had submitted any paper recording his persuasion of Ph.D. programme. Thereafter, the following

statement has been made in response to the observation in the note whether the petitioner's qualification be upgraded by entering the Ph.D. degree or not :

"The Director, NITA has taken a decision to place the matter to Board of Governors (BOG) of NITA for a decision."

14. The vigilance enquiry was taken up when the CVC forwarded a complaint to MHRD, Government of India. MHRD had received some complaints from the office of the Prime Minister and other important functionaries. They have stated that the authorities have powers to make investigation against any employee even without any complaint. The allegations as made by the petitioner have been generally denied. Why the respondents have not released the upgradation of pay band after petitioner's completion of five years of service as per 6th CPC, they have stated as under :

"Requirement of Master Degree as per MHRD Letter No.23-1/2008-TS II dated 18.08.2009 for implementation of 6th CPC (same is annexed herewith and marked as Annexure-R/6). Benefit and upgradation of Pay Band after completing 5 Year's Service, in respect of Dy. Registrar.

***The MHRD letter No.23-1/2008-TS II dated 18.08.2009, addressed to the Director of all CFTIs, under point No.2, has stated that the pay structure (6th CPC) shall be as notified by the MHRD dated 31.12.2008, addressed to the Secretary, UGC. It is also stated in this letter of MHRD dated 18.08.2009, that "For Dy. Registrar, UGC pay scale will apply to Dy. Registrar of NITs, subject to the possessing the qualifications & experience as prescribed by UGC from time to time" (Point No.9 of letter dated 18.08.2009)."**

15. According to the respondents, the petitioner's Ph.D. programme was neither full time, nor even part time but a special programme of BITS, Pilani where the Ph.D. scholars was allowed by BITS, Pilani to carry out Ph.D. programme keeping locale their. In the case of the petitioner, it was Agartala. Moreover, BITS, Pilani admitted the petitioner to the Ph.D. programme based on his B. Tech (Bachelor's degree). Till the date of filing the reply, the petitioner's request to enter the said qualification in his service record had not been acceded to. But as we have

noted, later on, BOG had denied to record such qualification. That development, the petitioner had incorporated by way of amendment. In respect of making 'adverse' comments in the forwarding letter, the respondents have reproduced a passage from the Schedule-D of NIT's Gazetted Statutes framed as per provisions of NITSER Act. In the said passage, it has been provided that an application of employee whose conduct is under investigation may be forwarded with brief comments on the nature of allegations and with a note that he would not be released if the employee is placed under suspension or a charge sheet is issued or any sanction is accorded for his prosecution before his selection. The respondents, however, have admitted that no irregularity was found against the petitioner and hence the vigilance clearance was given to the petitioner. But they have insisted that the petitioner will not be entitled to pension under the old rules. As the petitioner had been carrying out the Ph.D. programme without any permission of NIT, Agartala his Ph.D. qualification will not be recorded in his service records. Later on, a consolidated counter-affidavit was filed by the respondent No.1 to 5 after the writ petition was amended. In the said consolidated reply those respondents have added that in MHRD letter No.23/9/2008-II dated 18.08.2009, in respect of implementation of 6th CPC benefits by upgradation of pay band after completion of five years of service, in the post of Deputy Registrar. It has been stated that Master Degree is required for having that benefit. Even in the letter dated 13.12.2008 of MHRD, it was clearly mentioned that the minimum qualification of the Deputy Registrar shall be Masters Degree. Thereafter the respondents has asserted as follows :

"i) There is no investigation by CVO of NIT, Agartala, now and the issue raised by the Petitioner in the Writ Petition is now irrelevant.

ii) As per provisions of Section 29 of NIT statutes, the petitioner is not entitled to get Pension, since he joined NIT, Agartala, after 01.01.2004 and the BOG having Statutory Powers, has taken decision to stop Pensionary Benefit, as corrective measures for the mistake committed by some Officials of NIT, Agartala and also to ensure that Section 29 of NIT Statutes is not violated. If the petitioner is allowed to continue with Pensionary Benefit, such facility may be claimed by all other employees who joined after 01.01.2004, leading to collapse of Statutes and Administrative System.

iii) The Petitioner is not entitled to get higher AGP, since he does not have Master Degree (such as MA/M.Sc./M.Tec./M.Com etc.) as per requirement of 6th CPC and BOG having Statutory Powers, has taken decision not to give higher AGP on completion of 5 years' service.

iv) The petitioner is not entitled for upgradation of his qualification to Ph.D., since he violated the Code of Conduct, by not taking permission to continue his Ph.D., after he joined NIT, Agartala, and BOG having Statutory Powers, has taken decision, not to upgrade his qualification."

16. The petitioner has filed the rejoinder mostly reiterating his averments in the writ petition. It has been categorically stated in the rejoinder that the petitioner cannot be treated as a fresh appointee for the reason that he has been treated as 'in-service' candidate and he has been given the pay protection as the in-service candidate. Hence, the petitioner is entitled to benefits of his past service w.e.f. 16.03.1996 to 11.08.2011 for all purposes. Thereafter, the petitioner has referred a memorandum dated 29.08.1984 [Annexure-1 to the rejoinder] issued by the Department of Personnel and Administrative Reforms, Ministry of Home Affairs, Government of India providing that even an employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF benefits or choose to count the past service rendered in that body as qualifying service for pension by forgoing employer share. In the said memorandum dated 29.08.1984 [Annexure-1 to the rejoinder] the mobility of counting of service for pension has been provided in detail. Para-5(2) provides that where no terminal benefit for the previous service have been received, the previous

service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in the office memorandum in no case pension contribution liability shall be accepted from the employees concerned. The petitioner has provided the relevant orders or communication in respect of gratuity, leave encashment or define pensionary benefits etc. Even by the notification dated 21.05.2015, NIT Agartala has declared that pensionary benefits, leave encashment of fifty nine employees of NIT, Agartala will be governed by CCS (Pension) Rules, 1972. The name of the petitioner has been included in the said list. In the rejoinder, the petitioner has further stated that the Government of India has adopted a policy in respect of allowing the graduates with B. Tech degree directly to the Ph.D. programme. The Press Information Bureau (PIB) press release dated 01.12.2016 [Annexure-17 to the rejoinder] is relevant for the present purpose. It has been disseminated by that press release that B.Tech students studied in IIT and secured at least 8.5 CGPA will be given direct admission into the Ph.D. programme with fellowship of Rs.60,000/- for five months, along with suitable research grant. Therefore, the contention of the respondents that nobody can get the Ph.D. without post graduate degree is unfounded. Moreover, BITS, Pilani is a reputed deemed University and since long they had been admitting the persons for pursuing the Ph.D. programme having B.Tech. Thus, according to the petitioner, the ground for denying to record his Ph.D. degree in the service record is absolutely unsustainable. Even in the National Institute of Technology, Agartala, the persons having Bachelor Degree in Engineering/Technology with an excellent

academic record viz. CGPA with at least 9.0 out of 10 or equivalent (85% of marks). Candidate must have valid Gate score. The notification dated 30.11.2015 [Annexure-18 to her rejoinder] invited application for the Ph.D. programmes for various discipline. Minimum qualification for admission in the Ph.D. programme and as per the said notification, Bachelor's Degree with 85% of marks. The said qualification has been considered as the sufficient qualification for pursuing the Ph.D. programme in NIT, Agartala. In support of his contention, the petitioner has produced some more documents containing the disclosure that NIT, Agartala is allowing persons with the Bachelor's Degree in Engineering/Technology with excellent academic record to peruse that Ph.D programme in NIT Agartala. The petitioner has also illustrated that some other reputed engineering universities are allowing the persons with Bachelor's degree in engineering, to pursue the Ph.D. programme.

17. The petitioner has further averred that as per the first statute of National Institute of Technology, the employees appointed or after 01.01.2004 shall be governed by the New Pension Scheme as announced by the Government of India. Statute 29 provides as under :

"29. Provident Fund and Pension Schemes
Employees of the Institute appointed prior to 01.01.2004 will be governed by the Central Civil Services (Pension) Rules, 1972 and General Provident Fund (Central Services) Rules, 1960 and the Employees appointed on or after 01.01.2004 will be governed by New Pension Scheme of Central Government."

18. The petitioner has clearly stated that as his past service is liable to be added, his date of appointment will be treated from 16.03.1996 which is well before 01.01.2004. Thus, the petitioner will be entitled to the benefits under CCS

(Pension) Rules, 1972, CCS (Leave) Rules, 1972 and General Provident Fund (Central Services) Rules, 1960.

19. Mr. A. Bhowmik, learned counsel appearing for the petitioner has submitted that the entire action of the respondents is malafide. The respondents have withheld all financial benefits or recording of the Ph.D. degree in the service book most arbitrarily. Mr. Bhowmik, learned counsel having referred to the relevant facts and the documents has contended that the petitioner has been harassed in the name of inquiry without any basis. Eligibility of a person for a particular post would mean eligibility as declared by the employment notification or as provided by the recruitment rules. Upgraded qualification will have effect from the date when it will be incorporated in the recruitment rules. It has been shown by the petitioner that the recruitment rules has not been amended till 2015 upgrading the educational qualification (post graduation, as indicated before). Thus, that cannot be treated as an embargo in granting the 6th CPC benefit for completion of five years of service. So far the denial of benefit of pension under the old scheme [under CCS (Pension) Rules, 1972] GPF is grossly arbitrary as the respondents themselves has created a class for "in-service candidate" to grant protection of the past service in the form of pay protection under FR.

20. Mr. Bhowmik, learned counsel has referred to a decision of Madras High Court (Madurai Bench). In para-9 of the rejoinder, the said judgment dated 23.07.2014 of Madras High Court (Madurai Bench) has been referred to show that under direction of Madras High Court, NIT Trichy implemented Central Services(Pension) Rules, 1972 and General Provident Fund (Central Services)

Rules, 1960 to the employees who were in the CPF scheme prior to 2004. According to Mr. Bhowmik, learned counsel for the petitioner, NITs are governed by the same NITSAR Act and hence what the respondents have contended is grossly illogical and iniquitous.

21. Finally, Mr. Bhowmik, learned counsel has submitted that by not recording the Ph.D. in the service record of the petitioner, the respondents have acted atrociously regarding conferment of the Ph.D by a reputed deemed University namely BITS, Pilani. They have advanced hollow logic which is not only ill-informed, but absolutely unsustainable vis a vis the information placed by the petitioner to show that in all Engineering Universities, the person having Bachelor's Degree in Engineering with excellent academic record are permitted to join the Ph.D. programme directly, without insisting for post graduate degree.

22. Mr. Bhowmik, learned counsel has further submitted that the highest authority of NIT Agartala, the Board of Governors has without studying the relevant records have taken decisions, as noted above, which are unreasonable and arbitrary and hence, liable to be interfered with. Mr. Bhowmik, learned counsel has submitted that the respondents be further directed to record the PH.D degree of the petitioner in the service record and send the service records to the present employer of the petitioner namely Maharaja Bir Bikram University. The respondents be directed to release the GPF deposits with interest within a time-frame.

23. Mr. Bhowmik, learned counsel having referred **M/s Motilal Padmapat Sugar Mills Co. (P.) Ltd. v. State of Uttar Pradesh** reported in **AIR 1979 SC 621:(1979) 2 SCC 409**, **Monet Ispat and Energy Ltd. v. UoI** reported in

(2012) 11 SCC 1 and VR Vora v. Board of Trustees of the Port of Bombay

reported in **(1999) 1 SCC 761** has pleaded promisory estoppel. After extending the benefit of past service through the protection of pay, the benefits have been taken away. On such promise, the petitioner herein, altered his position and allowed termination of lien. During the life of the lien the respondents did not tell the petitioner that he would not get the pension under the old pension scheme or he will not be able to maintain GPF like the person who were appointed before 01.01.2004.

24. Mr. B. Majumder, learned Asst. S.G. appearing for the respondents in a robust attempt to refute the submission of Mr. Bhowmik, learned counsel and the contentions in the writ petition, has stated that protection of pay does not mean granting benefit of past services for all purpose. And hence the petitioner cannot claim the benefit of past services for getting the pension under Central Services (Pension) Rules, 1972 or under CCS (Leave) Rules, 1972 or the benefit of GPF (Central) Rules, 1960 . Mr. Majumder, learned Asst. S.G. has submitted that the petitioner has persuaded the Ph.D. programme without knowledge of the respondents. That conduct is absolutely unacceptable and the respondent No.3 being the formal appointing authority has every right to not record such Ph.D. degree in the service records of the petitioner. That apart, the petitioner had joined a Ph.D. programme without having a post graduate degree, which according to the respondents is a special Ph.D. not the Ph.D. under the University Grant Commission Regulation or under the AICTE's Regulation. Hence, the respondents have decided not to recognize the said Ph.D. of the petitioner. However, Mr. Majumder, learned

Asst. S.G. has submitted that the said qualification has nothing to do with the post of the Deputy Registrar (Administration) and for acquiring that qualification no benefit will accrue in favour of the petitioner. In this regard, Mr. Majumder, learned Asst. S.G. has relied on a decision of the apex Court in **University of Mysore versus Govind Rao** reported in **AIR 1965 SC 491** where the apex Court has observed that the Court should be slow to interfere with the opinion expressed by the experts. There is no allegation about malafide against the experts who constituted the board for recruitment. It would normally be wise and safe for the courts to leave the decision of the academic matters to the experts who are more familiar with the problems they face than the courts generally can be. The High Court cannot act like a quasi-judicial tribunal regarding dispute as such regards.

25. Mr. Majumder, learned Asst. S.G. has submitted that rules as prescribed by the competent authority shall be taken as the rule for granting the benefits implementing the 6th CPC for having "eligibility according to the rules." MHRD, in the year 2009 as noted, had communicated that for recruitment of Deputy Registrar the post-graduate degree from a recognized University or Institute shall be made essential qualification. Admitted position is that the said directive was not implemented by NIT, Agartala. Even in the appointment notification, post-graduate degree was not declared to be essential qualification for recruitment to the post of Deputy Registrar (Administration).

26. In this regard, Mr. Majumder, learned Asst. S.G., assisted by Mr. S. Mahajan, learned counsel appearing for the respondents has placed his reliance on a decision of the apex Court in **B.N. Nagarjun and Others versus State of**

Mysore and Others reported in **AIR 1966 SC 1942**. In **B.N. Nagarjun**(supra) it has been observed that it is not obligatory under proviso to Article 309 to make rules of recruitment etc. before a service can be constituted or a post created or filled up. This is not to say that it is not desirable that ordinarily, rule should be made on all matters which are susceptible to the embodied rules. Secondly, the state government has the executive power in relation to all matters in respect to which the legislature of the state has power to make laws. It follows from this proposition that the state government has the executive power under List II, Entry 41 as regards the state public services. There exists nothing in terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without law. According to Mr. Majumder, learned Asst. S.G. decision to hold inquires one by a committee formed by BOG and another by the Chief Vigilance Officer were initiated on the basis of the complaints received. To hold inquiry against one officer is incumbent duty to find out the veracity of the complaint and that cannot be held malafide. Mr. Majumder, learned Asst. S.G. has submitted that the writ petition is bereft of merit and shall be dismissed without further exploration.

27. Averments and the records as placed along with the writ petition and the reply have been keenly appreciated by this Court. The service records of the petitioner, particularly the record in respect of the petitioner's pay fixation in the post of the Deputy Registrar (Administration), in the pay Band-3-Rs.15,600-39,100/- with the grade pay of Rs.7,600/-, has also been perused. The relevant

part of fixation note as recorded in the service book as produced by the respondents is extracted below, for purpose of reference :

"Based on the revised LPC, the basic pay of Mr. Chakraborty, Dy. Registrar (Administration), NIT Agartala is re-fixed at Rs.38,520/- in the pay band-III (Rs.15,600-39,100/-) along with grade pay of rs.7,600/- on and from 12.08.2011 (F/N) (from the date of joining protecting last pay drawn under his parent department.) The last pay of Mr. Chakraborty is regulated as follows :

Vide this office order No.F.NITA.1(335-Estt)/2011/2318-22 dated 01.06.2015 :

On 12.08.2011 Basic Pay Rs.38,520/-

On 01.07.2012 Rs.39,680/-

On 01.07.2013 Rs.40,870/-

ON 01.07.2014 Rs.42,100/-

DNI on 01.07.2015 "

28. There is no dispute at all that the petitioner has been granted the protection of his last pay that he had received under his former employer, Tripura State Pollution Control Board under FR treating the petitioner as 'in-service candidate'. As such protection can only be granted to those appointee who were treated as 'in-service candidate'. The respondents however have without showing any basis contended that the protection of pay does not mean adding the past service for all purposes. The petitioner's claim is that the protection of pay means that he is deemed to be continuing in the service for purpose of pay, leave and qualifying service. On proper interpretation, he was extended the benefit of CCS (Pension) Rules, 1972 and General Provident Fund (Central Services) Rules, 1960. In providing those benefits, there was no irregularity.

29. Further, this Court would proceed to evaluate the action of the respondents by which it has been declared that the petitioner will only be entitled to get the pension under New Pension Scheme in conformity to Statute-29, as he has been appointed in NIT, Agartala after 01.01.2004 and he will not be entitled to

pension under CCS (Pension) Rules, 1972. For the same reason, he will not be allowed to be the member of GPF. It appears from the records, at one point of time, on the basis of the said action, NIT Agartala had stopped accepting contribution of the petitioner under GPF. The core question that emerges is that what does a pay protection would mean for an officer who had joined under a new employer. Protection of pay, if granted to one employee, does it recognize his past service for purpose of pension and other financial benefit and whether his date of his appointment be located in his past service? This has been the well recognize practice in the Central Government Services as well as in the State Government Services that those would recognized. The respondents' plea that the petitioner's date of appointment would be treated from 12.08.2011, when the petitioner had joined NIT, Agartala. As the date of appointment on the touchstone the pay protection has been granted by the respondents, as it appears, under FR-22(I)(a)(1), the date of appointment is liable to be deemed and hence on 16.03.1996, the bar created by Statute-29 will not apply in the case of the petitioner. FR-22(I)(a)(1) provides that the initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated in the manner where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed by the relevant recruitment rules, to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, his initial pay in the time-scale of the higher post shall be

fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or whichever is more. The pay protection can be granted to the candidates who are being recruited from Central Autonomous Bodies, Public Sector Undertakings as would be seen from the Government of India, Department of Personnel and Training OM No.12/01/1988-Set.(Pay)(1) dated 07.08.1989. The pay fixation is to be made by the employing Ministries/Departments after verification of all the relevant documents to be produced by the candidates who were employed in such organizations. From the said Government of India memorandum, it can be availed that as per the extant rules/orders pay protection is granted to the candidates who are appointed by the method of recruitment by selection through the UPSC, if the candidate are in a government service. No such pay protection was earlier granted to the candidate working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies when they are so appointed in government. That created an embargo in accommodating the talents from the non-government organizations. Thereafter, the Government of India has decided that the pay protection can be given to the candidates working in the Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies who are appointed as direct recruits on selection through a properly constituted agency including the departmental authorities making the recruitment directly. Their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and DA as admissible in the government will protect the pay plus DA followed any drawn by

him in their parent organization. In the event of such a stage not being available to which they have been recruited that pay may be fixed at a stage just below in the scale of post to which they have been recruited. So as to ensure minimum loss to the candidate his pay may be fixed for formulation will not exceed the maximum of the scale of the post to which they have been recruited. This is the method of fixation that is ordinarily followed in the government departments in respect of the candidates who are coming from the Autonomous or the statutory bodies. In this regard, it would be appropriate to refer to para-2.4 of G.I Department, Government of India, Department of Personnel and Training, OM No.28020/1/2010-Estt.(C) dated 17.08.2014; The said stipulation may be reproduced from Swamy's Compilation of FRSR (updated till 2016) where it has been noted as under :

(2) Technical Resignation on Pay Protection, eligibility of past services for reckoning of the minimum period of grant of Annual Increment.-

In cases of appointment of a Government servant to another post in Government on acceptance of technical resignation, the protection of pay is given in terms of the Ministry of Finance O.M. No.3379-E.III(B)/65 dated the 17th June, 1965 read with proviso to FR 22-B. Thus, if the pay fixed in the new post is less than his pay in the post he hold substantively, he will draw the presumptive pay of the pay he holds substantively as defined in FR-9(24). Past service rendered by such a Government servant is taken into account for reckoning of the minimum period for grant of annual increment in the new post/service/cadre in Government under the provisions of FR 26 read with Rule 10 of CCS (RP) Rules, 2016. In case the Government servant rejoins his earlier posts, he will be entitled to increments for the period of his absence from that post.

Thus, the past service can be accounted for when someone is granted the protection of pay under the said provision of FR. Even though, there is no express provision in the appointment letter but this is the corollary of protection of pay as granted to the petitioner. Hence, the petitioner would be treated being appointed before 01.01.2004.

30. The policy evolution as regards the counting of services for purpose of pension of the employees of Central Government and Central Autonomous Bodies seeking absorption in Autonomous Bodies under the State Government and vice versa can be located from the letter dated 20.07.1989 under No.28/10/84-P & PW/Vol.II(D). The said letter was addressed to the Chief Secretary, Government of Haryana from the Ministry of Personnel, Public Grievances and Pensions (Department of Pension & Pensioners Welfare), Government of India. The proposal of the Government of Haryana for counting the past service for pension had been accepted by observing as follows :

"The President is pleased to extent the orders, contained in this Department's letter of even number dated 07.02.1986 to the employees of State Government and Autonomous Bodies of Haryana."

Later on, by the Office Memorandum No.28/30/2004-P & PW(B) dated 26.07.2005 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare, Government of India, the issue of counting of past service on submission of technical resignation on or after 01.01.2004 was taken up and earlier policy had been clarified. The text, which is relevant for our purpose, is reproduced hereunder :

"The various Ministries Department/Autonomous bodies have been seeking clarifications from this Department whether the employees appointed on or before 31.12.2003, who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972, will be eligible for counting of their past service under Rule 26(2) of the said rules or under the provisions of the DP & AR's O.M. No.28/10/84-PU dated 29.08.1984, as amended from time to time in the situation where such employees submit technical resignation, on or after 1-1-2004 to take up new appointment in the new Ministry/Department/Central Autonomous Body.

2. The matter has been considered in consultation with the Ministry of Finance and it is clarified as follows :

(i) All the employees who entered into Central Government service or in the service of an Autonomous Body set up by Central

Government (satisfying the conditions laid down in para-4 of O.M. dated 29.08.1984), on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972, will continue to be governed by the same pension scheme and same rules, for the purpose of counting of their past service under the said rules or under the provisions of the DP & AR's O.M. No.28/10/84-PU dated 29.08.1984, as amended from time to time, if such employees submit technical resignation on or after 1-1-2004, to take up new appointment in another Ministry or Department of the Government of India or an Autonomous Body set up by the Central Government, in which the pension scheme under Central Civil Services (Pension) Rules, 1972 already exists for the employees who entered into service on or before 31-12-2003.

(ii) The employees who entered into service on or before 31-12-2003 and who were governed by CPF scheme or any pension scheme of Central or State Government, other than the pension scheme under Central Civil Services (Pension) Rules, 1972 on submission of technical resignation to take up new appointment on or after 1-1-2004, cannot be allowed to join the old pension scheme under Central Civil Services (Pension) Rules, 1972 because entry to the said scheme ceased w.e.f. 31-12-2003 and no new entry can be allowed in the pension scheme under above Rules. However, such employees can seek pensionary/terminal benefits from the previous organization/Department, if admissible under the rules of that organization/Department for the period of service rendered under that organization/Department.

(iii) All the Central Government employees who entered Central Government service or the service of an Autonomous Body set up by Central Government on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972 and who submit technical resignation on or after 1-1-2004, to take up a new appointment under State Government, will be eligible for grant of pro-rata pensionary benefits for the period of Central Government or Central Autonomous Body service, on the lines as provided in the Rule 37 of Central Civil Services (Pension) Rules, 1972 and related orders."

31. It is apparent that the employees who joined the post after 01.01.2004 from the pensionable establishment under CCS (Pension) Rules, 1972 will be entitled to get pension in their new post under CCS (Pension) Rules, 1972 and they will be also given the pro-rata pensionary benefit for the period they had served under the Central Government or the Central Autonomous Body in terms of Rule 37 of the Central Civil Services (Pension) Rules, 1972 and related orders. The petitioner in this case admittedly came from Tripura State Pollution Control Board

which does not provide pension to its employees/officers under Central Civil Services (Pension) Rules, 1972. The said statutory board provides pension from Contributory Pension Fund managed by the fund managers. Hence, in terms of the said memorandum dated 26.07.2005 ex facie the petitioner is not entitled to get pension under the CCS (Pension) Rules, 1972. The Office Memorandum under No.28/30/2004-P & PW(B) dated 28.10.2009 issued by the Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners' Welfare has maintained the similar position. Even in the Office Memorandum under No.25011/6/2014-AIS(II) dated 04.11.2015 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Government of India the continuity of the policy has been maintained by observing as follows :

"(i) The members of All India Services who had been an employee in pensionable establishment viz. Central/State Governments or autonomous bodies as on 31/12/2003 and appointed to All India Services on or after 01/01/2004 with proper permission shall be covered under the old non-contribution pension scheme in terms of Office Memorandum No.28/30/2004-P & PW(B) dated 28/10/2009, which has been made applicable Mutatis-Mutandis to members of All India Services by this Department vide letter No.25014/1/2013-AIS(II) dated 18/3/2013. The pay protection and leave accumulative arising out of previous service would be admissible as per relevant rules of respective All India Services (Pay) Rules and All India Services (Leave) Rules, 1955.

(ii) Those under CPF etc. will not be allowed entry into the old pension scheme on appointment from 01/01/2004."

32. In the year 2020, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Government of India issued another Office Memorandum No.28/30/200-P & PW(B) dated 11.06.2020 in the background of several representations received from the employees, who had joined after 01.01.2004 but before 18.10.2009 after technical resignation from a pensionable establishment of a Central/State Governments or autonomous bodies and who

were denied the benefit of counting of past service in the old pension scheme in the Central Government. Considering the relevance of the said memorandum in the present context, the substantive part of the same is reproduced hereunder :

"5. The matter has been examined in consultation with Department of Personnel and Training and Department of Expenditure. It has been decided that those employees who joined Central Government/Central Autonomous body under NPS during 1.1.2004 to 28.10.2009 after submitting technical resignation from Central Govt./Central Autonomous Body or a State Government/State Autonomous Body and who fulfill the conditions for counting of past service in terms of this Department's O.M. dated 28.10.2009, may be given an option for induction in old pension scheme and to get their past service rendered in the Central/State Government or Central/State Autonomous Body counted for the purpose of pensionary benefits on their final retirement from the Central Government/Central Autonomous Body, subject to fulfillment of all other conditions of counting of such past service in terms of DPAR's O.M. dated 29.08.1984 read with this Department's O.M. dated 7.2.1986 as amended from time to time.

6. Such option may be exercised within 3 months of issue of this O.M. Such employees who are appointed under NPS during 1.1.2004 to 28.10.2009 and are eligible to exercise option in terms of para 5 above but do not exercise the option within the stipulated period will continue to be covered by the provisions of National Pension System. Those employees who joined during 1.1.2004 to 28.10.2009 and have already been given the benefit of CCS(Pension) Rules in terms of O.M. dated 28.10.2009, will continue to be governed by those rules.

7. Those employees who exercise option for counting of past service in accordance with the above provisions may be allowed to avail the benefit under CCS (Pension) Rules, 1972. The capitalized value of pension and gratuity for the past service in the Central/State Autonomous Body will be deposited by that Body to the Central Government/Central Autonomous Body in accordance with the instructions contained in the O.M. No.28/10/84 Pension Unit dated 29.8.1984. In case the employee concerned has received the pensionary benefits from the Central Government Departments, State Government, Central/State Autonomous Body etc., he would be required to deposit the amount of such pensionary benefits (along with interest to be calculated in accordance with this Department's O.M. No.38/34/2001-P & PW(F) dated 29.07.2002) with the Central Government Department/Central Autonomous Body in which he has joined, to enable counting of past service. The employee's share in the accumulated wealth of National Pension System with interest/ returns accrued thereon under the NPS, would be deposited in the GPF account of the employee. The employer's share along with interest/returns accrued thereon under the NPS would be deposited in the account of Central Government/Central Autonomous Body in accordance with modalities provided in para 9 of the OM.

8. In some cases, due to non-availability of benefit of counting of past services under the old pension system during 01.01.2004 to 28.10.2009, the employees of State Government/State Autonomous bodies etc. may have been compelled to take voluntary retirement before joining pensionable Central Government Department/Central Autonomous bodies after 01.01.2004 but before 28.10.2009. It has been decided that 'voluntary retirement' of such employees may be treated as 'technical resignation' and the benefit of provisions of para 5 to para 7 above may also be extended to them subject to fulfillment of all other conditions for counting of service.

8.1. The forwarding the application through proper channel for the post they had joined after getting voluntary retirement is a pre-requisite for considering it as technical resignation.

8.2. The provisions of this O.M. is mandatory in all such cases.

9. The modalities of accounting of the NPS accumulation would be as under :

Sl. No.	Issues	Adjustment process
1.	Adjustment of employee's contribution to NPS	Amount may be credited to the individual's GPF account and the account may be recasted permitting up to date interest (FR 16 & Rule 11 of GPF Rules)
2.	Adjustment of Government contribution to NPS	To be accounted for as (-) Debit to Object Head "70-Deduct Recoveries" under Major Head "2071-Pensio and other Retirement Benefits" and Minor Head "911-Deduct Recoveries of overpayments" (GAR 35 and Para 3.10 of LMMH and Para 5.1.3(ii) of Civil Accounts Manual refers)
3.	Adjustment of increased value of subscription in NPS on account of appreciation of investment	May be accounted for by crediting the amount to Government Account under Major Head "0071-Contribution & Recoveries towards Pension & other Retirement Benefits" and Minor Head "800-Other-Receipts" (Note under above Major Head in LMMH)

10. All Ministries/Departments are requested to bring the contents of these orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached, Subordinate Offices and Autonomous bodies under them.

11. This issued in consultation with of Ministry of Finance, Deptt. of Expenditure vide ID Note No.25(6)/EV/2017 dated 06.01.2020 and in consultation with Controller General of Accounts vide their I.D. Note No.1(7)(2)/2010 c/a/TA/860 dated 18.08.2017. "

[Emphasis added]

33. The said benefit, however, was restricted for a definite period from 01.01.2004 to 28.10.2009 in that particular perspective, but this definitely indicates a departure from the earlier policy. Even, this Court is concerned that the eligibility has been culled out from the Office Memorandum dated 28.10.2009. It appears that the said embargo got prominence while the High Court of Punjab and Haryana was deciding a batch of cases being CWP No.4262/2006 and Others relating to the National Institute of Technology, Kurukshetra and by a common judgment, has passed the following opinion which is material for this case :

"In respect of such persons, who were contributory to CPF and who have also withdrawn the benefits, they could be given an option to re-deposit the amount drawn by them with interest @ 12% per annum within a specified period and all such persons, who exercise such option shall be admitted to the pension scheme of the Central Civil Services (Pension) Rules, 1972. Since all the persons, who may stand to benefit through this order, may not be before this Court as parties, I would direct the National Institute of Technology at Kurukshetra to publish a circular in newspapers as well as by personal communication calling upon all the employees to exercise the option before a particular date to express option for the pension scheme within a period of 3 months and extend the Central Pension Scheme, 1972 to all such persons, who exercise the option."

The said opinion has been subsequently restated by the High Court of Punjab and Haryana in **National Institute of Technology Faculty Forum, Jalandhar and Another versus Union of India, Ministry of Human Resource and Development and Others** [judgment dated 28.03.2012 delivered in Case No.C.W.P.15155 of 2011].

34. Mr. Bhowmik, learned counsel appearing for the petitioner has pressed in service a decision of the Madras High Court [Madurai Bench] in **Dr. K.A. Kuppusamy and Others versus The Secretary, Ministry of Human**

Resource Development and Others [judgment dated 23.07.2014 delivered in Case No.W.P.(MD)14385 of 2011 and Others]. The said decision though is set up in the context of waiving of the option and grant of mobility to the pension scheme under CCS(Pension) Rules, 1972 due reference to Statute-29 which is applicable for all NITs governed by the NIT Act, 2007. For purpose of framing the statute, the Central Government has exercised the powers conferred under sub-section 1 of Section 26 of the NIT Act, 2007. Statute-29 has already been reproduced.

35. In **Dr. K.A. Kuppusamy**(supra), as a preface to the final opinion it has been observed that until 2003 CPF and GPF schemes, floated by the state government applicable to the REC were in force. In 2003 by means of a MOU, the REC society was taken over by the Central Government i.e. after coming into being of the National Institute of Technology, Tiruchirappalli. Executive powers of the state government in respect of the affairs of the National Institute of Technology ceased to have any effect.

36. Another issue that had been debated [in the said case of **Dr. K.A. Kuppusamy**(supra) is whether the employees who were under the Contributory Provident Fund cum Gratuity scheme, in short, the CPF scheme would be entitled to come to the pension scheme under CCS(Pension) Rules, 1972 and to the Central Provident Fund (Central Services) Rules, 1960. The Kerala High Court has observed and directed in **Dr. K.A. Kuppusamy**(supra) in the following terms :

"28.In the result, W.P.(MD)No.1132 of 2011 is dismissed. W.P. (MD)Nos.14385 and 6289 of 2011 are disposed of directing the respondents therein, to implement the Central Civil Services (Pension)Rules, 1972 and Central Provident Fund (Central Services) Rules, 1960 to the petitioners and give them all the consequential monetary benefits. It is further directed that such consequential order shall be passed by the NIT, within a period of three months from the date of receipt of a copy of this order."

37. Apart that, conduct of the respondents to reverse their own decision after the life of lien had expired is unacceptable in the fairness principle, as the same action/conduct had deprived the petitioner to choose whether to continue in his post of the Deputy Registrar (Administration), NIT, Agartala or to go back to the post in Tripura State Pollution Control Board.

38. Having read the decision of the Punjab and Haryana High Court with para-7 of the Office Memorandum dated 11.06.2020, this Court is persuaded to declare that the said decision to not allow the petitioner to have pension under the CCS(Pension) Rules, 1972 and to maintain the account under the Central Provident Fund (Central Services) Rules, 1960 is arbitrary and unsustainable. In the event of allowing the petitioner to get the Revision under the CCS (Pension) Rules, 1972, the petitioner is also liable to deposit the capitalized value of pension and gratuity for the first service in accordance with the instruction contained in the office memorandum No.28/10/84-Pension Unit dated 29.08.1984 as referred in para-7 of the Office Memorandum dated 11.06.2020. On deposit of the said amount, the respondents shall be under obligation to allow the pro-rata pension to the petitioner in terms of the CCS (Pension) Rules, 1972 within a period of six months from the date of the deposit of capitalized value of pension and gratuity of the past services. For this purpose, the petitioner shall submit to the respondents, particularly to the respondent No.3, the authenticated statement in respect of capitalized value of pension and gratuity from his previous employer within a period of three months from the date of the judgment. The respondents may also give the pension and gratuity after deduction

of the capitalized value of the pension and gratuity of the past service without asking the petitioner to deposit the said value in terms of the above.

39. Thus, for the reasons assigned above, the petitioner is entitled to the benefit of pension under CCS(Pension) Rules, 1972 and for the same reason he was entitled to maintain the Central Provident Fund. The benefits granted to the petitioner by the memorandum dated 04.02.2012 was regular but the conditions were not properly delineated. There was no illegality as has been declared later on by the respondents.

40. This Court is not interested to explore whether the Director-in-charge had any power to take any decision or issue the memorandum dated 23.07.2013. The extent of power of the Director-in-charge has not been demonstrated by the respondents. In the usual course, the person-in-charge of the Director may exercise all the powers unless prohibited by the rules or the executive order/s. Moreover, by the doctrine of necessity, if some decisions are to be taken by the person-in-charge for the administrative reasons, such decision cannot be stated by the successor as without authority, unless, of course, manifest and patent illegality is attributed to such decision. In the present case, as it has been observed, the court is not confronted with a case of that nature.

41. On the issue of denying of the up-graded pay scale in PB-4 with GP of Rs.8,700/- on completion of five years of service in the pre-revised pay scale of Rs.12,000-18,300/- or in the revised pay of PB-3 with GP of Rs.7,800/-, the respondents have stated that the petitioner lacks in qualification as he had no post-graduate degree. In this regard, the petitioner has referred to a communication of

MHRD dated 02.11.2017 addressed to the Secretary, University Grants Commission. The relevant part of the said communication reads as follows:

"The pay of all incumbent Deputy Registrar/Deputy Finance Officer/Deputy Controller of Examination, who are presently in Pay Band of Rs.15,600-39,100/- with Grade Pay of Rs.7,600/-, shall be fixed at the appropriate cell in Level 12 of the Pay Matrix in accordance with guidelines issued by the Ministry of Finance, based on the recommendation of 7th Central Pay Commission, as the case may be. The pay of all those who have completed 5 years of service as Deputy Registrar/Deputy Finance Officer/Deputy Controller of Examination and are presently in pre-revised pay scale of Rs.37,400-67,000/- with Grade Pay of Rs.8,700/- shall be fixed at the appropriate cell in Level 13 of the Pay Matrix in accordance with the guidelines issued by the Ministry of Finance, based on the recommendation of 7th Central Pay Commission, as the case may be."

The said communication refers to the upgradation to the higher pay with higher grade pay. It clarifies the earlier approach. Earlier approach as referred by the respondents here was erroneous as inasmuch as in the same grade or post on the basis of the educational qualification, there cannot be two different scales as that would contravene Article 14 read with Article 39(d) of the Constitution of India subject to certain conditions [see **Harbans Lal versus State of H.P. : (1989) 4 SCC 459**] which enshrine the constitutional goal of equal pay for equal work.

42. The ground for denial of the said upgraded pay scale to the petitioner is on the solitary ground that the petitioner did not have the eligibility for the said post of Deputy Registrar (Administration) inasmuch as or in other words, the petitioner did not have post graduate degree as was instructed by the said MHRD, Government of India way back in 2009 as aforementioned. But it is not denied that as per the eligibility stipulated in the employment notification, the petitioner had all the qualification and accordingly, he was selected and his appointment had been made permanent. Subsequently, in the year 2017, there was an initiative to change the recruitment rules by incorporating the post graduate degree as essential

qualification. The very purpose of the scheme of upgradation of pay scale after five years of service in the said post is to give relief to the incumbent who is stagnated for five years without any incentive or promotion. The petitioner joined in the post of Deputy Registrar (Administration) on 11.08.2011 and as such on 10.08.2016 the petitioner had completed five years of service in the post of Deputy Registrar (Administration) and he was borne in the pay band of Rs.15,600-39,100/- with grade pay of Rs.7,600/- as required by MHRD communication dated 02.11.2017 and as such, he was entitled to the said final up-gradation for his completing five years of service but that was denied on the ground as discussed before.

43. There cannot be any amount of dispute that the petitioner has been denied the said AGP on completion of five years of service as he had no master degree. True it is that in the letter of MHRD dated 09.03.2020 [Annexure-30 to the writ petition] there is a reference of letter No.1-32/06-UT/U-1(II) dated 31.12.2008. It has been mentioned in the said letter dated 31.12.2008 that the said benefit can only be given to those possessing the qualification and experience prescribed. As qualification, the post graduate degree was prescribed by the said letter. That has become the foundation of denial, as stated. The respondents have been given importance on those words. Those words are mostly for the Deputy Registrars of the Central Universities or other Universities run by the State Governments. But that scheme is basically a stagnation relief mechanism for the Deputy Registrar/Deputy Registrar(Administration) who had not got any promotion during five years of their service. The eligibility shall always mean the eligibility as prescribed by the recruitment rules or the executive instruction only in absence of

the recruitment rules, as was extant at the time of appointment of the petitioner. There may be communications for amending the recruitment rules. But unless the recruitment rules are amended, the eligibility remains the same. In the case in hand, this Court has noticed that in order to bring change in the recruitment rules, exercise was taken only in the year, 2017. As the petitioner was eligible in terms of the extant recruitment rules, the petitioner shall be treated as eligible for purpose of getting the benefit of up-gradation of the scale and the grade pay. When an incumbant gets permanently appointed in a permanent post, having conformed to the eligibility criterion, the up-gradation of pay scale, to PB-4 with GP of Rs.87,00/- cannot be denied. Since, the petitioner had been holding the regular post of Deputy Registrar(Administration) and discharged all duties of Deputy Registrar to the fullest satisfaction of the authority and completed five years in the service in that capacity, he was entitled to the said financial pay up-gradation. The denial is completely arbitrary and even contrary to the letter written by MHRD to UGC. Hence, the petitioner shall be given Pay Band of Rs.37,400-67,000/-(PB-4) with Grade Pay of Rs.8,700/- from the day immediately after the day of completion of 5(five) years of service in the post of the Deputy Registrar(Administration).

44. Arrears pay that would accrue in favour of the petitioner for fixing his pay in the Pay Band of Rs.37,400-67,000/-(PB-4) with Grade Pay of Rs.8,700/- shall be paid to the petitioner within a period of three months from today. So far the question of subscribing GPF is concerned, for the subsequent appointment of the petitioner as the Registrar of M.B.B. University w.e.f. 01.03.2017, there will be no direction to grant the petitioner the benefit of GPF. Mr. Bhowmik, learned

counsel for the petitioner has urged this Court [reflected in the written note] for directing the respondents to release the petitioner's contribution to GPF with interest. The respondents are, in the emerged circumstances, directed to refund the petitioner's contribution to GPF within a period of three months from today with interest @ 7% as the respondents were under obligation to refund the said money when they had decided that the petitioner will not get the benefit of GPF, though according to this Court, the petitioner was entitled to.

45. By the confidential note dated 11.03.2016 two enquiries had commenced against the petitioner. One was in respect of his administrative actions as the Deputy Registrar (Administration) of NIT, Agartala and the other was in respect of conferment of his Ph.D. The respondents did not state anything about the outcome of those enquiries. In the first enquiry, the allegations were made by a person whose identity was never known. In the second enquiry, the Ph.D. was awarded by BITS, Pilani which is a reputed deemed University of Engineering. In absence of the said University in the proceeding certain scurrilous comments have been made by the respondents. The degree of Ph.D. has been awarded in favour of the petitioner when his locale was at Agartala. It cannot be the ground of objection, unless it is shown that it was prohibited by any law. In the age of Information of Technology 'locale' hardly matters. That the further allegation as brought in support of not recording the Ph.D. is that the Ph.D. dissertation is substantially plagiarised. In the entire reply, no material has been placed in proof of such serious allegation. That apart, allegation has been made against the petitioner that he did not inform or take permission for continuing his Ph.D. work,

but in their reply, the respondents have admitted that with the joining letter filed on 11.08.2011, the petitioner had submitted information that he was continuing his Ph.D. in BITS, Pilani. This was sufficient information for the respondents to take a decision whether to allow or not to allow the petitioner to continue with the Ph.D. work. In this regard, this Court should note that the Ph.D. work according to the petitioner was in the final phase. The petitioner did submit provisional conferment certificate and later on, the certificate of Ph.D. after it was handed down in the convocation. It has been clearly admitted by the respondents that vigilance clearance certificate and integrity certificate were issued by NIT, Agartala in favour of the petitioner. That shows that the petitioner was cleared even though no formal order terminating the enquiries was issued. But the respondents did not clear formally and such action of the respondents is manifestly mala fide. Enquiry against clearing any doubt or allegation, prima facie cannot be decried but the way the respondents has made wild allegation against another institution for awarding Ph.D. to the petitioner is not only unethical but without any foundation. Further, the allegations as brought against the petitioner which subjected him to a vigilance enquiry appeared to be without any substance. Thus, the enquiries initiated by the confidential note dated 11.03.2016 is liable to be set aside as no material in support of those allegations has been placed before this Court.

46. In fact, equity and arbitrariness are sworn enemies. One belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law. Therefore, arbitrariness is

violation of Article 14, and it affects any matter relating to public employment, it is violative of Article 16 as well. Article 14 and 16 strike at arbitrariness in the state action and ensure fairness and equality of treatment. The state action must be based on valid and relevant principles applicable alike to all similarly situated and must not be guided by any extreme and irrelevant considerations. Contrary thereto, would be denial of equality, where the operative reason of the state action as distinguished from motive induced by the ante chamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations. It would amount to malafide exercise of power and that is hit by Article 14 and 16. Malafide exercise of power and arbitrariness are different lethal radiations emanating from the same vice. In fact, the latter compliments the former. Both are inhibited by Article 14 and 16 (see **E.P. Royappa versus State of Tamil Nadu and Another** reported in **(1974) 4 SCC 3**). The petitioner has converted the other allegations that without having bachelor's degree in Technology, no person can be allowed to pursue the Ph.D. programme. The petitioner has shown even in NIT, Agartala only with the degree of Bachelor of Engineering with excellent marks, the candidates are allowed to pursue the Ph.D. programme. Thus, the entire action of non-recording of acquisition of Ph.D. by the petitioner in his service record, is in the considered opinion of this Court, malafide. The respondents are, therefore, directed to enter the petitioner's acquisition of the Ph.D. degree in his service book and send the service book to the M.B.B. University within a period 2(two) months from today.

47. In view of the aforesaid observations and direction, the decision of the Board of Governors (BOG) of NIT, Agartala under Item No.42.5 more particularly under items No. 42.5.1, 42.5.2 and 42.5.3 as adopted in the 42nd meeting of BOG held on 27.12.2017 and notified vide the notification dated 08.01.2018 stand quashed and set aside. The respondents are prohibited from acting on those decisions in any manner.

48. The petitioner has raised a question on estoppel based on promise. According to him, the respondents ought not have resiled from their promise to the serious jeopardy of the petitioner as the petitioner had altered his position irreversibly as his lien was recalled on his confirmation in the post of the Deputy Registrar (Administration) in NIT Agartala. The petitioner was extended the benefit of pension under CCS (Pension) Rules, 1972 and GPF along with his confirmation. Till then the lien was alive. On confirmation, when the petitioner terminated the lien, those benefits were suddenly recalled on the analogy as discussed elaborately before. In this regard, this Court has observed that there had been no change in law and there had been no contravention of any law though the veiled accusation made against the petitioner is that the petitioner had manipulated the process. On a serious scrutiny of the records, this Court did not find even trace of manipulation by the petitioner nor the materials were placed in the proceeding. Making wild allegation without foundation is wholly unfair. Fairness is an inseverable component of justice. The State or its authority cannot embark on any action based on hypothesis and on in-appropriate consideration of law.

Having observed thus, the writ petition stands allowed to the extent as indicated above. The respondents shall pay a sum of Rs.25,000/- as cost of litigation to the petitioner. Such cost shall be paid within a period of 3 (three) months from the date of judgment.

Records as produced by the respondents be returned forthwith, under a sealed cover.

JUDGE

