

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 2575 OF 2022
(Arising out of SLP(Civil) No(s). 31892 of 2018)**

**NATIONAL INSTITUTE OF
TECHNOLOGY & ANOTHER**

....APPELLANT(S)

VERSUS

OM PRAKASH RAHI & OTHERS

....RESPONDENT(S)

WITH

**CIVIL APPEAL NO(S). 2576 OF 2022
(Arising out of SLP(Civil) No(s). 31890 of 2018)**

**CIVIL APPEAL NO(S). 2577 OF 2022
(Arising out of SLP(Civil) No(s). 32025 of 2018)**

**CIVIL APPEAL NO(S). 2578 OF 2022
(Arising out of SLP(Civil) No(s). 31445 of 2018)**

**CIVIL APPEAL NO(S). 2579 OF 2022
(Arising out of SLP(Civil) No(s). 31900 of 2018)**

J U D G M E N T

Rastogi, J.

1. Leave granted.

2. The present batch of appeals are directed against the self-same judgment dated 31st July, 2018 passed by the Division Bench of the High Court of Himachal Pradesh at Shimla which upheld the order passed by the Director of the National Institute of Technology without going through the process of selection of the teachers in the higher pay band of Rs. 37400-67000 with AGP Rs.9000 and re-designated as Associate Professor consequent upon completion of three years of service in AGP Rs.8000(6th Central Pay Commission) and directed the appellants to consider their claim for further promotion to the post of Professor, and if found suitable, the teacher may be promoted from the due date with all consequential benefits.

3. The facts in brief have been taken note from Civil Appeal @ SLP(Civil) No. 31892 of 2018, culled out from the record and relevant for the purpose are that the appellant-institution, was initially the Regional Engineering College(REC) (H.P.), Hamirpur. Consequent upon conversion of 14 NITs and 3 RECs including the present institution at Hamirpur as National Institute of Technology with deemed university status, they were taken over as fully funded

institutions of Central Government by notification dated 14th May, 2003 wherein it was decided with the approval of the competent authority to implement Career Advancement Scheme(CAS) in NITs after approval of the recommendations of the Selection Committee by the Board of Governors(BOGs) of the NIT concerned by Office Memorandum dated 15th September, 2003 and prescribed service conditions of the teachers/employees of the then RECs upon conversion as NITs with deemed university status by later notification dated 9th November, 2003.

4. Later, Parliament enacted the National Institute of Technology Act, 2007 w.e.f. 6th June, 2007 wherein the appellant institution finds place in the first Schedule appended to the Act at Serial No. 5 in the list of central institutions incorporated and correspondingly became the NIT, Hamirpur and later by the NIT (Amendment) Act, 2012 vide notification dated 8th June 2012, it became the National Institute of Technology(Science, Education and Research) Act, 2007(hereinafter being referred to as the “Act 2007”).

5. The respondent-teachers were initially appointed as a Lecturer in their respective Engineering Department in the then REC,

Hamirpur(now NIT Hamirpur) on 28th June 2000. Later, on the recommendations of the staff selection committee, respondent teachers were designated as Lecturers(Sr. Scale) in the pay scale of Rs.10000-15200 with the approval of Board of Governors w.e.f. 25th July, 2005 vide order dated 30th December, 2005 and later pursuant to the recommendations of the 6th Central Pay Commission notified by letter dated 18th August, 2009, respondent teachers were placed as Assistant Professors in AGP Rs.6000 w.e.f. 1st January, 2006 and granted AGP Rs.7000 w.e.f. 1st July, 2006 vide pay fixation order dated 20th January 2010. Further, on the recommendations of the selection committee in terms of directives of Ministry of Human Resource Development (hereinafter being referred to as the “MHRD”) dated 14th March, 2012 and 18th March 2013 and with due approval of the Board of Governors, NIT, Hamirpur, they were fixed in the AGP Rs.8000 vide orders dated 25th June, 2013 and 12th November, 2013 respectively. The orders passed by the competent authority granting AGP of Rs.8000 are not the subject matter of challenge.

6. It may be noticed that earlier, such of the Assistant Professors and Lecturers (Selection Grade) who had completed the requisite period of service in the appropriate pay scale with the approval of the competent authority, were re-designated as Associate Professor in the pay scale/pay band PB-4 (Rs.37400-67000) with AGP Rs.9000 by an order dated 22nd June 2010 as per the MHRD guidelines dated 18th August, 2009 and letter dated 31st December, 2008.

7. But this time, the Director of the NIT, on its own, on mere completion of three years in the AGP Rs.8000, without undergoing the process of selection or the recommendations being made with the approval of the Board of Governors, granted benefit of AGP Rs.9000 with re-designation as Associate Professor to all the six respondent teachers and one of the orders for the purpose of reference is reproduced hereunder:-

**“NATIONAL INSTITUTE OF TECHNOLOGY
HAMIRPUR(H.P.)-177005**

Office Order

Consequent upon the completion of 03 years of service in AGP 8000(6th CPC) by Dr. O.P. Rahi on 24/07/2013, he is hereby placed in the higher pay band of Rs. 37400-67000 with AGP 9000 and

designated as Associate Professor w.e.f. 25/07/2013 in term with para 2 (a)(x) of Govt. of India, Ministry of HRD, New Delhi letter No. 1-32/2006-U.I(i) dated 31st December 2008.

The above incumbent will be entitled to draw the basic pay of 12400+AGP 9000 w.e.f. 19/10/2013 subject to verification by audit and subsequent direction, if any, received from MHRD in this regard.

By Order

DIRECTOR
NIT HAMIRPUR(HP)
Dt 27/10/14

NIT/HMR/Admn/Rev-270(Vol-18)/2014/6435-47

Copy to:

- 1.Above named officer through HOD, MED
- 2.Dy. Registrar(Accounts), NIT Hamirpur(HP)
- 3.PF of the individual

REGISTRAR
NIT HAMIRPUR(HP)"

8. Since it was not approved by MHRD as it was held to be in contravention to the guidelines dated 14th March, 2012 and 18th March 2013, that became the cause of grievance to approach the High Court by filing the writ petitions under Article 226 of the Constitution.

9. The High Court, under the impugned judgment, held that MHRD was not the authority competent to issue guidelines after the Act, 2007 came into force and since the statute, for the first time,

was incorporated/enacted in 2017, laying down the recruitment rules relating to the promotion of teachers in NIT having been incorporated by an amendment to the statute by clause 23(5)(a) on 21st July, 2017 whereby schedule 'E' has been appended providing qualifications and other terms and conditions for academic staff of NITs which may be applicable prospectively and accordingly upheld their placement in the higher pay band of Rs. 37400-67000 with AGP Rs.9000 and their re-designation as Associate Professor with a further direction for their consideration to the post of Professor in accordance with the guidelines which have now been enforced in the year 2017.

10. Learned counsel for the appellants submits that MHRD guidelines dated 31st December, 2008 on which the High Court has heavily relied upon are not applicable to the NIT. To the contrary, after the Act, 2007 came into force, the first statute in exercise of its power under Section 26(1) of the Act was notified on 23rd April, 2009 which did not contain any provision for Career Advancement Scheme and it has been introduced by the MHRD to deal with the genuine stagnation and hardship faced by the teachers and to meet

such exigency, higher pay grade or re-designation will be on 'in-situ' basis and, therefore, the work allocation remains the same and that is the reason for which each of the respondent teachers was appointed in the AGP Rs.8000 by an order dated 25th June, 2013 and 12th November, 2013 in terms of the guidelines dated 14th March, 2012 read with 18th March, 2013 based on the recommendations made by the duly constituted committee. In the given facts and circumstances, the High Court has committed the manifest error in relying upon the guidelines of MHRD dated 31st December 2008, which is not applicable to NIT teachers, in consequence, the finding which has been recorded by the High Court in upholding the orders passed by the Director granting AGP Rs.9000 merely on completion of three years' service and their re-designation as Associate Professor being, per se, illegal is not sustainable in law.

11. Learned counsel further submits that while granting benefit of AGP Rs.9000 and their re-designation as Associate Professor, the Director is not the authority competent in terms of the provisions of the Act 2007, at the same time, AGP Rs.9000 and re-designation as

Associate Professor was made subject to verification and subsequent direction of MHRD in this regard, hence no right could be said to be vested in favour of the respondent teachers and that is the reason, the matter, at one stage, was sent to the committee and since the committee also raised certain objections, matter was referred to MHRD for seeking clarification and MHRD recorded its finding that since the appointments have not been made in terms of the guidelines dated 14th March, 2012 followed by 18th March 2013 and the appointments made by the Director not being approved, no error was committed in the procedure been followed to withdraw the benefits extended to the respondent teachers.

12. Learned counsel further submits that this fact has been completely overlooked by the High Court that the appointments were made in the AGP Rs.8000, after the recommendations made by the selection committee been approved by the Board of Governors, in terms of the guidelines dated 14th March, 2012 followed by 18th March 2013 that indeed includes further appointments to AGP Rs.9000 and re-designation as Associate Professor and thus, the finding which has been recorded relying

upon the MHRD circular dated 31st December, 2008 in upholding the order of AGP Rs.9000 and re-designation to the post of Associate Professor is not sustainable in law.

13. Learned counsel further submits that after the Act, 2007 came into force, the first statute was notified in exercise of its power under sub-section (1) of Section 26 of the Act, 2007 with the prior approval of the visitor of NITs by notification dated 23rd April, 2009. Clause 23 of the statute 2009 provides for making appointment to the post of teachers by direct recruitment/promotion pursuant to the constitution of selection committee. Although, the notification and other terms and conditions of appointment could not be laid down by that time and it was notified in the year 2017, thus, in the given circumstances, by virtue of Section 5(d) of the Act 2007, laying down the conditions of eligibility for appointment, the guidelines issued by the MHRD have a binding force and the finding recorded by the High Court holding that MHRD is not an authority competent to issue guidelines after the Act, 2007 came into force, is not sustainable particularly, in the given circumstances when the respondent teachers got AGP Rs.8000

pursuant to the very guidelines of MHRD dated 14th March, 2012 followed with 18th March, 2013.

14. Thus, the respondent teachers, at least could not be permitted to approbate and reprobate, at the same time, while availing the AGP Rs.8000 under the MHRD guidelines dated 14th March, 2012 followed with 18th March, 2013, it is not open to canvass that the very guidelines will not apply for further AGP Rs.9000 and re-designation as Associate Professor and this has been completely overlooked by the High Court while passing the impugned judgment and needs to be interfered with by this Court.

15. Per contra, learned counsel for the respondents, while supporting the impugned judgment, submits that once their merit has been assessed by the committee and each of them has gone through the process of selection and interview under the Career Advancement Scheme as per the norms fixed for Centrally Funded Technical Institutions and corresponding AGP Rs.8000 has been granted to them by orders dated 25th June, 2013 and 12th November, 2013 respectively, each of them became entitled for AGP Rs.9000 and for re-designation to the post of Associate Professor on

completion of three years' service in the grade of Assistant Professors/ Lecturers(Sel. Grade) in terms of MHRD Guidelines dated 31st December, 2008 and para 2(x) in particular, and the Director, being the competent authority at the given point of time, and each of them had indisputedly completed three years' in the AGP Rs.8000 was entitled for the higher pay band of Rs. 37400-67000 with AGP Rs.9000 and consequent re-designation as Associate Professor and this what the High Court has upheld in the impugned judgment and the finding being in conformity with the MHRD guidelines dated 31st December 2008, needs no further interference by this Court.

16. Learned counsel further submits that, for the first time, through an amendment to the statute under clause 23(5)(a) on 21st July, 2017, schedule 'E' had been appended providing qualifications and other terms and conditions for academic staff of NITs, thus, all actions prior thereto are to be governed in terms of the guidelines issued by the MHRD applicable at the given point of time, they are entitled to protect their re-designation of Associate Professor which they are enjoying for sufficient long time and became due for further

promotion to the post of Professor under the guidelines which have been introduced by an amendment to the statute by notification dated 21st July 2017, at least at this point of time, this Court may protect not only their service conditions but the appellants may be directed to further consider their promotion to the post of Professor in terms of the amended statute dated 21st July 2017.

17. We have heard learned counsel for the parties and with their assistance perused the material available on record.

18. That prior to the appellant institution became NIT, it was a REC and at that time, the guidelines for CAS were prescribed by the All India Council of Technical Education(AICTE). Consequent upon conversion into NIT with deemed status and taken over as fully funded institution under the Central Government vide notification dated 14th May 2003, specific guidelines were formulated by MHRD for CAS for faculty members of NITs wherein it was decided with the approval of the competent authority to implement Career Advancement Scheme(CAS) in NITs for which the composition of the Selection Committee had been revised and after approval of the recommendations of the Selection Committee by the Board of

Governors(BOGs) of the NIT concerned by Office Memorandum dated 15th September 2003, prescribed the service conditions of the employees of the then RECs upon conversion as NITs with deemed university status by later notification dated 9th November 2003.

19. At this point of time, it will be appropriate to clarify that MHRD, on the recommendations of the 6th Central Pay Commission, introduced schemes for revision of pay structure and re-designation of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees vide its directive dated 31st December, 2008 but that is not applicable to the NITs and for NITs, separate directives were issued by the MHRD on 18th August, 2009 addressed to all Centrally Funded Technical Institutions and also to the IITs and the scheme provides for revision of pay structure and re-designation of teachers under 6th Central Pay Commission to grant accelerated promotional benefits of the scheme under para (2), which laid down the conditions of eligibility for revision to AGP Rs.6000 to AGP Rs.7000; AGP Rs.7000 to AGP Rs.8000 and AGP Rs.8000 to AGP Rs.9000 and also re-designation as Associate Professor. The extract

of MHRD guidelines dated 18th August, 2009 relevant for the purpose is reproduced as under:-

F. No. F.23—1/ 2008-TS.11
Government of India
Ministry of Human Resource Development
Department of Higher Education
Technical Section-11

Shastri Bhawan, New Delhi
Dated, the 18th August, 2009

To

The Director
All Centrally Funded Technical Institutions

Subject: Revision of pay of teaching and other Staff in Centrally Funded Technical Institutions (CFTIs) following the pay revision of the Central Government employees on the recommendation of the 6th Central Pay Commission (6th CPC).

Sir,

I am directed to say that the Government of India have decided, after taking into consideration the recommendations made by the Govardhan Mehta Committee, to revise the pay of teaching and other staff of Centrally Funded Technical Institutions following the pay revision of the Central Government employees on the recommendation of 6th CPC. The revised pay and other service conditions as approved by the Government of India for the teaching and other staff in CFTIs are as under:-

1...

2.For Other Centrally Funded Technical Institutions

The pay structure and designations for all other Centrally Funded Technical Institutions will generally be the same as per the scheme of revision of pay of teachers, etc. in

Universities, etc. as notified by the Ministry of HRD vide letter No. 1-32/2006-U.II/UI(i) dated 31st December, 2008 and clarification issued thereon from time to time. However, in the case of National Institutes of Technology(NITs), Indian School of Mines University(ISMU), Indian Institutes of Information Technology(IITs) and Schools of Planning & Architecture(SPAs), the following accelerated promotional benefits will be given while maintaining the UGC pay structure and designations;

(a) Seven non-compounded advance increments shall be admissible at the entry level of recruitment as Assistant Professor to persons possessing the degree of Ph.D awarded in the relevant discipline.

(b) (i) An Assistant Professor possessing the degree of Ph.D in the relevant discipline and with regular service of 3 years' at AGP of Rs. 6000/p.m. shall be eligible for moving to AGP of Rs. 7000/- p.m.

(ii) An Assistant Professor possessing the degree of Ph.D in the relevant discipline and with regular service of 3 years' at AGP of Rs. 7000/- p.m. shall be eligible for moving to AGP of Rs. 8000/- p.m.

(iii) An Assistant Professor possessing the degree of Ph.D in the relevant discipline and with regular service of 3 years' at AGP of Rs. 8000/- p.m. shall be eligible for moving to AGP of Rs.9000/- p.m. and re-designated as Associate Professor.

(c) Associate Professor completing 4 years' of regular service in the AGP of Rs. 9000/- and possessing a Ph.D degree in the relevant discipline shall be eligible to be appointed and designated as Professor, subject to other conditions of academic performance as laid down by the UGC and by the university, if any. No teacher other than those with a Ph.D shall be promoted, appointed or designated as Professor. The Pay Band for the post of Professors shall be Rs. 37400-67000 with AGP of Rs.10000/- p.m.

(d) Up to a maximum of 20% of the sanctioned post of Professors shall be placed in PB-4 in the AGP of Rs.12000/- p.m. after

regular service of 6 years' as Professor in the AGP of Rs. 10000/- and the minimum pay in the Pay Band will be fixed at Rs. 48000/- p.m. Other eligibility conditions will be as laid down by the UGC.

(e) All promotions will be based on performance evaluation and subject to fulfilment of other conditions laid down by MHRD letter No. 1-32/2006-U.II/U.I(i) dated 31st December, 2008.

....”

20. To overcome the difficulties being faced on implementation of the revision of pay structure of teachers in Centrally Funded Technical Institutions dated 18th August 2009, necessary guidelines were issued by the MHRD dated 14th March, 2012 in which a clarification was made that the guidelines provided by AICTE and UGC are not applicable to NITs with a further specification that CAS in NITs will be governed by guidelines and regulations defined by MHRD and the council for NITs. The extract of the guidelines issued by MHRD dated 14th March, 2012 is reproduced below:-

“No. F.33—7/ 2011-TS.III
Government of India
Ministry of Human Resource Development
Department of Higher Education

Shastri Bhawan, New Delhi
Dated, the 14th March, 2012

To

The Directors

Of all the National Institutes of Technology(NITs)

Subject: Promotion of faculty members of NITs under the Career Advancement Scheme (CAS)- Issue of necessary guidelines thereof-regarding.

Sir/Madam,

I am directed to refer to the various communications issued by this Ministry on the rules and regulations for promotion under Career Advancement Scheme (CAS) for faculty members of the National Institutes of Technology (NITs). The Ministry has received a number of representations from the faculty members of the NITs on the implementation of CAS. The issue had also been discussed in meetings of the Board of Governors (BOGs) of NITs, wherein concerns have been expressed.

2. In order to resolve the issue, a Committee (under the Chairmanship of Prof. Sunil Kr. Sarangi, Director, NIT-Rourkela) was constituted for removal of pay anomalies. The report submitted by this Committee was examined in the Ministry. It was felt that instant issue was intricately linked with the Recruitment Rules for faculty posts.

3. In order to approach the instant issue from a holistic prospective and in the back-drop of a need for Recruitment Rules, it was considered necessary to examine these two issues afresh. Accordingly, a Special Committee was set up under the Chairmanship of Prof. Sarangi, Director, NIT-Rourkela vide this Ministry's Order F.No. 24-1/2010-TS.III dated 27.07.2011 and 23.08.2011. The Sarangi Committee after detailed examination of the aforesaid issues submitted its report to Standing Committee of the Council of NITs in its meeting held on 15.11.2011 under the Chairmanship of Dr. RA Mashelkar. The Council of NITs in its 3rd meeting held on 18.11.2011 resolved to accept the recommendations of the Sarangi Committee for implementation of CAS & Recruitment Rules of faculty in NITs, as modified by the Standing Committee.

4. Subsequent to the resolution of the NIT Council, representations have been received in the Ministry from several NITs regarding the decisions taken for removal of anomalies, faculty promotions, condition of service, etc. These representations have since been examined in the Ministry in

consultation with certain Chairpersons of the BOGs and Directors of NITs. After due deliberations, the following general and specific guidelines are prescribed:

(a) career Advancement Scheme(CAS) is an integral part of a rigid staff structure where the number of posts at any given level is limited. Such a scheme provides an avenue through which a qualified employee climbs to the higher rung of the career ladder, even if there is no vacancy. It, however, will not be treated as mere formality as the purpose of the scheme was for development of merit and not eligibility based promotions.

(b) For a faculty member to gain advancement under CAS, he or she must satisfy the approved criteria under three broad heads: (i) a critical number of years in the lower level or designation and/or AGP, (ii) cumulative academic performance during the service period at the current level in terms of teaching and research output as well as sharing institutional responsibility, and (iii) proficiency and knowledge in one's chosen field of research and teaching Superior record in all these three fronts qualifies a faculty member for advancement to a higher level.

(c) CAS has been in operation in institutions under guidelines provided by AICTE and UGC. It is clarified that those norms and procedures are not applicable to NITs. CAS in NITs will be governed by guidelines and regulations defined by the Ministry of HRD and the Council of NITs.

(d)..

(e)..

(f) All recommendations of the Selection Committee shall take effect only from the date of approval of the recommendations by the Board or any later date as decided by the Board. There shall be no retrospective implementation of recommendations in any case (either financial or notional).

(g) The constitution of the Selection Committee, the procedure and criteria of selection shall be same for internal and external candidates. There shall not be a separate or special interview for CAS selection; interviews should be conducted along with candidates for direct recruitment against vacancies, if any.

(h)..

(i)...

(j)...

(k) Any promotion or enhancement of Pay Band or Grade Pay, already implemented by the institute should be got reviewed/examined by the Board by a duly constituted selection committee immediately. Any increment paid over the beginning of the scale of Associate Professor to those Assistant Professors who did not complete 3 years, is to be recovered from future pay.

(l) The orders issued by the Ministry following the 6th Central Pay Commission provides minimum number of years of service to go to higher AGP or a higher designation, e.g. 3 years from AGP Rs. 6000/- to Rs. 7000/- or from AGP Rs. 7,000/- to AGP Rs. 8,000/- etc. These are to be implemented only through the formal selection process. A formal Selection Committee (as per the NIT Act, 2007 and the statutes of NITs) must examine the candidature and ensure that an enhancement is recommended on the strength of academic contribution expected of a faculty member of an institution of National Importance.

(m)...

(n) The eligibility criteria(number of years in lower AGP) should be seen as necessary but not sufficient condition for upgradation of AGP or change of designation. Any upgradation can be done only on recommendation of a duly constituted Selections Committee after formal interview. The process for AGP upgradation should be as serious and dignified as that for change of designation. A candidate must convince the Selection Committee that he or she engaged in scholastic pursuits (teaching, research and management) to deserve an upgradation after his/her last advancement.

(o)...

(p)...

(q) All Institutes shall strive to conduct annual selection processes regularly in case of Institutes that have not conducted CAS interviews for 3 years or more. Selection Committees may, as a onetime measure, examine scholastic contribution of internal candidates made after the last interview and recommend a salary and AGP they would have earned now, had the Selection Committee met at the appropriate time.

(r)...

(s)....”

(emphasis supplied)

21. It will be relevant to note that eligibility has been prescribed under the relevant directives issued by MHRD dated 18th August, 2009 followed by 14th March, 2012 with a clear stipulation that financial upgradation in terms of 6th Central Pay Commission shall be extended co-terminus to the teacher, after going through the formal selection process, in terms of the formation of the selection committee provided under the Act, 2007 and the statutes of NITs to examine the candidature and ensure overall suitability of the teacher on fulfilment of the relevant conditions for grant of upgradation of pay/higher AGP/redesignation, as the case may be.

22. It is not disputed that each of the respondent teachers was granted financial benefit of the AGP Rs.8000 in terms of MHRD guidelines dated 14th March, 2012 followed by 18th March, 2013 based on the recommendations of the selection committee

constituted followed with interview and approval of Board of Governors to the post of Lecturer(Selection Grade) vide Office order dated 25th June, 2013 and 12th November, 2013 in the pay scale of Rs. 12000-18300(corresponding to AGP Rs.8000 in 6th Central Pay Commission).

23. But while placing in the higher pay band of Rs. 37400-67000 with AGP Rs.9000 and re-designation as Associate Professor, no procedure was followed, neither selection committee was constituted nor their suitability was adjudged and also there is no approval of the Board of Governors which is the requirement of law under the Act 2007.

24. The Director who is not even the authority competent under the provisions of the Act, 2007 straightaway, on its own discretion, without following the procedure prescribed by law, passed orders in favour of each of the respondent teachers on mere completion of three years' service in the AGP Rs.8000 and placed them in the higher pay band of Rs.37400-67000 with AGP Rs.9000 and re-designation of Associate Professor. One of the specimens (copy of the order passed by the Director), has been reproduced

hereinabove, which in itself, depicts that the Director, who is not the authority competent under the Act, 2007 passed orders without due compliance of the procedure prescribed under the Office Memorandum dated 14th March, 2012 and that was the reason for which MHRD declined to approve such appointments by its communication dated 12th February 2018.

25. The statute was later enacted vide notification dated 23rd April, 2009 in exercise of powers under sub-section (1) of Section 26 of the Act 2007. Under Section 13(1)(d), the Board is the appointing authority for the academic staff in the post of Lecturer or above. At the same time, the Central Government, with the prior approval of the visitor, in exercise of power under sub-section (1) of Section 26 of the Act 2007, framed the first statute for NITs and Director, as an Officer of the Institute, has been empowered under clause 17 of the statute to employ teaching supporting staff and discharge all other administrative functions delegated by the authority.

26. Indisputedly, under the present scheme of the Act 2007, the first statute came to be introduced by notification dated 23rd April, 2009 followed by later amendments made vide notification dated

21st July, 2017. The power for appointment of teacher is vested only with the Board of Governors obviously on the recommendations made by the selection committee. In the present scheme of the Act, 2007 of which a reference has been made, the orders passed by the Director of placing the higher pay band of Rs. 37400-67000 with AGP Rs.9000 and re-designated as Associate Professor to each of the respondent teachers cannot be said to be in accordance with the procedure prescribed for CAS in terms of the guidelines issued by MHRD dated 14th March, 2012 and 18th March, 2013 having not been followed by the Officer of the institution, i.e. Director, in passing orders which were impugned before the High Court that indeed cannot be approved by this Court.

27. The Division Bench of the High Court has proceeded on the premise that after the Act, 2007 has come into force, MHRD is not competent to issue circulars/guidelines of which a reference has been made dated 14th March, 2012 and 18th March 2013, which is completely misplaced for the reason that after the Act, 2007 came into force, the appellant-institution was taken over by the Central Government and being fully funded institution by the Central

Government, the CAS was introduced by MHRD only for accelerated promotion and was not in contradistinction to the scheme for appointment available to the teachers under the provisions of the Act 2007. At the same time, the respondent teachers were granted the benefit of AGP Rs.8000 under the same guidelines issued by the MHRD dated 14th March, 2012 and 18th March, 2013 that too on the recommendations of the selection committee and with the approval of the Board of Governors of NIT, Hamirpur, in the given facts and circumstances, to hold that the benefits once availed under the guidelines dated 14th March, 2012 and 18th March, 2013 by the respondent teachers while seeking revision of AGP Rs.8000, the very scheme will not be applicable while considering for AGP Rs.9000 and for re-designation as Associate Professor is otherwise not sustainable in law.

28. The Division Bench has further committed an error in recording a finding that since the statute pursuant to which the eligibility conditions for appointment have been introduced by notification dated 21st July, 2017 is prospective in character and earlier appointments made thereto have to be in terms of the

guidelines issued by MHRD dated 31st December 2008 for the reason that the guidelines issued by the MHRD dated 31st December, 2008 are not applicable so far as the NITs are concerned and this fact was clarified by the MHRD in its later guidelines dated 18th August, 2009 followed by 14th March, 2012 and this fact has been completely overlooked by the Division Bench while placing reliance on the guidelines dated 31st December, 2008.

29. We would like to observe that the guidelines issued by the MHRD from time to time for revision of pay structure and re-designation of the teachers in NITs are in the form of accelerated promotions, remain co-terminus with the person and are not related to post based promotions under the relevant recruitment rules, however, such scheme is not available under the Act, 2007 and after the amendment notification dated 21st July, 2017, Schedule 'E' has been appended in exercise of power under the clause 23(5)(a) of the statute laying down the qualifications and other terms and conditions of appointment of academic staff to be made through open advertisement on the recommendations of the

selection committee until exempted under the scheme of these rules.

30. To clarify it further, CAS scheme by its very nomenclature called Career Advancement Scheme introduced for teachers like Assured Career Progression Scheme (ACP), later called MACP for Central Government employees to overcome the problem of stagnation and hardship faced due to lack of adequate promotion avenues, it nowhere tinkers with the conditions of eligibility for appointment to the cadre posts included in schedule 'E' annexed to the statute pursuant to which qualifications and other terms and conditions of appointment of academic staff are included vide notification dated 21st July 2017.

31. Before parting with the judgment, we would like to observe that since the respondent teachers are working in the AGP Rs.9000 pursuant to the orders though may not be legally sustainable but it is not the case of the appellants that they are not eligible for AGP Rs.9000 and for re-designation as Associate Professor. In the given facts and circumstances, we consider it appropriate to observe that let the respondent teachers may continue for the time being and the

appellants may initiate the process to consider the respondent teachers for pay band of Rs. 37400-67000 with AGP Rs.9000 and for re-designation as Associate Professor in terms of the guidelines dated 14th March, 2012 and 18th March 2013. Such exercise may be undertaken within a period of four months and further course of action may be taken in terms of the recommendations of the selection committee and if they are found suitable, benefits be granted from the date of their suitability being adjudged and any of the respondent teachers, if aggrieved by the recommendations made by the selection committee/approval by the BOG, will be at liberty to avail such remedy which the law permits.

32. The appeals accordingly succeed and are hereby allowed with the above observations and the judgment passed by the Division Bench dated 31st July, 2018 is hereby set aside. No costs.

33. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**

(ABHAY S. OKA)

NEW DELHI

MARCH 30, 2022