

(1991) 12 CAL CK 0004

In the Calcutta High Court

Case No : C.O. No's. 13776 (W) of 1990 and 2949 (W) of 1991

Dr. Anisur Rahman Khan

APPELLANT

Vs

Indian Institute of Technology and Others

RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:

Central Service Rules, 1965 — Rule 3
Constitution of India, 1950 — Article 14, 226

Citation : (1992) 2 CALLT 200

Hon'ble Judges : Khwaja Mohammad Yusuf, J

Bench : Single Bench

Advocate : Mukul Prokash Banerji and Md. Nizamuddin, for the Appellant; Malay Kumar Basu and B.J. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Khwaja Mohammad Yusuf, J.—Both the writ petitions are taken up analogously for hearing and disposed of by this Judgment,

2. The petitioner who is the one and the same person in both the writ petitions was appointed Senior Research Assistant in the Indian Institute of Technology, Kharagpur, in 1980 in the Ford Foundation Scheme on "Water Use and Management for Agricultural Production" on contract basis for a period of two years or till duration of the Scheme, whichever is earlier. He got one premature increment on obtaining Ph.D. degree. Then he was appointed Junior Scientist in December 1982 under temporary/sponsored ICAR Scheme/Project on "All India Co-ordinated Research Project on Water Management" attached to the Agricultural Engineering Department of the Institute under the general terms and conditions of the Institutes of Technology Act, 1961 and also under the terms and conditions to be executed by the Institute and the petitioner. The petitioner was granted an annual increment in pay at the rate of Rs. 40/- per month on the recommendation of the investigator-in-charge of the Scheme "All India Co-ordinated Research Project on Water Management" and head of the Agricultural

Engineering Department. In September 1984 the petitioner was appointed to the post of Senior Research Officer (Soil Physicist) on temporary basis under the Temporary Sponsored Research Project on "All India Co-ordinated Project on Water Management" sponsored by the ICAR attached to the Agricultural Engineering Department of the Institute. He got the annual increment of Rs. 60/- per month. On receiving a communication from the Sponsoring Agency ICAR (Indian Council of Agricultural Research, New Delhi) the tenure of the Project "Water Management and Soil Salinity" operated in the Agricultural Engineering Department, the Dean, SRIC, extended the said Project Soil and the services of the staff members attached thereto till 30th September, 1990. It is alleged by the petitioner that the Deputy Registrar, Sponsored Research and Industrial Consultancy (SRIC), by Memo dated 5th October, 1990 terminated the service of the petitioner with effect from 1st October, 1990 on the ground of closure of the All India Co-ordinated Research Project entitled "Water Management and Soil Salinity" by ICAR.

3. The respondent contested the writ application by filing affidavit in opposition. I need not narrate the statements made in the writ petition and the affidavits because by the arguments put forward by the respective learned. Advocates of the parties the petitioner's case as well as the defence will emerge out clearly.

4. Mr. Banerji, the learned Advocate appearing for the writ petitioner, made exhaustive submission and also filed written argument. The writ petitioner is a Ph.D. in Science and held different offices as indicated hereinbefore. Relying on the defence that the service condition relating to sponsored Project are governed by Rules for Research Scheme of the Institute and as such the writ petitioner is not an employee of the Indian Institute of Technology and as soon as the Project is finished the service too is terminated. This contention of the defence was very much challenged by the petitioner. Mr. Banerji took through various sections of the Institute of Technology Act, 1961 as well as several clauses of the Statute. It is submitted that since the defence of the respondents is the terms of the Rules relating to Sponsored Research Scheme staff have been made by the authority the petitioner is guided by the said Rules alone but since the Rule can be made only by the Central Government in terms of Section 35 of the Act and there is no other provisions for making the Rules by the authorities under the said Act the Rules have got no legal sanction or status. None of the letters of appointment of the petitioner refers to the Rules made for Sponsored Research Scheme, on the contrary the appointment letter of the writ petitioner relating to the post of Senior Research Officer has been made by the Board of Governors u/s 25 of the Act and it has been specifically mentioned that the appointment is on temporary basis under general terms and conditions to be regulated by the said Act and the Statute of the Institute and as such the petitioner is an employee of IIT and the alleged Rules of Sponsored Research Scheme has got no application. A legal opinion was obtained as appears from Annexure "C to the Affidavit-in-Reply as to the service condition relating to those staff who are appointed in Research Project of the Institute and according to the legal opinion the staff employed

under the Project as well as the staff or permanent employee both come within the meaning of employees of IIT as both of them are paid out of consolidated fund of the Institute and both are governed by the Statute. A similar opinion was given by the legal adviser which was placed before the Board of Governors in January 1980, it appears from Annexure "A4" of the Supplementary Affidavit filed by the petitioner. The Assistant Director-General of ICAR forwarded a minute of discussion held in February 1990 and agreed upon by the Director and several other authorities of IIT and in paragraph 3 of the said minute it was specifically mentioned that "I.I.T. has already signed the Memorandum of understanding with ICAR while accepting the project and agreed to appoint the staff for the project in accordance with normal recruitment Rules and procedure applicable to I.I.T. As per Clause 12 (i) of the Memorandum of understanding the staff will appoint for all purpose be treated as employee of the grantee Institute as a part of its approved cadre and will be subject to the administrative control of the Institute." It is submitted further that the Minutes of the Board of Governors dated 19th September, 1983 which is Annexure "A" to the Affidavit-in-Reply, it was resolved that the employee of the Research Scheme shall be appointed not on contract basis but as a temporary employee by the Institute. So it is clear that the appointment was made on temporary basis by the IIT by the Board of Governors under general terms and conditions of the I.T. Act, 1961 and the Statutes of the Institute. From the appointment letter of 1984 of the petitioner it appears that it was not an appointment on contract basis nor the petitioner executed any contract agreement relating to the appointment but the appointment was made on temporary basis on general terms and conditions of I.T. Act and Statutes. In CO. No. 2949 (W) of 1991 relating to the quarter, the Affidavit-in Opposition by the IIT contains a letter dated 5th June, 1990 issued by the Dean, SRIC, IIT, disclosing on page 14 of the said Affidavit and also paragraph 2 that "such staff of the Projects who cannot be absorbed in the Institute, ICAR may please consider taking on deputation or otherwise." In F.M.A.T. No. 917 of 1991 at paragraph 6 of the said application the IIT stated specifically that the Project employees who cannot be absorbed are sent to ICAR on deputation and they would again revert back to IIT, The guidelines governing the grant of deputation of IIT is quite material for deciding the instant case. It is submitted that if the petitioner is an employee of IIT" then the petitioner can be sent on deputation to other authorities and would have the right to come back to the parent authority after the deputation period is over and it is specifically admitted in F.M.A.T. No. 917 of 1991 that after the deputation period is over the employees would revert back to IIT. Mr. Banerji has very boldly submitted that since the IIT has got no Rules of their own, as appears from the Minutes of the Council of IIT relating to item No. 8 of the agenda being Annexure "O" to the writ petition, it was decided that the Government of India Rules would be applicable and Rule 3 of the Central Civil Services Rules, 1965 provided that a person shall be deemed to be in quasi-permanent service if he has been in continuous temporary service for more than three years. It is crystal clear that the petitioner is an employee of IIT since 1980 in continuous service till his

services were terminated in October 1990. He was appointed by IIT on temporary basis in 1984 to the post of Senior Research Officer under the I.T. Act and Statutes and the status of the petitioner is quasi-permanent having been in continuous service for more than three years at least from 1984. The service of the petitioner cannot be terminated by the Deputy Registrar by order dated 5th October, 1990 on the assumption that the service of the petitioner was on a contract basis for the period the Project remained and after the end of the Project the service would stand terminated. Another point taken is that the termination is without jurisdiction as the appointing authority is the Board of Governors and the Deputy Registrar has no jurisdiction to terminate as he being much lower in rank than the appointing authority. It is finally submitted that the petitioner is still in service of the IIT and is entitled to all arrears of salaries, allowances and other benefits and is entitled to a suitable post as scientific officer and/or Faculty under IIT where he would join with a direction to get regular salaries and other benefits as an IIT employee. To put force his argument Mr. Banerji has cited a few decisions, namely, (a) Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, ; (b) 1990 CriLJ 17, CAL. LT 1991(2) HC 45 (Manick Chandra Sardar and Ors. v. State of West Bengal) ; and (c) Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another,

5. Mr. Basu, the learned Advocate appearing for the respondents, made submissions and also filed written arguments. After enumerating various sections and provisions of the Statutes, Mr. Basu came to the "Rules and Procedure for Sponsored Research Projects" (generally referred to as SRIC Rules). The said SRIC Rules are to be applicable to Sponsored Research Projects in respect of the acceptance and conduct of Sponsored Research Projects in the recruitment and service conditions of the said Project staff and these Rules were approved by the Board of Governors. Thereafter the learned Advocate dealt at length with Rule 4 of SRIC Rules. It is contended that the petitioner was offered in 1980 a post of Senior Research Assistant to Ford Foundation Scheme, a sponsored Scheme on "Water Use and Management for Agricultural Production" tenable in agricultural Engineering Department of the Institute for a period of two years or till the duration of the Scheme whichever is earlier. It is admitted that according to service condition as spelt out in condition of service, the employees in Sponsored Research Projects, shall for all practical purposes be treated as Institute staff and shall be subject to the administrative control of the Institute. Thereafter on the basis of an advertisement the petitioner applied for the post of Junior Scientist regulated by the Sponsored Research and Industrial Consultancy Centre of the Institute and the Indian Council of Agricultural Research. Scheme on "All India Co-ordinated Research Project on Water Management" and he was offered with the post for a period of two years or till the duration of the Project and appointed in March 1983. In September, 1984 he was offered the post of Senior Research Officer (Soil Physicist) on temporary basis under Temporary Sponsored Research Project on "All India Co-ordinated Research Project on Water Management" sponsored by the ICAR and the petitioner's service was governed under the

SRIC Rules of the Institute. Thereafter all incumbents including the petitioner informed that the Project was extended till 31st March, 1990 and that the service of the incumbents including the petitioner would automatically stand terminated with effect from 31st March, 1990. But at the initiative of the Institute the Project tenure was extended till 30th September, 1990 by the ICAR. The IIT submitted several Project proposals to the ICAR to accommodate the employees and also proposed that the Scientific Staff might be appointed in other Projects of the ICAR and the names of the said staff were also forwarded for consideration but the ICAR did not communicate its decision and as a result with the closure of the Project the petitioner's service is too terminated on 30th September, 1990. Mr. Basu submitted that after the termination of the service of the petitioner but in consideration of the requests of the IIT for absorption of Scientific Staff of the terminated Project the ICAR by letter dated 25th October, 1990 offered the post of Scientist (Senior Scale) to the petitioner in Water Technology for Eastern Region at Bhubaneswar. The petitioner by letter dated 12th November, 1990 accepted the offer through the Institute and requested the ICAR for extension of joining time upto 31st December, 1990 and the ICAR by letter dated 5th December, 1990 extended time as prayed for. But on 7th December, 1990 the petitioner moved the High Court suppressing the fact that he accepted the offer of appointment and prayed for extension of time for joining on personal ground. Even thereafter on the petitioner's prayers two further extension were given to him for joining the new post but he did not join. It is submitted by Mr. Basu that the challenge of the petitioner is that the Deputy Registrar (SRIC) cannot terminate his service is not correct. This authority is exercised by delegation of power under Statute 9(17) of the Statutes. It is not a fact that the petitioner is an employee of regular establishment of the IIT because he was appointed in Project sponsored by outside agency and the service conditions of the petitioner is governed by separate set of Rules approved by the Board of Governors. Further, no temporary employee of the sponsored Schemes is paid out of the Institute's main Account and the temporary employees of the Projects are paid by specific fund as granted by the sponsorer and those grants are deposited with main Research Scheme Fund. By no means the petitioner is a regular employee of the Institute but an employee of the Sponsored Scheme and governed under SRIC Rules and as such Articles 14 and 16 of the Constitution have not been violated. The SRIC Rules provided for transfer of an employee on the completion of a Project so that the Project employee may not be put to financial hardship and as such the decisions cited by the petitioner do not have any bearing on the fact of this case. This is provided in Rule 4.2(6) of Appendix I. It is further contended that the question of absorption of the petitioner as regular employee does not arise as he was not employed by the Institute as the staff of the Institute but employed in a time bound Project controlled and administered by the Institute in terms of Sponsored Research Rules. It is further submitted by the learned Advocate Mr. Basu that the Supreme Court in uncertain terms directed the sponsorer under whose authentication the Research Projects are being conducted in different institutions and the Government of India to find out ways

and means to provide employment to those persons who were employed in the Project. The Supreme Court's directive was to the sponsorer to take appropriate steps to provide adequate employment to such employees when the Project is complete and job comes to an end because it was not" desirable that an employee in a Research Project was continued from time to time should be abruptly discontinued and left without job all on a sudden. The learned Advocate for the IIT forcefully submitted once again that the job was offered to the petitioner but he did not avail of it. It is still open for the petitioner whether he would have the benefit of the appointment by the ICAR which has not been made a party-respondent and the IIT has no say in the matter. In support of his contention the learned Advocate cited Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, and an unreported Division Bench decision of Calcutta High Court being F.M.A.T. No. 1294 of 1986 decided on 10th February, 1987 (Vinod Chandra Jana and Ors. v. Indian Institute of Technology, Kharagpur and Ors.).

6. Elaborate arguments have been advanced by both sides for and against the case of the petitioner. On 12th July, 1980 by an office order of the Indian Institute of Technology, Kharagpur, the Deputy Registrar communicated the letter of appointment to the petitioner to the post of Senior Research Assistant in the Ford Foundation Scheme on "Water Use and Management for Agricultural Production" on the scale of pay stated therein on contract basis for a period of two years or till duration of the said Scheme, whichever is earlier. The recruitment to the post of Senior Research Assistant of the petitioner was guided by the conditions as laid down in the Circular dated 17th March, 1980 issued by the Board of Governors of the IIT which specifically said in Clause 4 that subject to satisfactory" services the employee should continue in the services of the Institute's Temporary Scheme for a period of two years on contract basis or till the duration of the Scheme, which was earlier and Clause 11 of the circular stated that the contract of service might be terminated by three months" notice on either side unless otherwise agreed to by the Institute and the employees concerned. The Institute may, however, terminate the services with three months" salary in lieu of notice. By the letter of appointment dated 21st March, 1983 the petitioner was appointed to the post of Junior Scientist in the IIT, Kharagpur, under the ICAR (Indian Council of Agricultural Research) on "All India Co-ordinated Research Project on Water Management" attached to Agricultural Engineering Department of the Institute on the terms and conditions almost the same as referred to hereinbefore in the case of Senior Research Assistant. By office order dated 15th September, 1984 the petitioner got the appointment of Senior Research Officer (Soil Physicist) with effect from 4th September, 1984 under the All India Co-ordinated Project on Water Management sponsored by ICAR attached to the Agricultural Engineering Department of the Institute on purely temporary basis till 31st March, 1985. The term of the aforesaid Project was extended as well as the service of the staff upto 30th September, 1990 by Circular dated 30th" March, 1990 where the petitioner figured at No. 1 but the

service continued to be a temporary one. By Memo dated 5th October, 1990 issued by the Deputy Registrar (SRIC) the service of the petitioner was terminated from 1st October, 1990. By Memo dated 9th November, 1990 three persons including the petitioner were offered appointment on temporary basis for a period of two years by the ICAR, New Delhi, and they were asked to join by 24th November, 1990. From the Affidavit-in-Opposition filed by the respondents it appears that the Indian Council of Agricultural Research (ICAR) by a Memorandum dated 25th October, 1990 offered to the petitioner a purely temporary appointment under Rule 15(5) of the ARS Rules as Scientist (Senior Scale) for a short term of two years and the petitioner would have no claim for regular appointment in ARS. This period of two years would be counted for the date of joining duty at WTC for Eastern Region at Bhubaneswar. By a letter dated 12th November, 1990 the petitioner wrote to the Under Secretary (Pers.), ICAR, New Delhi, accepting the offer but prayed for time to join at Bhubaneswar till 31st December, 1990 which was allowed on condition. The surprising fact is that instead of joining the duty in Bhubaneswar as was accepted by him, the writ petitioner moved the High Court on 7th December, 1990. This particular aspect of the case that the employment was offered to the petitioner was totally suppressed in the writ petition. In the fact of this disclosure that the ICAR by letter dated 25th October, 1990 offered the post of Scientist (Senior Scale) to the petitioner in WTC for Eastern Region at Bhubaneswar and the same was duly accepted by the petitioner by letter dated 12th November, 1990 with the request to the ICAR for extension of time till 31st December, 1990, it cannot be said that the ICAR in any way arbitrarily dealt with or discriminated with the petitioner. On the contrary the petitioner did not join the post offered to him by the ICAR at Bhubaneswar but moved the Hon'ble High Court on 7th December, 1990. Of course the petitioner has a right to move the court of law but in this particular case he did commit an act which cannot be appreciated. The petitioner ought to have come to the Court with clean hand and must have stated all the facts.

7. From the submissions made on behalf of the IIT there is no doubt that the petitioner's service was temporary from the very beginning and he continued to be in service from time to time by extension of the contract and purely on temporary basis. Though the petitioner served under different sponsoring authorities under the patronage of the Indian Institute of Technology, Kharagpur, but it is against public policy to keep hanging the sword of termination of service on one's head constantly for years together. The petitioner may or may not be an employee of the regular establishment of the IIT or any sponsoring authorities but it is the duty of the parent authority i.e., the IIT Kharagpur, to see that one does not remain a temporary hand for years, together without any assurance of his future career. The Supreme Court in the case of *Anand Bihari v. Rajasthan State Road Transport Corporation* (supra) held under the Industrial Disputes Act, 1947 in respect of drivers of buses who developed eye-sight below required standard that they should be provided with compensatory relief such as alternative employment. In this connection I want to quote the following passage

from the Supreme Court :

"The workmen are not denizens of an Animal Farm to be eliminated ruthlessly the moment they become useless to the establishment. They have not only to live for the rest of their life but also" to maintain the members of their family and other dependents, and to educate and bring up their children. Their liability in this respect at the advanced age at which they are thus retired stands multiplied. They may no longer be of use to the Corporations for the job for which they were employed, but the need of their patronage to others, intensifies with the growth in their family responsibilities."

8. The principle underlined in the above observation of the Supreme Court fits in very substantially with the condition of the petitioner who has given the best part of his life to the IIT or the sponsoring authorities under the aegis of the IIT. The petitioner has crossed 40 years and is no more eligible to join any Government service or any establishment of repute after serving so many years in the IIT. The 5-Judge Bench of the Supreme Court headed by Chief Justice Sabyasachi Mukharji in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress (supra) made a significant observation in para 223 which runs thus :

"The right to life includes; right to livelihood. The right to livelihood therefore cannot hang on the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain application. That will be a mockery of them.

Both the society and the individual employees, therefore, have an anxious interest in service conditions being well defined and explicit to the extent possible. The arbitrary rules, such as the one under discussion, which are also sometimes described as Henry VIII Rules, can have no place in any service condition."

9. The Supreme Court made this observation on the basis of a number of Supreme Court decisions quoted in the said paragraph. In view of the march of law made by Article 14 of the Constitution, in particular after Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, it is too late in the day to contend that the competent authority would be vested with wide discretionary power without any proper guidelines or the procedure. The days of "hire and fire" policy are gone. The guidelines, and the procedure adopted by the sponsoring authorities of different Schemes in the IIT stand against the principles of natural justice and fair-play and deprives one from his most legitimate rights and acts in a most whimsical and arbitrary way by depriving one or rather kicking out one from his livelihood. Apart from the case of Maneka Gandhi, the decision in the Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, is also of equal importance which stands in the way of

wrong public policy violative of Article 14 adopted by the authorities. The authorities like the sponsors of the Schemes under the control of the IIT must not behave like private ruthless employers and must look after the welfare of citizens, particularly their employees. A person cannot be denied his livelihood after being in service for ten years or so in the garb of ad hoc or temporary service and after the closure of the session of the service or the Scheme as in the instant case be thrown into wilderness. This principle has already been laid down by me in the case of *Manick Chandra Sardar v. State of West Bengal* (1990 CriLJ 17 : 1990(1) Lab IC 598).

10. In an Affidavit dated 4th April, 1991 filed by Mr. Iswar Chandra Sirohi on behalf of the IIT, Kharagpur, in F.M.A.T. No. 917 of 1991 (*Indian Institute of Technology and Ors. v. Dr. Anisur Rahman Khan*) it was specifically stated that the Director of the IIT held a discussion with the Director General of the ICAR with a view to adjust the staff which will become surplus consequent to the ICAR's decision to close down some of the Co-ordinated Research Projects being run at IIT. As a result of the said discussion the following decisions were arrived at. Here I quote the relevant decision as follows as quoted in the said affidavit:-

"The Director IIT would take steps to absorb as much staff as possible within the Institute. A list of staff which would not be able to absorb along with their Bio-data would be sent to ICAR to consider their being taken by ICAR on deputation terms for maximum period of three years within which the staff would be required to get proper placement against open vacancies. In case they are not being able to do so they will be reverted back to IIT."

11. The case of the petitioner is fully covered by the above decision on the basis of the discloser made in the Affidavit by Mr. Sirohi. It has been decided as a matter of policy that the staff found to be surplus and unable to get proper placement against open vacancies would be reverted to the parent body of the IIT. Here the IIT continues to be the parent body and the petitioner is deemed to have been serving under the parent body which is nothing but the IIT, Kharagpur. According to the legal opinion obtained by the IIT from Dr. Pratap Chandra Chunder about the service condition of the staff who are appointed under different Research Project of the IIT, the staff employed under the Project as well as the staff employed as permanent employees both come within the meaning of the employees of IIT as both of them are paid out of the Consolidated Fund of the IIT and both are governed by the Statutes. Let it be made clear that the Statutes were also framed by the Board of Governors of the IIT, Kharagpur. A further point which goes in favour of the petitioner is that under Rule 3 of the Central Civil Service Rules, 1965 a person should be deemed to be in quasi-permanent service if he has been in continuous temporary service for more than three years. Here I find that the petitioner is in continuous temporary service for more than triple of this period. So far as the termination of service by the Registrar is challenged as illegal and according to the petitioner the termination is without jurisdiction when the appointing authority is the Board of

Governors, I do not think necessary to decide this point in the writ petition as I am firmly of the opinion that the service of the petitioner has not been terminated and cannot be terminated.

12. It is admitted by Mr. Basu, the learned Advocate appearing for the IIT, that though it is denied that the petitioner is an employee of the regular establishment of the Institute but it is accepted that the petitioner was appointed in a Project sponsored by outside agency and that the service condition of the petitioner is governed by a separate set of Rules approved by the Board of Governors. In case the petitioner is governed by a set of Rules approved by the Board of Governors of the IIT then two different standards cannot be made out by the Board of Governors in respect of the employees and /or staff of the establishment whether regular or not, and more so when the petitioner has spent more or less of 10 years in the service of IIT or in different Projects of sponsored Schemes under the aegis of the IIT and is clearly governed by the Government of India Rules as referred to hereinbefore. In this connection attention may be drawn to the Minutes of the Fourth Meeting of the Council of the IIT held in New Delhi on 6th October, 1964 under the Chairmanship of Mr. M. C. Chagla wherein Item No. 8 of the Agenda relating to the applicability of Central Government's Fundamental and Supplementary and other Rules to the Institutes was considered and the following decision was taken :

"It was decided that whenever no rules had been framed by an Institute to deal with a particular matter, the Government of India Rules would become applicable."

13. The plea of defence that no temporary employee of sponsored Scheme is paid out of the Institute's main Account and a temporary hand of the Projects is paid out of specific fund as granted by the Sponsorer and that fund is deposited with the main Research Scheme Fund. But one should consider that the fund of any nature whatsoever is kept under the disposal of the main parent body and disbursed by it in accordance to the Act, Rules and Statutes. It is an admitted position by the defence that the SRIC Rules provided transfer of employee on the completion of a Project so that the Project employee may not be put to financial hardship and it is also admitted by the defence that though the petitioner was employed in a time-bound Project but the same Project was run, controlled and administered by the IIT and as such the responsibility of the petitioner rests with the parent Institute i.e., IIT, Kharagpur. In the case of Binode Behari Jena v. Indian Institute of Technology (supra) a Division Bench of Calcutta High Court presided over by Chief Justice Chittatosh Mookerjee held that the employees should be given continuity of service. This was a very significant observation in the judgment. Even the decision cited by the respondents in the case of Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, , the Supreme Court takes a sympathetic view of the persons employed with Research Projects by the World Health Organisation, the Indian Council of Medical Research and other Government and semi-Government bodies entrusted from

time to time to the All India Institute of Medical Sciences and directed that the petitioners should be provided employment as Researchers or in any suitable alternative employment until their inclusion in a team of Researcher is considered. The spirit of the decision is that it is not desirable that an employee in Research Project which continued from time to time should be abruptly discontinued and he should be left without job all on a sudden. In the case of Manick Chandra Sardar (supra) continuous service for more than three years on temporary basis was virtually meant to defeat the protection of continuous service to the petitioners who were entitled to be converted as permanent hands. It is certainly the duty of the IIT to see that those employed under the sponsored Schemes by different authorities under the control and administration of the IIT must be converted into permanent hands.

14. Though it is a fact that the petitioner accepted the offer of the ICAR to be posted as Scientist (Senior Scale) in Water Technology Centre of Eastern Region at Bhubaneswar and he did accept the same and wanted to join his new posting within 31st December, 1990 which time was granted to the petitioner by a Memo dated 5th December, 1990 written by Undersecretary (P) of the ICAR, New Delhi. In the said letter it was also written by the Under-Secretary that failing to join the offer of Scientist (Senior Scale) issued to him, the appointment would be treated as withdrawn and cancelled without further notice. But on 7th December, 1990 the petitioner moved the Hon'ble High Court against the termination of service by the Deputy Registrar (SRIC) by his Memo dated 5th October, 1990. It is clear that after the termination of service on 5th October, 1990 on the initiative of the IIT the ICAR granted once again a temporary job to the petitioner at Bhubaneswar but even then his challenge of termination of service by the Registrar (SRIC) on 5th October, 1990 in the circumstances cannot be said to be out of context. The offer to the petitioner to join his duties at Bhubaneswar still stands and termination in a mechanical way without application of mind is illegal.

15. In that view of the matter I quash the order of termination of service No. IIT/SRIC/3-201/75 dated 5th October, 1990 issued by the Deputy Registrar, (SRIC), (Sponsored Research and Industrial Consultancy), and also the second paragraph of the Memorandum No. 7-17/90 Per. I dated 5th December, 1990 issued by the Under-Secretary (P), (ICAR), (Indian Council of Agricultural Research, New Delhi). I extend the time of the petitioner to join the post of Scientist (Senior Scale) within 31st January, 1992. In case the post is not lying vacant the ICAR, New Delhi, shall try to accommodate the petitioner in any post of convenience in keeping with his qualification, status and protection of salary within 29th February, 1992. In case the ICAR finds that it is not possible for it to accommodate the petitioner then as the petitioner has not made the ICAR a party-respondent in the writ petition as such no further order is possible upon the ICAR at its back. In that event the authorities of the Indian Institute of Technology, Kharagpur, including the Board of Governors, the Director, the Registrar and the Deputy Registrar (SRIC) are directed and shall be duty bound to provide the petitioner with a suitable job in keeping with his qualifications,

experience, status and salary protection within 31st March, 1992. I make it clear that the petitioner shall not be able to get the salary during the period he did not work.

16. I further quash the Notice u/s 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 dated 15th/18th February, 1991 issued by the Estate Officer, IIT, Kharagpur, Respondent No. 5, in respect of Quarter No. CI-141, IIT Campus, Kharagpur, occupied by the petitioner and his family. The petitioner shall pay the rent or charges in full as required under the rules of the IIT from, the date he gets the employment either under any Sponsored Scheme controlled and administered by the IIT or direct under the Indian Institute of Technology, Kharagpur, and the arrears of such rents and/or charges, if any, shall be realised from him in easy instalments month by month. No facility of the quarter shall be curtailed in any way including water and electricity.

17. The two writ applications are accordingly allowed with directions. There will be no order as to costs.

18. Let xerox copy of the judgment be made available to the parties on usual undertaking and upon compliance of necessary formalities.

After the delivery of the Judgment, Mr. Chatterjee, the learned Advocate appearing for the Indian Institute of Technology, Kharagpur, prays for stay of the operative portion of the Judgment. In the facts and circumstances of the case and discussions made hereinbefore, the prayer is refused.