

(2022) 07 GAU CK 0012

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5055 Of 2017

Dr. Arup Bhattacharjee

APPELLANT

Vs

Director, National Institute Of Technology , Silchar And 2 Ors

RESPONDENT

Date of Decision : 21-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2022) 07 GAU CK 0012

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : G J Sharma, A S Dhillon

Final Decision : Disposed Of

Judgement

1. Heard Mr. S Dutta, learned senior counsel assisted by Mr. G.J. Sarma, learned counsel for the petitioners and Mr. S.P. Choudhury, learned counsel appearing on behalf of the respondent Nos.1 & 2.

2. This is a writ petition challenging the Minutes of the Meeting/Report of the Committee dated 27.04.2017 forwarded vide letter No.NITS/Estt/BOG-54 dated 16.05.2017 and the corresponding Minutes of the 53rd and the 54 th BOG Meeting insofar as the petitioner is concerned; for a direction to the respondents to affect date of promotion of the petitioner as Lecturer (Senior Scale) at least with effect from 03.10.2001 with consequential service benefit including arrear monetary benefit in the light of the judgment and order dated 03.02.2017 in WP(C) No.1969/2014; for a direction to the respondent to affect the date of promotion of the petitioner as Lecturer (Selection Grade) at least with effect from 03.10.2006 with consequential service benefit including arrear monetary benefit and to promote the petitioner to the post of Associate Professor in PB-IV, AGP Rs.9,000/-on completion of 3 years as Assistant Professor in PB-III, AGP Rs.8,000/- with effect from 03.10.2009.

3. The facts of the instant case is that the petitioner passed Bachelor of Engineering degree in Computer Science and Engineering from REC, Silchar in the year 1993. Thereafter the petitioner completed his M. Tech in March 1999 under GATE scholarship and obtained Degree of Doctor of Philosophy (Ph.D) on 11.03.2012. The petitioner initially served as Service Engineer with Zenith Computer from September, 1993 to December, 1994 and from January 1995 he served as a Software Engineer with IT India Ltd. (Usha Group) before joining REC, Silchar in the year 1996.

4. It is relevant herein to take note that the Regional Engineering College, Silchar which now had been converted to the National Institute of Technology with the Status of deemed University as per the Government of India notification, dated 14.05.2003 had invited an application for filling up of various posts like Professor, Asstt. Professor, Lecturer, System Programmer and Foreman. At serial No.6 of the advertisement, applications were invited for filling up of the post of System Programmer (under Computer Science and Engineering) in the scale of pay of Rs.2200-75-2800-100-4000/- (pre revised) which was also the scale of pay of Lecturer. As per the said advertisement, the job requirement of the post of System Programmer was (i) Selected candidates will be required to manage computer system (on various platform) in Electrical Engg./Computer Centre. (ii) Selected candidates may be required to work in shifts (iii) Selected candidates may require to share the teaching load as need may arise. It has been specifically pleaded in the writ petition at paragraph No.4 is that the post of System Programmer is equivalent to the post of Lecturer in scale/grade with equal qualification for Lecturer.

5. The petitioner applied for the post of System Programmer and was selected and appointed for the said post vide a letter No.RECS/ET/2/77/Vol-3/6/57-61 dated 26.08.1996. The petitioner thereafter joined the then REC in the substantive post of System Programmer. It was specifically pleaded that as per the job requirement, the petitioner was taking regular classes of B. Tech in Computer Science and Engineering. The petitioner thereafter was selected for the post of Lecturer in Computer Science and Engineering vide a communication No.RECS/Estt./ET/2/77/vol-3 dated 22.12.1999 which had the same scale of pay as that of the System Programmer. It has been specifically mentioned in the writ petition that the pay scale of both the System Programmer and the Lecturer was revised to Rs.8000-275-13500 following adoption of the 5th CPC recommendation as approved by All India Council of Technical Education (in short "AICTE) in the year 1997.

6. The further facts of the case are that the Ministry of Human Resources and Development had issued a letter on 15.09.2003 whereby Carrier Advancement Scheme (CAS) was made applicable to faculty members of the NIT. Annexure-B to the said writ petition is the Office Memorandum. Clause 3 of the said Office Memorandum being relevant is quoted herein below:-

"3. The effective date for giving benefit under CAS shall be the date on which the

candidate becomes eligible for consideration under CAS or the date of implementation of the revised scale of pay in the institute whichever is later. However, if a candidate is not found fit by the Selection Committee, he/she may be reconsidered for promotion under CAS only after two years and if found fit, the date of effect for giving benefit in this case shall be the date on which the BOG approves the recommendation of the Selection Committee."

7. The petitioner claims to be eligible for Career Advancement Scheme to the post of Lecturer (Senior Scale) considering and counting his service as a System Programmer. The petitioner was found eligible to the post of Lecturer (Senior Scale) under the Career Advancement Scheme in the year 2004 on the basis of a Selection Proceedings held on 17.01.2004. It was further the case of the Petitioner that as the Petitioner is a Lecturer with M. Tech and added service of the System Programmer under the UGC guidelines of qualification, on equivalence ought to have been found competent and eligible for consideration under the CAS with effect from 03.10.2001. Feeling aggrieved by the date of affect given under the CAS i.e., 17.01.2004 instead of 03.10.2001, the petitioner approached this Court by filing a writ petition which was registered and numbered as WP(C) No.1969/2014. In the said proceedings before this Court, pleadings were exchanged between the parties and by the judgment and order dated 30.02.2017, the said writ petition was allowed with the following observations:

"Short point for consideration is whether the previous service rendered by the petitioner in the post of System Programmer (Computer Science and Engineering) should be taken into account for placement of the petitioner as Lecturer (Sr. Scale).

It is the categorical stand of the petitioner that post of System Programmer (Computer Science and Engineering) and Lecturer in Computer Science and Engineering are equivalent posts requiring identical qualification and having the same pay scale. It is also the case of the petitioner that as per the advertisement for the post of System Programmer, the selected candidate was required to conduct teaching as and when the requirement arose. These averments of the petitioner have not been specifically denied by the answering respondents in paragraph 6 of the counter affidavit. All that has been stated is that there are two divisions in the NIT, one teaching and the other non teaching. The teaching division comprises of Lecturer etc. whereas, non teaching division comprises of System Programmer etc. Job requirement in both the divisions are different; therefore, petitioner cannot claim service benefit of System Programmer as there is no link or nexus between the two.

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accepted, would defeat the objective behind the scheme itself, which is intended to advance the career prospects of the faculty.

As already noticed above, the effective date for grant of CAS benefit is the date when the candidate becomes eligible. In the case of a candidate having M.Tech., he becomes eligible after rendering minimum service of 5 years. In the UGC clarificatory guidelines, as alluded to hereinabove, counting of past service is permissible provided there is no break between the two services and the previous service was in an equivalent post. Equivalence has been defined as carrying the same scale of pay and qualifications not being lower than the qualifications prescribed for the post of Lecturer. From a careful analysis of the materials on record, the assertion of the petitioner that the post of System Programmer is equivalent to the post of Lecturer in Computer Science and Engineering has sufficient merit and cannot be wished away. Answering respondents have not been able to dislodge this assertion. This aspect of the matter appears to have been overlooked by the Selection Committee in its meeting held on 17.01.2014. Viewed in the above context, submission made by Dr. Sarkar, learned counsel for the petitioner has sufficient force and merits acceptance.

In view of the above discussion, respondent Nos.1 & 2 are directed to reconsider the case of the petitioner for placement as Lecturer (Sr. Scale) effective from 03.10.2001 and thereafter to grant all consequential benefits.

Let the above exercise be carried out within a period of 3 months from the date of receipt of a certified copy of this order.

Writ petition is accordingly allowed, but without any order as to costs."

8. Pursuant to the said judgment and order passed by this Court the writ petitioner submitted a copy of the same to the respondent No.1 on 21.02.2017 with a request to implement the order of this Court by placing him into lecturer (Senior Scale) effective from 03.10.2001 and thereafter grant him all consequential benefits. The record reveals that in the 53rd meeting of the Board of Governors of the National Institute of Technology, Silchar held on 28.03.2017, a committee was constituted to review the issue of considering the period of service rendered by the petitioner as System Programmer, for his placement as Lecturer (Senior Scale) and the committee was directed to submit the report within 15 days to the Board for further necessary action.

9. The committee so constituted rejected the claim of the petitioner to place him in Lecturer (Senior Scale) effective from 03.10.2001 and to grant all consequential benefits in its meeting held on 27.04.2017. The observations and conclusions made by the said committee being pertinent for the adjudication of the instant dispute is quoted herein below:

"Following observations are made:

1. Considering MCSE degree of Dr. A Bhattacharjee, minimum experience

required for placing to Lecturer (senior grade) was 5 years. It may be mentioned that Dr. Bhattacharjee worked as System Programmer from 03.10.1996 to 22.12.1996 and subsequently joined as Lecturer on 23.12.1999. He was granted EOL (without pay) from 01.09.1997 to 15.03.1997 for prosecuting higher studies. Thus it is observed that Dr. Bhattacharjee actually served the Institute as Lecturer for a period of 1 yr 09 months 12 days only as on 03.10.2001 and was also on probation.

2. Dr. Bhattacharjee did not attend 4 weeks summer/winter school, he attended only 19 days as on 03.10.2001.

3. Dr. Bhattacharjee's performance was not satisfactory as his probation was extended for another 1 year (Annexure C).

Conclusion: Considering the above points, the committee did not find any merit in the claim of Dr. A Bhattacharjee to place him in Lecturer (Sr. Scale) effective from 03.10.2001 and thereafter to grant all consequential benefits."

10. Pursuant thereto, the decision rendered by the Committee on 27.04.2017 was placed before the Board of Governors of the NIT, Silchar in its 54th Meeting held on 06.05.2017. In the said meeting of the Board of Governors under the heading BOG_54/17/02, the Board after going through the report of the Committee had accepted the same and further advised the Institute to communicate the same to the petitioner. On the basis of the said decision taken in the Meeting held on 06.05.2017 by the Board of Governors, the petitioner was informed vide a communication dated 16.05.2017. Being aggrieved by the same, the petitioner has filed the instant writ petition seeking various reliefs as already mentioned herein above.

11. This Court vide an order dated 21.08.2017 issued notice making it returnable by 4 (four) weeks. The respondent Nos.1 & 2 have filed the joint affidavit-in-opposition through its Registrar. In paragraph 3 of the said affidavit-in-opposition, it was mentioned that the petitioner by way of the writ petition have tried to evolve the new theory to amalgamate a teaching and a non teaching cadre and thereby intended to gather benefit out of it. It was mentioned that in the year 1999, the post of the Lecturer was advertised and the petitioner applied for the same as a fresh candidate and on being selected he had joined the post of Lecturer on 23.12.1999 which is a fresh appointment in a new post for him and as such, the petitioner was entitled to claim benefits as teaching staff in the post of a Lecturer from 23.12.1999 and in that view of the matter, all entitlements were granted to him without any discrimination. In paragraph 6 of the affidavit-in-opposition, it was mentioned that the qualification for the System Programmer and the Lecturer are not equivalent since the post of the System Programmer is a non teaching cadre and the post of the Lecturer is a teaching cadre and there is no link between the two cadre lines even though scales are equivalent. It was further mentioned that in the Office Memorandum dated 21.08.2001, the minimum length of service for eligibility to move into the grade of Lecturer

(Senior Scale) should be 5 (five) years for those having M. Phil, ME/M. Tech degree. The petitioner was placed to the Lecturer (Senior Scale) as per the relevant rules in force followed by the NIT Silchar. Further to that while fixing the pay of the petitioner two advance increments were also granted to him for his M.Tech degree. In paragraph 9 of the affidavit-in-opposition, it was mentioned that the writ petitioner was recommended for promotion of Lecturer (Senior Scale) with effect from 17.01.2004 under the Career Advancement Scheme; whereas, under the Career Advancement Scheme a Lecturer would be eligible for placement in a Senior Scale after he had completed 6 (six) years of service after regular appointment with relaxation of one year and two years respectively for those having M. Phil, M.E/M. Tech and Ph.D degree. The petitioner having completed 5 (five) years of service in the post of Lecturer was granted the post of Lecturer (Senior Scale) with effect from 17.01.2004 which is the date on which the BOG approved the recommendation of the Selection Committee. The entitlement of the petitioner to be eligible for grant of promotion of Career Advancement Scheme with effect from 03.10.2001 was denied. It was further stated that the effective date of giving benefits under the CAS shall be the date on which one candidate becomes eligible for consideration under the CAS or the date of implementation of the revised pay scale whichever is later; and this aspect of the matter had been clarified by the Ministry of Human Resources and Development (NHRD) vide OM F.20-18/2003-TS.III, dated 06.04.2004 mentioning that the initial pay fixation and consequent grant of financial benefit in the promotion grade shall be only from the date of meeting of the BOG in which the recommendations are approved and there would not be any notional benefit/pay fixation prior to this date. Further to that, in paragraph 11 of the affidavit-in-opposition, it was mentioned that the Minutes, dated 27.04.2017 does not suffer from the vice of irrelevant consideration since the petitioner was not entitled to claim for his placement in the post of Lecturer (Senior Scale) with effect from 03.10.2001. It was mentioned that for the post of Lecturer in Computer Science and Engineering in the Engineering Department, the minimum qualification was 1st class B.E./B.Tech and it is a teaching (academic post) guided by AICTE norms. Graduation in specific branch of Engineering was required as minimum eligibility criteria, whereas, for the post of System Programmer, the minimum qualification was first class B.E. in CSE or ECE or EE or MSC Maths and it is a non teaching post (non academic and not guided by AICTE norms). It was averred that all eligible candidates for System Programmer positions are not eligible for Lecturer position and the post of System Programmer is not same as that of a Lecturer. Further to that it was mentioned that the respondents having due respect to the judgment and order, dated 03.02.2017 passed in WP(C) No.1969/2014 placed the same before the Board of Governors, NIT Silchar in 53rd Meeting held on 28.03.2017, wherein the Board constituted a committee to review the issue. The committee constituted for the said purpose submitted its report and the Board of Governors in its 54th Meeting had accepted the report and the same was duly communicated to the petitioner vide the letter dated 16.05.2017.

12. As regards the judgment of this Court dated 03.02.2017 passed in WP(C) No.1696/2014, it was stated in paragraph No.12 of the said affidavit-in-opposition that the respondents reserved the right to defer from the observations and findings of this Court and pursuant to which a Writ Appeal was preferred against the judgment and order, dated 03.02.2017 although there was some delay in filing the appeal. In paragraph No.16 of the affidavit-in-opposition, the respondents went further to state that since there was a direction of this court for reconsideration, under such circumstances, the said respondents were under a bona-fide impression that it was open for the respondents to take fresh call taking into consideration the judgment and order dated 03.02.2017. It was submitted that there was no arbitrariness in reviewing the services of the petitioner and the letter dated 16.05.2017 does not suffer from any whims and caprices as alleged by the petitioner and the said letter was issued as per the bona-fide perception of the respondents taking into consideration all aspects of the matter.

13. To the said affidavit-in-opposition, an affidavit-in-reply was filed on 28.08.2019. In the said affidavit-in-reply, dealing with the contention pertaining to the office memorandum, dated 06.04.2004 issued by the Ministry of Human Resources and Development, it was stated that the date of meeting of the Board of Governors was on 17.01.2004 and the OM in question is not applicable in respect to the instant case as the said OM is dated 06.04.2004, much after the Meeting of the Board of Governors, dated 17.01.2004. Further to that, it was also mentioned that a perusal of the Minutes of the Selection Committee Meeting held on 17.01.2004 would show that one Smti. Madhumita Paul was considered for promotion to Lecturer (Selection Grade) with effect from 19.05.2002 in the same BOG Meeting. Further to that, in the said affidavit-in-reply, the order dated 25.03.2019 in I.A(Civil) No.148/2019 was enclosed. It is relevant to mention that the said I.A(Civil) 148/2019 is an application under Section 5 of the Limitation Act, 1963 for condonation of the delay of 200 days in filing the accompanying Writ Appeal. The said Writ Appeal was filed against the judgment and order, dated 03.02.2017 passed in WP(C) No.1969/2014. The said application for condonation of delay was rejected by the Division Bench of this Court and consequently, the Writ Appeal so filed stood dismissed being barred by limitation. Consequently, the order, dated 03.02.2017 passed in WP(C) 1969/2014 had therefore attained finality.

14. Further to that, in the said affidavit-in-reply it was mentioned that the UGC guidelines, dated 24.12.1998 which was enclosed as Annexure A to the writ petition, it was clearly stated that the service experience of organisation such as CSIR, ICAR, DRDO etc should also be considered while counting pass service. Under such circumstances, the petitioner contended that the stand so taken that the entry point in service of the petitioner was a non teaching job cadre and the Lecturer was from teaching cadre, is completely contrary to the UGC guideline, dated 24.12.1998.

15. Apart from the above, it is also relevant to mention that vide an additional affidavit filed on 27.04.2022, the petitioner have brought on record his appointment letter dated 22.12.1999.

16. I have heard the learned counsel for the parties and have also perused the materials on record.

17. From the materials on record, it is an admitted fact that the petitioner was appointed as System Programmer on 03.10.1996 after following a selection process in the then Regional Engineering College, Silchar which is now known as the National Institute of Technology, Silchar. The OM dated 15.09.2003, the relevant portion of which have already been quoted herein above would show that a scheme called the Career Advancement Scheme for teachers of degree level Technical Institutions was framed. As per the said Scheme, the minimum length of service to be eligible for placement in the grade of Lecturer (Senior Scale) is 5 years for those having M. Phil or M. Tech degree. It further transpires from the record that the Selection Committee in the National Institute of Technology, Silchar held its meeting on 17.01.2004 and found that the Petitioner was eligible for placement as Lecturer (Senior Scale) with effect from 17.01.2004. It further appears from the said Minutes of the Selection Committee held on 17.01.2004 that while the petitioner was recommended for Lecturer (Senior Scale) with effect from 17.01.2004 but there were other Lecturers like Smti. Madhumita Paul who was recommended for Lecturer (Selection Grade) with effect from 19.05.2002. The petitioner being aggrieved, by not granting him Lecturer (Senior Scale) with effect from 03.10.2001, by not taking into consideration his period of service rendered as System Programmer under the Computer Science and Engineering Department had approached this court by filing the writ petition. The pleadings of the said writ petition ie. WP(C) 1969/2014 has been made a part of the instant proceedings. The affidavit-in-opposition filed by the respondent No.1 and 2 in the said writ proceedings i.e., WP(C) No.1969/2014 would show that the same grounds were taken as has been taken in the present affidavit-in-opposition in the present proceedings thereby justifying the reasons for recommendation of the Petitioner as Lecturer (Senior Scale) with effect from 17.01.2004. Specific reference can be made to paragraph 6 of the affidavit-in- opposition in WP(C) No.1969/2014. It is also relevant herein to take note of that the question as regards the effect of the Office Memorandum No.F.20-18/2003-TS III, dated 04.06.2004 was also taken in paragraph No.8 of the affidavit-in-opposition filed in WP(C) 1969/2014.

18. This Court vide the judgment and order, dated 03.02.2017 in WP(C) No.1969/2014 had come to a categorical finding that the post of System Programmer is equivalent to the post of Lecturer in Computer Science and Engineering and it further observed that the said aspect of the matter was overlooked by the Selection Committee in its meeting held on 17.01.2014. Relevant portion of the said judgment have already been quoted herein above. It transpires from the judgment as well as the pleadings in the earlier round of

litigation that the same question has been again raised in the instant proceedings by the respondent which had been specifically dealt with by this Court in the said judgment dated 03.02.2017.

19. Now the question therefore arises as to whether the direction to the respondent Nos.1 & 2 to reconsider the case of the petitioner for placement as Lecturer (Senior Scale) with effect from 31.10.2001 and to grant all consequential benefits; was it a mere direction to consider the case of the petitioner or was it a mandamus directing the respondents to consider the case of the petitioner in the light of the observations made in the said judgment. At this stage it may also be relevant herein to mention that feeling aggrieved and dissatisfied, the respondent Nos.1 & 2 have preferred a Writ Appeal against the judgment and order, dated 03.02.2017 in WP(C) No.1969/2014. There being a delay, an application for condonation of delay was also filed which was registered and numbered as I.A(Civil) No.148/2018. The Division Bench of this Court vide an order dated 25.03.2019 had dismissed the said application seeking condonation of delay thereby in effect the Writ Appeal so preferred was dismissed as time barred. It has been stated in the bar that no further appeal or proceedings was preferred against the order, dated 25.03.2019 passed in I.A(Civil) No.148/2019. Consequently, the findings so arrived at in the judgment and order, dated 03.02.2017 in WP(C) No.1969/2014 has attained finality.

20. Now coming to the question so posed as to whether the said directions passed in WP(C) NO.1969/2014 is mere direction to consider keeping all the points open or was it a direction to consider in the light of the observations made by this Court. The answer to the said query can be found in the judgment of the Supreme Court rendered in the case of A.P. SRTC. & Ors Vs. G. Srinivas Reddy & Ors reported in (2006) 3 SCC 674. The relevant portion of the said judgment being paragraph Nos.16, 17 and 18 are quoted herein below:

"16. The High Courts also direct the authorities to "consider", in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to "consider" and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs "consideration" without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to "consider" afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to "consider" the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the

court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to "consider" the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh. Be that as it may."

21. From a reading of the above quoted paragraphs of the judgment, it would show that a Court exercising jurisdiction under Article 226 of the Constitution may make a direction to consider without going into the merits of the case and in that circumstances the authority will have to consider the matter in accordance with law with reference to the facts and circumstances of the case and its power not being circumscribed by any observations or findings of the Court. However, if the High Court while exercising jurisdiction under Article 226 of the Constitution finds the decision making process erroneous and records its findings as to a manner in which the decision should have been made and then directs the authority to consider the matter, the authority will have to consider and decide the matter in the light of its finding or observations of the Court.

22. A perusal of the judgment and order, dated 03.02.2017 passed in WP(C) No.1969/2014 would show that this Court specifically have dealt with the merits of the matter and found that the decision taken in the Selection Board Meeting, dated 17.01.2004 to be not in consonance with the facts and the applicable law; and therefore directed the respondent Nos.1 & 2 to reconsider the case of the petitioner for placement as Lecturer (Senior Scale) effecting from 03.10.2001 and thereafter to grant all consequential benefits. The findings arrived at by this Court that the post of the System Programmer is equivalent to the post of Lecturer in Computer Science and Engineering for which the period of service rendered by the petitioner as System Programmer was required to be taken into consideration which was overlooked by the Selection Committee had attained finality. Under such circumstances, in view of the law laid down by the Supreme Court in A.P. SRTC v. G. Srinivas Reddy (supra), the scope of the consideration to be made by the respondent authorities had to be in the light of the findings and observations made by this Court.

23. Now coming to the question as to whether the authorities concerned have exercised its jurisdiction; in the light of the observations and findings of this Court, it would be relevant to take note of the Minutes of the Meeting held on 17.04.2014. The observations so made in the said Minutes have already been quoted herein above. As regards the first observation, it would be seen that the

Committee had taken into consideration that the petitioner worked as System Programmer from 03.10.1996 to 22.12.1999 and subsequently joined as Lecturer on 03.12.1999. It was mentioned that the petitioner was granted EOL (without pay) from 01.09.1997 to 15.03.1999 for pursuing higher studies. Consequently, the petitioner actually served the institute as Lecturer for a period of 1 year 9 months 12 days only as on 03.10.2001 and was also on probation. The second observation so made was that the petitioner did not attend 4 weeks summer/winter school and he attended only 19 days as on 03.10.2001. The third observation so made was that the petitioner's performance was not satisfactory as his probation was extended for another one year.

24. At this stage it may be relevant herein to take note of that the requirements of eligibility for placement in the Senior Scale through a procedure of selection. Clause 7.2.0 of UGC Notification on Revision of Pay Scales, minimum qualification for appointments of Teachers in Universities Colleges & other measures for the Maintenance of Standards, 1998 deals with the Lecturer (Senior Scale). The said clause being relevant is quoted herein below:

7.2.0 LECTURER (SENIOR SCALE)

A lecturer will be eligible for placement in a Senior Scale through a procedure of selection, if she/he has:

- (i) Completed 6 years of service after regular appointment with relaxation of one year and two years, respectively, for those with M. Phil and Ph.D.
- (ii) Participated in one orientation course and one refresher course of approved duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the University Grants Commission. (Those with Ph.D degree would be exempted from one refresher course).
- (iii) Consistently satisfactory performance appraisal reports.

25. From the above quoted clause, it would therefore appear that for a Lecturer to be eligible for placement in the Senior Scale through a procedure of selection, the said Lecturer has to comply with the three requirements enumerated in sub-clause (i), (ii) and (iii).

26. A perusal of Sub-clause (i), would show that the Lecturer should complete 6 years of service after regular appointment with relaxation of one and two year respectively, for those with M. Phil and Ph.D. As the petitioner had M. Phil, the period of service would be 5 years; and taking into account the judgment of this Court dated 03.02.2017 which held that the service rendered by the petitioner as a System Programmer has to be taken as equivalent to the post of Lecturer, the said period of five years would have been completed on 03.10.2001.

27. Now coming to the sub-clause (ii), it shows that the Lecturer to be eligible for placement in the Senior Scale has to participate in one orientation course and

one refresher course of approved duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the University Grants Commission and those with Ph.D degree would be exempted from one refresher course. In the observations made in the Minutes, dated 27.04.2017 no specific objection has been raised as regards non compliance to sub-clause (ii), save and except that the petitioner did not attend 4 (four) weeks of summer/winter school and he attended only 19 days as on 03.10.2001. At this stage, it may also be relevant to take note of clause 7.7.0 which stipulates the requirement of participation in orientation/refresher course of the summer institutions each of at least 3-4 weeks duration. The said clause 7.7.0 being relevant is quoted herein below:

"7.7.0 The requirement of participation in orientation/refresher courses/summer institutes, each of at least 3 to 4 weeks duration and consistently satisfactory performance appraisal reports, shall be the mandatory requirement for Career Advancement from Lecturer to Lecturer (Senior Scale) and from Lecturer (Senior Scale) to Lecturer (selection grade). Wherever the requirement of orientation/refresher courses had remained incomplete would not be held up but these must be completed by the year 2000.

The requirement for completing these courses would be as follows:

- i. For Lecturer to Lecturer (Senior Scale), one orientation course would be compulsory for University and College teacher. Those without Ph.D would be required to do one refresher course in addition.
- ii. Two refresher courses for Lecturer (Senior Scale) to lecturer (selection grade).
- iii. The senior teacher like Readers/Lecturers (senior grade) and Professors may opt to attend two Seminars/Conference in their subject area and present papers as one aspect of their promotion/selection to higher level or attend refresher courses to be offered by ASCs for this level."

28. From a perusal of the said clause, it would show that whenever the requirement of orientation/refresher course has remained incomplete, the promotions would not be held up but these must be completed by the year 2000. Therefore, it would be seen that the promotion cannot be held up wherever the requirement of orientation/refresher course has remained incomplete and therefore the second ground so taken in their observations dated 27.04.2017 cannot be said to be a justifiable or plausible ground. Further to that, it being the specific case of the petitioner that on the date of the interview, the petitioner had satisfied the requisite eligibility criteria which have not been denied by the Respondents.

29. The third observation so made was that the petitioners performance was not satisfactory as his probation was extended for another year. In the said observation there was a reference to Annexure – C. On the basis of the order, dated 28.04.2022 passed by this Court, the said Annexure-C was placed on

record. A perusal of the said Annexure-C would show that it is dated 12.12.2001 and it was inter alia mentioned that the petitioner was appointed on 23.12.1999 as Lecturer in the college on probation for a period of 2 (two) years with effect from the date of his joining i.e., 23.12.1999. It has been mentioned that the petitioner's work and conduct has not been satisfactory during the said period of probation and as such, his probation period was extended for another one year i.e., with effect from 23.12.2001 to 23.12.2002.

30. To the said observation, it was mentioned in paragraph Nos.23 (XIV), (XV) and (XVI) of the writ petition that the probation period is always taken into consideration while counting past services. It was further mentioned that one Dilip Dutta who then joined the REC Silchar on 26.06.1995 was also on probation for 2 (two) years but Shri Dutta was granted promotion to the Lecturer (Senior Scale) under the CAS with effect from 26.06.2000 because he had a M. Tech degree by then. Further it was mentioned that the performance appraisal report or the Annual Confidential Report of the petitioner did not have any adverse entry. Further to that no communication regarding any such entry in such report had been communicated to the petitioner. It was also specifically mentioned that the probation period of the petitioner was illegally extended and to that effect the petitioner submitted a written representation to the then Chairman, BOG. The Chairman BOG was kind to consider the prayer and had given no effect to the probation period extension order and other records as was prayed for in order to protect the petitioner's future career. It was mentioned that the service book of the petitioner had no adverse entry and not even an entry of extension of the probation period. It was specifically submitted that the respondents with a deliberative vindictive attitude, intentionally casting stigma on the petitioner with malice in order to deprive the petitioner from the benefit of the judgment and order, dated 03.02.2017 in WP(C) No.1962/2014. It is also relevant herein to note that the service book of the petitioner is a part of the Annexure – F to the Writ Petition which would show that there are no adverse entries made against the petitioner. Further to that, it has also been urged by the learned counsel appearing on behalf of the petitioner that the UGC OM dated 24.12.1998, does not discriminate regarding its applicability in drawing equivalence between posts irrespective of academic, non academic, probation, service guidelines, AICTE etc. Further to that, in the affidavit-in-opposition, there is no denial to the averments made in paragraphs 23 (XIV), (XV) and (XVI) of the Writ Petition. Now if this Court takes into consideration the affidavit-in-opposition filed by the respondent, it would be seen that it is a repetition of the affidavit in opposition filed in WP(C) No.1969/2014. There is no explanation or any averment justifying the observations made in the impugned Minutes dated 27.04.2014, merely it has been stated that the decision so taken does not suffer from malice in law.

31. From the above, it would be seen that the observations made in the Minutes of the Meeting held on 27.04.2017 to deny the benefit to the petitioner were on reasons which was never raised in the previous proceedings. The principles of constructive res-judicata duly applies to proceedings under Article 226 of the

Constitution for which this grounds cannot be taken at a later stage pursuant to the specific direction being given by the Court to reconsider the case of the petitioner in the light of the observations made in the judgment and order dated 03.02.2017 (see *Devi Lal Modi Vs. Sales Tax Officer, Ratlam & Ors* reported in AIR 1965 SC 1150). Even otherwise also these grounds cannot be reasonable or plausible grounds as already mentioned herein above for denying the benefit to the petitioner. In the opinion of this Court, the observations so made in the Minutes of the meeting and the conclusion therefor are acts done wrongfully and wilfully without reasonable or probable cause and therefore would mean exercise of power for purposes foreign to those for which in law it was intended. At this stage, it may be relevant to refer to a recent judgment of the Supreme Court rendered in the case of *X. Vs. Registrar General, High Court of Madhya Pradesh and ors* reported in MANU/SC/0171/2022 and the relevant paragraphs of the said judgment being paragraph Nos.57, 58 and 61 are quoted herein below:

57. We may gainfully refer to the following observations made by this Court in the case of *Kalabharati Advertising v. Hemant Vimalnath Narichania and Others*¹¹:

"25. The State is under obligation to act fairly without ill will or malice — in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide *ADM, Jabalpur v. Shivakant Shukla* [(1976) 2 SCC 521 : AIR 1976 SC 1207] , *S.R. Venkataraman v. Union of India* [(1979) 2 SCC 491 : 1979 SCC (L&S) 216 : AIR 1979 SC 49] , *State of A.P. v. Goverdhanlal Pitti* [(2003) 4 SCC 739 : AIR 2003 SC 1941] , *BPL Ltd. v. S.P. Gururaja* [(2003) 8 SCC 567] and *W.B. SEB v. Dilip Kumar Ray* [(2007) 14 SCC 568 : (2009) 1 SCC (L&S) 860] .)

26. Passing an order for an unauthorised purpose constitutes malice in law. (Vide *Punjab SEB Ltd. v. Zora Singh* [(2005) 6 SCC 776] and *Union of India v. V. Ramakrishnan* [(2005) 8 SCC 394 : 2005 SCC (L&S) 1150].)".

58. It is trite that the State is under the obligation to act fairly without ill will or malice — in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Where malice is attributed to the State, it can never be a case of malice or spite on the part of the State. It would mean exercise of statutory power for "purposes foreign to those for which it is in law intended". It means

conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others.

61. This Court has held that normally an order of transfer, which is an incident of service should not be interfered with, unless it is found that the same is mala fide. It has been held that mala fide is of two kinds — one 'malice in fact' and the second 'malice in law'. When an order is not based on any factor germane for passing an order of transfer and 12 (2009) 2 SCC 592 55 based on an irrelevant ground, such an order would not be sustainable in law.

32. From the above observation of the Supreme Court and taking into account the findings arrived at hereinabove, it would be seen that the petitioner has been deprived of the benefit of the order dated 03.02.2017 passed in WP(C) No.1969/2014 on factors not germane for which the Minutes of the meeting dated 27.07.2017 and the consequential orders suffers from malice in law for which the said would not be sustainable in law. Under such circumstances, the question therefore arises as to what directions can this Court pass? It is no longer res-integra that this Court in exercise of a writ jurisdiction does not normally direct authorities to act in a particular manner. Aware of this legal position, this Court in its judgment and order, dated 03.02.2017 passed in WP(C) No.1969/2014 refrained from directing the respondents to grant the benefit of Lecturer (Senior Scale) but directed reconsideration of the case of the petitioner in the light of the observations so made. In spite of the said directions being given, on the basis of the findings and observations made by this Court, the respondents in order to nullify the directions passed by this Court, have rejected the case of the petitioner on grounds which were not germane to the issue and which were also barred by constructive res-judicata. The pleadings in the instant case of the respondents are nothing but a mere repetition of the earlier pleadings as observed hereinabove and therefore, groundless. Under such circumstances, this Court is therefore of the view that the respondents are not left with no discretion but to give promotion to the petitioner as Lecturer (Senior Scale) at least with effect from 03.10.2001 with consequential benefits in the light of the judgment and order, dated 03.02.2017 passed in WP(C) No.1969/2014. The said opinion of this Court is based upon the well settled principles as laid down by the Supreme Court in the case of Union of India Vs. Anglo Afgan Agencies reported in AIR (1968) SC 718, wherein it was held that in a case where the range of discretion with the authorities have been cut down to such an extent that only one decision is possible, the Court may specifically direct the authority to act in a particular manner. This view so taken by this Court is for the reason that, it has been almost more than two decades that the rights of the petitioner to be given promotion as Lecturer (Senior Scale) with effect from 03.10.2001 along with consequential service benefits have been pending and interest of justice demands that finality is attained to the almost two decade old dispute.

33. This Court therefore disposes of this Writ Petition with the following order and directions:

- i. The Minutes of the meeting of the Committee dated 27.04.2017 are set aside and quashed.
 - ii. The letter No. NITS/Estt/BOG-54 dated 16.05.2017 and the corresponding Minutes of the 53rd and the 54th BOG meeting dated 06.05.2017 in so far as the petitioner is concerned, is set aside and quashed.
 - iii. The respondents are directed to give promotion to the petitioner as Lecturer (Senior Scale) with effect from 03.10.2001 with consequential service benefits including arrear monetary benefits,
 - iv. The respondents are further directed to grant all consequential service benefits to the petitioner as Lecturer (Selection Grade), Assistant Professor (Selection Grade) on the basis of the UGC notification relating to appointment of teacher in Universities and Colleges as issued from time to time.
 - v. The above exercise as directed in serial Nos.(iii) & (iv) shall be completed within a period of 2 (two) months from the date of the instant judgment.
34. With the above observations, the Writ Petition stands disposed of. However, no cost.