
(2023) 05 CAL CK 0040

In the Calcutta High Court

Case No : WPA No. 7680, 7682 Of 2020, I.A. No. CAN 1 Of 2020

Dr. Haradhan Maity

APPELLANT

Vs

Indian Statistical Institute & 9 Others

RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16

Citation : (2023) 05 CAL CK 0040

Hon'ble Judges : Rabindranath Samanta, J

Bench : Single Bench

Advocate : T.M. Siddiqui, N. Chatterjee, Dhiraj Trivedi, Debapriya Gupta, Sourav Mondal, A.K. Gupta Subir Sanyal, R.P. Motilal, Pabitra Biswas, Sucharita Biswas

Final Decision : Dismissed

Judgement

Rabindranath Samanta, J

1. Challenging the legality of the appointment of the private respondent no. 10, Dr. Sankar Sarkar, as an Assistant Professor of Physics and Applied Mathematics Unit in Indian Statistical Institute, respondent no. 1, the petitioner has preferred the writ petition being WPA 7680 of 2020. On the other hand, the petitioner has preferred the second writ petition being WPA 7682 of 2020 challenging the legality of the appointments of the private respondent nos. 11 and 12 namely Dr. Ramiz Rahaman and Dr. Swapan Rana as well as the appointment of private respondent no. 10, the said Dr. Sankar Sarkar. Since both the writ petitions are based on some similar set of facts and the reliefs sought for therein may be addressed by a common judgment, both the writ petitions were taken up together for hearing.

2. Shorn of details, the facts which led to filing of the writ petition being WPA 7680 of 2020 may be stated as under:

The petitioner Dr. Haradhan Maity is a permanently handicapped person with 60% disability and he belongs to the category of persons with disability (PwD).

On the basis of his final result, the Indian Statistical Institute, the respondent no. 1 herein, by an office order dated 29th July, 2008 awarded Junior Research Fellowship to him in Physics and Applied Mathematics unit of the Institute for one year, i.e., 2008-09. This term of one year was extended from time to time by the ISI authority. He successfully completed the Research Fellowship Programme in the year 2015 and was awarded with Ph.D. degree. A certificate to that effect was issued to him by the Indian Statistical Institute.

On 30th August, 2016, the petitioner made an application attaching his updated curriculum vitae thereto through e-mail to the authority concerned seeking appointment as a faculty member in the Indian Statistical Institute.

On the applications made by him under the Right to Information Act, 2005, a copy of an office order dated 2nd March, 2017 issued by the Director, Indian Statistical Institute was handed over to him on 11th January, 2019. This office order specifies the Recruitment Rules for faculty members of the Indian Statistical Institute. As per the aforesaid Recruitment Rules, the petitioner was eligible for getting appointment either to the post of Assistant Professor (on contract) or to the post of Assistant Professor in reference to his application dated 30th August, 2016. As to appointment as an Assistant Professor, a candidate must have a Ph.D. degree in the appropriate branch and should have at least 3 years (relaxable in exceptional cases) of post doctoral research/teaching/industrial experience. However, the phrase relaxable in exceptional cases has not been explained in the Recruitment Rules.

The petitioner with the prospective view and ambition, again made an application to the Director, Indian Statistical Institute, Calcutta seeking appointment as a Faculty member under the persons with disability (PwD) category on 12th May, 2017.

As regards his first application dated 30th August, 2016, the institute authority informed him unofficially that due to embargo imposed on recruitment process, his application could not be processed for the time being. However, once the embargo was lifted, his application would be considered. But with regard to his second application dated 12th May, 2017, the respondent authority was yet to take any decision. The petitioner became astonished to find in the website that one Dr. Sankar Sarkar, the private respondent no. 10 of Civil Engineering background was appointed as an Assistant Professor in Physics and Applied Mathematics unit in the Indian Statistical Institute despite the embargo was in force.

Afflicted with abysmal state of mind, the petitioner made application under the Right to Information Act on 15th January, 2018 to the respondent authority seeking specific information as to the basis for giving appointment to Dr. Sankar Sarkar. In the same application, he sought for information whether any advertisement was published for the post of Physics and Applied Mathematics and if any, the date of publication as well as the copy of the Recruitment Rules.

On 16th January, 2018, the petitioner by way of a reminder letter dated 16th January, 2018 requested the Professor-in-Charge of the Physics and Applied Sciences Division and the Head of the Department of the Physics and Applied Mathematics unit to consider his applications for appointment as Assistant Professor submitted on 30th August, 2016 and 12th May, 2017. In response to his reminder letter dated 16th January, 2017, the Professor-in-Charge, Physics and Earth Division, Indian Statistical Institute, informed him through e-mail dated 28th January, 2018 that curriculum vitae was received by the institute authority but after perusal of the same, it was observed that the petitioner did not possess the required 3 years of post doctoral research experience and thereby his application was rejected in a round about expression. Subsequently, the Senior Administrative Officer and Central Public Information Officer of the Institute informed the petitioner under the Right to Information Act that Dr. Sankar Sarkar was given the appointment on the basis of a rolling advertisement published in the Institute's website and after due process and recommendation by the Selection Committee. Not being satisfied with the information furnished by the Institute authority, the petitioner, to get proper clarification, made another application under the Right to Information Act, on 12th March, 2018 seeking copy of the rolling advertisement. In reply thereto, the Senior Administrative Officer and Central Public Information Officer on 11th April, 2018, citing irrational reasoning, failed to provide any copy of the rolling advertisement to him. However, he was supplied with a copy of the Recruitment Rules of the Indian Statistical Institute as prevailed on 30th August, 2016. As to his query, the Institute authority conveyed untrue information to him that as against the rolling advertisement, numerous applications were received. Being dissatisfied with the information furnished by the Indian Statistical Institute authority, the petitioner made a representation to the Secretary, Ministry of Statistics and Programme Implementation and the President, Indian Statistical Institute seeking consideration of his applications dated 30th August, 2016 and 12th May, 2017. In the letter dated 3rd July, 2018 addressed to the Secretary, Ministry of Statistics and Programme Implementation and others, the petitioner highlighted that though embargo was imposed as to recruitment of Faculty Member during the period from 14th July, 2014 to April, 2016, the private respondent, Dr. Sankar Sarkar, was appointed on the basis of his application dated 27th November, 2015 whereas, it was intimated to him that his application seeking appointment would be considered after the embargo was lifted.

The Director of Indian Statistical Institute made an official communication to the President, Indian Statistical Institute on 7th September, 2018 stating therein that Dr. Sankar Sarkar applied on 20th August, 2013, but the reply under the RTI Act dated 11th April, 2018 speaks that his date of application was on 27th November, 2015. It was stated in the representation with untrue statement that the private respondent was appointed as Visiting Assistant Professor on and from 6th December, 2018 but the RTI reply speaks that he joined as a Visiting Assistant Professor on 20th January, 2014.

Seeking his appointment as an Assistant Professor in Physics and Applied Mathematics unit in the Institute on cancellation of the appointment of private respondent, the petitioner by preferring this writ petition, inter alia, seeks the following reliefs:

“(a) A writ in the nature of Mandamus commanding the respondents to declare the respondent authority not to effect or further effect the impugned mail dated 28.01.2018 as in annexure P-9 of the Writ petition issued by the Respondent no. 5, being the Professor-in-charge and rescind, cancel and set aside the same.

(b) A further Writ in the nature of Mandamus commanding the concerned respondents to forthwith issue appointment letter in favour of the petitioner Dr. Haradhan Maity for the post of Assistant Professor under the administrative control of the respondent no.1 or alternatively commanding the concerned respondents to cancel the appointments that have already been made and further commanding the respondents to conduct a fresh selection for the post in question and further commanding them to rescind, recall, withdraw and/or cancel any order contrary thereto and/or inconsistent therewith.”

3. In the Writ petition being WPA 7682 of 2020, the petitioner Dr. Haradhan Maity states that while his grievances ventilated before the authority concerned were under consideration, the Indian Statistical Institute published an advertisement on 14th June, 2018 inviting applications to the post of Assistant Professor, Associate Professor and Professor from suitable candidates for its various research divisions. In response to the advertisement, the petitioner made application to the Applied Statistics Division, Physics and Earth Sciences Division and the Theoretical Statistics and Mathematics Division. But surprisingly, the ISI authority on consideration of their applications, appointed respondent nos. 11 and 12 namely, Dr. Ramiz Rahaman and Dr. Swapan Rana in the Department of Physics and Applied Mathematics for which the petitioner applied in response to the advertisement dated 14th June, 2018. The petitioner alleges that the authority concerned did not consider his application, nor it even called him before the interview without any justifiable reason. The petitioner, who is a student of the Indian Statistical Institute and having much acclaimed and adorable achievements to his credit along with commendable educational standards throughout, was illegally denied the appointment as an Assistant Professor in the Physics and Applied Mathematics. Challenging the appointment of the private respondent nos. 11 and 12 and seeking his appointment as an Assistant Professor in the aforesaid subject, the petitioner by preferring this writ petition, inter alia, seeks the following reliefs:

“(a) A Writ of or in the nature of Mandamus commanding the respondents to set aside impugned email communication dated 28.01.2018 issued by the Respondent no.5, email dated 27.05.2019 issued by the Respondent no. 7 and email dated 23.10.2019 issued by the Respondent no.8 as in annexure P-27 collectively of the Writ petition.

(b) A writ of or in the nature of Mandamus commanding the respondents to set aside the impugned order dated 20.07.2020 issued by the Respondent no.9 as in annexure P-29 of the Writ petition.

(c) A Writ of or in the nature of Mandamus commanding the concerned respondents to forthwith issue appointment letter to Your petitioner for the post of Assistant Professor under the administrative control of the respondent no.1 by cancelling the appointments that have already been made, or alternatively, further commanding the respondents to conduct a fresh selection for the posts in question.”

4. In the affidavit-in-opposition filed in respect of WPA 7680 of 2020, the Indian Statistical Institute states that as to appointment of the private respondent, Dr. Sankar Sarkar, the Institute adopted very fair, transparent, elaborate and descriptive procedure. After the interview was conducted by the National and International experts, the private respondent no. 10 was initially appointed to the temporary post of Visiting Assistant Professor. Subsequently, he applied for the permanent post. To consider his application, the private respondent no. 10 was asked to deliver a lecture on the recent research work before the external experts of Technical Advisory Committee (TAC). On receiving positive response from the Technical Advisory Committee, the Professor-in-Charge requested the Director to send the papers for review to international experts. After positive recommendation, the Selection Committee selected the private respondent to be appointed permanently to the post of Assistant Professor. This answering respondent states that the petitioner is not eligible to be selected since he lacked 3 years post doctoral research experience as per the prescribed procedure. As per the Expert Committee’s report the petitioner’s case did not fall in the exceptional category by which 3 years post doctoral research experience could be relaxed. This respondent further states that the Technical Advisory Committee comprising experts in the field deemed it justified to appoint the private respondent no. 10 as Assistant Professor in Physics and Applied Mathematics. On such grounds and denying and disputing the averments/allegations as made in the writ application, this answering respondent submits that this writ petition is liable to be dismissed. In the affidavit-in-opposition filed in respect of WPA 7682 of 2020, the Indian Statistical Institute states that the Divisional Screening Committee for Recruitment (DSC-R), Physics and Earth Sciences Division, after consideration of all the applications including the application of the petitioner, shortlisted some candidates including the private respondent nos. 11 and 12 and they were eligible for the next stage of proceedings, i.e., Stage II (Seminar and Interaction). The Divisional Screening Committee-Recruitment found that the petitioner Dr. Haradhan Maity was ineligible for the second stage of the processing. In subsequent stages of screening, the Screening Committee found the private respondent nos. 11 and 12 to be eligible to be appointed as Assistant Professor in Physics and Applied Mathematics and accordingly their names were recommended and they were appointed as such. Since the petitioner could not pass through the screening test conducted by the Divisional Screening

Committee for Recruitment, he was not recommended for appointment as Assistant Professor in Physics and Applied Mathematics. On such grounds and denying and disputing the averments/allegations as made in the writ application, this answering respondent also submits that this writ petition also is liable to be dismissed.

5. In his affidavits-in-opposition as well as a supplementary affidavit affirmed on 18th May, 2022, the respondent no. 10, Dr. Sankar Sarkar states that he belongs to Scheduled Caste. The Indian Statistical Institute, Kolkata, in the year 2013, made a special recruitment drive for SC/ST/OBC to fill up 23 posts of Assistant Professors in Mathematics, Statistics, Economics and Computer Science. Again in 2014, the Institute made another special recruitment drive for SC/ST/OBC category candidates for filling up 36 backlog vacancies of Assistant Professor. In such context, the respondent no. 10 states that the Indian Statistical Institute, in order to recruit Lecturers, Associate Professors and Professors, used to publish advertisement in its website for the faculty position several times during the year 2013 to 2017. Similar advertisements called rolling advertisements are published by the other institutes like IIT, Central Universities, NITs, IISER, IISC, Bangalore in their website throughout the year with a view to recruit faculty members. On the application made by him in the year 2013, the Selection Committee of the Institute selected him to appoint as Visiting Assistant Professor post considering his Ph.D. teaching experience of 3 years, academic records, journal publications and performance in a selection seminar in presence of Physics and Applied Mathematics unit and ISI faculty members. By an appointment letter dated 6th December, 2013, he was offered to join the Institute as Visiting Professor in the Physics and Applied Mathematics unit. However, on his request, the date of joining was extended and ultimately, he joined the Institute as a Visiting Assistant Professor on 20th January, 2014. Be it mentioned that at the time when he joined the Institute, he then had more than 3 years' post-Ph.D. experience. On 17th July, 2017, there was a selection seminar in presence off the Physics and Applied Mathematics unit faculty member, Head of the Department, Professor-in-Charge, Technical Advisory Committee Members and the Director, ISI. After he succeeded in the selection seminar before the Selection Committee, he was offered the position of Assistant Professor in December, 2017 where he was working since 20th January, 2014. In such premises and denying and disputing the averments as made in the writ applications, this respondent submits that the writ application is liable to be dismissed.

6. The respondent nos. 11 and 12, namely, Dr. Ramiz Rahaman and Dr. Swapan Rana, in their affidavit-in-opposition deny the averments as made in the writ application save and except what are matters on record. They state that the applications dated 30th August, 2016 and 12th May, 2017 were made by the petitioner before completion of 3 years post-doctoral/research/teaching experience. They deny that the petitioner had satisfied all eligibility criteria to be appointed as Assistant Professor in Physics and Applied Mathematics unit. On such grounds and denying the averments as made in the writ application, these

respondents submit that the writ application is liable to be dismissed with costs.

7. It is evident from annexure P-2 collectively that the petitioner Dr. Haradhan Maity was awarded Junior Research Fellowship in Physics and Applied Mathematics of Indian Statistical Institute vide office order dated 29th July, 2008. Subsequently, as it appears from annexure P-3, the tenure of Junior Research Fellowship was extended from time to time up to 20th August, 2012. Thereafter, he was awarded Senior Research Fellowship and such Fellowship continued up to 19th August, 2015. Annexure P-4, i.e., a certificate issued by the Indian Statistical Institute shows that the petitioner carried out his research work at the Physics and Mathematics Unit of the Indian Statistical Institute, but he obtained Ph.D. degree in Applied Mathematics from University of Calcutta in 2015. This shows that the petitioner worked at the Institute initially as a Junior Research Fellowship and subsequently as Senior Research Fellowship during the period as indicated above. But, the Ph.D. degree was conferred on him by the University of Calcutta.

8. After the petitioner obtained Ph.D. degree, he for the first time applied for a suitable faculty position to the Institute by an application dated 30th August, 2016 annexing his curriculum vitae through e-mail. While the application dated 30th August, 2016 was pending for consideration before the Institute authority, the petitioner, by making an another application dated 12th May, 2017, requested the Director, Indian Statistical Institute to appoint him to the post of Assistant Professor in Applied Mathematics under the reserved category of persons with disabilities (PwD). Admittedly, while the petitioner got no response to the applications made by him, the Professor-in-Charge, Physics and Earth Sciences division of the Institute in response to a letter dated 16th January, 2018 made by him to the Director, the ISI authority informed him that the department received his e-mail with curriculum vitae. But, on perusal of his curriculum vitae, it was clear that he did not have the required 3 years of post-doctoral research experience. By the letter dated 28th January, 2018, the petitioner was advised that it would be better for him if he applied for the post closer to the time when he would be completing his 3 years post-doctoral requirement.

9. As the case of the petitioner demonstrates, he collected the Recruitment Rules from the Institute authority on making application under the Right to Information Act. The Recruitment Rules were made by the Director of the Institute vide office order dated 2nd March, 2017.

10. The Recruitment Rules relating to appointment of Assistant Professor provide as under:

"For appointment as Assistant Professor, the candidate must have a Ph.D. in the appropriate branch and should have a 1st Class or equivalent at the preceding degree with a very good academic record throughout. The candidate should have at least 3 years (relaxable in exceptional cases) of post-doctoral research/teaching/industrial experience."

11. It is the contention of the petitioner that as the information furnished by the Institute authority shows, the Institute was not in a position to recruit Assistant Professor due to official embargo imposed on the Indian Statistical Institute during the period from 14th July, 2014 to April, 2016. The petitioner complains that the respondent no. 10, Dr. Sankar Sarkar was appointed on the basis of the application made by him on 27th November, 2015 during the continuance of the official embargo. In such factual matrix, the petitioner challenges the appointment of the respondent no. 10. It is the further case of the petitioner that he belonging to the category of persons with disability, his candidature should have been considered by the Institute authority under such category for the purpose of recruitment as an Assistant Professor.

12. Before dealing with the plea of the petitioner seeking appointment as Assistant Professor, it will be wise to refer some documents produced by the respondent no. 10 by way of affidavit-in-opposition and the supplementary affidavit. Annexures R-7 (collectively) are the two advertisements, commonly called as rolling advertisement, issued by the Indian Statistical Institute as a Special Recruitment Drive in filling up SC/ST/OBC backlog vacancies for the post of Assistant Professor. One advertisement which remained in force for 60 days from 1st June, 2013 speaks of filling up 8 posts of Assistant Professor under the category SC, 4 posts of Assistant Professor under the category ST and 11 posts of Assistant Professor under the category OBC. On the other hand, another advertisement which was in force for 60 days from 1st December, 2014 speaks of Special Recruitment Drive for filling up 12 Assistant Professors under the category SC, 6 posts of Assistant Professor under the category ST and 18 posts of Assistant Professor under the category of OBC.

13. The respondent no. 10 states that in response to the rolling advertisement issued in the year 2013, he applied for the post of Assistant Professor in 2013. After the Selection Committee recommended his name, he was offered an appointment as Visiting Assistant Professor in Physics and Applied Mathematics Unit initially for a period of 2 years with effect from date of joining. He joined on 20th January, 2014 as a Visiting Assistant Professor. Thereafter, his tenure as Visiting Assistant Professor was extended from time to time and ultimately, on his application date 5th December, 2017 and being successful in the selection seminar conducted by the Institute authority on 17th July, 2017, he was recommended to be appointed as an Assistant Professor and he was appointed to such post in December, 2017. Admittedly, the respondent no. 10, Dr. Sankar Sarkar, is a Civil Engineer.

14. Learned counsel appearing for the petitioner submits that as the case projected by the respondent no. 10, he was appointed as a Visiting Assistant Professor temporarily on 20th January, 2014. While the embargo was imposed on the Institute authority to make any recruitment during the period from 14th July, 2014 to April, 2016, the respondent no. 10 was permanently appointed on the basis of the application made by him on 5th December, 2017. According to

learned counsel, such appointment of the respondent no. 10 as against permanent vacancy of Assistant Professor was made by way of regularization. Citing a decision in the case of Secretary, State of Karnataka and Others vs. Umadevi (3) and Others reported in (2006) 4 SCC 1, learned counsel submits that such appointment of the respondent no. 10 as against a permanent vacancy of Assistant Professor by way of regularization is not permissible. Learned counsel submits that his client belongs to the category of PwD and as per the relevant provisions of the Rights of Persons with Disabilities Act, 2016 as well as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, his client's candidature should have been considered by the Institute authority under the category of PwD. Learned counsel points out that while his client made application – one dated 30th August, 2016 after completing his Ph.D. and the another dated 12th May, 2017 under the category of Persons with Disabilities (PwD), the authority concerned should have entertained his applications relaxing the 3 years post-doctoral experience which may be granted to a deserving candidate like his client. Learned counsel further submits that despite his client possessed the requisite qualification and experience when he made the application in November, 2018 in response to another advertisement made by the Institute on 14th June, 2018, the Institute authority fostering a hostile attitude against his client, intentionally disqualified him to be appointed to the post he applied for. Emphasizing that the entire selection process was vitiated with illegality and arbitrariness without considering the candidature of his client under the category of Persons with Disabilities, learned counsel submits that the selection and appointment of the respondent nos. 10, 11 and 12 are liable to be cancelled and his client may be appointed to such post. Alternatively, learned counsel submits that the Institute authority may be directed to conduct the selection afresh. In support of his submission, learned counsel has referred to a catena of decisions which are as under:

I. B.S. Minhas vs. Indian Statistical Institute and Others reported in (1983) 4 SCC 582.

II. State of Orissa and Another vs. Mamata Mohanty reported in (2011) 3 SCC 436.

III. State of Bihar and Others vs. Chandreshwar Pathak reported in (2014) 13 SCC 232.

IV. Official Liquidator vs. Dayanand and Others reported in (2008) 10 SCC 1.

V. Mohd. Sohrab Khan vs. Aligarh Muslim University and Others reported in (2009) 4 SCC 555.

VI. Union of India and Another vs. National Federation of the Blind and Others reported in (2013) 10 SCC 772.

VII. Justice Sunanda Bhandare Foundation vs. Union of India and Another reported in (2017) 14 SCC 1.

15. Learned counsel appearing for the Indian Statistical Institute submits that the respondent no. 10 applied for the post of Assistant Professor in response to a rolling advertisement published by the Institute authority in 2013. Initially, the respondent no. 10 was appointed for a specified period temporarily and after he succeeded in the rigorous selection process conducted by the Selection Committee comprising experts, his name was recommended for appointment and he was permanently appointed as Assistant Professor in 2017. Learned counsel submits that the respondent nos. 11 and 12 were also selected after they passed through the rigours of selection process conducted by the Selection Committee of experts. Learned counsel submits that while Selection Committee comprising experts on the subject, after conducting a thorough selection process, selects a candidate, the Court should not interfere with the decision of the Selection Committee. Learned counsel submits that while the respondent nos. 10 to 12 have been appointed through an exhaustive selection process, it will not be wise for the Court to cancel the appointment brushing aside the experts' opinion. In support of his contention, learned counsel has cited a catena of decisions in the case of *Nelima Misra vs. Harinder Kaur Paintal and Ors.* reported in (1990) 2 SCC 746, in the case of *National Institute of Mental Health and Neuro Sciences vs. Dr. K. Kalyana Raman and Others* reported in 1992 Supp (2) SCC 481, in the case of *Madras Institute of Development Studies and Another vs. K. Sivasubramaniyan and Others* reported in (2016) 1 SCC 454 and in the case of *Bhushan Uttam Khare vs. The Dean, B.J. Medical College and Ors.* reported in (1992) 2 SCC 220.

16. Learned counsel appearing for the respondent no. 10 submits that the respondent no. 10 was selected by the Selection Committee of experts and he was appointed on the recommendation of the Selection Committee. Such appointment of the respondent no. 10 should not be interfered with by this Court defying the views/opinion of the experts who were the members of the Selection Committee. In support of his submission, learned counsel has cited the decisions in the case of *H.S. Vankani and Ors. vs. State of Gujarat and Ors.* reported in AIR 2010 SC 1714, in the case of *Dr. Basavaiah vs. Dr. H.L. Ramesh & Ors.* reported in (2010) 8 SCC 372 and in the case of *Sajeesh Babu K. Vs. N.K. Santhosh & Ors.* reported in AIR 2013 SC 141.

17. On the other hand, learned counsel appearing for the respondent nos. 11 and 12 also submits that his clients were selected after being successful in a rigorous selection process conducted by the Selection Committee of experts and thereafter, they were appointed to the respective posts. Learned counsel argues that this Court should not interfere with the opinion/views made by the experts of the Selection Committee. In support of his contentions learned counsel has cited a number of decisions in the case of *Dr. Umakant Saran vs. State of Bihar and Others* reported in AIR 1973 SC 964, in the case of *Mani Subrat Jain vs. State of Haryana and Others* reported in AIR 1977 SC 276 and in the case of *The Chancellor and another vs. Dr. Bijayananda Kar and Others* reported in AIR 1994 SC 579.

18. Learned counsel appearing for the University Grants Commission submits that the UGC Regulations and Guidelines issued from time to time as well as notification issued by the Government of India are binding upon all the universities/institutions and colleges and such educational institutions should follow the Government of India/UGC guidelines. Learned counsel further submits that UGC wants that the such educational institutes should implement the government orders and UGC guidelines relating to implementation of reservation policy both vertical (for SC/ST/OBC) and horizontal (for persons with disabilities, etc.) in teaching and non-teaching posts.

19. The Hon'ble Apex Court in the decision of *B.S. Minhas vs. Indian Statistical Institute and Others* reported in (1983) 4 SCC 582 has held that the Indian Statistical Institute being a State within the meaning of Article 12 of the Constitution is amenable to Writ jurisdiction of this Court. However, it is not contended by any of the answering respondents that this Court has no jurisdiction to entertain this Writ application against the Indian Statistical Institute.

20. Before I deal with the points as raised during hearing, I feel that it will be apposite to highlight the legal principles postulated by the Hon'ble Apex Court in the decisions cited by the learned counsel for the petitioner. In the decision in the case of *State of Orissa and Another vs. Mamata Mohanty* reported in (2011) 3 SCC 436, the Hon'ble Apex Court has held at paragraph 36 that it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting nominees from the employment exchange or putting a note on the notice board, etc., that will not meet the requirement of Articles 14 and 16 of the Constitution. In the decision in the case of *State of Bihar and Others vs. Chandreshwar Pathak* reported in (2014) 13 SCC 232, the Hon'ble Apex Court has held at paragraph 13 that in the absence of any advertisement or selection process, the appointment of the respondent is not protected and could be validly terminated. In the decision in the case of *Official Liquidator vs. Dayanand and Others* reported in (2008) 10 SCC 1, the Hon'ble Apex Court has held at paragraph 71 that in the *Secretary, State of Karnataka v. Umadevi* (3) the Constitution Bench again considered the question whether the State can frame scheme for regularisation of the services of ad hoc/temporary/daily wager appointed in violation of the doctrine of equality or the one appointed with a clear stipulation that such appointment will not confer any right on the appointee to seek regularisation or absorption in the regular cadre and whether the Court can issue mandamus for regularisation or absorption of such appointee and answered the same in negative. In the decision in the case of *Mohd. Sohrab Khan vs. Aligarh Muslim University and Others* reported in (2009) 4 SCC 555, the Hon'ble Apex Court at paragraph 26 has held that advertisement which was issued for filling up the post of Lecturer in Chemistry could not have been filled up by a person belonging to the subject of Industrial Chemistry when the same having been specifically not mentioned in the advertisement that a Master's

degree-holder in the said subject would also be suitable for being considered. There could have been intending candidates who would have applied for becoming candidate as against the said advertisement post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post. In the decision in the case of *Union of India and Another vs. National Federation of the Blind and Others* reported in (2013) 10 SCC 772, the Hon'ble Apex Court on reservation of vacancies for the persons with disabilities directed all the departments/public sector undertakings/government companies shall issue instructions declaring that non-obedience and the Nodal Officer in department/public sector undertakings/government companies, responsible for proper strict implementation of the reservation for person with disabilities be departmentally proceeded against for the default. In the decision in the case of *Justice Sunanda Bhandare Foundation vs. Union of India and Another* reported in (2017) 14 SCC 1, the Hon'ble Apex Court at paragraph 10 has held that the 2016 Act visualises a sea change and conceives of actualisation of the benefits engrafted under the said Act. The whole grammar of benefit has been changed for the better, and responsibilities of may have been encompassed. In such a situation, it becomes obligatory to scan the anatomy of significant provisions of the Act and see that the same are implemented. The laudable policy inherent within the framework of the legislation should be implemented and not become a distinct dream. Immediacy of action is the warrant.

21. As noted above, it has been argued by the learned counsels appearing for the answering respondents emphasizing the substantial point that since the Selection Committee comprising experts recording their observations/opinion selected the deserving candidates, the Court should not interfere with the observations/opinion of the experts' committee. In such context, it would be profitable to refer to some of the judgments in the case of *Dr. Basavaiah vs. Dr. H.L. Ramesh & Ors.* reported in (2010) 8 SCC 372 and in the case of *Sajeesh Babu K. Vs. N.K. Santhosh & Ors.* reported in AIR 2013 SC 141. In the decision in the case of *Dr. Basavaiah (supra)*, the Hon'ble Apex Court has held at paragraph 45 that in the academic matters, the Courts have a very limited role particularly when no mala fide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the Courts to leave the decisions to the academicians and experts. As a matter of principle, the Court should never make an endeavour to sit in appeal over the decisions of the experts. In the decision in the case of *Sajeesh Babu K. (supra)*, the Hon'ble Apex Court has held at paragraph 18 that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee.

22. Undisputedly, the petitioner, after obtaining Ph.D. degree in 2015 applied to the Indian Statistical Institute by an application dated 30th August, 2016 for the

post of Assistant Professor in Physics and Applied Mathematics. As the Recruitment Rules of the Institute published vide office order dated 2nd March, 2017 and the previous Recruitment Rules show, for appointment as an Assistant Professor, the candidate must have a Ph.D. in the proper branch and should have a first class or equivalent at the preceding degree with a good academic record throughout. The candidate should have at least 3 years (relaxable in exceptional cases) of post-doctoral research/teaching/industrial experience. It is not in dispute that such qualification and experience of a candidate are required for the purpose of recruitment as Assistant Professor under any of the categories namely, SC/ST/OBC/PwD. On 30th August, 2016, when the petitioner made the first application and on 12th May, 2017 when the petitioner made a second application for appointment as an Assistant Professor under the reserved category of persons with disabilities (PwD), the petitioner did not have the compulsory 3 years post-doctoral research/teaching/industrial experience. The communication of the Institute authority dated 28th January, 2018 demonstrates that since the petitioner lacked 3 years post-doctoral experience, his application could not be entertained. This indicates that the authority concerned did not find any exceptional merit of the petitioner by which 3 years compulsory post-doctoral experience could be relaxed. Therefore, by dint of the aforesaid two applications, the petitioner cannot claim that his candidature should be considered for the post of Assistant Professor either under general category or under the reserved category of PwD. It is true that the Institute authority on the application made by the petitioner under the Right to Information Act failed to supply the copy of the rolling advertisement but from a series of documents annexed to the affidavit-in-opposition and the supplementary affidavit filed by the respondent no. 10 evince that the Indian Statistical Institute and the other similar Institutes by publishing rolling advertisements in their website, invited the best candidates for the purpose of recruitment of Assistant Professor, Associate Professor or other faculty members. The petitioner, who lacked the eligibility criteria to be appointed as Assistant Professor by virtue of applications dated 30th August, 2016 and 12th May, 2017, has no locus standi to challenge the appointment of the respondent no. 10. However, in this context, legality of the appointment of the respondent no. 10 may be considered in terms of the documents filed by him.

23. As stated above, the respondent no. 10 applied for appointment as Assistant Professor in response to a rolling advertisement published by the Institute in 2013. As his appointment letter shows, initially he was appointed as a Visiting Assistant Professor on 20th January, 2014. Subsequently, his appointment was confirmed after he passed the hurdles of Selection Committee comprising experts in the field. According to the Institute authority, the appointment of the respondent no. 10 after his appointment was confirmed in the permanent post of Assistant Professor, continues since his initial appointment on 20th January, 2014.

24. As to the third application which was made by the petitioner on 19th November, 2018 in response to an advertisement dated 14th June, 2018

published by the Institute, a thorough selection process was conducted by the Institute amongst 45 candidates who applied for different posts under different reserved categories. The petitioner and some other persons also applied for respective posts under the category of PwD. As it appears from the reports of the Divisional Screening Committee for Recruitment (DSC-R), the Selection Committee observed that publication of the petitioner Dr. Haradhan Maity was poor. As regards the respondent no. 11, namely, Dr. Ramiz Rahaman, the Screening committee opined that his publication was sufficiently good and his area of research was Quantum Cryptography, that then enjoyed high priority. He had sufficient teaching experience in Indian Universities. As regards respondent no. 12, Dr. Swapan Rana, the Screening Committee observed that he had been working in a free fundamental area of quantum information processing and he had impressive publication and good post-doctoral experience.

25. Experts' opinions as recorded above clearly demonstrate that the petitioner failed to qualify in the selection process. As held by the Hon'ble Apex Court in Dr. Basavaiah and Sajeesh Babu K. (*supra*), the Court should leave the decisions to the academicians and experts and as a matter of principle, the Court should not make endeavour to sit in appeal over the decisions of the experts. However, the Court may interfere if there is any allegation of mala fides against the experts who constituted the Selection Committee.

26. After a careful reading of the Writ application and the affidavits-in-reply, I do not find any material which may convince the factum that the experts of the Selection Committee acted against the petitioner with mala fide intention.

27. As noted above, the petitioner and some other candidates applied for the post of Assistant Professor under the category of PwD. Amongst the candidates under the category of PwD, a candidate namely, Pratibhamoy Das was selected for appointment under the reserved category of PwD. As the experts' opinion shows, the publication of Pratibhamoy Das was good in numerical analysis. All these exhibit that the candidature of the petitioner and the candidature of the selected candidate Pratibhamoy Das were duly considered by the Selection Committee, but the petitioner could not succeed in the selection process. True, the petitioner was one of the deserving candidates for the post of Assistant Professor in Physics and Applied Mathematics, but on competition and comparison, his candidature failed to meet the required parameters of selection.

28. In the decision in the case of Mani Subrat Jain vs. State of Haryana and Others reported in AIR 1977 SC 276, the Hon'ble Apex Court has postulated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal right to do something or to abstain from doing something. Since the petitioner has not acquired any legally enforceable right, this Court should refrain from passing any order in his favour.

29. As discussed above, as to the appointment of respondent no. 10, Dr. Sankar Sarkar, as an Assistant Professor in Physics and Applied Mathematics, a rolling advertisement was published as a special drive to recruit the candidates belonging to SC/ST/OBC to the post of Assistant Professor. As the materials on record reveal, as against the rolling advertisements as a special drive to recruit the above candidates, only one application was submitted in the year 2013 and the application was of the respondent no. 10, Dr. Sankar Sarkar. On consideration of the overall documents on record, this Bench finds that the information furnished by the Institute authority under the Right to Information Act that numerous applications were submitted as against the post of Assistant Professor in Physics and Applied Mathematics does not bear the true information. Since applications were invited through the rolling advertisements only to recruit the candidates belonging to SC/ST/OBC category, the applications filed by the petitioner for the post to which the respondent no. 10 was recruited were infact the applications submitted sans the advertisements. As a communication of the Institute authority shows the petitioner was advised that since he lacked post-doctoral experience, he should file application for appointment at the appropriate time. While a general advertisement was published by the Institute authority through the advertisement dated 14th June, 2018, the petitioner in response thereto made the application on 19th November, 2018. However, as observed, his candidature in respect to his application dated 19th November, 2018 was duly considered by the Selection Committee, but he failed to succeed in the selection process. In such factual matrix, the sole application of the respondent no. 10 in response to rolling advertisements published in the year 2013 was duly considered by the Selection Committee and after he succeeded in the selection process, he was appointed to the post of Visiting Assistant Professor on 20th January, 2014, initially for a temporary period. Thereafter, on the prayer made by him on 27th November, 2015, the Selection Committee after conducting rigorous selection process as stated above found him qualified to be appointed to the permanent post of Assistant Professor and accordingly he was appointed to the post. What this Bench finds, such appointment of the respondent no. 10 to the permanent post from the temporary post is not by way of regularization, but by way of confirmation through a rigorous selection process. That being so, the decision in the case of Secretary, State of Karnataka and Others vs. Umadevi (3) and Others reported in (2006) 4 SCC 1 as referred to by the learned counsel for the petitioner is not applicable. It is contended by the petitioner that since the post of Assistant Professor was meant for Physics and Applied Mathematics, the candidature of the respondent no. 10, Dr. Sankar Sarkar, who is a Civil Engineer, cannot be considered for the post. However, from the experts' reports in this regard, this Bench finds that the qualifications as possessed by the respondent no. 10, Dr. Sankar Sarkar, also fit him in the post of Assistant Professor for Physics and Applied Mathematics. As the respondent no. 10 found himself qualified to be appointed to the post, he applied for the post alone and no other candidates. Such being the factual position, I find that the decision in the case of Mohd. Sohrab Khan vs. Aligarh Muslim University and Others reported in (2009)

4 SCC 555 is not applicable. Since the petitioner's candidature under the category of PwD was considered, the decisions in the case of Union of India and Another vs. National Federation of the Blind and Others reported in (2013) 10 SCC 772 and in the case of Justice Sunanda Bhandare Foundation vs. Union of India and Another reported in (2017) 14 SCC 1 are also not applicable to the petitioner's contention.

30. Therefore, in view of the above, I find that there is no merit in both the two Writ petitions and the Writ petitions should be dismissed.

31. Accordingly, both the Writ petitions being WPA 7680 of 2020 and WPA 7682 of 2020 are dismissed on contest. The connected applications also stand disposed of.

32. No order as to costs.

33. Parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this Court.

34. Urgent Photostat/ certified copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.