

(1992) 07 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29772 of 1990

Dr. V. Bansal and Others

APPELLANT

Vs

IIT Kanpur and Others

RESPONDENT

Date of Decision : 08-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 73

Institutes of Technology Act, 1961 — Section 11, 12, 12(3), 13, 13(2)

Citation : (1993) 1 AWC 17

Hon'ble Judges : S.D. Agarwala, J; R.R.K. Trivedi, J

Bench : Division Bench

Advocate : Janardan Sahal, for the Appellant; S.N. Verma, D. Kakkar, Jayant Banerji and V.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—In this petition counter and rejoinder affidavits have been exchanged and learned Counsel for the parties are agreed that the petition may be disposed of finally at this stage. It may also be mentioned that so far as Respondents Nos. 3 and 4 are concerned, notice was accepted by the learned Senior Standing Counsel of the Union of India. However, no counter affidavit has been filed in spite of time granted nor any body put in appearance on behalf of Respondents Nos. 3 and 4 at the time of hearing of this petition on any date.

2. This petition has been filed by 33 Assistant professors of Indian Institute of Technology, Kanpur (hereinafter referred to as the Institute) questioning the legality and propriety of restructuring of the cadres of academic staff and revision of pay scales introduced by order dated 19-4-1990 (Annexure v. to the writ petition). Petitioners have also challenged the resolutions of the Board of Governors dated 9-5-1990 (Annexure VI), 23-5-1990 (Annexure IX) and 25-8-1990 (Annexure XI) by which the Board of Governors has accepted and adopted the revised pay scales and the restructuring of the cadres after considering the objections raised by Ministry of Human Resource Development

dated 13-8-1990 (Annexure X), which has also been sought to be quashed.

3. Before entering into the facts which gave rise to the aforesaid controversy it would be appropriate to refer, in brief, the functioning of the Indian Institute of Technology which is one of the premier engineering institute of the country run and controlled under the provisions of the Institutes of Technology Act, 1961 (Act No. 59 of 1961) (hereinafter referred to as the Act) and the Statutes and Ordinances framed thereunder. A close scrutiny of the provisions of the Act will show that the Institutes have been conferred maximum autonomy for managing their affairs obviously with a view to achieve maximum excellence in imparting the engineering education and to produce brilliant scholars in the field which ultimately forms the back-bone of the industrial and economic structure of the country. The Board of Governors constituted u/s 11 of the Act is the supreme Body to manage the affairs of the Institute. Section 9(1) provides that the President of India shall be the Visitor of every Institute. The Chairman of the Board is nominated by the Visitor, other members of the Board are the Director, the persons nominated by the Government of each of the State falling within the zone in which the Institute is situate from amongst the persons who, in the opinion of the Government, are technologists of repute. Four persons having special knowledge or practical experience in respect of Education, Engineering or Science to be nominated by the Council and two professors of the Institute to be nominated by the Senate. There are other bodies also for purposes of running the Institute but their reference is not very relevant for the present controversy. Section 13 of the Act provides that subject to the provisions of this Act the Board of any Institute shall be responsible for general superintendence, direction and control of the affairs of the Institute and shall exercise all the powers of the Institute not otherwise provided by this Act, the Statutes and the Ordinances and shall have the power to review the acts of the Senate. Clause (d) of Sub-section (2) of Section 13 confers power on the Board to institute and appoint persons to academic as well as other posts in the Institute. Another Body which is important for the present controversy is the Council established u/s 31(1) of the Act. The composition of the Council is provided u/s 31(2) of the Act. Section 33 provides the duties of the Council. Sub-section (1) says that it shall be the general duty of the Council to coordinate the activities of all the institutes. Sub-section (2) of Section 31 specifies other functions, Clause (b) whereof confers on the Council, power to lay down policy regarding cadres, method of recruitment, conditions of service of employees, institution of scholarship and freeship, levying of fees and other matters of common interest. Thus a perusal of Section 13 read with Section 33 makes it clear that the intention of the legislature was to keep uniformity in various activities of all the five Institutes of the Country. The Board of Governors have to Junction within the policy laid down by the Council The composition of the Council shows that it is headed by Minister-In-charge of Technical Education in the Central Government as Chairman, Chairman of each Institute, Director of each institute, Chairman of University Grants Commission, Director General, Council of Scientific and Industrial Research, Chairman of the

Council of Indian Institute of Sciences, Bangalore, and Director of Indian Institute of Sciences, Bangalore are 14 Ex Officio members. An officer of the Ministry of Central Government concerned with technical education is to be nominated by that Government to act as Secretary of the Council. Rest of the members are nominated from different sources as provided u/s 31(2) of the Act. The financial aspect of the Institutes has been dealt with by Sections 21, 22, 23, and 24 of the Act. The entire financial burden is on the Central Government. Section 26 of the Act contemplates to provide the Statutes in the matters enumerated thereunder. Clause (g) provides for the classification, the method of appointment and the determination of terms and conditions of service of teachers and other staff of the Institutes.

4. Now for appreciating the actual controversy, it would be appropriate to mention certain facts. In the Institute at Kanpur, the cadre structure of the academic staff originally was lecturer, then Assistant Professor, the Associate Professor and then Professor. However, the Board by its resolution dated 4-2-1974 decided to dispense with the post of Associate professor. Thus thereafter the post of Associate Professor was discontinued and in the Indian Institute of Technology at Kanpur it was a three-tier Cadre, namely lecturer, Assistant Professor and then Professor. The Petitioners' case is that in other four Institutes the post of Associate Professor continued which was disputed by the Respondents but it is needless to be detained for this disputed fact so far as the present controversy is concerned. The Government of India by its letter dated 5-5-1989 (Annexure III to the writ petition) proposed to revise the pay scales as mentioned in Annexure I to the letter. This letter was considered by the Board of Governors on 22nd and 23rd May, 1989. A copy of the resolution has been filed as Annexure IV. The move regarding revision of the pay scales was criticised as an attack on the autonomy of the Institute. The Board requested the Ministry of Human Resource Development (hereinafter referred to as MHRD) to refer the matter to IIT Council for detailed discussion and satisfactory resolution. This forms the background in which the impugned order dated 19-4-1990 (Annexure v. to the writ petition) was passed. It provided for restructuring of the cadres of the academic staff and also for the revision of the pay scales. The Board by its resolution dated 9-5-1990 accepted and adopted the policy laid down by letter dated 19-4-1990. It also resolved that the IIT Kanpur will have a new cadre of Associate Professor as communicated by the Government. This resolution also provided that the Chairman of the Board along with some members shall meet the executive committee of the faculty forum on May 22, 1990 to assess the difficulties apprehended by the faculty of IIT Kanpur and to consider the anomalies in the matter of implementation of the new scheme with particular reference to existing Assistant Professors at IIT Kanpur. It appears that in pursuance of the aforesaid resolution a meeting of the representatives of the Board and Faculty Forum took place on May 22, 1990 and a sort of understanding was reached for consideration of the Board of Governors in its meeting on 23-5-1990. The understanding has been tiled as Annexure VIII to the

writ petition. On 23-5-1990 the meeting of the Board took place and it decided not to make any appointment of lecturers in future in the Institute. Resolutions 3(ii), 3(iii) and 3(iv) are relevant for present controversy. The Board resolved to consider all existing permanent lecturers and all existing permanent Assistant Professors for being considered for promotion as Assistant Professors and Associate Professors respectively, through Selection Committee constitute Under Statute 12(3)(b). This resolution of 23-5-1990 has been filed as Annexure IX to the writ petition. Resolution 3(iii) deals with Assistant Professors which is being quoted below:

(iii) All existing permanent Assistant professors will be considered for promotion as Associate Professors through Selection Committee constituted as per statutes 12(3)(b). This will be a one time selection process, The updated bio-data submitted by the prospective candidates will be presented before the Selection Committee for consideration. The candidates will be given the option of personal appearance before the Selection Committee. The effective dates of promotion as Associate Professors will be decided by the selection committee case by case, based on qualifications, experience, academic attainments and tenure as Assistant Professors. Any case of salary fixation prior to April 19, 1990 if recommended by the selection committee but not prior to January 1, 1986, will be referred to the Finance Committee Those who are not recommended to be promoted as Associate Professors through this one time exercise will continue as Assistant Professors and will be considered for promotion in future through open Recruitment.

5. The Secretary of the Council of IITs vide letter dated 13-8-1990 (Annexure X to the writ petition) suggested modifications in respect of the resolution dated 23-5-1990. The suggestion was in respect of the lecturers as well as Assistant Professors. The Board by its resolution dated 25-8-1990 (Annexure XI to the writ petition) rejected the suggestions regarding lecturers and stuck to its earlier decision of considering the selection of all the existing permanent lecturers as Assistant Professors with effect from 19-4-1990 by Selection Committee constituted. However, in case of Assistant Professors the Board rescinded its earlier resolution and decided to fill the posts of Associates Professors by normal recruitment process of open selection, i.e. by advertisement and not by internal assesment as done in respect of lecturers. Thus aggrieved, the Assistant Professors have filed the present writ petition.

6. We have heard Shri Sndhir Chandra, learned Senior Advocate who along with Shri Janardan Sahai appeared for Petitioners and Mari S.N. Verrna, learned Senior Advocate who along with Shri Dinesh Kakkar and others appeared for Respondents; Nos. 1 and 2.

7. Submissions of Shri Sodhir Chandra for challenging the aforesaid orders and resolutions were as under:

(i) that the restructuring of the cadres could not be done without amending the

statutes which required approval of the Visitor for this submission reliance has been placed on Section 26 (f) and (g) and Section 27(3) and Statutes 11 and 12.

(ii) That the Union of India and MHRD have no authority to change the cadres among the academic staff. The Council has been by passed. The order dated 1.9-4-1990 is wholly illegal and without authority for this reason.

(iii) That in case of lecturers one time promotion by internal assessment has been approved while in case of Petitioners it has been refused and the Petitioners have been discriminated. The action is violative of Article 14 of the Constitution.

(iv) Lastly, it has been submitted that on 22-5-1990 an understanding was reached between the petitioners and the Board of Governors that Petitioners shall also be considered for promotion by Selection Committee by way of internal assessment and not by open selection. This understanding has been violated and a serious prejudice has been caused to the Petitioners.

8. Sri. S.N Verma, learned Counsel for Respondents, in reply submitted that statute 11 only provides a classification of various employees of the Institute according to their nature of work and it has nothing to do with the cadre. The post of Associate Professor throughout continued. It was made only non-functional by resolution dated 4-2-1974. It has been further submitted that it is wrong to suggest that the Council has been by passed or ignored Referring to the order dated 19-4-1990 it has been submitted that the proposed restructuring of the cadres and revision of the pay scales was act of the Council and MHRD. Section 36 has been relied on for submitting that no act of the Board of Council shall be invalid for any irregularity With reference to Sections 21, 22, 23 and 25 of the Act, it has been submitted that the role of the Government is important as the enter financial burden is on it. As the revision of pay scales and restructuring of the cadres of academic staff could entail heavy financial burden, the Government was justified to intervene in the matter for purposes of making suggestions. It has been submitted that authority of the Board or the Council has not been affected at all Lastly, it has been submitted that the policy laid down by order dated 19-4-1990 has not been challenged on the grounds of mala fide or arbitrariness and the Petitioners cannot have any grievance in absence of the same. Taking recourse to the practical implementation of the scheme it has been suggested that majority of Assistant Professors have applied for being considered to be appointed as Associate Professors. They have been considered and proposed for being appointed as Associate Professors. Open selection is necessary for maintaining the excellence and betterment of the Institution. Petitioners cannot have any grievance against such move.

9. Both the Counsel have relied on number of authorities which shall be referred to and discussed at the relevant places. Considering the gravity of the dispute which relates to a premier Institutes of the country, we have given our deep consideration to every aspect of the matter and our conclusions are as under:

Considering the first submission of the learned Counsel for Petitioners that

restructuring of the cadres could not be done without amending the Statutes, in our opinion, for implementing the proposals made through the letter dated 19-4-1990 it did not require any amendment in the Statutes, Learned Counsel for Petitioners has placed reliance on Statute 11, a perusal whereof will show that it has only classified various employees of the Institute under different heads according to the nature of the work. The classification provides three headings-academic technical and administrative. It is not disputed that Petitioners belong to the academic staff which includes various posts including professor, Associate professor, Assistant professor and lecturer. The classification thus provided is inclusive and not exhaustive. By order dated 19-4-1990 an uniformity has been sought to be achieved in respect of the cadres of academic staff "in all the Institutes. Admittedly, prior to 19-4-1990, there was disparity in this respect amongst the various Institutes. Hence forth, it has been provided that there will be only three posts i.e. Assistant Professor, Associate Professor and Professor and it shall be a three-tier cadre in all the Institutes. All these posts already mentioned in the classification provided by the Statute II(a). For this reason no amendment in the Statute was required, in our opinion, the submission of the learned Counsel for the Petitioners is not correct.

10. The second submission of the learned Counsel for Petitioners was that Union of India and Ministry of Human Resource Development (in short MHRD) has no authority to change the cadres amongst the academic staff. It was vehemently argued that only Council could lay down the policy regarding cadres, methods of recruitment and condition of service of employees u/s 33(2)(b) of the Act. It was argued that the Council in this case has been by passed and ignored. As the order dated 19-4-1990 has not been passed by the authority competent in law, it is illegal and without authority and is thus liable to be quashed. It has also been submitted that in view of the extensive intervention of the MHRD and the Cabinet, the restructuring of the cadres and revision of pay scales cannot be said to be an act of the Council. It has been done at the dictates of the authorities having no concern with the same. The autonomy of the Institute and its functioning through the Board of Governors has also been seriously eroded. Learned Counsel for Petitioners for this submissions has placed reliance on Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, and Orient Paper Mills Ltd. Vs. Union of India (UOI), .

11. The learned Counsel for Respondents, on the other hand, submitted that in view of Sections 21, 22, 23 and 24 as the Union of India is responsible to bear the entire financial burden of the Institute it could intervene to safeguard its financial interest. It has been further submitted that the IIT Council has considered the entire policy enunciated by the order dated 19-4-1990 and in view of this it is act of the Council though the Union of India through its Ministry-MHRD. also intervened and participated for obvious reasons as stated above, at no point the authority or functioning of the Council or the autonomy of the Institute has been affected. In our opinion, this controversy has two aspects ;

firstly as to whether the Union of India could at all intervene in the matter relating to restructuring of the cadres and revision of pay scales and secondly whether from the material on record, it can be inferred that the order dated 19-4-1990 was not the action of the IIT Council.

12. Considering the first aspect first, in our opinion, the Union of India in exercise of its executive powers could intervene in the matter. Article 73 of the Constitution provides that subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. It can not be disputed that the Parliament enacted the Institutes of Technology Act, 1961 by virtue of Entry No. 64 of List 1 of 7th Schedule. Entry No. 64 reads as under:

Institutes for Scientific or Technical Education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

13. Preamble of the Act contains this declaration that the Institutions of Technology including the Institute of Kanpur are institutions of national importance. The executive power of the Union of India thus could extend in respect of all the matters connected with such institutions. It cannot be disputed that the act of restructuring of the cadres and revision of pay scales is an executive act and the Union of India through its concerned Ministry could intervene and participate in laying down the policy. We have considered the provisions of the Act and there is nothing in the Act or the Statute on which basis it could be said that the executive power of the Union of India has been in any way trammelled or curtailed. The learned Counsel for Petitioners has also not invited our attention to any provision contained in the Act or Statute curtailing the executive power of the Union of India contemplated under Article 73 of the Constitution. The submission of the learned Counsel for Petitioners that Union of India could not intervene thus cannot be accepted.

14. The second important aspect of the controversy is as to whether due to intervention of the executive power of the Union of India the authority of the IIT Council has been eroded and the autonomy of the Institute has been undermined. A perusal of the order dated 19-4-1990 clearly shows that the question of revision of the pay scales of the teachers of the IITs was considered by the Council of IITs and the Government of India and the letter was from the Secretary of the Council of IITs addressed to all the Directors of the Indian Institutes of Technology at Bombay, Delhi, Kanpur, Kharagpur and Madras. It leaves no doubt that Council of IIT actually considered the matter and it was at the most a joint action on the part of the Government of India and the Council of IITs which, in our opinion, cannot be objected to; considering the financial aspect of the matter.

15. Learned Counsel for Petitioners, however, placed reliance on Annexure-I to the counter affidavit and submitted that the Council of IITs set up a committee of

three members to go into this matter and as the report of the committee was not submitted, the consideration was postponed for another date requesting the committee to finalise its recommendations by 15-9-1989. On this basis it has been submitted that the report of the aforesaid committee was not submitted and the matter was thereafter not considered by the Council. This fact has been denied by the Respondents in their counter affidavit. There is no other material on record to show that the report submitted by the Committee was not placed before the Council and it was not considered by the same. In para. 8 of the counter affidavit filed by Dr. O.P. Sharma, it has been stated that the report of the Committee was duly approved by the Chairman of the Council of the IITs which post incidentally is held by the Minister In-charge of the Technical Education in the Central Government. Though this averment in the counter affidavit shows that approval was of the Chairman and not of the Council, but on this basis alone we find it difficult to infer that the matter was not actually considered by the Council, in view of the specific averment made in the order dated 19-4-1990, that matter was considered by the IIT Council. It cannot be disputed that the restructuring of the cadres and revision of pay scales and laying down policy in this connection is purely an executive act. In our opinion, the authorities cited by the learned Counsel for Petitioners are distinguishable on facts and the principle laid down therein cannot be applied in the facts and circumstances of the present case. So far as the autonomy of the Institute and the Board of Governors is concerned, from the material on record it does not appear to have been undermined in any manner. The Board of Governors in their meeting held on 23-5-1990 suggested certain amendments for implementing the scheme envisaged by the order dated 19-4-1990. By order dated 13-8-1990 the MHRD raised certain objections and then suggested modifications. The Board of Governors vide its resolution dated 25-8-1990 stuck to its earlier resolution dated 23-5-1990 in respect of the one time promotion of the existing lecturers and the Board did not accept the suggestion made through the letter dated 13-8-1990. However, the Board accepted the suggestion in respect of the promotion of the Assistant Professors through c pen selection, it clearly shows that the Board accepted and adopted the Scheme after considering its suitability and propriety and not at the dictates of MHRD as alleged. We do not find any kind of erosion of autonomy of the Institute.

16. The third submission of the learned Counsel for Petitioners relates to discrimination in matter of promotion. Before we enter into this controversy, it appears necessary to consider the legal position that in service jurisprudence it is only right to be considered for promotion which is term of service and not the chance of promotion. In the present case, the right of Petitioners to be considered for promotion has not been effected at all. The controversy raised on behalf of the Petitioners as to whether their promotion should be through open selection or it should be by internal assessment, in our opinion, relates to chance of promotion. It can be said that in open selection the Petitioners may face tougher contest and the chance of promotion may be dimmed to some extent,

however, it cannot be termed in any manner affecting right to be considered for promotion Further, the open selection is also necessary for the betterment of the Institute and for maintaining its excellence. The Petitioners should not have any grudge against the same. So far the grievance that they have not been given the equal treatment or equal opportunity as given to lecturers is concerned, we are of the view that the two cadres are entirely different and differently placed. The reason has been mentioned in the letter dated 13-8-1990 as well as in the resolution dated 25-8-1990 to provide one time selection process by internal assessment as it has been proposed to abolish the cadre of lecturers. In the facts and circumstances of the case the reason given for giving relaxation from the general policy of open selection in respect of lecturers is not unreasonable or arbitrary. From the facts and circumstances of the case we are of the confirmed opinion that the Petitioners have not been discriminated in any manner and there is no violation of Article 14 or 16 of the Constitution. It may also be pointed at that the policy regarding the restructuring of the cadres and revision of pay scales has not been challenged on the ground of mala fide and arbitrariness. It is well known that that can not be any policy which may satisfy each and every employee There may remain dissatisfaction in some quarters but the propriety and legality of the policy cannot be judged on the basis of Individual grievance or on the basis of grievance of a group of individuals. The constitutionality and legality of the policy can be judged by considering whether it is fair, reasonable and does justice to the majority of employees. Hon''ble Supreme Court in cases of Reserve Bank of India and Others Vs. C.N. Sahasranaman and Others, ; Union of India v. S.L. Datta 1991 (1) SCC 505 ; K. Jagadeesan Vs. Union of India and others, and Director, Lift Irrigation Corporation Ltd. and Others Vs. Pravat Kiran Mohanty and Others, , has taken similar view and the view we have taken in the present case is in consonance with the principles laid down by the aforesaid authorities.

17. The last submission of the learned Counsel for Petitioners was based on the understanding reached between the Petitioners and some members of the Board of Governors in their meeting on 22-5-1990. So far as the understanding dated 22-5-1990 is concerned, in our opinion, it can not be said to have any binding effect. The understanding reached was that the Board of Governors will consider the problems and grievances of the Petitioners in implementing scheme regarding the restructuring of the cadres and revision of pay scales in the meeting of the Board. The Petitioners'' grievance is confined against the open selection for promotion. In this regard the method of appointment in higher cadres has throughout been by open selection. Petitioners have themselves filed the document dated 29-9-1981 which release to the introduction of the Associate Professor cadre. It also provided that it should be by open selection. The Institute at no point of time deviated from the practice of open selection and in our opinion rightly which was necessary for preserving the good name and excellence of the Institute. The understanding readied was only in respect of the consideration of the grievances and the Petitioners can not plead any estoppel

against the Respondents on the basis of the same.

18. There are some other aspects which we feel necessary to be mentioned here for not accepting the case of the Petitioners. Appendix to the impugned order dated 19-4-1990 under the heading "Coverage" reads as under:

Coverage:

1. This scheme applies to teachers in the Indian Institutes of Technology (IITs)
2. All teaches appointed on or after the date from which the scheme has been given effect to, will be governed by the provisions of the scheme. This scheme will also be applicable to these existing teachers who exercise their option in writing to be governed by the provisions of this scheme prior to their pay fixation. Those who do not exercise such an option will continue in the existing scales of pay alongwith connected benefits.

19. From the documents filed it appears that all the Petitioners are continuing in the Institute as Assistant Professors from before 1st January, 1986. From the aforesaid it is clear that they were given option to continue in the old cadre. The scheme introduced by order dated 19-4-1990 could be applicable to them only on exercise of their option in writing. Petitioners have not thrown any light on this aspect of the matter as to whether they exercised option or not. Since they could avoid the application of the Scheme by not exercising option, they cannot raise any grievance. If they have exercised the option with open eyes, they are not now entitled to raise any grievance. Another aspect is that Respondents have filed affidavit disclosing figures that out of the total strength of the Assistant Professors, 101 applied for being appointed as Associate Professors and professors. Out of 101, 49 have already been selected as Associate Professors. Some of them have also been selected as Professors. On the basis of the figures supplied it is clear that the majority of the Assistant Professors including some of the Petitioners have already been absorbed. Since the Petitioners or majority of them opted for the scheme and participated in the open selection, they are not entitled for raising any grievance against the Scheme. A Division Bench of this Court in case of Dr. Y.K. Mathur v. Vice Chancellor, Chandra Shekhar Azad University of Agriculture and Technology, Kanpur (1990) 1 UP LB EC 438 has taken the view that once Petitioner applied for the post in pursuance of the advertisement and appeared before the selection committee which found him not suitable, cannot be allowed to turn round after availing the opportunity. We are in respectful agreement with the aforesaid view of the Division Bench.

20. In our opinion, Petitioners have failed to make out any case for interference Under Article 226 of the Constitution.

21. For the reasons recorded above, this petition has no force and is accordingly dismissed. The interim order dated 16-11-1990 is vacated. There will be no order as to costs.