

(2017) 12 DEL CK 0317

In the Delhi High Court

Case No : Civil Writ Petition No. 12083 Of 2016

Prof. Sachin Maheshwari

APPELLANT

Vs

Netaji Subhas Institute Of Technology & Anr.

RESPONDENT

Date of Decision : 11-12-2017

Acts Referred:

Constitution Of India, 1950 — Article 19

Netaji Subhash Institute Of Technology Rules, — Rule 1(b)(iii), 2, 6A, 8, 10, 10(xi), 11, 20, 22A, 22(b), 22(c)

All India Council for Technical Education Act, 1987 — Section 10(i), 10(v), 23(i)

Delhi University Act, 1922 — Section 2(a)

Citation : (2017) 12 DEL CK 0317

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Tarkeshwar Nath, Onkar Nath, Avnish Ahlawat, Palak Rohmetra, Anil Soni, Priyanka Singh

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

1. The present petition has been filed by the petitioner with the following prayers:

â??Therefore, this Honâ??ble Court may graciously be pleased to:-

(i) Quash and set aside the Advertisement dated 30.11.2016.

(ii) Pass any other order that is deemed fit and proper under the facts and circumstances of the case.â??

2. From the above, it is seen that in substance, the petitioner is challenging the advertisement dated November 30, 2016, whereby the respondent /

NSIT while advertising the post of Director in Netaji Subhash Institute of Technology (NSIT in short) has prescribed the qualifications and experience

as under:

Qualifications and Experience: The candidate must possess a doctorate degree in any field of Engineering, Technology and

specialization in any of the areas of endeavour of the Institute (i.e Electrical/ Electronics and Communication/Instrumentation &

Control/Computers & Information Technology/Bio-Technology/Manufacturing Processes and Automation Engineering or Physical

Sciences). He/She must be an eminent academician and should have proven ability of developing and managing organizations, providing

leadership and vision, and sufficient experience of technical education and/or Industry at a senior level (Dean, Head, Professor etc) in

planning and development/research/teaching. Candidate must have demonstrated high academic excellence by way of research publications

in referred international journals, membership of professional bodies and reviewership/editorship of professional national/international

Journals. The candidate should have worked for at least 10 years as Professor/ equivalent.

The challenge is primarily on the ground that the advertisement requires a candidate to have 10 years experience as Professor / equivalent.

3. Some the facts relevant for the proper adjudication of the case are, the petitioner joined the respondent / NSIT as a Lecturer in Manufacturing

Processes and Automation Engineering Division. In the year 2000, he was selected as an Assistant Professor in respondent / NSIT. In April, 2007, he

was selected as a Professor in the same institute. It is his case that on February 23, 2009, he was allocated the duties and responsibilities of Head of

the Division of Manufacturing and Process and Automation Engineering. On May 6, 2010, the Institute invited applications from eligible candidates for

the post of Director, NSIT wherein no minimum period of working as Professor / equivalent has been mentioned. It is also averred that on July 29,

2010, Govt. of NCT of Delhi, Department of Training and Technical Education decided to implement the revised pay scales and other service

conditions for the categories of employees of Degree Level Technical Institutions and Delhi Technological University on the basis of

recommendations made by AICTE with details as mentioned therein, i.e., AICTE (Pay Scales Service Conditions and Qualifications for the Teachers

and other academic staff in Technical Institution) (Degree) Regulations 2010 notified on March 5, 2010 (Regulation 2010 in short). As per Para 2

therein, the appointments to the post of Principal / Director in Technical Institutions would be based on the conditions and eligibility in respect of the educational qualifications, teaching and research experience laid down by the AICTE from time to time. It is his case for Principal / Director the norms of the AICTE prescribe the eligibility as minimum of 10 years experience in Teaching / Research / Industry out of which at least 3 years shall be at the level of Professor or minimum 13 years experience in teaching and / or Research and / or Industry. It is his case that no change has been made by AICTE till date. It is also averred that on August 16, 2010, NSIT conveyed the implementation of revised pay scales and other service conditions to the Institute Faculty in accordance with the AICTE notification dated March 5, 2010 read with office Order dated July 29 2010 of Govt. of NCT of Delhi Department of Training and Technical Education. In other words, respondent / NSIT has made the Regulation, 2010 of AICTE read with Office Order dated July 29, 2010 of Govt. of NCT of Delhi applicable in regard to appointment to the post of Principal / Director with same qualification and teaching experience as laid down by the AICTE. It is his case that no condition of Regulation, 2010 of AICTE has been changed so far. Insofar as the post of Principal is concerned the AICTE Regulation stipulate it to be in the pay band of Rs.37400-67000 with AGP of Rs.10,000/- plus special allowance of Rs.3,000/- per month. It is averred that on May 8, 2013 another advertisement was issued by the Chairman, Board of Governors, NSIT inviting applications for the post of Director, which again did not mention minimum working period as Professor, as an eligibility criteria. It is also averred that even in the year 2014, a notification was advertised for the post of Director which also did not mention minimum working period as Professor as eligibility criteria. In view of the said notification, the petitioner also applied for the post of Director as he was eligible for the same. On November 5, 2014, he was called for interaction with the Selection Committee held on November 24, 2014. He was not recommended by the Committee for the post of Director. It is averred that on October 13, 2015, Ministry of Personnel, Public Grievance and Pension, DOP&T, Government of India has issued the Office Memorandum to the effect that the proposed amendments / revision in the Recruitment Rules should be put on the website for 30 days for inviting comments from stakeholders. On April 18, 2016, the petitioner was appointed as Dean, Faculty

Affairs. On July 11, 2016, Professor Yogesh Singh was relieved from the charge of Director. He was given additional charge of Director on July 12, 2016. As the post of Director was lying vacant, an advertisement dated November 30, 2016 was issued for the said post by Director, NSIT on behalf of the Board of Directors, NSIT and not by the Chairman, Board of Governors, as has been done in the past. It is the case, a new condition has been added of a candidate having working experience of 10 years as Professor / equivalent as eligibility criterion for the post of Director and that too without the approval of the Board of Governors. On December 6, 2016, petitioner made a representation to the Institute seeking amendment to the advertisement by issuing Corrigendum to the effect of withdrawing the condition of work experience of 10 years. It is also averred that a further representation dated December 8, 2016 was made by the petitioner to the Honâ??ble Lt. Governor seeking withdrawal of the illegal condition. It is his case that the Honâ??ble Lt. Governor instead of responding to the representation of the petitioner dated December 6, 2016 sent the same to the Deputy Director (SB), Department of Training and Technical Education, Govt. of NCT of Delhi. It appears that petitioner had earlier filed the Writ Petition being 11932/2016, which was withdrawn with liberty to file a fresh petition with better particulars.

4. It may be suffice to state that during the pendency of this Writ Petition, memo of parties were amended whereby the Honâ??ble Lt. Governor, Govt. of NCT of Delhi, respondent no.1 was deleted as party and All India Council for Technical Education was impleaded as respondent no.2. In terms of the amended Memo of Parties, there are two respondents, (1) Netaji Subhash Institute of Technology and (2) All India Council for Technical Education.

5. In the counter-affidavit respondent no.1/NSIT has stated that it is a 100% grantee institution of Govt. of NCT of Delhi and the President of the Society is Honâ??ble Lt. Governor of Delhi. It is their case that the President i.e. Honâ??ble Lt. Governor of Delhi is competent to fix the criteria and guidelines for appointment to the Post of Director in the absence of notified Recruitment Rules. The NSIT is a Society registered under the Societies Registration Act. It was set up by the Government with an objective to provide excellence in instruction at the under-graduate and post-

graduate levels and undertake sponsor research in such branches of Engineering and Technology and Applied Science and Management Sciences as

Institute may think fit. It is also averred, that a proposal for giving the status of University to NSIT as approved by Legislative assembly of Delhi was

sent for final approval to the President of India and the same has been received back with observations for reconsideration of GNCTD. It is averred

that the Memorandum of Association and Rules and Regulations of NSIT do not prescribe any qualification / experience for the post of Director,

NSIT, which is one of the post of the officers of the Institute. The Director shall be the Principal Academic and Executive Officer of the Institute and

shall be responsible for the proper administration of the Institute and for imparting instructions and maintenance of discipline therein. It is averred that

the post of Director from the beginning has been filled by the Govt. of NCT of Delhi, Department of Training and Technical Education after the same

was advertised in the Newspaper. For the first time in the year 2009, the NSIT was directed to advertise the post of Director for which necessary

selection was made by the Selection Committee appointed by the Honâ??ble Lt. Governor of Delhi. It is also averred that the Department of

Training and Technical Education proposed that keeping in view the fact that NSIT is likely to be upgraded into a University as the Bill in this regard

has already been passed by the Legislative Assembly of Delhi, and in view of its future requirement, it was agreed that it may be advisable to include

a clause regarding possession of 10 years experience as Professor / equivalent by the applicant. The proposal was approved by the Chief Secretary,

Deputy Chief Minister and finally by the Honâ??ble Lt. Governor of Delhi and accordingly, the advertisement was issued for the post of Director,

NSIT. The pay scale of Director of NSIT is Rs.67,000/- â?? Rs.79,000 (HAG Scale). The Honâ??ble Lt. Governor of Delhi and the President of the

NSIT also constituted a Selection Committee to recommend the name of candidate for appointment for the post of Director, NSIT. The last date of

receipt of application was October 26, 2016 and 40 applications were received.

6. On the aspect of guidelines issued by AICTE, it is stated by the respondent no.1 / NSIT that All India Council for Technical Education (pay scale,

service condition and qualification for teachers and other academic Staff in Technical Institutions (Degree) Regulation, 2010 are regulatory only and

not mandatory. The institutes have to frame their own Rules and Regulations keeping in view the minimum criteria prescribed by AICTE. It is their

case, if any Institute is giving a higher scale of pay and wants more experienced persons for their faculty, no fault can be found with the same. As per

the AICTE, Regulation, 2010, the post of Principal / Director is in the pay band of PB-IV, i.e., Rs.37,000 â€" Rs.67,000 with AGP of Rs.10,000 plus

Special Allowance of Rs.3,000/- per month, whereas the post of Director of NSIT as per the advertisement is in the pay band of Rs.67,000 â€

Rs.79,000/- (HAG Scale) which is much higher and more superior post compared to AICTE norms. In other words, it is the case of the respondent

NSIT, the qualifications and experience prescribed by AICTE to the post of Director / Principal are minimum in the pay scale of PB-IV i.e.,

Rs.37,400 â€" Rs.67,000 with AGP of Rs.10,000/-. It is also stated that as per the advertisement dated November 30, 2016 for the post of Director,

NSIT, the petitioner was not eligible for the same as he did not possess 10 years of experience as Professor, which is the basic requirement. It is also

averred that in the past for appointment to the post of Director, NSIT, the criteria was fixed by the Chairman, BOG in consultation with the President

of the Society as is evident from the advertisements issued in 2009, 2010, 2013 and 2014 and current 2016 respectively. But keeping in view that NSIT

is likely to be upgraded to the University as the Bill in this regard has already been passed by the Legislative Assembly of Delhi, the Department of

Training and Technical Education, GNCTD proposed a clause regarding 10 years of experience as Professor / equivalent which was approved by the

President (NSIT), i.e., Honâ??ble Lt. Governor of Delhi. Pursuant thereto the advertisement was issued. In other words, respondents have justified,

the prescribing of experience of 10 years as Professor for the post in question.

7. I may note here that initially a short affidavit was filed by the AICTE, respondent no.2, wherein they referred to the Regulations made by AICTE

called as AICTE (pay scales, service conditions, qualifications of teachers and other academic staff in technical institutions) (Degree) Regulations,

2010 and the same are applicable to technical institutions and Universities including deemed Universities imparting technical education. They referred

to the fact that the post of Principal / Director shall be in the pay band of Rs.37,400 â€" Rs.67,000/- with AGP of Rs.10,000/- plus Special Allowance

of Rs.3,000/-per month. It is also stated that the State Governments taking into consideration other local conditions may also decide in their discretion

to introduce scales of pay higher than those mentioned in the Scheme and may give effect to the revised bands / scale of pay from a date on or after

January 1, 2006, however in such case, details of modifications proposed shall be furnished to the Central Government and central assistance shall be

restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s). Rejoinder

has been filed by the petitioner.

8. I may also note in terms of order dated May 18, 2017, this Court noting that the affidavit of AICTE it is not clear that respondent no.1 could have

put the condition in the advertisement which is under challenge and the same needs to be clarified, called upon the AICTE to file an affidavit in that

regard. AICTE filed an affidavit initially on July 14, 2017. This Court on September 11, 2017 noting that the affidavit filed by the AICTE is not

adverting to the issue on which the affidavit was required to be filed, granted further time to the AICTE to file another affidavit. Accordingly on

September 22, 2017, further affidavit was filed by AICTE, wherein in Para 6, AICTE has stated as under:

â??It is submitted that AICTE prescribe the minimum norms and standards including the qualification and pay scales of Faculty and

Principal / Director for all AICTE approved Technical Institutions. As stated above in the para 5 as per AICTE Regulations, 2010 State

Government is permitted to have higher scale of pay without expecting central assistance. In this case State Govt. of Delhi have adopted

higher scale of pay and hence might have asked for higher qualification and experience. It is pertinent to mention here that pay scales are

in general related to qualifications and experience of a candidate. Since the minimum requirements as per AICTE Regulations are fulfilled,

there is no deviation in norms.â??

9. The petitioner has also filed a response to this affidavit wherein the petitioner has denied the stand of the AICTE that the Govt. of NCT of Delhi

having adopted higher scale of pay might have asked for higher qualification and experience. According to the petitioner, the said stand is contrary to

the stand taken by the AICTE earlier.

10. Mr. Tarkeshwar Nath, learned counsel appearing for the petitioner submitted that AICTE has framed Regulations i.e. "Regulation 2010" vide

Notification dated March 5, 2010 in exercise of its powers conferred under Sub Section (i) of Section 23 read with Section 10(i) and (v) of All India

Council for Technical Education Act 1987 which was enacted by Parliament to govern the Technical Education throughout the country. Therefore, the

same are statutory and binding on all Technical Institutions throughout the country. In this regard he relied upon the judgment in the case reported as

(2016) 14 SCC 505 Pramod V. State of Maharashtra & Ors. wherein in Para 17 the Supreme Court held as under:

"Moreover, the Regulations of AICTE being statutory, unless these have been superseded or annulled by a competent authority, the

appellant's age of superannuation stood extended up to 65 years"

11. He further stated, AICTE Regulations have made it mandatory for the State Governments and Technical Institutions to implement the same as a

composite scheme without any modification except with regard to the date of implementation and scales of pay mentioned therein, leaving it open to

State Governments, taking into consideration other local conditions, in their discretion to introduce scales of pay higher than those mentioned in the

Scheme. He submitted, the Government of NCT of Delhi by its Office Order dated July 29, 2010 adopted the Regulation 2010 dated March 5, 2010 as

per the Cabinet decision dated July 22, 2010 to implement the revised pay scales and other service conditions in respect of different categories of

employees of Degree Level which includes the conditions of eligibility in respect of educational qualifications and teaching/research experience with

the same pay band of Rs.37,400-67000 with AGP of Rs.10,000/- plus special allowance of Rs.3,000/- for Principal/Directors in Technical Institutions

without any modification and NSIT, in turn, vide its office order dated August 16, 2010 with the approval of Board of Governors and in pursuance of

the office order dated July 29, 2010 of the Govt. of NCT of Delhi adopted the implementation of revised pay scales and other service conditions as

contained in AICTE notification dated March 05, 2010 and office order dated July 29, 2010 of the Govt. of Delhi in totality without any change or

modification. Thus it is also his submissions that the approval of BOG, NSIT is necessary for adoption of Regulation, 2010 after the Delhi Govt. adopts

the same as has been done in the present case where the Delhi Govt. has adopted Regulation, 2010 in totality first without any change or modification

by its office order dated August 16, 2010 and thereafter NSIT as stated above, in totto, without any change.

12. He stated, Sh. Puneet Kaushik (who had sworn the earlier affidavit dated July 14, 2017) filed third affidavit dated September 22, 2017 on behalf of

AICTE reiterating its stand as taken in earlier affidavits but expressed his opinion, (though without any basis, contrary to Regulation, 2010 and the

stand taken earlier) that the Government of NCT of Delhi in this case has adopted higher scale of pay and hence might have asked for higher

qualification and experience. Such an opinion is not binding on the court. He stated, the petitioner fulfills all the criteria with respect to qualifications

and experience for the post of Director as per Regulation 2010. He also fulfils all the criteria as per impugned advertisement except the experience of

10 years as Professor/equivalent. According to Mr. Nath, the petitioner is short by four months as Professor though he has teaching experience of 18

years out of which 9 years & 8 months as Professor. He would state Regulation 2010 has neither been amended/alterd till dated by AICTE who is

the Competent Authority. No document, contrary to the same has been placed on record by the respondents. According to him, Delhi Government too

has not prescribed any qualification and experience (though not competent) other than those mentioned in Regulation, 2010 nor the Delhi Govt. has

introduced scales of pay higher than those mentioned in the scheme. So is the case with NSIT. BOG, though is competent to prescribe the terms and

conditions for appointment of Director in terms of Clause 10A (viii) and (xi) (g) read with clause 22 but the same would attain finality subject to the

approval of Delhi Government. He stated, the legality or illegality of the said prescriptions are to be tested on the touchstone of Regulation, 2010

whether they are in consonance with the said Regulations. In case of repugnancy, AICTE Regulations would prevail as held by Supreme Court.

13. He stated, Delhi Government cannot stipulate norms of even higher standards in those areas which are covered by the norms of AICTE as held

by Supreme Court in Rungta Engineering College, Bhilai & Anr v. Chhattisgarh Swamy Vivekananda Technical University & Anr. cited as 2014 (11)

SCALE 582. He also relied upon Christy James & Ors v. State of Kerala Civil Appeal No. 4604/2016. He stated, the AICTE, Regulation, 2010 in any

case are necessarily to be followed by NSIT as they are, as on date, includes the criteria with respect to minimum experience. According to him, in

the present case, NSIT has compromised the standards in the impugned advertisement, which is not permissible. Condition with respect to physical

sciences as a requirement for the post of Director in a highly and specialized technical Institution is not understood. BE/B.Tech or ME/M.Tech has

been compromised in the advertisement. Post PhD publications and guiding PhD student being highly desirable has also been compromised. Insertion

of 10 years experience in the impugned advertisement without the approval of BOG or by Competent Authority, i.e., AICTE is not sustainable

contrary to AICTE, Regulation, 2010. The Delhi Government or LG or even BOG is not competent to change the criteria as fixed by AICTE as held

in catena of cases. Earlier two advertisements, though mention the same pay band of Rs.67000-79000/- have not fixed the criteria with respect to

experience of 10 years as Professor/equivalent. He stated, NSIT has not been upgraded into a University till date as contended by respondent No.1.

Even otherwise, the petition has to be adjudicated on the basis of status existing at the time when cause of action for the petition arose and admittedly,

NSIT was not a University at the time when impugned advertisement was published or at the time of filing the instant petition. In other words, rules

applicable at the time of advertisement will be considered more particularly in view of the settled law that rules if amended (which is not the case in

hand) would obviously be prospective in nature. He relied upon the judgment reported as 2016 (8) AD Delhi 678 Municipal Corporation of Delhi

Ministerial Staff Association (Regd.) v. The Director, Local Bodies, New Secretariat & Or.s He would state, bill for upgradation of NSIT into

University as stated by the respondent No.1 admittedly has not been finalized till date.

14. He stated, internal note annexed as Annexure R-1 confirms that the matter of release of impugned advertisement was not discussed in BOG but

was discussed in the chamber of Secretary, TTE, in the presence of Director, TTE and Spl. Director, TTE who have no authority in this regard. The

proposed changes were not made public as required under office order of DoPT O.M. dated October 13, 2015. The said internal note further confirms

that the signature of Chief Secretary or Dy. C.M. or L.G, though they are not competent, were taken on misrepresentation that the proposed

advertisement is similar to the one issued earlier when Director, NSIT was appointed previously. He relied on the judgment reported as 65(1997) DLT

840 B.N. Mishra v. L. Governor of Delhi & Ors to contend that the President of NSIT Society is not competent to prescribe the terms and conditions

of service for appointment to the post of Director. Experience is one of the conditions of the appointment. He further stated, the publication of

impugned advertisement itself is illegal as the same has been issued by the Director on behalf of Board of Governors, which is not permissible. The

same is required to be issued by Chairman, Board of Governors as has been done in past. The judgment annexed as Annexure R-2 (to the counter-

affidavit of respondent no.1) is not applicable in the present case in view of the fact that the dispute therein was between two Central Universities and

also the issue involved therein was left open to be decided by the Division Bench in appeal vide LPA No. 1195/2007. Therefore, the issue involved in

that case cannot be said to have attained finality. Additionally, judgments relied upon by the respondent No.1 are not applicable in the present case in

view of the facts and circumstances. None of the judgments cited by the Ld. Counsel for the respondent No.1 say that criteria fixed by AICTE with

respect to qualification and experience falling under the jurisdiction are changeable by the authority other than AICTE. During his submissions, Mr.

Nath also relied upon the judgment of the Bombay High Court (Aurangabad Bench) in the case of G.H.R. Education Foundation Society Jalgaon and

Anr. vs. State of Maharashtra and Ors. 2011 (5) MhLJ 267. He prays, the impugned advertisement be set aside and the petition be allowed.

15. On the other hand, Ms. Avnish Ahlawat, learned counsel for the respondent / NSIT would submit that there is no deviation from AICTE

Regulations. The NSIT is a 100% grantee institute of Govt. of NCTD. The President, Hon'ble Lt. Governor / Govt. has provided a Higher Scale

of Pay for the post of Director NSIT which is Rs.67,000 â Rs.79,000 (HAG) Scale as against the AICTE had recommended scale for the post of

Principal / Director in PB-IV Rs.37,000 â Rs.67,000 with AGP of Rs.10,000 plus special allowance of Rs.3000. The Regulations framed by the

AICTE are regulatory and not mandatory. The Institute is required to follow the minimum prescribed standards in the Regulations, but the Higher

Scales and qualifications can be prescribed by the Institute / Government for achieving excellence and betterment in the Higher Education. The

institute / GNCTD has to frame its own Service Rules and Regulations keeping in mind the minimum criteria prescribed by the AICTE. She submitted,

since there are no Recruitment Rules for the post in question, keeping in mind the requirement for the post of Director, the advertisement was issued.

At present there being no Chairman of the Board of Governors, the steps were taken up to fill up the post of Director and matter was sent by acting

Director for approval to the Nodal Department, i.e., DTTE GNCTD and the President of the Society, i.e., Honâ??ble Lt. Governor of Delhi and

under the clause qualification, 10 years experience as Professor / equivalent was mentioned in the advertisement with the approval of the President

NSIT, i.e., Honâ??ble Lt. Governor of Delhi in view of the fact that very soon NSIT is to be given the status of University. No fault can be found

merely because 10 years experience as Professor has been asked for the post of Director whose scale is almost double of the scale prescribed in the

Regulations. It can be seen that file was put up by the nodal department to the Dy. Chief Minister and then to the Honâ??ble Lt. Governor (the

President) who approved the requirement of experience of 10 years as Professor. The Petitioner being not eligible for the post of Director, NSIT

cannot be allowed to challenge the advertisement dated November 30, 2016. Mere eligibility as per AICTE Regulations does not give him any right to

be considered for the post. The Honâ??ble Lt. Governor of Delhi / President of NSIT constituted a selection committee to recommend the names of

the candidates for appointment to the post of Director NSIT in terms of Rule 20 of the NSIT Rules and Regulations. In all 43 applications were

received by the committee out of which 3 were received late and the committee after short listing called 20 candidates out of 40 eligible for interview

and Prof. J.P. Saini has been selected for the post of Director. Offer of appointment was issued on 4th May, 2017 and he has taken charge of the

post, subject to the result of this writ petition. Respondent no.2 also filed their affidavit confirming that states in their discretion can enhance the pay

scale for the posts and the same shall be furnished to the Central Government and the Central Governmentâ??s assistance shall be restricted to the

pay bands as approved by the Central Government and not to any Higher Scale of pay fixed by the State Governments. In the present case in any

case NSIT is not funded by the Central Government; it is 100% funded by the State Government therefore, there could not be any dispute on granting

higher pay scale. Since the affidavit of AICTE was silent on the issue of higher qualification prescribed, this Court in its order dated May 18, 2017

referring to the issue which arises for consideration, whether the Respondent No.1 could have put a condition of 10 years experience as Professor in

the advertisement issued for making appointment to the post of Director, NSIT directed AICTE to file a specific affidavit in this regard which has

been filed. She referred to Para 6 of the affidavit filed by AICTE on September 22, 2017.

16. Ms. Ahlawat referred to some of the provisions of Rules and Regulations. Ms. Ahlawat also stated that there is no challenge that the decision of

the President / Government to have 10 years experience as Professor for the post of Director is an arbitrary or irrational decision or that it is a

malafide exercise on the part of the President / Government.

17. She submitted the number of applications received with the present advertisement re-confirms the justification of the decision of the President /

Government to call for applications for the post of Director from the applicants having 10 years experience as Professor.

18. During the course of the arguments it was submitted by Mr. Nath that in the advertisement while prescribing educational qualification that the

candidate must possess a Doctorate Degree in any field of Engineering, Technology and specialization in any of the areas of endeavour of the Institute

(i.e., Electrical / Electronics and Communication / Instrumentation & Control / Computers & Information Technology / Bio-Technology /

Manufacturing processes and Automation Engineering or Physical Sciences), the physical sciences qualification is a deviation from AICTE

Regulations.

19. According to Ms. Ahlawat, the word physical science is being read by the petitioner in totally out of context. The word physical science does not

mean applied science of humanities. It is submitted that AICTE recognizes number of Engineering Degrees programme in Physical Science, i.e.,

Material Science, metallurgy, mathematics & computing, chemical science, electronics science, information science, computer science, nano science,

polymer science, manufacturing science, electronics & computer science, environmental science, pharmaceutical chemistry etc. Therefore, the

contention of the petitioner on this account is also to be rejected.

20. She would refer to the Judgment of the Supreme Court in the case reported as (2011) 4 SCC 606 Visveswaraiah Technological University and

Anr. v. Krishnendu Halder and Ors. wherein according to her it was held that the fixation of higher eligibility criteria than the minimum prescribed by

Central Governing Body, by University / State Government concerned to achieve excellence in education unless it is established that such standards

are arbitrary or adversely affect the standards, if any fixed by the Central body under the Central enactment cannot be faulted with. She stated, the

Supreme Court relied upon its earlier decision in the case of Preeti Srivastava (Dr.) v. State of M.P. (1999) 7 SC 120 wherein the Constitution Bench

of the Supreme Court in Paras 39, 45, 46, 47 and 48 categorically held that there is distinction in the word eligibility and qualification. Eligibility

connoting the minimum criteria for selection that may be laid down by the University or any Central statute while qualifications connoting the additional

norms laid down by the College or by the State. In every case, minimum prescribed standard has to be complied with, in addition, it may lay down

other additional norms for admissions or regulate admissions. She also relied upon the Judgment in the case of State of Tamil Nadu v. S. V. Bratheep

(2004) 4 SCC 513, wherein according to her, the Supreme Court in Paras 9, 10 & 12 categorically held that if higher is prescribed by the State

Government than what has been prescribed by the AICTE, it cannot be said that it is in any manner adverse to the standards fixed by AICTE. The

Court categorically held that minimum alone cannot be taken into consideration.

21. The contention that the purpose of fixing of norms by AICTE is to ensure uniformity with extended access of educational opportunity and such

norms should not be tinkered with by the State in any manner was rejected by the Supreme Court relying upon the case of Preeti Srivastava (Dr.)

(supra) that the State can always fix a further qualification or additional qualification to what has been prescribed by AICTE and that proposition is

indisputable.

22. She submitted in the case of Association of Management of Private Colleges v. All India Council for Technical Education (2013) 8 SCC 271, the

Supreme Court while dealing with the powers and function of AICTE held that the role of AICTE is only advisory and recommendatory in the sense

that AICTE can set standards of technical educational and if there is non-

compliance therewith, AICTE can only bring the same to the notice of UGC

it cannot by itself enforce or issue any sanction to or penalize Universities or their constituent and affiliated colleges. AICTE role is limited to the

purpose of ensuring proper maintenance of norms and standards in technical education system and compliance therewith.

23. She also submitted the reliance placed by the counsel for the petitioner in the case of Christy James & Ors. (supra) is concerned the same has no

applicability to the facts of this case as in that case the qualifications prescribed by AICTE for the post of Assistant Professor were diluted by Kerala

Government by framing a special Rule where the requirement was of Ph.D. Degree; first class Degree at Bachelor's or Master's level in the

appropriate branch of Engineering or Technology with three years experience in teaching / industry / research at the level of Lecturer or equivalent

was diluted by bringing Rule 6 (A) in the special Rules framed by the Kerala Govt. which reads as under: -

6(A)(2) candidates applying for the post of Assistant Professor are exempted from possessing Ph.D. Degree but they have to acquire

Ph.D. Degree within 7 years of appointment to the post of Assistant Professor as stipulated by the All India Council for Technical

Education.

The Supreme Court held that in view of the fact that Rule 6 (A) was not in consonance with the prescription made by the AICTE the same is liable to

be set aside.

24. According to Ms. Ahlawat there is no dispute that AICTE lays down the qualifications in order to maintain the standards of Education in the

Technical Institutions but qualifies the submission by stating they cannot be reduced. The issue in this case, according to her is the question of

prescribing higher qualifications. That issue has been dealt with by the Constitution Bench judgment in the case of Preeti Srivastava (Dr.) (supra),

S.V. Bratheep (supra) and Krishnendu Halder and Ors. (supra). She stated the case of Rungta Engineering College Bhilai and Ors. (supra) also has

no applicability to the facts of this case as the said case was dealing with a case where the College which was granted approval by AICTE, the

examining body refused to give affiliation on the ground that it does not fulfill the conditions required under the norms specified by AICTE. The

Supreme Court held that it is not the examining body who will go into this issue. They can only bring the shortcomings to the notice of AICTE and

seek appropriate action against the college and therefore, directed that affiliation be given. There was no issue of prescribing higher norms than the

AICTE norms or standards.

25. She further submitted that the reliance placed by the petitioner on the judgment reported as 2011 (5) Mh. 267 G.H.R. Education Foundation

Society Jalgaon & Ors. v. State of Maharashtra also has no applicability to the facts of this case as in that case, the Society had selected Director for

appointment to the Institute but the University was not giving approval to the same. The Division Bench held that when there is no dispute that

Respondent no.2 selected candidate possessing requisite educational qualification for being appointed to the post of Director of Technical Institute as

per the norms prescribed by AICTE, refusal by the University to grant approval to the appointment is erroneous and therefore, granted approval.

26. Mr. Anil Soni, Ld. Counsel for the AICTE, reiterates the stand taken in the various affidavits filed by AICTE.

27. Having heard the learned counsel for the parties, two issues arises for consideration in this petition, the first being whether a stipulation could have

been put / prescribed in the advertisement for making appointment to the post of Director, NSIT of a candidate having 10 years experience as

Professor / equivalent different from the one prescribed by the AICTE, secondly whether such a stipulation can be prescribed with the approval of the

President of the Society i.e Honâ??ble Lt. Governor of NCT of Delhi, contrary to the Rules and Regulations.

28. On the first question, there is no dispute that the AICTE is the regulatory body, which prescribes/empowered to issue, Regulations regulating the

terms/conditions of appointment to various posts in the technical institutes established with its approval, NSIT in this case. In fact, parties are at ad

idem on this proposition. There is also no dispute that as per the Regulations issued by the AICTE, the same stipulates the post of Director/Principal of

a technical institute to be in the Pay Band-IV, Rs.37,000-67000 with AGP of Rs.10,000/-, special allowance of Rs.3,000/-. Insofar as the post of

Director in NSIT is concerned, the same carries a pay scale of Rs.67000-79000. This aspect can be noted from the impugned advertisement issued by

the respondent No.1. In other words, the scale as prescribed by the respondent No.1 for the post of Director, NSIT is higher than the one prescribed

by the AICTE in its Regulations. The submission of Ms. Ahlawat based on the Regulation, 2010 that gives a State Government, discretion to introduce

scales of pay, higher than those mentioned in the Regulations and that as the NSIT is likely to be upgraded in a University as the Bill in that regard has

already been passed by the Legislative Assembly of Delhi, a higher pay scale was prescribed, is appealing. So it follows, if a pay scale attached to a

post is higher than one stipulated by the AICTE in its Regulations 2010, the respondent No.1 would be justified to have a higher eligibility condition for

appointment to such post, the post of Director, NSIT in this case.

29. The submission of Mr. Tarkeshwar Nath that the respondent No.1 is required to follow the eligibility as prescribed by the Regulations 2010, of

AICTE is without any merit for more than one reason; (i) the said eligibility is for a post in the pay scale of Rs.37000-67000 with AGP of Rs.10000/-

in PB-IV; and (ii) the petitioner having not disputed, rather accepted the fact that the post of Director, NSIT is in the scale of Rs.67000-79000/-, the

requirement for appointment to a post carrying such a scale must be with a higher eligibility condition cannot be contested. Further her submission that

the stipulation prescribed by the AICTE in terms of Regulations 2010 are the minimum standards to be maintained by an Institute for making

appointment to the post of Director is also appealing.

30. The issue raised is no more res-integra in view of the judgment of the Constitution Bench of the Supreme Court in the case of Preeti Srivastava

(Dr.) (supra), wherein in para 39, the Supreme Court held as under:-

â??39. The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But,

the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or

regulation framed by the Central Government in the exercise of its powers under Entry 66, List I. At times, in some of the judgments, the

words ""eligibility"" and ""qualification"" have been used interchangeably, and in some cases a distinction has been made between the two

words -

eligibility"" connoting the minimum criteria for selection that may be laid down

by the University Act or any Central Statute, while

qualifications"" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down

by the Central Statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other

additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with

or in a manner which does not dilute the criteria so laid down.â??

31. The Supreme Court, in the case of State of Tamil Nadu v. S. V. Bratheep (supra), in paras 10, 12 and 13 held as under:-

10. Argument advanced on behalf of the respondents is that the purpose of fixing norms by the AICTE is to ensure uniformity with extended

access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument

ignores the view taken by this Court in several decisions including Dr. Preeti Srivastav's case that the State can always fix a further

qualification or additional qualification to what has been prescribed by the AICTE and that proposition is indisputable. The mere fact that

there are vacancies in the colleges would not be a matter, which would go into the question of fixing the standard of education. Therefore,

it is difficult to subscribe to the view that once they are qualified under the criteria fixed by the AICTE they should be admitted even if they

fall short of the criteria prescribed by the State. The scope of the relative entries in the Seventh Schedule to the Constitution have to be

understood in the manner as stated in the Dr. Preeti Srivastava's case and, therefore, we need not further elaborate in this case or consider

arguments to the contrary such as application of occupied theory no power could be exercised under Entry 25 of List III as they would not

arise for consideration.

12. One other argument is further advanced before us that the criteria fixed by the AICTE was to be adopted by the respective colleges and

once such prescription had been made it was not open to the Government to prescribe further standards particularly when they had

established the institutions in exercise of their fundamental rights guaranteed under Article 19 of the Constitution. However, we do not think

this argument can be sustained in any manner. Prescription of standards in education is always accepted to be an appropriate exercise of

power by the bodies recognising the colleges or granting affiliation, like AICTE or the University. If in exercise of such power the

prescription had been made, it cannot be said that the whole matter has been foreclosed.

13. In this view of the matter, we think these appeals deserve to be allowed in part and the order of the High Court stands modified to the

extent of stating that it is permissible for the State Government to prescribe higher qualifications for purposes of admission to the

engineering colleges than what had been prescribed by the AICTE and what has been prescribed by the State and considered by us is not

contrary to the same but is only complementary or supplementary to it.â??

32. The Supreme Court in the case of Visveswaraiah Technological University and Anr. (supra), has in paras 14(i) and 15 held as under:-

â??14. (i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely

affect the standards laid down by the Central Body/AICTE. The term `adversely affect the standards' refers to lowering of the norms laid

down by Central Body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those

prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered

as adversely affecting the standards laid down by the Central Body/AICTE.

xxx xxx xxx

15. The primary reason for seats remaining vacant in a state, is the mushrooming of private institutions in higher education. This is so in

several states in regard to teachers training institutions, dental colleges or engineering colleges. The second reason is certain disciplines

going out of favour with students because they are considered to be no longer promising or attractive for future career prospects. The third

reason is the bad reputation acquired by some institutions due to lack of infrastructure, bad faculty and indifferent teaching. Fixing of

higher standards, marginally higher than the minimum, is seldom the reason for seats in some colleges remaining vacant or unfilled during a

particular year. Therefore, a student whose marks fall short of the eligibility criteria fixed by the State/University, or any college which

admits such students directly under the management quota, cannot contend that the admission of students found qualified under the criteria

fixed by AICTE, should be approved even if they do not fulfil the higher eligibility criteria fixed by the State/University.â??

33. The reliance placed by Mr. Tarkeshwar Nath on the judgment of the Supreme Court in the case of *Rungta Engineering College, Bhilai & Anr v.*

Chhattisgarh Swamy Vivekananda Technical University & Anr (supra) by referring to para 33 is concerned, in the said para, the Supreme Court had

referred to its judgment in the case of *State of T.N. v. Adhiyaman Educational & Research Institute*, (1995) 4 SCC 104 and held that the arguments

that the State Legislature can stipulate norms of higher standards even in those areas, which are covered by the AICTE is clearly rejected (by the

Supreme Court). I may state here that the Supreme Court in its judgment in the case of *Visveswaraiah Technological University and Anr. (supra)* has

already clarified its observations in the case of *State of T.N. v. Adhiyaman Educational & Research Institute (supra)*, by stating as under:-

14. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained

unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates,

para 41(v) and (vi) of *Adhiyaman* would come into play and automatically the lower minimum standards prescribed by AICTE alone would

apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in *Dr. Preeti Srivastava*

and the decision of the larger Bench in *S.V. Bratheep* which explains the observations in *Adhiyaman* in the correct perspective. We

summarise below the position, emerging from these decisions :

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the

standards laid down by the Central Body/AICTE. The term 'adversely affect the standards' refers to lowering of the norms laid down by

Central Body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those

prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered

as adversely affecting the standards laid down by the Central Body/AICTE.â??

34. From the above, it is clear that the Supreme Court has on the basis of its judgment of the Constitution Bench in Preeti Srivastava (Dr.) (supra) and

the decision of the larger Bench in S.V. Bratheep (supra) has clarified that prescribing higher standards for admission by laying down qualifications in

additional to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education,

will not be considered as adversely affecting the standards laid down by the central body/AICTE. Since the limited reliance has been placed by Mr.

Tarkeshwar Nath on the judgment of the Supreme Court in the case of Rungta Engineering College, Bhilai & Anr v. Chhattisgarh Swamy

Vivekananda Technical University & Anr (supra) with regard to para 33, wherein the Supreme Court had referred to the judgment in State of T.N. v.

Adhiyaman Educational & Research Institute (supra), which was already clarified by the Supreme Court in its earlier judgment in Visveswaraiah

Technological University and Anr. v. Krishnendu Halder and Ors. (supra) and which was not brought to the notice of the Supreme Court and such a

conclusion being based on its Constitution Bench judgment in the case of Preeti Srivastava (Dr.), the position of law must be held to be that higher

standards can be prescribed.

35. Insofar as the judgment relied upon by Mr. Nath in the case of G.H.R. Education Foundation Society Jalgaon & Ors. (supra), is concerned, there

the Division Bench of the High Court was concerned with a dispute, whether the respondent no.2 the selected candidate possessed the requisite

educational qualification for being appointed to the post of Director of Technical Institute as per the norms prescribed by AICTE, which appointment

was refused by the University inter alia on the ground he did not fulfill the norms as prescribed by the AICTE. It was held by the High Court that the

respondent no.2 fulfills the qualification as prescribed by the AICTE and directed the appointment of respondent no.2. The said judgment has no

applicability in the facts of this case.

36. Insofar as the second issue i.e. whether such a stipulation could have prescribed with the approval of the President of the Society contrary to the

Rules and Regulations is concerned, to answer this issue, it is necessary to reproduce some of the relevant provisions of the Rules and Regulations of the NSIT. Rule 1(b)(iii) defines 'President' to mean the Hon'ble Lt. Governor. Rule 2 defines 'Authorities of the Institute' to include Board of Governors. As per Rule 8, which relates to Board of Governors, the general superintendence, direction and control of the affairs of the Institute shall be vested in the Board of Governors. The Board of Governors shall consist of 13 Members including the Chairman. Rule 10 defines the powers and functions of the Board of Governors, which includes sub-rule(vii), empowering the Board of Governors to create such posts as it may consider necessary for carrying on the work of the Institute and to prescribe the terms and conditions of service of appointment to the posts taking full cognizance of such provisions existing in the University of Delhi and Ordinance (xii) of the University of Delhi; Rule 10 (viii) relates to making appointments to all Group A posts in the Institute. Clause (g) of Rule 10(xi) stipulates framing, classification and method of appointment and determination of the terms and conditions of service in respect of posts under the control of the Institute. Rule 11 stipulates that the Chairman of the Board of Governor shall preside over the meeting. In case of his absence, the Chairman for conducting that meeting shall be elected from amongst the Members present. The Board of Governors by a resolution can delegate to the Director or to a Committee such of its powers as it may deem fit. Rule 20 relates to Selection Committees and insofar as the selection to the post of Director is concerned, the Selection Committee shall be formed by the Chairman, Board of Governors in consultation with the President except that the first Director shall be appointed by the Government. The Officers of the Institute includes the President; Chairman; Board of Governors; Director etc. Rule 22A empowers the President to cause an inspection to be made by such person or persons as he may direct of the Institute itself, building, laboratories and equipment and also of the examinations, teaching and other work conducted or done by the Institute. In that regard, the President shall in every case give notice to the Institute of his intention to cause an inspection or inquiry. The President may address the Chairman, Board of Governors/Director with respect to result of such inspection or inquiry. The President is empowered to annul any proceedings of the Institute, which is not in conformity of the Rules and Regulations of the Institute. Rule 22(b)

empowers the Chairman to exercise all powers of the Board of Governors and inform the Board of Governors of the action taken for its approval in

the next meeting. Rule 22(c) relates to Director. For the purpose of this case, suffice to note that in the event of the post of Director remaining vacant

for any reason, it shall be open to the Board of Governors to authorize a Senior Professor in the service of the Institute to exercise such power,

functions and duties of the Director as the Board of Governors may deem fit.

37. From the reading of the aforesaid provisions of the Rules and Regulations, it is clear that the power to create posts and to make appointments to all

Group A posts lies with the Board of Governors. The power includes framing, classification and method of appointment and determination of the terms

and conditions of service in respect of all posts under the control of the Institute. It is the Chairman of the Board of Governors, who shall preside over

the meeting. In his absence, the Chairman for conducting meeting shall be elected from amongst the Members present. The President is to cause

inspection about the working of the Institute. The President has to ensure that the proceedings of the Institute are in conformity with the Rules and

Regulations of the Institute. The role of the President is supervisory. The selection committee shall be formed by the Chairman of the Board of

Governors in consultation with the President.

38. The plea on behalf of respondent no.1, to justify the approval of the eligibility by the President, in view of the position of the Chairman of the Board

of Governors was vacant, is untenable as it is stipulated in the Rules that the other Members of the Board of Governors can choose a Chairman to

preside over the meeting.

39. The President has power to annul the proceedings, if it is not in conformity with the Rules and Regulations. This power is different and distinct

from the power to prescribe method of appointment, which power exists only with the Board of Governors. Hence, the incorporation of the eligibility

of 10 years as Professor / equivalent could not have been done with the approval of the President.

40. It is a settled law that Rules and Regulations have to be implemented in the manner they have been laid down. Further, the issue with regard to the

power of the President to prescribe the eligibility condition for appointment is no more res-integra in view of the judgment of this Court as relied upon

by Mr. Tarkeshwar Nath in the case of B.N. Mishra (supra). From the facts, it is noted that the dispute relates to Delhi Institute of Technology, an autonomous Institution receiving full grant in aid from the Government of Delhi and Dr. B.N. Mishra, who till his attaining the age of superannuation on May 31, 1996 was its Director. Dr. Mishra was associated with the Institute since its inception in the year 1983, much before attaining the age of superannuation. He applied for re-employment. The application was addressed to the President of the Society. His grievance was that he was not even considered for re-employment and consequently the order of the Board of Governors dated May 16, 1996 directing one Professor Raj Senani to look after the work of Director with effect from June 01, 1996 in addition to his normal duties was illegal, arbitrary and was passed with mala fide intent, ulterior motives, in violation of Memorandum of Association, Rules and Regulations as well as Service Rules of the Society as applicable to the Institute. He filed a petition before this Court seeking a direction quashing the Memorandum and for direction that the respondents to take a decision for his re-employment/contractual appointment. The respondents therein had justified the impugned action. This Court referring to the Memorandum of Association and Rules and Regulations of the Institute, including Rule 4 (xix) under the title FUNCTIONS, (which is reproduced as under) and clause 10, which deals with powers and functions of Board of Governors more particularly Clauses 10 (A)(i) and 10 (A) (vii), (which read as under) and also Clauses 11(1) and 24, (which read as under) and the resolution of the Board of Governors dated June 20, 1996, (the relevant portion of which read as under), had come to a conclusion that the Board of Governors was so overtaken by the decision of the Government that it did not consider it fit to discuss the matter. It was held by the Court that the Board had completely abdicated its powers. All the Rules and Clauses referred to above were ignored and the Resolution of the University was made to take wings and fly away. The Court refused to accept that the matter of re-employment was considered by the Governing Body. The writ petition was allowed and the direction was given to consider the re-employment of the petitioner within a month.

â??(xix) to frame Rules and Regulations and bye- laws for service conditions of all categories of its employees taking full cognizance of

such provisions existing in the University of Delhi and in accordance with the Ordinance Xii of the University of Delhi wherever

applicable;â??

Powers: 10 (A)(i) to exercise the executive authority of the Institute subject to police directives of the General Council and/or the

government and/or the University of Delhi. The policy directives of the University of Delhi will remain in force till the Institute remains

affiliated to the University of Delhi Within the meaning of clause (a) of section 2 of the Delhi University Act 1922;

10(A)(vii) to create such posts as it may consider necessary for carrying on the work of the Institute and to prescribe the terms and

conditions of service and appointment to these posts taking full cognizance of such provisions existing in the University of Delhi and

ordinance Xii of the University of Delhi wherever applicable;

Meetings: Clause 11(1): The Board of Governors shall meet at least once in three months.

24. Transitory Provisions: Subject to the formulation of service conditions of all categories of employees of the Institute the following

transitory provisions shall apply;

a) A person employed on a permanent basis shall be entitled to be in the service of the Institute until he completes the age of Sixty.

b) If the Board of Governors is satisfied, it may reemploy any distinguished teacher, after he has attained the age of sixty years in

accordance with the provisions of the ordinance Xii of the University of Delhi.

Note : Director, and all other categories of staff recognised as Teachers by the University of Delhi are Teachers for this purpose.

d) Rest of the service conditions including provisions for LTC, HBA, VA, Medical facilities etc. will be as per Government Rules till the

Society frames its own rules.

Resolution

In connection with the retirement of Dr.B.N.Mishra, the Chairman informed the Board that this issue was discussed at length in the

Standing Committee and brought to the attention of the Board the following observations of the 11th meeting of the Standing Committee of

the Board held on 13.6.96:

In spite of the fact that Dr.B.N.Mishra was informed about his forthcoming retirement on 31.5.96 by a communication vide ref. U.O. No.

PA/DTTE/96/109 dated 23.4.96 of the Secretary (TE), he was repeatedly insisting on the question of his re-employment. The Standing

Committee considers this kind of action on the part of Dr.B.N.Mishra not in good taste and considering that the L.G in his capacity as

President of DIT Society has not agreed to his re-employment, recommends that no further action should be taken in this matter.

In this context, the Chairman pointed out that although there were repeated representations and pressures on him to call a meeting of the

Board to consider this issue, the meeting was not called as no discussion was considered desirable to overrule the decision of the Govt.

which has categorically stated by an order issued on 23rd April, 1996 that Dr.Mishra must retire on 31st May, 1996. The question,

Therefore, of his reemployment can not be considered as a matter of right and since Dr.Mishra has already retired and has handed over the

charge, this question cannot be reopened and should be declared as closed. The observations and recommendations of the Standing

Committee of the Board noted above, were duly endorsed by the Board.

41. From the reading of the judgment, it is clear that even in the case of Dr. B.N. Mishra, this Court had come to a conclusion that it is the Board of

Governors, which was the Authority concerned to decide the issue of re-employment of Dr. B. N. Mishra.

42. The position of rules in the case in hand being same, the eligibility prescribed and advertisement dated 30.11.2016 must be held illegal. Ordered

accordingly. Accordingly the consequential decision of appointing Professor J.P. Saini, which appointment was made subject to the outcome of the

writ petition vide order dated December 24, 2016 in LPA No. 724/2016 is set aside. It is made clear, nothing precludes the respondent No.1 to make

appointment to the post of Director by following the procedure as laid down in the Rules and Regulations. The writ petition is disposed of. No costs.

CM No. 47737/2016 (for stay)

Dismissed as infructuous.