

(1994) 02 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14064 of 1989

Shanker Ji Singh

APPELLANT

Vs

Institute of Engineering and Rural Technology

RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 162, 21

Citation : (1994) 2 AWC 903

Hon'ble Judges : A.P. Singh, J

Bench : Single Bench

Advocate : B.P. Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Singh, J.—Sri Shankerji Singh Petitioner has filed the present writ petition with the prayer that the Director of the Institute of Engineering and Rural Technology, Allahabad (hereinafter called the "IERT") may be directed by a writ of mandamus to allow him. to join his post of Engineering Instructor/Assistant Lecturer in I.E.R.T. He has also prayed for issue of order to accord all benefits which are obviously attached to his joining of the post.

2. Brief facts involved in this writ petition are that the Petitioner was appointed as Engineering Instructor, which post is now equivalent to that of Assistant lecturer by order dated 22nd October, 1980 which was to be effective from 1-10-1980 in the pay scale of Rs. 325-575. A copy of the lettes of appointment has been filed as annexure 1 to the writ petition. The order reads as follows:

Allahabad Polytechnic, Allahabad AD HOC APPOINTMENT No. AP/PF/4201

dated 21-11-80

Sri Shanker Ji Singh, M.T. Line 117/9, Cariappa Road, Allahabad.

You are hereby temporarily appointed as Engg. Instt. on Rs. 325/- P.M. Three hundred Twenty five plus D.A. in the grade of Rs. 305-10-375-12-495-16-575

payable from Rac A/c w.e.f. 1-10-80.

You should join your post latest by

Your services are terminable at any time without notice.

Copy to;-- 1. Account Section (Asstt)

(R.N. Kapoor) Principal

3. A perusal of the order would show that the Petitioner was appointed on temporary basis in the pay scale of Rs. 305-10-375-12-495-16-575 on a consolidated salary of Rs. 325/- per month plus D.A. It was made clear that his services will be terminable at any time. Whereafter Petitioner was transferred from one post to another post in the service of I.E.R.T. and finally he was sent on deputation in the service of Navodaya Vidyalaya Samiti by order date 26-11-86. The order, which is important for the purposes of this case, reads as follows:

INSTITUTE OF ENGINEERING AND RURAL TECHNOLOGY 26, Chatham Lines
(near Prayag Station Allahabad)

211 002-U.P. (India)

IERT/Estab/2723

dated 26-11-86

Consequent to his appointment as W.E.T. (Craft Teacher) by the Navodaya Vidyalaya Samiti Shastri Bhawan, New Delhi, Shri Shankerji Singh has been relieved of his duties in this Institution provisionally with effect from 26th November, 1988 A.N.

His lien in this institution has been retained for two years from the date of his relief.

The relief of Sri Shankerji Singh is provisional subject to production of No Dues Certificate which he has not been able to submit due to strike by the employees of this institution.

Director

Copy forwarded for information and necessary action to:

1. The Director, Navodaya Vidyalaya Samiti, Room No. 115, Ist Floor, C-Wing, Shastri Bhawan, New Delhi--110 001.

4. A reading of the order would show that consequent to Petitioner's appointment as Craft teacher in the Navodaya Vidyalaya Samiti, he was provisionally relieved from his duties in the I.E.R.T. with effect from 26-11-86. His lien in the I.E.R.T. was, however, retained for a period of two years. Annexure 9 is the order dated 10-11-86 appointing the Petitioner in the Navodaya Vidyalaya Samiti as Craft teacher which also shows that his appointment was

made on deputation Since this order is also material for deciding the fate of the case, the same is reproduced below:

No. 1-30/85-NVC Navodaya Vidyalaya Samiti. Room No. 116, Ist Floor, C-Wing, Shastri Bhavan, New Delhi-110 001. Dated 10-11-86.

The Chairman, Navodaya Vidyalaya Samiti is pleased to appoint Shri Shanker Ji Singh as WET (Craft Teacher) of Navodaya Vidyalaya at Vill. Jangal Agrahi on deputation. The terms and conditions of deputation are enclosed. You are requested to get yourself relieved immediately and report to the principal, Navodaya Vidyalaya Vill. Jangal Agrahi/District Magistrate, Gorakhpur, U.P. latest by 24th November, 1988 failing which the offer will stand automatically withdrawn The date of reporting to the principal/ District Magistrate will be treated as your joining it the Navodaya Vidyalaya Samiti. There is a possibility of permanent absorption of the candidate in the Samiti after completion of two years provided his/her services are found satisfactory. The Samiti reserves the right of accepting or rejecting retention of such employees on permanent basis. Please send your acceptance to the Director Navodaya Vidyalaya Samiti Telegraphically at the given address:

Sh. Shanker Ji Singh, M.T. Line, 117/9, Karriyyapa Road, Allahabad (U.P.)

(K.S. Sharma) Director

Copy to

1. Principal, Navodaya Vidyalaya, Vill. Jangal Agrahi, Distt. Gorakhpur, U.P.

Subsequently, by letter dated 8-11-88. Dean, Mechanical Engineering Faculty. I.E.R.T., Allahabad was requested by the Deputy Director of Navodaya Vidyalaya Samiti to grant one year's extension to the Petitioner's deputation in the Navodaya Vidyalaya Samiti with effect from 28-11-88. Relevant portion of this letter, which is annexure 10 to the writ petition, reads as follows :

Subject: Extension in deputation period in respect of Shri/Smt. Shri Shankerji Singh WET.

Sir.

Please refer to this office letter of even number dated 7-9-88 on the above mentioned subject vide which you were requested to grant extension in lieu of deputation period of one another year of above mentioned teacher, Shri Shanker Ji Singh is working in Navodaya Vidyalaya Jangal Agrahi, Gorakhpur, U.P. on deputation from Institute of Engineering and Rural Technology, 26, Chatham Lines, near Prayag Station completing his deputation period on 27-11-88.

You are again requested to grant extension in Deputation period of one another year w.e.f. 28-11-88. An early reply is solicited.

5. However, by order dated 7-11-88 the Director of I.E.R.T. refused to grant the extension of deputation for the reason that the term of on-going Windmill

Research & Development project in which Petitioner had his lien had already expired due to the closure of the Department, i.e. Department of Non Conventional Energy Source, Ministry of Energy Govt. of India.

Subsequently however Petitioner made an application dated 18-11-88 which is annexure 12 to the writ petition, insisting for extension of his deputation period by one year whereupon the Director I.E.R.T. wrote to the Deputy Director, Navodaya Vidyalaya Samiti that the matter was being put up before the Managing Committee of the I.E.R.T. whose decision shall be communicated as soon as it is taken. Thereafter, by letter dated 20-4-89 the Director informed the Deputy Director, Navodaya Vidyalaya Samiti to the effect that the I.E.R.T. had no objection to the extension of deputation and retention of lien of the Petitioner Craft Teacher for a further period of one year from 27-11-88. It was also made clear that the institute has no objection if the Petitioner is finally absorbed in the Navodaya Vidyalaya Samiti. Thus, by order dated 20-4-89, a copy whereof is annexure 14 to the writ petition, the Petitioner was allowed to continue in the Navodaya Vidyalaya Samiti for a period of one year from 27-11-88, but before the period of one year from 27-11-88 could expire, Petitioner was relieved from Navodaya Vidyalaya Samiti on 10-5-89. Consequently, he made an application to the Director, I.E.R.T., which is annexure 15 to the writ petition, by which he requested that he had been relieved on 10-5-89 and has come to report to join the service in the I.E.R.T. on 11-5-89 and he may be allowed to join. This request of the Petitioner, however, was not accepted and he was not allowed to join. Hence, this writ petition.

6. The case of the Respondent, on the other hand, is that the Petitioner was appointed against a temporary post under a project which has already come to an end. Petitioner of his own applied for appointment in Navodaya Vidyalaya Samiti where he was allowed to join and he of his own joined the service of Navodaya Vidyalaya Samiti. He was never sent on deputation and his services in the I.E.R.T. did not continue thereafter firstly for the reason that he joined the service of Navodaya Vidyalaya Samiti and secondly that the Windmill Research & Development project under which he was appointed had come to an end and the post was no more available to appoint him again. It was further contended by the Respondent that Petitioner was never sent on deputation nor his lien was retained in the service of I.E.R.T. inasmuch as he was neither in permanent service of I.E.R.T. nor there was any provision for retention of his lien. It is also asserted that the Petitioner's appointment having been made under a particular project, his services automatically came to an end with the termination of that project and the Petitioner cannot be granted the relief claimed by him in the writ petition. The Respondent further contended that I.E.R.T. being a private body and not governed by any statutory provision nor being agency or instrumentality of the Government either of the State or the Central, as such, the relief claimed in the writ petition cannot be allowed and no mandamus can be issued to the Respondent. In short, the maintainability of the writ petition was opposed on the ground that the Respondent was a private body and was not a State or an

Authority under the provisions of Article 12 of the Constitution, as such, writ petition was not maintainable. It was also contended that the relief of reinstatement in the service could only be allowed when there was breach of some provision of law and since no breach of any provision of law has been disclosed in the writ petition, as such, no such relief can be allowed.

7. In rebuttal, the Petitioner has contended that he was not appointed under any particular Scheme as will appear from the order of appointment and also from various orders of transfer His appointment was made in the service of I.E.R.T. and he was transferred from one Scheme to another treating him as the employee of I.E.R.T. It was also contended by the Petitioner that the Respondent is absolutely wrong in saying that he was appointed in the service of Navodaya Vidyalaya Samiti after his termination of service from the I.E.R.T. According to him, the Petitioner was sent on deputation by the I.E.R.T. in the Novodaya Vidyalaya Samiti and by specific order his lien in the I.E.R.T. was retained and he was allowed to work in the Novodaya Vidyalaya Samiti for a total period of three years and since he came back in the service of the I.E.R.T. within the said period of three years, he was entitled to join the service of I.E.R.T. and the I.E.R.T. was under obligation to allow him to join and treat him as it's employee. It was further contended that I.E.R.T. is an instrumentality of the State and, therefore, the writ petition is maintainable inasmuch as the I.E.R.T.'s stand in not allowing the Petitioner to work and continue as before in it's service is not warranted by law and is wholly arbitrary, as such, writ for the issue of directions in the nature of Madamus for granting the reliefs claimed in the writ petition is maintainable.

8. I have heard Sri B. P. Singh on behalf of Petitioner and Smt. Ramo Devi Gupta on behalf of the Respondents. On the request of the learned Counsel for the Respondents, I take up the contentions of the Respondent regarding maintainability of the writ petition first.

9. It is argued by the learned Counsel for the Respondent that the writ petition is not maintainable for two reasons. First that tile Respondent I.E.R.T. is not a State or instrumentality of the State or an authority under Article 12 of the Constitution, as such, no writ petition can be maintained for grant of Mandamus against it. Second contention of the learned Counsel for the Respondent was that the service of the Petitioner being contractual with the I.E.R.T. no order for restoration of Petitioner's services in I.E.R.T. can be made as the Petitioner has no legal right to the post in question as there was no statutory provision governing the service of the Petitioner.

10. On the other hand, learned Counsel for the Petitioner has argued that since there has been no termination of Petitioner's service, the question of his reinstatement in the service of the I.E.R.T. does not arise. The contention made by the Petitioner's learned Counsel is that this writ petition has been filed against the high handedness of the Respondent who without terminating the service of the Petitioner is not allowing him to join the service on completion of his deputation, which according to the Petitioner, he was entitled to join due to

his lien having still been retained in the I.E.R.T, It is further argued that the I.E.R.T. is an instrumentality of the Government inasmuch as it is performing important governmental functions and is working mostly on the finances provided and under the control of the State and the Central Government, as such, it comes within the purview of "other Authority" or in any case it is an instrumentality of the State under Article 12 of the Constitution and, therefore, the writ petition for issue of the writ of Mandamus prayed for by the Petitioner is maintainable.

11. So as to judge the rival contentions of the learned Counsel for the parties made on the point as to whether the I.E.R.T. is the instrumentality of the State or it is an Authority within the meaning of the term under Article 12 of the Constitution, it is necessary to examine the instruments under which the I.E.R.T. has been established.

12. I.E.R.T. has been registered as a Society under the Societies Registration Act, 1860. Memorandum of Association of the Society and the Rules governing the functions of the Society on which reliance has been placed by both the sides gives out the objects for which the Society was constituted the composition of the Society and the area of its functioning and Govt. Control over the Society.

13. A reading of the Memorandum of Association and the Rules, which provided for the functioning of the Society both of which are available on the record of the case would disclose the following glaring aspects regarding government's participation in the Society and its control over the functioning of the Society which runs the I.E.R.T.

14. Para 3 of the Rules of the Society gives composition of the Society. It would show that out of the total of 13 members of the Society seven members from serial No. 4 to 10 are government officials by virtue of their office under the government whereas as per Clause (2) of Para 3 the appointment of the Chairman of the Society is to be made by the State Government from the panel to be given by the Society. Clause (3) of para 3 of the Rules would also show that the Society can admit new members only with the approval of the Government. Para 4 of the Rules provides for composition of the Board of Management of the Society. Here also out of 13 members, 7 members from serial Nos. 4 to 10, are government officers who are members of the Board by virtue of their office under the Government Similarly, the Chairman of the Board of Management has to be appointed by the State Government. in para 17 of the Rules which provides for tenure of the members, of the Board of Management and the Society, would show that the government officers who are made members (Sl. Nos. 4 to 10) have to cease to hold office as soon as they cease to hold the particular post by virtue of which they had become members of the Society or the Board of Management Para 12(8) of the Rules would show that proceedings of the meeting of the Society and the Board of Management is to be furnished to the State Government. Similarly, under para 13(i) in the matters of policy, directions from the State Government have to be obtained and carried out by the Society

and the Board of Management. Under Clause (2) of Para 13 the Government has been empowered to issue directions and the Governor has power to call for returns, accounts and other information's relating to the properties and activities of the Society as he may wish. In para 14 it is provided that powers and functions of the Board of Management are to be subject to the power of the Government and that of the Governor under para 13. Similarly, sub-clause (c) of Clause (iii) of para 14 authorises the Society to accept grants and loans from Khadi Board or Khadi & Village Industries Commission OT from similar Government and non Government organisations within the guidelines laid down by the loaning institution and to undertake production and sale of Khadi and Village Industries products. Clause (iii)(d) of para 14 also provides that the Board will cooperate with the organisations (Government/Semi-Government/ Non-Government), Industry (Private/Public-Sector), State/Central Government in matters of scientific Research and Development and receive grants, loans etc. from them. Para 14(vi) empowers the Society to prepare the budget in every year and sanction expenditure within the limits of the budget as approved by the Government for the activities financed by the State Government. Sub-clause (b) of Clause (vii) of para 14 provides that the Society shall conduct trade courses, short-term refresher courses and training courses for youths for the benefit of the Society. Clause (xvi) of para 14 provides that the Society shall consider and pass resolutions on the annual accounts and other financial estimates of the Institute as it thinks fit and submit a copy of the resolution passed thereon to the State/Central Government. Sub-clause (b) of Clause (xvii) of para 14 provides that the Board will abide by the Grant-in-aid Rules issued by the Director of Technical Education for conduct of Diploma courses financed by the State Government. Finally Clause (xix) of para 14 requires the Society to perform such other functions as may from time to time be assigned to it by the Central or the State Government and to affiliate, admit, recognise or otherwise utilise other institutions for carrying out the aforesaid objects. Similarly, under para 23 of the Rules, the Society has the power to alter, extend or abridge the purpose or purposes for which it is established with the prior approval for the State Government.

15. Memorandum of Association, which is annexure 2 to the supplementary affidavit filed by the Respondent gives out objects of the Society in para 3. It has been given in Clause (iv) of para 3 that the object of the Society as per the Memorandum of Association is to make arrangements for examinations conducted by the State Board of Technical Education and Training, U.P. in accordance with the prescribed Rules and Regulations. In clause (xix) of para 3 it is required to follow Rules and orders of the State Government regulating the grants-in-aid for the activities financed by the State Government. Clause (xxiii) of para 3 of the Memorandum of Association would show that the Society is to undertake rural development activities and promote service centres. Training Centres and organise any other activities suitable to rural developments.

16. The resume of the Memorandum of Association and the Rules of the Society,

under which the I.E.R.T. has been established, would show that it carries out some governmental job such as rural development on scientific lines. Composition of its members is predominantly by government officers by virtue of their office they hold under the government. The Chairman of the Society as well as of the Board of Management is also to be appointed by the State Government. Various activities carried out by it are also financed either by the State or by the Central Government. It grants Diplomas and Degrees which are recognized by the State Board of Technical Education and Training U.P. Its functioning in the matter of award of diplomas and degrees are governed by the provisions of the U.P. Technical Education Act. The Government has control over its activities inasmuch as the State Government has power to issue directions in the matters of policy. State Government through the Governor has also power to call for returns, accounts and other informations relating to the properties and activities of the Society. The provisions mentioned in the preceding part of this judgment would show that the State Government has all pervading control over the policy matters, activities and functions of the Society which runs the I.E.R.T. The Government has power to alter and extend the purpose or purposes of the Society which runs the I.E.R.T. The Society is further under obligation to submit resolution passed by it and the Board of Management to the State Government. It cannot admit any member in it without approval of the State Government. It also carries on various activities of development entrusted to it either by the State or by the Central Government.

17. In view of these glaring circumstances, it is very difficult to accept the proposition that I.E.R.T. or the Society which runs it is not an instrumentality of the State Government. It is no doubt true that the Society which runs the I.E.R.T. is a registered Society under the provisions of the Societies Registration Act, 1860, but when the veil of the Society is lifted, it is to be found that the Society has no existence of its own independent of the Government which has almost absolute control over its day to day functioning. The contention of the learned Counsel that the I.E.R.T. is not an instrumentality of the Government and is a private body is, therefore, not acceptable. This submission, accordingly, is liable to be rejected on the facts noted above.

18. Learned Counsel for the Respondent, however, tried to substantiate the contention that I.E.R.T. or the Society which runs it is not either "State" "Other authority" or an instrumentality of State" for the reason that its funds are not entirely made up of the grants or aid provided for or given by the State. It has the liberty of raising its own funds from many other sources also as loans from Banks and other government and non-governmental agencies. Its power of spending and investment of its funds and incomes is not controlled by the government except for the grants and funds provided by it for running its own schemes and projects. In support of this contention learned Counsel drew assistance from the judgment of the Apex Court of the Land in the case of *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, . In the case of *Tek Raj* the Supreme Court held that Institute of constitutional and Parliamentary studies, a

Society registered under the Societies Registration Act established for non-governmental functions, for undertaking research work in constitutional and Parliamentary matters although substantially aided by the Government was not State or instrumentality of State. It was further held that it's constitution with Speaker of the Parliament as President, Ministers as Vice-President and Members did not at all go to suggest that the Society was on instrumentality of the State. According to the Supreme Court, the Society was private voluntary body established by it's members for undertaking research in Constitutional and Parliamentary laws for the benefit of the members of the Parliament and others connected with these studies. It was noticed that apart from the Speaker and Ministers, Members of Parliament, Hon'ble Chief Justice and Hon'ble Judges of Supreme Court and the lawyers too were it's members, it received grants from various voluntary institutions and also from foreign bodies and institutions. Thus on these facts of the case and the Scheme of the Society the Supreme Court held that the Institute was not a government instrumentality. The participation of Speaker and the Ministers as it's members and grant of funds to it by the government alone was not determinative. The Speaker and Ministers too as members of Parliament were it's members and the functioning of the Society by the Government was by way of providing help in an important field of carrying on research on Constitutional and parliamentary studies.

19. In my opinion, the facts of the case in Tek Raj Vasandi cannot provide any guideline for deciding the point in the present case. Obviously in this case the Society is running an educational institution which is instrumental in the award of degrees and diplomas to the inmates getting admission in it, it undertakes many other development works such as rural development. It helps running various developmental schemes in villages with the government aid and also on behalf of the government. As a welfare State under Article 41 of the Constitution the State is under an obligation to make effective provision for securing the right to education to "it's people no doubt within it's economic and developmental capabilities. At the same time Articles 45 and 46 thereof cast a fundamental duty on the State to provide free education to children upto the age of 14 years, it is also duty bound to promote the educational interests of weaker sections of the people specially of scheduled Caste and Scheduled Tribes. Thus from the Scheme of the Constitution it cannot be said that the grant of funds by the State to educational institutions engaged in the task of providing educational facilities to the members of the society including members of its weaker sections and Scheduled Caste and Scheduled Tribes is in any way an act of grace or kindness by it. The State is under constitutional obligation to create educational opportunities to the members of the Society on the whole and to the members of weaker sections, Scheduled Castes and Scheduled Tribes in particular, either by itself or by giving financial assistance to private or autonomous bodies like societies and statutory authorities like University and educational Boards.

20. For discharging the above constitutional obligation the State may either itself run the educational institutions for imparting education for the purposes of

awarding degrees and diplomas or in the alternative it may indirectly assist others in the running of such institutions by providing the requisite financial resources and also by controlling their functioning either by itself or "through statutory or other bodies which may be societies controlled by it) established for that purpose. If the Society or the institution run by it is engaged in the job of imparting education to the members of the society, including the members of the weaker sections of the society, the Scheduled Caste and Scheduled Tribes on state aid with it's managerial control over the society either directly or indirectly and the education so imparted is productive of degree and diplomas which in turn are recognised by statutory bodies like Universities and Boards such as Board of High School and Intermediate Education and Board of Technical Education. Such an educational institution cannot, by any stretch of imagination, be termed as a private institution and therefore, beyond the reach of this Court under Article 226 of the Constitution nor it can be held unanswerable to the people with whom it deals and whose fate it decides, for the breach of the provisions of Part III of the Constitution by it. These institutions admit such students, in its fold, who are interested in the pursuit of their studies. Their pursuit is subject to the disciplinary control by the administrative authorities of the institution and the society. It cannot be ruled out that in a given case the administrative authorities of such an educational institution may, by an order, deprive any student who is pursuing his studies in it, of his right to further pursue his studies on the ground of indiscipline. This power of the institution certainly will have a toll on the constitutional right of the citizen (members of the society, including the members of weaker sections of the society, Scheduled Caste and Scheduled Tribes) which automatically flows from Articles 41, 45 and 46 of the Constitution.

21. The I.E.R.T. is imparting education for awarding degrees and diplomas recognized and regulated by U.P. Board of Technical Education under the provisions of the U.P. Technical Education Act, 1962. For that purpose it admits students on merit and on norms fixed by the Board. In this process it also refuses admission to many of the students who thus stand deprived of their right of pursuing their studies in it. Students admitted by it are also subject to its administrative and disciplinary control through the principal or the Director or some other body within itself. Decisions taken " by it either for refusing admission or for awarding punishment on disciplinary or other grounds do have adverse impact on the constitutional right of the students to pursue their studies. The I.E.R.T. thus undoubtedly is engaged in the functions which, in essence, are governmental in nature though government assistance both by way of finances and management control. Under the provisions of the U.P. Technical Education Act and the Rules of the Society in passing whereof too the State Government has major role to play. Similarly, the job of rural development, which is also being carried by the I.E.R.T., is a primarily State job which may be carried either by itself or through others whom it provides funds for the purpose and also expertise and management control.

22. The I.E.R.T. is being run by a Society for providing education to the members of of society at large for awarding degrees and diplomas which are recognised by the U.P. Board of Technical Education which is a purely State Government set up under the provisions of U.P. Technical Education Act 1962 like U.P. Board of High School and Intermediate Education constituted under the provisions of U.P. Intermediate Education Act, 1921. It's degree and diplomas are duly recognised by the Government. Management of studies of the I.E.R.T. and programmes of it's development are almost fully controlled by the State Government either through the Board of Techniral Education U.P., Lucknow or through it's own officers who are not only predominant constituents of the society running it but also of the Board of Management which is it's chief executive body or the mouth-piece. Provision of funds to the I.E.R.T. by the State as well as the Central Government for its educational and for developmental activities in which the I.E.R.T. is engaged is not an act of kindness or of good gesture OH behalf of the State or the Central Government. The funds are being provided to it by both these governments in discharge of their constitutional obligations not only under Articles 41, 45 and 46 of the Constitution but also under Articles 38(2) and 29(1) (a), (b) and (c) thereof. The Society which runs the I.E.R.T., in my, opinion, thus is being used by the State as well as by the Central Government for the purposes of discharging it's constitutional duties and obligations by motivating it to perform on its basis some of its sovereign functions such as the work of rural development and the work of providing educational opportunities to the members of the society at large including the members of the weaker sections, Scheduled Castes and Schedule Tribes in whose favour it makes reservations in the matter of their admissions in various courses of study in the I.E.R.T. through executive orders referable to Article 162 of the Constitution, it is for these purposes that the State provides funds and finances to the I.E.R.T. and also exercises control on its functioning. With these special features of the I.E.R.T. its running cannot be equated with that of the jnstitute of Constitutional and Parliamentary studies which" is a purely academic body with no consequential effect on the fate of the members of the Society at large Its constitution and State funding cannot at all by any stretch of imagination, be attrib used to Articles 38(2), 39 (a), (b) and (c) or to Articles 41, 45 and 46 of the Constitution or any other provision of the Constitution nor the work performed by it is one which under the Constitution is enjoined on the State. It does not, in any way, from it's activities has any thing to do with the fare of the students who pursue their statutes in it. The learned Counsel for the Respondents thus cannot equate the facts and the circumstances in Tekraj Vasandi's case with those in the present case. The facts of this case bear no similarity to the facts of Tekraj's case, as such, the law laid down by the Supreme Court in Tekraj's case should have no application to the point involved on the facts of this case.

23. Reference in this connection may also be given to another judgment of the Supreme Court in the case of Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], . In this case, the

Supreme Court on identical reasoning as given in the case of Tekraj Vasandi (supra), has held that National Council of Educational Research and Training which was also a Society registered under the Societies Registration Act could not be held to be "State", "other authority" or instrumentality of the State".

24. On the other hand, learned Counsel for the Petitioner has placed reliance on the judgment of the Supreme Court in the case of Sheela Barse Vs. Secretary, Children's Aid Society and others, , B.S. Minhas Vs. Indian Statistical Institute and Others, , P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . Except for the B.S. Minhas case, all other cases, on which reliance has been placed by the learned Counsel for Petitioner, were cases in respect of Societies registered under the Societies Registration Act, The Supreme Court in all these cases held that on account of the nature of work being performed by them, the funds provided to it by the State and the control of the State exercised on the functioning of each of the Societies was indicative of the fact that these Societies were nothing but instrumentality of the State which obviously comes within the purview of "State" or "other authority" under Article 12 of the Constitution of India. Relevant test in this respect has been elicited by the Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, which was again reiterated in the case of Som Prakash Rekhi v. Union of India AIR 1981 SC 217 , where the Supreme Court laid down following tests which should be determinative of the nature of the institution as to whether it is "State" or "other authority" or "instrumentality of the State" under Article 12 of the Constitution. Those tests are: (i) financial resources given to it by the State which must be its chief funding source, (ii) functions performed by it whether can be characterised as governmental in essence; (iii) plenary control over the institution if vested in the Government; (iv) the Institute has some element of authority or command within itself and (v) lastly, that same functions were earlier carried out by the government. Applying these tests to the I.E.R.T. it will appear that financial resources to the I.E.R.T. are being given by the State and the Central Government. It is imparting education with government aid and the courses run by the institution are only those which are approved by the Board of Technical Education on which also State has its full control, Its expenses required for running the institute are mainly financed by the State Government and the Central Government. The Government controls admissions in the courses of study conducted by the Institute by laying down norms for admission of students and providing reservations in favour of backward, Scheduled Caste and Scheduled Tribes and other candidates. The State has almost absolute control over the functions of the I.E.R.T. inasmuch as membership of its parent body is predominantly of government officers and other officers of the Board of Technical Education and other governmental agencies. Similarly, Board of Directors, which is its decision making body, consists of the same persons who constitute the membership of the Society where too dominance of the government officers and other officers of the Board of Technical Education is complete. Government has

last word in the matter of the policy of the Society. It has power to give directions and make investigations in the matters of the affairs of the society which runs the I.E.R.T. Thus, the preliminary control over the functioning of the Society and the I.E.R.T. thus vests in the government and its Board of Technical Education. The institute has authority of admitting and refusing admissions to the students who seek admission in the institution for pursuing their studies. It can expel students which is bound to visit them with adverse effect in their career. The job of development of rural areas as well as the work of imparting education which is being performed by the institute cannot be said to be purely voluntary or private work being performed by it in a philanthropic pursuit. As per the provisions of the constitution under the Articles already referred to above, such jobs are being done by it on behalf of the State and the Central Government which as seen above comes within the fundamental duties of the government under the Constitution. In the circumstances, it is very difficult to accept that the institute is a private body and it cannot be labelled as an instrumentality of the State. Applying the tests laid down by the Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, *Som Prakash (supra)*, *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and Ajay Hasia (supra)*, there seems absolutely no escape for the irresistible conclusions that the I.E.R.T. is and must be held as an instrumentality of the State under Article 12 of the Constitution. For that reason it must, therefore, be held also to be bound like the Central and the State Government with the constitutional obligations under Part III of the Constitution. It is, therefore, like the government liable to be sued against any breach by it of the fundamental rights of the people with whom it may happen to deal with in discharge of its functions which it carries on behalf of the State and is in a given case a complaint is lodged by a person in this Court or the Supreme Court under Article 226 or 32 of the Constitution against the breach of his fundamental right by the I.E.R.T. this Court of the Supreme Court will not throw away the writ petition on the ground that the I.E.R.T. is not answerable to it for the breach of fundamental right of the people with whom it deals with in the discharge of the aforesaid functions.

25. The last case of *Ajay Hasia (supra)* bears quite much of similarity with the facts of the present case. In that case, it has been held that a Society registered under the Societies Registration Act which runs a Regional Engineering College in Srinagar was an instrumentality of the State inasmuch as its composition was dominated by the representatives appointed by the Central and State Government of Jammu & Kashmir; money required by it was being entirely provided by the Central and State Government; its accounts were to be submitted to the Government for its scrutiny and satisfaction. Society had to follow directions of the State and Central Government in the matters dealt in the report of the Review Committee; rules had to be made by the Society with the

approval of the government accounts of the Society were to be submitted to the Government; immovable properties could be disposed of by the Society only with the approval of the Government. Government had power to appoint members of the society. Members other than the government nominees could be removed with the approval of the Central Government. Board of Governors, which was executive body of the Society was dominated by the nominees of the Government.

26. A comparison of the Constitution and Rules of the Society running the present institution (IERT) and the Society which runs the Regional Engineering College Srinagar, which was subject matter of scrutiny by the Supreme Court in *Ajay Hasia's* case (supra) would show that both bear lot of similarity both in constitution and governmental control to a very large extent. Here also the learned Counsel for the Respondent has not shown that the funds were received by the Society running the I.E.R.T. from other source except that for getting funds from others no prior approval of the State or of the Central Government was required by the Society. Except for his and to some other minor differences the provisions in the Memorandum of Association and the Rules of the Society are identical to those of the Snnagar Society. It is thus apparent that I.E.R.T. is nothing but an instrumentality of the State though from the cloak which it wears it is a private Society. As ruled by the Supreme Court in *Ajay Hasia* (supra) and also in *Som Prakash* (supra) the instrument by which Society is formed is not determinative of its governmental character. On an over all assessment of the Scheme and Rules of the Society, in my opinion, the Society running the I.E.R.T. is an instrumentality of the State and comes within the purview of Articles 14 and 21 of the Constitution. The contention of the learned Counsel for the Respondent is, therefore, rejected both on facts as well as on law.

27. The next submission of the learned Counsel for the Respondent is that this Court has no power to issue writ of Mandamus as prayed by the Petitioner inasmuch as the conditions of service of the Petitioner are not governed by the provisions of any law or Rules or Regulations or Government Orders, as such, he is not entitled to the reliefs claimed in the writ petition. This contention of the learned Counsel is also not acceptable on the facts of the case. Petitioner has not prayed for his reinstatement in the service of the I.E.R.T. He has come to this Court complaining against the high-handedness of the management of the I.E.R.T. According to the Petitioner although his services have not been terminated by the management of the I.E.R.T. According to the Petitioner although his services have not been terminated by the management of the I.E.R.T. still he is not being allowed to join his service in the I.E.R.T. and he is not also being paid his salary. It is also not the case of the Respondents that Petitioner's services have been terminated by the management of the I.E.R.T. What has been contended by the learned Counsel for Respondent in this respect firstly is that Petitioner's appointment having been made under a particular project sponsored by the Central Government, his service came to an end as soon as that project came to an end and no order of termination for terminating

his service was required to be passed and the Petitioner therefore, is not entitled to join the service of I.E.R.T. nor the I.E.R.T. is under obligation to allow him to join its service. Alternatively, it was also contended that Petitioner's service came to an end as soon as he joined the service of Navodaya Vidyalaya Samity in 1986 as the Petitioner was never set there on deputation nor his line was kept in tact in the I.E.R.T. as his services were purely temporary and temporary employees have no lien.

28. To Judge the merits of the contentions raised by the learned Counsel for the Respondent, it is necessary to revert to the factual aspect of the case once again. The Petitioner, admittedly, was appointed in the service of I.E.R.T. by order dated 22-10-80, which has been filed as annexure 1 to the writ petition. This order has also been extracted by me in this judgment. A perusal of the order would show that Petitioner's appointment was made without reference to any project what sever nor there is any contemplation in the said order that his service will come to an end after lapse of a particular project or after lapse of a particular time. Annexure 2, which is an order of 30th July, 1982 passed by the Director of the I.E.R.T., would show that Petitioner was transferred to T.C.P.C. section at the Head Quarter (I.E.R.T.) whereas Sri B.B. Singh, Manager Gohri was transferred by the same order as manager of Baranpur project. Similarly by order dated 31-1-83 Petitioner was transferred to the Baranpur Project as Paryavekcbhak (Gram Udyog) from January 1983 by an order passed by the Director I.E.R.T. Similarly, by an order dated 16-4-83 Petitioner's services were lent to Community Development Cell with effect 1-4-83. It was also made clear in the said order, which was passed by professor-Incharge Personnel Marketing that the Petitioner was to receive the same pay which he was drawing from the institution (I.E.R.T.) and the salary will be paid to him by the Community Development Cell account. Again by an order dated 11-2-84 passed by the Deputy Director (R.D.) Petitioner was transferred from Shankergarh project of the Community Development Work which was undertaken by the I.E.R.T. to the Head Quarter of I.E.R.T. Again by an order dated 10-9-85 the Petitioner was transferred from Community Development Cell of Metallography Laboratory, but however in the said order it is not clear as to where the Petitioner was transferred from Metallography Laboratory. Subsequently by order dated 16-10-88, which is annexure 7 to the writ petition, passed by the Deputy Director R&D, the Petitioner was directed to receive salary from the Windmill Energy Centre from 15-8-85 to 31-3-86. This order appears to have been passed by the Deputy Director under the directions of the Director of I.E.R.T. Thereafter, comes the order dated 26-11-86 whereby Petitioner was sent on deputation in the service of Navodaya Vidyalaya Samiti with specific mention that his lien in the I.E.R.T. shall be maintained. Similarly, the order dated 7-11-88 passed by the Director, I.E.R.T. would show that Petitioner's lien in the I.E.R.T., was extended for another period of one year. On these facts it is very difficult to accept the contention of the learned Counsel for the Respondent that Petitioner was ever appointed under a particular project or that his services automatically came to an end on the

termination of that or any other project, either of Windmill Energy Centre which was sponsored by the Central Government or any other one. It is no doubt true that at the time when the Petitioner was sent on deputation of Navodaya Vidyalaya Samiti the Petitioner appears to have been working in the Windmill section but It is not correct that the Petitioner was appointed in the said Windmill Project and his services stood terminated as soon as the Windmill Project came to an end. It is not the case of the Respondent that before Petitioner's transfer in the Windmill Project or before he was sent on deputation in the Navodaya Vidyalaya Samiti, his services in the I.E.R.T. were terminated. Such a stand, however, on the facts of the case is not possible to be taken nor any order to that effect has either been filed or shown to me by Respondents.

29. The facts noticed above do sufficiently demonstrate that Petitioner's appointment was made on a purely temporary basis in the service of I.E.R.T. and not specially in any particular Project sponsored by the State or the Central Government. It is also clearly borne out that at no stage, whatsoever, the services of the Petitioner were terminated although it was open to the I.E.R.T. to terminate his service if there existed any such requirement.

30. Now the question arises as to whether the Management of the I.E.R.T. has authority or power to deprive the Petitioner of his right to continue in the service of I.E.R.T. without termination of his service. In this context the question arises as to whether I.E.R.T. is an instrumentality of the State and if it is State or its instrumentality, the I.E.R.T. has no such freedom to act in total disregard of the fundamental rights guaranteed to its employees under Articles 14, 16 and 21 of the Constitution. It is settled position from the judgments of the Apex Court of this land in several cases that the right to service is also protected by Article 21 of the Constitution. Article 14 of the Constitution prevents the State or its instrumentalities from acting in any manner which is not warranted by law. Similarly Article 16 forbids unequal treatment in the matters of appointment, promotion etc. by the Government or its agencies. In the earlier part of this judgment, it has already been found that I.E.R.T. is an instrumentality of the State. Therefore, in its day to day functioning it has to conform with the requirements of Articles 14, 16 and 21 of the Constitution It cannot act as an unruly horse, it has to give due consideration to the laws of the land and to the rights of those with whom it has to deal with. It obviously is answerable to the Courts of law if it does not comply with the provisions of laws including the provisions of the Constitution in its dealings with its employees and other persons who may come in its contact in the matters of its functioning in various activities undertaken by it. It is beyond doubt that a person who has been appointed in service of the Government. State or an authority under the State or any instrumentality of the State has a right to continue in service and to receive salary or wages, as the case may be, till his services are dispensed with in accordance with law. It is admitted position that Petitioner was appointed in the service of I.E.R.T. on 22-10-80. Since then his services have not been terminated. It is also established fact that the Petitioner was sent on deputation

to Navodaya Vidyalaya Samiti by order dated 26-11-86 and his lien was kept intact in the service of I.E.R.T for a period of two years. The said deputation was, however, extended by another order dated 20-4-89 for one more year and before the period of one year could come to an end Petitioner reported for joining his services in the I.E.R.T. on being relieved from his deputation in the Navodaya Vidyalaya Samiti where he had gone with the permission of the Director of the I.E.R.T. The Petitioner thus possessed the right to claim the joining of his service in the I.E.R.T. and the I.E.R.T. had no factual or legal justification, whatsoever, to deny Petitioner's right of joining his service in the I.E.R.T. The argument of the learned Counsel for the Respondent that the lien of the Petitioner in the service of I.E.R.T. came to an end when the Petitioner was sent on deputation to the Navodaya Vidyalaya Samiti is falsified from a perusal of the order dated 26-11-86 passed by the I.E.R.T. itself which clearly mentions about the retention of the lien of the Petitioner in the service of the I.E.R.T. It was, however, contended by the learned Counsel for the Respondent that the Director who passed the order for retention of lien of the Petitioner in the service of I.E.R.T, had no power to do so. This argument is not acceptable. No attempt has been made to show as to who else possessed the requisite power. On the other hand, it is to be seen that the Director is the appointing authority of the Petitioner as he had actually appointed the Petitioner by his order of appointment dated 22-10-80. Various orders of transfer too were passed by the Director or on his behalf for sending Petitioner from one place to another in the I.E.R.T. or outside the I.E.R.T. It is, therefore, not acceptable that Director possessed no power to retain the lien of the Petitioner when the Petitioner was sent to the Navodaya Vidyalaya Samiti on deputation. It is also not possible to accept the contention of the learned Counsel for the Respondent, specially on the facts of this case, that the Petitioner opted for the service of Navodaya Vidyalaya Samiti consequent to the termination of the Windmill project in which he was employed and his services in the I.E.R.T. came to an end. This contention of the learned Counsel for the Respondent is not borne out from the facts and the orders noticed above.

31. On the facts noticed and discussions made above it is not conceivable as to on what ground the Respondent I.E.R.T. can prevent the Petitioner from joining his service in the I.E.R.T. No other reason except for the reasons already mentioned and rejected has been given by the learned Counsel for the Respondent I.E.R.T. for justifying the stand of the Respondent denying the Petitioner of his right of joining his service in the I.E.R.T. Since the stand of the I.E.R.T. and its management has no reasonable and justifiable cause for preventing the Petitioner from joining his services in the I.E.R.T. as such, the Petitioner is entitled for the grant of the reliefs claimed by him in the writ petition to which he is certainly entitled under Articles 14 and 21 of the Constitution.

32. In view of the fact that in this writ petition Petitioner has not sought the relief of his reinstatement in service nor on the facts of the case grant of such a relief to him is called for, it is, therefore not at all necessary for me to decide the question as to whether an employee of the I.E.R.T., in a given case, is entitled for

the grant; of the relief of reinstatement in service because of the absence of statutory or the like provisions governing his service conditions. For the same reason, therefore, I am also not called upon, to deal with and discuss the case law cited by the learned Counsel for the Respondent on this point which however in all fairness to the counsel deserve to be cited in this dement. These cases are:

- (i) Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, ;
- (ii) Km. Anita Verma v. D.A.V. College 1992 (1) UP LB EC 30 (Para 21);
- (iii) Sanjay Jindal v. J.P. Bhargava 1989 (1) UP LB EC 472 (at page 473 last para);
- (iv) Dr. Smt. Rashmi Kumar v. State of U.P. 1989 (1) UP LB EC 674;
- (v) Sri Bhagwan Saraswat v. S.B.I. 1986 (2) UP LB EC 1201;
- (vi) Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, , and
- (vii) Y.P. Gupta v. Union of India 1976 LIC 238 (FB)(Head Note B & C Para 26).

33. The result of the above discussion is that this writ petition must be and is, accordingly, allowed. The Management of I.E.R.T. including its Director is directed to allow the Petitioner to join his services in the I.E.R.T. with effect from the date he reported back to them for joining his service in the I.E.R.T on the conclusion of his deputation in the Navodaya Vidyalaya Samiti. It goes without saying that the Petitioner will also be entitled to the payment of his full salary and all other benefits which he would have normally received and earned, had he not been prevented from joining his service in the I.E.R.T. in the year 1988. He shall also be entitled to all other benefits including promotions which he may have earned if he was allowed to continue in the service of the I.E.R.T. on his return from deputation from the Navodaya Vidyalaya Samiti on 11-5-1989. The Petitioner shall also be entitled to his costs which is assessed at Rs. 1000/-