

GAHC010174542022



2025:GAU-AS:8059-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/350/2022

SUNIRMAL BHATTACHARJEE
S/O LATE BASANTA KUMAR BHATTACHARJEE,
ASSISTANT EXECUTIVE ENGINEER,
INDIAN INSTITUTE OF TECHNOLOGY, GUWAHATI, GOVERNMENT OF
INDIA, GUWAHATI- 781039.

VERSUS

THE UNION OF INDIA AND ORS.
REP. BY THE SECRETARY TO THE GOVT.OF INDIA, MINISTRY OF HUMAN
RESOURCE AND DEVELOPMENT, DEPARTMENT OF EDUCATION, SHASTRI
BHAWAN, C-WING, DR. RAJENDRA PRASAD ROAD, NEW DELHI- 110001.

2:THE DIRECTOR
INDIAN INSTITUTE OF TECHNOLOGY
GUWAHATI
GOVT. OF INDIA
GUWAHATI- 781039
ASSAM.

3:BHASKAR CHOUDHURY
ASSISTANT EXECUTIVE ENGINEER

INDIAN INSTITUTE OF TECHNOLOGY
GUWAHATI
GOVERNMENT OF INDIA
GUWAHATI- 781039.

4:THE CHAIRMAN
UNIVERSITY GRANTS COMMISSION (UGC)
BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002.

5:THE CHAIRMAN
ALL INDIA COUNCIL FOR TECHNICAL EDUCATION (AICTE)
NELSON MANDALA MARG
VASANT KUNJ
NEW DELHI-110060.

6:DIPANKAR DAS
S/O LAKSHMI MOHAN DAS

PERMANENT RESIDENT OF LUMDING WARD NO. 1
ANANDAPALLY
HOUSE NO. 619

P.O.- LUMDING

P.S.- LUMDING

DIST.- HOJAI
PIN- 782447
ASSAM

Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate), MR S GAUTAM,MS N
BEGUM,MR. K M MAHANTA

Advocate for the Respondent : DY.S.G.I., RESPONDENT IN PERSON (R-6),MR. P. CHOUDHURY
(r-3),MS. B CHOUDHURY (r-3),MR. S K MEDHI,SC, A I C T E,SC, IITG,SC, U G C

Linked Case : WA/142/2023

THE INDIAN INSTITUTE OF TECHNOLOGY
REP. BY THE REGISTRAR
P.O.- IIT GUWAHATI
P.S.- NORTH GUWAHATI
DIST.- KAMRUP
GUWAHATI
ASSAM
PIN- 781039.

VERSUS

DIPANKAR DAS AND 5 ORS.

S/O LAKSHMI MOHAN DAS
RESIDENT OF LUMDING
WARD NO. 1
ANANDAPALLY HOUSE NO. 619
P.O. LUMDING P.S. LUMDING DIST. HOJAI
PIN - 782447
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2:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT.OF INDIA
MINISTRY OF HUMAN RESOURCE and DEVELOPMENT
DEPARTMENT OF EDUCATION
SHASTRI BHAWAN
C-WING
DR. RAJENDRA PRASAD ROAD
NEW DELHI- 110001.

3:BHASKAR CHOUDHURY
ASSISTANT EXECUTIVE ENGINEER
INDIAN INSTITUTE OF TECHNOLOGY GUWAHATI
P.O.- IIT GUWAHATI
P.S.- NORTH GUWAHATI
DIST.- KAMRUP
GUWAHATI
ASSAM
PIN- 781039.

4:SUNIRMAL BHATTACHARJEE
S/O LATE BASANTA KUMAR BHATTACHARJEE
ASSISTANT EXECUTIVE ENGINEER
INDIAN INSTITUTE OF TECHNOLOGY GUWAHATI
R/O QUARTER NO. B- 72
IIT GUWAHATI CAMPUS
P.O.- IIT GUWAHATI
P.S.- NORTH GUWAHATI
DIST.- KAMRUP
GUWAHATI
ASSAM
PIN- 781039.

5:THE CHAIRMAN
UNIVERSITY GRANTS COMMISSION (UGC)
BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002.

6:THE CHAIRMAN
ALL INDIA COUNCIL FOR TECHNICAL EDUCATION (AICTE)
NELSON MANDALA MARG

VASANT KUNJ
NEW DELHI-110060.

Advocate for : MR. R P KAKOTI SR. ADV.
Advocate for : RESPONDENT IN PERSON(R-1) appearing for DIPANKAR DAS
AND 5 ORS.

BEFORE

**HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MRS. JUSTICE MALASRI NANDI**

In WA 350/2022

For the appellant : Mr. K.K. Mahanta, Senior Advocate.
: Ms. N. Begum, Advocate.
For respondent No.1 : Mr. S.K. Medhi, CGC.
For respondent No.2 : Mr. S. Sutradhar, Advocate.
For respondent no.3 : Ms. J. Das, Advocate.
For respondent no.4 : Mr. A. Chamuah, standing counsel.
For respondent no.6 : Respondent-in-person.

In WA 350/2022

For the appellant : Mr. S. Sutradhar, Advocate.
For respondent No.2 : Ms. K. Deka, Advocate (on
behalf of learned CGC).
For respondent no.3 : Ms. J. Das, Advocate.
For respondent no.4 : Respondent-in-person.
For respondent no.5 : Mr. A. Chamuah, standing counsel.

Date of hearing : 23.05.2025.
Date of judgment : 18.06.2025.

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

In connection with W.A. 350/2022, heard Mr. K.K. Mahanta,

learned senior counsel, assisted by Ms. N. Begum, learned counsel for the appellant. Also heard Mr. S.K. Medhi, learned CGC for respondent no.1; Mr. S. Sutradhar, learned counsel for respondent no.2; Ms. J. Das, learned counsel for respondent no.3; Mr. A. Chamuah, learned standing counsel for respondent no.4; none appears on call for the respondent no.5; and Mr. D. Das, respondent no.6-in-person.

2) In connection with W.A. 142/2023, heard Mr. S. Sutradhar, learned counsel for the appellant. Also heard Ms. K. Deka, learned counsel appearing on behalf of Ms. R. Devi, learned CGC for respondent no.2; Ms. J. Das, learned counsel for respondent no.3; Mr. D. Das, respondent no.4-in-person; Mr. A. Chamuah, learned standing counsel for respondent no.5; and none appears on call for respondent no.6.

3) Mr. D. Das, the respondent-in-person (i.e. respondent no.6 in W.A. 350/2022 and respondent no.4 in W.A. 142/2023) was the writ petitioner in W.P.(C) 7342/2017, amongst others, praying for setting aside the selection and appointment of Sri Bhaskar Choudhury (respondent no.3 in writ petition) and Sri Sunirmal Bhattacharjee (respondent no.4 in the writ petition) as Assistant Executive Engineer (Civil) in the Indian Institute of Technology, Guwahati (hereinafter referred to as "IIT-G" for brevity), and for further direction to the official respondents to publish a fresh selection list as per the selection result dated 04.05.2017 for appointment to the said post.

4) For the sake of convenience, the respondent no. 6 in W.A. 350/2022 and respondent no.4 in W.A. 142/2023, who was the writ petitioner in W.P.(C) 7342/2017, is hereinafter referred to as "respondent-in-person".

5) In brief, the case of the respondent-in-person, in the writ

petition, is that pursuant to employment advertisement dated 25.11.2016, he and several others had applied for filling up the post of Assistant Executive Engineer (Civil). The six short-listed candidates were called for interview on 11.04.2017. Thereafter, the authorities of the IIT-G had selected the two Internal Candidates of IIT-G, namely, Sri Bhaskar Choudhury and Sri Sunirmal Bhattacharjee (respondent nos. 3 and 4 in the writ petition) for appointment to the post of Assistant Executive Engineer (Civil). Their appointment was challenged by the respondent-in-person on the ground that Sri Bhaskar Choudhury had obtained B.Tech (Civil) Degree from the Institute of Advance Studies in Education (IASE for short), a deemed university in the State of Rajasthan through Distance Education Mode, which is impermissible. Similarly, the appointment of Sri Sunirmal Bhattacharjee was challenged on the ground that he had obtained B.S. Degree (Engineering Technology), from Birla Institute of Technology and Science, Pilani (BITS, Pilani for short), which is Work Integrated Learning Programme (hereinafter referred to as WILP for brevity), a Distance Education mode, which is not equivalent to B.Tech or B.E. Degree, which was impermissible.

6) The writ petition was allowed by the learned Single Judge vide impugned judgment and order dated 28.07.2022, by holding that the as per the views and inputs of the AICTE and UGC, the qualification of Bachelor of Science in Engineering Technology from BITS Pilani in respect of the said Sri Sunirmal Bhattacharjee (respondent no. 4 in the writ petition) is not a recognized degree. Accordingly, it was further held that he did not have the necessary minimum qualification to participate in the selection process pursuant to the employment advertisement dated 25.11.2016 for appointment to the post of Assistant Executive Engineer (Civil). Resultantly, his participation, selection and

consequential appointment was declared *non est* and invalid in the eye of law.

7) The learned senior counsel for the appellant in W.A. 350/2022 has submitted in the outset that during the pendency of the appeal, the said appellant had superannuated on 31.12.2022. However, as he is being allowed to withdraw pay, which is one grade lower to his post and as his retiral benefits have been withheld, he is pressing the said appeal. His submissions are summarised as follows:-

- a. The employer, i.e. IIT-G must have the liberty to decide about the equivalency of the educational qualification for the purpose of employment.
- b. In this case, the BITS, Pilani, the Deemed University which had conferred the Degree to the appellant, is an Institution of Eminence and had the authority to design his own course for conferring a degree. Moreover, the WILP mode is still continuing in BITS, Pilani. In this regard, the learned senior counsel for the appellant has referred to the UGC (Institutions of Eminence Deemed to be Universities) Regulations, 2017.
- c. The finding that the degree of the appellant is not a recognised degree was unwarranted and ought not to have been decided in the absence of BITS, Pilani as one of the respondents. Moreso, as the degree had not been challenged.
- d. The advertisement required that the candidate must have a degree from a recognised University, but not recognised degree from a recognised University.

8) In support of his submissions, the learned senior counsel for the appellant has cited the following case, viz., *Maharashtra Public Service*

Commission v. Sandeep Shriram Warade & Ors., (2019) 6 SCC 362.

9) The learned counsel for the appellant in W.A. 142/2023, has submitted that the selection process was fair and transparent and moreover, the respondent-in-person had assailed the appointment of the respondent nos. 3 and 4 in the writ petition after being unsuccessful in the selection process. Moreover, he has adopted the submissions of the learned senior counsel for the appellant in W.A. 350/2022.

10) The learned counsel for Bhaskar Choudhury, by referring to the affidavit-in-opposition filed in W.A. 350/2022, has submitted that the degree of the respondent no.3 was not under challenge. Moreover, he has adopted the submissions made by the learned senior counsel for the appellant in W.A. 350/2022.

11) The respondent-in-person, Sri D. Das, had submitted that the degree of the respondent nos. 3 and 4 in the writ petition were illegally accepted to be equivalent only because they were internal candidates of IIT-G. In support of his submissions, reliance was placed on the copy of the UGC notification no. F.1-52/97 (CPPP-II) regarding specification of degrees. In support of his submission that in case of conflict between the statutory provisions, rules, etc. with conditions mentioned in employment advertisement, the rules would prevail.

12) Per contra, the learned standing counsel for the UGC has made his submissions in support of the impugned judgment and order. It was submitted that the specific stand of the UGC in their affidavit-in-opposition filed in the writ petition is that the appellant in W.A. 350/2022 had obtained the Degree of Bachelor of Science in Engineering Technology under WILP mode,

which is off-campus learning mode, which has never been recognised and/or approved by the UGC. It has been submitted that the UGC has not granted its approval to IASE, Sardarshahar, Rajasthan to offer technical courses under Open Distance Learning Mode. It was also submitted that the erstwhile Distance Education Council had granted ex-post facto "institutional recognition" to the said IASE for the programmes approved by the statutory body of the University offered by it through distance mode upto academic year 2005 vide communication dated 29.08.2007. Moreover, provisional institutional recognition was also granted to IASE for academic year 2007-08 vide communication dated 03.09.2007 and 11.08.2009 respectively. However, no further recognition was granted to IASE either by the Distance Education Council or by the UGC to offer any programme through distance mode.

13) It was submitted that the UGC has not granted its approval to any Institute to open any study-centre in any other State or even within the same State and moreover, no institution is authorised to affiliate any College or Institution for conducting courses leading to award of diploma or a degree or to impart technical and professional programmes through distance mode. Moreover, it was submitted that the Distance Education Council, under IGNOU (Indira Gandhi National Open University) had accorded ex-post facto programme-wise approval to WILP with effect from 1995 to academic year 2007-08 vide communication dated 24.11.2009, only to BITS, Pilani. Therefore, the degree of Bachelor of Science in Engineering Technology granted in the year 2009 is invalid.

14) In support of his submissions, the learned standing counsel for the UGC has cited the case of *Orissa Drift Irrigation Corporation Ltd. V. Rabi Sankar Patro & Ors., (2018) 1 SCC 468*, and *Bijon Nath v. The State of Assam &*

Ors., W.A. 55/2019, decided on 13.02.2020.

15) Upon hearing all appearing sides, the materials available on the record have been carefully perused and considered the submissions made and cases cited at the Bar.

16) In this case, the respondent no.1 in WA No. 142/2023 had filed the writ petition after being unsuccessful in recruitment process. Therefore, having not registered his protest before his participation in the process, the case of *E.S.I.C. (supra)* cited by him would have no application in this case.

17) It is noted that in paragraph 12 of the case of *Orissa Lift Irrigation Corporation Ltd. (supra)*, the Supreme Court of India had observed that the UGC had not granted approval to any institution deemed to be university to establish study centres. In paragraph 23.3 thereof, the Supreme Court of India had referred to the AICTE (Grant of Approval for starting New Technical Institutions, Introduction of Courses and Programmes and Approval of Intake capacity of Seats for Courses or Programmes) Regulation, 1994 and reference was made to Clause 4 of the said Regulation that after commencement of the said Regulations, amongst others, no Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma Courses or Programmes except with the approval of the Council. In paragraph 27.4, reference was made to IASE, Sardarshahar, Rajasthan and it was stated that no deemed university can start study centres/ franchises without prior approval of the UGC. Moreover, it was observed that for starting any UGC approved degree course through distance mode, prior approval of the Distance Education Council is mandatory. In paragraph 30.15 of the said judgment, how off-campus centre is to be regulated under UGC (Institutions Deemed to be Universities) Regulation, 2010,

has been referred to, making it very clear that under Regulation 18, no Institution Deemed to be University shall be allowed to conduct courses in the distance mode from any of its off-campus centre approved subsequent to the said regulations. As per the directions contained in paragraph 66, amongst others, it was held that AICTE Regulations 1994 do apply to deemed to be universities and deemed to be universities, in the said case, were not justified in introducing any new course in technical education without the approval of the AICTE. In respect of candidates who were enrolled during academic sessions 2001-2005, in the said case, the ex-post facto approvals granted by UGC and their authorities concerned were set aside. Moreover, some modalities was also devised for those students whose degrees were suspended by 15.01.2018. Thus, as per the decision in the said case, no off-campus distance education mode is permissible.

18) No one has disputed the status of BITS, Pilani as an Institution of Eminence. However, the question is whether imparting of education in WILP mode is an off-campus mode of education, to which the answer is in the affirmative. Accordingly, the appellant has miserably failed to show that WILP form of off-campus education has been approved either by the UGC or by the AICTE. Moreover, the appellant has not been able to show that the stand of the UGC that the Distance Education Council, under IGNOU (Indira Gandhi National Open University) had accorded ex-post facto programme-wise approval to WILP with effect from 1995 to academic year 2007-08 vide communication dated 24.11.2009, only to BITS, Pilani and therefore, the degree of Bachelor of Science in Engineering Technology granted in the year 2009 is invalid, is not correct.

19) It may be mentioned that the UGC and the AICTE were not

initially arrayed as respondents in W.P.(C) 7342/2017. However, to have a proper appreciation of the issue relating to qualification of Bachelor of Science in Engineering Technology from BITS, Pilani, by virtue of the order dated 27.06.2019, passed in W.P.(C) 7342/2017, they were arrayed as respondent nos. 5 and 6 respectively. Taking note of the stand of the said two authorities, the learned Single Judge had recorded as follows in paragraph 12 of the impugned order, which is extracted below:-

“12. To have a proper appreciation of the issue that the qualification of Bachelor of Science in Engineering Technology from BITS, Pilani is neither the same nor an equivalent of the required minimum qualification of a bachelor degree in Engineering from a recognized University or an Institute, we deem it proper to refer to the views of the AICTE as well as the UGC in their respective affidavits. The AICTE in their affidavit with reference to the aforesaid question in paragraph 6 takes a stand that the word 'Work Integrated Learning Program (WILP) of BITS Pilani which is a deemed to be university is not an AICTE approved program and that the AICTE approval is necessary for a technical program conducted by the deemed to be university. According to the AICTE, the course leading to the Bachelor of Science in Engineering Technology of the BITS Pilani is an integrated learning program, which is a unique program for working professionals conducted without the approval of the AICTE. Although the BITS Pilani may be a deemed to be university, but it cannot claim to have the approval of AICTE with regard to the courses that it had offered. But the AICTE leaves it to the UGC for its clarification as to whether the WILP offered by BITS Pilani was approved by the UGC or not. The relevant extracts of the stand of the AICTE on the issue whether the qualification of Bachelor of Science in Engineering Technology from the BITS Pilani is an acceptable qualification or not is extracted as below:

“The work integrated learning program (WILP) of BITS Pilani, a deemed to be university is not an AICTE approved program. Deemed to be University does not require AICTE approval till Supreme Court opined in 2017, that AICTE approval is necessary for technical programs conducted by deemed to be universities.”

“The integrated learning program is not a regular full time course nor it is Distance Education course as claimed by the BITS Pilani. It is a unique program for working professionals conducted without the approval of the AICTE. The deemed University cannot claim to have the approval of AICTE.

But the BITS Pilani claims that the course is approved by UGC. Hence the UGC would clarify that whether WILP being conducted by the BITS Pilani was approved by UGC or not."

20) The appellant has not been able to dispel the stand of the UGC in its affidavit-in-opposition that the Bachelor of Science in Engineering Technology of BITS, Pilani has never been a specified degree of UGC under Section 22 of the University Grants Commission Act, 1956 and therefore, the said degree cannot be treated as a recognised degree.

21) In this regard, it may be mentioned that though the learned senior counsel for the appellant in W.A. 350/2022 and the learned counsel for the appellant in W.A. 142/2023 have urged that the degree issued by BITS, Pilani was not challenged in the writ petition and therefore, the validity of the degree granted by BITS, Pilani could not have been decided without impleading BITS, Pilani in the writ petition. In this regard, it may be mentioned that the learned Single Judge has not declared all degrees granted by BITS, Pilani under WILP Mode to be invalid. However, it was held by the learned Single Judge that as per views and inputs by the AICTE and UGC, the qualification of Bachelor of Science in Engineering Technology is not a recognised degree, it was held that Mr. Sunirmal Bhattacharjee, the appellant in W.A. 350/2022 [i.e. respondent no.4 in W.P.(C)7342/2017] did not have the necessary qualification to participate in the selection process pursuant to advertisement dated 25.11.2016 of the IIT-G Registrar for the post of Assistant Executive Engineer (Civil). Thus, the selection and appointment of the appellant in W.A. 350/2022 was interfered with by holding the selection and consequential appointment as *non-est* and invalid in law. We concur with the said part of the decision by the learned Single Judge.

22) In light of the discussions above, and as per the directions contained in the case of *Orissa Lift Irrigation Corporation Ltd. (supra)*, the cases cited by the learned senior counsel for the appellant in W.A.350/2022, are not found to help the appellants in both the appeals in any manner. Therefore, no point would be served to burden this judgment and order with discussion on those cases.

23) The second part of the order by the learned Single Judge is a direction that the writ petitioner, namely, Dipankar Das to be construed to be the second candidate as per order of merit and provide for the consequential order and benefits, and further directing that a reasoned order be passed within a period of four months from the date of the order.

24) Insofar as the said part of the order is concerned, it is seen from the materials available in the Memo of Appeal that the proceeding of the selection committee meeting for the post of Assistant Executive Engineer (Civil) was held on 11.04.2017. As per the minutes of the meeting, 73 persons had applied for the post out of which six candidates were called for interview. Two of such candidates did not appear in the interview and therefore, out of four applicants, the names of the appellant in W.A. 350/2022 (i.e. Sri Sunirmal Bhattacharjee) and the respondent no 3 in the said appeal (i.e. Sri Bhaskar Choudhury) were forwarded for approval vide letter dated 12.04.2017. Thereafter, the Chairman of the Board of Directors of IIT-G accorded his approval vide an e-mail communication dated 21.04.2017. Thereafter, the Director of IIT-G had issued the letter dated 01.05.2017, offering appointment in favour of the appellant in W.A. 350/2022. In its affidavit-in-opposition filed by the IIT-G [respondent nos. 1 and 2 in W.P.(C) 7342/2017], it has been stated to the effect that appointment orders were issued in favour of the appellant in

W.A. 350/2022 on 01.05.2017 and on completion of the process, the result of the said selection was uploaded in the official website on 04.05.2017.

25) Thus, in the considered opinion of the Court, after the appellant in W.A. 350/2022 had joined in the post of Assistant Executive Engineer (Civil) in IIT-G, the validity of the select list dated 11.04.2017, had come to an end. The learned senior counsel for the appellant has not been able to show that the said select list dated 11.04.2017, still remains valid now i.e. after 8 years. Under such circumstances, when the validity of the select list is lost, the only way that the post of Assistant Executive Engineer can be filled up in IIT-G is by way of a fresh advertisement and selection process. The validity of the select list is not shown to have been extended till date and thus, it had lost its force.

26) In the case of *Ali Hossain Mandal v. State of West Bengal, 2024 INSC 453: (2024) 0 Supreme(SC) 506*, the Supreme Court of India, after discussing several precedents, has held that a panel or a merit list cannot be treated as if it exists in perpetuity. Paragraphs 24 and 25 thereof are extracted below:-

24. *To better understand whether such a panel can be utilised for appointment after its expiry and if there exists a legal right to be considered for appointments to the notified 16,500 vacancies, it is relevant to take note of the ratio in the following judgments:*

i. State of Orissa & Anr. v. Raj Kishore Nanda & Ors., (2010) 6 SCC 777 at 783. Para 16:

“16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage.”

ii. Union of India v. B. Valluvan, (2006) 8 SCC 686, Para 17:

“17. The life of a panel ordinarily is one year. The same can be extended only by the State and that too if the statutory rule permits it to do so. The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the Selection Committee or reject the same. As has been noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had also been filled up. As the future vacancy had already been filled up in the year 2000, the question of referring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore, cannot be sustained.”

iii. Girdhar Kumar Dadhich v. State of Rajasthan, (2009) 2 SCC 706 at 709, Para 16 :

“16. Furthermore, the select list would ordinarily remain valid for one year. We fail to understand on what basis appointments were made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart from a bald statement made in the list of dates that the validity of the said select list had been extended, no document in support thereof has been placed before us.”

iv. State of Bihar v. Mohd. Kalimuddin, (1996) 2 SCC 7 at 12. Paras 8 & 9 :

“8. As held in the case of Shankarsan Dash, (1991) 3 SCC 47 even if vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed, unless the relevant rules indicate to the contrary. It is indeed expected of the State to act bona fide and for valid reasons in refusing to make the appointments after the selection process has been gone through...

Without knowing the nature of change it was not open to the High Court to anticipate the policy and brand it as unreasonable.

9. For the above reasons, we are of the opinion that even if it is assumed that the panel or select list had not expired at the date of filing of the writ petition, the refusal on the part of the Government to make appointments from the panel or select list, vide letter dated 27-5-1993, could not be condemned as arbitrary, irrational and or mala fide. We, therefore, reverse the view taken by the High Court, set it aside and hold that the original writ petition was liable to be dismissed and we hereby dismiss the same. No order as to costs.”

25. *The opinion expressed in the above judgments makes it clear that a panel or a Merit List cannot be treated as if it exists in perpetuity, which will*

facilitate making appointments as and when required. When the panel expires or after the selection process is over with most posts being filled, the benefit of appointments cannot be given unless the panel's validity is legally extended. However, no such extension of the panel's validity was granted. In fact, in conclusion of the earlier process, a fresh recruitment process was undertaken vide Notification dated 29.09.2022, through which, 9500 candidates have already been appointed.

27) Accordingly, that part of the direction by the learned Single Judge that the writ petitioner, namely, Dipankar Das, to be construed to be the second candidate as per order of merit and provide for the consequential order and benefits, and further directing that a reasoned order be passed within a period of four months from the date of the order, is not in accordance with the observations made by the Division Bench of this Court in the case of *Governing Body of Dibru College v. State of Assam & Ors., 2010 (1) GLT 301: (2009) 0 Supreme(Gau) 853* and in the case of *Ali Hossain Mandal (supra)*, therefore, warrants interference.

28) Thus, in light of the discussions above, both these appeals are partly allowed to the extent as indicated hereinafter. Accordingly, the Court is inclined to pass the following –

O R D E R

29) The appeal against the judgment and order dated 28.07.2022, passed by the learned Single Judge in W.P.(C) No. 7342/2017, being W.A. 350/2022 and W.A. 142/2023, are partly dismissed by holding that the impugned judgment, holding that the appellant in WA 350/2022 did not have the minimum required qualification as per advertisement dated 25.11.2016 of the Registrar, IIT-G and declaration of his selection and appointment to the post of Assistant Executive Engineer (Civil), as *non-est* and invalid in law, warrants

no interference whatsoever.

30) However, both the appeals are partly allowed insofar as that part of the judgment and order dated 28.07.2022 is concerned, whereby direction has been issued by the learned Single Judge that the writ petitioner, namely, Dipankar Das, is required to be construed to be the second candidate as per order of merit and provide for the consequential order and benefits, with further directing that a reasoned order be passed within a period of four months from the date of the order.

31) Under the circumstances, the writ petitioner, namely, Sri Dipankar Das [i.e. respondent no. 6 in W.A. 350/2022, and respondent no. 1 in W.A. 142/2023] is found entitled to a cost of Rs.30,000/- (Rupees Thirty thousand only) to be paid by the appellant in W.A. 142/2023 [i.e. Indian Institute of Technology, Guwahati, represented by its Registrar]. The said cost shall be paid within outer period of 45 (forty-five) days from the date of receipt from the said Sri Dipankar Das, the relevant bank account particulars that may be relevant for online and/or electronic fund transfer), failing which the same shall become recoverable in accordance with law.

JUDGE

JUDGE

Comparing Assistant