

(1995) 07 CAL CK 0002

Calcutta High Court

Case No: C.O. 6177 (W) of 1991 and C.O. 2248 (W) of 1992

Proshanta Guha and Monorath
Pandey

APPELLANT

Vs

The Indian Inst. of Tech.,
Kharagpur and Others

RESPONDENT

Date of Decision: July 19, 1995

Acts Referred:

- Constitution of India, 1950 - Article 14
- Institutes of Technology Act, 1961 - Section 22, 35, 6(1), 6(l)(b)

Citation: 99 CWN 1160

Hon'ble Judges: G.R. Bhattacharjee, J

Bench: Single Bench

Advocate: K.K. Moitra and Subrata Dasgupta, for the Appellant; M.K. Basu and B.J. Chatterji, for the Respondent

Judgement

G.R. Bhattacharjee, J.

Both these writ petitions have been beard together and both these matters are being disposed of by this order as common questions of significance are involved in both the matters. Dr. Proshanta Guha, the petitioner in C.O. 6177(W) of 1991 is an Agricultural Scientist. He joined the Indian Institute of Technology, Kharagpur (IIT. For short) on 11th September. 1984 as Junior Scientist (Agronomy), under the temporary research project on "All India Coordinated Project on Water Management" sponsored by the ICAR (Indian Council of Agricultural Research) on an initial basic pay of Rs. 700/- per month in the scale of pay of Rs. 700-1600 plus D.A., H.R.A. and other allowances, if any. as admissible to other temporary employees under the Institute rules in force from time to time subject to the concurrence of the sponsoring agency. Annexure-A to the writ petition is his appointment letter dated the 4th September. 1984 issued by the Registrar of the Institute for Board of Governors. As would appear from the appointment letter the

project on water management sponsored by the ICAR was attached to Agricultural Engineering Department of the IIT. It was mentioned in the appointment letter that the appointment was on temporary basis under general terms and conditions to be regulated by the Institute of Technology Act, 1961 and the Statutes of the Institute as are in force from time to time and under the specific terms and conditions stated in the letter of appointment itself. It was mentioned in the letter of appointment that the post was purely temporary for a period upto 31.3.1985 or for the duration of the project which was earlier. It was inter alia stated therein that the services might be terminated without any cause being assigned by giving one month's notice on either side unless otherwise agreed to by the appointing authority and the employee and that the services might also be terminated by the Institute without any cause being assigned on payment of one month's salary in lieu of notice. The petitioners' grievance is that by a letter dated 5.10.90 which is annexure-B to the writ petition the petitioners' services were terminated by the Deputy Registrar (SRIC, that is. Sponsored Research and Industrial Consultancy) with effect from 1st October, 1990. The petitioners contention inter alia is that his services cannot be terminated retrospectively as has been done purporting by the said letter of termination dated the 5th October, 1990. It is also his contention that the termination of his services was made not by his appointing authority, the Board of Governors (BOG) but by the Deputy Registrar who is subordinate to the Board of Governors and as such the termination of services is bad in law. It is also his contention that he has to be treated as a regular employee of the IIT and as such his services are not liable to be terminated with the termination of the project in which he was working at the relevant time. The petitioner therefore inter alia prays for quashing the impugned order of termination of his services dated 5.10.90 and also for a direction to absorb and confirm the petitioner against a permanent vacancy in the approved cadre as an employee of the Indian Institute of Technology, Kharagpur. Dr. Monorath Pandey, the writ petitioner In C.O. 2248(W) of 1992 is also an Agricultural Scientist. He was first appointed in the IIT, Kharagpur as a casual worker in the post of Junior Agronomist with effect from 2nd August, 1973 and thereafter on 1st November, 1973 he was appointed to the post of Operator on adhoc basis. On 1st April, 1974 he joined as a research scholar in IIT and continued till 3rd November, 1974 and on the 4th November, 1974 he was appointed as Junior Scientific Assistant in the Scheme on "Measurement, Evaluation and Improvement of Soil Structure sponsored by the Indian Council of Agricultural Research. He worked in the said post till 26th April, 1976. On 27th April, 1976 he joined the post of Senior Research Assistant in the Research Scheme on "Water Use and Management for Agricultural Production" sponsored by the Ford Foundation in the Agricultural Department of IIT and the petitioner worked in the said post till 28th March, 1979. On the 29th March, 1979 he joined the post of Research Officer in the same research project in the same department in the pay scale of Rs. 700 - 1300/- It is the petitioner's case that although the said project was terminated on 31.12.84 he was allowed to continue in the said project till 10th June, 1985. Thereafter the petitioner

was appointed to the post of Junior Research Officer (Chem.) in Weed Control Project of the Institute sponsored by the ICAR with effect from 11.6.1985 in the scale of Rs. 700 - 1600 with the benefit of pay protection on temporary basis for one year or for the duration of the project whichever was earlier. Annexure-G to his writ petition is his appointment letter in respect of the post of Junior Research Officer (Chem.) under the project on "Weed Control" sponsored by the ICAR. He joined the post on the 11th June, 1985. The said appointment letter was also issued under the signature of the Registrar (Offg.) for Board of Governors. Subsequently by a letter dated the 22nd November, 1991 which Annexure - I to the writ petition the Deputy Registrar (SRIC) informed the petitioner that the work of the temporary research project on Weed Control would come to an end on 31.3.91 on expiry of the duration of the project sanctioned by the ICAR. That notice was served as a notice of termination of the temporary services of the petitioner with effect from 31.3.1991. The office memo dated 1.4.91 which is annexure-J to the writ petition also notes that due to closure of the projects the temporary appointment of the petitioner attached to the temporary research project on Weed Control stands terminated with effect from the 31st March, 1991 and the petitioner would cease to be borne on the roll of temporary research scheme on the project with effect from 1.4.1991. The petitioner in this writ petition inter alia prays for cancellation of the said order of termination dated the 1st April, 1991 and also for absorption and confirmation as a permanent employee of the IIT, Kharagpur. His contention is also that he has been serving continuously in different projects in IIT for a period of more than 16 years and his services therefore cannot be terminated in the way in which it has been done.

2. It may be mentioned here that in both the writ petitions not only the Indian Institute of Technology, Kharagpur and its authorities are respondents, but the Indian Council of Agricultural Research also has been made respondent in both the writ petitions. The Indian Council of Agricultural Research is however not coming to contest the writ petitions which are being contested only by the authorities of the Indian Institute of Technology, Kharagpur. It is the contention of the respondent IIT that the petitioners were not in the regular cadre of the IIT and as such the IIT has no obligation to absorb them on the expiry of the respective sponsored projects in which they were working. It is also submitted on behalf of the respondents that in these cases the sponsoring agency ICAR should absorb both the petitioners in view of the fact that they worked for quite a long period under the projects sponsored by the ICAR. It is also the contention of the respondent IIT that the terms and conditions of the service of the researchers in sponsored projects is governed by the rules and procedures known as Sponsored Research and Industrial Consultancy Rules (SRIC Rules) framed by the Board of Governors of IIT and as such researchers are not governed by the rules applicable to the regular employees of the Institute.

3. In support of the contention that the sponsored project works undertaken by the Institute also form part of the normal activities, and functions of the Institute and that the grants received for the purpose by the institute from the sponsoring

agencies also form part of the one and the general fund of the Institute, the petitioners have relied upon different statutory provisions. They have also challenged the validity of the SRIC Rules on the ground that the Board of Governors have no power under the Institute of Technology Act, 1961 to frame such rules and that the rule making power is left only with the Central Government u/s 35 of the Institute of Technology Act. My attention has also been drawn to section 22 of the said Act which provides for maintaining a fund in every Institute to which shall be credited -

(a) all moneys provided by the Central Government

(b) all fees and other charges received by the Institute.

(c) all moneys received by the Institute by way of grants, gifts, donations, benefactions bequests or transfers; and

(d) all moneys received by the Institute in any other manner or from any other source.

4. The powers and duties of the Institute have been enumerated in section 6(1) of the said Act. One of the functions of the Institute is to provide for instruction and research in such branches of engineering and technology, sciences and arts, as the Institute may think fit. and for the advancement of learning and dissemination of knowledge in such branches. The Institute is also empowered to receive gifts, grants, donations or benefactions from the Government. It has been submitted on behalf of the petitioners that undertaking of research is also one of the functions of the Institute and therefore when any sponsored research project is taken by the Institute that also falls within the sphere of its normal functioning and any grant received by the Institute from the sponsoring agency also forms part of the fund of the Institute as the institute is mandated to maintain only one fund, and it cannot have multiple funds. It is further submitted that whatever money or grant is received by the Institute and same must go to the fund of the Institute maintained u/s 22 of the Act. There is no doubt that there is force in this submission and this view has also been expressed by the legal adviser of the Institute as it would appear from the relevant records. Annexure-P to the affidavit-in-reply affirmed by the writ petitioner Dr. Proshanta Guha contains the legal opinion obtained and placed in the 69th meeting of the Board of Governors held on 18th October, 1979 and the legal opinion was that the schemes operating at the Institute were the functions of the Institute (vide section 6(l)(b) of the Act) and the funds received for such projects are to be treated as part of the consolidated fund of the Institute u/s 22 of the Act and accordingly the services rendered under the scheme both by the permanent employees of the Institute as well as the direct recruits are to be treated as Institute's staff according to the terms of the employment of the temporary staff. It was further opined that those working at that time on the Research Projects without any special contract of service, whether permanent employees or temporary

employees, come within the meaning of "Employees" as they are paid out of the consolidated fund of the Institute and are governed by the Statutes. It is also the case of the writ petitioner Dr. Proshanta Guha as stated in paragraph 15 of the affidavit-in-reply that the Board of Governors in their meeting held on the 20th December, 1982 inter alia resolved in condition number 9 of the conditions that the employees in sponsored research projects shall, for all practical purposes, be treated as Institute staff and shall be subject to the administrative control of the Institute. It is the case of the writ petitioners that the Indian Council of Agricultural Research had formulated general guidelines for formulation, processing and implementation of research projects and in clause 9 it has been specifically mentioned that the staff of the scheme would be absorbed by the host Institute after the termination of the project. The said clause 9 of the general guidelines will be found in annexure - D to the writ petition of Dr. Proshanta Guha which reads thus :

9. Provision of scientific, technical, and supporting staff on regular pay scale can be made in the schemes sponsored by the institute/universities other than ICAR institutes provided the host institution/university gives an undertaking that the staff of the scheme would be absorbed by the institution after the termination of the scheme.

5. It is also the case of the writ petitioners that pursuant to the conditions under said clause 9 of the general guidelines" the ICAR and the IIT Kharagpur duly signed inter alia a Memorandum of Understanding (MCU) and from Clause 12(I) of the MOU it would appear that the employees recruited for the research work/project are employees of the IIT, Kharagpur. Clause 12 of the Memorandum of Understanding which can be found in annexure-E to the writ petition of Dr. Proshanta Guha runs thus :

12(i). The staff for the, project-scheme should be appointed in accordance with the normal recruitment rules and procedures applicable to the State Government/grantee institutions. They will for all purposes be treated as employees of the State Government/grantee Institution, as a part of its approved cadre and will be subject to the administrative control of that State Government/Institution.

(ii) The scale of pay, allowances etc. applicable to the staff of the scheme will be the same as admissible under the respective State Government/grantee Institution. In case existing State Government/Institution employees are appointed to ICAR scheme posts, they would draw pay, as if the posts existed in the State Government Department/Institutions. "In their letter dated the 30th May. 1970 annexure-F to the writ petition of Dr. Proshanta Guha addressed by the ICAR to the Director. IIT, Kharagpur. it has been asserted that the scheme will be governed by the terms and conditions contained in the schedule of terms and conditions circulated to all concerned with the Council letter dated the 4th February. 1970 and clause 11 of the said schedule also stipulates inter alia that the members of the staff of the Research

Projects/Schemes will for all practical purposes be treated" as employees of the grantee institution, form part of the approved cadres thereof and will be subject to the administrative control of the institution. Annexure-G to the said writ petition of Dr. Proshanta Guha is a letter dated the 7th March, 1980 written by the Assistant Director General (Agronomy), ICAR Shri S.B. Hukkeri to the Director, IIT, Kharagpur enclosing herewith a copy of his tour note of his visit to Kharagpur from the 6th to 8th February, 1980 for perusal and necessary action. In the tour note under the heading no. 3 "Discussion regarding implementation of project" it has been inter alia recorded thus :

I met Prof. Shankar Lal, Director, IIT, Kharagpur, to discuss various points regarding implementation of ICAR projects particularly Memorandum of Understanding, Staff Cadre and scales of pay, etc. of the various ICAR projects. Prof. J. Das, Dean, Sponsored Research and Consultancy and Dr. B.N. Mitra, Asstt Prof. (Agronomy), Department of April. Engineering were also present during the discussion. Presently, the staff working in various ICAR Projects is not being treated as part of the Institute cadre. The pay scales and the designations of the posts are also not on par with those of the Institute. It was, therefore, explained to the Director that the IIT has already signed the Memorandum of Understanding with ICAR while accepting the projects and agreed to appoint the staff for the project in accordance with the normal recruitment rules and procedures applicable to the grantee institute, that is, IIT. As per Clause 12(1) of the Memorandum of Understanding, the staff appointed will for all purposes be treated as employees of the grantee institute, as a part of its approved cadre and will be subject to the administrative control of that Institution. It was emphasised by me that IIT has contributed substantially in the field of April. Engineering and Soil Water Management. In order to attract good scientists, it is essential that efforts are made to treat the scheme posts as part of the cadre strength of the Institute. This will give stability to the scientists working in the project.

6. It is the contention of the petitioners that the IIT authorities took a decision in respect of service matters which are not governed by the specific rules of the IIT that the same shall be governed by the Central Services (Temporary Service) Rules, 1965 and that being so the petitioners who have already rendered more than six years of continuous service, have acquired the status of a quasi-permanent employee of the institute according to the said rules. The petitioners have also relied upon a letter issued by the then Deputy Prime Minister and the Minister of Agriculture, Govt. of India Sri Devi Lal dated the 3rd April, 1990 addressed to Shri Indrajit Gupta, Member of Parliament which is annexure-I to the writ petition of Dr. Proshanta Guha. That letter was regarding discontinuance of the Kharagpur Centre from the coordinating umbrella of the Project Directorate on Water Management. In the last paragraph of the said letter which is important in this connection is reproduced below :

Further to it. at a meeting of the Director. IIT with Director General. ICAR on 26th February. 1990. the Council has agreed to consider continuance of the terminated project(s) upto (he end of September. 1990 based on request from Director IIT so as to enable him to make suitable alternative arrangements for absorbing the staff. A list of staff which the Institute would not be able to absorb, along with their bio data may be sent to ICAR to consider their being taken by ICAR on deputation terms for maximum period of three years within which the staff would be required to get proper placement against open vacancies. In case of their not being able to do so they will be reverted back to IIT. During this period, if any research proposals are submitted by the IIT. the council will consider these on merit and process these expeditiously.

7. This letter of high authority clearly indicates that in the meeting of the Director. IIT and the Director General. ICAR held on 26th February. 1990 it was virtually acknowledged that suitable alternative arrangement for absorbing the staff was the primary responsibility of the IIT and only in case it does not become readily possible to absorb any staff, the ICAR would consider them for taking on deputation term for a maximum period of three years after which, if they are not placed against any open vacancies, they will be reverted back to the IIT. It Is the case of the IIT that after the closure of the project they sent the name and bio data of the writ petitioner Dr. Proshanta Guha to the ICAR but the ICAR subsequently reported that they did not receive the same and again the same was sent but in spite of that no placement in respect of the petitioner was made by the ICAR.

8. Office order no. R/49/88 dated the 27th June. 1988 issued by the IIT which is annexure-M to the writ petition of Dr. Proshanta Guha also shows that the IIT authorities had approved the taking over of the sanctioned ministerial posts of the Research Scheme/Project into the institution roster as temporary establishment of the institute. The detailed procedure approved, so far as relevant for our purpose is quoted below :

(1) With immediate effect the temporary ministerial sanctioned posts of Research Schemes/Projects be taken into Institute roster as a temporary establishment of the Institute.

(2) Recruitment for such temporary ministerial posts, will be made by the Institute as per statutory selection procedure and will be empanelled in the temporary establishment of the Institute.

(3) On recruitment/promotion such staff of the temporary establishment will be placed under the disposal of the Dean (SRIC)/Dy. Registrar (SRIC) in accordance with their recruitment from time to time. The expenditure in regard to salaries and other allied benefits will be met out of the respective Research Schemes/Projects fund.

(4) Such temporary staff will automatically be regularised against permanent vacancies in the Institute roll according to the inter se seniority. The service benefits

will be allowed as per Institute rules.

(5) The existing ministerial staff members who are presently working in the temporary posts of the Schemes/Projects may continue and their posts be included in the temporary establishment of the Institute. They may be regularised following the point no. 4 above.

9. Here it will be proper to take note of certain relevant provisions of the SRIC Rules itself. Rule 2(iii) of the SRIC Rules provides that any matters not provided for in these Rules and Procedures shall, be dealt with and disposed of, as far as may be, in accordance with the general terms and conditions regulated by the Institutes of Technology Act, 1961 and the Statutes as are in force from time to time. Rule 4(d) defines that research project grant is the grant sanctioned by the sponsoring agency to the Institute for the execution of the Sponsored Research project. Therefore the research project grant is also a grant to the Institute and consequently the same also forms part of the fund of the Institute. Rule 6(1) provides that all Sponsored Research Work shall be treated as Institute work. This makes it clear that the research work undertaken through any Sponsored Research Project is also an work of the Institute. Rule 7.3(1) requires that provisions should be made under the Research Project proposal to cover the expenses under the heads salaries and allowances for the research project staff and this should also include the service and retirement benefits to be given to the staff in accordance with the Institute rules. Rule 11(1) provides that a separate account for the research project grant received and expenditure incurred shall be maintained by the Institute. The fact that a separate account of grant received and expenditure incurred shall have to be maintained does not destruct the grant from its being a part of the fund of the Institute. Rule 4.1(9) of the Recruitment Rules at Appendix I provides that employees in Sponsored Research Projects shall, for all practical purposes, be treated as Institute staff and shall be subject to the administrative control of the Institute. Rule 4.2(3) of the said Appendix I provides that when the total service period (of a person employed in a project) is extended beyond three years, the extension shall be reported to the Board of Governors. This indicates a change in complexion of the" nature of the appointment where, the appointment is extended beyond three years in a sponsored project. Rule 4.2(5) thereof provides that when a person who is already employed in a project is appointed in another project, the case will be considered as a fresh appointment, and his pay will be protected subject to the availability of funds and the recommendation of the Selection Committee. This provision contemplates continuity and integrally of service despite movement from one project to another. Rule 4.2(5) further provides that the service in the earlier project(s) will be considered for the purposes of computing the total period of service benefits available to the employee, provided the service is continuous and that short breaks in service, upto a maximum of 30 days may be cordoned by the Director, by adjusting against the leave due or by granting extraordinary leave without pay. so as to give continuity of service. Rule 4.2(6) provides that a person

appointed to a post in a project may be transferred on the termination of the project to a vacant post in another project having the same designation and pay scale. premised he has served in the project for a proud of at last one (sic) and the investigator in charge/Principal Investigator approves, such appointment Rule 4.2(7) provides for transfer of accumulated leave from one project to another project if the sponsoring agencies shall levee Rule 4.2(8) provides that whenever a vacancy for a post arises in a project other things being equal, preference will be given to employees of other project (sic) to be considered for appointment to that post if they possess all the necessary qualifications and experience required for the post. Rule 4.2(9) provides that when an employee of a project has completed sever continuous years of service (either, temporary or on contract or in combination) in one or several projects together. efforts shall be made by the Institute to absorb the employee in an appropriate vacancy in, the Institute, in accordance with the normal selection "procedures. It is farther provided therein that in order to implement the above. It would be necessary to have Confidential Evacuation Reports of such employees for at least three years and hence Confidential Evaluation Reports for all; employees of profits shall maintained from the fourth year of their service, that is after camped of three years of continuous service in the project. Behind the letters of ovation however guarded the language may be. the anxiety of the IIT (minorities is -clearly discernible that m view of the impelling force of equity considerations a person who has served for seven years in one or more projects should not be jettisoned simply on the ground of expiry of project. That is not all. For the purpose of absorption consideration of Confidential Evaluation Reports for at least three years has been spelt out as a requisite. On the expiry of the third year of continuous service in one or more projects, the provision mandate maintenance of Confidential Evaluation Reports. It is therefore evident that three years" evaluation reports will be completed and available at the end of the sixth year of continuous service, and at the end of the sixth year of service, in view of the said provision, a candidate"s confidential evaluation reports for three successive years will be available for being considered for the purpose of his absorption. Therefore for all practical purposes and intents the said provision requires the cases of all employees who have rendered service in projects for a continuous period of six years, to be brought under the spell of equity considerations for the purpose of absorption in appropriate vacancies in the Institute on ground of continuous service for a considerable length of time, not being less than 6 years, - more particularly in a case where after six years of continuous service an employee comes to the brink of unemployment due to closure of project. In view of such reading of the provision it can well be said that the Institute in enacting the said provision has voluntarily committed itself to a self impose moral responsibility based on equity considerations to absorb or accommodate such of the project employees Who have completed six years of continuous service and are threatened with employment due to closure of project. Assuming for the sake of argument that self imposed moral responsibility may not necessarily coincide with legal responsibility in a given set of

facts and circumstances, yet self imposed moral responsibility may very often locate the center of gravity of a frame-work of state action which, by constitutional mandate, is required to be sustained on the props of fairness and non-arbitrariness. The SRIC Rules, the Memorandum of Understanding, the relevant correspondence, the decision to absorb the ministerial staff, etc which I have lavishly dismissed clearly indicate the concept of fairness to which the IIT and the ICAR have committed themselves in respect of the employees of the projects. In view of the constitution mandate of Article 14 the authorities have to act fairly and without undue discrimination. Their acts must not be vitiated by arbitrariness. Their actions must conform to the standard by which they themselves profess to be judged, particularly, where such standard is not antagonistic to sense of fairness. Fairness to which the IIT has conceptually committed itself will have to be translated into fairness in action. For this purpose intervention of this court in its writ jurisdiction has found necessary so far as the present writ petitioners are concerned. In both the cases under consideration the petitioners have already completed more than 6 years of continuous service in projects (in one case it is 16 years) and therefore it will now be highly unfair and arbitrary on the part of the IIT to turn them out of employment on the ground of closure of particular project.

10. It has been argued on behalf of the respondents that there was no Memorandum of Understanding and it was only in the form of a suggestion coming from the ICAR which was not accepted by the IIT. Such a plea is too belated to hold water. As we have seen, as far back as in February 1980 the Asstt. Director General (Agronomy), ICAR. Shri S.B. Hukkeri not only had a talk with the Director, IIT at Kharagpur during his tour but also recorded his minutes of discussion with the Director, IIT, Kharagpur and forwarded the same to the latter obviously for the purpose of records. The IIT has not submitted before me, not to speak of producing any document to show that on receipt of the same any objection was taken on the part of the IIT as to the correctness of the contents of the said minutes. In the circumstances this plea now on the part of the IIT that there was no Memorandum of Understanding between the ICAR and the IIT and there is no obligation on the part of the IIT to honour the supposed commitments is only a vain attempt in despair to wriggle out of the situation in which the IIT has landed itself due to its sheer recklessness and nonchalance in carrying out its responsibility.

11. As regards the letter of termination of service issued by a subordinate officer and not by the appointing authority, my attention has been drawn to the Statute 15 Clauses (5) and (6). Clause (5) provides that the appointing authority shall have the power to terminate the services of any member of the staff without notice and without any cause assigned during the period of probation. Clause (6) provides that the appointing authority shall have the power to terminate the services of any member of the staff by three months' notice or on payment of three months' salary in lieu thereof, on certified medical grounds. It is submitted on behalf of the petitioners that even when a probationer's service can be terminated only by the

appointing authority, there cannot be any question of terminating the services of researchers of research projects by an authority inferior to the appointing authority where such researchers have rendered long years of service. There is indeed force in this submission. It is however submitted on behalf of the respondents that the notice of termination was issued by an inferior authority because the inferior authority was authorised by delegation of power to issue such notice. Well, delegation of authority to issue a notice of termination by way of simple communication is something different from the power to take the decision of termination itself. The decision of termination must not be taken by an authority inferior in rank to the appointing authority. Once the decision is taken by the appointing authority, communication of the same may be made by any inferior authority by virtue of a delegated power. In the present case nothing has been shown or indicated that the decisions of termination of the services of the petitioners were taken by the Board of Governors, namely, the appointing authority. On the other hand purportingly the decision of termination in each case was the decision of the person issuing the letter, such person being inferior in rank to the appointing authority. This is plainly not tenable.

12. The learned Advocate for the respondents argued that the writ petitioners are liable to be rejected on ground of delay. Having regard to the facts and circumstances I however find no merit in this argument. In the case of Dr. Proshanta Guha the writ petition has been filed on 22nd February, 1991. that is, about four months and a half after the issuance of the impugned letter dated the 5th October, 1990. It is stated in para 31, of his writ petition that he approached different authorities for relief and lastly visited the ICAR office at Delhi, but that also yielded no result and consequently he has to approach this court. The short delay has thus been satisfactorily explained by the writ petitioner. In the case of Dr. Monorath Pandey the writ petition has been filed on 25th February, 1992. that is, about 11 months after issuance of the impugned letter dated the 1st April, 1991. He has described in paragraphs 41 and 42 of his writ petition how he was stranded and had to pass days with his family members on the charity of, professors, employees, friends and well-wishers and had to take shelter with his family members under a tree in open space in front of the Director's bungalow and all his efforts to obtain justice failed leaving no other alternative but to approach this court for justice. Having regard to the facts and circumstances of the case, I am of opinion that delay has been explained. The plea of delay taken on behalf of the respondents therefore fails.

13. The learned Advocate for the respondents relied upon the following decisions, namely, (1) [Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others](#), (2) [State of Orissa and Another Vs. Dr. Pyari Mohan Misra](#), (3) [Sheila Roy and Others Vs. Union of India and Others](#), and (4) Tera Mian v. State of West Bengal, 1993 (II) CHN 237. In fact the decision of the Supreme Court in S.M. Hamilton v. AIIMS (supra) does not go against the present writ petitioners. It is submitted on

behalf of the respondents that ICAR should be directed to employ the writ petitioners. In *State of Orissa v. Pyari Mohan Misra* (supra) the writ petitioner was appointed on adhoc basis as Director of Fisheries and by a subsequent order he was directed to continue temporarily until further orders. Subsequently consequent upon the policy decision of the Government to appoint an IAS officer to man the post of the Director, the writ petitioner was reverted from the post of Director to the post of Joint Director. The question before the Supreme Court was whether the reversion was valid in law. In the facts and circumstance of that case the Supreme Court held that the reversion was perfectly valid and legal. In our present cases the question involved is not a question of reversion from a higher post to a lower post, but of termination of services. The said decision has therefore no application to the present cases. The case of *Sheila Roy v. Union of India* (supra) was decided by the Delhi High Court on the particular facts and circumstances obtaining in that case. The facts and circumstances of the present cases under consideration of this court are quite different. As I have already discussed the present cases have to be decided inter alia in the back ground of the provisions of the SRIC Rules, the Memorandum of Understanding and vital correspondence between the IIT Kharagpur and the ICAR and certain arrangements agreed upon by them. The reported decision of the Delhi High Court was not concerned with such factors as are obtaining in the present cases. That is also the position so far as the Division Bench decision of this court in *Tera Mian v. State of West Bengal* (supra) is concerned. Consequently none of those decisions is attracted to the facts of the present cases.

14. On the other hand the petitioners have referred to certain reported decisions, such as *Biswajit Bose v. State of W. Bengal*, 98 CWN 40. In *re Chandan Kumar Bhattacharjee & Ors*, 1993(2) CLJ 106, etc. They have also referred to and placed certain unreported decisions of this court, such as. (1) *Dr. A.R. Khan v. IIT* C.O. 13776(W) of 1990 with 2949(W) of 1991 (decision of Division Bench dt. 17.5.94). (3) *Kalyan Prasad Sinha Mahapatra v. IIT*. C.O. 11909(W) of 1994 (decided on 23.12.94). All these unreported decisions went against the IIT Kharagpur. However on an independent analysis of the facts and circumstances of the present cases which I have elaborately discussed earlier I find that the writ petitioners are entitled to the following relief's and I direct accordingly. The impugned Memo No. 11T/SRIC/3-201/75 dt. 5.10.90, annexure-B to the writ petition of Dr. Proshanta Guha in C.O. 6177(W) of 1991 and the Memo No. IIT/ SRIC/ M1SC (Genl)/5 dt. 1.4.91 annexure-J to the writ petition of Dr. Monorath Pandey in C.O. 2248(W) of 1992 are hereby quashed. The respondents IIT authorities of Kharagpur IIT are directed to treat the writ petitioners to be in continuous service from the respective dates of the purported termination of services of the writ petitioners. The respondents IIT authorities are further directed to reinstate and employ the petitioners in any available scheme posts of equivalent category within four weeks from the date of communication of this order and to absorb them in equivalent category in the regular establishment of IIT, Kharagpur with the benefit of past service as soon as

possible during the continuance of scheme employment. Instead of employing the petitioners in scheme posts initially, the respondents IIT authorities however may directly absorb the petitioners in the regular establishment within four weeks from the date of communication of this order. All arrear salaries as may be admissible to the writ petitioners, had they been actually in continuous service, shall be paid to the petitioners within eight weeks from the date of communication of this order. In calculating the arrear payable any amount paid during the pendency of the writ petitions to the respective writ petitioners for adhoc engagements like Post Officer or Junior Research Officer in the Energy Requirements in Agricultural Sector Project, shall be deducted. In view of the commitment of the ICAR it is however directed that expenses towards the payment of arrears for the initial period of three years in respect of each petitioner shall however be met by the ICAR although initially the payment of arrear for much period shall be made to the petitioners by the IIT authorities who shall, by virtue of this order, be entitled to reimbursement of the same. The ICAR will reimburse the amount to the IIT, Kharagpur within three months of receipt of demand in this respect from the IIT authorities. Till reinstatement of the petitioners as directed above they shall be deemed to be in continuous service. The IIT authorities are directed to give proper residential accommodation to the petitioner Dr. Monorath Pandey within a reasonable time. They are also directed not to oust the petitioner Dr. Proshanta Guha from the residential accommodation he is occupying now. The writ petitions stand disposed of accordingly. No cost is however ordered.