

W.P.(MD)No.19024 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2022

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

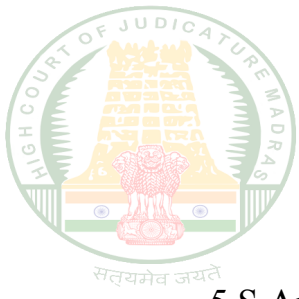
W.P.(MD)No.19024 of 2018

P.Dhanaseelan

...Petitioner

/Vs./

1. The Union of India,
Rep.by its Joint Secretary,
Ministry of Human Resource Development,
Department of Higher Education,
Shastri Bhawan,
New Delhi-110 001.
- 2.National Institute of Technology, Tiruchirapalli,
Represented by its Registrar,
Thuvakudi,
Tiruchirappalli-620 015.
- 3.National Institute of Technology, Tiruchirapalli,
Represented by its Director,
Thuvakudi,
Tiruchirappalli-620 015.
- 4.The Board of Governors,
Rep.by its Chairperson,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.



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5.S.Amalan Sigmund Kaushik,
Assistant Professor,
Department of Architecture,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

6.Dr.Virivinti Nagajothi,
Assistant Professor,
Department of Chemical Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

7.Dr.Sarthak Mandal,
Assistant Professor,
Department of Chemistry,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

8.Dr.Sunandan Sarkar,
Assistant Professor,
Department of Chemistry,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

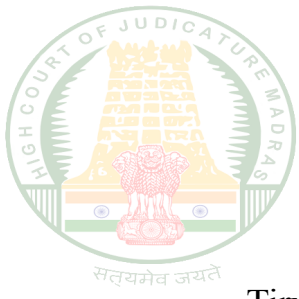
9.Dr.Somenath Garai,
Assistant Professor,
Department of Chemistry,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.



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10. Dr. R. Raghavan,
Assistant Professor,
Department of Civil Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.
11. Dr. R. Senthil Kumar,
Assistant Professor,
Department of Civil Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.
12. Dr. Jeevan Joseph,
Assistant Professor,
Department of Civil Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.
13. Dr. S. Marisamynathan,
Assistant Professor,
Department of Civil Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.
14. Dr. D. Ruben Sudhakar,
Assistant Professor,
Department of Energy and Environment,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,

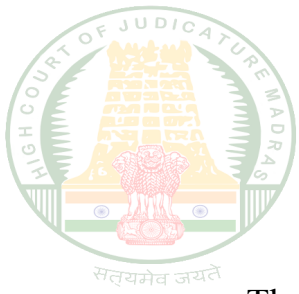


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Tiruchirappalli-620 015.

15. Dr. Menka,
Assistant Professor,
Department of Energy and Environment,
National Institute of Technology, Tiruchirappalli,
Thuvakudi,
Tiruchirappalli-620 015.
16. Dr. S. S. Karthikeyan,
Assistant Professor,
Department of Electronics & Communication Engineering,
National Institute of Technology, Tiruchirappalli,
Thuvakudi,
Tiruchirappalli-620 015.
17. Dr. Varun P. Gopi,
Assistant Professor,
Department of Electronics & Communication Engineering,
National Institute of Technology, Tiruchirappalli,
Thuvakudi,
Tiruchirappalli-620 015.
18. Dr. Shelas Sathyan
Assistant Professor,
Department of Electronics & Communication Engineering,
National Institute of Technology, Tiruchirappalli,
Thuvakudi,
Tiruchirappalli-620 015.
19. Dr. Karthik Thirumala
Assistant Professor,
Department of Electronics & Communication Engineering,
National Institute of Technology, Tiruchirappalli,



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Thuvakudi,
Tiruchirappalli-620 015.

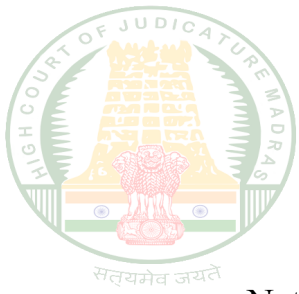
20.Dr.Vivek Mohan
Assistant Professor,
Department of Electronics & Communication Engineering,
National Institute of Technology, Tiruchirappalli,
Thuvakudi,
Tiruchirappalli-620 015.

21.Dr.R.L.Josephine,
Assistant Professor,
Department of Electronics & Communication Engineering,
National Institute of Technology, Tiruchirappalli,
Thuvakudi,
Tiruchirappalli-620 015.

22.Dr.Manoranjan Sahoo,
Assistant Professor,
Department of Electronics & Communication Engineering,
National Institute of Technology, Tiruchirappalli,
Thuvakudi,
Tiruchirappalli-620 015.

23.Dr.R.Periyasamy,
Assistant Professor,
Department of Instrumentation & Control Engineering,
National Institute of Technology, Tiruchirappalli,
Thuvakudi,
Tiruchirappalli-620 015.

24.Dr.P.A.Karthick,
Assistant Professor,
Department of Instrumentation & Control Engineering,



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National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

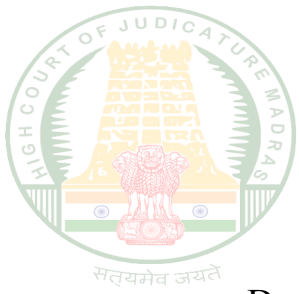
25.Dr.C.Geetha,
Assistant Professor,
Department of Instrumentation & Control Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

26.Dr.S.Nivethitha,
Assistant Professor,
Department of Management Studies,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

27.Dr.I.Jeyaraman,
Assistant Professor,
Department of Mathematics,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

28.Dr.Jitraj Saha,
Assistant Professor,
Department of Mathematics,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

29.Dr.N.Prakash,
Assistant Professor,

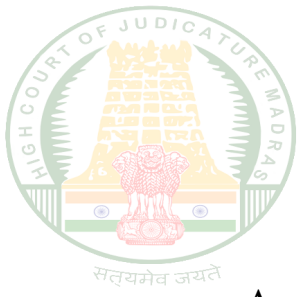


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Department of Mathematics,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

- 30.Dr. Vamsinadh Thota
Assistant Professor,
Department of Mathematics,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.
- 31.Dr.D.Nagarajan,
Assistant Professor,
Department of Metallurgical & Materials Engineering
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.
- 32.Dr. V.Karthik,
Assistant Professor,
Department of Metallurgical & Materials Engineering
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.
- 33.Dr.Ashok Kumar Nallathambi,
Assistant Professor,
Department of Mechanical Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.
- 34.Dr.R.Kaushik,



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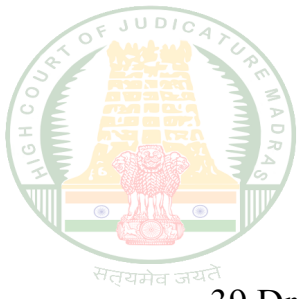
Assistant Professor,
Department of Mechanical Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

35.Dr.S.S.Harish Kruthiventi
Assistant Professor,
Department of Mechanical Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

36.Dr.Vedharaj Sivasankaralingam
Assistant Professor,
Department of Mechanical Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

37.Dr.Annupureddy Venkateswarlu
Assistant Professor,
Department of Physics,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

38.Dr.Prabal Singh Verma,
Assistant Professor,
Department of Physics,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.



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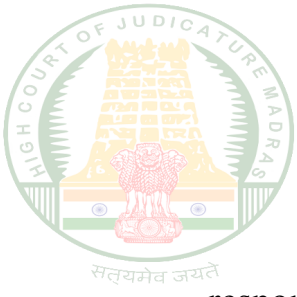
39. Dr. V. Satheeshkumar
Assistant Professor,
Department of Production Engineering,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

40. Dr. Ganesh Chandra Nandi,
Assistant Professor,
Department of Chemistry,
National Institute of Technology, Tiruchirapalli,
Thuvakudi,
Tiruchirappalli-620 015.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records culminating to the selection of 42 Assistant Professor made in pursuance of the Advertisement No.NITT/R/F/2017/03 dated 11.10.2017 issued by the second respondent and to quash the same and to command the respondent Nos.2 to 4 to make fresh selection for the regular post of Assistant Professor in the third respondent institute by operating the “post based” roster prepared in accordance with the Government of India, Department of Personnel and Training O.M.No. 36012/2/96-Estt. (Res) dated 02.07.1997, after indicating the number of vacancies earmarked for each reserved and unreserved categories by treating each Department as a unit and as per the Resolution of the fourth

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respondent and to appoint the petitioner as Assistant Professor (Fine Arts) in the Department of Architecture of the third respondent Institute on the basis of the qualification as advertised in their advertisement dated 13.07.2016, 06.05.2017 and 11.10.2017.

For Petitioner : Mr.Sricharan Rangarajan
for Mr.T.Sakthi Kumaran

For R1 : Mr.M.Kannan

For R2 to R4 : Ms.J.Maria Roseline

For R5 to R14 &
R16 to R18 : Mr.V.Meenakshi Sundaram

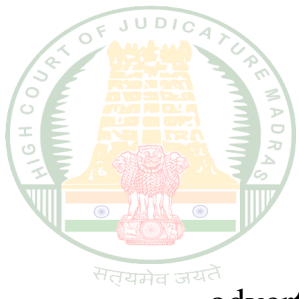
For R29, R31, R33-
R35, R37 to R40 : Mr.S.Anwar Sameem
for M/s.T.Antony Arulraj

For R19 to R28,
R15, R32 & R36 : No appearance

ORDER

The petitioner challenges advertisement dated 11.10.2017 calling for applications for the post of Assistant Professors in the National Institute of Technology, Tiruchirapalli [NIT]. As a consequence of the

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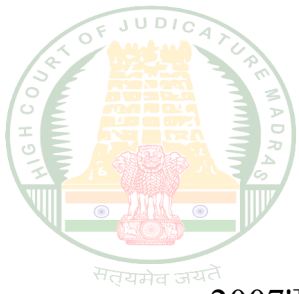
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advertisement issued, 36 Assistant Professors have been appointed, all arrayed as respondents to this writ petition. During the pendency of the writ petition, several have retired.

2. Seeing as the petitioner's application was for a post in the Department of Architecture, I am of the view that the challenge must be restricted only to such applications as relate to the aforesaid department. Thus, this writ petition is dismissed as regards those respondents, who have retired and those who are appointed in other Departments, barring the Department of Architecture.

3. R5 has been appointed as Assistant Professor in the Department of Architecture and this Writ Petition is thus decided qua the eligibility of the petitioner to be appointed in the post of Assistant Professor and the veracity or otherwise of the concluded appointment of R5. These are the only two issues that arise for consideration of this Court.

4. NIT is governed by the provisions of the *National Institutes of Technology, Science Education and Research Act, 2007* ['NITSER Act



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2007']. Clause 23 of the First Statutes framed under the provisions of the Act provide for the mode and method of appointments to be effected by the Board of Governors, including Academic, Technical or Administrative appointments.

5. Clause 7 of the First Statutes adumbrate the essential qualifications for appointments to the position of faculty in the Department of Architecture as follows:

S.O.947(E)- In exercise of the powers conferred by sub-section (3) and sub-section (4) of Section 26 of the National Institute of Technology, Science Education and Research Act, 2007 (29 of 2007), with the prior approval of the Visitor, the Central Government hereby makes the following statutes further to amend the First Statutes of the National Institutes of Technology, namely-

(1) These Statutes may be called the First Statutes of the National Institutes of Technology (Amendment) Statutes, 2017.

7. For faculty in the Department of Architecture, following shall be essential qualification without insisting on credit point requirements at Assistant Professor level:

(I) M.Arch or M.Plan with one year professional experience; Assistant Professor at Academic Grade Pay of Rs.6000;

(ii) M.Arch or M.Plan with two years of professional experience; Assistant Professor at Academic Grade Pay of Rs.7000;

(iii) For higher cadres the educational



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qualification and credit point requirement shall remain same as given in the table for Engineering and Sciences.

6. The impugned call for appointments dated 11.10.2017 sets out the essential qualifications in clause 2 as follows:

2.Essential Qualifications:-

(I) Detailed Educational Qualifications, Experience and other criteria for selection shall be as per the modified recruitment rules for Faculty in NITS. It shall be as per Schedule E of the first statutes of the NITs (amendment Statutes 2017) reference Gazette of India dated July 24th 2017.

(ii) All new entrants shall have Ph.D in the relevant/equivalent discipline and shall have First Class in the preceding Degrees*

Preceding Degrees:-

** For all Engineering/Architecture Departments B.Tech/B Arch. or any equivalent degree AND M.Tech/M.Arch or any equivalent degree in relevant discipline.*

** Candidates having Ph.D. Degree directly after B.Tech. From reputed Institution/Universities will also be considered, if other norms are fulfilled.*

** For Humanities/Management/Applied Sciences B.A./B.Sc/B.Com. or any equivalent undergraduate degree and /or M.A./ M.Sc./M.Com./M.B.A./M.C.A or any equivalent P.G. degree in relevant discipline.*

** Relaxation for applying to Assistant Professor (On Contract) AGP Rs.6000Rs.7000 in Architecture Department as per Gazette of India notification.*



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7. The petitioner would urge that there must be clarity in regard to what constitutes 'eligible criteria' and Notification calling for applications must be transparent and adhere to the relevant Regulations available in public domain. In this instance, the Notification stipulates that for the Department of Architecture, a B.Tech/B.Arch or any equivalent degree and M.Tech/M.Arch or any other equivalent degree in the relevant discipline would suffice. Clause (2)(i) specifically refers to Schedule E of the First Statutes that, inter alia, contains clause 7, as noticed earlier.

8. The petitioner had joined the services of NIT pursuant to an advertisement dated 13.07.2016. He possessed, at that time, the qualifications of B.R.A., (Bachelors of Fine Arts) and M.F.A., (Master of Fine Arts) and an M.Phil in History along with industrial work and teaching experience as an Assistant Professor (Fine Arts). He was called for a written test and thereafter selected to fill one of 59 temporary faculty positions in the Department of Architecture. He was appointed on 16.08.2016 as a temporary faculty for academic year (AY) 2016-17.

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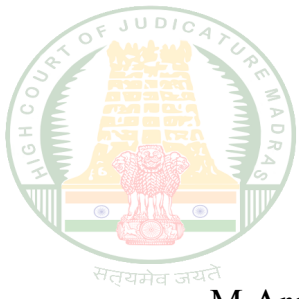


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9. While so, an Associate Professor in the Department of Architecture had retired on 31.10.2016 and the petitioner would claim to have handled the work load of said Associate Professor, till the completion of his period of service on 30.06.2017. He applied again in response to an advertisement dated 06.05.2017 to fill 148 temporary faculty positions and was again appointed to work till 31.12.2017. His services were extended by letter dated 04.01.2018, till 30.04.2018. He applied in response to the impugned notification dated 11.10.2017 and was unsuccessful. Hence this writ petition.

10. Recruitment Rules were introduced anew in the NIT meanwhile, vide notification dated 21.07.2017 and it is the petitioner's case that all recruitments made pursuant to the impugned Notification must be in line with the new Recruitment Rules, as per clause 7 of the First Statutes. Seen in the context of the aforesaid, the petitioner, who holds neither an M.Arch nor an M.Plan, is not eligible for appointment. He does not seriously dispute the position qua his eligibility, except to state that R5 is also wholly ineligible, since he too holds neither an



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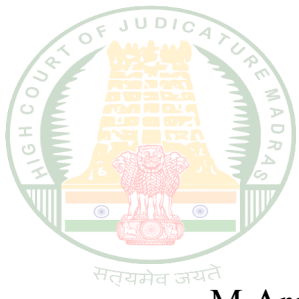
M.Arch nor an M.Plan, but only a Masters in Landscape Architecture.

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11. Since R5 is also not endowed with the requisite qualification, the petitioner would press into service Article 14 of the Constitution to state that his candidature must be preferred for appointment over that of R5, seeing as he has previously worked in the Department of Architecture for two academic years, also handling the additional work load of an Associate Professor .

12. The defence of NIT as well as R5 is premised upon the qualifications prescribed under the *Minimum Standards of Architectural Education Regulations* over the years. They argue that Section 83 of the Architects Act, 1972 ('Act') provides for the constitution of a Council of Architecture upon whose recommendations, Regulations for minimum standards in Architectural education are being issued from time to time.

13. The Regulations of the year 1983 have been duly notified and contain an Appendix which, at clause 2 states that the qualification for a Reader or an Assistant professor is a B.Arch or equivalent, with seven years' experience in teaching, research or professional work, or an



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M.Arch or equivalent with five years' experience in Teaching/Professional work.

14. The Note appended thereto states that the equivalent qualification shall mean any such qualification as recognized by the Council of Architecture for registration as an Architect under Section 25 of the Architects Act, 1972. Thus, according to them, the educational qualification of R5 being M.Plan in Landscape Architecture would suffice and his appointment is not liable to be disturbed.

15. They also rely on subsequent Regulations issued in 2015 and 2017 that contain Annexures prescribing qualifications, and equivalence of Post-Graduate Degrees in 28 designated subjects having a duration of two year/four semester (Full time) or Three years/Six semesters(part time) granted by Indian Universities or a competent Authority recognized by the Central and State Government, to an M.Arch degree, for the purpose of employment in institutions imparting Architectural education. Landscape Architecture is included in this list at Serial No.4.

16. The difficulty they face is that the 2015 and 2017

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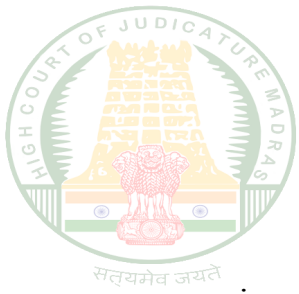
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regulations have not been notified and cannot be relied upon. There is thus no question of incorporation by reference of these Regulations into the First Statutes without the proper process of Notification, as prescribed.

17. In fact, the 2017 regulations were challenged in a writ petition bearing No.34676 of 2018 by the Academic Society of Architects. The basis of the challenge was that the 2017 regulations were being enforced even prior to approval by the Ministry of Human Resources Development. This challenge was accepted, the Division Bench holding that the attempt of the respondents to enforce the 2017 regulations even prior to approval, was clearly misconceived.

18. The Bench further observes that the only regulations that would be enforceable, as they have been duly approved by the Government as well as gazetted, are *the Minimum Standards of Architectural Education Regulations, 1983*, framed under Section 45(2) (e)(g)(h)(i) and (j) r/w Section 21 of the Architects Act. Reliance of the respondents upon the 2015 and 2017 regulations is thus clearly



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misconceived.

19. The Division Bench, in conclusion, states thus:

“30. A reading of the above judgment of the Supreme Court shows that if a Statute confers power to issue Regulations/Guidelines, the same has to be done only in the manner specified under the Statute and not in any other manner. Therefore, the dictum laid down in the said decision of the Supreme Court, will squarely apply to the facts of the present case. Further, Section 21 of the Architects Act gives power to the Council of Architecture to prescribe the minimum standards of Architectural education required for granting recognised qualifications by colleges or institutions in India and such prescription of the Regulations cannot be done independently by the first respondent-Council of Architecture. Thus, the Minimum Standards of Architectural Education Regulations are to be brought into force only by way of due approval of the same by the Central Government and issuance of the same in the Official Gazette of the Union of India as provided under Section 45 of the Act. In the absence of such approval by the Central Government, the said "Minimum Standards of Architectural Education Regulations, 2017", do not have any statutory force and they cannot be implemented. In the present case, the prescription of the Minimum Standards of Architectural Education Regulations, 2017 are being discussed in the meetings of the Council



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of Architecture. But it is clear that the said 2017 Regulations have not yet been approved by the Central Government till date and only the earlier Regulations of the year 1983 are in force. Under such circumstances, the attempt made by the first respondent-Council of Architecture by issuance of impugned communications dated 31.10.2018 and 03.12.2018 to the Architectural institutions, is not legally sustainable. Therefore, the impugned communications are liable to be quashed, since the first respondent-CoA is trying to enforce the Regulations of the year 2017 even before the same are approved by the second respondent-Central Government.

31. Hence, for the reasons stated above, the Writ Petition is allowed as prayed for. Consequently, W.M.P. is closed. No costs."

20. The 1983 Regulations read with the explanatory Note contained thereto, still stare the petitioner and R5 in the face as they prescribe a Masters Degree or equivalent, such equivalence connoting any qualification as may be recognised by the Council of Architecture for registration as an architect. For this purpose, one may refer to Section 25 of the Architect Act which deals with qualification for entry in the register of architects.

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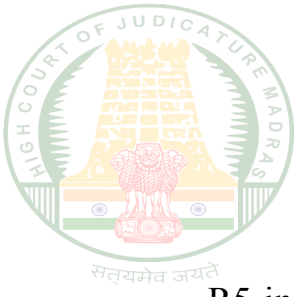
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21. Section 25 states that the Tribunal constituted for inclusion of names in the registers, the Registration Tribunal, would direct the entry of the name of the applicant in the register, if he holds recognised qualifications or possesses other qualifications as may be prescribed by the Rules. '*Recognized qualification*' is defined in Section 2[d] of the Act as any qualification in Architecture for the time being included in the Schedule or notified under Section 15.

22. Section 15 refers to qualifications granted by authorities in foreign countries and is not relevant for purposes of this case. The Schedule to the Act does not refer to a Masters Degree and refers only to Under-Graduate degrees. Reliance upon in Appendix B of the 1983 Regulations and the explanatory Note, thus, takes us nowhere.

23. In light of clause 7 of the First Statutes, which is categorical to the effect that only a Masters in Architecture or a Masters in Planning with the required experience will suffice, the question of equivalence does not arise at all.

24. This conclusion would render both the petitioner as well as



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R5 ineligible for appointment, R5 as the degree held by him, a Masters in Landscape Planning does not satisfy the essential qualifications set out under Advertisement dated 11.10.20174 and the petitioner as admittedly he has not studied Architecture let alone acquired a Masters degree in that subject.

25.Detailed submissions have been made in regard to the application of the reservation policy in effecting the appointments. While the respondents would submit that, in making the appointments, they have applied the applicable rules of reservation within the framework of flexible cadre of structure, the petitioner would point out that there is no reference to this in the notification.

26.He is right on this score. The Board of Governors, at the 20th meeting held in January 2010, have discussed the issue relating to faculty recruitment directing specific attention to the following issues:

“(a) The number of vacancies available in various departments for various posts must be clearly specified in advance.

(b) Those candidates who had applied against the earlier advertisement may not be needed to apply again, but should be allowed to upgrade and uplink any additional data in their bio-data



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subsequent to their application that could add value to their candidature.

(c) The positions in the various departments must be based on work load, students' number, etc.

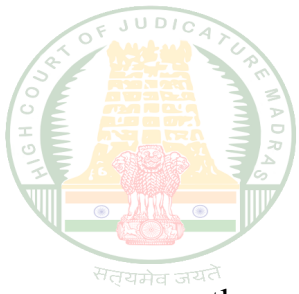
(d) The reservation policy of the Government of India must be fully implemented and so specified in the advertisement in terms of number of posts available under the reservation policy.

(e) This new advertisement with the number of vacancies clearly specified must be approved in a HODs' meeting and subsequently by the Senate.

(f) Further Board resolved that, after the completion of above process it could be circulated to the Chairman and members of the Board and approval obtained through circulation note.

(g) After fulfilling the above, the advertisement is to be released.”

27.The impugned advertisement dated 11.10.2017 does not confirm to this directive, as nowhere does it stipulate, as has been specifically directed by the Board, the specific number of posts per category. It is only the counter which gives the break-up as being 11 vacancies of which, six relate to OC, three to OBC and one each to SC and ST. These details ought to have been stipulated in the advertisement itself and the omission to do so is a fatal flaw that, to my mind, vitiates



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the procedure followed in effecting appointments. The qualifications stipulated are also, as per the discussion in the paragraphs supra, not in line with the required regulations.

28. The opacity of the selection process and the errors in regard to the qualifications of the aspirants to the posts are indeed a matter of concern to the Court. It appears clear to me that all is not well as regards the method, methodology as well as the procedure followed by NIT, in effecting appointments, at least with regard to the Department of Architecture.

29. In light of the detailed discussion as above, the appointment of R5 is set aside. There shall be a fresh call for filling in the vacancies that arise consequent upon this order and the process shall be strictly in line with the stipulations under the First Statutes and the 1983 Regulations, such exercise to be concluded within a period of three months from today.

30. This Writ Petition is disposed in the aforesaid terms. No costs.

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Index : Yes/No
Internet : Yes
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DR.ANITA SUMANTH, J.

ssb

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

Order made in
W.P.(MD)No.19024 of 2018

Dated:
01.02.2022