

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO(S). 5307 OF 2024****LOKENDRA KUMAR TIWARI****... APPELLANT(S)****VERSUS****UNION OF INDIA AND OTHERS****... RESPONDENT(S)****J U D G M E N T****S.V.N. BHATTI, J.**

1. In January 2013, Respondent No. 2/Institute issued an Advertisement numbered FS-01/2013 ("Advertisement") calling for applications from suitable candidates for the posts of Professor, Associate Professor and Assistant Professor. The Civil Appeal concerns the appointment of an Assistant Professor. The Advertisement invites applications for appointment to regular posts of Assistant Professor, and the Appellant is among the applicants. The qualifications required for the post and the qualifications possessed by the Appellant are stated in the following table:

Criteria Required for Assistant Professor	Qualifications Possessed by the Appellant
Ph.D. with First Class or equivalent (in terms of grades) at the preceding degree in the appropriate branch, with a good academic record throughout	Ph.D. in Information Security, Department of Electronics and Communication, University of Allahabad (November 2008 to May 2012)

First class or equivalent at the degree preceding the Ph.D. in the appropriate branch	M.S. in Cyber Law & Information Security, IIIT-Allahabad, First Division; awarded Bronze Medal and Certificate of Merit for securing Third Position in the MS batch; CGPA 9.02/10 (July 2006 – May 2008)
Experience of minimum 3 years of teaching / research / industrial experience as on the closing date of the advertisement, 25.02.2013	Working as Lecturer at Ewing Christian College (University of Allahabad), Department of Computer Science, 21.07.2008 to 05.04.2013; additionally served as Guest Faculty at IIIT-Allahabad from October 2012 to 05.04.2013
Faculty positions in areas including Information Technology (including Information Security, Laws & Practices, Information and Network Security), Electronics, Management, MSc/LIS, Bioinformatics, Biomedical Engineering	Applied for Assistant Professor in the Information Security/MSCLIS stream (Information Security Laws & Practices; Information and Network Security)

2. The Appellant was invited for the interview held on 18.03.2013. On 06.04.2013, Respondent No. 3 issued a letter of appointment to the Appellant as Assistant Professor on a contract basis for a period of 12 months. The Appellant accepted the appointment on a contract basis, and continued to discharge the duties and functions in the Respondent No. 2/Institute. On 26.03.2014, Respondent No. 2, on a few perceived omissions in the selection process, cancelled all the appointments made pursuant to the recommendation of the Selection Committee dated 06.04.2013. It is pertinent to note that, in the very selection dated 06.04.2013, Respondent No. 2 appointed thirteen individuals as Associate and Assistant Professors in the Institute. The Appellant and another individual, Dr. Ranjana Vyas, were recommended on a contract basis and given appointments. The aggrieved appointees, pursuant to the recommendation of the Selection Committee dated 06.04.2013, challenged the cancellation of appointment by Respondent

No. 2 by filing Writ Petition No. 22558 of 2014 in the High Court of Judicature at Allahabad.

3. On 11.12.2015, the Writ Petitions filed by the removed Associate and Assistant Professors were allowed, and Respondent No. 2 was directed to reconsider the issue after affording the candidates an opportunity. The Appellant filed an application for modification on the ground that the Appellant's initial appointment on a contractual basis was *ex facie* illegal and contrary to the Rules. The Appellant's application was disposed of on 24.03.2017, along with the Civil Appeal Nos. 4406-4418 of 2017 filed against the judgment dated 11.12.2015 of the High Court of Judicature at Allahabad.

4. The present Civil Appeal arises from the decision taken by Respondent No. 2, pursuant to the order of remand.

5. Respondent No. 2, while reconsidering the matter, decided to reiterate the decision of the Selection Committee, resulting in the re-issuance of the appointment letter to the thirteen candidates. Respondent No. 2 has offered the contractual appointment on 27.06.2017 to the Appellant, and the operative portion reads as follows:

"As apropos the above Office Memorandum, you are requested to join your services to complete your contract period at IIT Allahabad within 21 days from the receipt of this letter; failing which the opportunity to join the IIT Allahabad will automatically stand cancelled.

You are required to bring proper relieving order from your present organization at the time of rejoining your services here. Please also bring your Last Pay Certificate.

This is being issued with the approval of competent authority."

6. The Appellant filed Writ Petition No. 7099 of 2018 challenging the reiteration of the recommendation for the Appellant's appointment on a

contractual basis. The Appellant's case in Writ Petition No. 7099 of 2018 was that the Advertisement was issued exclusively for regular appointments in Pay Band-IV and Pay Band-III, with no mention of contractual appointments, and that Rules 9 and 9-A of the Recruitment and Service Rules of IIIT-Allahabad, 1999 ("Rules"), separately prescribed distinct Selection Committees for regular and contractual appointments, a procedure entirely bypassed in the present case. It was contended that, of all candidates selected on 06.04.2013, every other candidate was appointed on a regular basis, while the Appellant alone, along with Dr. Ranjana Vyas, was arbitrarily placed on a contractual appointment. This constituted a violation of Articles 14 and 16 of the Constitution of India. The Appellant urged that his oral protest at the time of joining, and his subsequent acceptance under economic compulsion on the assurance of the then Director, could not operate as an estoppel against the illegality. It was further contended that, even after this Court's remand in 2017, the Institute regularised all other candidates' contractual appointments except the Appellant's. The Appellant accordingly prayed for the quashing of the orders dated 01.01.2018, 19.06.2017 and 27.06.2017, the modification of the Selection Committee's recommendation dated 06.04.2013, and the treatment of his appointment as regular with all consequential service and monetary benefits from 06.04.2013.

7. Respondent No. 2 opposed the writ prayer, arguing the Selection Committee was competent to recommend appointments on a regular or contractual basis, as rules allowed discretion. The committee exercised this discretion based on candidates' merit and available posts. It was added that the Appellant was not uniquely treated; Dr. Ranjana Vyas was similarly

appointed contractually. The Respondent asserted that the Appellant voluntarily accepted his contractual appointment on 06.04.2013 without protest and worked for nearly a year without grievance. When appointments were cancelled, and a new offer was made on 27.03.2014, the Appellant accepted it in writing, thereby barring him from later questioning the contractual nature of the offer. The Respondent also argued that the Appellant failed to press his claim for regular appointment earlier, including during the proceedings of 11.12.2015 and 24.03.2017. The Board of Governors re-examined the matter on 06.06.2017 after providing a status report and hearing. The decision to uphold the contractual appointment was well-reasoned and not subject to judicial review. Lastly, it was contended that, since the Appellant was not in service and refused to complete his contractual term, he was not entitled to regularisation.

8. On 12.02.2019, the learned Single Judge dismissed the Writ Petition filed by the Appellant. The Single Judge noted that the Board of Governors' decision dated 06.06.2017 had been taken after due reconsideration pursuant to this Court's directions and therefore carried a presumption of due application of mind. It was observed that the Competent Authority had considered the Appellant's case along with that of others and had chosen to maintain his contractual appointment. This decision does not warrant an interference under Article 226 of the Constitution of India. The High Court further held that the Appellant, having been appointed on a contractual basis, did not have the right to seek regular appointment. It was additionally noted that the Appellant had accepted his contractual appointment without any formal protest and had worked for a considerable period under those terms,

and therefore could not subsequently challenge the nature of his appointment, more so when he had accepted a fresh contractual appointment. The Writ Petition was accordingly dismissed, with the limited relief of permitting the Appellant to join and complete the remaining duration of his contractual tenure.

9. The Appellant filed an unsuccessful appeal before the Division Bench. The Division Bench recorded that even if the advertisement did not expressly distinguish between contractual and regular appointments, the fact was that the Appellant had accepted his contractual appointment without any written protest and continued in service for a considerable period. The Division Bench noted that the Appellant's allegation of an oral protest at the time of joining was insufficient to displace his clear conduct in accepting the contractual terms. It further emphasised that acquiescence disentitled the Appellant from later challenging the appointment. While dealing with the plea of discrimination, the Division Bench held that the Appellant could not claim regularisation merely because other candidates had been appointed on a regular basis, observing that the Selection Committee had the discretion to recommend appointments. The Division Bench dismissed the Writ Appeal. Hence, the Civil Appeal.

10. Learned Senior Counsel, Mr. Sudhir Kumar Saxena, appearing for the Appellant, argued that the advertisement was issued for filling up a sanctioned regular post in Respondent No. 2/Institute. The Rules provide for a separate procedure for the selection on a regular or contract basis. The Selection Committee has no jurisdiction or authority to arbitrarily make a recommendation of the Appellant's case for appointment on a contract basis.

If the Appellant is eligible for appointment on a contract basis, then by the same criteria, he is eligible for a regular appointment. It is no one's case that the contractual appointment was made despite the Appellant not being fully qualified to hold the position of Assistant Professor. Rather, the Appellant is fully qualified and was entitled to a regular appointment. The Appellant accepted the appointment on a contractual basis by making an oral protest. Even assuming the protest was oral, the options for the unemployed are few, and on the assurance given by the then Director, the Appellant joined as an Assistant Professor. Therefore, acceptance of the contractual appointment does not estop a challenge to the illegality or irregularity of the selection procedure for all candidates. Giving singular treatment to the Appellant suffers from discrimination and violates Articles 14 and 16 of the Constitution of India. The learned Single Judge and the Division Bench are excessively swayed by the conduct of the Appellant in accepting the contractual appointment. The original record produced in this Court, stated with circumspection, "bristles with patent illegalities and arbitrariness" as the persons who were conducting the appointment were part of the Selection Committee. The Appellant had been working as a lecturer/guest lecturer in other institutions, and the denial of regular employment in the case at hand is for reasons unavailable. The Appellant suffers from discrimination and prays for re-appointment as a regular appointee and for the issuance of all consequential benefits.

11. Learned Counsel, Mr. Sanyat Lodha, appearing for Respondent No. 2, contends that the scope of judicial review in matters of selection and appointment is well established, and the case on hand does not fall within the

permissible parameters of judicial review. This Court *vide* order dated 24.03.2017 directed reconsideration, and the reconsideration cannot be faulted with inasmuch as Respondent No. 2 accepted the recommendations as made by the Selection Committee. The Selection Committee recommended that the Appellant be appointed on a contract basis, whereas other candidates be appointed on a regular basis. Therefore, the Appellant has no right.

11.1 *Vide* order dated 28.01.2026, this Court directed Respondent No. 2 to file a tabular statement of the details of candidates appointed, qualifications held by the candidates selected and appointed on a regular basis, and whether any relaxation was granted to any one of the selected or regularly appointed candidates. Mr. Sanyat Lodha placed before us the statement together with the minutes of the meeting of the Selection Committee.

12. We have perused the record and noted the arguments. The real controversy in the Civil Appeal is not whether a contractual appointee is entitled to regularisation, but whether issuing a contractual appointment against an advertisement meant for a regular vacancy, subjecting it to the regular process and arbitrarily granting a contractual appointment, is sustainable. The following are the admitted circumstances:

A. Advertisement: Respondent No. 2 issued the Advertisement calling for applications for appointment to the posts of Professor, Associate Professor and Assistant Professor in the Institute. The posts were advertised in Pay Band-IV and Pay Band-III, respectively. The Advertisement made no mention of any appointment being made on a contractual basis, and the last date for receipt of applications was 25.02.2013.

B. Appellant's Application and Suitability: The Appellant applied in response to the advertisement for the post of Assistant Professor in the area of Information Security. He was found suitable for consideration, possessing a PhD with a First-Class preceding degree and a good academic record, and was accordingly called for an interview for the post of Assistant Professor by letter dated 18.03.2013.

C. Shortlisted for Consideration for a Regular Appointment: The Appellant was shortlisted and appeared for the interview held on 18.03.2013 before the Selection Committee constituted for the purpose. The selection process was one and the same for all candidates, regular and otherwise, and the Appellant was considered alongside all other candidates who were ultimately appointed on a regular basis.

D. Recommended for Appointment on a Contract Basis: Despite being found suitable and selected through the same process, the Selection Committee, vide its recommendation dated 06.04.2013, recommended the Appellant for appointment on a contract basis for a period of one year at a fixed pay of Rs. 40,000/- per month, while all other thirteen candidates, barring the Appellant and Dr. Ranjana Vyas, were recommended for and given regular appointments. No reason was recorded for this differential treatment.

13. We observe that the procedure initiated is for a regular appointment, and the Selection Committee, after perusing the candidates' applications and credentials, has not given equal or uniform treatment to all candidates invited for an interview. The Appellant, if unsuitable for appointment, could not have been recommended even on a contract basis for a period of twelve months. To justify a singular treatment, at least the record must disclose reasons. The

record does not disclose any reason for denying the post for which the Appellant was shortlisted and interviewed. We are aware that in Judicial Review, the court will not sit as a court of appeal on the views recorded by the Selection Committee. The point in the case at hand is not whether the reasons recorded are right or untenable, but whether, even by the most liberal approach to the primacy of appointment, educational institutions have, in these matters, the denial of regular appointment justified?

14. At this stage, we do not intend to examine the procedure followed by the Selection Committee for making the recommendation dated 06.04.2013 in respect of other appointees. Because there is no challenge to their appointments and they are not parties before us. The other argument regarding the illegality of the Selection Process is also not considered, as it is not under challenge in the present proceedings. However, we note that denying a regular appointment is patently illegal and unconstitutional. Respondent No. 2 places before us the present vacant positions of Assistant Professors in the Institution, with thirty-two vacancies. The total number of vacancies for Assistant Professors is sixty-seven. Having perused the record, we are unable to discern a just and real reason for denying the Appellant a regular appointment. In the facts and circumstances of the case, we hold that the Appellant is entitled to a Regular Appointment in Respondent No. 2/Institution as Assistant Professor. Further, we mould the relief by denying other benefits except the Appellant's entitlement to continuity of service without financial benefit. Respondent No. 2 is directed to issue an order of appointment within four weeks from today, and the Appellant shall be kept, in the seniority of Assistant Professors, as the last candidate against the

candidates recommended and appointed by the Selection Committee resolution dated 06.04.2013.

15. All the orders/judgments impugned are set aside. The Civil Appeal is allowed as indicated above. No order as to costs. Pending application(s), if any, is/are disposed of accordingly.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

**New Delhi;
May 13, 2026**