(3) Save as otherwise provided in this Act, the repeal of the Acts referred to in sub-section (1) shall not have an adverse effect on the general application of section 6 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904) in relation to the enforcement of provisions."

17. A careful reading of sub-section (2) would reveal that notwithstanding repeal of the Act of 1980 anything done or any action taken under the acts referred to in sub-section (1) is to be deemed to have been done or taken under the new Act and for such purposes the new Act were to be treated to have been in force at all material times. Once we find that the new Act contains no power with the Director to fill up a substantive vacancy which has come into existence later, to be filled from a candidate selected in an earlier advertisement, the action of the Director would be without jurisdiction. This is particularly so as the powers of the Director under the previous Act would continue under the new Act by virtue of section 31(2) of the Act of 2023 insofar as it is not inconsistent with the Act. A power which is not conferred upon the Director during the currency of new Act cannot be exercised by tracing the source of such power from the previous Act, which has already been repealed.

18. In view of the deliberations and discussions held above, we hold that the Director had no jurisdiction to pass the order in favour of the appellant on 15.01.2024 and such order is, therefore, held to be without jurisdiction. Though for a different reason, but we ultimately find ourselves to be in agreement with the conclusion drawn by the learned Single Judge for quashing the order of the Director.

19. This appeal, consequently fails, and is dismissed. No order is passed as to costs.

(2025) 5 ILRA 701
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.05.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 5151 of 2023

Dr. Sanjay Mittal ...Petitioner
Versus
Union Of India & Ors. ...Respondents

Counsel for the Petitioner:
Avneesh Tripathi

Counsel for the Respondents:
A.S.G.I., Rohan Gupta, Sabhajeet Singh

Service Law – Disciplinary Proceedings – IIT Kanpur Statutes, Statute 13(9)(b) – Misconduct by Professor – Allegations of disparaging remarks against a colleague belonging to SC category and convening of an unauthorized faculty meeting questioning appointment – Inquiry held, charges found proved – Board of Governors imposed penalty of withholding two increments without cumulative effect for two years and debarment from holding administrative responsibilities for three years – Validity.

Held: The charges established derogated from discipline and constituted service misconduct; penalty of withholding increments is permissible under Statute 13(9)(b)(ii). However, debarment from holding administrative responsibilities for a period of three years is not one of the penalties enumerated under Statute 13(9)(b). The said punishment is beyond the authority of the IIT, manifestly illegal, and stands quashed. Penalty of withholding two increments without cumulative effect sustained.

Writ Petition partly allowed.

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against an order of the Director, Indian Institute of Technology, Kanpur dated 01.08.2022, punishing the petitioner with the withholding of two increments, without cumulative effect, for a period of two years, and directing that he shall not hold any administrative responsibility for a period of three years. The petitioner also challenges the resolution of the Board of Governors of the Indian Institute of Technology, Kanpur (for short, 'the IIT') dated 23.07.2022, resolving to impose upon the petitioner punishments as ordered by the Director of the IIT.

2. The petitioner is a Professor in the Department of Aerospace Engineering at the IIT. He was served with a charge-sheet dated 25.04.2018 by the Chairman, Board of Governors of the IIT, carrying the following charges, accompanying the formal memorandum:

"Article-1

That the said Dr. Sanjay Mittal, during a departmental get-together in the Department of Aerospace Engineering held on 04.01.2018 made disparaging comment stating that the standard of the department was going down due to the new faculty that has recently joined the Institute.

As Dr. Subrahmanyam Saderla happened to be nearby, the comment was made against none other than Dr. Subrahmanyam Saderla. He was also aware that such a disparaging comment in full public view would tend to lower the professional character and reputation of Dr. Subrahmanyam Saderla in the department.

Dr. Sanjay Mittal has, therefore, allegedly committed a serious misconduct by attempting to humiliate Dr. Subrahmanyam Saderla in full public view. Accordingly, the said Dr. Sanjay Mittal is prima facie accused of violating Rule 3(a) and (b) of the Conduct Rules (Schedule-B) framed under Statute 13(17) of the IIT Kanpur Statutes.

Article-2

That the said Dr. Sanjay Mittal vide an email dated 09.01.2018 called a meeting of all the faculty members of the Department of Aerospace Engineering, barring Dr. Subrahmanyam Saderla and Dr. Raghvendra P. Kukillaya, inviting them in a meeting at 4 PM on 10.1.2018 in AE Meeting Room (NWTF Building) ostensibly to discuss the possible procedural lapses in the recent hiring in the department, without any permission from the HoD or the competent authority of the Institute. During the meeting, he allegedly pioneered a discussion amongst his faculty colleagues alluding that the recent selection of Dr. Subrahmanyam Saderla was not in keeping with the norms of the Institute.

Dr. Sanjay Mittal was well aware that the selection of Dr. Subrahmanyam Saderla was made in a special recruitment drive for SC/ST/OBC/PWD candidates and Dr. Subrahmanyam Saderla is belonging to Scheduled Caste Category, yet he called the meeting to foment, nurture and evoke discontentment amongst his faculty colleagues against the selection of Dr. Subrahmanyam Saderla.

Dr. Sanjay Mittal has, therefore, allegedly committed a serious misconduct by attempting to cause discontentment amongst his faculty colleague against the

selection of Dr. Subrahmanyam Saderla, knowing very well that Dr. Subrahmanyam Saderla belongs to Scheduled Caste Category and calling his selection in question would cause immense humiliation to Dr. Subrahmanyam Saderla. The said Dr. Sanjay Mittal is, therefore, príma facie accused of violating Rule 3(a) and (b) of the Conduct Rules (Schedule- B) framed under Statute 13(17) of the IIT Kanpur Statutes."

3. There is a separate and detailed statement of imputations in support of the two charges, accompanying the charge-sheet, besides a list of documents and witnesses, by which, the charges were proposed to be proved.

4. The petitioner submitted his written statement on 10.05.2018/ 12.05.2018, traversing the charges. Much happened in this case before the stage of issue of the charge-sheet, that is to say, when preliminary inquiry was done by a Fact Finding Committee (for short, 'FFC').

5. After submission of the petitioner's written statement, the Chairman of the Board of Governors of the IIT, on the 31st of May, 2018, appointed Hon'ble Mr. Justice Saeed-uz-Zaman Siddiqui, a former Judge of this Court, as the Inquiry Officer. One Kripa Shankar, a Professor, was appointed the Presenting Officer and disciplinary proceedings were directed to be held before the Inquiry Officer, jointly against the petitioner, and Professor Rajeev Shekhar, Professor Ishan Sharma and Dr. C.S. Upadhyay. The Inquiry Officer held the inquiry, which the petitioner alleges, was in denial of the principles of natural justice, in the sense of being denied reasonable opportunity of defence. The petitioner's request for appointment of an Advocate as his defence representative was rejected by the Inquiry Officer, without referring it to the Disciplinary Authority. The petitioner's request to appoint a Professor of the IIT as his defence assistant too was rejected.

6. It is the petitioner's case that after the petitioner closed his defence, the Inquiry Officer did not generally question him on the circumstances appearing against the petitioner and the evidence for the purpose of enabling him to explain any circumstances, that would go against him.

7. After conclusion of the inquiry, the Inquiry Officer submitted a report dated 17.08.2018, holding the petitioner, along with two others, guilty of the misconductm charged on both counts. The inquiry report was laid before the Board of Governors of the IIT on 06.09.2018. The Board did not find charges, relating to caste based bias or hatred, made out against the petitioner, but, nevertheless, found the charges of misconduct established.

8. The Board, in their meeting dated 06.09.2018, resolved to supply a copy of the inquiry report to the petitioner, carrying the relevant part of the observations of the Inquiry Officer and omitting those remarks in the report that did not relate to the charges. Upon supply of the inquiry report, the petitioner submitted detailed representations dated 03.10.2018, 06.10.2018 and 19.10.2018 against the findings carried in the inquiry report, communicated vide memorandum dated 13.09.2018. The petitioner's representations, together with the findings of the Committee, were again placed before the Board of Governors in their special meeting held on 17.10.2018. According to the petitioner, the Board decided with a

closed mind and rejected the petitioner's representations. They held both articles of charges proved against the petitioner, pursuant to the resolution of the Board of Governors dated 17.10.2018. The Director and Chairman of the Board of Governors issued a memorandum dated 09.11.2018 to the petitioner, saying that the Board were of opinion that the charges against the petitioner and the two other Professors were of similar nature and the evidence against them conclusively proved, that they have committed misconduct, violating Rules 3-A and 3-B of the Conduct Rules framed under Statute 13 (17) of the IIT.

9. It was further remarked that the Board had decided to award the penalty of reduction to a lower post or grade to the petitioner under Statute 13(9)(b)(b) (4) for a period of one year, after which, the petitioner's post and grade, presently held, would be restored.

10. The petitioner was asked to show cause against the proposed penalty by the memorandum dated 09.11.2018 on or before 27.11.2018. He submitted a representation dated 27.11.2018 to the Board of Governors in reply to the memo dated 09.11.2018. The petitioner's representation dated 27.11.2018 was placed before the Board in their meeting dated 18.01.2019. According to the Board's final resolution, the penalties of withholding two increments with cumulative effect for a period of two years and the petitioner being forbidden from holding any administrative responsibility for a period of three years, were imposed vide office order dated 08.03.2019.

11. Aggrieved by the order dated 08.03.2019, the petitioner instituted Writ-A No.5103 of 2019 before this Court. The said writ petition was allowed vide order dated 11.05.2022, quashing the order dated 08.03.2019, punishing the petitioner and leaving it open to the Board of Governors of the IIT to proceed against the petitioner afresh from the stage of consideration of the inquiry report and the petitioner's representations against the report and pass reasoned orders in accordance with Rule 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, 'the CCS Rules') within a period of three months. The order of this Court was laid before the Board of Governors of the IIT in their meeting held on 28.06.2022 and they resolved to the effect that considering the misconduct found proved against the petitioner, a minor penalty was warranted under Statute 13(9) of the Statutes of the IIT. Accordingly, they resolved to punish the petitioner with the withholding of two increments without cumulative effect for a period of two years under Statute 13(9)(b)(b)(3). The further punishment, that was inflicted, was that the petitioner shall not hold any administrative responsibility for a period of three years. In accordance with the resolution of the Board of Governors dated 23.07.2022, a formal order, inflicting the punishment, was passed by the Director of the IIT dated 01.08.2022.

12. Aggrieved by the order dated 01.08.2022 passed by the Director and the resolution of the Board of Governors dated 23.07.2022, amongst others, the present writ petition has been instituted by the petitioner.

13. A notice of motion was issued on 19.04.2023. In course of time, a counter affidavit was filed on behalf of respondent Nos.2, 3 and 4 and a rejoinder, on behalf of the petitioner. Parties having exchanged

affidavits, the writ petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

14. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Avneesh Tripathi, learned Counsel for the petitioner, Mr. Rohan Gupta, learned Counsel appearing on behalf of respondent Nos. 2 to 4 and Mr. Sabhajeet Singh, learned Central Government Counsel appearing on behalf of the Union of India.

15. It is argued by Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Avneesh Tripathi, learned Counsel appearing for the petitioner, that a bare perusal of charge No.1 would show that it is based on hearsay. The complainant did not hear the conversation in the get-together on 04.01.2018 or the disparaging comments made by the petitioner, saying that the standard of the Department was going down due to the new faculty that has recently joined the institute. He next submits that the entire proceedings on charge No.2 are based on misconceptions. Dr. Abhijeet Kushari, PW-8, the Acting Head, Department of Aerospace Engineering on 10.01.2018 and the sole eye-witness on behalf of the establishment contradicted the allegations levelled against the petitioner. None of the other establishment witnesses were present in the meeting. It is contended that the establishment did not produce an iota of evidence in support of the imputations, subject matter of charge No.2. It is next submitted by Mr. Khare that the charges laid against the petitioner, even if taken to be true on their face value, would not constitute any misconduct, by any stretch of imagination.

16. The next point urged is that the Board have imposed a penalty of not giving any administrative responsibility to the petitioner for three years, which is not one of the penalties envisaged, provided or permitted under the Statute of the IIT, or referable to any other provision of the law, that may apply. The learned Senior Advocate submits that the real intention behind debarring the petitioner from holding any administrative responsibility for a period of three years was to jeopardize his career and reputation. It was particularly directed against the petitioner, being selected and appointed the Director of an IIT, for which he was eligible and suitable. It is argued that knowing well that the petitioner is at the top of his pay-scale and the withholding of two increments will not affect him financially, the real intention of imposing the penalty was to put a blemish on his career. It is also argued that this Court's order dated 11.05.2022 passed in Writ-A No.5103 of 2019 has been observed in breach, in that, that the petitioner's representation and the findings of the Inquiry Officer have not been considered by the Board of Governors, applying mind to the issues and evidence. Rather, they have maintained the penalty, earlier imposed.

17. Mr. Rohan Gupta, learned Counsel appearing for the IIT, on the other hand, has raised a number of preliminary objections. The foremost is that since Dr. Subrahmanyam Saderla, the complainant, has been harassed by three faculty members of the IIT, he ought be heard first before proceeding to final hearing. Dr. Saderla has not been impleaded as a party, according to Mr. Gupta, which makes the writ petition ill-framed for non-joinder. The order impugned is a communication of the decision of the Board dated 23.07.2023 and the said decision has been challenged with an unexplained delay of over seven months, after bypassing the alternative remedy

provided under the Statutes. There is still another objection, which says that the petitioner has an alternative remedy under Statute 13(10) of the Statutes of the IIT, where he can appeal any decision of the Board of Governors to the Visitor, who is none other than the President of India.

18. It is further argued that the fact that earlier, the writ petition was directly entertained, does not entitle the petitioner to bypass the alternative remedy now, because, when Writ-A No.5103 of 2019 was instituted, one of the grounds was denial of natural justice. Now, after remand, the petitioner's version has been considered and, therefore, he is obliged to avail the statutory alternative remedy. On the merits of the matter, it is submitted by learned Counsel for the IIT that a complaint was received from Dr. Subrahmanyam Saderla, Assistant Professor, Department of Aerospace Engineering, alleging that he was being harassed by certain faculty members, including the petitioner. Upon receipt of the complaint, an External Fact Finding Committee was constituted on 27.01.2018. The External Fact Finding Committee investigated the matter, interacting with various faculty members. They submitted their report on 08.03.2019, which found the petitioner, along with other faculty members, to wit, Professor Rajeev Shekhar, Professor Ishan Sharma and Dr. C.S. Upadhyaya, prima facie guilty of misconduct. This led to initiation of disciplinary proceedings against the petitioner with the appointment of a retired High Court Judge as the Inquiry Officer. The petitioner was given full opportunity of hearing and the inquiry report submitted. The earlier resolution dated 23.07.2022, adopted by the Board of Governors to punish the petitioner, was impugned in Writ-A No.5103 of 2019 and quashed on the ground that the inquiry report and the petitioner's representation against the report had not been considered and a reasoned decision made. Accordingly, the entire matter was re-examined and the impugned order passed.

19. Mr. Rohan Gupta has been at pains to show, by evidence to this Court, what the petitioner said of his colleague, Dr. Subrahmanyam Saderla and how it constitutes misconduct. About the penalty imposed, regarding deprivation of administrative assignments to the petitioner, it is submitted by Mr. Gupta that it is purely an administrative and preventive measure. Though not explicitly provided in the Statutes, this penalty had to be imposed to maintain general discipline on the IIT Campus and to discourage future misdemeanours of the same kind by any other employee.

20. We have carefully considered the submissions advanced on behalf of both parties by learned Counsel and perused the record.

21. The petitioner was served with a charge-sheet, carrying two articles of charges, both of which he denied by submitting a written statement of his defence. The respondents proved the charges before the Inquiry Officer by leading both documentary and oral evidence. After the inquiry was over, a copy of the inquiry report was furnished to the petitioner and his representation invited against the findings of the Inquiry Officer, before the Disciplinary Authority, to wit, the Board of Governors of the IIT took a decision. If there was some non-consideration of the findings of the Inquiry Officer and the petitioner's representation thereagainst by the Board of Governors,

that fipple was removed by this Court by quashing the order dated 08.03.2019 earlier passed, vide judgment and order dated 11.05.2022 passed in Writ-A No.5103 of 2019. The IIT was given liberty to proceed afresh from the stage of the inquiry report and the petitioner's representation thereagainst. Now, the Board of Governors have considered the matter, looking into the findings of the Inquiry Officer and the petitioner's representation, giving due opportunity to the petitioner to have his say against the findings in the inquiry report, which they have considered. In substance, therefore, there is no procedural irregularity that goes to the root of the matter, vitiating the finding of guilt recorded by the Board of Governors.

22. This is not to say that there are no processual infractions committed during the inquiry. The Inquiry Officer did commit an error in not allowing the petitioner to be represented by an Advocate, considering the fact that the Inquiry Officer was himself a former Judge of the High Court, a legally trained man. The principle in this regard has been laid down by the Supreme Court in **Ramesh Chandra v. Delhi University and others, (2015) 5 SCC 549.** In **Ramesh Chandra** *(supra),* it has been held:

"**70.** In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as an enquiry officer in an inquiry initiated against an employee, the denial of assistance of a legal practitioner to the charged employee would be unfair."

23. This Court is of opinion that though the inquiry was unfair at least on this point, amongst others, but the fairness of the inquiry is no longer open to examination now, since it was not examined or pronounced upon in the earlier writ petition, to wit, Writ-A No.5103 of 2019, which was allowed with an order of remand to the Board of Governors. The orders in the last mentioned writ petition did not quash the inquiry report or held it to be procedurally unfair or vitiated in any manner. The matter was remitted to be considered by the Board of Governors from the stage of the inquiry report and the petitioner's representation thereagainst, which, in the opinion of this Court, was not duly considered by the Board while passing the order of punishment, impugned in the earlier writ petition. The validity of the inquiry cannot, therefore, be much seen in this writ petition. There has been cavil between parties that the charges themselves are so vague that the Board of Governors acted to punish on a non-charge. We do not think so.

24. The Board of Governors have found the imputations proved and the question, whether it was a service misconduct, is not one with much worth to it. It certainly derogated from the essence of discipline when the petitioner questioned the wisdom of the IIT in recruiting certain persons as members of the faculty in the Department of Aerospace Engineering. The wisdom of the employer in selecting and appointing an employee cannot be questioned by another employee. No doubt, there could be discussions about the suitability of a teacher by colleagues in an academic institution, sitting back in the privacy of their homes, but it could not be the subject matter of discussion or critical appraisal in a get-together held on the premises of the IIT or the Department of Aerospace Engineering. A meeting of the other faculty members could certainly not be called to discuss the merits of the employer's choice of his employees.

25. A professor teaching in a university or an academic organization, like the IIT, may not be trained in the straight jacket of discipline, but, he has to be mindful of the protocol which governs his behaviour, words and conduct towards others. What he can say of his students, possibly, he cannot of his peers; certainly not about his superiors and employers, and their decisions. The subject matter of the charges here are a typical example of the violation of protocol. Given the evidence considered by the respondents about behaviour of the petitioner – not to comment about the behaviour of others, who are not party to the litigation, we think that this is not a case, where no misconduct of any kind was committed by the petitioner. It is certainly not a case where the two charges held proved against the petitioner can be said to be no charges at all, and, a fortiori, not punishable as service misconduct.

26. The only point that merits consideration is about the penalties imposed upon the petitioner. The two penalties imposed are withholding of two increments without cumulative effect for a period of two years, and, the other is, debarring the petitioner from holding any administrative responsibility for a period of three years. Statute 13(9) of the Statutes of the IIT reads:

"13. Terms and Conditions of Service of Permanent Employees.-

Permanent employees of the Institute shall be governed by the following terms and conditions:

(9) The Director may place a member of the staff appointed at the Institute under suspension:

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under investigation or trial.

Provided that where a member of the staff is detained in custody for a period exceeding fortyeight hours, whether in connection with a criminal offence or under any law for the time being in force providing for preventive detention, such member of the staff shall be deemed to have been placed by the Director under suspension with effect from the date on which he was so detained.

During the period of suspension, the member of the staff shall be entitled to the following payments, namely

(a) a subsistence allowance at an amount equal to the leave salary which the staff member would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary:

Provided that where the period of suspension exceeds six months, the Director shall be empowered to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:

(i) The amount of subsistence allowance may be increased by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the Director the period of suspension has been prolonged for reasons

to be recorded in writing, not directly attributable to the staff member;

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the Director, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the staff member;

(iii) The rate of dearness allowance will be based on the increase, or, as the case may be the decreased amount of subsistence allowances admissible under sub-clauses (i) and (ii) above.

(b) Any other compensatory allowance admissible from time to time on the basis of pay of which the staff member was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawal of such allowances.

However, no payment shall be made unless the staff member furnished a certificate that he is not engaged in any other employment, business, profession or vocation.

The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on any member of the staff:-

(i) Censure;

(ii) withholding of increments or promotion;

(iii) recovery from the whole or part of any pecuniary loss caused to the Institute by negligence or breach of orders,

(iv) reduction to lower service, grade or post or to a lower time-scale, or to a lower stage in a time-scale;

(v) compulsory retirement;

(vi) removal from service which shall not be a disqualification for future employment under the Institute;

(vii) dismissal from service which shall ordinarily be a disqualification for future employment under the Institute.

No order imposing on any member of the staff any of the penalties specified at (iv) to (vii) above shall be passed by any authority subordinate to that by which he was appointed and except after an enquiry has been held and the member of the staff has been given reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

No order imposing on any member of the staff any of the penalties specified at (i) to (iii) above shall be passed by any authority subordinate to that by which he was appointed and unless the member of the staff concerned has been given an opportunity to make a representation to the Appointing Authority.

Notwithstanding the above provisions it shall not be necessary to follow the procedure mentioned above in the following cases:-

(a) where an employee is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where the authority empowered to dismiss or remove the

person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the Visitor is satisfied that in the interests of the security of the State it is not expedient to give to that person such an opportunity.

If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (b) above the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be, final."

27. A careful perusal of Clauses (i) to (vii) of Statute 13(9)(b) indicates that the penalties that can be imposed upon an employee of the IIT. The penalty of depriving a member of the IIT staff of his right to hold any administrative responsibility for a fixed or an unlimited period of time is not one of the contemplated penalties under Statute 13(9)(b). Ex facie, therefore, the respondents have committed a manifest error of law in awarding the penalty of debarring the petitioner from holding any administrative responsibility for a period of three years. The submission of the learned Counsel for the IIT, that deprivation from holding administrative appointments is purely an administrative or preventive measure taken by the IIT and not stricto sensu a penalty awarded, is utterly unacceptable. The tenor of the impugned order shows that the penalty of depriving the petitioner from holding an administrative responsibility for a period of three years, that figures in the order impugned, is one of the two penalties imposed upon the petitioner, in consequence of disciplinary proceedings. It is not an administrative or preventive measure taken by the IIT. The IIT did not have the authority or the power under the Statute to impose the said penalty, which we hold hereby to be manifestly illegal.

28. Before parting with the matter, there is one more aspect that needs a brief remark. The other penalty, that has been imposed, is one of withholding of increments. Statute 13(9)(b) clearly indicates that whereas penalties specified in Clauses (iv) to (vii) can be imposed after an inquiry has been held and the member of the staff given a reasonable opportunity of showing cause proposed to be taken against him, the penalties enumerated in Clauses (i) to (iii) of Statute 13(9)(b) can be imposed after giving time to make a representation to the Appointing Authority. The penalty imposed here is clearly one that falls under Clause (ii) of Statute 13(9)(b) of the Statutes of the IIT. No fault, therefore, ca at all be found with the inquiry held against the petitioner for the said penalty could be imposed by merely giving the petitioner a show cause notice and after considering his reply by the Appointing Authority.

29. Thus, so far as the first penalty goes, no legitimate objection about any kind of procedural unfairness is open to the petitioner.

30. In the result, this writ petition **succeeds** and is **allowed in part.** The impugned order dated 01.08.2022 passed by the Director of the IIT and the resolution of the Board of Governors of the IIT dated 23.07.2022, insofar these impose the penalty of debarring the petitioner from holding any administrative responsibility for a period of three years, are hereby

quashed. There shall be no embargo upon the petitioner from holding any administrative responsibility whatsoever. The penalty of withholding two increments without cumulative effect is **upheld**.

31. There shall be no order as to costs.

(2025) 5 ILRA 711
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.05.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ A No. 6273 of 2025

Prince Yadav ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Abhishek Singh, Shashi Bhushan Rai

Counsel for the Respondents:
C.S.C.

Service Law – Compassionate Appointment – Succession Certificate – Requirement in case of rival claims – Validity of claim by children from two marriages.

Held: Succession certificate is not mandatorily required in all cases of compassionate appointment. Where rival claims are set up by heirs from both the first and second wife, children born out of even void/illegal marriage are treated as legitimate under Section 16 of the Hindu Marriage Act, 1955 and have equal right to be considered for compassionate appointment. Authority cannot exclude such children. Impugned order directing petitioner to obtain succession certificate quashed. Matter remanded to competent authority to assess rival claims under Rule 17 of the U.P. Dying-in-Harness Rules, 1974 and offer appointment to the most deserving dependent.

Writ Petition allowed.

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Shri Shashi Bhushan Rai, learned counsel for petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution petitioner has challenged the order dated 03.01.2025 whereby he has been directed to furnish succession certificate so as to set up a valid claim for compassionate appointment.

3. Learned counsel for petitioner submits that in the matter of compassionate appointment succession certificate is not mandatorily required as has come to be held in the judgment of a Co-ordinate Bench of this Court in ***Shakeel Khan v. State of U.P. and three others Writ A No. 7454 of 2020*** disposed of on 12.10.2020.

4. Meeting the above submissions, learned Standing Counsel Shri Rahul Malviya submits that the judgment would be applicable only in those cases where there is uncontested case and not in the cases where rival claims are set up. It is contended that in the present case from the recitals contained in the letter dated 03.01.2025 itself it is very much clear that the deceased had two wives and there are children born out of the marriage with the first wife as well as the second life. In these circumstances, therefore, when there are rival claims set up by the heirs of both the wives, it would be necessarily required to have succession certificate as it would validate the claim of one of the heirs to be offered compassionate appointment dislodging the claims of others.