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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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Don
01/07/2015
SECTION OFFICER (JUDL.)

(See Rule 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

1. ORIGINAL APPLICATION No : 255 / 2009
2. Transfer Application No : ----- / 2009 in O.A. No.-----
3. Misc. Petition No : ----- / 2009 in O.A. No.-----
4. Contempt Petition No : ----- / 2009 in O.A. No.-----
5. Review Application No : ----- / 2009 in O.A. No.-----
6. Execution Petition No : ----- / 2009 in O.A. No.-----

Applicant (S) : Smti' Jyotsna Rani Das Mops.

Respondent (S) : Union of India Mops.

Advocate for the : Mr. U.K. Nair,
{Applicant (S)} Mr. B. Sharma & Mr. G. Z. Ahmed.

Advocate for the : -----
{Respondent (S)} CGSC.

Notes of the Registry	Date	Order of the Tribunal
<p>this application is in form is filed/C. F. for Rs. 50/- deposited vide IPO/BD No. <u>396/442963</u> Dated <u>3.12.09</u></p> <p><u>4.12.09</u> 4 (Four) copies of application with envelops received for issue notices to the Respondent Nos. 1 to 4. Copy served.</p> <p><u>4.12.09</u> Received 4 copies of order dated 9/12/09 Alha San. Addl. Secy. 12/12/09. NO w/s b/cd. 22.1.2010</p> <p>Dy. Registrar <u>4.12.09</u></p>	<p>09.12.2009</p>	<p>Four applicants in this O.A. seek extension of the benefit of the judgment passed by Co-ordinate Bench, at Principal Bench, New Delhi on 11.5.05 in T.A.50/99, as upheld by the Hon'ble Supreme Court on 22.9.2008.</p> <p>I have perused the judgment of the Principal Bench, order passed in W.P.(C) as well as ^{order} SLP. On perusal of the order dated 15.5.08 in W.P.(C) at page 78 of the paper book, though Writ Petition has been admitted against the aforesaid order of the Principal Bench but direction was issued to grant them <u>temporary</u> status, against which SLP was preferred and it has been dismissed vide order dated 29.9.08. In any case applicants seek extension of the judgment passed by Principal Bench on 11.5.05.</p> <p>In view of the above, O.A is admitted. Miss U.Das, learned Addl.C.G.S.C accepts notice on behalf of the respondents. Thus service is complete. No further notice be issued to the respondents. Reply be filed within four weeks, rejoinder, if any, be filed within 2 weeks thereafter.</p>

List on 25.01.2010.


(Mukesh Kr. Gupta)
Member(J)

27.1.2010
W/S filed
by the Respondents.
Copy served.
27/1/2010

25.1.2010 Learned counsel for the
Respondents seeks time to file reply.
List the matter on 15.2.2010.

(Madan Kumar Chaturvedi)
Member (A)

/lm/

W/S filed.
12.2.2010

15.02.2010 Learned counsel for Applicant seeks
some time to obtain proper instructions.
List the matter on 16.3.2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

lm/

W/S filed.
15.3.2010

16.03.2010 Mrs.U.Dutta, proxy counsel submitted
that due to some personal difficulty Ms.U.Das,
learned Addl.C.G.S.C. is not in a position ^{to argue} the
case today. As such, she prayed for
adjournment. Accordingly, adjourned to
05.04.2010.

(Madan Kr. Chaturvedi)
Member (A)

/bb/

W/S filed.
1.4.2010

06.05.2010 An affidavit in terms of order dated **05.04.2010** has been filed by the Respondents. Learned counsel for Applicants, Mr. B. Sarma seeks and allowed time to file affidavit as well as rejoinder within three weeks.

No rejoinder filed.

M
1.6.2010

List the matter on **02nd June 2010**.

d (Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pb/

Rejoinder not filed.

02.06.2010

Learned counsel for Applicant prays for adjournment. List the matter on **14th June 2010**.

M
14.6.2010

d (Madan Kumar Chaturvedi)
Member (A)

S (Mukesh Kumar Gupta)
Member (J)

/Lm/

14.06.2010

Rejoinder as well as reply to additional affidavit filed by the respondents on **05.05.2010**, has been filed today. Ms.U.Das, learned counsel for respondents seeks more time to peruse and to react. In the circumstances, adjourned to **25.06.2010**.

14.6.2010
Reply to the Affidavit and Rejoinder have been filed by the Applicants through their Advocate at page no 95 to 98 and 99 to 107 respectively. Copy served to the Advocate for the Respondents.
14/6/2010

d (Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/bb/

25.06.2010

On the request of parties, adjourned to

29.06.2010.

d (Madan Kumar Chaturvedi)
Member (A)

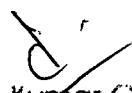
S (Mukesh Kumar Gupta)
Member (J)

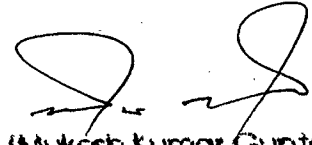
/bb/

The case is ready for hearing.

M
24.6.2010

29.06.2010 Heard learned counsel for the parties.
For the reasons recorded separately, O.A. is
allowed.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

nkmi

Received
Usha Das
Advocate
13/7/2010
Received
Anil Kumar
(Member) 13/7/2010

2-8-2010
Judgment/Binal order
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bring real.
A 1838 to No 58-240
1842

2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.255 of 2009

DATE OF DECISION: 29.08.2010

Sri Jyotshna Rani Das & 3 others

APPLICANT(S)

Mr U.K. Nair

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

RESPONDENT(S)

Ms U. Das, Addl. C.G.S.C.

ADVOCATE(S) FOR THE
RESPONDENT(S)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi Administrative Member

- | | | |
|----|--|--------|
| 1. | Whether reporters of local newspapers may be allowed to see the Judgment ? | Yes/No |
| 2. | Whether to be referred to the Reporter or not? | Yes/No |
| 3. | Whether their Lordships wish to see the fair copy of the Judgment ? | Yes/No |


Member (J)

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.255 of 2009

Date of Order: This the 29th day of June 2010

The Hon'ble Sri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

1. Sri Jyotshna Rani Das,
W/o Mr Paban Kumar Das,
Resident of Village- Kamarkuchi,
P.O.- Tepesia, Kamrup-782402,
Assam.
2. Sri Rashik Lal Das,
S/o Iswar Chandra Das,
Resident of Village- Bumanipar,
P.O.- Gandhinagar, Sonapur,
Kamrup, Assam, Pin-782402.
3. Sri Hari Charan Das,
S/o Late Anandi Ram Das,
Resident of Village & P.O.- Malai Bari,
Kamrup, Assam, Pin-782405.
4. Sri Padu Ram Sahu,
S/o Late Phagu Ram Sahu,
Resident of Village- Baruwaberi,
P.O.- Sonapur, Kamrup,
Assam, Pin-782402.

..... Applicants

By Advocate Mr U.K. Nair.

- versus -

1. The Union of India, represented by the
Secretary, Ministry of Health and Family Welfare,
Department of Health,
Nirman Bhawan, New Delhi-110001.
 2. The Indian Council of Medical Research,
represented by the Director General,
All India Institute of Medical Sciences,
New Delhi.
 3. The National Institute of Malaria Research,
through its Director,
22, Shamnath Marg, Delhi-110054.
- 2

4. The Officer In Charge, Field Station,
IDVC Project,
National Institute of Malaria Research,
Cachal, VIP Road, Six Mile,
Guwahati-781022, Assam.

..... Respondents

By Advocate Ms U. Das, Addl. C.G.S.C.

.....

ORDER (ORAL)

MUKESH KUMAR GUPTA, JUDICIAL MEMBER

Four applicants working on casual basis with the respondents, in present O.A., seek direction to respondents to confer them temporary status as contemplated vide DOPT order dated 10.09.1993 with all consequential benefits. Contention raised by them is that applicability of aforementioned O.M. is no more res integra as held by a coordinate Bench (Principal Bench) of this Tribunal in T.A.No.50/1999, decided on 11.05.2005. Mr U.K. Nair, learned counsel for applicants drew our attention to para 46 of aforesaid order holding in specific that aforesaid DOPT O.M. dated 10.09.1993 will apply to employees of ICMR as well. Thus, it was prayed that present applicants being similarly situated with applicants in aforementioned T.A. are entitled to similar treatment particularly when judgment dated 11.05.2005 is a judgment in rem and not a judgment in personam.


2. Contesting the claim and by filing reply, the respondents have pointed out that aforementioned judgment had not attained finality and further present applicants were not party to said T.A. and, therefore, said judgment ipso facto cannot be made applicable to them.



3. Ms U. Das, learned Addl. C.G.S.C. for the respondents strenuously urged that said judgment dated 11.05.2005 is not a judgment in rem and thus benefits cannot be extended to them. Furthermore, it was emphasized that unless and until issue is finalized and attains finality, it cannot be said that it has become a judgment in rem.

4. We have heard learned counsel for parties, perused the pleadings and other material placed on record. It is not in dispute that order dated 11.05.2005 passed by the Principal Bench had been challenged and appealed vide W.P.(C) No.858/2006 before Hon'ble Delhi High Court and vide order dated 15.05.2008 Rule DB was issued and the matter was listed for regular hearing as per turn. Specific direction had been issued therein vide order of said date that said judgment cannot be kept in abeyance. Rather, it had to be implemented. SLP(C) No.21568/2008, preferred against aforesaid Hon'ble Delhi High Court order, had been dismissed vide order dated 29.09.2008, though time for compliance of aforesaid direction was extended. In compliance thereto, the respondents (National Institute of Malaria Research, Dwarka, New Delhi) passed order dated 22.06.2009 granting temporary status to applicants therein with the condition that same would be subject to final outcome of Writ Petition (C) No.858/2006.

5. In our considered opinion, the judgment passed by coordinate Bench, unless it is stayed, set aside or modified in either manner, is binding on the coordinate Bench. No good cause has been shown warranting a different view to be taken on said subject. As long as the judgment is not reversed, we as a coordinate Bench are bound




by said judgment. Extending the benefits of said judgment dated 11.05.2005, present O.A. is allowed. The respondents are directed to treat present applicants in similar manner as in aforesaid T.A.No.50/1999 decided on 11.05.2005.

5. Aforesaid direction shall be carried out by the respondents within a period of three months from the date of receipt of the order.

No costs.

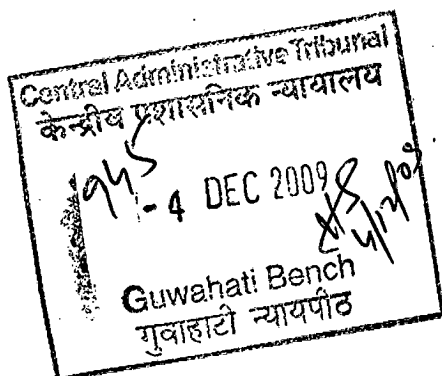

(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER


(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

nkm

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH:: GUWAHATI**

ORIGINAL APPLICATION NO. 255 / 2009



Sri Jyotshna Rani Das & 3 ors.

....Applicants

-Versus -

The Union of India & 3 ors.

....Respondents

SYNOPSIS

This Original Application has been preferred against the inaction and wanton attitude on the part of the NIMR authorities in not conferring Temporary Status upon the applicants, who are casual daily wage workers in the I.D.V.C. Field Unit, Cachal, Guwahati of the NIMR. The applicants are entitled to the grant of Temporary Status in accordance with the scheme contained in DOPT O.M. No. 51016/2/90-Estt.(C) dated 10.09.1993 which grants temporary status to the casual daily wage workers. The aforesaid scheme contained in DOPT O.M. No. 51016/2/90-Estt.(C) dated 10.09.1993 granting temporary status to the casual daily wage workers has already been upheld by the Hon'ble Central Administrative Tribunal Principal Bench, the Hon'ble Delhi High Court and the Hon'ble Supreme Court. Moreover, similarly situated persons as the applicants have already been granted temporary status in accordance with the scheme contained in DOPT O.M. No. 51016/2/90-Estt.(C) dated 10.09.1993. The applicants have preferred a number of representations before the concerned authorities seeking conferment of temporary status but to no avail. Thus constrained the applicants has preferred the instant Original Application seeking justice which has been since long denied to the applicants.

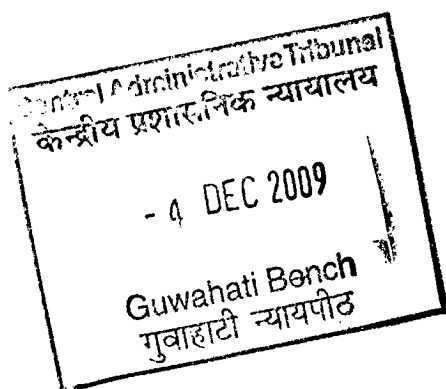
Filed by :-

G. Z. Ahmed

Advocate.

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH:: GUWAHATI**

ORIGINAL APPLICATION NO. 255 / 2009



Sri Jyotshna Rani Das & 3 ors.

....Applicants

-Versus -

The Union of India & 3 ors.

....Respondents

LIST OF DATES

1. 1986 - 1991 - The applicants joined as casual daily wage workers in the Field Station, IDVC Project, Cachal, Guwahati of the National Institute of Malaria Research.
2. 01.09.93 - The Casual Labour (Grant of Temporary Status and Regularisation) Scheme contained in DOPT O.M. No. 51016/ 2/90-Estt. (C) dated 10.09.1993 comes into effect.
3. 21.02.06 - The applicants prefers a representation before the Director, National Institute of Malaria Research, through proper channel, praying for conferment of monthly fixed pay w.e.f 1.03.2006.
4. 16.05.06 - The applicants prefers another representation before the Senior Administration Officer, National Institute of Malaria Research, through proper channel, praying for conferment of monthly fixed pay and the benefits of Employees Provident Fund.
5. 06.10.07 - The applicants again prefers a representation before the Senior Administration Officer, National Institute of Malaria Research, through proper channel, praying that

they be entitled to work for 6 days a week and pay for 7 days a week.

6. 04.01.08 - In response to the aforesaid representations dated 21.02.2006, 16.05.2006 and 06.10.2007, the Senior Administration Officer on behalf of the Director, National Institute Malaria Research vide issue of official memo no. Admn/DW/386/05/1619 sought certain information from the Officer In-Charge, NIMR, IDVC Field Unit, Sonapur for regularisation of the services of the applicants.

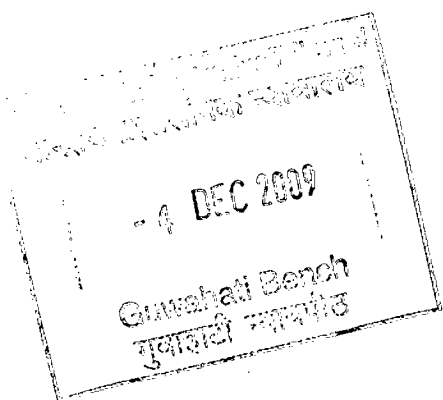
7. 20.05.2000 - The Hon'ble Central Administrative Tribunal, Principal Bench issues an order in TA 50 of 1999 directing the respondent authorities to identify which amongst the applicants would fall within the definition of casual labourers as provided in the Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1993 and to extend to them the benefits of the aforesaid scheme.

8. 2000 - The aforesaid order dated 20.05.00 was challenged before the Hon'ble Delhi High Court, through WP (C) No. 7828/2000, by the Indian Council of Medical Research.

9. 23.02.02 - A Division Bench of the Hon'ble Delhi High Court remits the matter back to the Tribunal for fresh consideration.

10. 11.05.05 - The Hon'ble Central Administrative Tribunal Principal Bench vide issue of an order allowed TA No.50/99/PB, directing the respondent authorities to treat applicants as employees of ICMR and that the applicants be considered for grant of temporary status w.e.f. 01.09.1993 as per the Scheme dated 10.09.1993, as per their eligibility and requirement, with all consequential benefits.

11. 2006 - The aforesaid order dated 11.05.05 passed by the Hon'ble



Central Administrative Tribunal Principal Bench in TA No.50/99/PB was challenged before the Hon'ble Delhi High Court through W.P. (C) No. 858/2006.

12. 15.05.08 -

The Hon'ble Delhi High Court upheld the impugned order dated 11.05.05 by a Judgement and Order in W.P. (C) No. 858/2006.

13. 2008 -

The Indian Council of Medical Research preferred an appeal before the Hon'ble Supreme Court through S.L.A (C) No. 21568/2008.

14. 29.09.08 -

S.L.A (C) No. 21568/2008 was dismissed by the Hon'ble Supreme Court by a Judgement and Order stating that the Hon'ble Court did not find any ground to interfere with the impugned order dated 11.05.05.

15. 22.06.09 -

The Officer In-Charge, National Institute of Malaria Research (Indian Council of Medical Research) vide issue of Office Order no. Admin. /Temp. Staus/ NIMR/ 507/ 09/472 granted temporary status to the casual workers in different field units of IDVC Project, NIMR

16. 12.08.09 -

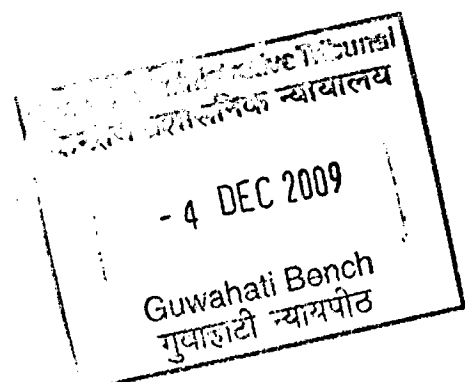
The applicants again preferred representations, through proper channel, before the Director (In-Charge), National Institute of Malaria Research for grant of temporary status as per the guidelines of the DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993 with reference to Office Order no. Admin. /Temp. Staus/ NIMR/ 507/ 09/472 dated 22.06.2009.

17. 24.08.08 -

The representations of the applicants were forwarded to the concerned authority, through the proper channel, vide issue of Official Reference No.852.

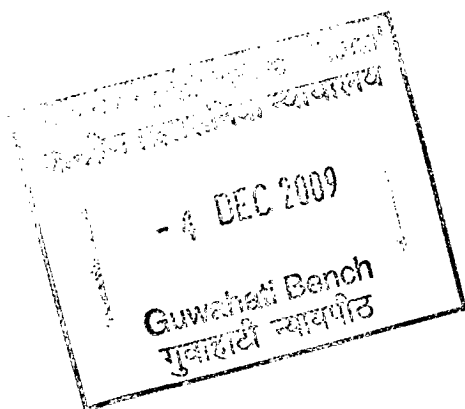
Filed by

G.Z. Ahmed
Advocate



**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH:: GUWAHATI**

ORIGINAL APPLICATION NO. 255/ 2009



Sri Jyotshna Rani Das & 3 ors.

....Applicants

-Versus -

The Union of India & 3 ors.

....Respondents

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Filed By

G. Z. Sharma,

Advocate

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH:: GUWAHATI**

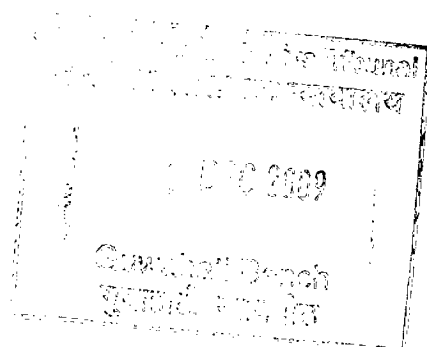
ORIGINAL APPLICATION NO. 255 / 2009

*Filed by exo applicants
through Mr. G.Z. Ahmed,
Advocate.*

BETWEEN

1. Sri Jyotshna Rani Das, Wife of Mr.
Paban Kumar Das, resident of Vill.
Kamarkuchi, P.O. Tepesia, Kamrup-782402,
Assam.

2. Sri Rashik Lal Das, son of Iswar
Chandra Das, resident of Vill. Bumanipar,
P.O. Gandhinagar, Sonapur, Kamrup-
782402, Assam.



3. Sri Hari Charan Das, son of Late,
Anandi Ram Das, resident of Vill. & P.O-
Malai Bari, Kamrup-782405, Assam.

4. Sri Padu Ram Sahu, son of Late Phagu
Ram Sahu, resident of Vill. Baruwaberi,
P.O. Sonapur, Kamrup-782402, Assam.

....Applicants

-AND-

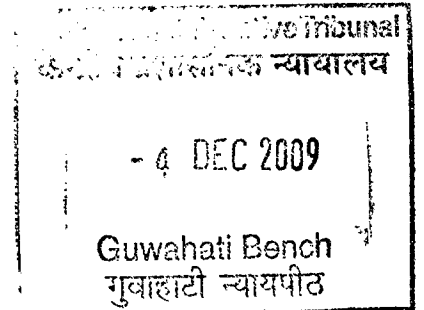
1. The Union of India represented by
the Secretary, Ministry of Health and
Family Welfare, Department of Health,
Nirman Bhawan, New Delhi – 110001.

2. The Indian Council of Medical
Research represented by the Director
General, All India Institute of Medical
Sciences, New Delhi.

Ass.

3. The National Institute of Malaria Research, through its Director, 22, Shamnath Marg, Delhi-110054.

4. The Officer In Charge, Field Station, IDVC Project, National Institute of Malaria Research, Cachal, VIP Road, Six Mile, Guwahati- 781022, Assam.



.... Respondents

1. **PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:**

This original application has been preferred against the inaction on the part of the National Institute of Malaria Research (Indian Council of Medical Research) in not conferring Temporary Status upon the applicants, who are Casual Workers in the Field Station, IDVC Project, Cachal, Guwahati of the National Institute of Malaria Research. The applicants are entitled to the grant of Temporary Status, in accordance with the scheme contained in DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993. Yet, till the filing of this Original Application, the same has not been granted to them.

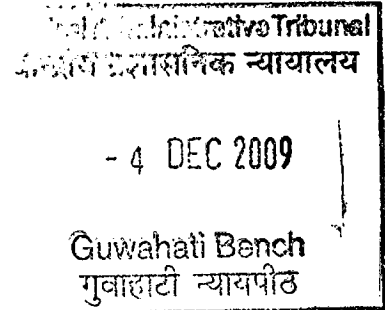
2. **JURISDICTION:**

The applicants further declare that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

3. **LIMITATION:**

The applicant declares that the instant case has been filed within the limitation period prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

Ans.



4. FACTS OF THE CASE:

4.1. That the applicants are citizens of India by birth and residents of the above mentioned locality in the state of Assam and as such they are entitled to all the rights, protections and privileges guaranteed under the Constitution of India and the laws framed there under.

4.2 That the applicants state that they have raised a common grievance arising out of the same cause of action in the instant Original Application and the remedy/ relief(s) sought for on their part is the same and similar. As such they crave leave of this Hon'ble Tribunal to join hands together to prefer this common application for redressal of their genuine and bonafide grievances.

4.3 That the applicants state that they are presently working as casual daily wage workers in the Field Station, IDVC Project, Cachal, Guwahati of the National Institute of Malaria Research. That the appellant no.1 is working in the capacity of Computer Typist, the duties of the appellant no. 2 and the appellant no. 3 includes blood slides collection and staining for malaria microscopy and the appellant no. 4 discharges the duties of Chowkidar. The respective dates of joining of each of the appellants are as follows; appellant no.1 joined on 3.9.1991, appellant no.2 joined on 1.10.1986, appellant no.3 joined on 22.09.1986 and appellant no. 4 joined on 5.9.1986.

Documents certifying the aforesaid Date of Joining are hereby enclosed as Annexure 1 (series).

4.4 That the applicants state that states that they are working in their respective designations since their respective date of joining to the best of their abilities and without any qualms from any quarter as regards their discharge of official duties. However, after decades of rendering dedicated service the appellants are still working as casual/ daily wage workers and no favourable change has been made in respect of their pay scale. The applicants have already submitted a number of representations before the concerned authorities

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highlighting their aforesaid grievances but to no avail. The applicants preferred a representation dated 21.02.2006 before the Director, National Institute of Malaria Research, through proper channel, praying for conferment of monthly fixed pay w.e.f 1.03.2006 instead of the daily wages, which they are presently entitled to.

A copy of the representation dated 21.02.2006 is annexed as Annexure - 2.

4.5 That the applicants state that they preferred another representation dated 16.05.2006 before the Senior Administration Officer, National Institute of Malaria Research, through proper channel, praying for conferment of monthly fixed pay and the benefits of Employees Provident Fund. Subsequently, the applicants again preferred a representation, dated 06.10.2007, before the same authority praying that they be entitled to work for 6 days a week and pay for 7 days a week.

Copies of the representations dated 16.05.2006 and 06.10.2007 is annexed as Annexure - 3 and 4 respectively.

4.6 That your applicants state that the casual workers recruited in different field units of IDVC Project initially preferred a writ petition before the Hon'ble Delhi High Court claiming temporary status in accordance with the scheme contained in DOPT O.M. No. 51016/2/90-Estt.(C) dated 10.09.1993 . However, the Hon'ble Delhi High Court vide order dated 13.10.1999 transferred the matter to the Hon'ble Central Administrative Tribunal Principal Bench for disposal. Thus, TA 50 of 1999 was filed before the Hon'ble Central Administrative Tribunal, Principal Bench. The matter was finally heard by the Hon'ble Tribunal and vide order dated 20.05.2000 issued direction to the respondent authorities to identify which amongst the applicants would fall within the definition of casual labourers as provided in the Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1993 and to extend to them the benefits of the aforesaid scheme provided: Firstly, they have been engaged by the respondent authorities for a period of at least 240

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days (206 days in case respondents organisation is observing the 5 day week). Secondly, they are in employment of respondents on the date of issue of this order and thirdly, they fulfill the other eligibility qualifications prescribed in the scheme.

A copy of the aforesaid Judgement and Order dated 20.05.2000 passed by the Hon'ble Central Administrative Tribunal Principal Bench is annexed as Annexure -5.

4.7 That your applicants states that the aforesaid decision was challenged before the Hon'ble Delhi High Court, through WP (C) No. 7828/2000, by the Indian Council of Medical Research and vide issue of an order dated 23.2.2002 passed by a Division Bench of the Hon'ble Delhi High Court, the matter was remitted back to the Tribunal for fresh consideration. Thus, TA No.50/99/PB came to be filed before the Hon'ble Central Administrative Tribunal Principal Bench. The Hon'ble Tribunal vide issue of order dated 11.05.2005, allowed TA No.50/99/PB, directing the respondent authorities to treat applicants as employees of ICMR and that the applicants be considered for grant of temporary status w.e.f. 1.9.1993 as per the scheme of DOPT dated 10.9.1993, as per their eligibility and requirement, with all consequential benefits. Further, the Hon'ble Tribunal directed that prior to grant of temporary status, the claim of the applicants for grant of skilled grade will be considered and if found entitled, consequential benefits would also be granted.

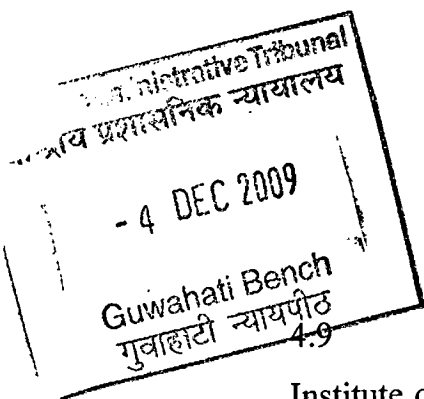
A copy of the aforesaid Judgement and Order dated 11.05.05 passed by the Hon'ble Central Administrative Tribunal Principal Bench is annexed as Annexure - 6.

4.8 That your applicants state that the aforesaid order dated 11.05.2005 passed by the Hon'ble Central Administrative Tribunal, Principal Bench was challenged in W.P. No. 858/2006 before the Hon'ble Delhi High Court, which upheld the impugned order dated 11.05.2005 in its Judgement

11.05.2005
Gurukulam
मुंबई न्यायालय

11.05.2005

and Order dated 15.05.2008. Finally, the Indian Council of Medical Research preferred an appeal before the Hon'ble Supreme Court through S.L.A (C) No. 21568/2008, which was dismissed by the Hon'ble Supreme Court by Judgement and Order dated 29.09.2008 stating that the Hon'ble Court did not find any ground to interfere with the impugned order.



A copy of the Judgement and Order dated 29.09.2008 passed by the Hon'ble Supreme Court is annexed as Annexure - 7.

That your applicants state that the Officer In-Charge, National Institute of Malaria Research (Indian Council of Medical Research) vide issue of Office Order no. Admin. /Temp. Staus/NIMR/507/09/472 dated 22.06.2009 granted temporary status to the casual workers in different field units of IDVC Project, NIMR. The order dated 22.06.2009 was passed in compliance of the aforesaid Judgement and Order arising out of a series of litigations in the Hon'ble Central Administrative Tribunal Principal Bench, Hon'ble Delhi High Court and the Hon'ble Supreme Court.

4.10 That your applicants state that the aforesaid order dated 22.06.2009 clearly lays down :- Firstly, the implementation of these instructions would be subject to final outcome of the W.P. (C) No.858/2006 filed in the Hon'ble High Court of Delhi. In this regard, your appellants states that the Hon'ble High Court has already upheld the impugned order passed by the Hon'ble Central Administrative Tribunal, Principal Bench, dated 11.05.2005, vide its Judgement and Order dated 15.05.2008 and subsequently the Hon'ble Supreme Court vide Judgement and Order dated 29.09.2008 dismissed the S.L.A (C) No. 21568/2008, which was preferred by the Indian Council of Medical Research challenging the Hon'ble High Court's Judgement and Order dated 15.05.2008 in W.P. No. 858/2006.

Secondly, these orders shall apply to all casual workers who were in service in IDVC Project on 10.09.1993 and had completed one year of service in project i.e. atleast 240 days duty (206 days in the case of offices observing five days week) and were applicants to the above case filed in the

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Principal Bench, Central Administrative Tribunal, Delhi. Such employees would be entitled to be granted Temporary Status in terms of the DOPT O.M. dated 10.09.1993, w.e.f. 01.09.1993. In this regard, your applicants states that they were all in service in IDVC Project on 10.09.1993 and have completed one year of service in project and also served at least 240 and/or 206 days in the case of offices observing five days week. However, the applicants in the present Original Application were not applicants in the TA 50 of 1999, filed before the Hon'ble Central Administrative Tribunal, Principal Bench. This condition imposed by the National Institute of Malaria Research (Indian Council of Medical Research) vide issue of order no. Admin. /Temp. Staus/ NIMR/507/09/472 dated 22.06.2009 is in clear violation of well-established principles of law. The Judgement and Order dated 29.09.2008 passed by the Hon'ble Supreme Court in the case of Indian Council of Medical Research v. Prem Chand & Ors is not a Judgement in Personam but a Judgement in Rem. Any judgment passed by the Supreme Court has wide and large ramifications and the scope of application of a judgment of the apex court cannot be curtailed or bifurcated by the provisions of any official order. As such the stipulation as regards being an applicant in the TA 50 of 1999 filed before the Hon'ble Central Administrative Tribunal, Principal Bench is illegal, malafide and bad in law and such is liable to be set aside and quashed. Thus, the applicants in the present Original Application are entitled to be granted Temporary Status in terms of the DOPT O.M. dated 10.09.1993, w.e.f. 01.09.1993.

A copy of the Order dated 22.06.2009 is annexed as Annexure - 8.

4.11 That your applicants state that they again preferred representations, dated 12.08.2009, through proper channel (in this case, the Officer-In-Charge, IDVC Field Unit, Cachal, Guwahati) before the Director (In-Charge), National Institute of Malaria Research for grant of temporary status as per the guidelines of the DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993 with reference to Office Order no. Admin. /Temp. Staus/ NIMR/ 507/ 09/472 dated 22.06.2009. Subsequently, the representations of the applicants were forwarded to the concerned authority, through the proper

- 4 DEC 2009

Guwahati Bench
Tribunal

Amo.

channel (in this case, the Officer-In-Charge, IDVC Field Unit, Cachal, Guwahati), vide issue of Official Reference No.852, on 24.08.2009. However, till date no response, whatsoever, has been received by the applicants from the respondent authorities. Thus, placed and highly aggrieved by the turn of events the applicant has been constrained to file this instant Original Application seeking justice, which has been denied to them since long.

A copy of the forwarding letter dated 24.08.2009 is annexed as Annexure - 9.

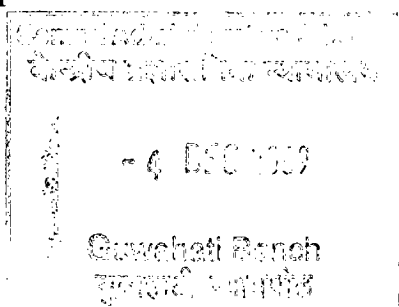
4.12 That your applicants state that throughout the country similarly placed incumbents as the applicants working as casual daily wage workers in different Field Station, IDVC Project of the National Institute of Malaria Research has been conferred the benefits as envisaged under the Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1993 contained in DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993. However, your applicants have been illegally deprived of such benefit, till date, without any rhyme and reason.

4.13 That your applicants state that the inaction and wanton attitude of the respondent authorities have violated the principles of Natural Justice, Administrative Fair Play and the set of Rules established by law and the action towards not extending to the applicants their just and legitimate claim have infringed upon the mandate of Articles 14, 16(1), 39(a) & 309 of the Constitution of India.

4.14 That the applicants state that they have no other appropriate, equally efficacious alternative remedy available to them and the remedy sought for herein when granted would be just, adequate, proper and effective.

4.15 That the applicants demanded justice, but the same was denied to them.

4.16 That this application has been filed bonafide for securing the ends of justice.



5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that the action on the part of the respondent authorities in not conferring upon the applicants the temporary status as envisaged under the provisions of the DOPT OM No. 51016/ 2/ 90 – Estt.(C) dated 10.09.93 and paying to them their remuneration on a daily wage basis is bad in law as well as in facts.

5.2 For that the Hon'ble Principal Bench of the Central Administrative Tribunal, the Delhi High Court and the Supreme Court having already decided the entitlement of the casual labourers serving in the NIRM as regards the conferment of temporary status under the provisions of the OM dated 10.09.93, the respondent authorities are obliged to confer upon the applicant the benefits flowing from the judgments passed by the Hon'ble Courts as well as under the provisions of the above mentioned OM.

5.3 For that the action on the part of the respondent authorities in not conferring upon the applicants the benefits of temporary status has the effect of violating the rights of the applicants towards enjoyment of such benefits and such action is uncalled for on the part of the respondent authorities.

5.4 For that in terms of the provisions of the OM dated 10.09.93 and also the judgments passed by the Hon'ble Courts, a right has accrued to the applicants for grant of temporary status to them and denial of such benefits have infringed upon the legal rights of the applicants towards enjoyment of such benefits in addition to being against the principle of legitimate expectation.

5.5 For that non conferment of the benefits of temporary status to the applicants under the provisions of the OM dated 10.09.93 has resulted in violation of the fundamental rights of the applicant as enshrined in Article 14 of the Constitution of India inasmuch as similarly situated incumbents throughout the country and serving under the respondent authorities have already been conferred upon the benefits as envisaged under the provisions of the OM dated 10.09.93.

Ans.

5.6 For that the decision on the part of the respondent authorities to confer the benefits flowing from the OM dated 10.09.93 only to the applicants in the TA No. 50/99/PB clearly demonstrates the non application of mind on the part of the said authorities inasmuch as such a decision being contrary to the provisions of Article 14 of the Constitution of India is unsustainable in the eye of law.

5.7 For that non payment of the remunerations of the applicants at the rate of a fixed monthly wage and paying to them on daily wage basis is contrary to the policy decision adopted by the respondent authorities in that regard and as such the respondents are duty bound to pay to the applicants their pay and allowances at the rate of a fixed monthly wage.

5.8 For that in any view of the matter the action on the part of the respondent authorities in not conferring upon the applicants the temporary status as envisaged under the provisions of the DOPT OM No. 51016/ 2/ 90 – Estt. (C) dated 10.09.93 and paying to them their remuneration on a daily wage basis is unsustainable in the eye of law.

6. DETAILS OF THE REMEDIES EXHAUSTED:

The applicants declare that they have no other alternative and efficacious remedy except by way of filing this application. As such they are seeking urgent and immediate relief.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicants further declare that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other court, authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

A. Rao.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicants pray that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the relief's sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following relief's.

8.1 To grant to the applicants the benefit of temporary status as contemplated vide the OM bearing No. 51016/ 2/ 90 – Estt. (C) dated 10.09.93 w.e.f. the date they became eligible for conferment of such benefits in terms of the provisions of the above mentioned OM.

8.2 To direct the respondent authorities to pay to the applicants their pay and allowances at the rate of a fixed monthly allowance and/or skilled grade to which they are entitled to in terms of the policy decision adopted by the respondent authorities to the effect.

8.3 Cost of the application.

8.4 Any other relief/ relief's that the applicants in the facts and circumstances of the case would be entitled to.

9. INTERIM ORDER PRAYED FOR:

In this facts and circumstances of the case the applicants does not pray for any interim directions, as such.

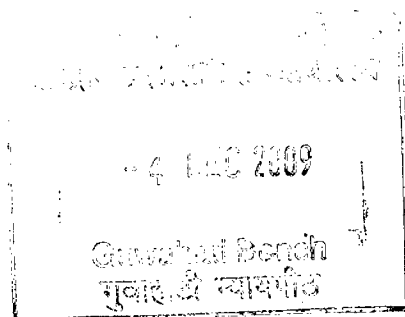
10.

11. PARTICULARS OF THE I.P.O:

- i) I.P.O No. : 39 G 44 2963
- ii) Date : 3.12.2009 ,
- iii) Payable at : Guwahati

12. LIST OF ENCLOSURES:

As stated in the index.



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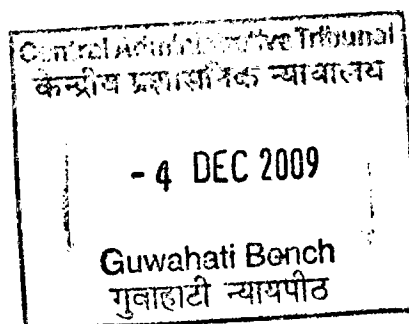
--VERIFICATION--

I, Sri Jyotshna Rani Das, aged about 43 years, Wife of Mr. Paban Kumar Das, resident of Village - Kamarkuchi, P.O. - Tepesia, Kamrup - 782402, Assam, do hereby solemnly affirm and verify that I am the applicant No. 1 in this instant Original Application and I have been duly authorised to swear this verification on behalf of the other applicants and as such I am competent to swear this affidavit conversant with the facts and circumstances of the case, the statements made in paragraph 1, 2, 3, 4 (1, 2, 9, 12), 5, 12 are true to my knowledge; those made in paragraphs 4 (3, 4, 5, 6, 7, 8, 10 & 11) are true to my information derived from the records and the rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign this verification on this the 29th day of November, 2009, at Guwahati.

Jyotshna Rani Das

DEPONENT



-13-

ANNEXURE-1 (SERIES)

NATIONAL INSTITUTE OF MALARIA RESEARCH

(Indian Council of Medical Research)

FIELD STATION

Ministry of Health & Family Welfare

Chachal, VIP Road, Six-Mile,

Guwahati - 781 022, Assam (India)



राष्ट्रीय मलेरिया अनुसंधान संस्थान

(भारतीय आयुर्विज्ञान अनुसंधान परिषद)

क्षेत्रीय इकाई

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

चचल, वी आई पी रोड, छः माइल

गोवाहाटी - 781022, असम (भारत)

Ref :

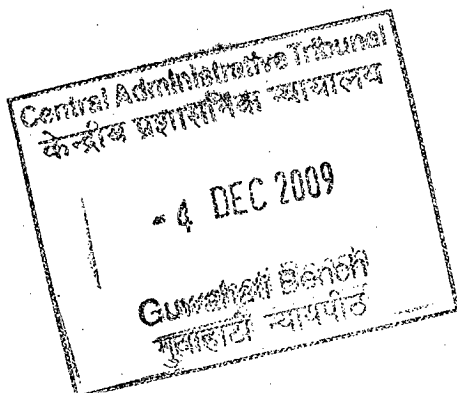
Dated : 16-03-2009

TO WHOM IT MAY CONCERN

This is to certify that Jyotshna Rani Das, daughter of Late Dharma Kanta Das is working as Typist in the IDVC Project, National Institute of Malaria Research (ICMR), Field Station Chachal, V.I.P. Road, Guwahati - 781 022, since September 3, 1991 on the Daily Wage Basis as and when required.

She is a sincere, obedient and dedicated worker, and her performance as a Typist has been excellent.

I wish her all the success in the future.

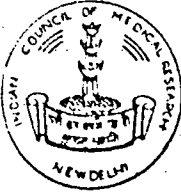


(VAS DEV)
Officer-in-Charge

Certified to be true Copy
G. Z. Ahmed.
Advocate

-14-

PHONE : (0361) 86 211



मलेरिया अनुसंधान केन्द्र
MALARIA RESEARCH CENTRE

(संशोधन गुरुकुल केंद्र)

(INDIAN COUNCIL OF MEDICAL RESEARCH)

FIELD STATION

SONAPUR : KAMRUP : ASSAM-782 402 (INDIA)

Ref. No.....

Date 21/11/95

TO WHOM IT MAY CONCERN

This is to certify that Sri Rashik Lal Das S/O Sri
Iwar ch. Das resident of Village Bamani par P.O. Gandhinagar,
Kamrup, Assam, worked here as a Casual Worker from 01/10/86
to till date on the basis of as and when required.

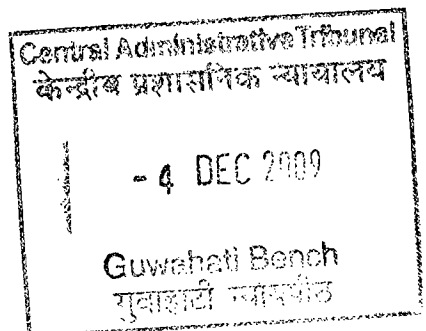
He bears a good moral character.

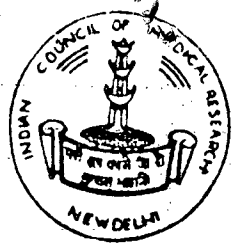
Place : Sonapur
Date : 21-11-95

(Vas Dev)
Officer in-charge.

Officer-in-Charge,
I. D. V. C. Mission
Malaria Research Centre,
Sonapur : Kamrup : Assam

Attest
Officer-in-Charge,
I. D. V. C. Mission
Malaria Research Centre
Sonapur : Kamrup : Assam.





मलेरिया अनुसंधान केन्द्र
MALARIA RESEARCH CENTRE

মেলেৰিয়া গৱেষণা কেন্দ্ৰ
(INDIAN COUNCIL OF MEDICAL RESEARCH)
FIELD STATION

SONAPUR : KAMRUP : ASSAM-782 402 (INDIA)

Our Ref. _____

Dated 18-7-96

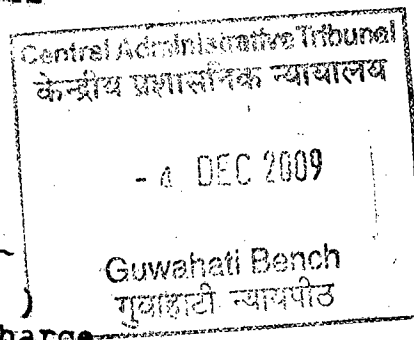
TO WHOM IT MAY CONCERN

This is certify that Sri Haricharan Das, Son of Late Anandi Ram Das of village Malaibari, (Dist. Kamrup) has been working as Casual Worker since 22-9-86 on the basis of as and when required. His duties included blood slides collection and staining for malaria microscopy.

He is a sincere young man and bears a good moral character.

Lawm
18/7/96

(Vas Dev)
Officer-in-Charge





MALARIA RESEARCH CENTRE

(INDIAN COUNCIL OF MEDICAL RESEARCH)

FIELD STATION
SONAPUR

I.D.V.C. Project

32

Ref. No MRC/Sona/52/88/

Date 14.3.1988.

TO WHOM IT MAY CONCERN

I Certify that Shree Padu Ram Sahu was working as Chowkider in the I.D.V.C. Project Malaria Research Centre (ICMR) Field Station - Sonapur since September 1986.

His performance in the above mentioned Project is satisfactory. He is an young, energetic and dedicated worker.

I wish him success in life.

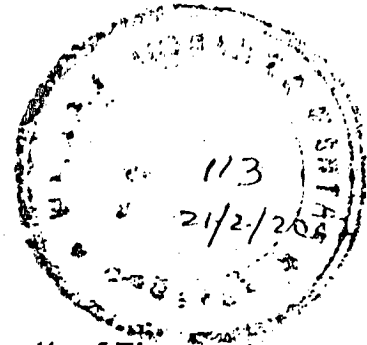
H. K. Nayak
(Dr. H.K. Nayak)
Officer-in-Charge,
Malaria Research Centre,
Field Station - Sonapur,
Sonapur Field Station,
Sonapur, Assam.

- 4 DEC 2009

Guwahati Branch
গুৱাহাটী শাখা

National Institute of Malaria Research
(Indian Council of Malaria Research)
Field Station
Sonapur : Kamrup : Assam

To,
The Director
National Institute of Malaria Research
22 Sham Nath Marg
Delhi - 110054.



(Through Proper Channel)

Ref : State Assam Government Office Memorandum (Deptt. of Finance)
No. FEG-5/2001/184 Dated Dispur, the 15th February, 2006.

Sub : Fixation of Pay of Casual Workers in respect of Field Station, Sonapur.

Sir,
With due respect we the undersigned to bring the following facts to your kind notice :

That Sir, we are working in FS, MRC, Sonapur, for last fifteen years and even more in Daily Wage basis as Casual Workers.

Sir, since all the departments of both Central and State Governments are giving Fixed Pay to their Casual Workers, we expect we should also be considered for monthly Fixed Pay from 1/3/2006 as per the Government Circular. Moreover, whatever, arrear becomes due to us, may kindly be remitted to us since 1/3/2006.

For your kind references, Sir, we are enclosing herewith a copy of the office memorandum of the State Government relating to the pay of Casual Workers. This is also to inform you that on the basis of this Circular we have been given salary on per day basis but not in fixed rate as it has been mentioned in State Circular Numbering FEG-5/2001/184 Dated Dispur the 15th February, 2006 for your ready reference.

Last, but not least, till permanent solution made for us with honour, we request you to kindly realise the agony & frustration of we, the Casual Workers under IDVC at this honour and hope your kind self would do the needful to rescue us from the present situation.

Wishing for your favourable retort.

Yours faithfully

Name	Date of Joining
Jyotshna Rani Das	03-09-1991
Hari Charan Das	22-10-1986
Rasik Lal Das	01-10-1986
Padu Ram Sahu	09-09-1986

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
- 4 DEC 2009

Signature
J. Das Guwahati Bench
मुवाहाती न्यायपीठ

RDs
P. Sahu
Certified to be true Copy
G. Z. Ahmed
Advocate

Enclosed : State Circular Numbering FEG-5/2001/184
Dated Dispur the 15th February, 2006.

Date : 16/5/2006

To,
The Senior Administration Officer
National Institute of Malaria Research
22, Sham Nath Marg
Delhi - 110054.

Through Proper Channel

Sub : Regarding E.P.F. and Thirty Days Wages.

Respected Sir,

Respectfully we the Daily Wages Staff of N.I.M.R, Sonapur Field Station working here for the last twenty years and still we are on Daily Wages and not entitled for E.P.F. and not getting full month wages. As we request verily on 3rd May 2006 while you were in Field Station. Once again we request you Sir, that regarding our E.P.F. which is not deducting from our Wages as other D.W.W. of other F.S. We request you Sir that kindly deduct the fix amount as per the rule from our wages. So in near future that will be benefited to all of us. And also we request you Sir that in other F.S. all D.W.W. get full month Wages i.e. 30 days Wages where as we are getting not more then 20 days Wages not included Saturday and Sundays.

Kindly consider our case and take necessary action.

Thanking you,

Sincerely,

(All D.W. Worker)

S.No. Name

1. Jyotshna Rani Das.

2. Sh. Rashik Lal Das.

3. Sh. Hari Charan Das.

4. Sh. Padu Ram Sahu.

Signature

[Signature]

R Das.

[Signature]

[Signature]

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय - 4 DEC 2009 Guwahati Bench गुवाहाटी न्यायपीठ
--

Copy to : Officer-in-Charge

Certified to be true Copy
G. Z. Ahmed,
Advocate

Date : 6-10-2007

To,

The Senior Administrative Officer
National Institute of Malaria Research
22 Sham Nath Marg
Delhi - 110054.

Sub : Daily Wage Workers

FAX (0120) 2548113

Sir,

We the undersigned have been engaged as Daily Wage Workers for more then 15 years. We are being paid for the maximum of 5 days a week.

We request to you grant for permission work for 6 days a week and pay for 7 days week as per with regular daily wage workers.

Thanking you,

Yours faithfully,

Forwarded
Vansh 6/10/07
Officer-in-Charge
I.D.V.C. Mission
Mahan. P.
S.L. Choudhary

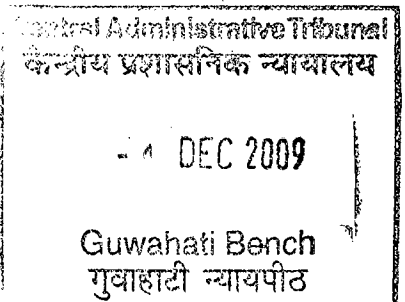
1) Jyotshna Rani Das. J.R.D.

2) Hari Charan Das. H.C.D.

3) Rasik Lal Das. R.L.D.

4) Padu Ram Sahu. P.R.S.

NIMR, SONAPUR (Assam)



Certified to be true Copy
G. Z. Ahmed.
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

TA 50 of 1999
CWP 1747 of 1997

New Delhi this the 20 day of May, 2000

HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN(A)
HON'BLE SHRI KULDIP SINGH, MEMBER (J)

- | | |
|---|-------------------------------|
| 1. Shri Prem Chand, | 24. Shri Haerakant Jha |
| S/o Late Shri Trilek Singh, | 25. Shri Gauri Datt |
| R/o 228-B, Karampura, | 26. Shri Shakil Ahmed |
| New Delhi. | 27. Shri Kamin Ali |
| 2. Shri Dev Datt | 28. Shri Jitender |
| 3. Shri Bishan Prakash | 29. Shri Nabab Singh |
| 4. Shri Subodh Kumar Tyagi | 30. Shri Sahab Singh |
| 5. Shri Madan Pal Singh | 31. Shri Ramesh Prasad |
| 6. Shri Shaikat Ali | 32. Shri Sharashad Ali Ansari |
| 7. Shri Vinod Kumar | 33. Shri Hans Raj |
| 8. Shri Deoraj Singh | 34. Shri Anil Kumar |
| 9. Shri Jaipal Singh | 35. Shri Mahipal |
| 10. Shri Kuldeep Kumar | 36. Shri Shiva Singh Bisht |
| 11. Shri Mangal Sen | 37. Shri Nareesh |
| 12. Shri L.M. Mishra | 38. Shri Sanjay |
| 13. Shri Satbir Sharma | 39. Shri Lalbabu |
| 14. Shri Abrar Ali | 40. Shri Keshar Singh |
| 15. Shri Khem Singh | 41. Shri Shishupal |
| 16. Shri Purshottam Datt | 42. Shri Surender |
| 17. Shri Rajesh | 43. Shri Subhash |
| 18. Shri Rakam Singh | 45. Shri Sanjeev Kumar |
| 19. Shri Kanwarjeet Singh | 46. Shri Shiv Dharshan |
| 20. Shri Vanahidhar | 47. Shri Chander Mani Gaur |
| 21. Shri ^{Sudat} Satish Kumar | 48. Shri Dharindra Parinda |
| 22. Shri P.C. Joshi | 49. Shri Mohar Singh |
| 23. Shri Madan Singh | 50. Shri Devender Singh |
| ATTESTED | 51. Shri Ajay Mitra |
| Examiner, Judicial Deptt. | 52. Shri Ratan Bhoel |
| हस्ताक्षर/अभिप्रेत | 53. Shri Shivcharan |
| | 54. Shri Satyapal Singh |
| | 55. Pramed Kumar |
| | 56. Kishan, Patel |

हस्ताक्षर, न्यायाधीश
Examiner, Judicial Deptt.
हस्ताक्षर/अभिप्रेत

Guwahati Bench Copy
G. Z. Ahmed
Advocate

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 4 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

57. Shri Umash Kumar

58. Shri R.D. Badhuri

59. Shri Dharam Singh

.... Petitioners

(Address for service for
Petitioners No.2 to 57 will be

C/o Shri Prem Chand,

S/o Late Shri Trilek Singh,

R/o 228-B, Karampura,

New Delhi (Petitioner No.1)

Sh. A.K. Behera with Shri K.P. Dohare, Counsel.
Versus

1. Union of India

Through: Secretary,

Ministry of Health &

Family Welfare,

(Department of Health),

Nirman Bhawan,

New Delhi-110001.

2. Indian Council of Medical Research

Through its Director-General,

All India Institute of Medical Sciences,

New Delhi.

3. Malaria Research Centre,

Through its Director,

22, Sharnath Marg,

Delhi-110 054.

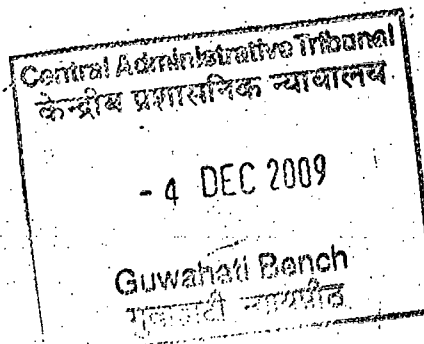
.... Respondents.

Shri V.K. Rao, Counsel.

प्रमाणित किया गया

सी.एस.एस. ऑफिस
आसिस्टेंट सचिव
सेवा विभाग
नया दिल्ली

bunai



ORDER

Mr. S.R. Adiga, VC (A):

Applicants seek a direction to respondents to grant them temporary status in accordance with Casual Labourers (Grant of Temporary Status & Regularisation) Scheme, 1993 with consequential benefits. They also seek a direction to pay them wages admissible to skilled workers as per Govt. orders in consonance with duties performed by them, with back wages representing the difference between daily wages paid to them as unskilled workers and those admissible to them as skilled workers.

2. This application was initially filed in the Delhi High Court and by order dated 13.10.99 has been transferred to the Tribunal for disposal.

3. Applicants are working under Indian Council of Medical Research (ICMR), which is a Society registered under the Societies Registration Act (R-3). Respondent No. 3, employer of the applicants was engaged in various activities involving integrated control of malaria. Applicants claim that they are discharging the duties as skilled workers. They state that they have been engaged as casual labourers between 1985 and 1993 but despite putting in service respondents did not take any positive steps to grant them temporary status nor paid wages as skilled workers.

4. Attention has been invited to DOP & T's OM dated 10.9.93 (Annexure -P1) introducing the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme, 1993.

5. Applicants admit that some of them had filed

ATTESTED

Examiner, Judicial Deptt.
केन्द्रीय प्रशासनिक न्यायालय

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writ petition bearing CW No.2/93 and 3/93 in Delhi High Court for regularisation of their services but the same were dismissed by order dated 14.11.95. The SLP filed in the Hon'ble Supreme Court was also dismissed but the present relief is different in as much as applicants are now seeking grant of temporary status, with consequential benefits.

6. Respondents in their reply challenged the OA. After inviting attention to Delhi High Court's order dated 14.11.95 (Annexure-R-1) rejecting the writ petition filed by the applicants earlier for their regularisation. Respondents state that the main contentions raised by the applicants in the present petition are the same as were raised in the earlier writ petition. They state that the applicants are project employees of ICVR which came to an end on 31.3.97 and in that eventuality the services of applicants were liable to be disposed of but a decision was taken to extend the said project by one more year and it was extended upto 31.3.98. They state that Govt. dated 10.9.95 introducing the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme was in respect of casual employees under Govt. of India and cannot be applicable to ICVR. It is emphasised that grant of temporary status is only in furtherance of the claim for regularisation and once the applicants are given the temporary status, the next step is to regularise them as per said scheme. In the instant case, applicants are working

as casual labourers for project work, they are not entitled to the same as per Delhi High Court's order dated 14.11.95 and when the applicants are not entitled

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to regularisation, the question of grant of temporary status does not arise at all.

7. We have heard applicants' counsel Shri A.K. Behera and respondents' counsel Shri V.K. Rao.

8. The first contention of the respondents' counsel is that since ICMR is a Society registered under the Societies Registration Act, the scheme of DOP&T dated 10.9.93 does not automatically become applicable to applicants and no benefit flowing from this scheme accrues to them. In this connection, Shri Behera has referred to ICMR's by-laws with particular reference to Bylaw No.1 which is reproduced as under:

"1. In regard to all matters concerning the service conditions of employees of the Council, the Fundamental and supplementary Rules framed by the Govt. of India and such other rules and orders issued by the Govt. of India from time to time shall mutatis mutandis apply to the employees of the Council."

Provided that such rules and orders issued by the Govt. of India as are specifically not made applicable to autonomous organisations like ICMR should not apply to the employees of the Council."

9. Nothing has been shown to us to establish that the DOP&T's Scheme dated 10.9.93, which is undoubtedly in the nature of Govt. order has specifically not been applicable to ICMR under the proviso to Bylaws No.1,

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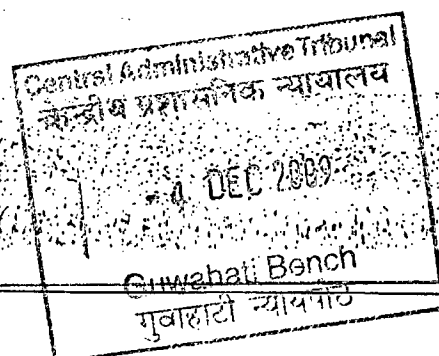
and under the circumstance we hold that the ICRM is not outside the purview of DOP & T's Scheme dated 10.9.93.

10. The next question arises for consideration is whether applicants who are admittedly ~~the~~ project workers are entitled to get temporary status under the DOP & T Scheme dated 10.9.93.

11. A perusal of the aforesaid Scheme at Annexure-P1 makes it clear that nothing contained therein excludes casual labourers engaged ^{engaged on Projects} in Projects from its ambit, and under the circumstance we hold that such of those casual labourers who fulfil the eligibility conditions contained therein would therefore also be entitled to its benefits.

12. Shri V.K. Rao contended that respondents have several projects in hand all over the country and engage a large number of casual workers for their execution. He contended that if applicants were granted temporary status, others similarly situated would come forward and it would result in the bulk of the funds allotted for these projects being consumed only in the payment of the benefits provided in the Scheme, as a result of which the objective for which these projects had been taken up would be lost. In particular he emphasised that after grant of temporary status applicants would claim regularisation which was not envisaged in the Projects, as the Projects themselves were time bound and were concluded after the objective had been achieved.

13. While we appreciate respondents' anxiety



that the objectives for which the projects are taken up, should themselves not be lost as a result of consumption of the bulk of the allotted funds merely in the payment of the benefits flowing from the Scheme; the law, rules and instructions cannot be disregarded. In this connection we note that the Delhi High Court have themselves held that applicants are not entitled to regularisation of their services; and para 4(ii) of the aforesaid scheme also clearly states that conferment of temporary status would be without reference to the vacation/availability of regular Group 'D' posts. Under the circumstance, mere grant of temporary status to applicants does not necessarily imply that they will be entitled to regularisation.

14. We therefore dispose of this OA with a direction to respondents to carefully identify which amongst applicants would fall within the definition of casual labourers as provided in the Casual Labour (Grant of Temporary status and Regularisation) Scheme, 1993. To them and them alone, respondents should extend the benefits of the aforesaid Scheme provided, firstly they have been engaged by respondents for a period of at least 240 days (206 days in case respondents' organisation is observing the 5 day week); secondly they are in employment of respondents on the date of issue of this order; and thirdly they fulfill the other eligibility qualifications prescribed in the Scheme. These directions should be implemented within 4 months from the date of receipt of a copy of this order. No costs.

(KUNIM CHAND)

Certified that the copy application
has been duly received and
filed (O) and that the
same have been legally and faithfully copied with
the original.

7-50

1. Name of the copy application
2. Name of the applicant
3. Date of presentation of application
4. No. of the application
5. Name of the authority
6. Date on which the copy application was received
7. Date of disposal

3804
K. P. Dohare
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Urgent
Rs. 14/-
21/7/00
21/7/00

Section Officer (I)
Central Administrative Tribunal
Guwahati Bench, New Delhi

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TA No. 50799/P12

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

1. Shri Prem Chand,
S/o Shri Trilok Singh,
R/o 228-B, Karampura,
New Delhi.
2. Shri Dev Dutt
3. Shri Bishan Prakash
4. Shri Subodh Kumar Tyagi
5. Shri Madan Pal Singh
6. Shri Shaikat Ali
7. Shri Vinod Kumar
8. Shri Deeraj Singh
9. Shri Jaipal Singh
10. Shri Kuldeep Kumar
11. Shri Mangal Sen
12. Shri L.N. Mishra
13. Shri Salbir Sharma
14. Shri Abrar Ali
15. Shri Khem Singh
16. Shri Purshottam Dutt
17. Shri Rajesh
18. Shri Rakam Singh
19. Shri Kanwarjeet Singh
20. Shri Vanshidhar
21. Shri Sudesh Kumar
22. Shri P.C. Joshi
23. Shri Madan Singh
24. Shri Heerakant Jha
25. Shri Gauri Datt
26. Shri Shakil Ahmed
27. Shri Momin Ali
28. Shri Jitender
29. Shri Nabab Singh
30. Shri Sahab Singh
31. Shri Ramesh Prasad
32. Shri Shamshad Ali Ansari
33. Shri Hans Raj
34. Shri Anil Kumar
35. Shri Mahipal
36. Shri Bhim Singh Bisht
37. Shri Naresh
38. Shri Sanjay
39. Shri Lalbabu
40. Shri Keshar Singh

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44-38861-10000



Copy filed 10/10/11
S. Z. Ahmed.
Advocate

41. Shri Shashipal
42. Shri Sunder
43. Shri Subhash
- 44.
45. Shri Srijeev Kumar
46. Shri Shiv Dharshan
47. Shri Chander Mani Gaur
48. Shri Dharindra Parinda
49. Shri Mohar Singh
50. Shri Devender Singh
51. Shri Ajay Mitra
52. Shri Ram Bhool
53. Shri Shivcharan
54. Shri Satyapal Singh
55. Shri Pramod Kumar
56. Shri Kishan Pal
57. Shri Umesh Kumar
58. Shri R.D. Badhuri
59. Shri Dharam Singh
60. Shri Jagdish S/o Dhuri Singh

Temporary

Permanent

-Petitioners

(Address for service for petitioners No.2 to 60 will be C/o Shri Prem Chand, S/o late Shri Trilok Singh, R/o 228-B, Karampura, New Delhi
(petitioner No.1)

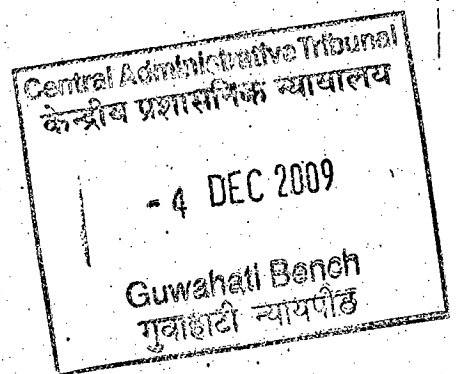
(By Advocate Shri A.K. Behera)

-versus-

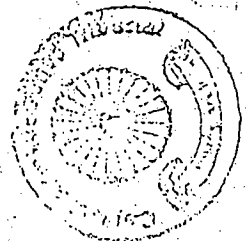
1. Union of India through Secretary, Ministry of Health & Family Welfare, (Department of Health), Nirman Bhawan, New Delhi-110001.
2. Indian Council of Medical Research, through its Director-General, All India Institute of Medical Sciences, New Delhi.
3. Malaria Research Centre, through its Director, 22, Shamnath Marg, Delhi-110 054.

-Respondents

(By Senior Counsel Shri Raju Ramchandran with Sh. V.K. Rao, Advocate)



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ORDER

Mr. Shanfar Baji, Hon'ble Member (J)

Earlier, before transfer to the Tribunal, on assumption of jurisdiction on Indian Council of Medical Research (ICMR), vide notification issued by DoPT, the following reliefs have been sought:

(i) to take immediate action to give effect to the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Government of India 1993 and grant the Petitioners Temporary Status with effect from date/dates they became eligible for the same under the above Scheme;

(ii) to further grant the Petitioners all the other benefits flowing from the grant of Temporary Status to them, as per the provisions of the aforesaid Scheme;

(iii) to pay the Petitioners wages admissible to the skilled workers, as per the Orders issued by the Government in consonance with the duties performed by them, with back wages representing the difference between the daily wages paid to them as 'unskilled' workers and those admissible to them as 'skilled' workers;

(iv) The Hon'ble High Court may pass such other order or orders as it may deem fit and appropriate in the circumstances of the case.

2. The matter was heard finally by the Tribunal and vide order dated 20.7.2000 in TA-50/1999 the following directions have been issued:

*14. We therefore dispose of this OA with a direction to respondents to carefully identify which amongst applicants would fall within the definition of casual labourers as provided in the Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1993. To them and them alone, respondents should extend the benefits of the aforesaid Scheme provided firstly they have been engaged by respondents for a period of at least 240 days (206 days in case respondents' organisation is observing the 5 day week); secondly they are in employment of respondents on the date of issue of this order; and thirdly they fulfill the other eligibility qualifications prescribed in the Scheme. These directions should be implemented within 4

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Mr. Shanfar Baji
Hon'ble Member (J)
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Date: 20/12/2009

months from the date of receipt of a copy of this order.
No costs."

3. The aforesaid decision was carried in CWP No.7828/2000 by the ICMR and by an order dated 23.2.2002 passed by a Division Bench of the High Court of Delhi, with the following observations the matter was remitted back to the Tribunal for fresh consideration:

"The fundamental point is the question of applicability of the Scheme which, as per its opening paragraph No.3, is applicable to "Ministries", "Departments of the Government of India. The said terminology, "Ministries", "Departments" and "attached subordinate offices", are having well established connotation in the field of Central Government Service Rules and Orders, and therefore, a finding was required to be rendered on this aspect which has not been done by the Tribunal.

In addition to the adjudication of the scope of clause 3 of the Scheme referred to above, the further question to be adjudicated would be the effect of the provision in the I.C.M.R. Rules making Central Government's CCS Rules etc. applicable to the employees of ICMR in terms of Bye law No.1 which is quoted hereinbelow:

In regard to all matters concerning the service conditions of employees of the council, the Fundamental and Supplementary Rules framed by the Govt. of India and such other rules and orders issued by the Govt. of India from time to time shall mutatis mutandis apply to the employees of the council. Provided that such rules and orders issued by the Govt. of India as are specifically not made applicable to autonomous organisations like ICMR should not apply to the employees of the Council.

Incidental to the adjudication of the above two aspects, would be the consideration of the effect of the provision in clause 3 of the Scheme laying down that the scheme shall not be applicable to the casual workers in Railways, Department of Telecom and Department of Posts who are covered by their separate schemes.

We find from the records that apart from the observation of the Tribunal to the effect that the private respondents are admittedly project employees, the documents which had been made the basis of the petition filed by the private respondents themselves

[Signature]
C. S. Jaiswal
Joint Secretary
Ministry of Health & Family Welfare
Government of India



Central Government
C 2009
Joint Secretary
Ministry of Health & Family Welfare
Government of India

and which are at pages 61 to 64 of the paper book, the private respondents have themselves claimed to be casual employees of the project called Malaria Research Project.

Another aspect to be adjudicated upon by the Tribunal would be the effect of the earlier proceedings in the form earlier CWP No.2/93 and 9/93, seeking regularisation of their services, being decided against the private respondents upto the Supreme Court. It has been contended by the counsel of the petitioner (ICMR) that in case the Project employees do not have any entitlement for regularisation at all, as now stands concluded by the earlier proceedings upto the Supreme Court, then they cannot have entitlement to temporary status under the Scheme dated 10.09.1993.

Fundamental issue would also be the question as to whether Project employees are at all entitled to be treated as employees of ICMR establishment, and what is the difference in the status of these casual employees of the project vis-à-vis casual employees of the main establishment (ICMR). There are also related contentions of the respondent which equally warrant adjudication by the Tribunal, inter-alia, on the point that the internal notings and correspondence exchanged between the respondents 2 & 3 before the Tribunal (who are now petitioner Nos 2 & 3 before this Court) allegedly incorporating an admission on the part of the institution itself that the project employees would be governed by the scheme dated 19.09.1993, or at least the petitioner institution can be taken to have so treated it, and therefore, ICMR is in a sense, estopped from now taking a stand to the contrary.

We find from a perusal of the impugned judgment that the Tribunal has not adjudicated comprehensively on the real matters in dispute between the parties including certain core questions and issues which we have set out above. Without saying anything more lest it amounts to, or may be treated by the Tribunal to be, an expression of opinion by us on the aspects which have not yet been adjudicated, we set aside the impugned judgment and order of the Tribunal dated 20-7-2000 only on the ground of there being no decision on certain core issues, and direct that the Tribunal will decide the matter afresh after hearing both the parties in accordance with law, in the light of observations set out hereinabove.

In order to ensure the interest of justice, we also direct that the Tribunal while deciding the matter afresh pursuant to our present directions, will not be influenced by any of the observations/findings on the merits of the matter either as contained in our present

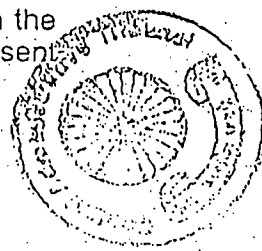
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सुप्रीम कोर्ट, नया दिल्ही

पुनर्विचार आदेश
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पुनर्विचार आदेश



order or in the impugned order dated 20.7.2000 which we have set aside with the direction for the Tribunal to decide the matter afresh and in accordance with law. Parties to appear before the Tribunal on 15.5.2002."

4. In the above view of the matter a brief background as a factual matrix is relevant to be highlighted for proper adjudication. Applicants are working on daily wages and claim to be performing the duties as skilled workers having engaged between 1985 and 1993 working under ICMR and a permanent body, Malaria Research Centre (MRC, for short) and are working in the Project undertaken called Integrated Diseases Vector Control (IDVC).

5. Few of applicants have earlier approached the High Court of Delhi in Writ Petition No.3/83, whereby, by an order dated 14.11.95 holding that IDVC Project is to be wound up and appointment was co-terminus, the request for regularisation was turned down which has been put at rest by dismissal of SUP, which is no more res integra. By taking resort to bye-law No.1 governing conditions of service of employees of ICMR it is stated that the orders passed by the Government of India shall mutatis mutandis apply to the employees of the Council, which includes casual employees engaged on Project.

6. In the above backdrop, what has been contended before us is that Government of India vide notification dated 10.9.93 issued by DoPT promulgated a Scheme w.e.f. 1.9.93 which has not specifically excluded ICMR from its purview accorded temporary status to all casual workers on 1.9.1993 fulfilling the conditions and such conferment ensures wages at the minimum of the pay scale for corresponding regular Group 'D' officials including DA, HRA,

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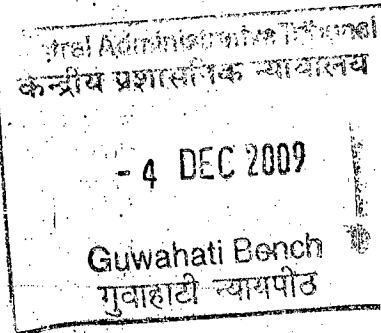
CCA, benefit of increment, leave encashment, maternity leave on completion of three years contribution to the GPF.

7. It is also one of the claims that though applicants are performing the work of skilled nature, they are paid wages at par with semi skilled and this is a discrimination under Article 14 of the Constitution of India.

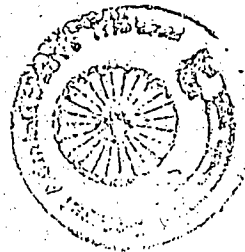
8. Heavy reliance has been placed on internal correspondence between Director, MRC and ICMR to contend that a proposal has been made and a decision has been taken by the governing Council to confer temporary status on the employees of Project, yet the same has not been culminated into an order passed by the Government.

9. As per the decision of the High Court (supra) while remanding the case back, though no expression of opinion has been made on merits, yet the following issues have been framed for the Tribunal to be adjudicated:

- i) whether Scheme of DoPT dated 10.9.93 would have any application to the ICMR which is not a department of the Government of India or an attached/subordinate office or a Ministry?
- ii) What would be the effect of Government Rules on the bye-laws framed by ICMR?
- iii) Whether Clause-3 of the DoPT Scheme dated 10.9.93 by necessary implication excludes ICMR from its purview?
- iv) Whether project employees are to be treated as employees of MRC or ICMR?



20/12/2009
सचिव, न्यायिक विभाग
उपसचिव, न्यायिक विभाग
न्यायिक विभाग
सचिव, प्रशासनिक विभाग



- v) Whether internal notings and correspondence is an admission on the part of the Institution for accord of temporary status as per the Scheme of 10.9.93?

These issues shall have to be answered.

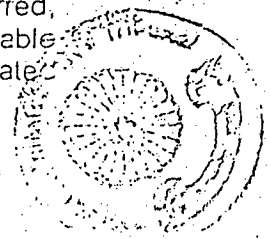
10. Before we proceed to divulge on the framed issues, a project in its legal context is a construction unit, which is regular and permanent as defined in the judicial dictionary by K.J. Iyer (13th Edition). In common parlance, a project has been defined in Concise Oxford English Dictionary (10th Edition - Revised) as an enterprise carefully planned to achieve a particular plan or a planned undertaking. In the above light, the Apex Court in *L. Robert D'Souza vs. Executive Engineer*, 1982 SCC (L&S) 124, the project has been defined and given a legal meaning with the following observations:

"21. Rule 2501 (b) (i) clearly provides that even where staff is paid from contingencies, they would acquire the status of temporary railway servants after expiry of six months of continuous employment. But reliance was placed on Rule 2501 (b) (ii) which provides that labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment would be treated as casual labour. In order to bring the case within the ambit of this provision it must be shown that for 20 years appellant was employed on projects. Every construction work does not imply project. Project is correlated to planned projects in which the workman is treated as work-changed. The letter dated September 5, 1996, is by the Executive Engineer, Ernakulam, and he refers to the staff as belonging to construction unit. It will be doing violence to language to treat the construction unit as project. Expression 'project' is very well known in a planned development. Therefore, the assertion that the appellant was working on the project is belied by two facts: (i) that contrary to the provision in Rule 2501 that persons belonging to casual labour category cannot be transferred, the appellant was transferred on innumerable occasions as evidenced by orders Ex.P-1 dated

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Date: 10/12/2009
Place: Guwahati

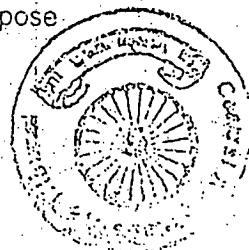


January 24, 1962, and Ex.1-2 dated August 24, 1964, and the transfer was in the office of the Executive Engineer (Construction); (ii) there is absolutely no reference to project in because surplus on completion of project there was no necessity to absorb him. But the letter dated September, 5, 1966, enquires from other Executive engineers, not attached to projects, whether the surplus staff including appellant could be absorbed by them. This shows that the staff concerned had acquired a status higher than casual labour, say temporary railway servant. And again construction unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be equated to project. Therefore, the averment of the Railway Administration that the appellant was working on project cannot be accepted. He belonged to the construction unit. He was transferred fairly often and he worked continuously for 20 years and when he questioned the bona fides of his transfer he had to be re-transferred and paid wages for the period he did not report for duty at the place where he was transferred. Cumulative effects of these facts completely belie the suggestion that the appellant worked on project. Having rendered continuous uninterrupted service for over six months, he acquired the status of a temporary railway servant long before the termination of his service and, therefore, his service could not have been terminated under Rule 2505.

11. In the conspectus of the above, ICMR is a Society registered under the Societies Act, 1860 with an object to prosecute and assess research propagation of knowledge to initiate and aid medical science research in India. In the Society, as per its Memorandum of Association, the Health Minister, Government of India, is the President of Council and Secretary of the Ministry of Health as Vice-Chairman. The Governing Body with the approval of the Govt. of India appoint the Director General of the Council. In nutshell, by bringing ICMR to the Notification under Section 14(2) of the Administrative Tribunals Act, 1985 apart from being declared as a State within the meaning of Article 12 of the Constitution of India for the purpose

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प्रमाणित/AT/11/2009
सी.एस. जे.एस.
उपस्थित, जस्टिस (अधीनस्थ)
न्यायाधीश



of jurisdiction, the employees are treated to be holders of civil post. In a Constitution Bench's decision consisting of seven Judges in Pradeep Kumar Biswas vs. Union of India, 2002 (SCC (L & S) 633 laid down a test on a Body as a State within the meaning of Article 12 of the Constitution of India and when the management and control is by the Government with the financial aid the Body is State within the meaning above.

12. A Project is either externally funded or internally funded. ICMR as a permanent attached Body known as MRC, which is part and parcel of the ICMR and their employees are the employees of the ICMR. The aforesaid Body undertakes projects for achievement of object through scientific research. Earlier before 1985 MRC was set up to control epidemic of Malaria in India and in 1985 a Project in the name of Integrated Disease Vector Control (IDVC) had been started to deal with the study and control of disease spread from vector, namely, Malaria and other vector borne diseases. About 12 field stations were established all over India with 400 employees in different categories. IDVC Project, which was set up in 1986, was continued from time to time and initially till 8th Five Year Plan but as Malaria has not been eradicated as well as other diseases spread from vector, this Project almost has attained perpetuity, though, it is averred that the same is continued till 31.3.2005.

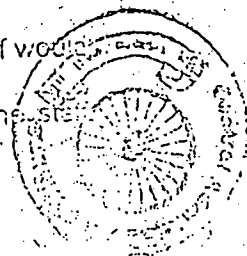
13. It is no more res integra that earlier when applicants had preferred a claim before the High Court of Delhi in CWP No. 3/93 for regularization, taking stock of the fact that IDVC Project is to wind up by the 8th Five Year Plan period and the staff would be phased out, it should be discontinuance of the staff.

Signature of the
Member, Judicial Bench
Central Administrative Tribunal

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working in different position in phased manner, the request for their regularization on the analogous engagement of Project employees is co-terminus and the claim for regularization stood rejected. This has been in limine upheld by the Apex Court. However, since 1995, a decade has passed, the 8th plan is over yet there has been a need to continue the Project as neither Malaria nor other vector born diseases have been fully eradicated. With the result, overshooting its expiry the Project is still on. Earlier, the decision to wind it up and to phase out the employees has not been implemented.

14. A Project can be funded externally by World Health Organization, UNICEF and other International Bodies but a Project, which is internally funded a person, employed in the Project is being paid from out of the Consolidated Fund of India. In ICMR, IDVC is being funded by the Ministry of Health, Govt. of India and they have the control which makes the ICMR as a State within the meaning of Article 12 of the Constitution of India.

15. In ICMR, Malaria Project Workers Association has filed Writ Petition Nos. 5856-57/1985 before the Apex Court seeking regularization and as a policy taken by the respondents on an assurance that their services stood regularized in the light of the order passed by the Apex Court on 14.08.1997 in WP No. 5856-57/1985.

16. The facts revealed in WP No.5856-57 before the Apex Court were that the association consisting of employees who had been engaged in different projects of the ICMR which not

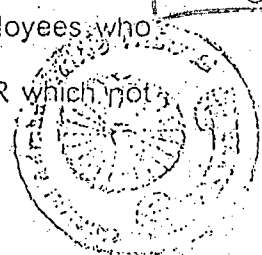
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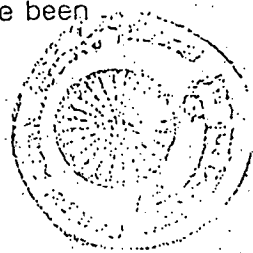
only included IAPC but IDVC for exclusive research and control of malaria and filaria and other communicable diseases. In the above backdrop the employees have raised an issue that these projects and schemes are owned and controlled by ICMR and are functioning as a wing of the Ministry of Health and Family Welfare being part and parcel of the ICMR. It was also the contention raised that the employees are being paid from out of the Consolidated Fund of India. These are working as wings of the Ministry of Health and Family Welfare. In the above conspectus on an assurance to absorb the petitioners therein on suitable post is a deemed admission and consent of the petitioners therein being paid from out of the Consolidated Fund of India being internally funded project of the Ministry of Health and Family Welfare which is the cadre controlling authority of the ICMR.

17. While an issue for regularisation of ad hoc casual and other temporary government servants has been dealt with in State of Haryana v. Piara Singh, 1992 SCC (L&S) 823, yet a separate category of project employee has been carved out on the basis of the decision of the Apex Court in Delhi Development Horticulture Employees' Union v. Delhi Administration and others, 1992 SCC (L&S) 805. In Horticulture case (supra) as per the 5th Plan year different schemes have been formulated by the Central Government, one was food for work under the National Employment Rural Programmes and the incumbents were engaged on daily wages. In the above conspectus the following observations have been made:

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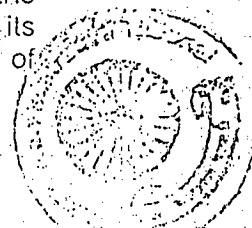
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"20. On the other hand, it is contended by the counsel for the respondents and the counsel for the writ petitioners that the directions given are perfectly warranted in all the circumstances of the case and have been given following the decisions of this Court. It is submitted that the said directions have been given with a view to curb the arbitrariness of the authorities and with a view to give a satisfactory solution to a human problem created by the policies of the Governments themselves. It is submitted by Shri R.K. Garg that the work-charged employees should be treated on par with adhoc employees and out to be regularised on the 1st of April of each year. All those persons who are working in the permanent posts ought to be regularized, says the counsel. Shri M.K. Ramamurthy, appearing for the work charged employees contended that the general concept as to work-charge employees, viz., that the employment is confined to a particular work or project is not correct. He submitted that this is a legacy left behind by the British. He submitted that the work-charge employees are employees of the work-charge establishment and so long as one or the other work is there, they should be continued. Inasmuch as the Government, particularly at the present stage of development, is never without a project or work, these employees must also be regularised. Indeed, according to the counsel the concept of work-charge establishment is a mere matter of accountancy. It is distinct from project employment. It is really temporary employment, which in the nature of things must be treated as regular. Other counsel appearing for the respondents in the appeals and for the writ petitioners supported these contentions.

21. Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the rules of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of

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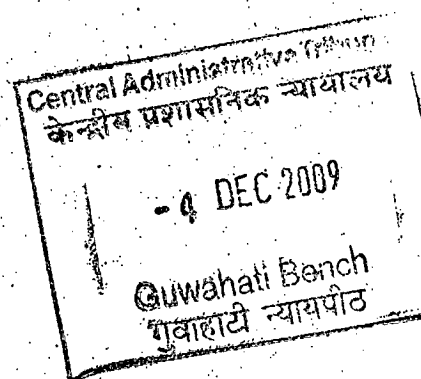
Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long, the court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above. The principles relevant in this behalf are stated by this Court in several decisions, of which it would be sufficient to mention two decisions having a bearing upon the issue involved here. They are Dharwad Distt. P.W.D. Literate Daily Wage employees Association v. State of Karnataka and Jacob M. Puthuparambil v. Kerala Water Authority. In the first case, it was alleged that about 50,000 persons were being employed on daily-rated or on monthly-rated basis over a period of 15 to 20 years, without regularizing them. It was contended that the very fact that they are continued over such a long period is itself proof of the fact that there is regular need for such employment. In that view of the matter, following directions were given, after reviewing the earlier decisions of this Court elaborately: (SCC p.408, para 23).

"2. From amongst the casual and daily rated employees who shall have completed ten years of service by December 31, 1989, 18,600 shall immediately be regularised with effect from January 1, 1990 on the basis of seniority-cum-suitability.

There shall be no examination but physical infirmity shall mainly be the test of suitability.

3. The remaining monthly rated employees covered by the paragraph 1 who have completed ten years of service as on December 31, 1989 shall be regularised before December-31, 1990, in a phased manner on the basis of seniority-cum-suitability, suitability being understood in the same way as above.

The balance of casual or daily rated employees who become entitled to absorption on



the basis of completing ten years of service shall be absorbed/regularised in a phased manner on the same principle as above on or before December 31, 1997.

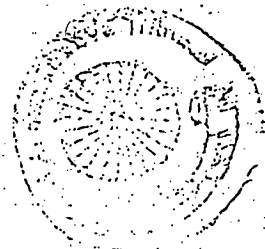
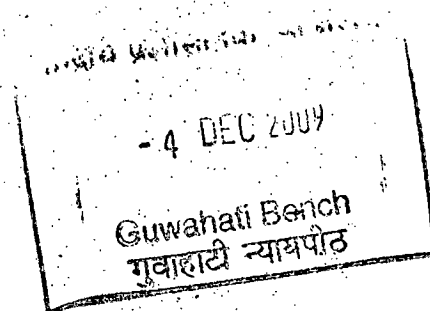
5. At the point of regularisation, credit shall be given for every unit of five years of service in excess of ten years and one additional increment in the time scale of pay shall be allowed by way of weightage.

There was direction that the claims on other heads would be considered at the time of final disposal. We have come to the conclusion that apart from these reliefs no other would be admissible.

22. Having given the said direction, the Bench (Ranganath Misra, M.M.Punchhi and S.C. Agarwal, JJ) made the following observations: (SCC p.408, para 24)

"We are alive to the position that the scheme which we have finalized is not the ideal one, but as we have already stated, it is the obligation of the court to individualize justice to suit a given situation in a set of facts that was placed before it. Under the scheme of the Constitution the purse remains in the hands of the executive. The legislature of the State controls the Consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forthwith would create problems, which the State may not be able to stand. We have, therefore, made our direction with judicious restraint with the hope and trust that both parties would appreciate and understand the situation. The instrumentality of the State must realize that it is charged with a big trust. The money that flows into the Consolidated Fund and constitutes the resources of the State comes from the people and the welfare expenditure that is meted out goes from the same Fund back to the people. May be that in every situation the same tax payer is not the beneficiary. This is an incident of taxation and a necessary concomitant of living within a welfare society."

23. The second case (Jacob) arose from Kerala. Upon the establishment of Kerala Water Authority under Kerala Water Supply and



Sewerage Act, 1986, all the functions of Public Health Engineering Department were also transferred to the Authority. After its constitution, the Authority too recruited some persons. With effect from July 30, 1988, the Authority came within the purview of the Public Service Commission. The employees of the Authority thus fell into four categories, namely, (i) those who were in the employment of PHED before the constitution of the Authority and were transferred to the authority, (ii) those whom the Authority employed between April 1, 1984 and August 4, 1986, (iii) those who were appointed between August 4, 1986 and July 30, 1988, and (iv) those who were appointed after July 30, 1988. Rule 9 of the Kerala State and subordinate Services Rules empowered the Government to appoint persons, in the case of an emergency, otherwise than in accordance with the Rules, such appointment was to be valid only for a limited time and such appointee was bound to be replaced by a regular appointee. At the same time, clause (e) of the Rule provided that persons so appointed may be regularised provided they completed two years' continuous service on December 22, 1973. Construing the said clause in the light of the constitutional philosophy, this Court held: (SCC p.47, para 15)

"Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularization in service."

24. In the light of the said principle and in the light of the principles emerging from the decisions of this Court which were elaborately discussed the following directions were give: (SCC pp.47-8, para 17)

- (1) The Authority will with immediate effect regularize the services of all ex-PHED employees as per its Resolution of January 30, 1987 without waiting for State Government approval.
- (2) The Services of workers employed by the Authority between April 1, 1984 and August 4, 1986 will be regularized with immediate effect if they possess the requisite qualifications for the

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post provided on the date of appointment of the concerned worker.

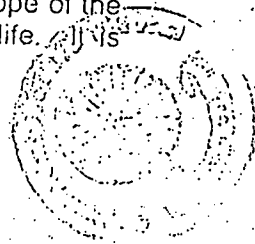
- (3) The services of workers appointed after August 4, 1986 and possessing the requisite qualifications should be regulated in accordance with Act 19 of 1970 provided they have put in continuous service of not less than one year, artificial breaks, if any, to be ignored. The Kerala Public Service Commission will take immediate steps to regularize their services as a separate block. In so doing the Kerala Public Service Commission will take the age bar as waived.
- (4) The Kerala Public Service Commission will consider the question regularisation of the services of workers who possess the requisite qualifications but have put in less than one year's service, separately. In doing so the Kerala Public Service Commission will take the age bar as waived. If they are found fit they will be placed on the list along with the newly recruited candidates in the order of their respective merits. The Kerala Public Service Commission will be free to rearrange the list accordingly. Thereafter fresh appointments will issue depending on the total number of posts available. If the posts are inadequate, those presently in employment will make room for the selected candidates but their names will remain on the list and they will be entitled to appointment as and when their turn arrives in regular course. The list will ensure for such period as it permissible under the extant rules.
- (5) The Authority will be at liberty to deal with the services of the workers who do not possess the requisite qualifications as may be considered appropriate in accordance with law.

Those workers whose services have been terminated in violation of this court's order in respect of which Contempt Petition No. 156 of 1999 is taken out shall be entitled to the benefit of this order as if they continue in service and the case of each worker will be governed by the clause applicable to him depending on the category to which he belongs and if he is found eligible for regularization he will be resorted to service and assigned his proper place."

18. A Constitution Bench of the Apex Court in D.T.C. v. D.T.C. Mazdoor Congress, 1991 (supp.) 1 SCC 600 the following observations have been made:

"230. There is need to minimize the scope of the arbitrary use of power in all walks of life."

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inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law.

231. The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has to stake in their proper and efficient working. Both discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.

232. The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

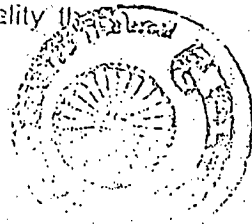
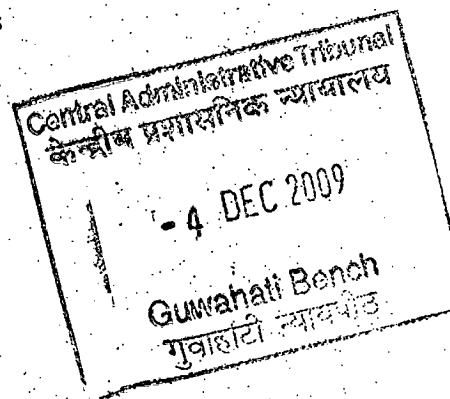
19. In the above backdrop though our Constitution is yet to recognize as a fundamental right, right to livelihood but yet what has been said in its true import and in the light of socio-economic conditions preclude Government to set out terms and conditions while offering any type of livelihood to an incumbent which are not only arbitrary but unconscionable as well.

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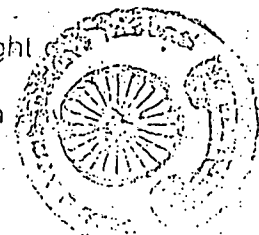
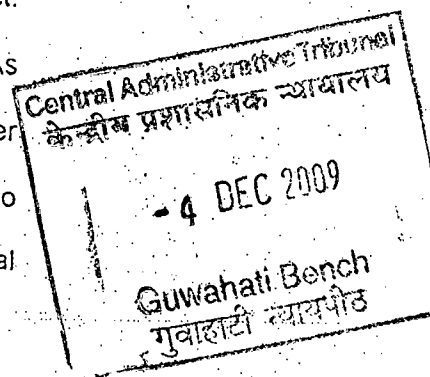
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20. From the cumulative reading of various cases cited and the ratio decidendi discussed clearly points out that though in a project one has no right for regularisation and it is co-terminus, yet no case law has been cited or any exception which holds the view that if a project had been continued for over two decades and there is a likelihood of its being carried out in perpetuity whether a valid inference can be drawn that the project is a permanent body and the object for the purpose it has been constituted having not been achieved the fate of incumbents working in the project would be in limbo and they would have to be satisfied that only emoluments on daily wages with no guarantee at least of minimum of the pay scale or other attendant benefits as admissible to a daily wager or casual worker holding a temporary status though without any valid claim for regularisation which is not the issue in the present case. Applicants in the present case had been working in different capacities earlier in a different project but later on in IDVC since more than 20 years. They are still getting the wages at the rates admissible under the Minimum Wages Act as promulgated from time to time by the State or the Union Territory concerned. A project like MRC, which has already become part and parcel of the ICMR as a permanent body IDVC a project undertaken somewhere in 1986. Since 1986 with an object to study and control IDVC such as Malaria, Filariasis etc. project initially was sanctioned till 8th Plan and continued beyond that and is still continuing. There is no indication to the effect that the above Project is likely to be wound up in the near future though an assumption on the analogy which is a reality that



Malaria in this country is not yet eradicated and not even controlled with the tropical conditions and climatic changes all over India there is a strong need, requirement and even necessity to have research on Malaria continued for more than two decades loses all its essentials and components of a Project and keeping in view that right to livelihood is protected against the directive principles of State policy with recognized principle of equal pay for equal work. There would be an inference to deemed instrumentality of Government and the Project being part and parcel of either MRC or ICMR. To hold that project employees in a project which is continued for more than 20 years with a certainty of its being continued in future as well, are not employees of the Government instrumentality which has funded the project would be cruel and would not be justice to the employees engaged in the Project. The Apex Court in Writ Petition No.5856-57/85 when approached by similarly circumstanced project employees and once the contention has been raised on the above analogy the Government suo moto promised regularisation of petitioner therein. They were deemed to be employees of the ICMR despite engaged on the project. The assurance has culminated into appointment letters. As such the same analogy though the decision is a consent order would not act as a precedent yet the act of the Government to take contradictory stand would not only be illogical but irrational and arbitrary as well.

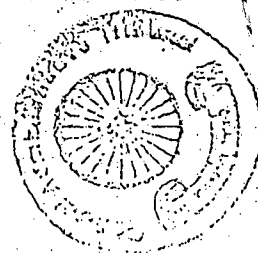
21. In a socialist country which is over-crowded by population a person who does not enjoy a fundamental right of livelihood if offered appointment cannot bargain and is on



government in terms of its ready to accept the offer, but for which there are others to grab it. This contract of service is not only violates the essence of the Constitution of India but also contrary to law. If the project comes to an end within a reasonable period one cannot be allowed to assail it or claim any benefit. But once the project keeping in light the underlying object, achievement and the task left suggests its permanency a view shall have to be taken that though the decision to treat IDVC as a part and parcel and permanent body of ICMR is yet to be taken by the Government, by necessary implication the same has to be treated for the purpose of grant of temporary status to applicants with attendant benefits as a part and permanent body of ICMR. Such a view would neither violate Constitution of India nor would open the flood gates as what is concerned is the future of employees of IDVC who had been stagnating on emoluments as admissible to daily wagers without any guarantee for future and security of service after attaining the age of superannuation. As a model and welfare State Government has to play an ideal role in such a manner that the employees are not victimized and the State Exchequer should not be wasted. A balance is to be made. This is the model role but in apathy to the genuine grievance and a slip shot manner to reject the claim on technicality cannot be countenanced. While the directions of the Apex Court (supra) were being implemented in OA-2409/2001 the respondents filed a Review Application No.134/2002 in OA-2049/2001 though it was dismissed in circulation on 8.7.2002, yet in their RA the star ground to assail

the orders regularising the project workers was that 400

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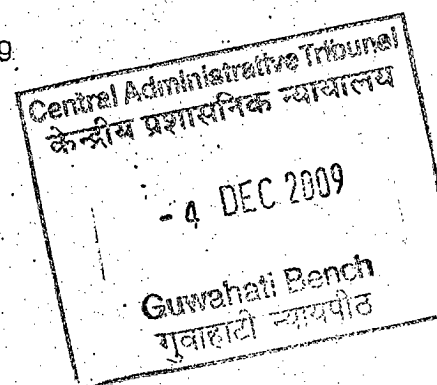
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employees of the project in IDVC who are on long term extra mural project would have to be regularised. This leaves no doubt that applicants in the present case are identically situated with those of petitioners in Amini's case (supra).

22. A Writ Petition filed before the High Court of Delhi by few of applicants in CWP-3/93 claiming regularisation, the claim was solely rejected on the ground that respondents had made a statement that the IDVC Project is to be wound up by the end of the 8th Plan, which is not yet otherwise happened. The Apex Court dismissed the appeal in limine. Had the decision in WP No.5856-57/1985 by the Apex Court on 14.8.87 and implementation thereof by the Project been brought to the notice the claim for regularisation would have ended otherwise. But as no relief is claimed for regularisation, no comments can be offered.

23. In Steel Authority of India Ltd. & Others v. National Union Waterfront Workers and others, (2001) 7 SCC 1, while dealing with the contract workers a Constitution Bench of the Apex Court by considering a plethora of decisions the following observations have been made:

"71. By definition the term 'contract labour' is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal



employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai case and in Indian Petrochemicals Corpn. case etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer."

24. In Ram Singh v. U.T. Chadigarh, 2004 SCC (L&S)

14 the test to judge master servant relationship though in the conspectus of a contract worker the following observations have been made:

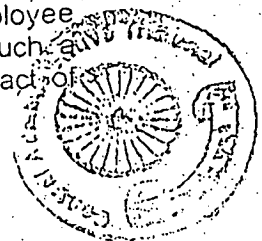
"15. In determining the relationship of employer and employee, no doubt, "control" is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from the independent of it. The other factors, which may be relevant, are - who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the "mutual obligations" between them. (See Industrial Law, 3rd Edn., by I.T. Smith and J.C. Wood, at pp. 8 to 10)

16. Normally, the relationship of employer and employee does not exist between an employer and a contractor and the servant of an independent contractor. Where however, an employer retains or assumes control over the means and method by which the work of a contractor is to be done, it may be said that the relationship between employer and employee exists between him and the servants of such contractor. In such a situation the mere fact of

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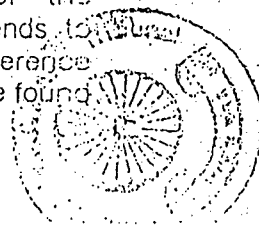
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formal employment by an independent contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Whether a particular relationship between employer and employee is genuine or a camouflage through the mode of a contractor is essentially a question of fact to be determined on the basis of the features of the relationship, the written terms of employment, if any, and the actual nature of the employment. The actual nature of relationship concerning a particular employment being essentially a question of fact, it has to be raised and proved before an industrial adjudicator. Conclusions (5) and (6) of the Constitution Bench decision of this Court in Steel Authority of India are decisive for purposes of this case, which read as under: (SCC p.63, para 125)

"125. (5) On issuance of prohibition notification under Section 10 (1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the condition as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10 (1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of the contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found




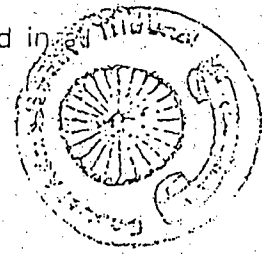
suitable and, if necessary, by relaxing the condition as to minimum age appropriate, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

25. If one has regard to the above, while conceiving a pragmatic approach the integration factor is the basic test. Having regard to the above and keeping in light the object of ICMR, which is to initiate, develop research for study of the diseases and the fact that the ICMR has their own virus units and Malarial Research Project being a permanent body and the fact that this is no more res. integra with IDVC, an internally funded Scheme that the Ministry of Health utilizing consolidated fund of Government to meet out the existence of the Project and the manner of discharge of duties and functions of the employees is governed by the ICMR. We have no doubt in our mind that there exists relationship of master and servant between ICMR and employees of IDVC. As such, with a jural relationship and all the components and factors, by necessary implication, deeming them to be the employees of the ICMR they cannot be shunted out from the purview of definition of employee only on the sole ground that not having appointed on a regular post encadred with ICMR.

26. In Piara Singh's case (supra) even a daily wager or an ad hoc employee when continued for years there would be a presumption of work and the post. The same analogy would mutatis mutandis apply to the present fact situation, where applicants have continued for more than two decades with all ingredients of their employment being directly controlled in

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Secretary, IDVC
Ministry of Health, Govt. of India



respects by the ICMR. In such an event merely because a project is undertaken by ICMR though funded by the Ministry of Family Welfare and on Consolidated Fund of India have to be treated as employees of the Council as per bye-law-I.

27. In Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. v. Bal Kishan Soni and others, (1997) 5 SCC 86 the staff employed in a project has been made entitled for regular pay scale of the posts on which they are engaged on the doctrine of equal pay for equal work.

28. The Apex Court in State of West Bengal v. Pantha Chatterjee, 2003 SCC (L&S) 894, while dealing with a case of volunteer home guard employed on Bangla Desh Border who demanded regularisation on the principle of equal pay for equal work, held as follows:

"16. In the present case, we have seen that there has not been any dispute about the nature of duties of the two sets of BWHG. Ordinarily, no doubt, they could claim benefits only in accordance with the Scheme under which they are engaged. But as held earlier, the Scheme was not implemented in its terms as framed. Hence, the distinction sought to be drawn between the part-time and the permanent BWHG had obliterated and both worked together shoulder to shoulder under similar situations and circumstances and discharged same duties. Once the Scheme as framed failed to be implemented as such by those at the helm of the affairs and the part-time BWHG were continued under the authority of those vested with such power to continue them, it is not open to the State Government or the Central Government to deny them the same benefits as admissible to members of the permanent staff of BWHG. The decisions reported in Karnataka State Private College Stop-gap Lecturers Assn. v. State of Karnataka and Govt. of India v. Court Liquidator's Employees Assn. May also be beneficially referred to.

17. On the basis of the Scheme, as promulgated by the Government of India, the State Government with the sanction of the Governor of West Bengal raised the battalion of

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Border Wing Home Guards, as indicated earlier and they were to be paid from a given head of expenditure of the State Government. The Scheme, however, makes it clear that the expenditure incurred would be reimbursed by the Central Government. The Central Government should not and cannot get out of this undertaking. It is no doubt true that the State of West Bengal being in the position of an employer of the respondent petitioners, owes the primary responsibility of making all the payments on account of salary, allowances and other perquisites to them as admissible to the permanent staff of the Border Wing Home Guards but this burden of expenditure must be ultimately borne by the Central Government. The petitioners have been guarding the borders of the country assisting BSF in checking the infiltration from across the border. The petitioners have been working and discharging their duties under the control of the authorities of the Border Security Force. We also find that the Central Government cannot shed its responsibility by raising a lame plea that it was because of the State Government that voluntary character of the engagement of the writ petitioners, as per the Scheme, was lost. In our view, the primary responsibility for deployment for such a long duration squarely lies upon the Central Government. The deployment was envisaged to be for a period of 3 months to be continued, only if necessary as may be assessed by the authorities of the Border Security Force. The authority to continue the deployment beyond the period of 3 months was entrusted to the responsible authorities of the Border Security Force by the Central Government itself. There is no dispute that the writ petitioners were continued accordingly. In such a situation the State Government hardly had any choice in the matter to cease or withdraw the deployment engaged in the job of patrolling of borders under operational control of BSF."

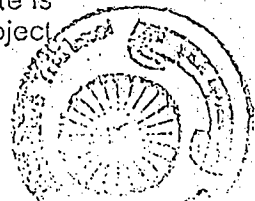
29. In so far as regularisation of Project employees is concerned, a three-Judge Bench of the Apex Court in Dr. V.L. Chandra v. AIIMS, 1990 SCSLJ 78 held as follows:

"6. The Institute set up statute is intended to carry on research in a continuous way to improve the level of medical knowledge. Under the Act the Institute is an autonomous body though the Chairman thereof is no other than the Union Minister of the Health. It is true that the Institute is entrusted from time to time with research project

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by the World Health Organization, the Indian Council of Medical Research and other government and semi-government bodies. It is appropriate that a scheme should be evolved by the Institute in coordination with the Health Ministry and the Indian Council of Medical Research so that a team of researchers is built up to meet the general requirements of research. It is quite possible that certain projects would require specialized hands and on such occasions a special team could be set up on casual basis by drawing the competent hands from different institutions for a period but to keep up the tempo of research if a team of researchers is built up it would be convenient for the Institute for purposes of discipline and control as also for efficiency. The Health Ministry must also sponsor continuous research projects in the field of medical and health and for such purposes several projects should be listed out from time to time and entrusted to the respondents institute and also a similar Institute at Chandigarh and to Institutes as and when set up elsewhere. This would assist in updating relevant medical information and knowledge, apart from building up a scientific tone and temper for general circulation. We commend that the Institute initiates seriously action in this regard without delay and we suggest that the Ministry of Health and the Indian Council of Medical Research collaborate with the Institute to work out the same.

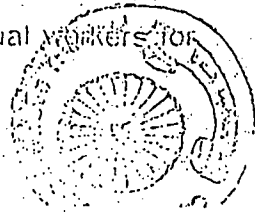
7. Respondent No.3 Indian Council of Medical Research has not chosen to appear separately before us inspite of service of notice. Since we have been told that the respondent-Institute has immediately no scope to employ the petitioners excepting the one that we have named above, we direct that the remaining three petitioners in these two petitions should be provided employment either as Researchers or in any suitable alternative employment until their inclusion in a team of researchers is considered. The Indian Council of Medical Research shall take appropriate steps to offer adequate employment to the three petitioners within two months hence. If the question of funding becomes necessary, we direct the Ministry of Health to cooperate and place adequate funds at the disposal of the Indian Council of Medical Research."

30. A three Judge Bench in Chief Conservator

Forests v. Jagannath Maruti Kondhare and others, 1996

SCC (L&S)-500, as regards continuation of casual workers for

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long periods regarding permanency of a project, the following observations have been made:

"22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to the Industrial Court of Pune (and 15 to the Industrial Court, Ahmednagar) has been kept as casuals for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered, that the Pachgaon Parwali Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on the increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants.

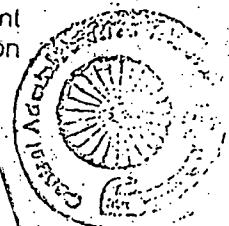
23. The final point which needs our determination is regarding the reliefs granted by the Industrial Court, which is to make the workmen, in both the matters, permanent with all the benefits of a permanent worker, which would include payment of wages etc. at the rate meant for a permanent worker.

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24. On the relief part, it is Shri Bhandare who principally addressed us. His contention in this regard is that the relief of making the workmen permanent, that is, to regularize them was not justified inasmuch as some of them had been employed under the Maharashtra Employment Guarantee Act, 1977. In any case the drain on

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the State Exchequer which would follow if all workers like the respondents are to be paid as permanent employees would be so enormous that the State would find it difficult to engage in other welfare activities.

25. To bring home his submission regarding the unjust nature of the relief relating to regularization, Shri Bhandare sought to rely on the decision of this Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. We do not think that the ratio of this decision is applicable to the facts of the present case inasmuch as the employment of persons on daily-wage basis under Jawahar Rozgar Yojna by the Development Department of Delhi Administration, whose claim for regularization was dealt with in the aforesaid case was entirely different from that of the scheme in which the respondents-workmen were employed. Jawahar Rozgar Yojna was evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. It is because of this that the Bench observed that the object of the Scheme was not to provide right to work as such even to the rural poor, much less to the unemployed in general. As against this, the workmen who were employed under the schemes at hand had been so done to advance objects having permanent basis as adverted to by us.

26. Therefore, what was stated in the aforesaid case cannot be called in aid at all by the appellants. According to us, the case is more akin to that of State of Haryana v. Piara Singh in which this Court favoured the State Scheme for regularization of casual labourers who continued for a fairly long spell - say two or three years, (paragraph 51). As in the case at hand the workmen concerned had, by the time they approached the Industrial Courts worked for more or less 5 years continuously, no case for interference with this part of the relief has been made out.

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 Secy, Legal Deptt.
 गृह विभाग, न्याय
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 Civil Lines, New Delhi

27. We may also meet the contention that some of the workmen had been employed under the Maharashtra Employment Guarantee Act, 1977. As to this, we would first observe that no factual basis for this submission is on record. Indeed, in some of the cases it has been pointed out that the employer had not even brought on record any order of appointment under this Act. This part of perusal of this Act shows that it has not accepted the application of the Industrial Disputes Act.

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1947. This is apparent from the perusal of Section 13 of this Act. It may be further pointed out that this Act having been brought into force from 1978, could not have applied to the appointments at hand most of whom are of the year 1977.

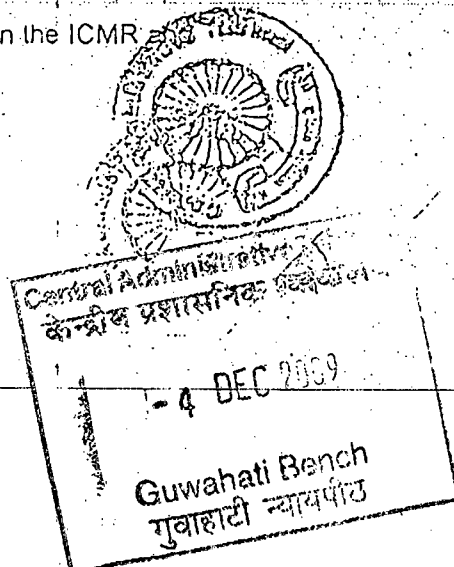
28. Insofar as the financial strain on the State Exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forest Department itself the casual employees are about 1.4 lakhs and if all of them were to be regularized and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighborhood of Rs.300 crores — a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forest Department or any other Department of the Government."

The aforesaid dicta leaves no doubt that permanency writ large on the work performed by applicants as well as the object of the IDVC.

31. The aforesaid is the background and a prelude to answer to the framed questions.

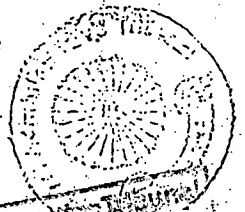
32. Learned counsel of applicants Shri A.K. Behera has strongly relied upon the internal notings dated 20.10.95 and also issued in 1997 to contend that a decision has already been taken to regularize the daily wagers and in fact has stated that two of the employees, namely, Subhash and Dheeraj Singh have already been regularised. It is also contended that there exists a master and servant relationship between the ICMR applicants.

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35. Learned counsel states that reliance on the decision in AIIMS (supra) is misconceived. It is stated that MRC is funded by the Government to conduct research and unless IDVC is declared as a permanent establishment grant of temporary status would be putting a premium. Inputs are supplied by the

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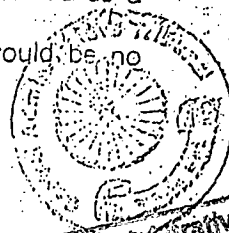
Health Ministry for eradication of malaria and other integrated viral diseases. The project is to wind up by 31.3.2005. As there had been enough research in IDVC it is also stated that even at later stages MRC is also to go. By referring to a decision of the Apex Court it is stated that burden to prove that applicants are employees of ICMR ^{is on them.} As per the decision of the Apex Court in Workman of Nilgiri v. State of T.N., 2004 (3) SCC 514 and except the bald pleading this burden has not been successfully discharged.

36. It is also stated that grant of temporary status and regularisation to Group 'D' post in DoPT Scheme of 1993 are inseparable. Scheme of 10.9.93 is an off shoot to a decision of the Tribunal wherein leave encashment, 50% of service to be reckoned for qualifying service on regularisation. Productivity Linked Bonus clearly demonstrate that it is inextricably linked with regularisation and by necessary implication Government autonomous bodies are excluded.

37. As regards AIIMS case it is stated that therein the applicants were employees of AIIMS and even in ICMR no daily wage or casual worker has been accorded temporary status. It is in this conspectus stated that letter dated 20.10.95 is not with reference to project employees and moreover there is no approval of governing body to the proposal of grant of temporary status to the IDVC employees.

38. Learned senior counsel would contend that assuming the same is a recommendation would not be extended as a promise as ~~no decision~~ has been taken there would be no

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occasion to infer either promissory estoppel or legitimate expectation. It is also stated that a back door entry is sought by applicants for their regularisation.

39. As regards parity of wages is concerned, it is stated that applicants are not qualified and are basically given in house training which would not transform them into skilled workers. Apart from collection of larva there are manifold duties like guarding and appointments of applicants had not required any such qualification or skills imbibe. The decision of the Apex Court in M.D., U.P. Land Development Corporation v. Amar Singh, 2003 (5) SCC 338 is relied upon.

40. We have carefully considered the rival contentions of the parties and perused the material on record. It is no more res integra that applicants are not seeking regularisation as the same has been turned down by the High Court of Delhi, which stood affirmed by the Apex Court on the basis that Project in 1995 was to be wound up and staff is to be phased out. Though this has not taken place and rather the project is still continuing even after passage of more than 10 years.

41. The first issue as to applicability of DoPT OM dated 10.9.93 on ICMR which is not a department of Government or an attached or subordinate office and also not a Ministry, OM dated 10.9.93 was basically meant for casual workers who were employed in Central Government offices and was an aftermath of Raj Kamal's case. This would have been applied for accord of temporary status and was not applicable to Department of Telecommunication, Posts and Telegraph and Railways where

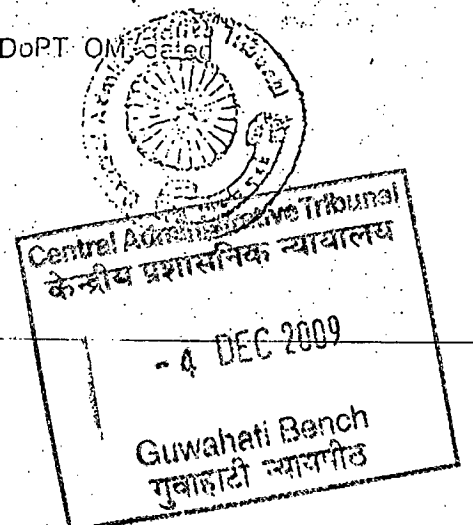
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reports claims were submitted. However, ICMR which is more res integra to be an entity within the meaning of Article 12 of the Constitution of India as a State for the purpose of jurisdiction is amenable to the jurisdiction of the Tribunal in the light of the decision of the Constitution Bench in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others, 2002 SCC (L&S) 633, having regard to the control, funding and various factors had qualified to be a State within the meaning of Article 12 of the Constitution. ICMR has been formulated with a view to undertake research, medical scientific research in India and to promote it by establishment of a fund borne by the Ministry of Health and Family Welfare, i.e., the Consolidated Fund of India. With regard to the employees of ICMR and their service conditions fundamental and supplementary rules framed by the Government of India, orders issued by the Government relating to their employees have to be applied mutatis mutandis to the employees of the Council. The only exceptions are the orders which are specifically not made applicable to the autonomous organisation would not be applicable to the ICMR.

42. A grammatical and literal construction of bye-law-I with underlying objects sought to be achieved to extend at par with Government employees the conditions of service and benefits to the employee of the Council would indicate that the Government orders which expressly exclude autonomous organisation from its purview would not be applicable to the employees of the Council. If one has regard in this conspectus to the Scheme underlying promulgation of DoPT OM

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10.9.93 had applied to all Government employees, its attachment offices and Ministry and is not applicable to Railway, Department of Telecom and Posts. It has not been specifically excluded within its purview the autonomous organisation or bodies funded by Government of India. The rule of exclusion, by necessary implication, cannot be construed.

43. If such a necessary implication is to be construed, reading the proviso to bye-law-I and assuming it is constructed that any Government order which excludes by necessary implication by not incorporating applicability of its Scheme or benefits to the employees of autonomous organisation would not be applicable, the main provision of bye-law-I which extends fundamental rules, supplementary rules and other rules issued by Government of India mutatis mutandis applicable to the employees of the Council would go redundant and otiose.

44. A three-Judge Bench of the Apex Court in *Abraham B. Bafan v. State of Gujarat*, 1985 (2) SCC 24 while ruling that with regard to the interpretation of statute clearly observes that the word occurring in two limbs of the Section should be given the same meaning with the following observations:

*10. The power conferred under clauses (a) and (b) of sub-section (1) of Section 11 is in fact extension of the power recognized under Section 21 of the General Clauses Act and while under the General Clauses Act, the power is exercisable by the authority making the order, the named authorities under clauses (a) and (b) of Section 11 (1) of the Act are also entitled to exercise the power of revocation. When the High Court exercises jurisdiction under Article 226 of the Constitution it does not make an order of revocation. By issuing a high prerogative writ like habeas corpus or certiorari it quashes the order impugned before it and by declaring the order to

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be void and striking down the same nullifies the order. The ultimate effect of cancellation of an order by revocation and quashing of the same in exercise of the high prerogative jurisdiction vested in the High Court may be the same but the manner in which the situation is obtained is patently different and while one process is covered by Section 11 (1) of the Act, the other is not known to the statute and is exercised by an authority beyond the purview of sub-section (1) of Section 11 of the Act. It is, therefore, our clear opinion that in a situation where the order of detention has been quashed by the High Court, sub-section (2) of Section 11 is not applicable and the detaining authority is not entitled to make another order under Section 3 of the Act on the same grounds.

45. If one has regard to the above, once the intention is to extend Government orders mutatis mutandis to the employees of the Council the latter part signifies that unless the same is specifically excluded shall not apply to the employees of the Council is the correct interpretation and on the basis of harmonious construction failing which the object is frustrated.

46. In this view of the matter we have no hesitation to hold that DoPT OM dated 10.9.93 would apply to the employees of the ICMR as well.

47. This leads us to answer question No.2, i.e., the effect of Government rules and bye-laws framed by the ICMR in the light of above answer we have no hesitation to hold that unless a Government order specifically, expressly debar application to autonomous organisation like ICMR the same, by necessary implication, would apply to the employees of ICMR.

48. The question No.3 as to exclusion, by necessary implication, in clause 3 of the DoPT Scheme dated 10.9.93 and its applicability to ICMR is concerned, clause 3 of the

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Serv. Rules as to its applicability to Government officers attached to

offices/departments is the answer above and would hold good.

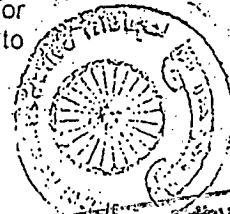
In this view of the matter, DoPT Scheme does not by necessary implication exclude ICMR from its purview.

49. As regards answer to question whether internal notings and correspondence is an admission on the part of the Institution for accord of temporary status as per the Scheme of 10.9.93, it is relevant to highlight the ratio laid down in M.D. U.P.

Land Development Corporation v. Amar Singh (supra):

"9. Having perused the impugned order in the light of the documents referred to above and keeping in view the rival contentions urged on either side, we are of the view that the impugned judgment and order of the High Court cannot be sustained for reasons more than one. The internal note and order of the Corporation, which is made the basis for the claim that twenty-five posts were available on a regular basis, is itself not correct. At this stage we may observe that the internal note and order dated 2.11.1990 was prepared by the Director of the Corporation for his own purpose, but strangely enough a copy of the same was produced by the respondents in the writ petition. We fail to understand how the copy of this internal note and order came into the hands of the respondents. Apart from the fact whether such an internal note itself could give any right to the respondents, the very reading of the same does not give an impression that it is indicated to create twenty-five posts on a regular basis. It only states that a panel of twenty-five persons be prepared for training, taking note of the future possible requirement of persons working in the project. The Division Bench of the High Court has misread this document. The letter dated 9.11.1990 addressed to the Vice-Chancellor of Agricultural University seeking names of the candidates for recruitment to the post of Assistant Project Manager (Group 3) itself shows that twenty-five posts of Assistant Project Managers are likely to be created in future for that purpose; the Corporation had decided that a panel of BSc. (Agr.) graduates be prepared; the selected candidates would be given training for one year and thereafter, they would be put on probation for another year. A request was made in the letter to

Secretary, Government of India
Ministry of Agriculture
Central Administrative Tribunal
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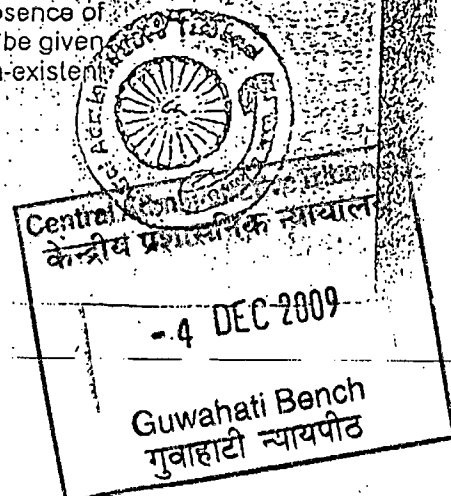
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send a list of agricultural graduates, BSWc. (Agr.). By the letter addressed to the respondents individually dated 9-2-1991 they were asked to attend the office of the Senior Deputy Manager, Jaunpur (Reclamation Development Project, Million Wells Scheme) for training by 25-2-1991; during the period of training, they would be paid Rs. 1200 per month as training allowance. A copy of the said letter was also given to the Senior Deputy Manager, Jaunpur (Reclamation does not say more than calling the candidates to join for the purpose of training, that too under the "Million Wells Scheme".

10. The letter dated 22.2.1993 of the Joint Secretary, U.P. Government extracted above, in clear terms states that 260 posts of different categories were created for the appellant Corporation, against which 140 posts were already occupied by the incumbents and 120 posts were still left vacant; those 120 posts were kept suspended and in lieu thereof permission was given to fill 107 posts temporarily newly created for the purpose of the U.P. Sodic Land Reclamation Project sponsored by World Bank. From these documents it is clear that the respondents were never recruited as against regularly sanctioned posts on a regular basis. Reading of these documents it is clear that the respondents were never recruited as against regularly sanctioned posts on a regular basis. Reading of these documents and the contentions raised on either side go to show that the appointments of the respondents were temporary under the "Million Wells Scheme" aforementioned. When the work of the Scheme had come to an end, the respondents were not entitled to claim regularization of their services. Even though their services were continued after 31.3.1994 by virtue of an interim order passed in the writ petition, they cannot claim benefit of regularization of their services as a matter of right. This court in State of H.P. v. Nodha Ram in para 4 has stated thus: (SCC pp.478-79)

"4. It is seen that when the project is completed and closed due to non-availability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularize them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularize their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent

सचिव, न्यायपालिका
Executive Secretary
दिल्ली न्यायपालिका
Central Administrative Tribunal
न्यायपालिका, नई दिल्ली
New Delhi



establishment. The directions would amount to creating of posts and continuing them despite non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is, therefore, set aside."

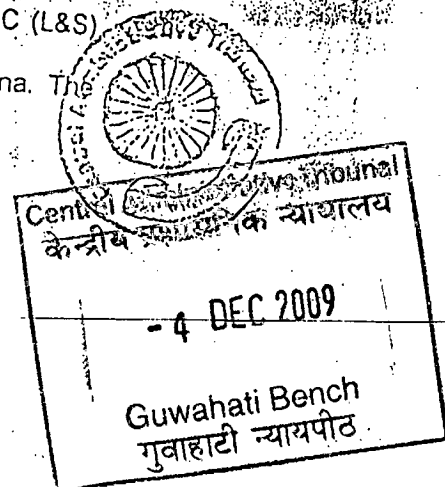
11. In clear and certain terms it is stated that when the project comes to a close, the employees who are working in the project will not get any vested right. In other words, once the project comes to an end, services of the employees also come to an end. The other decisions cited by the learned counsel more or less are to the same effect."

50. If one has regard to these internal notings and orders are only meant for official purposes and have no probative value before the Court. Moreover, we find that the above notings have not culminated into an order passed by the Governing Counsel or the appropriate body. As such no reliance of whatsoever nature can be placed by applicants to substantiate their claim.

51. As regards question whether project employees are treated as employees of either MRC or ICMR, it is trite law in the light of the decision of the Apex Court in *L. Robert D'souza* (supra) and the grammatical meaning of the project that it is only a work undertaken to achieve a purpose or object and it is only co-related to the planned project in which a person is treated as work charged. However, any project which assumes character of a permanent unit, by no stretch of imagination can be equated to project.

52. In so far as project and its characteristics are concerned, in *Delhi Development Horticulture Employees' Union v. Delhi Administration and others*, 1992 SCC (L&S) 805 the Apex Court was pitted with *Jawahar Rozgar Yojna*. The

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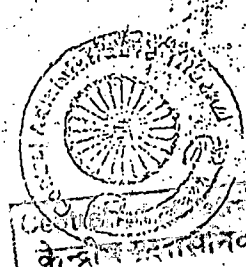
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गुवाहाटी न्यायपीठ

Scheme was to give employment some regularisation. In that backdrop what is being held is that the existing schemes are to wind up for want of resources. This has an object to curb illegal employment market which results in a new source of corruption and frustration to others and regularisation of these workers in time bound project jeopardizing the public interest as well.

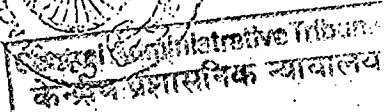
53. The recent decision in Amar Singh's case (supra) also deprecates issuing directions to the State to create posts in a non-existing establishment. On closure of a project no vested right has accrued to the employees. Their services are co-terminus with the project.

54. There are a plethora of decisions including Central Welfare Board v. Anjali Bepari and others 1996 SCC (L&S) 1358, where regarding project employees Government have been directed to frame a Scheme for their absorption. A similar direction was issued by a three Judge Bench in Chief Conservator of Forests v. Jagannath Maruti Kondhare and others, 1996 SCC (L&S) 500. Nowhere we find any ratio decidendi to the effect which as an inbuilt nomenclature of applicability of equity, legitimate expectation and also pragmatic approach as to the issue whether a project which has continued for 20 years and is yet to be accomplished and this research has a requirement in perpetuity whether to be construed still a project or a deemed body of Government when specifically it is funded from out of the Consolidated Fund of India and not a project funded by various schemes of IMF etc.

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Guwahati Bench
মুজাফ্ফার ন্যায়পাঠ

WHO, UNICEF but it is internally funded organisation of Ministry of Health. The control and working of the employees under IDVC, their dispensation and other ancillary attendant benefits are being provided by ICMR. This IDVC project had been continuing uninterruptedly since 1985 for almost two decades. Though it was to be wound up in 1995 itself but that had not taken place. The winding up of this Project in 1995 and the averments made therein resulted in dismissal of claim of applicants for regularisation. If the fact of its being a continuing project would have been before the Apex Court the directions would have been different. Nothing precludes Court below while exercising power of judicial review having regard to the legitimate expectation of an employee who had been continued in employment for more than 20 years and had lost its youth, vigor, energy and had become overage for any other engagement it is always legitimately expected by such employee from the Government that his services would have to be carried till its logical conclusion. To the contrary the project would not only goes against the right to livelihood in whatever force it is recognizable but also be a merciless treatment to such an employee. When several schemes of daily wagers have been framed and implemented by the Government segregating in exclusion the employees of IDVC would not only be unjust but would be an anti thesis to principle of equality enshrined under Article 14 of the Constitution of India. Merely because IDVC has a nomenclature as a project yet we find the same to be established goal of ICMR to achieve targets of development and research of the diseases which the State challenges to.

सुप्रीम/अप्रीम

रजिस्ट्रार, न्यायिक विभाग
Registrar, Judicial Branch
दिल्ली न्यायिक विभाग
Court of Sessions, Delhi

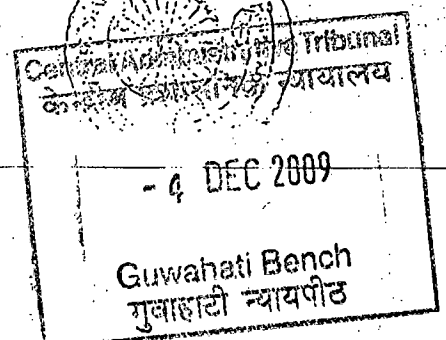


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controlled are still writ large on the face of the Society and one of such example is of Polio.

56. If an employee has been taken with a view to achieve the object and that object is yet to be accomplished and the body by which this engagement has taken place has continued for even two decades and is still continuing and is not wound up with the requirement of such a research work to be carried out in the interest of Nation and its subject treating this to be a temporary body which has been established to achieve the target and a constant dearth of retrenchment on the persons at the fag end of their lives would be cruel. In a socialist country like ours when the Government is the employer the employees are at the receiving end. They have no right to bargain due to large scale unemployment. One is forced to accept any employment even on unconscionable terms. Continuing them for two decades like present applicants still at the rate of daily wages revised from time to time by the State Government would be a glaring example of helplessness and to scuttle down their rights in an arbitrary manner. In *State of West Bengal v. Pantha Chatterjee*, 2003 (6) SCC 469 casual workers who have been employed part time to guard Bangla Desh Border as regards their regularisation the Apex Court has held that when daily wagers had continued for number of years there would be a presumption of the work and posts. However, taking a pragmatic approach and keeping in view the cardinal principle, doctrine of legitimate expectation and having regard to the preceding and attending circumstances when jural relationship of master and servant between the IDVC employees and the

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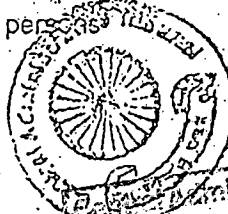
ICMR is established applying the test laid down both in Steel Authority of India Ltd. & Others v. National Union Waterfront Workers and others, (2001) 7 SCC 1 as well as in Pradeep Kumar Biswas (supra) by the Constitutional Benches of the Apex Court applicants who are paid from out of the Consolidated Fund of India issued by the Ministry of Health which is the controlling authority of ICMR as well the manner of control and performance of applicants the IDVC project as it has not yet been wound up it is almost a permanent body of the ICMR and its utility and objects still required to be continued the applicants though are employed in IDVC yet they are deemed to be the employees of the ICMR for the purpose of grant of temporary status.

57. The aforesaid conclusion gains support from N.K. Amani's case where on the directions of the Apex Court the employees who were employed in IDVC project and an objection to that was taken the ICMR had offered regularisation by extending temporary posts in IDVC project. This clearly shows inter-changeability of employees between IDVC and ICMR and it is a communication to the effect that IDVC is part and parcel of ICMR.

58. As regards temporary status is concerned, though it is alleged that inextricably regularisation cannot be excluded, yet applicants seek only temporary status.

59. Temporary status as a daily wage would be extended the benefits mutatis mutandis as available to government employees. The scheme of temporary status applies to persons

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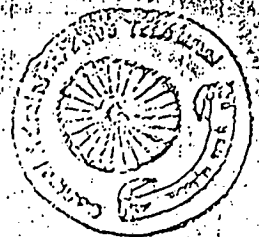
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who were in position on 1.9.93 which is not in dispute in the case of applicants. The conferment of temporary status as per clause 4 (2) is without reference to creation, availability of regular group 'D' posts and would not involve any change in the duties and responsibilities. Temporary status guarantees minimum of pay scale for a corresponding regular Group 'D' official benefit of increment, leave encashment, maternity leave but in so far as 50% of the service to be counted for retirement benefits and on completion of 3 years' continuous service treatment at par with Group 'D' employees and regularisation are concerned, the same would not be admissible to applicants.

60. In our considered view by grant of temporary status applicants would be entitled only to minimum of the pay scale and other attendant benefits. This would not amount to grant of regularisation or any claim for such regularisation as law has taken its course in that event.

61. As regards the wages are concerned, applicants are performing the work of skilled nature which has not been specifically rebutted by respondents. The certificates issued to applicants do indicate that they have been performing the work of skilled nature. In that event even as per admissibility of daily wages they are entitled to wages for skilled category. The Tribunal earlier in TA-29/99 though directed respondents to consider the above aspect of the matter yet has not been decided.

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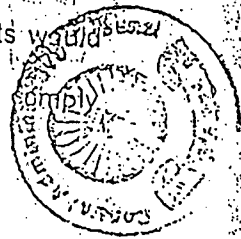
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62. As regards TA 29/99, what has been denied is regularisation but the issue of grant of temporary status was not in question, as such it was not adjudicated.

63. It is trite law that on dismissal of SLP in limine without recording reasons would not be a binding precedent under Article 14 of the Constitution of India. It is equally settled in view of the decision of the Apex Court in *L. Chandra Kumar v. Union of India and others*, 1995 (2) S.C.J. 27 that a decision of the High Court has a binding precedent on the Tribunal under whose jurisdiction it is functioning. Be that as it may, the decision of the High Court earlier in WP/3/93 dated 14.11.95 rejected the claim of applicants for regularisation as 8th Plan was to bring an end to IDVC Project. As this had not happened and the circumstances have changed nothing precludes Government from considering, keeping in light the equitable principles of legitimate expectation, taking steps towards regularisation of these employees in its own wisdom. No mandamus can be issued in this regard.

64. In the result, for the foregoing reasons, this TA is allowed. Respondents are directed to treat applicants as employees of ICMR. They may be considered for grant of temporary status w.e.f. 1.9.1993 as per the Scheme of DoPT dated 10.9.93, as per their eligibility and requirement. In that event applicants shall be entitled to all consequential benefits. We also direct the respondents that prior to grant of temporary status the claim of applicants for grant of skilled grade will be considered and if found entitled, consequential benefits would also be granted. Respondents are further directed to comply

Signature
Secretary, Judicial Branch
Central Administrative Tribunal
Guwahati Bench



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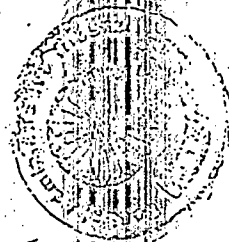
with these directions, within a period of six months from the date of receipt of a copy of this order. No costs.

(S.K. Malhotra)
Member (A)

'San.'

(Shanker Raju)
Member (J)

11/5/05



सचिव, न्याय न्याय
भारतीय प्रशासनिक न्यायालय
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DEC 2009

Chandigarh Bench

- 77 -

ANNEXURE- 7
227602

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s). 21568/2008

(From the judgement and order dated 15/05/2008 in WP No. 858/2006 of the HIGH COURT OF DELHI AT N. DELHI)

INDIAN COUNCIL OF MEDICAL RES. & ORS.

Petitioner(s)

VERSUS

PREM CHAND & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 29/09/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Petitioner(s)

Mr. Raju Ramachandran, Sr. Adv.
Mr. V.K. Rao, Adv.
Mr. Saket Sikri, Adv.
Ms. Madhu Sikri, Adv.
Ms. Nidhi, Adv.

Certified to be true copy

Assistant Registrar (Judl,
..... 29-9-2008

Supreme Court of India

For Respondent(s)

Mr. A.K. Behera, Adv.
Mr. Lalit M. Harichandan, Adv.

In-Person

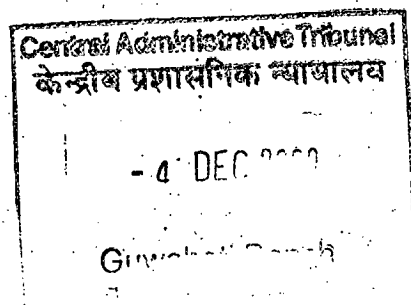
UPON hearing counsel the Court made the following
O R D E R

We find no ground to interfere with the impugned order. However, the time granted by the High Court for compliance is extended by six months from today. Having regard to the fact that a large number of respondents are affected, we request the High Court to dispose of the matter within four months. The special leave petition is dismissed.

- Sol -
(Pawan Kumar)
Court Master

- Sol -
(Anand Singh)
Court Master

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G. Z. Ahmed
Advocate



Present: Mr. V.K. Rao, Advocate for the Petitioner.
Mr. A.K. Behera and Mr. P. Harichandan, Advocates for
the Respondents.

+ WP(C) No. 858/2006

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Examiner, Judicial Department
High Court of Delhi

Rule DB

List in the category of 'Regular Matters' at its own turn
as per its year of seniority.

It is made clear that though the proceedings for
contempt against the petitioners have been stayed that would not
imply that the benefits of the impugned Judgment are not to be
made available to the petitioners as granted by the CAT as a
consequence of respondents being governed by OM No.
51016/2/90/Estt(I) dated 10.9.1993 granting temporary status to the
petitioners.

Needful be done within two months from today.

SANJAY KISHAN KAIL, J

MAY 15, 2008
rm

MOOL CHAND GARG, J

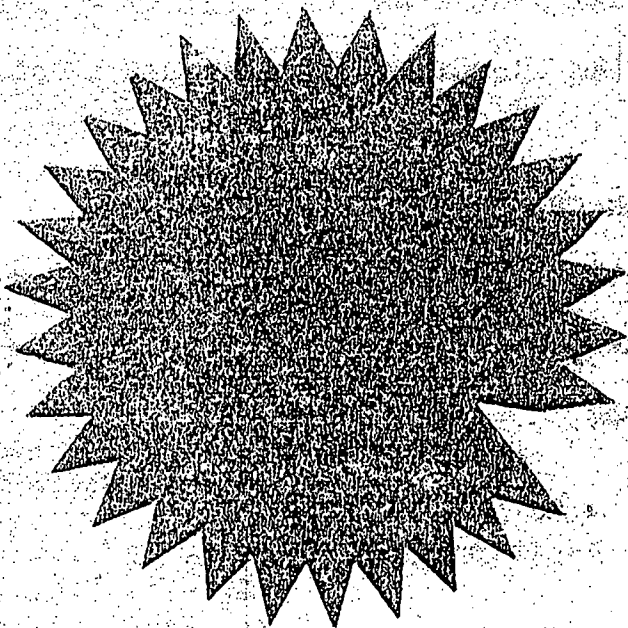
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Examiner, Judicial Department
High Court of Delhi
Authorised under Section 70
Indian Evidence Act

Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
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SUPREME COURT OF INDIA	
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Matter No	SLP(C) NO. 215 68/08
Brief Cause Title	council of Indian Medical Res. 801. Prem Chandra 801s

SERIAL NO.	OF 11-35673
No. of (lots)	1
Classification	11
Remarks	Eleven

Date of delivery to the copy. 29-9-08

Section Officer
Supreme Court of India

29/9/08

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29/9/08

ANNEXURE-8

National Institute of Malaria Research
(Indian Council of Medical Research)
Sector-8, Dwarka, New Delhi-110077

No. Admin./Temp. Staus/NIMR/507/09/ 472

22 June, 2009

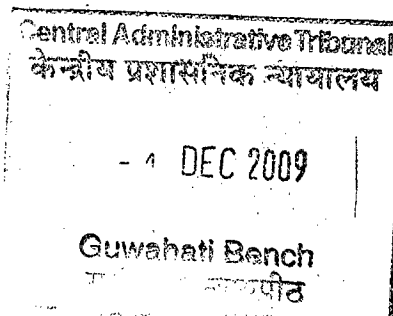
ORDER

Sub :- Grant of Temporary Status to the Casual Workers in different field units of IDVC Project, NIMR – Regarding.

The casual workers were recruited in different field units of IDVC project from time to time. They filed an O.A. in CAT Principal Branch, Delhi, claiming temporary status in accordance with the scheme contained in DOPT O.M. No.51016/2/90 -Estt.(C) dt. 10th Sept. 1993. The matter had been litigated in the Hon'ble CAT, Delhi High Court and the Supreme Court and as per the Judgement/ Order of the apex court, the CAT Order dt 11.5.2005 in TA no. 50/99/PB is to be implemented. The matter has been considered in consultation with the ICMR Hqrs and it has been decided to implement the aforesaid CAT Order. Accordingly, the following instructions are issued to implement the aforesaid Order of CAT, Principal Branch :-

- (i) The implementation of these instructions would be subject to final outcome of the W.P. No. 858/2006 filed in the Hon'ble High Court of Delhi.
- (ii) These orders shall apply to all casual workers who were in service in IDVC Project on 10.09.1993 and had completed one year of service in project i.e. at least 240 days duty (206 days in the case of offices observing five days week) and were applicants to the above case filed in the Principal Branch of CAT, Delhi. Such employees would be entitled to be granted Temporary Status in terms DOPT O.M. dt. 10.09.1993, referred to above w.e.f. 01.09.1993.. A list of such employee is enclosed.

Certified true Copy
G. Z. Ahmed



2. The employees falling in the above category would be entitled to the following benefits :-

- (vi) Wages at daily rates with reference to minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA.
- (vii) Benefits of increment at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days, (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.
- (viii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work. Casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit in the eventuality of their regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.
- (ix) Maternity leave to lady applicants in TA as admissible to regular Group D employees will be allowed.
- (x) They would be entitled to Productivity Linked Bonus/ Ad-hoc bonus only at the rates as applicable to casual labourers.

3. Wages will be fixed for each applicant separately on the basis of Basic pay/Basic pay + Grade pay together with DA, HRA and CCA as given below and the arrears paid to them on furnishing an undertaking in the enclosed proforma.

Date/year	Basic (Rs.)	Justification
1/9/1993	750/-	As per IV th Pay Commission
1/9/1994	762/-	Annual increment @ Rs. 12/-
1/9/1995	774/-	Annual increment @ Rs. 12/-
1/1/1996	2550/-	As per V th Pay commission
1/9/1996	2605/-	Annual increment @ Rs. 55/-
1/9/1997	2660/-	Annual increment @ Rs. 55/-
1/9/1998	2720/-	Annual increment @ Rs. 60/-
1/9/1999	2780/-	Annual increment @ Rs. 60/-
1/9/2000	2840/-	Annual increment @ Rs. 60/-
1/9/2001	2900/-	Annual increment @ Rs. 60/-

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 4 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

1/9/2002	2960/-	Annual increment @ Rs. 60/
1/9/2003	3020/-	Annual increment @ Rs. 60/
1/4/2004	3020/- +1510(DP)=4530/-	50% merger with Annual increment @ Rs. 60/-
1/9/2004	3080/-+1540/-=4620/-	50% merger with Annual increment @ Rs. 60/
1/9/2005	3140/-+1570/- =4710/-	50% merger with Annual increment @ Rs. 60/
1/1/2006	7860/-	Fixation as per 6 th Pay commission.
1/7/2006	8100/-	Annual increment @ 3%
1/7/2007	8350/-	Annual increment @ 3%
1/7/2008	8610/-	Annual increment @ 3%
1/5/2009	8610/-	-

4. All expenditures on this account, including arrears of past wages, shall be met from the NIMR Budget.

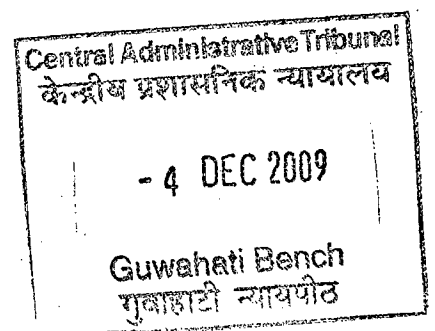
(Dr. V.K. Dua)
Officer-in-Charge

To

1. Accounts Section, NIMR, Delhi
2. Bill Section, NIMR, Delhi
3. Admn. I, NIMR, Delhi
4. OIC, NIMR All IDVC field units - Guwahati
5. Concerned staff (By name)

Copy forwarded for information to:

1. PS to Secretary, Department of Health Research and Director-General, ICMR, V. Ramalingaswamy Bhawan, Ansari Nagar, New Delhi.
2. ECD-II Section, ICMR, Ramalingaswamy Bhawan, Ansari Nagar, New Delhi with reference to their letter no. 75/7/2000-ECD-II dt. 23.4.09.



NATIONAL INSTITUTE OF MALARIA RESEARCH
(Indian Council of Medical Research)

STATION

Health & Family Welfare
Chachal, VIP Road, Six-Mile,
Guwahati - 781 022, Assam (India)



ANNEXURE 8
राष्ट्रीय मलेरिया अनुसंधान संस्थान
(भारतीय आयुर्विज्ञान अनुसंधान परिषद)
क्षेत्रीय इकाई
स्वास्थ्य एवं परिवार कल्याण मंत्रालय
चचल, वी आई पी रोड, छः माइल
गोवाहाटी - 781022, असम (भारत)

Ref. : 852

Dated : 24-08-2009

To,

The Director (In-Charge)
National Institute of Malaria Research
Sector-8, Dwarka
New Delhi - 110 077.

Sub : Representation for the grant of temporary status as per the
guidelines of the Department of Personal and Training O.M.
No. 51016/2/90-Estt(C); dated 10-09-1993.

Sir,

I am forwarding the representations of the following casual
employees for your due considerations.

1. Sh. Padu Ram Sahu.
2. Sh. Rasik Lal Das.
3. Sh. Hari Charan Das.
4. Mrs. Jyotshna Rani Das.

Thanking you,

Sincerely,

(VAS DEV)
Officer-in-Charge

Certified to be true Copy
G. Z. Ahmed
Advocate

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

- 4 DEC 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

OA NO. 255/2009

Smti Jyotshna Rani Das & ors

...Applicants

-Versus-

Union of India & others

.... Respondents

-AND-

IN THE MATTER OF

Written Statement submitted by the Respondents

WRITTEN STATEMENT:

The humble answering respondents submitted their written statement as follows:

I(a)

That I

am.....

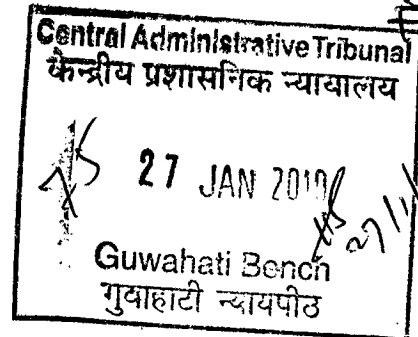
Var Dev

Officer-in-Charge, National Institute of

Malaria Research, Guwahati.

.....and respondent No. 04.....in the above case. I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statements, the contentions and statements made in the application and authorized to file the written statement on behalf of all the respondents.

Var Dev
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022



Filed by
Respondents Through
Usha Das
Addl Clk
25/1/2010 '00

R. Copy on
G. Z. Ahmed
(Adv. for the Applicant)
25.01.10

27 JAN 2010

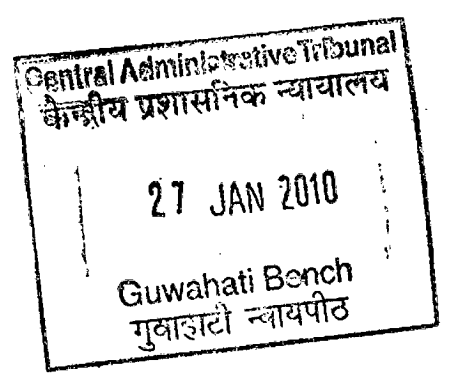
Guwahati Bench
गुवाहाटी न्यायपीठ

2

2) That the respondents would like to give the Preliminary Objection of the case before traversing various paragraphs of the OA, which may be treated as integral part of the Written Statement.

- a) That the Original Application filed by the applicants is totally false, frivolous. Misconceived and hence liable to be dismissed.
- b) That the applicants in the present OA are praying for grant of temporary status in accordance with the Scheme contained in DOP&T O.M. dated 10.09.1993. The said issue is already pending before the Hon'ble High Court of Delhi at New Delhi. In view of the fact that the Respondents have categorically stated that the said OM of the DOP&T is not applicable to the Respondents and as such the present OA is not maintainable.
- c) That it is submitted on the basis of OM dated 10.9.1993, some of the daily wagers filed an OA before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi seeking grant of Temporary status and the Hon'ble Tribunal allowed the OA. However, the respondents have already challenged the said order by way of filing a Writ Petition before the Hon'ble High Court at New Delhi which is pending adjudication and the applicants should have waited for the outcome of the said Writ Petition instead of filing another OA on the basis of same set of facts.
- d) That not only this, much before filing of the OA before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, one Writ Petition No. 3/1993 was filed by some of the daily wagers in the Hon'ble High Court seeking their regularization which was dismissed on 14.11.1995 by a detailed speaking order. In these circumstances, during pendency of the similar petition before the Hon'ble High Court of Delhi, there is no occasion for the applicants to file the present OA.
- e) That the claim of the applicants is based on the OM dated 10.9.1993 issued by the DOP&T but their claim for grant of temporary status and

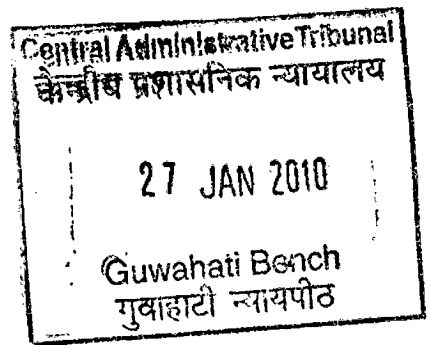
Van Der
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022



regularization of their services is not maintainable in the present case as would be clear from the following:

- i) The said Scheme is applicable to those casual employees working in Central Government offices other than the department of Telecom, Post and Railways, which is clear from the Office Memorandum dated 10.9.1993. Thus the said Scheme is not applicable to respondents 2 and 3.
- ii) It may be stated that ICMR is a Society registered under the Societies Registration Act and is autonomous body. It has various constituent units/Research Institutes and one such unit is MRC, respondent No. 3. Neither ICMR nor its Institutes may be called Central Government servant/civil servant. Thus by no stretch of imagination, the said scheme can be treated as applicable to respondents 2 and 3.
- iii) A perusal of the Office Memo dated 10.9.1993 would show that the said Scheme was formulated by the Central Government on the basis of direction contained in the judgment of Hon'ble CAT, Principal Bench, New Delhi, delivered on 16.2.1990. It was admitted the case between casual employees and the Union of India i.e. those casual employees who were working with Union of India. Such direction, therefore, cannot be applicable to ICMR, which is not covered under the jurisdiction of CAT.
- iv) A perusal of the Scheme would show that the Scheme is made for grant of temporary status and regularization of casual workers. Thus admittedly, status is to be given to such casual laborers engaged under Central Government offices who fulfill the conditions as per the Scheme. Once they are given the temporary status, the next step is to regularize them as per the said Scheme.
- v) In the instant case, the applicants are working as casual labourers for project and are not entitled to regularization at all. This is so held by this Hon'ble

Vas De
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022



Court in its judgment dated 14.11.1995 (Supra). Thus when the applicants are not entitled to regularization, and the relief in this respect has already been rejected by this Hon'ble Court, the question of grant of temporary status to them does not arise and is meaningless. On this ground also the said scheme is not at all applicable as far as the applicants are concerned.

In view of the submissions made therein above, there is no merit in the OA and the same is liable to be dismissed. However, reply on merits is as under:

3) That with regard to the statement made in paragraph 1 of the OA, the respondents beg to submit that the applicants are not entitled to the grant of temporary status in accordance with the Scheme of DOP&T dated 10.9.1993. However, without prejudice to the same, it is submitted that the present OA on the basis of the OM dated 10.9.1993 of DOP&T is highly belated and liable to be dismissed on this ground alone.

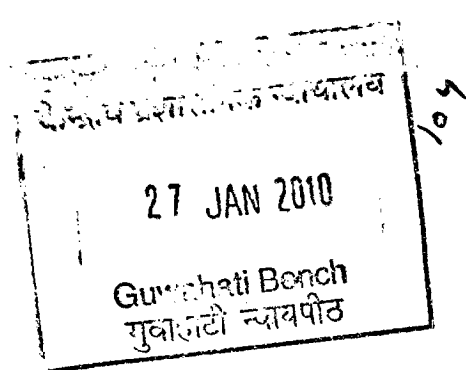
4) That with regard to the statement made in paragraph 2 of the OA, the respondents beg to submit that subject to other pleas, the jurisdiction of this Hon'ble Tribunal is not denied.

5) That with regard to the statement made in paragraph 3 of the OA, the respondents beg to submit that the contents of this paragraph are wrong and denied. The OA filed by the applicants is hopelessly time barred and liable to be dismissed on this ground.

6) That with regard to the statement made in paragraphs 4.1, 4.2 and 4.3 of the OA, the answering respondents beg to offer no comment.

7) That with regard to the statement made in paragraph 4.4 of the OA, the answering respondents beg to submit that since the applicants were engaged on a project and as such their services are governed by the terms

Vas De
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022



and conditions of the engagement letter. As far as the representations given by the applicants are concerned, the same were disposed of from time to time by the Respondents.

8) That with regard to the statement made in paragraphs 4.5, 4.6 and 4.7 of the OA, the respondents beg to offer no comments.

9) That with regard to the statement made in paragraph 4.8 of the OA, the respondents beg to submit that the submission made in this paragraph are factually incorrect and the applicants are trying to mislead this Hon'ble Tribunal. It is matter of record that the Writ Petition was filed by the respondents before the Hon'ble High Court of Delhi at New Delhi. Since the said Writ Petition, the Hon'ble Court did not stay the impugned order passed by the Hon'ble Tribunal, the respondents have filed the Special Leave Petition before the Hon'ble Supreme Court and Hon'ble Supreme Court of India while dismissing the SLP against the interim order, was pleased to observe that the High Court may dispose of the Writ Petition at an early date.

10) That with regard to the statement made in paragraph 4.9 of the OA, the respondents beg to submit that the temporary status has been granted only to those applicants who were party before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in the said OA as although the Writ Petition has been admitted but no stay against the order of the Hon'ble Tribunal was granted by the Hon'ble High Court.

11) That with regard to the statement made in paragraph 4.10 of the OA, the respondents beg to submit that the statements made in this paragraph are totally misleading and contrary to the records. It is submitted that the Writ Petition is pending before the Hon'ble High Court and the

Vas De
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022

order of the Hon'ble Tribunal is still under consideration of the Hon'ble High Court. In these circumstances, when the matter is sub-judice, the benefit of the stay order of the Hon'ble CAT, Principal Bench, New Delhi can not be granted to all the casual workers who were in service in IDVC Project till the time the Writ Petition is decided by the Hon'ble High Court. It is, however, denied that the applicants are entitled to the benefit of the OM dated 10.9.1993 of DOP&T when it has categorically been submitted by the respondents that IDVC Project is not covered in the said OM for grant of temporary status to the daily wagers.

12) That with regard to the statement made in paragraph 4.11 of the OA, the respondents beg to offer no comment.

13) That with regard to the statement made in paragraph 4.12 of the OA, the answering respondents state that beg to deny the contentions made therein as wrong and misleading. Only those casual workers who were the applicants in the OA before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi and as per the directions of the Hon'ble Tribunal have been conferred with the temporary status.

14) That with regard to the statement made in paragraph 4.13 of the OA, the respondents beg to deny the contentions made therein and beg to submit that there is no violation of the principles of natural justice, as alleged.

15) That with regard to the statement made in paragraphs 4.14 and 4.15 of the OA, the respondents beg to deny the contentions made therein are wrong and misleading. There is no reason or cause of action for the applicants to file the present application.

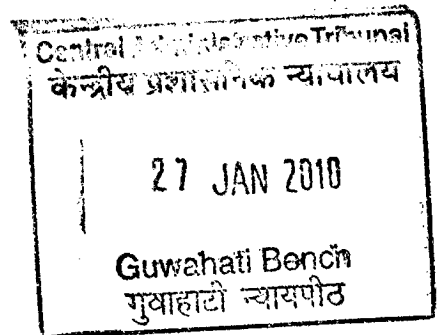
16) That with regard to the statement made in paragraph 4.16 of the OA, the respondents beg to deny the contentions made therein as wrong and misleading. There is no justification for filing of the present OA more so when the issue involved as already pending adjudication before the Hon'ble High Court of Delhi.

17) That with regard to the statement made in paragraphs 5.1 to 5.8 of the OA, the respondents beg to submit that the statements are repetitive in nature and have already been dealt with hereinabove. The grounds are not having force and the applicants are not entitled to the grant of temporary status.

18) That with regard to the statement made in paragraphs 6 and 7 of the OA, the respondents beg to offer no comment.

19) That with regard to the statement made in paragraph 8 of the OA, the respondents beg to submit that in view of the submissions made hereinabove, the applicants are not entitled to the relief claimed by them from paragraphs 8.1 to 8.4 and the OA is liable to be dismissed.

Vas De
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022



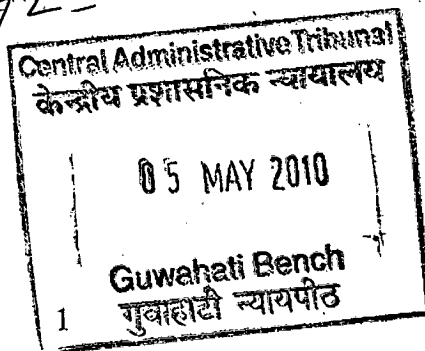
VERIFICATION

I Vas Dev, aged
about 55 years at present working as
Officer-in-charge, National Institute of Malaria
Research, Guwahati, who is one of the respondents and taking steps in this case, being
duly authorized and competent to sign this verification for all respondents,
do hereby solemnly affirm and state that the statement made in paragraph
1, 3 to 19 are true
to my knowledge and belief, those made in paragraph
2, 3 to being matter of records, are
true to my information derived there from and the rest are my humble
submission before this Humble Tribunal. I have not suppressed any material
fact.

And I sign this verification this 25th day of January 2010 at Guwahati

Vas Dev
DEPONENT
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022

-92-



Filed by
the Respondents Through
Advocate
05/5/10 '08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

OA NO. 255/2009

Smti. Jyotshna Rani Das & ors

...Applicants

-Versus-

Union of India & others

.... Respondents

-AND-

IN THE MATTER OF

An Affidavit on behalf of the Respondents pursuant to the order
passed by this Hon'ble Tribunal dated 05.4.2010

That I VAS Dev working as *Officer-in-charge* with
the National Institute of Malaria Research who is respondent No. do
hereby solemnly affirm and declare as under:

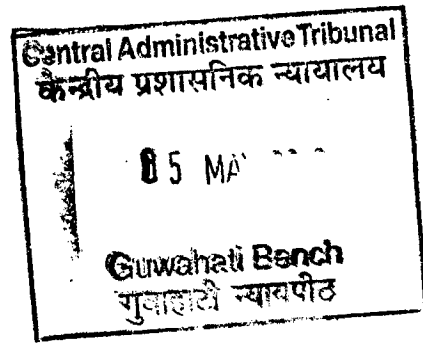
Received Copy
@ Mr. Advocate
For Mr. B. Sumon,
Advocate (Applicants)
Date - 5/5/2010

1) That I being *Officer-in-charge* with the respondents,
am well conversant with the facts of the case and hence duly competent to
swear this affidavit.

2) That the above mentioned OA filed by the applicants is pending
adjudication before this Hon'ble Tribunal. The OA has been filed by the
applicants for grant of temporary status to them in accordance with the
Scheme contained in OM dated 10.9.1993 of the DOP&T.

3) That the Respondents have already filed the detailed reply to the OA filed
by the applicants which may be taken as part and parcel of the present

Vas Dev
Officer-In-Charge
National Institute of Malaria Research
IDVC Field (M)
Chachal, Guwahati - 781 022



affidavit as well as and are not repeated herein for the sake of brevity. The Respondents in their reply have stated that the matter with respect to grant of temporary status is pending before the Hon'ble High Court of Delhi at New Delhi.

4) That the present affidavit is being filed pursuant to the directions of this Hon'ble Tribunal, clarifying the fact which has already been mentioned in the reply by the Respondents.

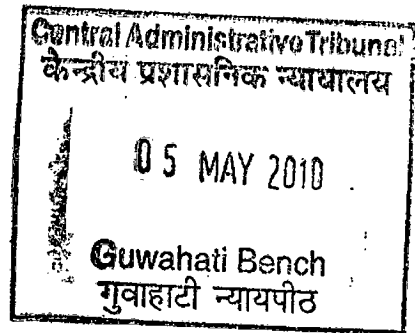
5) That it is submitted that the case of the Respondents with respect to the *applicability of OM dated 10.9.1993 in respect of the daily wagers/IDVC Project employees* is that the said OM is not applicable to the Respondents. Further, the matter with respect to the case of similarly placed daily wagers is already sub-judice before the Hon'ble High Court of Delhi at New Delhi.

6) That the contention of the applicants in the present OA is that the temporary status granted to the applicants in the case filed by them before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi, be granted to the present applicants as well. In this respect, it is clarified that the temporary status has been granted only to those applicants who were party before the Principal Bench of CAT, New Delhi pursuant to the directions passed by the Principal Bench but the same is subject to the final decision by the Hon'ble High Court on the case.

7) That in the aforementioned circumstances, the temporary status cannot be granted at this stage to the applicants in the present OA by applying the directions passed by the Principal Bench of Cat, New Delhi in their case.

8) That with respect to the Office Order dated 22.6.2009, which has been quoted by the applicants, it is submitted that the said order has not been


[Signature]
 Officer-in-Charge
 Training & Development, Malabar Hill
 Income Tax Unit
 Guwahati - 781



mentioned before this Hon'ble Tribunal in its entirety and the applicants have tried to pick up one part of the said order, which was quoted by them. It is stated that the document has to be read as a whole and not in isolation. It is specifically stated that the said order also mentions that the temporary status has been granted only to those employees, who were the applicants in the case filed by them in the Hon'ble Provincial Bench of CAT, New Delhi.

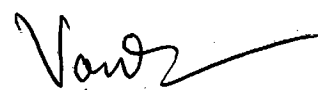
9) That in view of the above clarifications/submissions, the claim of the applicants for grant of temporary status in the present OA is liable to be rejected by this Hon'ble Tribunal.

Place : Guwahati
Dated: 03.5.2010


DEPONENT
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022

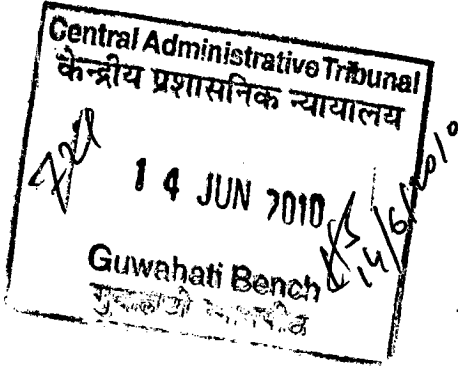
VERIFICATION

Verified at Guwahati on this 3rd day of May, 2010 that the contents of the above affidavit are true and correct to the best of my knowledge and belief, no part of it is false and no material has been suppressed or concealed there from.


DEPONENT
Officer-In-Charge
National Institute of Malaria Research
IDVC Field Unit
Chachal, Guwahati - 781 022

-95-

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI**



Original Application No. 255 / 2009

Sri Jyotshna Rani Das & 3 Ors.

.....Applicants

-Versus-

The Union of India & 3 Ors.

.....Respondents

IN THE MATTER OF:-

Reply by and on behalf of the applicant to the affidavit submitted by the Respondents in O.A No. 255/2009, in pursuance of the order dated 05.04.10 passed by this Hon'ble Tribunal.

REPLY FOR AND ON BEHALF OF THE APPLICANT

1. That I am the applicant no.1 in the O.A No. 255/ 2009 and I have been duly authorised by the other applicants to swear this reply. The copy of the affidavit filed by the respondents, as served upon my counsel has been perused by me and I have understood the contents thereof.

2. That save and except the statements that are specifically admitted to herein below all the averments as made in the affidavit, under reply, are categorically denied.

3. That with regard to statement made in Paragraph 1, 2, 3 and 4 of the affidavit, under reply, your deponent begs to offer no comments.

Filed by the applicant
through her counsel
Ms. G.Z. Ahmed on 14.06.10.

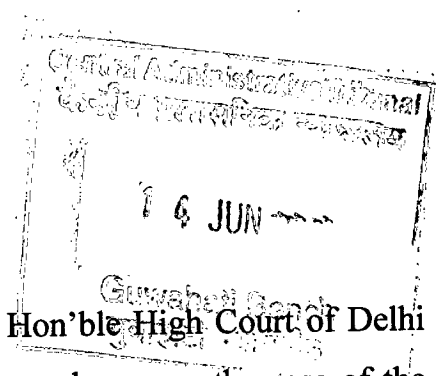
Jyotshna Rani Das.

Received
Advocate
14/6/2010

4. That with regard to statement made in Paragraph 5 of the affidavit, under reply, your deponent denies the same and states that the contention of the respondent authorities that the OM dated 10.09.1993 is not applicable to the respondent authorities is totally false, incorrect and misleading in as much as the National Institute of Malaria Research under the Indian Council of Medical Research is an instrumentality of the Central Government and the Central Government Rules, Schemes and Policy decisions in the matter of conditions of service are applicable to the employees of the National Institute of Malaria Research and as such the OM dated 10.09.1993 is applicable to the respondent authorities. Further, the order dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB also holds that the OM dated 10.09.1993 is applicable to the respondent authorities. Thus, the Casual Labour (Grant of Temporary Status and Regularisation) Scheme contained in DOPT O.M. No. 51016/2/90-Estt.(C) dated 10.09.1993 is applicable to the respondent authorities.

5. That with regard to the contention raised by the respondents in Paragraph 6 of the affidavit, under reply, your deponent denies the same and states that the action on the part of the respondent authorities in granting Temporary Status only to the applicants in the TA No.50/99/PB preferred before the Principal Bench of the Hon'ble Central Administrative Tribunal is bad in law as well as facts, in as much as other similarly situated incumbents are also entitled to avail the benefits flowing out of the judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB as the same is a Judgement in Rem and not Judgement in Personam. Thus, the respondent authorities have erred while passing Office Order no. Admin. /Temp. Staus/NIMR/507/09/472 dated 22.06.2009 to the extent of granting the Temporary Status only to the applicants in the TA No.50/99/PB and is bad in law as well as facts in as much as an Office Order cannot curtail the benefits flowing out a judgement passed by the Hon'ble Central Administrative Tribunal. Also, the judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB is the law holding the field in the nature of a

dyotabna Rani Das.



precedent, its operation being not stayed by the Hon'ble High Court of Delhi and the Hon'ble Supreme Court of India and squarely covers the case of the petitioner.

6. That with regard to the contention raised by the respondents in Paragraph 7 of the affidavit, under reply, your deponent denies the same and further states that they are entitled to the grant of temporary status in terms of the DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993 and that the aforesaid OM dated 10.09.1993 is applicable to the respondent authorities in view of the judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB.

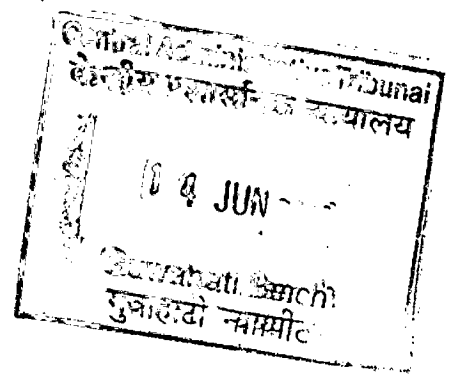
7. That with regard to the contentions raised by the respondents in Paragraph 8 of the affidavit, under reply, your deponent denies the same and reiterates and reaffirms the statements made in paragraph 5 of this reply.

8. That with regard to the contention raised by the respondents in Paragraph 9 of the affidavit, under reply, your deponent denies the same and further states that the applicants are entitled to the grant of temporary status in terms of the DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993 and that the aforesaid OM dated 10.09.1993 is applicable to the respondent authorities in view of the judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB. Further, the applicants are entitled to the reliefs prayed for in the Original Application the same being based on substantive and material grounds and preferred bonafide for securing the ends of justice.

Gyotahna Romi Das.

.....Verification/-

VERIFICATION



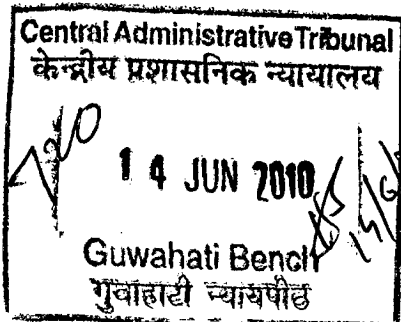
I, Smti. Jyotshna Rani Das, aged about 44 years, wife of Mr. Paban Kumar Das, resident of Village Kamarkuchi, P.O. Tepesia, in the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the applicant no. 1 in this instant application, conversant with the facts and circumstances of the case and I have been duly authorised by the other applicants to swear this verification on their behalf, the statements made in paragraph 3 to 8 _____ are true to my knowledge; those made in paragraphs _____ are true to my information derived from the records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 14th day of June 2010.

Jyotshna Rani Das.

DEPONENT

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI



Original Application No. 255 / 2009

Sri Jyotshna Rani Das & 3 Ors.

.....Applicants

-Versus-

The Union of India & 3 Ors.

.....Respondents

IN THE MATTER OF:-

Rejoinder by and on behalf of the applicant to the
written statement submitted by the Respondents in
O.A No. 255/ 2009.

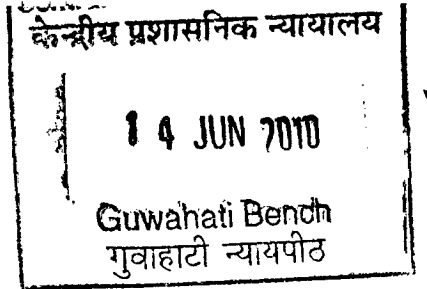
REJOINDER FOR AND ON BEHALF OF THE APPLICANT

1. That I am the applicant no.1 in the O.A No. 255/ 2009 and I have been duly authorised by the other applicants to swear this rejoinder. The copy of the written statement filed by the respondents as served on my counsel, has been perused by me and I have understood the contents thereof.
2. That save and except the statements that are specifically admitted to herein below all the averments as made in the written statement, under reply, are categorically denied.
3. That with regard to statement made in Paragraph 1 of the written statement, under reply, your deponent begs to offer no comments.

Received
Usha Das
Advocate
14/6/2010

Filed by the applicant
through her counsel
Ms. G. Z. Ahmed on 14.06.10.

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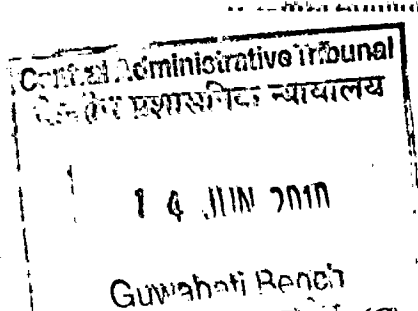
4. That with regard to statement made in Paragraph 2(a) of the written statement, under reply, your deponent denies the same and states that the instant Original Application is based on substantive and material grounds and as such your deponent is entitled to the reliefs prayed for in the Original Application.

5. That with regard to the contention raised by the respondents in Paragraph 2(b) of the written statement, under reply, your deponent states that the Casual Labour (Grant of Temporary Status and Regularisation) Scheme contained in DOPT O.M. No. 51016/2/90-Estt.(C) dated 10.09.1993 is not applicable to the respondent authority is totally misplaced and misconstrued as the Principal Bench of the Hon'ble Central Administrative Tribunal vide issue of order dated 11.05.05 in TA No.50/99/PB held in clear terms that the DOPT O.M. dated 10.09.1993 would apply to the employees of the ICMR as well (Paragraph 46, Page 37 of the order and Page 64 of the Original Application). Also, the averment made by the applicants in the original application that they are entitled to the grant of temporary status under the Casual Labour (Grant of Temporary Status and Regularisation) Scheme contained in DOPT O.M. No. 51016/2/90-Estt.(C) dated 10.09.1993 has not been disputed by the respondents.

6. That with regard to the contention raised by the respondents in Paragraph 2(c) of the written statement, under reply, your deponent denies the same and further states that the contention of the respondent authorities that the applicants should have waited for the outcome of the Writ Petition (c) No. 858/2006 preferred by the respondents before the Hon'ble High Court of Delhi assailing the order dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB is totally misplaced and misconstrued as the Hon'ble High Court of Delhi in its order dated 15.05.08 held:

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"It is made clear that though the proceedings for contempt against the petitioners have been stayed that would not imply that the benefits of the impugned order judgment are not to be made available to the petitioners as granted by the CAT as a consequence of



respondents being governed by O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993 granting temporary status to the petitioners. Needful be done within two months from today."

(Page 78 of the Original Application)

A bare perusal of the aforesaid order dated 15.05.08 amply makes it clear that the Hon'ble High Court did not stay the impugned judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB instead a positive direction was issued by the Hon'ble High Court of Delhi to the effect that the benefits of the impugned judgement are to be made available to the petitioners as granted by the Hon'ble Central Administrative Tribunal and the same be done within two months from 15.05.08 i.e. 15.07.08. However, the Hon'ble High Court of Delhi was pleased to stay the contempt proceedings initiated against the respondents by the Principal Bench of the Hon'ble Central Administrative Tribunal arising out of non-compliance of the order dated 11.05.05 passed in TA No.50/99/PB.

7. That with regard to the contention raised by the respondents in Paragraph 2(d) of the written statement, under reply, your deponent begs to offer no comment as the same is irrelevant for deciding the issues raised in the instant original application. In the said W.P. (c) No. 3/1993 filed before the Hon'ble High Court of Delhi and subsequently dismissed vide order dated 14.11.1995 the issue pertained to regularisation while in the instant original application pertains to grant of temporary status.

8. That with regard to the contention raised by the respondents in Paragraph 2(e) of the written statement, under reply, your deponent denies the same and reiterates and reaffirms the statements made in paragraph 5 and 6 of this rejoinder and further states they are entitled to the grant of temporary status in terms of the DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993 and that aforesaid OM dated 10.09.1993 is applicable to the respondent authorities. Further, with regard to the contention raised by the respondents in Paragraph 2(e) (i), (ii), (iii), (iv) and (v) of the written statement, under reply, you deponent states that they are totally false, baseless and misleading. The

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contentions as raised in Paragraph 2 (e) (i), (ii) and (iii) that the OM dated 10.09.1993 is not applicable to the respondent authorities, the employees of the National Institute of Malaria Research under the Indian Council of Medical Research are not central government employees/ civil servants and the Hon'ble Central Administrative Tribunal exercises no jurisdiction to entertain the instant original application, respectively, is totally false, incorrect and misleading in as much as the National Institute of Malaria Research under the Indian Council of Medical Research is an instrumentality of the Central Government and the Central Government Rules, Schemes and Policy decisions in the matter of conditions of service are applicable to the employees of the National Institute of Malaria Research and as such the OM dated 10.09.1993 is applicable to the respondent authorities. Thus, the Casual Labour (Grant of Temporary Status and Regularisation) Scheme contained in DOPT O.M. No. 51016/2/90-Estt.(C) dated 10.09.1993 is applicable to the respondent authorities as its employees are admittedly central government employees and as such the respondent authority is to be construed as a part of "central government". As regards the contention raised in Paragraph 2 (e) (iv) your deponent begs to offer no comments. As regards the contention raised in Paragraph 2 (e) (v) that the applicants are not entitled to regularization in terms of the order dated 14.11.1995 (Supra) your deponent reiterates and reaffirms the statements made in Paragraph 7 of this rejoinder.

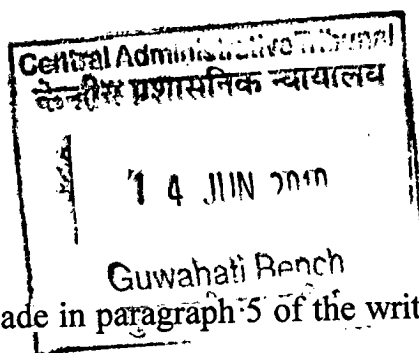
9. That with regard to statement made in paragraph 3 of the written statement, under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraph 1 of the Original Application and further states that they are entitled to the grant of temporary status in terms of the DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993 and that aforesaid OM dated 10.09.1993 is applicable to the respondent authorities in view of the judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB.

10. That with regard to statement made in paragraph 4 of the written statement, under reply, your deponent reiterates and reaffirms the statement made in Paragraph 2 of the Original Application.

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11. That with regard to statement made in paragraph 5 of the written statement under reply, your deponent denies the same and further reiterates and reaffirms the statement made in Paragraph 3 of the Original Application.

12. That with regard to statement made in paragraph 6 of the written statement under reply, your deponent reiterates and reaffirms the statement made in Paragraphs 4.1, 4.2 and 4.3 of the Original Application.

13. That with regard to statement made in paragraph 7 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 4.4 of the Original Application.

14. That with regard to statement made in paragraph 8 of the written statement under reply, your deponent reiterates and reaffirms the statement made in Paragraphs 4.5, 4.6 and 4.7 of the Original Application.

15. That with regard to statement made in paragraph 9 of the written statement under reply, your deponent denied the same and states that inadvertently the applicants misconstrued the orders of the Hon'ble High Court of Delhi and the Hon'ble Supreme Court of India and tenders an unconditional apology, at the very first opportunity, available in this regard. Further, the allegation as regards an attempt to mislead this Hon'ble Tribunal is totally baseless and is denied.

16. That your deponent states that the correct factual position, in this regard, is that the respondent authorities assailing the order dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB preferred Writ Petition (c) No. 858/2006 before the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi vide issue of order dated 15.05.08 refused to stay the operation of the impugned judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB instead a positive direction was issued by the Hon'ble Court to the effect that the benefits of the impugned judgement are to be made available to the petitioners as granted by the Hon'ble Central Administrative Tribunal and the same be done within two months from

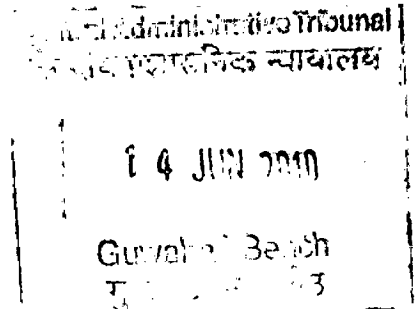
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15.05.08 i.e. within 15.07.08. However, the Hon'ble High Court of Delhi was pleased to stay the contempt proceedings initiated against the respondents by the Principal Bench of the Hon'ble Central Administrative Tribunal arising out of non-compliance of the order dated 11.05.05 passed in TA No.50/99/PB.

17. Your deponent further states that thereafter the respondent authorities approached the Hon'ble Supreme Court of India by way of filing SLP No. 21568, which was dismissed vide order dated 29.09.2008. In the aforesaid order dated 29.09.2008 the Hon'ble Supreme Court of India dismissed the SLP finding no ground to interfere with the impugned order. Thus, the operation of the impugned judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB was not stayed. However, the time granted for compliance by the Hon'ble High Court of Delhi was extended the Hon'ble Supreme Court of India by six months from 29.09.2008 i.e. upto 29.03.2009. Thus, in any case the respondent authorities were under an obligation to confer temporary status to all its casual employees on or before 29.03.2009 and the same have not been discharged till date. Further, in the aforesaid order dated 29.09.2008, the Hon'ble Supreme Court of India positively directed the Hon'ble High Court of Delhi to dispose of the Writ Petition (c) No.858/2006 within four months i.e. within 29.01.2009. The deponent states that they have no further information relating to the subsequent developments in the matter. However, the same is within the knowledge of the respondent authorities and they have stated on oath, without bringing on record any material, that the matter is still pending disposal before the Hon'ble High Court of Delhi, which is highly unlikely in terms of the order dated 29.09.2008 passed by the Hon'ble Supreme Court of India.

18. That with regard to statement made in paragraph 10 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 4.9 of the Original Application and further states that the action on the part of the respondent authorities in granting Temporary Status only to the applicants in the TA No.50/99/PB preferred before the Principal Bench of the Hon'ble Central Administrative Tribunal is bad in law as well as facts, in as much as other similarly situated

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incumbents are also entitled to avail the benefits flowing out of the judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB as the same is a Judgement in Rem and not Judgement in Personam. Thus, the respondent authorities have erred while passing Office Order no. Admin. /Temp. Staus/NIMR/507/09/472 dated 22.06.2009 to the extent of granting the Temporary Status only to the applicants in the TA No.50/99/PB and is bad in law as well as facts in as much as an Office Order cannot curtail the benefits flowing out a judgement passed by the Hon'ble Central Administrative Tribunal. Also, the judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB is the law holding the field in the nature of a precedent and squarely covers the case of the petitioner.

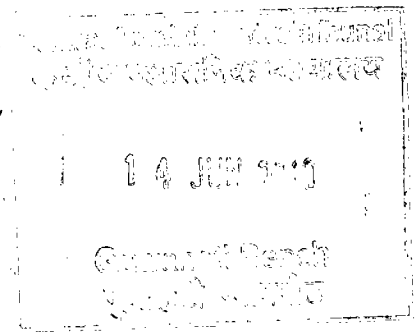
19. That with regard to statement made in paragraph 11 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 16 and 17 of this rejoinder. Further, your deponent submits that they are entitled to the grant of temporary status in terms of the DOPT O.M. No. 51016/2/90-Estt. (C) dated 10.09.1993 and that the aforesaid OM dated 10.09.1993 is applicable to the respondent authorities in view of the judgement dated 11.05.05 passed by the Principal Bench of the Hon'ble Central Administrative Tribunal in TA No.50/99/PB.

20. That with regard to statement made in paragraph 12 of the written statement under reply, your deponent reiterates and reaffirms the statement made in Paragraphs 4.11 of the Original Application.

21. That with regard to statement made in paragraph 13 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 4.12 of the Original Application.

22. That with regard to statement made in paragraph 14 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 4.13 of the Original Application.

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23. That with regard to statement made in paragraph 15 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 4.14 and 4.15 of the Original Application.

24. That with regard to statement made in paragraph 16 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 4.16 of the Original Application. Further, your deponent submits that in the event, W.P. (C) No. 858/2006 before the Hon'ble High Court of Delhi is still pending, the pendency of the same does not bar the proceedings of the instant original application before the Hon'ble Tribunal.

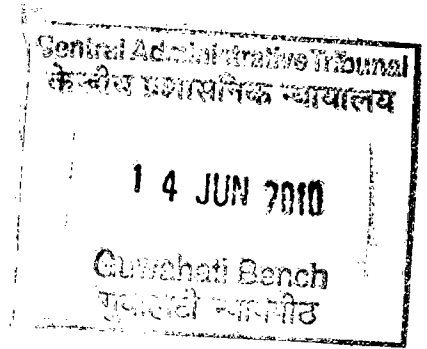
25. That with regard to statement made in paragraph 17 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 5.1 to 5.8 of the Original Application. Further, your deponent states that the instant Original Application is based on substantive and material grounds and as such your deponent is entitled to the reliefs prayed for in the Original Application.

26. That with regard to statement made in paragraph 18 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 6 and 7 of the Original Application.

27. That with regard to statement made in paragraph 19 of the written statement under reply, your deponent denies the same and reiterates and reaffirms the statement made in Paragraphs 8.1 to 8.4 of the Original Application and further states that the applicants are entitled to the reliefs prayed for in the Original Application the same being based on substantive and material grounds and preferred bonafide for securing the ends of justice.

.....Verification/-

dyotindra Ran Das.



VERIFICATION

I, Smti. Jyotshna Rani Das, aged about 44 years, wife of Mr. Paban Kumar Das, resident of Village Kamarkuchi, P.O. Tepesia, in the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the applicant no. 1 in this instant application, conversant with the facts and circumstances of the case and I have been duly authorised by the other applicants to swear this verification on their behalf, the statements made in paragraph 3 to 5,
7 to 15 & 18 to 27 are true to my knowledge; those made in paragraphs 6, 16 & 17
_____ are true to my information derived from the records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 14th day of June 2010.

Jyotshna Rani Das.

DEPONENT