INDIAN COUNCIL OF AGRICULTURAL RESEARCH KRISHI BHAWAN:

NEW DELHI

F. No. 27-8/2014-LAW Dated 09/9/2020

Sub: Uploading of Gauhati High Court Judgment dated 26.06.2020 in WP(C) No. 8184/2017 titled Sh Ananta Das &Ors Vs. UoI & Ors on ICAR website

The Gauhati High Court has passed a judgement dated 26-6-2020 in WP(C) No. 8184/2017 titled Sh Ananta Das &Ors Vs. UoI&Ors. The judgment has dealt with the issues pertaining to regularisation / pensionary benefits to CLTS and their legal heirs claiming regularisation/pensionary benefits.

The above mentioned judgement dated 26-6-2020 may be uploaded on the **ICAR website www.icar.org.in** for information of all concerned.

Sd/-
(Jitender Khanna)
Law Officer

To

Media Unit for placing on the ICAR website.

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 8184/2017

1. **Sri Ananta Das,**
Son of Late Baliram Das,
Resident of Vill- Shukhanjani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

2. **Sri Amulya Das,**
Son of Late Dharmeswar Das,
Resident of Vill- Shukhanjani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

3. **Sri Dinoram Das @ Dino Das,**
Son of Late Dharani Chandra Das,
Resident of Vill- Shukhanjani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

4. **Sri Chandra Kanta Das,**
Son of Late Adit Das,
Resident of Vill- Shukhanjani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

5. **Sri Niranjan Das,**
Son of Late Adit Das,
Resident of Vill- Shukhanjani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

6. **Sri Khagen Das,**
Son of Late Meghnath Das,
Resident of Vill- Kamargaon,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

7. **Sri Kameswar Boro,**
Resident of Vill- Kamargaon,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

8. **Sri Deben Das (1),**
Son of Late Baliram Das,
Resident of Vill- Duramari,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

9. **Sri Lakshmi Kanta Das (1),**
Son of Late Sarbeswar Das,
Resident of Vill- Kamargaon,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

10. **Sri Pabitra Das (1),**
Son of Late Lalit Ch. Das,
Resident of Vill- Puthimari,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

11. **Smt. Kusum Das,**
Wife of Late Dhaneswar Das,
Resident of Vill- Duramari,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

12. **Smt. Afirun Nesa,**
Wife of Late Abdul Jalil,
Resident of Vill- Meda,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

13. **Smt. Sarojoni Das,**
Wife of Late Deben Das,
Resident of Vill- Kamargaon,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

14. **Smt. Rajobala Das,**
Wife of Late Boloram Das,
Resident of Vill- Sukhan Jani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

15. **Smt. Sahema Begum,**
Wife of Late Ashrof Ali,

Resident of Vill- Tengagaon (Dehan Guri),
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

16. **Smt. Hasina Khatoon,**
Wife of Late Shahed Ali,
Resident of Vill- Dekaguri,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

17. **Smt. Padumi Nath,**
Wife of Late Rakhal Nath,
Resident of Vill- Sukhan Jani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

18. **Smt. Renuka Das,**
Wife of Late Daleswar Singh,
Resident of Vill- Sukhan Jani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

19. **Smt. Fantap Boro,**
Wife of Late Teliram Boro,
Resident of Vill- Kamargaon,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

20. **Smt. Amita Nath,**
Wife of Late Durna Nath,
Resident of Vill- Kamargaon,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

21. **Smti Puni Das,**
Wife of Late Hari Das,
Resident of Vill- Sukhan Jani,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

----- **Petitioners**

– ***VERSUS*** –

1. **Union of India,**
Represented by the Secretary to
the Government of India,
Ministry of Agriculture, New Delhi.

2. **Indian Council of Agriculture Research**
Through its Director General,

Krishi Bhawan, New Delhi-110001

3. **Central Research Institute of**
Jute and Allied Fibers
P.O.-Barrackpore, Pin- 700120
District- 24 Paraganah (North),
West Bengal.

4. **The Director,**
Central Research Institute of Jute and Allied Fibres,
P.O.- Barrackpore,
Pin-700120, District- 24 Paraganah (North),
West Bengal.

5. **Scientist In-Charge,**
Ramie Research Station,
Central Research Institute of Jute and
Allied Fibres (Indian Council of Agricultural
Research), Vill- Kamargaon,
P.O.- Sorbhog, District- Barpeta, Assam,
Pin- 781317.

---- **Respondents**

BEFORE

HON'BLE THE CHIEF JUSTICE MR. AJAI LAMBA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioners : Mr. S Das, Advocate,
: Mr. N Baruah, Advocate.

For the Respondent Nos. 3 to 5 : Mr. D Mazumder, Senior Govt. Advocate
Mr. P Borah, Advocate.

Date of hearing : 02.06.2020.

Date of Judgment : 26.06.2020

JUDGMENT & ORDER (CAV)

(S. Saikia, J)

Heard Mr. S Das, learned counsel for the petitioner as well as Mr. D Mazumder, learned Senior Advocate assisted by Mr. P Borah, learned counsel appearing for respondents No: 3, 4 & 5.

2. This writ petition has been filed by the petitioners, 21 in number challenging the order dated 03.11.2015 in Original Application No. 040/00308 of 2014 passed by the Central Administrative Tribunal (CAT), Guwahati.

3. The case projected by the petitioners before the CAT is that the petitioners No: 1 to 10 are retired workers and petitioners No: 11 to 21 are the wives of retired workers. The petitioners No: 1 to 10 and the husbands of the petitioners No: 11 to 21 were appointed as Casual Workers under the respondent No. 5, namely, Ramie Research Station, Sorbhog, which is under the jurisdiction and control of Indian Council of Agriculture (ICAR) and Central Research Institute of Jute and Allied Fibers (CRIJAF) respondents namely No: 2 and 3 herein. The petitioners claim to be regularised and given the status of "temporary status-casual labourer". It is stated that they were paid Grade-IV scale of wages as paid to other regular Grade-IV workers. The petitioners also state that all benefits of Grade-IV employees have been given to them. However, after retirement although they were offered retiral benefits/legal dues, but they were not provided with the benefit of pension.

4. The grievances of the petitioners are that the respondent authorities have denied the grant of pension to the petitioners on the ground that they belonged to the category of

"temporary status-casual labourer" and as such, they are not considered entitled for grant of pension like other regular Grade-IV employees.

5. The petitioners approached the respondents/higher authorities to consider their prayer for payment of pension, however same was rejected. It is the further case of the petitioners that groups of workers who were similarly situated and who were engaged at Barrackpore, West Bengal by the same authorities/management, had approached the Calcutta Bench of CAT with a prayer for direction to provide them benefits of pension and other retiral dues. The CAT, Calcutta Bench allowed the prayer of the petitioners therein and directed the respondents to provide pension and other retiral benefits at par with the regular Grade-IV employees. The Tribunal also directed the respondents to create appropriate number of posts for regularisation of the eligible applicants and/or their deceased predecessors-in-interest which would be co-terminus to the service and also to provide for all benefits to the eligible applicants.

6. The applicants being similarly situated approached the CAT, Guwahati Bench and sought for similar reliefs as granted by the Calcutta Bench of CAT. The CAT, Guwahati Bench by order dated 21.12.2012 disposed of the Original Applications filed by the petitioners directing the petitioners to submit one comprehensive representation before the respondent authorities within 3 (three) weeks from the date of the receipt of the order.

7. In terms of the order passed by CAT, Guwahati Bench, the petitioners preferred a comprehensive representation before the respondent authorities by communication dated 04.04.2013. The respondent authority refused to consider the prayers of the petitioners towards grant of pensionary benefits. Being aggrieved, the petitioners challenged the inaction

of the respondent authorities by approaching the CAT, Guwahati Bench for a second time by filing Original Application No. 040/00308 of 2014. The CAT, Guwahati by order dated 03.11.2015 dismissed the said Original Application refusing to accede to the prayers made by the petitioners in view of the law laid down by the Supreme Court in ***Secretary, State of Karnataka & Ors.*** –vs- ***Uma Devi & Ors.***, reported in ***(2006) 4 SCC 1***. Being aggrieved, the present writ petition has been filed.

8. The petitioners have assailed the order of the CAT, Guwahati contending that the order of the CAT did not consider the aspect of the petitioners being conferred the status of casual labourers and that reliefs have been granted by CAT Bench of other regions of the country to other similarly situated persons employed under the same respondents. The learned counsel for the petitioners have also pressed into service judgment of the Apex Court in the case of ***Habib Khan*** –vs- ***State of Uttarakhan & Ors.***, reported in ***(2019) 10 SCC 542*** to buttress his contention that period of service rendered as work-charged employee should be counted towards grant of pensionary benefit. The contention of the petitioners is that the Apex Court in this judgment has held that period of service rendered on work-charged basis should be counted for the purpose, of computation of qualifying service for grant of pension. The petitioners have also relied upon the judgment of the Apex Court in the case of ***Prem Singh*** vs. ***State of Uttar Pradesh***, reported in ***(2019) 10 SCC 516*** in support of their contentions.

9. Per contra, Mr. Mazumder, learned Senior Advocate appearing for the respondents No: 3 to 5 stoutly contends that the proposition put forth by the petitioners is not the correct proposition of law, inasmuch as, there are certain factual aspects which have not been highlighted by the petitioners. He further submits that the interpretation of the said judgment

sought to be projected by the petitioners in respect of ***Habib Khan (supra)*** is incorrect. Mr. Mazumder, refers to the objections filed by respondents No: 2 and 3 before the CAT and pointed out that by Office Memorandum dated 10.09.1993, a scheme was brought in by the Department of Personnel, F.O. & Pensions, Government of India. The senior counsel submits that the said scheme is known as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India" (herein after referred to as the "Scheme of 1993"). The scheme came into force w.e.f. 01.09.1993. The scheme is applicable to casual labourers in employment of Ministries/Departments, the Government of India and their attached and subordinate offices, on the date of issue of the orders. But, it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts, who already have their own Schemes.

10. Mr. Mazumder, learned Senior Advocate draws the attention of the court to Clause-4 of the Scheme of 1993 which defines temporary status. Clause 4 (iv) of the Scheme of 1993 categorically provides that "*such casual labourers who acquired temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Grade-D posts*". He submits that in view of this Clause-4 (iv) of the Scheme of 1993, no casual labourers who acquire temporary status can be brought into the permanent establishment except by way of regular selection process. Mr. Mazumder submits that it is not disputed that the petitioners have retired in their capacity as casual labourers. They were never brought to the regular establishment by way of proper selection and consequently they were never regularised. As the petitioners claim the benefits under the Scheme of 1993, they have accepted the nature of their employment as casual labourers with temporary status. Similarly Clause 5 of the Scheme of 1993 provides that the benefits would

be available to the casual labourers. Mr. Mazumder, learned counsel also submits that in terms of Clauses 5 (v) and 5 (vii) of the Scheme of 1993, 50% of the service rendered under Temporary Status would be counted for the purposes of retirement benefits after regularisation. And until they are regularised they will be entitled to Adhoc bonus rates applicable to casual labourers. Mr. Mazumdar strenuously submits that since at no point in time have the petitioners put to challenge the provisions of the Scheme of 1993, rather they have continuously accepted their employment status as per the Scheme of 1993, the benefits prayed for are specifically barred under the Scheme of 1993.

11. In view of the said particular Scheme of 1993, Mr. Mazumder, learned Senior counsel appearing for the respondents No: 3 to 5 submits that the mandate of the scheme requires temporary status casual labourers to undergo a process of regular selection for being regularly employed in the establishment. The petitioners or their relatives have not undergone any regular selection and the same is not disputed by the petitioners. Consequently, in view of the law laid down by the Apex Court in ***Uma Devi (supra)*** there is no scope for recruitment in public employment without there being a regular process of selection as laid down by the Service Rules. In that view of the matter, the judgment sought to be pressed by the petitioners being ***Habib Khan (supra)*** and ***Prem Singh (supra)*** are not applicable to the facts and circumstances of this case and therefore, the present application is devoid of merit and should be accordingly dismissed.

12. Having heard the learned counsel for the parties, we proceed to deal with the issues raised in the present proceeding. A perusal of the Scheme of 1993 reveals that temporary status has been defined in the Scheme of 1993 as under:-

"Temporary Status

(i) ***Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).***

(ii) ***Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.***

(iii) ***Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.***

(iv) ***Such casual labourers who acquired temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts."***

13. Clause 4 (iv) of the Scheme of 1993 provides that casual labourers for being brought on to the permanent establishment must be selected through regular selection process. Clause 5 of the scheme provides for the benefits entitled to the casual labourers. Clause 8 of the Scheme of 1993 provides the procedure for filling up of Grade-'D' post.

Relevant portions of Clauses 4(iv), 5(v), 5(vii) and 8 of the Scheme are extracted below:-

"***4. Temporary Status***

(i) .....

(ii) .....

(iii) .....

(iv) ***Such casual labourers who acquired temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.***

5. Temporary status would entitle the casual labourers to the following benefits:-

(i) .....

(ii) .....

(iii) .....

(iv) .....

(v) ***50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularisation.***

(vi) .....

(vii) ***Until they are regularised, they would be entitled to Ad-hoc bonus only at the rates as applicable to casual labourers.***

8. Procedure for filling up of Group "D" posts:-

(i) ***Two out of every three vacancies in Group "D" cadres in respective offices where the casual labourers have been working would be filled up as per extent recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfil the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer."***

14. From a perusal of the provisions of the scheme, it is clear that any casual labourer to be brought into the permanent establishment must be through the process of regular selection for Group 'D' posts. And it is only upon regularisation of the services in terms of the Scheme of 1993 that 50% of the services rendered under temporary status can be counted for the purpose of retirement benefits after their regularization. It is not disputed that the petitioners were never brought in as regular employees through a process of proper selection as provided under the Scheme of 1993.

15. Access to public employment for the citizens of the Country is one of the rights guaranteed to the citizens under the Constitution of India. All citizens have a fundamental right to apply for and be considered for engagement through public employment. The law regarding the parameters for employment has been clearly laid down by the Apex Court in the case of ***Uma Devi (supra)***. In the said case, the Apex Court has held in paras 4, 12, 13, 43, 45 and 49 as under:-

> "*4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the*

very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

13. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us

while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964 (4) SCR 964). It was held therein:

"In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation oI Article 14 or in ordering the overlooking of the need to comply with the requirements oI Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as

'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The

claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

(Emphasis by us)

16. The judgment of ***Habib Khan (supra)*** pressed by the petitioners refers to another judgment rendered by the Apex Court in the case of ***Punjab State Electricity Board & Anr.*** *–vs-* ***Narata Singh & Anr., reported in (2010) 4 SCC 317.*** In the case of ***Narata Singh (supra)***, the facts narrated reveal that the respondents therein claimed the benefit of his service rendered under the State Government for counting towards the qualifying services

for pensionary benefits pursuant to his retirement under the Punjab State Electricity Board. The Board by a particular instruction had on its own free volition adopted the policy of the State Government entitling the respondent No. 1 to count the period of duty performed by them as work-charge employee under the State Government for the purpose of pension. As such the facts of ***Narata Singh (supra)*** are entirely different from the facts of the present proceedings. In the present proceedings, the writ petitioners do not dispute the mandate of the Scheme of 1993. They have availed of all the benefits available to them under the Scheme. Their grievance is the denial of grant of pensionary benefits as had been granted to other similarly situated employees by the respondent authorities in the State of West Bengal albeit on the orders passed by CAT Kolkata Bench.

17. The ratio laid down in the case of ***Narata Singh (supra)*** was relied on by the Apex Court while rendering judgment in ***Habib Khan (supra)***. A perusal of the judgment reveals that in the case of ***Habib Khan (supra)***, the issues that were raised pertain to the Civil Service Regulation in the State of Uttarakhand, more particularly Regulation 370. Regulation 370 of the Uttarakhand Civil Services is extracted below:-

> ***"The aforesaid question is no longer res integra in view of the facts enumerated herein after. The relevant provisions under which the period of work-charged service is not to be counted for computation of 'qualifying service' in the State of Uttarakhand is Rule 370 of the Civil Service Regulations which is extracted below:***
>
> ***"370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post shall qualify except-***
>
> ***(i) periods of temporary or officiating service in a non-pensionable establishment,***
>
> ***(ii) periods of service in a work-charged establishment, and***
>
> ***(iii) periods of service in a post paid from contingencies."***

The said Regulation 370 mentions continuous temporary or officiating service followed without interpretation by confirmation in the same or any other post.

(emphasis by us)

18. From a perusal of the judgment it is seen that the issue raised in ***Habib Khan (supra)*** pertains to counting of temporary or officiating services in a work-charged establishment in respect of a person who does not fulfill the qualifying services for grant of pension, but who are subsequently confirmed in the said post.

19. In so far as the judgment of "Prem Singh" is concerned, the issue therein is the counting of services rendered as work-charged Employee under Regulation 370 of the Civil Service Regulations of Uttarakhand. The note to Rule 3(8) of the Uttar Pradesh Retirement Benefit Rules, 1961, did not permit counting of services rendered as work-charged employee. The Apex Court found the classification impermissible, particularly when such services can be counted between two temporary or in between temporary and permanent services. The Apex Court held that service in work-charged period remains same for all employees and if it is counted for one class, it must be counted for all to prevent discrimination. Consequently Rule 3(8) was read down and Regulation 370 and para 669 was struck down. However, it is to be noted that on facts, the appellant therein was regularised on 13.03.2002 and he superannuated on 31.01.2007. As such on facts, the judgment relied upon by the petitioners does not come to their aid, as the petitioners herein were admittedly never regularised and brought into the permanent establishment through regular selection as in terms of Clause 4(iv) of the Scheme of 1993.

20. The facts in the present case revolve around the rights of the petitioners which they

accrue under the Scheme of 1993, and this Scheme categorically provides that it will not confer regular employment status to the petitioners. If the petitioners are to be brought in the regular employment, then it must be by way of regular selection process as provided under the Scheme of 1993. In view of the provisions of Scheme of 1993 read with the law laid down by the Apex Court in the case of ***Uma Devi (supra)***, the ratio in the case of ***Habib Khan (supra)*** and ***Prem Singh (supra)*** are not applicable to the facts of this case and therefore, does not come to the aid of the petitioners.

21. The powers of Article 226 are wide enough to reach out to the injustice wherever it may originate. However, the wide powers available under Article 226 of the High Court are to be used to ensure that the citizens are guaranteed the constitutional rights available to them under the Constitution of India. The powers cannot be used to seek undue benefits which may have been wrongly conferred on others. The law laid down in the case of ***Uma Devi (supra)*** still holds the field and negates the concept of entry into public employment otherwise than by way of regular selection as mandated by the Service Rules. The petitioners having been employed under the Scheme of 1993, they are entitled to the benefits that accrue to them under the 1993 Scheme. The benefits available to the petitioners under the Scheme are provided under clause 5 of the Scheme. As discussed above, notwithstanding the grant of the benefits provided under the scheme, the scheme categorically provides that the casual labourers like the petitioners who acquire temporary status will not be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts. Consequently, the petitioners cannot claim that pensionary benefits should be granted to them by the respondent authorities on the basis of the services rendered by them as temporary status casual labourers without being brought into regular establishment

by way of regular selection. In this context, the well settled principles relating to regularisation and parity in pay which have been reiterated time and again by the Apex Court, as has been done in case of ***State of Rajasthan & Ors.*** *-vs-* ***Daya Lal & Ors.***, reported in ***(2011) 2 SCC 429***, will be apposite in the context of the present proceedings. The relevant paragraphs of the judgment are extracted herein below:-

> ***"(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.***
>
> ***(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be `litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.***
>
> ***(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.***
>
> ***(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.***

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

The CAT, Guwahati Bench having duly considered the law laid down by the Apex Court rejected the Original Application filed by the petitioners. We find no infirmity in the impugned order dated 03.11.2015 passed by CAT, Guwahati Bench to warrant any interference.

22. Considering the above, we are not persuaded to interfere with the orders passed by the CAT, Guwahati and consequently there is no merit in the writ petition and the same is therefore dismissed.

23. No order as to cost.

Sd/-Saumitra Saikia

JUDGE

Sd/- Ajai Lamba

CHIEF JUSTICE

18.08.2020

Comparing Assistant

CERTIFIED TO BE TRUE COPY
Phanindra Dev Goswami
Date 18-08-2020
Administrative Officer (Judicial)
Copying Section
Gauhati High Court
Authorised U/S 76, Act 1, 1872