

THE HIGH COURT OF MEGHALAYA

WP(C). No. 265 of 2013

1. Ms. Fiasta T. Deingdoh,
D/o Late Lt. Col B. Lyngdoh,
Resident of Meshan Nongkhyriem,
Nongthymmai,
Shillong, East Khasi Hills,
Dist- Meghalaya.

... **Petitioner**

-Versus-

1. The Union of India,
Represented by the Secretary
To the Government of India,
Ministry of Human Resource Development,
New Delhi – 110001.
2. The Member Secretary,
ICSSR,
Aruna Asaf Ali Marg,
New Delhi – 110067.
3. Director,
ICSSR,
Aruna Asaf Ali Marg,
New Delhi – 110067.
4. Honorary Director,
Indian Council of Social Science Research,
North Eastern Regional Centre,
NEHU Campus, Shillong – 793022.
5. Acting Director,
Indian Council of Social Science Research,
North Eastern Regional Centre,
NEHU Campus, Shillong – 793022.
6. Chairman,
Indian Council of Social Science Research,
North Eastern Regional Centre,
NEHU Campus, Shillong – 793022.

.....**Respondents**

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

For the petitioner : Mr. M.Chanda, Adv.
Mr. S.Choudhury, Adv.
Mr. P.Nongbri, Adv.

For the respondents : Mr. P.K.Tewari, Sr. Adv.
Mr. R.Deb Nath, CGC.

Date of hearing : 13-08-2015

Date of Judgment : 25-08-2015

JUDGMENT AND ORDER

In this writ petition, the petitioner is praying for quashing the impugned letter bearing (i) F.No.3.30/2012/RIC, dated 18-06-2013, which read as follows:

“INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH
(Ministry of Human Resource Development)
Post Box No. 10528, Aruna Asaf Ali Marg,
New Delhi – 110 067.

F.No. 3.30/2012/RIC

Dated: 18.6.2013

Dear Dr. Thomas,

This is in response to your letter No. F.2.1/NERCHQ-GC/2013-183 dated May 17, 2013 regarding the case of Ms. Fiasta Diengdoh who was working as a Programme Officer under North-East New Initiative Programme.

It may please be noted that North-East New Initiative Programme has been discontinued by the ICSSR and it has not been renewed beyond 31st of March 2013. Ms. Fiasta Diengdoh's appointment was made to look after the 'New Initiative Programme' on yearly basis till the North East Programme continued.

Now, that the NER programme stands discontinued, her appointment cannot be renewed beyond 31st March 2013 on her present position, as her appointment letter clearly states. In case NERC feels that they need her services in her earlier

position, which she was holding before joining the New Initiative Programme, she may be engaged in that position as per the terms and conditions stipulated by the Centre earlier.

With warm regards,

Yours sincerely,

Sd/

(G.S.Saun)

Dr. C.J.Thomas,
Deputy Director
ICSSR North-Eastern Regional Centre (NERC)
NEHU Campus
Umshing
Shillong-793022
Meghalaya.”

(ii) letter bearing F.No.11/NERC/GAM/2013-268, dated 19-06-2013 and (iii) letter bearing F.No.11/NERC/GAM/2013-315, dated 01-07-2013 and also for writ of mandamus directing the respondents to allow the petitioner to continue in the sanctioned post of Programme Officer in regular scale of pay plus allowances due and admissible in the grade pay of ` 5400/- pursuant to the decision of the Council communicated through ICSSR, Ministry of HRD, New Delhi by letter bearing F.No. 9-1/NER/2010/ICSSR dated 10-08-2011.

2. The concise fact of the case leading to the filing of the present writ petition is recapitulated. The petitioner is a member of the Scheduled Tribe community and a permanent resident of the State of Meghalaya. Petitioner had acquired Master Degree in Sociology from North Eastern Hill University (for short NEHU), Shillong and also did her M.Phil in Sociology from NEHU. North Eastern Regional Centre (for short NERC) was set up in the NEHU, Campus, Shillong under the Indian

Council of Social Science Research (for short ICSSR) which is an organization under the Government of India, Ministry of Human Resource, New Delhi, in order to raise the quality of doctoral research work in various discipline of Social Sciences in North East India to organize training cum research methodology courses in the Region with ICSSR to give basic training on facts and skills required for Social Science Research individual.

3. As the petitioner was found suitable having all the educational qualifications, she was appointed as Programme Officer in the ICSSR, NERC, Shillong vide appointment order bearing F. No. 166/NERC/GAM/2004-834, dated 11-10-2004 on purely temporary and contractual basis for one year on a consolidated remuneration of ` 9000/- (Rupees nine thousand) per month w.e.f. 11-10-2004. The terms and conditions of the contract appointment of the petitioner as Programme Officer on consolidated remuneration had been extended from time to time vide office order dated 04-10-2005 and 10-10-2006 and had continued to serve thereafter without any break. However, by office order bearing F.No.11/NERC/GAM/2008-647, dated 12-11-2008, a consolidated remuneration was fixed to ` 10,000/- (Rupees ten thousand) only per month w.e.f. 12-10-2008 and the said appointment was further extended by office order dated 12-10-2009 but later on by office order dated 13-10-2010, the consolidated remuneration had been enhanced to ` 17,400/- (Rupees seventeen thousand, four hundred) only w.e.f. 16-10-2010. For easy reference, the initial appointment

of the petitioner on contractual basis on a consolidated pay dated 11-10-2004 (Annexure – 2 to the writ petition) read as follows:

**“INDIAN COUNCIL OF SOCIAL SCIENCE
RESEARCH
NORTH EASTERN REGIONAL CENTRE
UPPER NONGTHYMMAI, SHILLONG 793014,
MEGHALAYA**

CJ Thomas

Acting Director

No.F.166/NERC/GAM/2004-834 October 11, 2004

APPOINTMENT ORDER

The undersigned is please to appoint Ms Fiasta T. Diengdoh as a Programme Officer in the ICSSR North Eastern Regional Centre (ICSSR-NERC) on purely temporary contractual basis for one year on a consolidated remuneration of Rs. 9,000/- per month with effect from 11th October 2004.

*Sd/-
CJ Thomas
Acting Director
ICSSRNERC,
Shillong”*

and also the order dated 04-10-2005 read as follows:

**“INDIAN COUNCIL OF SOCIAL SCIENCE
RESEARCH
NORTH EASTERN REGIONAL CENTRE
UPPER NONGTHYMMAI, SHILLONG 793014,
MEGHALAYA**

CJ Thomas

Acting Director

F.No.11/NERC/GAM/2005-663 October 4, 2005

OFFICE ORDER

The undersigned is pleased to extend the term of appointment of Ms Fiasta T Diengdoh as a Programme Officer in the ICSSR North Eastern

Regional Centre (ICSSR-NERC) on purely temporary contractual basis on a consolidated remuneration of Rs. 9000/- per month for one year on expiry of her term on 10th October 2005.

Sd/-
CJ Thomas”

4. The Acting Director of the ICSSR, NERC, NEHU Campus, Shillong under his letter No.F.2.1/NER/HQ-GC/2009-270, dated 22-06-2009 requested the Member Secretary, ICSSR-NERC, seeking necessary permission to fill up the sanctioned vacant posts in the Centre on purely temporary and contractual basis. The said letter dated 22-06-2009 (Annexure-4 to the writ petition) read as follows:

**“INDIAN COUNCIL OF SOCIAL SCIENCE
RESEARCH
NORTH EASTERN REGIONAL CENTRE
NEHU Campus Shillong -793022
Tel.: 0364-2550428, 2550432, 2550436(O)
2501817 (R)Email: icssr_nerc@hotmail.com
or cjoshuathomas@gmail.com**

C J Thomas
Acting Director

No. F.2.1/NERC/HQ-GC/2009-270 June 22, 2009

Dr. Ranjit Sinha
Member- Secretary
ICSSR-NERC
New Delhi 110067

Dear Sir,

This has a reference to our earlier correspondence in connection with the sanctioned vacant positions in the Centre. The following staffs are working against the sanctioned vacant position in the Centre on purely temporary and contract basis and we will be extremely grateful if you could give the necessary permission to fill up these positions at an early date:

Junior Stenographer

- Ms Christian Blah

<i>Junior Accountant</i>	- <i>Mr Tongboi Baite</i>
<i>Library Attendant</i>	- <i>Mr R M Pasi</i>
<i>Programme Officer</i>	- <i>Ms Fiasta Diengdoh</i>
<i>Office Assistant</i>	- <i>Mr Ban</i>

With thanks and kind regards,

Your Sincerely,
Sd/-
(C J Thomas)

C.C.: Dr S N M Kopparty, Director, ICSSR, New Delhi 110067

5. The Member Secretary, ICSSR, New Delhi under his letter dated 10-08-2011, informed Prof. Subba, Incharge of the programmes at NERC, Shillong that the NERC made the contract/adhoc appointment of a Programme Officer (for short PO) based on the qualification required for such position. The Monitoring Committee recommended and the Council approved that Ms. Fiasta (writ petitioner) should continue to be in the position and get the benefit of a regular employee and the PO will function under the Honorary Director just as all other staffs of NERC does. However, since NERC is a regional office of the ICSSR, New Delhi, the PO will get certain queries and directions from the Coordinator of the North Eastern Regional Programme, ICSSR, New Delhi related to work under the North East "New Initiative Programme." The said letter dated 10-08-2011 read as follows:

**"INDIAN COUNCIL OF SOCIAL SCIENCE
 RESEARCH
 (Ministry of Human Resource Development)
 Post Box No. 10528, Aruna Asaf Ali Marg
 New Delhi – 110067
 EPABX: 26741849-51 Fax : 91-11-26741836
 E-mail : info@icssr.org Website : www.icssr.org**

*Dr. Ranjit Sinha
Member Secretary*

F.No: 9-1/NER/2010/ICSSR

10/8/2011

Dear Prof. Subba,

Thank you for your letter dated 5th August 2011. We are also very happy that you appreciate our support for capacity building and programmes at the NERC, Shillong.

You have sought a few specific clarifications, here are my comments:

1. All appointments at NERC are made by it. However, the NERC is the Regional Office of the ICSSR and all appointments have to be approved by the Council. The Council desires that the Programme Officer's (PO) post be regularized from plan grant as recommended by the Northeast Monitoring Committee. Regularization will enable the PO to get the 6th Pay Commission scale from April 2011 (as per the NERC's own proposal). The permanent staff will get their new pay scales and arrears once the 6th Pay Commission Pay Scales are implemented. The ICSSR has already written to the MHRD for the early implementation of the new scales for the Regional Centres.

2. The NERC made the contract/adhoc appointment of the PO based on the qualifications required for such a position. Clearly it is aware of the minimum qualifications needed (MA in social sciences with high Second Division), and the terms and conditions for all regular positions in the organization. The incumbent was appointed to the post by NERC, we believe, only because she fulfilled the necessary selection criterion. The Monitoring Committee recommended and the Council approved that Ms. Fiasta should continue to be in the position and get the benefits of a regular employee.

3. The PO will function under the Hon. Director just as all other staff at NERC does. However, since NERC is the regional office of the ICSSR, New Delhi, the PO will at times get certain queries and directions from the Coordinator of the NER Programme, ICSSR, New Delhi, related to work under the North-East 'New Initiatives' and other Programmes.

4. The P.O. will continue to work till the North East programme Continues.

5. The NER Programme Coordinator, Dr. Sanchita Dutta, has only conveyed the decisions of the Monitoring Committee and the Council. She has not suggested 6th Pay Commission scales for anyone. The proposal for renewal of the NE programmes and the regularization and pay scales of the PO came from the NERC. The Council has only approved your proposal.

6. ICSSR (RIC) Division has written to NERC regarding the other contractual staff at the NERC, for permanency. The posts have to be first created with proper justification which then would have to be approved of the Council. The Council will take a decision as per the merits of the case.

I am sending this letter by fax and post also.

With best regards,

Sincerely,

*Sd/-
(Dr. Ranjit Sinha)*

*Prof. T. B. Subba
Honorary Director
Indian Council of Social Science Research
North Eastern Regional Centre
NEHU Campus,
Shillong-793022"*

Para Nos. 2, 3 and 4 of the letter dated 10-08-2011 clearly indicated that the NERC made the contract/adhoc appointment of the PO and the Monitoring Committee recommended and the Council approved that the PO should continue to be in the position i.e. the contract/adhoc appointment but get the benefit of regular employee and the PO will function under the Honorary Director just as all the other staffs at NERC does and PO will get directions from the Coordinator of the NER Programme. The PO will continue

to work till the North East Programme continues. This letter itself shows very clearly that the petitioner is working as PO in the project.

6. Subsequent orders of the Honorary Director, ICSSR, NERC dated 11-08-2011 and 12-10-2012 extended the term of appointment of the petitioner as PO subject to approval of the ICSSR, NERC proposal for the post of PO by the ICSSR, New Delhi and that the petitioner's salary will be paid from the plan grant under the ICSSR North East "New Initiative Programme."

One of the order viz., 12-10-2012 is quoted hereunder:

**"INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH
NORTH EASTERN REGIONAL CENTRE
NEHU Campus, Shillong-793022**

Phone : 0364-2550436 (O)2501817 (R)

Fax : 0364-2550428 (Fax)

e-mail: icssr_nerc@hotmail.com icssrnerc@dataone.in

website: www.icssrnerc.org

*Professor T.B. Subba
Honorary Director*

*No. F.4.201/NERC/ICSSR-NEMC/2012-559
12th October 2012*

OFFICE ORDER

The Honorary Director, ICSSR North Eastern Regional Centre is pleased to appoint Ms. Fiasta Diengdoh as the Programme Officer in the ICSSR, North East Monitoring Committee sponsored 'North-East New Initiative Programme,' wef 1st April 2012 to 31st March 2013 on the scale of pay of Rs. 15,600-39,100 (Grade Pay 5,400).

Ms. Diengdoh's appointment as the Programme Officer may be extended in future subject to approval of ICSSR-NERC proposal for the post of Programme Officer by the ICSSR, New Delhi. Further, Ms. Diengdoh's salary will be paid from the Plan grant under the 'ICSSR North-East New Initiative Programme.'

Payment of the due salary and other benefits till date will take effect as soon as the sanction order and

the grant-in-aid are received from the ICSSR, New Delhi in this regard.

During her period of service in the ICSSR North Eastern Regional Centre, Ms Diengdoh is expected to look after all the programmes under the ICSSR North-East New Initiatives under the direction of the Honorary Director, ICSSR-NERC.

This Office Order is issued as per the direction of the Member-Secretary, ICSSR, New Delhi vide his letter F. No. 9-2/NERC/2012-13/NER dated 15th June 2012.

Sd/-

*(T.B. Subba)
Honorary
Director, ICSSR-NERC,
Shillong"*

7. From the said orders, one of which is quoted above, it is clear that the petitioner's salary shall be paid from the plan grant under "ICSSR North East, New Initiative Programme and that itself shows that the petitioner was working as PO of the said project i.e. the ICSSR North East "New Initiative Programme". The Director (RINP) ICSSR under his letter dated 18-06-2013 i.e. (impugned letter) informed the Deputy Director, ICSSR, NERC, NEHU Campus, Shillong, that the said programme i.e. North East "New Initiative Programme" under which the petitioner is working as PO stands discontinued from 31-03-2013 and as such the appointment of the petitioner as PO cannot be renewed beyond 31-03-2013 on her present position. In case NERC feels that they need the service in other position which she was holding before her appointment as PO of the "New Initiative Programme", she maybe engaged in that position as per the terms and conditions stipulated by the Centre earlier. Therefore, this

impugned letter dated 18-06-2013 clearly indicated that the North East “New Initiative Programme” under which the petitioner was working as PO had been discontinued w.e.f. 31-03-2013. Once the said programme is discontinued, the appointment of the petitioner as PO of that programme cannot be continued. It is a clear fact that on 01-04-2011, appointment of the petitioner was on contract basis as per the terms stipulated by the Centre earlier. Such terms and conditions of the petitioner’s appointment as PO on contract basis are clearly known to the petitioner as well as to the respondents. Prof. Gassah in ICSSR-NERC, NEHU Campus, Shillong under his letter dated 19-06-2013 (impugned letter) informed the petitioner clearly that the North East “New Initiatives Programme” had been discontinued by the ICSSR and it has not been renewed beyond 31-03-2013. Since the said NER programme stands discontinued, the appointment of the petitioner as programme officer of “New Initiatives Programme” as per ICSSR letter dated 18-06-2013 cannot be renewed beyond 31-03-2013. However, ICSSR expressed its willingness to engage the petitioner in the position as PO on contractual basis which the petitioner was holding before 01-04-2011 as per the terms and conditions stipulated by the Centre, and accordingly the ICSSR NERC would like to take up the matter with the ICSSR, New Delhi to consider the petitioner’s position as PO on contract basis w.e.f. 01-04-2013 onwards on a consolidated salary of ` 20400/- (Rupees twenty thousand, four hundred) per month plus ` 400/- as transfer part which the Centre offered to the petitioner prior to April,

2011. Although the ICSSR NERC, NEHU does not have any budgetary provisions in the NERC for 2013-2014 at that moment, the Centre assured the petitioner to take up the matter with the ICSSR to consider the petitioner's case sympathetically considering her valuable service in the Centre. Therefore, the ICSSR, NERC, NEHU, Shillong offered the petitioner to accept the said terms and conditions of appointment as PO on contract basis w.e.f. 01-04-2013 onwards on a consolidated salary of ` 20400/- per month plus ` 400/- as transport allowance. For easy reference, the said impugned letter dated 19-06-2013 (Annexure -12 to the writ petition) is quoted hereunder:

**“INDIAN COUNCIL OF SOCIAL SCIENCE
RESEARCH
NORTH EASTERN REGIONAL CENTRE
NEHU Campus, Shillong-793022**

Phone : 0364-2550436 (O)2501817 (R)

Fax : 0364-2550428 (Fax)

e-mail: icssr_nerc@hotmail.com icssrnerc@dataone.in

website: www.icssrnerc.org

*Professor L.S.Gassah
Honorary Director*

F.No. 11/NERC/GAM/2013-268 June 19,2013

*Ms. Fiasta Diengdoh
Programme Officer
ICSSR-NERC
Shillong*

Dear Ms Diengdoh,

This has a reference to your representation dated 14th June 2013 in connection with your position in the Centre as a Programme Officer. Your representation was forwarded to ICSSR, New Delhi for consideration. In this regard, we received a letter from Dr. G.S.Saun, Director, ICSSR, New Delhi dated 18th June 2013 stating that the 'North-East New Initiative Programme' has been discontinued

by the ICSSR and therefore it has not been renewed beyond 31st March 2013.

As you are aware, vide our Office Order No. F.4.201/NERC/ICSSR-NEMC/2012-559 dated 12th October 2012 you were informed that you have been appointed as a Programme Officer in the ICSSR North-East Monitoring Committee sponsored 'New Initiative Programme' with effect from 1st April 2012 to 31st March 2013. Since the NER Programme stands discontinued, your appointment as per ICSSR's letter dated 18th June 2013 cannot be renewed beyond 31st March, 2013. I am enclosing a copy of ICSSR's letter dated 18th June 2013 and also Office Order dated 12th October 2012 for your reference. However, ICSSR expresses its willingness to engage you in the position as a Programme Officer on contractual basis which you were holding before 1st April 2011 as per the terms and conditions stipulated by the Centre earlier.

We would like to take up the matter with ICSSR, New Delhi to consider your position as a Programme Officer on contractual basis with effect from 1st April 2013 onwards on a consolidated salary of Rs. 20, 400/- per month plus Rs. 400/- as Transport Allowance, which the Centre offered to you prior to April 2011. Although we do not have any budget provision in the NERC for 2013-2014 for this amount, yet I assure you to take up the matter with ICSSR to consider your case sympathetically considering your valuable service in the Centre.

I will be happy if you could accept this offer and give us your undertaking in this regard at an early date so that we may take up with ICSSR, New Delhi for the needful.

With best regards,

Yours sincerely
Sd/-
(L.S.Gassah)
20-06-2013"

8. By the impugned letter dated 01-07-2013 petitioner had been informed that the Centre is yet to receive the response from the writ petitioner and in case the petitioner is interested to be engaged against the position stated in the impugned letter dated 19-06-2013, the petitioner may submit her response on or before 05-07-2013. In case the Centre does not

receive the response from the petitioner within the stipulated dated (05-07-2013), it may be presumed that the petitioner is no more interested to accept the assignment offered to her. The said letter dated 01-07-2013 read as follows:

**“INDIAN COUNCIL OF SOCIAL SCIENCE
RESEARCH
NORTH EASTERN REGIONAL CENTRE
NEHU Campus Shillong -793022**

*Professor L.S. Gassah
Honorary Director*

F.No. 11/NERC/GAM/2013-315 July 1, 2013

*Ms. Fiasta Diengdoh
Programme Officer
ICSSR-NERC
Shillong.*

Dear Ms. Diengdoh,

Kindly refer to our earlier Office letter even number dated 19th June 2013 enclosing a copy of ICSSR's response to your representation dated 14th June 2013.

As it is evident from the letter under reference that after discontinuation of North-East New Initiative Programme, ICSSR had directed the NERC to engage you in your previous contractual position as per the terms and conditions stipulated by the Centre earlier.

In our letter dated 19th June 2013 we had conveyed to you the direction issued by the ICSSR and also requested you to respond to the letter or express your willingness to be considered for the post which you were holding prior to joining the North-East New Initiative Programme.

The Centre is yet to receive your response. In case you are interested to be engaged against the position, as stated above, kindly submit your response on or before 5th July 2013. This will help us to remove uncertainty about your official position in the Centre and also to seek formal approval from the ICSSR, New Delhi, for the position of Programme

Officer on contractual basis. In case we don't receive your response within the stipulated date (5th July 2013), it may be presumed that you are no more interested to accept the assignment offered to you.

With best regards,

Yours Sincerely,

(L.S.Gassah)

01-07-2013”

9. Being aggrieved by the said impugned letters, the petitioner filed the present writ petition for the reliefs which have been mentioned in the foregoing para No.1.

10. The respondents filed the affidavit-in-opposition. The gist of the case of the respondents in the affidavit-in-opposition is that the ICSSR was set up by the Government of India in 1969 as an autonomous organization to promote Social Science Research in the country. It has set up Regional Centres all over the country, one of which is the North Eastern Regional Centre (NERC) at NEHU, Shillong. The ICSSR-NERC is under the pervasive control of the parent body i.e. ICSSR, New Delhi and is fully funded by the Ministry of Human Resource Development, Government of India. The functioning of ICSSR-NERC is as per the direction of the parent body and it is also regulated by the various conditions laid down by its parent body while releasing grant and financial aids. Presently, in the recent set up of the North Eastern Regional Centre there are 12 permanent posts against which 11 incumbents are working in substantive capacity. Only the post of Stenographer is lying vacant. The permanent posts in the regular establishment of

the ICSSR-NERC, Shillong and their pay scale as per the 5th Central Pay Commission are as follows:

“Subject: Information of ICSSR approved posts at the ICSSR-NERC, Shillong

(As per the 5th Central Pay Commission)

Sl. No.	Name of Post	Scale of Pay	Council's sanction letter Number and Date
1.	Deputy Director	10,000-325-15-15,000	No. 14-2/78- RIC dated 9/10/1985
2.	Documentation Assistant (Promoted to Documentation Officer by DPS)	5500-175-9000 8000-275-13500	No.F 14-1/80-RIC dated 16/3/1987 No. 10-12/79-RIC dated 31/12/2002
3.	Junior Accountant	4000-100-6000	No.F.14-1/80-RIC dated 6/10/1988
4.	Junior Stenographer	4000-100-6000	No.F.14-1/80-RIC dated 6/10/1988
5.	Lower Division Clerk	3050-75-3950-80-4590	No. 14-2/78- RIC dated 9/6/1981
6.	Library Attendant (Office Assistant)	3050-75-3950-80-4590	No.F. 14-1/78-RIC dated 16/6/1996
7.	Repographic Technician	3050-75-3950-80-4590	No. F. 14-2/78- RIC dated 15/1/1987
8.	Peon	2650-65-3300-70-4000	No. F. 14-2/78- RIC dated 14/4/1981
9.	Chowkidar	2550-55-2660-60-3200	No. 14-2/78-RIC dated 15/1/1987
10.	Cleaner-cum-Attendant (office)	2550-55-2660-60-3200	No. F.14-1/80-RIC dated 5/2/1991
11.	Cleaner-cum-Attendant(guest house)	2550-55-2660-60-3200	No. F.14-1/80-RIC dated 5/2/1991
12.	Sr. Stenographer*	5500-175-9000	No. F.14-2/78-RIC dated 14/4/1981

NOTE: Sl. No.12, the post of Stenographer is lying vacant in the Centre.

Sd/-
(Deputy director)

Sd/-
(Honorary Director)”

11. During the April-September, 2004, the writ petitioner was involved as a Research Associate in ICSSR-NERC, Shillong in a project sponsored by the Family Health International (FHI), in the National Aids Control Organisation (NACO). This project

was over by the end of September, 2004 by putting an end to the petitioner's assignment as Research Associate. By the letter dated 20-09-2004 of the ICSSR to the Director ICSSR, NERC, Shillong, sanctioned an amount of ` 31 lacs with ` 8 lacs under the Plan and ` 23 lacs under the Non-Plan for the year 2004-2005 in the form of grant for the programmes associated with the objectives of ICSSR-NERC. To ensure effective implementation of this objective for the year 2004-2005 from the fund under the Non-Plan head, a special fund was earmarked for engagement of PO on a consolidated pay of ` 10 thousand per month for the said programmes.

12. Petitioner submitted an application dated 11-10-2004 offering herself as PO but without any selection process. Petitioner had been picked up for appointment as PO on the same date and she was engaged as PO on contractual basis for a period of one year i.e. the appointment order dated October 11, 2004 which had been quoted in the foregoing para. On expiry of initial period of one year, the petitioner's contractual period was extended from time to time from 12-11-2005 to 16-04-2011. Since the petitioner's engagement could not have been continued beyond 17-04-2011, as a gesture of goodwill, the Centre accommodated the petitioner as PO under another Programme called North East "New Initiative Programme" for a period of one year from 01-04-2011 to 31-03-2012 on regular pay scale. Though the said programme was only for the financial year 2011-2012 (01-04-2011 to 31-03-2012), she was extended for another year from 01-04-2012 to 31-03-2013 and

the petitioner's contractual engagement has PO was extended for the said period. Since 01-04-2013 there has been no budgetary support for the said programme i.e. North East "New Initiative Programme." Consequently, it was not possible to continue the service of petitioner as PO of "New Initiative Programme." It is a clear case of the respondents that the said programme i.e. North East "New Initiative Programme" under which the petitioner was appointed as PO on contractual basis had ceased to function as there has been no budgetary support for the said programme.

13. The respondents in their counter affidavit dated 07-04-2015 stated that case of the petitioner in the additional affidavit dated 19-03-2015 of the writ petitioner that other 3(three) incumbents who are similarly situated with the writ petitioner had been regularized in the year 2009-2011 against the sanctioned post is not correct and those 3(three) incumbents are not similarly situated with the writ petitioner because those persons were appointed against the sanctioned posts of the regular establishment of the ICSSR-NERC, Shillong. The respondents further reiterated that the writ petitioner was appointed as PO of a programme i.e. North East "New Initiative Programme" which was closed or ceased to function w.e.f. 01-04-2013 as there had been no budgetary support for the said programme. As the programme had been discontinued, there is no question of continuing the petitioner as PO in the earlier terms and conditions of the appointment of the petitioner as PO of the said programme. It is also the further case of the respondents that there is no continuing

programme in the NERC where the petitioner could be appointed on contract basis as PO in the earlier terms and conditions of her appointment as PO of the North East “New Initiative Programme” which was discontinued on 01-04-2013. However, as a good gesture from the side of the respondents, the ICSSR-NERC under the impugned letter dated 19-06-2013 and 01-07-2013 took up the case of the writ petitioner with the ICSSR, New Delhi to engage the petitioner in the position as a PO on contract basis which the petitioner was holding before 01-04-2011 i.e. before her appointment as PO of the said project i.e. North East “New Initiative Programme” which was implemented w.e.f. 01-04-2011.

14. This Court i.e. the Meghalaya High Court (Justice T. Nandakumar Singh, J) in ***Tanbor Langbnang & Ors vs North Eastern Hill University: (2013) 3 GLT (ML) 863*** held that the writ petitioner who had been engaged as casual employee on daily wage basis for a certain period without following the procedure prescribed under the constitutional scheme of public employment and also not against any sanctioned posts cannot be regularized and the regularization cannot be said to be a form of appointment or mode of appointment. Para 6, 9, 10, 11, 13, 15 and 16 of the GLT in ***Tanbor Langbnang case’s (Supra)*** read as follows:

“6. The legal position of a Govt. servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The Apex-Court (Constitution Bench) in *Roshan Lal Tandon & Ors vs. Union of India & Anr*** reported in ***AIR 1967 SC 1889***, held that:-**

“6. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than on contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by the statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.”

9. The public employment as laid down by the Constitution and the law made there-under and the Constitutional Scheme envisages employment by the Govt. and its instrumentalities on the basis of procedure established in that behalf. Any public employment has to be in terms of the Constitutional Scheme. The Courts have always kept the legal aspects in mind and therefore, the persons who get

employed, without the following of a regular procedure or even through backdoor or on daily wage basis, approaching the Courts, seeking directions to make them permanent are not welcomed by the Courts and their case are not entertained inasmuch as the High Courts are not invoking the wide jurisdiction under Article 226 of the Constitution of India to defeat the concept of social justice and equal opportunity for all in the matter of public employment as recognized by our Constitution. The Courts desists 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. It is equally well settled that the wide power of the High Courts under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating, illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment.

10. Regularization cannot be said to be a form of appointment and also cannot be said to be a mode of recruitment. If the regularization is to be accepted as a mode of recruitment or regular appointment or one of the Constitutional Scheme in public employment, it would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules. The Apex Court in **R.N. Nanjundappa vs. T. Thimmiah and Another** reported in **(1972) 1 SCC 409**, held that:-

“26. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with the procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment.
.....”

11. The Apex Court in **B.N. Nagarajan & Ors vs. State of Karnataka & Ors** reported in **(1979) 4 SCC 507**, held that the words “regular” or “regularization” do not connote permanence and

cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. Procedural irregularities which could have been corrected are those in the process of selection which do not go to the root of appointment.

13. The Apex Court in **Dr. Chanchal Goyal (Mrs) vs. State of Rajasthan** reported in **(2003) 3 SCC 485**, held that:-

“6. There is no scope of regularization unless the appointment was on regular basis. Considerable emphasis has been laid down by the appellant to the position that even for temporary appointment there was a selection. That is really of no consequence. Another plea of the appellant needs to be noted. With reference to the extension granted it was contended that a presumption of the Service Commission's concurrence can be drawn, when extensions were granted from time to time. This plea is without any substance. As noted above, there is no scope for drawing a presumption about such concurrence in terms of sub-rule (2) of Rule 27. After one year, currency of appointment is lost. The extension orders operated only during the period of effectiveness.

7. The decisions relied upon by the learned counsel for the appellant were rendered in different factual background. A decision is an authority for what it decides and not for what could be inferred from the conclusion.”

14. There cannot be a legitimate expectation of a persons whose appointments on casual basis without following the procedure prescribed under the Constitutional Scheme in public appointment that their illegal appointments would be regularized only for their continuation of their employment/engagement for a decade inasmuch as, the legitimacy of an expectation can be inferred only if it is founded on the sanction of law.

16. The Apex Court in **State of Karnataka & Ors vs. G.V. Chandrashekar** reported in **(2009) 4 SCC 342**, had considered the Para-53 of the

judgment in **Umadevi's** case (**Supra**) and held that regularization is not permissible where initial recruitment vis-à-vis is illegal and contrary to Constitutional Scheme.....”

15. The Apex Court in **State of HP through the Secretary Agriculture to the Govt. of H.P. Shimla vrs Nodha Ram and Ors: (1998) SCC (L&S) 478** held 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 establishment. The Court should adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite non-availability of the work. The directions issued by the High Court are absolutely illegal warranting the Supreme Court’s interference.”

16. The Apex Court in **Principal, Mehar Chand Polytechnic and Anr vrs Anu Lamba and Ors: (2006) 7 SCC 161** held that there cannot be regularization of adhoc/temporary appointment against no sanctioned post in a time bound project. Para 8, 35, 38 of the SCC in **Principal, Mehar Chand Polytechnic** case’s (Supra) read as follows:

“8. It is not the case of the Respondents that prior to issuance of the said offer of appointment any vacancy existed or the same was notified to the Employment Exchange. It is furthermore not their case that they were recruited in terms of the statutory rules and/or upon compliance with the requirements envisaged under Articles 14 and 16 of the Constitution of India. It is also not their case that prior to their appointments any advertisement was issued enabling the

eligible candidates to file applications therefor or the vacancies were notified to the Employment Exchange.

35. *The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The project undertaken by the Union of India although continued for some time was initially intended to be a time bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturalists. In absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus.*

38. *It was further opined : (SCC p.501,para 26)*

*"26. It is true that the Respondents had been working for a long time. It may also be true that they had not been paid wages on a regular scale of pay. But, they did not hold any post. They were, therefore, not entitled to be paid salary on a regular scale of pay. Furthermore, only because the Respondents have worked for some time, the same by itself would not be a ground for directing regularization of their services in view of the decision of this Court in **Uma Devi (3): (2006) 4 SCC 1: 2006 SCC (L&S) 753.**"*

17. For the foregoing discussions in the given facts, this Court is of the considered view that the North East "New Initiative Programme" under which the petitioner had been appointed as PO had ceased to continue w.e.f. 01-04-2013 as there had been no budgetary support for the said programme and as such the petitioner cannot continue as PO on

contractual basis in the terms and conditions of her appointment as PO of the said project. Accordingly, the reliefs sought for in the present writ petition which are mentioned in the foregoing para No.1 cannot be granted.

18. Hence, writ petition is dismissed.

JUDGE

S.Rynjah