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

Case No. : WP(C)/6683/2017

HIREN CH. DAS and 15 ORS.
S/O LT. TARUN CH. DAS R/O MALABARI, P.O. KHETRI DIST. KAMRUP M,
ASSAM, PIN - 782403.

2: SRI KAMAL KR. SARMA
C/O LT. BHARAT CH. DEV SARMA R/O GAMARIMURI
P.S. BELSOR
DIST. NALBARI
ASSAM
PIN - 781306.

3: SMTI. INDRANI BORTHAKUR
D/O SRI SAILENDRA NATH BORTHAKUR R/O 2 NO. LAKHIMI NAGAR
P.O. REGIONAL RESEARCH LABORATORY NEAR MEGHNA RESORT
ASSAM
PIN- 785006

4: SRI NILOTPAL BORA DAS
R/O FLAT NO. 385
BLOCK NO. 3
BETKUCHI
P.O. LAKHRA
DIST. KAMRUP M
ASSAM PIN- 781034.

5: SRI ANUJ KR. REGON

R/O TAXI ALI MOTHDANG
DIST. SIVASAGAR
PIN - 785640

6: SMTI. JURI BHATTACHARYA
C/O GIRISH CH. BHATACHARYA R/O H.NO. 63
PATHARKUCHI

UDAYAN PATH
BASISTHA CHARIALI
GUWAHATI - 781029.

7: SRI RUPNATH DAULAGUPA
C/O SRI DURJOY LANGTHASA
R/O DAMADI HARVAR NEAR VETERINARY OFFICE P.O. and P.S. MAIBONG
PIN - 788831
DIST. DIMA HASAO
ASSAM

8: GULSHAN ARA ZANNAT HUSSAIN
C/O A.A. HUSSAIN HOUSE NO. 37
L.N.B. ROAD
NEAR MASJID
SHAH NAGAR
HATIGAON
GUWAHATI.

9: SMTI. SANTONA BARUAH
C/O PRASANTA BORA
R/O NAKARI RAJEN KONWAR PATH
WARD NO. 2
P.O. NORTH LAKHIMPUR
PIN - 787001.

10: SRI PRANJAN BARUAH
S/O SRI KANAK BARUAH R/O SALANA STATION ROAD
P.O. and P.S. KHETRI DIST. KAMRUP M
ASSAM
PIN - 782403.

11: SRI JALAUDDIN AHMED
S/O LT. ABDUL AZIZ
R/O SATRAKANARA
P.S. BAGBOR
DIST. BARPETA
ASSAM
PIN - 781308.

12: SRI LAKSHI PRASAD BOR
C/O HARA KANTA BORA R/O JAGIAL BEBEJIA
P.O. BALIGAON
P.S. RAHA
DIST. NAGAON
PIN - 782144.

13: SRI BHABAJYOTI SAIKIA

C/OLT. ROBIN SAIKIA
R/O HOOJ KAHUATOLI
P.O. HOOJ RANGAGARA DIST. NAGAON
ASSAM
PIN - 782002.

14: SMTI. HIRA KAKOTI
W/O SRI PALASH LOCHAN BORAH
R/O COLLEGE NAGAR VIA AMINGON
OPP. NORTH GUWAHATI BLOCK PHC.

15: SMTI. ANITA BASUMATARY
D/O LT. ROBIN BASUMATARY R/O FATASHIL AMBARI TINIALI
CYCLE FACTORY ROAD
DIST. KAMRUP M
ASSAM
PIN - 781025.

16: SMTI. GUNJALATA RAJBONSHI
C/O MINTU DAS R/O BHETAPARA VIDYAMANDIR PATH
P.O. BASISTHA PIN - 78102

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE CHIEF SECRETARY, GOVT. OF ASSAM, DISPUR, GUWAHATI -6.

2:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI -6.

3:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR
GUWAHATI -6.

4:THE DIRECTOR

SOCIAL WELFARE ASSAM
UZANBAZAR
GUWAHATI -1.

5:THE COMMISSIONER and SECRETARY
TO THE GOVT.OF ASSAM
FINANCE DEPARTMENT

DISPUR
GUWAHATI -6.

6:THE SECRETARY TO THE GOVT. OF ASSAM

PERSONNEL B DEPARTMENT
DISPUR
GUWAHATI-6.

7:THE DIRECTOR
WOMEN AND CHILD DEVELOPMENT DEPARTMENT
UZANBAZAR
GHY-

Advocate for the Petitioner : MR.D DEKA, MR.J PATOWARI,MR.D J DAS,MR.K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM R1, MS. M BHATTACHARJEE(GA, ASSAM),SC, FINANCE(R5),SC, PERSONNEL DEPT.(R6)

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 05.11.2024

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. J. Patowary, learned counsel for the petitioners. Also heard Ms. M. Bhattacharjee, learned State counsel appearing for the respondents No. 1 to 4 and 6 and Mr. P. Nayak, learned Standing counsel, Finance Department, appearing for the respondent No.5.

2. By instituting this writ petition, the petitioners, who have been appointed as Child Development Project Officers (CDPOs in short) on contractual basis, have prayed for a direction to the respondent authorities to consider the claim of the petitioners for parity in pay with regular CDPOs and for a direction to frame a scheme for regularization of the service of the petitioners as CDPOs. The

petitioners have also prayed for payment of arrears as well as the current salary of the petitioners.

3. The case of the petitioners, in nutshell, is that they are working as CDPOs under Integrated Child Development Services (ICDS in short) and posted in different parts of the State of Assam. The petitioners were appointed pursuant to the advertisement dated 09.01.2010 on contractual basis, initially for a period of one year and their services have been extended from time to time.

4. The ICDS Programme was launched on 02.10.1975. It is a centrally sponsored social welfare scheme for addressing health and malnutrition issues. The programme aims to improve the health, nutrition and education of children under six years of age, pregnant and lactating mothers and women of 16-44 years of age living in urban and rural background and tribal areas of the country. The CDPO is a key functionary of the scheme under ICDS. The CDPO is responsible for organization of service and also for determination and implementation of ICDS scheme at the field level. The post of CDPO is a gazetted post and the Central Government bears 90% of the expenditure for payment of salaries of CDPOs and rest 10% is borne by the State Government.

5. The Assam Social Welfare (Recruitment and Promotion) Service Order, 1994, provides that 60% post of CDPO in Social Welfare Department, Govt. of Assam is required to be filled up by direct recruitment and the rest 40% by way of promotion from the feeder cadre. There are 230 numbers of ICDS project in the State of Assam. In the year 2009-10, schemes were received by the Govt. of Assam for implementation of many new ICDS projects within a time frame, failing which, the posts would lapse. However, due to paucity of time and also

considering the exigency, it was decided by the Government in the Social Welfare Department to appoint CDPOs on contractual basis as such, the department has advertised inviting application from eligible candidates having requisite qualification for filling up the posts of CDPO on contractual basis for a period of one year. The advertisement reflects for filling up of 9 (nine) posts of CDPOs, but also stipulated that the number of posts may go up. Accordingly, the petitioners were appointed after due selection process.

6. The aforesaid advertisement was put to challenge before this Court in WP(C) 2772/2010 filed by some officials of the department alleging that such advertisement would adversely effect their promotional avenue. This Court by the judgment and order dated 15.11.2010 disposed of the writ petition by negating the contention of the petitioners therein and allowing the authorities to go ahead with the selection process. The department, thereafter, conducted the selection process by increasing the number of posts from 9 to 22, wherein, total 22 candidates including the petitioners were appointed as CDPOs.

7. Mr. K.N. Choudhury, learned senior counsel for the petitioners, submits that on being satisfied that the service rendered by the petitioner and on successful implementation of various schemes under ICDS project, the services of the petitioners have been continued and extended from time to time and their fixed pay of Rs.10,000/- has been enhanced to Rs.20,000/-. The extension of the service of the petitioners has been made pursuant to the approval and concurrence of the competent authority.

8. Mr. K.N. Choudhury, learned senior counsel, submits that services carried out by both regular CDPOs and contractual CDPOs are one and the same.

However, there is a great disparity of pay between these two sets of CDPOs. The regular CDPOs is having pay scale and earns Rs.45,000/- per month approximately, plus other allowances as monthly salary whereas, the contractual petitioners earns Rs.20,000/- only as fixed pay per-month. On many occasions, the petitioners have approached the concerned authorities for granting them parity in pay with regular CDPOs, as they are discharging identical duty and responsibility. However, the authorities have failed to consider the case of the petitioners. Not only that, to add woes of the petitioners, they are not being paid salary although their services are being fully utilized by the Government. He submits that the Central Government bears 90% of the expenditure for payment of salaries of all CDPOs and the rest 10% is borne by the State Government. The petitioners are also paid salaries from the same head account from which the regular CDPOs get their salaries. This disparity and hardship have been duly intimated to the competent authority by the Directorate of Social Welfare Department, Govt. of Assam.

9. Mr. K.N. Choudhury, learned senior counsel, submits that the petitioners have entered government service through proper selection process held by the Social Welfare Department and has been rendering service without any break for the past many years. Apart from their regular duties, the petitioners have been performing additional government duties such as NRC duty, Election duty, Guno utsav duty, Flood relief duty, Disaster Management duty, Ambubachi Mela duty etc. Moreover, the petitioners are required to render their services in other departments such as Health & Family Welfare, Public Health Engineering, Panchayat and Rural Development and Labour Departments for fulfilment of their obligations as part of convergence amongst these departments.

10. He submits that some of the petitioners have become over aged for government service. As such, the petitioners have been requesting the Government in the Social Welfare Department for regularisation of their services. A representation was filed, however, the authorities are yet to consider the same. He further submits that due to their untiring efforts the newly sanctioned ICDS projects are functioning at par with other regular ICDS projects. However, the respondent authorities with an ulterior motive of ousting the petitioners from government service and to accommodate some blue eyed persons, have not extended the services of the petitioner from December, 2016. Hence, the petitioners submitted several representations before the authorities but to no avail. Eventually the Director, Social Welfare, Assam vide his letter No. DSW (E)/43/2011/66 dated 05.01.2017 requested the Deputy Commissioners of the concerned districts to submit performance reports in respect of the petitioners by constituting a three member committee so as to enable the government to extend the services of the petitioners. He submits that to the best of the knowledge of the petitioners the concerned Deputy Commissioners have already submitted the performance report in respect of the petitioners but due to lackluster attitude of the respondent authorities nothing has been done to extend the services of the petitioners. He further submits that the petitioners entered government service through a duly conducted selection process and considering the fact that the posts in which they were engaged were sanctioned posts, it is not understood as to why the petitioners' appointments were made contractual. More so, the state government has to bear only 10% of the expenditure. Now, despite having served the government with utmost sincerity for so long, the fate of the petitioners are in serious jeopardy and the petitioners who have become over aged in the meanwhile would be left high

and dry as they won't be eligible for new employment. This would also have a cascading effect on their family members as the petitioners are the only bread earners of their respective families. Learned Senior counsel for the petitioners submits that the petitioners were given to understand that in due time their services would be regularised. As such, the petitioners were legitimately expecting that Government would consider their case for regularisation in a positive manner.

11. Learned Senior counsel submits that the petitioners are now quite experienced and fully trained in their field of work. The Government has spent lots of public money and valuable time to train the petitioners so that their services may be utilised in the best possible manner. Now after all these developments, if the services of the petitioners are not utilised any further, then it would be wastage of precious time and loss to state exchequer apart from ruining the lives of the petitioners and their family members who are dependent upon them. He also submits that the appointments of the petitioners having been made in substantial compliance with the constitutional scheme and the rules thereof, can be considered for regularisation by the competent authority. As such, there is no bar for regularising the services of the petitioners as their appointments were not illegal. In the above context the Learned Senior counsel K.N. Choudhury, has relied upon the decisions of the Hon'ble Supreme Court of India rendered in **B.N. Nagarajan vs. State of Karnataka** reported in **(1979) 4 SCC 507** and **Nihal Singh -vs- State of Punjab** reported in **(2013) 14 SCC 65**. Therefore, he submits that the state respondents may be directed to regularize the services of the petitioners by framing an appropriate regularization scheme as the executive or the legislature is competent to frame such a scheme so as to regularize the services of the petitioners.

12. Relying on the decision of a Full Bench of this Court in its Judgment and Order dated 26.10.2017 passed In **W.P.(C) No. 5002/2012, (Kamrup District Siksha Sarathi (1) Association -vs- State of Assam & Ors.)**, learned senior counsel submits that the Full Bench has come to the finding that the State either by way of executive action or legislation can frame by way of scheme for regularization of services of temporary employees, provided the temporary appointments were made by following a rational recruitment procedure in which all eligible candidates had the opportunity to participate. Therefore, the present petitioners having been appointed by holding a due process of selection, they can legitimately expect for regularization of their services. It is also submitted that the respondent authorities in order to prevent some funds from lapsing appointed the petitioners and now when their purpose is served they are turning a blind eye to the claims of the petitioners for pay parity and regularization. Therefore, he submits that the respondents cannot be permitted to adhere to such 'use and throw' policy.

13. Mr. K.N. Choudhury, learned senior counsel has further placed reliance on the following judgments of the Hon'ble Supreme Court:-

i). **Somesh Thapliyal and another -vs- Vice Chancellor, H.N.B. Garhwal University and another** reported in **(2021) 10 SCC 116**.

ii). **Pratap Kishore Panda and Others -vs- Agni Charan Das and Others** reported in **(2015) 17 SCC 789**.

iii). **State of Jammu and Kashmir and Others -vs- District Bar Association, Bandipora**, reported in **(2017) 3 SCC 410**.

iv). **Amarendra Kumar Mohapatra -vs- State of Orissa and Others** reported in **(2014) 4 SCC 583**.

v). **Narendra Kumar Tiwari and others -vs- State of Jharkhand and Others**, reported in **(2018) 8 SCC 238**.

14. Ms. M. Bhattachajee, learned State counsel, while referring to the affidavit-in-opposition filed on behalf of the State, submits that the petitioners being contractual employees, their remuneration has to be guided by the terms and conditions incorporated in the agreement executed by them. As per Order dated 04.01.2021 passed by this Hon'ble High Court in the instant matter, the contractual services of the petitioners have been extended.

15. Learned State counsel, submits that the Social Welfare Department has obtained views of the Judicial Department regarding regularization of the services of such contractual CDPOs and the Judicial Department vide their endorsement dated 13.11.2020 opined that it does not agree to the grant of regularization to the contractual CDPO's in violation of the ratio laid down by the Constitutional Bench of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka -vs- Uma Devi (3)**, reported in **(2006) 4 SCC 1**.

16. Ms. M. Bhattacharjee, learned State counsel, submits that the process for recruitment of CDPOs is laid down in the provisions of the Assam Social Welfare (Recruitment & Promotion) Service Orders, 1994. The appointment of the contractual CDPOs was not according to the provisions contained in the aforesaid Service Order. She submits that having regard to what has been stated herein above especially with reference to the judgment of the Hon'ble Supreme Court in **Uma Devi** (Supra), regularization of the services of the

petitioners cannot be considered.

17. Mr. P. Nayak, learned Standing counsel, Finance Department, submits that the Finance Department vide endorsement dated 07.06.2007, 16.06.2009 and 08.09.2010, agreed to the engagement of 12 numbers of CDPOs, including the office staff, on contractual basis, subject to strict compliance of all terms and conditions laid down in the sanction order issued by the Government of India, vide No.14-3/2006-CDI, dated 20.12.2006. The Finance Department agreed to the engagement only on contractual basis but has not duly created the posts. In the said endorsements it was clearly stated that such engagements shall be on contract basis and co-terminus with the ICDS Scheme. It is also submitted that the Finance Department conveyed "no objection" to the re-engagemnet of 21 numbers of CDPOs for a further period of 11 months, as proposed on fresh contract to be signed after vetting of contract document by legislative department and also enhanced the remuneration from Rs.10,000/- to Rs.20,000/- per month in view of the revised pay of the regular CDPOs.

18. Mr. P. Nayak, learned Standing counsel and Ms. M. Bhattacharjee, learned counsel have further submitted that the alleged disparity in pay scale between regular CDPO and the petitioners, who were engaged on contract basis, existed primarily on the basis of difference in the nature of engagements they were in. Moreover, once the petitioners had signed the contract with open eyes, and accepted the said pay, they are not supposed to have any objection in that regard. The petitioners were engaged on contractual basis on a pay that was made known to them. It is not a case that the payment agreed upon was not being paid. The advertisement dated 09.01.2010 itself clearly mentioned that the nature of engagement shall be contractual and no employee shall be

entitled to claim continuation in the service, unless he/she is qualified through the APSC.

19. The learned State counsels have submitted that as settled by the Hon'ble Supreme Court in the case of **Uma Devi**, (Supra) the theory of "legitimate expectation" for regularisation cannot be successfully advanced by the contractual employees. It cannot also be held that the State has held out any promise while engaging the petitioner either to continue them or to make them permanent. Infact, in the advertisement dated 09.10.2010 it was specifically mentioned that no employee shall be entitled to claim continuation in the service unless he/she is qualified by APSC.

20. Ms. M. Bhattacharjee, learned State counsel by referring to the additional affidavit, submits that that the petitioners have been appointed in the year 2010-2011 on contractual basis and some of the appointments were made against Contractual posts of CDPOs for a period of 1 year subject to execution of an agreement with the incumbent concerned and term of extension has been based both on the performance and decision of the Govt. She further submits that the Government of India, Ministry of Women & Child Development minutes of EPC and Administrative Approval of Annual Programme Implementation Plans (APIP) 2017-18 for Anganwadi Services Scheme under Umbrella ICDS dated 17/07/2017, specifically laid down that Salary of Contractual posts at State/UT, district and Block/Sector/Project level has been discontinued from 01.04.2017.

21. It is submitted by Ms. Bhattacharjee that as per the minutes of EPC regarding the State of Assam it has been clearly observed that while making engagement for the contractual posts, Cabinet approval has not been given by

the State Cabinet. Therefore, salary for these posts will not be allowed. She further submits that regarding clause 3 of the advertisement dated 09.01.2010, since the date of engagement of the petitioners on contractual basis, there were advertisements in February, 2019 and in August, 2019 by the APSC for recruitment in regular posts of CDPO but it is not known if the petitioners participated in the regular process of selection taken up by the concerned authorities. Therefore, learned State counsels submits that the petitioners are not entitled for any pay parity nor have any right to claim for regularisation and as such the writ petition may be dismissed.

22. Following cases laws have been relied on by Mr. P. Nayak, learned standing counsel and Ms. M. Bhattacharjee, learned State counsel, in support of their submissions:-

i. Secy. State of Karnataka and Another -vs- Uma Devi and Another reported in **(2006) 4 SCC 1.**

ii. State of Manipur and Another -vs- Ksh. Moirangninthou Singh and others reported in **(2007) 10 SCC 544.**

iii. State of Karnataka and others -vs- M.L. Kesari and others reported in **(2010) 9 SCC 247.**

23. Due consideration has been extended to the submissions advanced by the learned counsel for the parties and the material available on record.

24. Concededly, the petitioners were appointed as CDPOs on contractual basis by following the due process of selection pursuant to the advertisement dated 09.01.2010 initially for a period of one year and have joined in the month

of January 2011. Their services have been extended from time to time.

25. As noted herein above, the ICDS Programme, a centrally sponsored scheme, was launched way back on 02.10.1975, a social welfare scheme for addressing health and malnutrition issues. The programme aims to improve the health, nutrition and education of children under six years of age, pregnant and lactating mothers and women of 16-44 years of age living in urban and rural background and tribal areas of the country. The CDPO is a key functionary of the scheme under ICDS. The CDPO is responsible for organization of service and also for determination and implementation of ICDS scheme at the field level. The Central Government bears 90% of the expenditure for payment of salaries of CDPOs and rest 10% is borne by the State Government.

26. In terms of the Assam Social Welfare (Recruitment and Promotion) Service Order, 1994, 60% post of CDPO is required to be filled up by direct recruitment and the rest 40% by way of promotion. It is noted that there are 230 numbers of ICDS project in the State of Assam. In the year 2009-10, many new ICDS projects were to be implemented within a time frame, failing which, the posts would lapse. Considering the exigency, it was decided by the Government of Assam to appoint CDPOs on contractual basis. The department has advertised inviting application for eligible candidates having requisite qualification for filling up posts of CDPO on contractual basis for a period of one year. The advertisement reflects for filling up of 9 (nine) posts of CDPOs, but also stipulated that the number of posts may go up. Accordingly, increased the number of posts from 9 to 22 and appointed 22 persons including the petitioners, after due selection process. On being satisfied the service rendered by the petitioners and on successful implementation of various schemes under

ICDS project, the services of the petitioners have been continued and extended from time to time and their fixed pay of Rs.10,000/- has been enhanced to Rs.20,000/-. The extension of the service of the petitioners has been made pursuant to the approval and concurrence of the competent authority.

27. On consideration, it is seen that services carried out by both regular CDPOs and contractual CDPOs are one and the same discharging identical duty and responsibility. As noted above, the Central Government bears 90% of the expenditure for payment of salaries of all CDPOs and the rest 10% is borne by the State Government. The petitioners are also paid salaries from the same head account from which the regular CDPOs are being paid their salaries. Having accepted the disparity and hardship, the competent authority, i.e. the Directorate of Social Welfare Department, intimated the Govt. of Assam regarding such disparity in pay and hardships.

28. It is noticed that the petitioners have been appointed as CDPOs after proper selection process held by the Social Welfare Department and have been rendering their services for the past many years on being duly extended from time to time. Now, some of the petitioners have become over aged for government service. It is informed that the newly sanctioned ICDS projects are functioning at par with other regular ICDS projects. It is noted that the petitioners are now quite experienced and fully trained in their field of work and their services have been utilised.

29. Having considered above, I am of the view that if the services of the petitioners are not utilised any further, then it would be wastage of precious time and loss to state exchequer as the appointments of the petitioners having

been made in consonance with the constitutional scheme of public employment. Thus, the case of the petitioners could be considered for regularisation by the respondent authorities as all the requisites of a regular employment were adhered to while appointing the petitioners.

30. Having viewed above this court is not oblivious of the legal proposition that regularization of employment of person which were made without following any rational procedure, cannot become an alternative mode of recruitment for public posts. However, in the present case, the petitioners cannot be termed as back door entrants. Although, the post of CDPOs are to be filled up through Assam Public Service Commission, due to exigencies involved at the relevant point of time, the appointment of the petitioners have been made by following due process of selection wherein other eligible/ interested candidates had also participated. Thus, I am of the considered opinion that the respondent authorities may consider framing an appropriate regularization scheme as the executive or the legislature is competent to frame and would not be barred from framing such a scheme so as to regularize the services of the petitioners as one time measure in the facts and circumstances of the present case.

31. In this regard, reference may be had to the Judgements of the Hon'ble Supreme Court in the following cases:-

In the case of **Somesh Thapliyal** (Supra), the Hon'ble Supreme Court has observed and held which are quoted herein below:-

“37. From the narration of facts as being referred to supra, it clearly manifests that the appellants were appointed after going through the process of selection as contemplated under [Part VI of the Act](#) 1973 which indeed was an appointment on substantive basis and since the appellants were not in an equal bargaining position and were in the need of

employment when the offer of appointment was made, left with no option but to accept such arbitrary conditions incorporated in the letter of appointment in treating it to be contractual for a limited period still recorded their protest while joining but no heed was paid. When they were allowed to continue by extending their services, they remained under the bonafide belief that as their appointment is being substantive in character, they will be made permanent/confirmed immediately after the permanent posts are sanctioned in the Department of Pharmaceutical Sciences but to their dismay, after an advertisement dated 29th August, 2011 came to be notified by the respondent Central University, no option was left with them but to approach the High Court by filing of a writ petition.

43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.

In the case of **Pratap Kishore Panda** (Supra), the Hon'ble Supreme Court has observed and held which are quoted herein below:-

“17. These decisions, however, need not be adverted to in the exposition of the aspect of the law which arises before us. The prevailing law is now discernible from Umadevi (3), which has correctly been cited before us in extenso. The Umadevi (3) doctrine is that if employment of persons persons is contrary to or dehors the statutory provisions and/or rules and regulations, then equities will not have any play even if such persons have been rendering services for several years. The most that can be done for such employees is for the State Government to devise a scheme, as a one-time measure, for their absorption so long as the governing statute or the rules and regulations are not infringed. In the words of the Constitution Bench: (SCC p. 39, para 47)

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary. casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them wehre they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

Reliance on paras 33, 36 and 47 however does not advance the case of the appellant since the State Government in the present case has carried out recruitment in a

regular manner, albeit beyond OPSC which had presented a panel containing negligible number of SC/ST candidates. The subject challenged recruitment was neither capricious nor arbitrary but on the contrary was carried out in consonance with a known method of selection viz. Rule 9(4). This was not a case of ad hoc employees being selected in a whimsical, inconsistent or haphazard manner or in order to favour some individuals. The incumbents were sponsored by the Employment Exchange and over 400 candidates were found suitable by a duly constituted Selection Committee which interviewed them. It was not a relaxation of the Rules in order to favour a few, but was the consequence of following an alternate method of selection intended to remedy a malady in the recruitment of SC/ST candidates. It is well within the powers of the State to organise an alternative recruitment drive when insufficient SC/ST candidates are available and under Article 320(4) of the Constitution OPSC was not required to be consulted."

In the case of **District Bar Association, Bandipora** (Supra), the Hon'ble Supreme Court has observed and held which are quoted herein below:-

"11. The decision in Umadevi dealt firstly with the right claimed by temporary employees to be regularised in service on the basis of long continuance, legitimate expectations, employment under the State and the Directive Principles. The second salient question which the Constitution Bench was called upon to answer was whether courts would be justified in issuing directions for regularisation based on such features such as equality and long spells of service. On both counts the Constitution Bench held against the temporary employees. However Umadevi is not an authority for the proposition that the executive or the legislature cannot frame a scheme for regularisation. Uma Devi does not denude the State or its instrumentalities from framing a scheme for regularisation. In paragraph 53 of the decision, this Court held as follows :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in [State of Mysore v. S.V. Narayanappa](#), [R.N. Nanjundappa v. T. Thimmiah](#) and [B.N. Nagarajan v. State of Karnataka](#) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not

duly appointed as per the constitutional scheme."

12. The third aspect of Umadevi which bears notice is the distinction between an "irregular" and "illegal" appointment. While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment. There may be varied circumstances in which an ad hoc or temporary appointment may be made. The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed. The exercise of power however stands vitiated if it is found that the exercise undertaken (a) was not in the exigencies of administration; or (b) where the procedure adopted was violative of [Articles 14 and 16](#) of the Constitution; and/or (c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides. If the appointment process is not vitiated by any of the above faults, can it be said that appointments made as an outcome of such an exercise cannot be regularised under a scheme framed in that regard by the employer? This is particularly when the employer himself proceeds to frame a scheme to bring these employees within the protective umbrella of regular service without the intervention or command of a court direction. This is the issue to which we turn. We propose to analyse the precedents before formulating the principles

In the case of **Amarendra Kumar Mohapatra** (Supra), the Hon'ble Supreme Court has held which are quoted herein below:-

"38. Equally important is the fact that even after declaring the true legal position on the subject and even after deprecating the practice of appointing people by means other than legitimate, this Court felt that those who had served for ten years or so may be put to extreme hardship if they were to be discharged from service and, therefore, directed the formulation of a scheme for their regularisation. This was no doubt a one- time measure, but so long as the appointment sought to be regularised was not illegal, the scheme envisaged by para 53 of the decision (supra) extracted above permitted the State to regularise such employees. Dr. Dhawan argued that the appellants- Stipendiary Engineers had, by the time the decision in Umadevi's case (supra) was pronounced, qualified for the benefit of a scheme of regularisation having put in ten years as ad hoc Assistant Engineers and fifteen years if their tenure was to be counted from the date of their employment as Stipendiary Engineers. He contended that even in the absence of a Validation Act, Stipendiary Engineers appointed on ad hoc basis as Assistant Engineers, who had worked for nearly ten years to the full satisfaction of the State Government would have been entitled to regularisation of their services in terms of any such scheme.

43. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in [State of Karnataka v. M.L. Kesari and Ors.](#) (2010) 9 SCC 247, has examined that question and explained the principle regarding

regularisation as enunciated in *Umadevi's case* (supra). The decision in *that case* summed up the following three essentials for regularisation (1) the employees worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this stage:

“7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

In the case of **Narendra Kumar Tiwari** (Supra), the Hon'ble Supreme Court has held which are quoted herein below:-

“7. The purpose and intent of the decision in Umadevi (3) was therefore two-fold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.”

32. The case laws relied by learned State counsels, namely- **Uma Devi (3)** (Supra) and clarified in case of **M.L. Kesari** (Supra), need no discussion as the

same are settled position of law that the Court cannot direct regularization in service.

33. Having considered the above facts and law laid down by the Hon'ble Supreme Court, undoubtedly, petitioners would not have indefeasible right to claim for regularisation of their services as they have been appointed on contractual basis. However, there may not be an absolute bar for the executive or the legislature to frame an appropriate regularization scheme.

34. In the present case, as noted above, although, the post of CDPOs are to be filled up through Assam Public Service Commission, due to exigencies involved at the relevant point of time, the appointment of the petitioners have been made by following a due process of selection wherein other eligible/interested candidates had also participated. In my view, the respondent authorities may consider framing an appropriate regularization scheme as the executive or the legislature is competent to frame such a scheme.

35. In view of the discussion made herein above, this court is of the considered opinion that the respondent authorities may consider framing an appropriate regularization scheme so as to regularize the services of the petitioners as one time measure in the facts and circumstances of the present case. Having considered the fact that ICDS programmes are still continuing, the services of the petitioners shall not be disturbed till appropriate decision is taken for framing scheme for regularisation by the State authorities. It is also provided that respondent authorities shall pay the arrear and current salary of the petitioners, if not already paid.

36. The writ petition stands disposed of in terms of above observations and direction. No order as to costs.

JUDGE

Comparing Assistant