

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 7211 of 2021.

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-And-

IN THE MATTER OF :

Tapos Chandra Ray and others

.....*Petitioners.*

-Versus-

Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs and others.

.....*Respondents.*

Mr. Mohammad Bakir Uddin Bhuiyan, Adv.

...For the *petitioners.*

Mr. Sk. Shaifuzzaman, DAG with
Mrs. Rehana Sultana, AAG with
Mr. Md. Salim Azad, AAG and
Mr. Ashique Rubaiat, AAG and
Ms. Zulfia Akhter, AAG

.....For the respondents.

Present:

Mr. Justice K.M. Kamrul Kader

&

Mr. Justice Mohammad Showkat Ali Chowdhury

**Heard On : 08.12.2022, 15.06.2023, &
20.07.2023 23.11.2021**

And

Judgment On : 30.08.2023

K.M. Kamrul Kader, J:

On an application preferred by the petitioners under Article 102 of the Constitution of the People's Republic of Bangladesh, this Rule Nisi was issued on 14.09.2021, in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why failure of the respondents to discharge their legal obligation in regularizing the services of the petitioners on permanent basis following the provisions of Rule 6(3)(Ka) of the আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪ and the discriminatory and irrational treatment towards the petitioners in respect of regularization of their designated services in International Crimes Tribunal, Bangladesh on permanent basis with arrear salary and all other attendant service benefits with effect from the date of entitlements should not be declared to be without any lawful authority and is of no legal effect and as to why the respondents should not be directed to regularize the designated services of the petitioners in International Crimes Tribunal, Bangladesh on permanent basis with arrear salary and all other attendant service benefits from the date of their entitlements within a stipulated time and/or pass such other or further order of orders as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule are that for the purpose of proper functioning of The International Crimes Tribunal of Bangladesh (herein after referred to as ICT of Bangladesh), the Ministry of Finance created and approved 83 (Eighty-three) posts by two sanction letters as contained in Memo No. 07.155.015.10.05.009.2010-502 dated 08-10-2012 and Memo No. 07.155.015.10.05.009.2010-530 dated 01-11-2012. It is also stated that the office of the respondent No.1, Ministry of Law, Justice and Parliamentary Affairs had given sanction for creation of

those 83 (eighty-three) posts of International Crimes Tribunal, Bangladesh by sanction letters as contained in Memo No. 10.00.0000.128.015.004.2012-1241 dated 06-12-2012 and Memo No. 10.00.0000.128.015.004.2012-244 dated 17-02-2013. Thereafter, the International Crimes Tribunal, Bangladesh on 11-09-2014 published a Notice for appointment in those 83 posts as contained in Memo No. 10.22.0000.000.11.001.14.1 dated 10-09-2014. In response to the said notice for appointment, these petitioners submitted their respective applications seeking appointment and eventually they became qualified to get appointment and thereafter, the respondent No.5, International Crimes Tribunal, Bangladesh issued appointment letters to the petitioners on various dates. Upon receiving the appointment letters, the petitioners joined their respective posts on several dates and since 2014, the regularization of the aforementioned posts of the petitioners have been extended on several times on temporary basis of their satisfactory performance in their respective services and the extension orders are contained in Memo No. 10.00.0000.128.015.004.2012-596 dated 05-08-2014, Memo No. 10.00.0000.128.015.004.2012-1176 dated 27-12-2015, Memo No. 10.00.0000.128.015.04.12 (Part)-580 dated 13-11-2018 and Memo No. 07.155.020.10.05.009.2010 (Part-1)-733 dated 12-12-2019. Thereafter, the petitioners submitted a joint application on 12-07-2018 to the respondent No.6 requesting him to take steps to regularize the designated services of the petitioners on permanent basis on following the provisions of Rule, 6 of আন্তর্জাতিক অপরাধ ট্রাইবুন্যাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪. Thereafter, respondent No.6, Registrar of the

International Crimes Tribunal, Bangladesh forwarded letters dated 12.07.2018, 30.10.2018, 17.02.2019 and 01.04.2019 to the respondent No.1, Secretary (Law and Justice Division), Ministry of Law, Justice and Parliamentary Affairs requesting him to regularize the services of these petitioners, which are contained in Memo No. Anto.Opo.Tri-1/434/2018 dated 12.07.2018, Memo No. Anto.Opo.Tri-1/658/218 dated 30.10.2018, Memo No. Anto.OPo. Tri-1/108/2019 dated 17.02.2019 and Memo No. Anto.Opo.Tri-1/205/2019 dated 01.04.2019. It is also stated that as per the forwarding letters of the respondent No.6, office of the respondent No.1 sent several forwarding and reminders to the office of the respondent No.3, Secretary, Ministry of Public Administration with request to regularize the designated services of the petitioners and the aforesaid forwarding letters are contained in Memo No. 10.00.0000.128.015.004.12 (Part)-197 dated 21.04.2019 and Memo No. 10.00.0000.128.015.004.12 (Part)-335 dated 23.07.2019. It is further stated that one Mr. Nurul Haque, the Deputy Secretary (সওব্দ), Section - 5 of the Ministry of Public Administration vide Memo No. 05.00.0000.154.15.016.11.131 dated 27.08.2019 requested the respondent No.1 to communicate with the Ministry of Finance for deleting the condition “(ক) প্রস্তাবিত পদ গুলো সম্পূর্ণ অস্থায়ীভাবে ০১(এক) বছরের জন্য সৃজিত হবে। তবে প্রয়োজনের নিরিক্ষে পরবর্তীতে প্রশাসনিক মন্ত্রণালয়ে প্রস্তাব, জনপ্রশাসন মন্ত্রণালয় এবং অর্থ বিভাগের সম্মতির ভিত্তিতে পদগুলোর সৃজনের মেয়াদ বৃদ্ধি করা যাবে। (খ) সৃজিত পদগুলোর মেয়াদ শেষে অথবা আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল সমূহের কার্যক্রম সম্পন্ন (যাহা আগে ঘটে) শেষে তাৎক্ষণিকভাবে বিলুপ্ত হবে” which imposed by the Ministry of Finance and thereafter, Law and Justice Division of the Ministry of Law, Justice

and Parliamentary Affairs vide Memo No. 10.00.0000.128.015.004.12 (Part)-567 dated 17.11.2019 sent a representation and thereby requested the Ministry of Finance to delete the condition No.“Ka” and “Kha” of the letter contained in Memo No. 07.155.015.10.05.009.2010-502 dated 08.10.2012 (Annexure-A) and make the designated services of the petitioners permanent, but till date there is no response from the Ministry of Finance.

Being aggrieved by and dissatisfied with the failure of the respondents the petitioners finding no other alternative and efficacious remedy preferred this instant Writ Petition before this Court and obtained the present Rule.

Mr. Mohammad Bakir Uddin Bhuiyan, learned Advocate appearing on behalf of the petitioners submits that as per provision of Rule 6(3)(Ka) of আন্তর্জাতিক অপরাধ ট্রাইবুন্যাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪ services of an officer/employee shall be regularized on permanent basis after successful completion of his/her probation period subject to fulfillment of condition stipulated in Rule-6(4) and the petitioners have successfully completed their probation period in the year-2016 and they have fulfilled the condition as stipulated in Rule 6(4) of আন্তর্জাতিক অপরাধ ট্রাইবুন্যাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪, but the respondents have not yet taken any step to regularize the designated services of the petitioners on permanent basis. He also submits that several staffs of the International Crimes Tribunal, Bangladesh have been regularized in different times and they have been transferred to the equivalent posts in various Districts Courts, which

generates legitimate expectation in minds of other staffs of the International Crimes Tribunal, Bangladesh to be regularized on permanent basis. The aforesaid order are contained in Notification Nos. 317 A dated 27-10-2015 and 216 J dated 14-10-2020, and in Office Order Nos. 201/2016(A&C) dated 14-07-2016 and 46 (A&C)/2020/(A&C) dated 27-01-2020. He again argued that the Cabinet Division of the Government through an Office Order as contained in Memo No.MoPoBI/Ko:Bi:Sha:/KoPoGo-11/2001-2011 dated 03-05-2003 formulated a Guideline regarding regularization of designated services of employees appointed on temporary basis and in that Guideline it was suggested that services of temporary employees can be regularized on permanent basis after 05(five) years of their regular service on temporary basis. But in the instant case in hand, it is evident that the petitioners have been performing crucial duties for over 08 years on temporary basis and the respondents have not yet regularized the designated services of the petitioners on permanent basis which is a glaring violation of their fundamental rights to be treated in accordance with law and shall get equal opportunity in public employment without any discrimination as guaranteed under the Constitution. Mr. Bhuiyan also submits that as the petitioners are in service of the International Crimes Tribunal, Bangladesh, their services can be considered as similar as to the service of the employees of the Supreme Court of Bangladesh and in similar and identical matters, the Hon'ble Appellate Division of the Supreme Court of Bangladesh in the cases of *Government of Bangladesh-Vs.- Md. Mosharraf Hossain and*

others, reported in 71 DLR (AD)4, (Para-13 &14) and also in the case of *Bangladesh Vs Santosh Kumar Saha*, reported in 21 BLC(AD) 94 (Para-146) held that, the High Court Division can entertain writ petition relating to question of service matter when the matter relates to the discrimination among the employees and as such, the instant writ petition is maintainable. Mr. Bhuiyan by filing a supplementary affidavit also submits that the Investigating Agency has already confirmed their manpower of International Crimes Tribunal, Dhaka vide Memo No.44.09.0000.0001.11.036.22.535 dated 07.03.2022 as evident Annexure-R to the supplementary affidavit. There is a set organogram of the posts of International Crimes Tribunal, Dhaka and ICT, Dhaka gave appointment of 45(forty five) employees. The petitioners have legitimate expectations to be regularized on permanent basis in their services and as such, the respondents are required by law to regularize the service of the petitioners on permanent basis without any further intimation and delay, but the respondents have failed to do so and as such, he prays for a direction upon the respondents to regularize the designated service of the petitioners in International Crimes Tribunal, Bangladesh on permanent basis with arrear salary and all other attendant service benefits from the date of their entitlements.

Mr. Sk. Shaifuzzaman, learned Deputy Attorney General with Mr. Ashique Rubaiat, learned Assistant Attorney General appearing on behalf of the respondents by filing an affidavit-in-opposition and submits that in order to make the 83 temporary posts permanent, the International Crime Tribunal sent letters to the Secretary, Ministry of

Law and Justice Division vide Memo Nos. আন্তঃ অপঃ ট্রাইং-১/৪৩৪/২০১৮ dated 12.07.2018, আন্তঃ অপঃ ট্রাইং- ৬৫৮/২০১৮ dated 30.10.2018 and আন্তঃ অপঃ ট্রাইং-3/30/203 dated 17/2/2019. Law and Justice Division in the light of those letters requested the Ministry of Public Administration to make those 83 posts permanent vide Memo Nos.১০.০০.০০০০.১২৮.১৫.০০৪ (অংশ)১২-১৯৭ dated 21.04.2019 and ১০.০০.০০০০.১২৮.১৫.০০৪ (অংশ)-৩৩৫ dated 23.07.2019. In reply to that request, the Ministry of Public Administration informed to the Law and Justice Division vide Memo No.০৫.০০.০০০০.১৫৪.১৫.০১৬.১১.১৩১ dated 27.08.2019 that as per conditions given by the Finance Division, there is no option to make the proposed posts permanent and suggested to communicate with Finance Division. On such situation, Law and Justice Division Vide Memo No ১০.০০.০০০০.১২৮.১৫.০০৪.১২(অংশ)-৫৬৭ dated 17.11.2019 requested the Finance Division to take necessary steps to make those posts permanent by withdrawing conditions given in the approval letter's 'Ka' and Kha' conditions. The said approval letter was sent vide Memo No.০৭. ১৫৫.০১৫.১০.১৫.০০৯.২০১০-৫০২ dated 08.10.2012. On the same matter, another letter was sent to the Finance Division from Law and Justice Division vide Memo No.১০.০০.০০০০.১২৮.১৫.০০৪.১২(অংশ)-৪৪৭ dated 26.10.2022 till now no approval is received from the Finance Division in this regard. However, Finance Division agreed to keep those posts preserved from 01.06.2022 to 31.05.2023 vide Memo No. ০৭.১৫৫. ০১৫.১০.০৫.০০৯.২০১০-৭৪১ dated 19.12.2022. Learned Deputy Attorney General again submits that except challenging the virus of law or

violation of fundamental rights, Judicial review of a decision of authority relating to the terms and conditions of service under Article 102 of the Constitution is not permissible (*Bangladesh-VS.- Santosh Kumar Saha* reported in 21 BLC (AD) 94. But in this writ petition, the petitioner challenged none of the above, rather; challenged terms and conditions of service and hence the petition is not maintainable. He further submits that as per conditions given by the Finance Division there is no option to make the posts of the petitioners permanent which is evident from the Memo No.০৫.০০.০০০০.১৫৪.১৫.০১৬.১১.১৩১ dated 27.08.2019 issued by the Ministry of Public Administration (Annexure - 2-v)' and as such the Rule is liable to discharged.

We have heard the learned counsel of both sides. We have also gone through the writ petition, supplementary affidavit, affidavit-in-opposition, impugned notifications and all other related documents with the petition carefully.

In 2009, Bangladesh set up The International Crimes Tribunal of Bangladesh (ICT of Bangladesh) to investigate and prosecute suspects for the genocide committed in 1971 by the Pakistani Army and their local collaborators, namely *Razakars*, *Al-Badr* and *Al-Shams* during our Great Liberation War. Thereafter, the Ministry of Finance created and approved 83 (Eighty-three) posts on temporary basis by two sanction letters as contained in Memo No. 07.155.015.10.05.009.2010-502 dated 08-10-2012 and Memo No. 07.155.015.10.05.009.2010-530 dated 01-11-2012, for the purpose of proper functioning of the International Crimes Tribunal, Bangladesh. Next, the respondent No.1 also gave

sanction for creation of those 83 (eighty-three) posts of ICT of Bangladesh vides sanction letters as contained in Memo No. 10.00.0000.128.015.004.2012-1241 dated 06-12-2012 and Memo No. 10.00.0000.128.015.004.2012-244 dated 17-02-2013. Thereafter, on 11-09-2014, ICT of Bangladesh published a Notice for appointment in those 83 posts vides Memo No. 10.22.0000.000.11.001. 14.1 dated 10-09-2014 which reads as follows:

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল
পুরাতন হাইকোর্ট ভবন, ঢাকা।
স্মারক নং ১০.২২.০০০০.০০০.১১.০০১.১৪.১
তারিখ: ১০.০৯.২০১৪ খ্রি.
নিয়োগ বিজ্ঞপ্তি

আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়ের আইন ও বিচার বিভাগ (বিচার শাখা-৮) এর ০৮/০৭/২০১৪ খ্রি. তারিখের বিচার-৮/সংযুক্ত প্রতিষ্ঠান/ছাড়পত্র২৯/২০১০-৪৩২ নং স্মারক মূলে প্রাপ্ত ছাড়পত্রের প্রেক্ষিতে আন্তর্জাতিক অপরাধ ট্রাইব্যুনালে রাজস্বখাত ভুক্ত প্রত্যেক বছর মেয়াদ বৃদ্ধির শর্তে সম্পূর্ণ অস্থায়ী ভিত্তিতে শূন্য পদ গুলি সরাসরি নিয়োগের মাধ্যমে পূরণ করার নিমিত্ত নিম্নলিখিত শর্ত সাপেক্ষে প্রত্যেকটি পদের বিপরীতে বর্ণিত যোগ্যতা সম্পন্ন বাংলাদেশের প্রকৃত নাগরিকদের নিকট হইতে সাদা কাগজে দরখাস্ত আহ্বান করা হইতেছে।

In response to the said notice, the petitioners as candidates submitted their applications for appointment and eventually, they were selected by the Authority and the respondent No.5, ICT of Bangladesh issued appointment letters to the petitioners on various dates. Their appointment letters contain some terms and condition.

On receipt the appointment letters, the petitioners joined in their respective posts on different dates. Since 2014, the posts of the petitioners have been extended time to time on temporary basis.

Learned Deputy Attorney General argued that except challenging the virus of law or violation of fundamental rights, Judicial review of a decision of authority relating to the terms and conditions of service

under Article 102 of the Constitution is not permissible and as such, the writ petition is not maintainable. On the contrary, Mr. Mohammad Bakir Uddin Bhuiyan, learned Advocate for the petitioners argued that the Investigating Agency has already confirmed their manpower of ICT of Bangladesh vides Memo No.44.09.0000.0001.11. 036.22.535 dated 07.03.2022 as evident Annexure-‘R’ to the supplementary affidavit. Several staffs of the ICT of Bangladesh have been regularized in different times and they have been transferred to the equivalent posts in various Districts Courts vides Notification Nos. 317 A dated 27-10-2015 and 216 J dated 14-10-2020, and Office Order Nos. 201/2016(A&C) dated 14-07-2016 and 46 (A&C)/2020/(A&C) dated 27-01-2020, which generates legitimate expectation in minds of other staffs of the ICT of Bangladesh to be regularized on permanent basis. He also argued that the Cabinet Division of the Government through an Office Order as contained in Memo No. MoPoBI/Ko:Bi:Sha:/KoPoGo-11/2001-2011 dated 03-05-2003 formulated a Guideline regarding regularization of designated services of employees appointed on temporary basis and in that Guideline it was suggested that services of temporary employees can be regularized on permanent basis after 05(five) years of their regular service on temporary basis. The case in hand, it is evident that the petitioners have been performing crucial and risky duties for more than 08 years on temporary basis and the respondents have not yet regularized the designated services of the petitioners on permanent basis which is a glaring violation of their fundamental rights to be treated in accordance with law and shall get

equal opportunity in public employment without any discrimination as guaranteed under the Constitution. Considering these aspect of the matter, we are of the view that the petitioners are in service with the ICT of Bangladesh, their services can be considered as similar as to the service of the other employees of the ICT of Bangladesh. However the High Court Division can entertain writ petition relating to question of service matter when the matter relates to the discrimination among the employees in similar and identical matters. We find support of this contention in the cases of *Government of Bangladesh-Vs.- Md. Mosharraf Hossain and others*, reported in 71 DLR (AD) 4, (Para-13 &14) and also in the case of *Bangladesh Vs Santosh Kumar Saha*, reported in 21 BLC(AD) 94 (Para-146) and as such, we are of the view that the instant writ petition is maintainable.

Now, the question is whether the petitioners can claim as their right that they should be regularized on permanent basis after successful completion of their probation period subject to fulfillment of condition stipulated in Rule-6(4) of আন্তর্জাতিক অপরাধ ট্রাইবুন্যাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪.

Learned Advocate for the petitioners argued that the petitioners were duly appointed and they have requisite qualifications. They have been continuing their service in their respective posts with utmost sincerity to the satisfaction of all. As the petitioners were joined in their respective posts of ICT of Bangladesh on temporary yearly basis, therefore, they have *legitimate expectation* that, they would be regularized against the permanent posts. In the case of *Bangladesh*

Biman Corporation –vs.- Rabeya Bashri Irene and others reported in 55

DLR (AD) 132. the Hon'ble Appellate Division held as under:-

“In the background of the existing practice of absorbing the employee of the petitioner’s category on satisfactory completion of the initial period of employment under a contract, it can be said that there was a reasonable ground for the writ petitioners to expect for being absorbed permanently in the service of the corporation.”

The writ petition concerning regularization/absorption on permanent basis in the revenue budget with the continuity of services were disposed of by this Division in several cases mainly based on the decision of Government of Bangladesh, represented by the *Secretary, Ministry of Labour and Manpower vs. Mohammad Anisur Rahman 18 MLR (AD) 372* and the *Chief Engineer, the Local Government and Engineering Department and others vs. Kazi Mizanur Rahman and others 17, BLC (AD) 91.*

But, on an subsequent appeal against a decision of this kind arising out of *writ petition No. 7166 of 2015*, the Hon'ble Appellate Division finally set at rest the earlier decisions passed by this Division mainly based on *18 MLR (AD) 372 and 17 BLC (AD) 91*. We have found that the Hon'ble Appellate Division has cleared up every aspect of the common issues leaving no ambiguity. The decision is the secretary *Ministry of Fisheries and Livestock and others vs. Abdur Razzak and others reported in 71 DLR (AD) 399*. For better understanding and to dispel all sorts of anomalies it is better to quote only the most relevant

portion from Judgment of the Appellate Division. Their lordships crystallized the whole thing in the following manner:

"Since the provisions of "Bidhimalas" are statutory provisions the authority concerned must comply with the provisions of the "Bidhimalas" as quoted earlier before regularization of absorbed officers and employees in the revenue set up. However, this Court is bound to insist the Government making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. No court can direct the Government or its instrumentalities to regularize the service of the officers and employees of the development project in the revenue budget in the cases where statutory requirements have not been fulfilled. Regularization cannot be claimed as a matter of right. It is statutory requirement that opportunity shall be given to eligible persons by public notification and recruitment should be according to the valid procedure and appointment should be of the qualified persons found fit for appointment to a post or an office under the Government. When the High Court Division is approached for relief by filing writ petition, necessarily the High Court Division has to ask itself whether the person before it had any legal right to be enforced or not. It cannot be directed to devise a third mode of selection. Accordingly, it is observed that:

1. The legitimate expectation would not override the statutory provision. The doctrine of legitimate expectation cannot be invoked for creation of posts to facilitate absorption in the offices of the

regular cadres/non cadres. Creation of permanent posts is a matter for the employer and the same is based on policy decision.

2. While transferring any development project and its manpower to revenue budget the provisions provided in the notifications, government orders and circulars quoted earlier must be followed. However, it is to be remembered that executive power can be exercised only to fill in the gaps and the same cannot and should not supplant the law, but only supplement the law.

3. Before regularization of service of the officers and employees of the development project in the revenue budget the provisions of applicable "Bidhimala" must be complied with. Without exhausting the applicable provisions of the "Bidhimala" as quoted above no one is entitled to be regularised in the service of revenue budget since those are statutory provisions.

4. The appointing authority, while regularising the officers and employees in the posts of revenue budget, must comply with the requirements of statutory rules in order to remove future complication. The officers and employees of the development project shall get age relaxation for participation in selection process in any post of revenue budget as per applicable Rules.

5. A mandamus cannot be issued in favour of the employees directing the government and its instrumentalities to make anyone regularized in the

permanent posts as of right. Any appointment in the posts described in the schedule of Bangladesh Civil Service Recruitment Rules, 1981, Gazetted Officers (Department of Live Stock Service) Recruitment Rules, 1984 and Non-gazetted Employees (Department of Live Stock Service) Recruitment Rules, 1985 bypassing Public Service Commission should be 41 treated as back door appointment and such appointment should be stopped.

6. To become a member of the service in a substantive capacity, appointment by the President of the Republic shall be preceded by selection by a direct recruitment by the PSC. The Government has to make appointment according to recruitment Rules by open competitive examination through the PSC.

7. Opportunity shall be given to eligible persons by inviting applications through public notification and appointment should be made by regular recruitment through the prescribed agency following legally approved method requirements of law.

8. It is not the role of the Courts to encourage or approve appointments made outside the constitutional scheme and statutory provisions. It is not proper for the Courts to direct absorption in permanent employment of those who have been recruited without following due process of selection as envisaged by the constitutional scheme.

In view of the discussion made above and since it is not apparent from the judgment of the High Court Division and other materials available in the record that the procedure provided in the Government notification, circulars or orders and the process of appointment indicated in the "Bidhimalas" 1995 or 2005 have been followed duly for appointing the writ petitioners and that they are no longer in service in view of terms of appointment letters and contracts, the direction of the High Court Division to absorb/regularise their service giving continuity of the same cannot be approved. So, the same is set aside."

We have also perused the record, wherefrom it is transpires that the petitioners were appointed on temporary basis under the revenue fund. During the appointment process, the Rules relating to employees of the ICT of Bangladesh were introduced. Accordingly, the appointment letter of the petitioners also contained terms and conditions of the আন্তর্জাতিক অপরাধ ট্রাইবুন্যাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪. Thus, the appointment process relating to the employees of the ICT of Bangladesh are different than the judgment and order passed by the Hon'ble Appellate Division in the decision is the secretary ***Ministry of Fisheries and Livestock and others vs. Abdur Razzak and others reported in 71 DLR (AD) 399.*** However, this decision is also relevant to the writ petitioner because they were appointed under the provision of the said আন্তর্জাতিক অপরাধ ট্রাইবুন্যাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪. The appointment letter of one the petitioner is contains some terms and condition which reads as follows-

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল
পুরাতন হাইকোর্ট, ভবন ঢাকা।
(Website: www.ict-bd.org)

স্মারক নং- আন্তঃ অপঃ ট্রাইঃ-১/২৩/২০১৫
১২/০১/২০১৫ খ্রিঃ

তারিখঃ

প্রতিঃ

.....
.....
.....

বিষয়: নিয়োগপত্র প্রদান প্রসঙ্গে।

আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়ের আইন ও বিচার বিভাগ (বিচার শাখা-৮) এর ০৮/০৭/২০১৪ খ্রিঃ তারিখের বিচার-৮/সংযুক্ত প্রতীষ্ঠান/ছাড়পত্র-২৯/২০১০-৪৩২ নং স্মারক মূলে প্রাপ্ত ছাড়পত্রের প্রেক্ষিতে আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের সহায়ক কর্মকর্তা/কর্মচারী নিয়োগ বিধিমালা, ২০১৪ এর বিধি ৪(২) মোতাবেক ৩য় ও ৪র্থ শ্রেণীর শূন্যপদে নিয়োগদানের লক্ষ্যে গঠিত বাছাই কমিটির গত ০১/০১/২০১৫খ্রিঃ তারিখের ১০.২২.০০০০.০০০.১১.০০১.১৪.১৮ নং স্মারকে প্রদত্ত সুপারিশ অনুমোদনক্রমে আপনাকে নিম্নলিখিত শর্তে জাতীয় বেতন স্কেল, ২০০৯ এর ১৩ নং গ্রেডে টাকা ৫৫০০-৩৪৫×৭-৭৯১৫-ইবি-৩৮০×১১-১২০৯৫ বেতনক্রম অনুসারে 'লাইব্রেরীয়ান' পদে প্রত্যেক বছর মেয়াদ বৃদ্ধির শর্তে সম্পূর্ণ অস্থায়ী ভিত্তিতে নিয়োগ প্রদান করা হলোঃ-

২। উক্তরূপে নিয়োগপ্রাপ্ত 'লাইব্রেরীয়ান' এর ক্ষেত্রে নিম্নরূপ শর্তাবলী প্রযোজ্য হবে, যথাঃ-

- (ক) এই নিয়োগপত্র অনুসারে যোগদানের তারিখ হতে ০২ (দুই) বৎসরের জন্য আপনি শিক্ষানবিস স্তরে থাকবেন। তবে স্থায়ীকরণের পূর্বে উক্ত মেয়াদ এক বা একাধিকবার অতিরিক্ত ০২ (দুই) বৎসর পর্যন্ত বৃদ্ধি করা যাবে;
- (খ) আপনি স্বাস্থ্যগতভাবে উক্ত পদে নিয়োগযোগ্য এবং উক্ত পদের দায়িত্ব পালনে কোন ব্যাঘাত সৃষ্টি করতে পারেন এমন কোন দৈহিক বৈকল্যে ভুগছেন না এই সম্পর্কে সিভিল সার্জন, সরকারি কর্মচারি হাসপাতাল, কলেজ রোড, ঢাকা বা তদকর্তৃক এতদুদ্দেশ্যে মনোনীত কোন মেডিকেল অফিসার কর্তৃক প্রদত্ত স্বাস্থ্য পরীক্ষার প্রতিবেদন দাখিল করতে হবে;
- (গ) আপনি প্রজাতন্ত্রের চাকুরীতে নিয়োগের জন্য অনুপযুক্ত নন মর্মে পুলিশ কর্তৃক যাচাইঅন্তে সন্তোষজনক ভেরিফিকেশন রিপোর্ট প্রাপ্তি সাপেক্ষে প্রমাণিত হতে হবে;
- (ঘ) কোন শিক্ষানবিসের শিক্ষানবিস মেয়াদ বা বর্ধিত মেয়াদ থাকলে তা চলাকালে যে কোন সময় বা উহা শেষ হবার পরবর্তী ০৬ (ছয়) মাসের মধ্যে নিয়োগকারী কর্তৃপক্ষ যদি মনে করেন যে, তাঁর আচরণ ও কর্ম সন্তোষজনক নয়, বা ক্ষেত্রমত ছিল না কিংবা তাঁর কর্মদক্ষ হওয়ার সম্ভবনা নেই তাহলে নিয়োগকারী কর্তৃপক্ষ উক্ত মেয়াদ চলাকালে বা ক্ষেত্রমত উক্ত ০৬ (ছয়) মাসের মধ্যে কোন কারণ দর্শানো ব্যতিরেকে শিক্ষানবিসের চাকুরীর অবসান ঘটাতে পারেন;
- (ঙP) নিয়োগপ্রাপ্ত ব্যক্তি-কে (ক) উপ-অনুচ্ছেদে উল্লিখিত প্রশিক্ষণ শুরু হবার পূর্বেই একজন জামানতদারসহ ৫০ (পঞ্চাশ) টাকা মূল্যের নন-জুডিসিয়াল স্ট্যাম্প এই মর্মে একটি বন্ড সম্পাদন করতে হবে যে, যদি তিনি শিক্ষানবিসিকালে অথবা শিক্ষানবিসিকাল উত্তীর্ণ হবার ০৩ (তিন) বৎসরের মধ্যে চাকুরীতে ইস্তফা দেন তা হলে শিক্ষানবিসিকালে তাকে প্রদত্ত বেতন-ভাতাদি তিনি ফেরৎ দিতে বাধ্য থাকবেন;
- (চ) নিয়োগপ্রাপ্ত ব্যক্তি যদি তাঁর ইস্তফাপত্র গৃহীত হবার পূর্বে অনুচ্ছেদ (৫) মোতাবেক সরকারের প্রাপ্য অর্থ ফেরত না দিয়ে কর্তব্যে অনুপস্থিত থাকেন তাহলে উপ-অনুচ্ছেদ (৫) অনুযায়ী তাঁর নিকট প্রাপ্য সুদময় অর্থ বিধান অনুসারে আদায়যোগ্য হবে;
- (ছ) এই নিয়োগপত্র আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের সহায়ক কর্মকর্তা/কর্মচারী নিয়োগ বিধিমালা, ২০১৪ এর বিধি ৪(২) মোতাবেক গঠিত বাছাই কমিটি কর্তৃক প্রদত্ত ফলাফল ও সুপারিশ অনুসারে প্রদান করা হয়েছে।
- (জ) নিয়োগপ্রাপ্ত ব্যক্তি যদি কোন বিদেশী নাগরিককে বিবাহ করেন অথবা বিবাহ করতে প্রতিশ্রুতিবদ্ধ হন তা হলে তার এই নিয়োগ বাতিল বলে গণ্য হবে;
- (ঝ) শিক্ষানবিস 'লাইব্রেরীয়ান' এর চাকুরী সংক্রান্ত অন্যান্য বিষয়ে সরকারি কর্মচারী (শৃঙ্খলা ও আপীল) বিধিমালা, ১৯৮৫ ও সরকারি কর্মচারী (আচরণ) বিধিমালা, ১৯৭৯ এবং সরকারের চতুর্থ শ্রেণীর কর্মচারীগণের ক্ষেত্রে প্রযোজ্য নিয়মাবলী অনুসরণ করা হবে;
- (ঞ) কোন শিক্ষানবিসকে চাকুরীতে স্থায়ী করা হলে পেনশন, অর্জিত ছুটি ও অন্যান্য বিষয়ে শিক্ষানবিসি মেয়াদ তার মোট চাকুরীকালের অন্তর্ভুক্ত হবে;
- (ট) এই নিয়োগপত্রে সুনির্দিষ্টভাবে বর্ণিত হয়নি এরূপ ক্ষেত্রে তাঁর চাকুরীর শর্তাদি নিয়োগকারী কর্তৃপক্ষ কর্তৃক সময় সময় প্রণীতব্য আইন, আদেশ ও বিধি-বিধান দ্বারা নিয়ন্ত্রিত হবে এবং
- (ঠ) চাকুরীতে যোগদানের জন্য তিনি কোন ভ্রমণ ভাতা/দৈনিক ভাতা প্রাপ্য হবেন না।

3Z যদি উপরের शर्तबली आपनार निकट ग्रहणयोग्य হয় তাহলে আপনি আগামী ২০/০১/২০১৫খ্রিঃ তারিখ পূর্বাঙ্কে নিম্নস্বাক্ষরকারীর निकट যোগদান করবেন। নির্ধারিত তারিখে চাকুরীতে যোগদান না করলে আপনি চাকুরীতে যোগদান করতে সম্মত হননি মর্মে এই নিয়োগ পত্র বাতিল বলে গণ্য হবে।

(মোঃ মোস্তাফিজুর রহমান)

রেজিস্ট্রার

আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল, ঢাকা।

ফোনঃ ৯৫১৪০০৩ ফ্যাক্সঃ ৯৫১৪০০৯

We also noticed that other appointment letters also issued by the Authority concerned under similar terms and condition. We have also perused the আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের সহায়ক কর্মকর্তা/কর্মচারী নিয়োগ বিধিমালা, ২০১৪, wherefrom it is transpires that the petitioners have accrued specific legal rights under Rule 6(3)(Ka) of আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪, as they were appointed as per the said *Bidhimala*. Thus, the petitioners have legitimate expectation to be regularized on permanent basis after the completion of their 02(two) year probation period and as such, the respondents are under legal obligation to regularize the services of the petitioners on permanent basis. We also noticed that the Registrar of International Crime Tribunal, Dhaka vide Memo dated 12.07.2018 and 30.10.2018 requested the respondent No.1, Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs to confirm the service of the petitioners in ICT of Bangladesh following the provision of Rules 6(1)(Ka) and Rule 6(1)(Kha) of the আন্তর্জাতিক অপরাধ ট্রাইব্যুনাল (সহায়ক কর্মকর্তা ও কর্মচারী) নিয়োগ বিধিমালা, ২০১৪ and the office of the respondent No.1 vide Memo dated 21.04.2019 and 23.07.2019 requested the Secretary of the Ministry of Public Administration and Ministry of Finance to take necessary steps and consider the issue of regularization/confirmation of

services of the petitioners in ICT of Bangladesh, but the respondents did not pay any heed to it.

We also noticed that in the meantime, the Investigating Agency of the ICT of Bangladesh identified more than 15,000 (fifteen thousand) of accused relating to genocide and it is also a political commitment of Bangladesh that the War Criminals of 1971 should be punished, otherwise, the identity of Bangladesh as a Nation will suffer a lot. The Ministry of Law and Parliamentary Affairs, the respondent No,1 the administrative ministry concerning ICT of Bangladesh and ICT itself time and again requested that the Ministry of Public Administration and the Ministry of Finance to regularize the petitioners, but both the Ministries failed to take necessary steps as per provision of আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের সহায়ক কর্মকর্তা/কর্মচারী নিয়োগ বিধিমালা, ২০১৪. However, some people of Bangladesh who corroborated with the Pakistani's in our Great Liberation War are always tried to frustrate the judicial activities of the ICT of Bangladesh and the respondents are sitting idly without regularizing the employees of ICT of Bangladesh, which will support the purpose of those who opposes the judicial activities of ICT of Bangladesh.

Considering these aspect of the case and the submission of the learned Advocate for the petitioners and the learned Deputy Attorney General, we are of the view that the Rule have got much merit to succeed and the respondents should be directed to regularize/confirm the petitioners as per provision of আন্তর্জাতিক অপরাধ ট্রাইব্যুনালের সহায়ক কর্মকর্তা/কর্মচারী নিয়োগ বিধিমালা, ২০১৪.

Accordingly, the Rule is disposed of with direction. The respondents are directed to regularize into the designated services of the petitioners in International Crimes Tribunal, Bangladesh on permanent basis with arrear salary and all other service benefits, if any, from the date of their entitlements within 03(three) months from the date of receipt of this order, in accordance with law.

There will be no order as to cost.

Office is directed to communicate the judgment and order at once.

Mohammad Showkat Ali Chowdhury, J:

I agree.