

GAHC010004122008



2024:GAU-AS:6178

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

WP(C) 4431/2008

SUJIT KUMAR SINGHA AND ORS.

S/O KRISHNA KUMAR SINGHA POST HOLDING AS 'KHALASI' GRADE-IV,
SILCHAR SUB DIVN IRRIGATION, SILCHAR CACHAR, RESIDENTIAL
ADDRESS - VIVEKANANDA ROAD, P.O. TARAPUR, P.S. SILCHAR-3, DIST
CACHAR, ASSAM

2: MD. NIZAM UDDIN LASKAR

S/O-LATE BASARAT ALI LASKAR POST HOLDING AS "KHALASI"
GRADE-IV SILCHAR WEST SUB-DIVISION IRRIGATION BORJATRAPUR
R/O-ADDRESS-VILL and P.O.-GANIR GARAM P.S.-KATIGORAH DIST-
CACHAR
ASSAM.

3: MD. ABUL HUSSAIN LASKAR

S/O LATE M.ALI LASKAR POST HOLDING AS "KHALASI" GRADE-IV
SILCHAR SOUTH SUB-DIVISION
IRRIGATION KABUGANJ RESIDENTIAL ADDRESS-VILL and P.O.-
DHANEHARI P.S.- SONAI DIST-CACHAR
ASSAM.

4: MD. ABDUL KHALIQUE MAZUMDER

S/O-LATE MAHAMMAD UDDIN MAZUMDER
POST HOLDING AS "CHOWKIDER" SILCHAR SUB-DIVISION IRRIGATION
SILCHAR

RESIDENTIAL ADDRESS- VILL and P.O.-BADRIPAR P.S.-SILCHAR

DIST-CACHAR

ASSAM.

5: SRI KANTA PRASAD ROY

POST HOLDING AS "CHOWKIDER"

SILCHAR SOUTH SUB-DIVISION IRRIGATION

KABUGANJ

RESIDENTIAL ADDRESS- VILL and P.O.-KAJIDAHAR

PART-III

P.S. -SONAI

DIST-CACHAR

ASSAM.

6: MD. SAHAJAN MAZUMDER

S/O-MD.M.ALI MAZUMDER POST HOLDING AS "HELPER

SILCHAR SOUTH SUB-DIVISION IRRIGATION

KABUGANJ. RESIDENTIAL ADDRESS- VILL. and P.O.-SONABARI GHAT-I

DIST-CACHAR

ASSAM

..... **Petitioners**

VERSUS

THE STATE OF ASSAM AND ORS

REP. BY ITS COMMISSIONER AND SECY. TO THE GOVT.OF ASSAM,

IRRIGATION DEPTT, DISPUR GHY-6

2: THE SECRETARY

TO THE GOVT. OFF ASSAM

IRRIGATION DEPARTMENT

DISPUR

GUWAHATI-6.

3:THE SECRETARY

TO THE GOVERNMENT OF ASSAM

FINANCE DEPARTMENT

DISPUR

GUWAHATI-6.

4:THE CHIEF ENGINEER

DEPARTMENT OF IRRIGATION

GUWAHATI

ASSAM.

5:THE SUPERINTENDING ENGINEER

CACHAR CIRCLE IRRIGATION

SILCHAR.

6:THE EXECUTIVE ENGINEER

SILCHAR SUB-DIVISION

IRRIGATION

CACHAR

ASSAM

..... **Respondents**

With

WP(C) 1202/2013

BULU RAM ROY

S/O LT. SAKUR ROY R/O VILL- NAM KAMAIKHYA P.O. SILGHAT

P.S. KALIABOR DIST.NAGAON

ASSAM.

..... **Petitioner**

VERSUS

THE STATE OF ASSAM AND 4 ORS

REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM

DISPUR

GUWAHATI-6.

2:THE COMMISSIONER and SECRETARY

GOVT. OF ASSAM

PUBLIC WORKS DEPARTMENT

PWD

DISPUR

GHY.- 781006.

3:THE CHIEF ENGINEER

PUBLIC WORKS DEPARTMENT ROADS

CHANDMARI

GHY.- 3.

4:EXECUTIVE ENGINEER

PWD

KALIABOR RURAL ROAD DIVISION

JAKHALABANDA

DIST.- NAGAON

ASSAM.

5:THE PRINCIPAL SECRETARY

TO THE GOVERNMENT OF ASSAM

FINANCE DEPARTMENT

DISPUR

GHY.- 6.

.....respondents

with

WP(C) 4273/2016

MD. NAZIM UDDIN LASKAR

S/O LT. BASARAT ALI LASKAR

VILL. and P.O. GONIRGRAM PT.II

P.O. KATIGORAH

DIST- CACHAR

ASSAM

.....**Petitioner**

VERSUS

THE STATE OF ASSAM AND 5 ORS

REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM

IRRIGATION DEV. DEPTT.

DISPUR

GHY-6

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

FINANCE DEPTT.

DISPUR

GHY-6

3:THE CHIEF ENGINEER

IRRIGATION

CHANDMARI

GHY-1

4:THE SUPERINTENDING ENGINEER

CACHAR CIRCLE

IRRIGATION

P.O. SILCHAR

DIST- CACHAR

ASSAM

5:THE EXECUTIVE ENGINEER

SILCHAR DIVISION IRRIGATION

KANAKPUR

P.O. KANAKPUR

DIST- CACHAR

ASSAM

6:THE TREASURY OFFICER

SILCHAR

P.O. SILCHAR

DIST- CACHAR

ASSAM

.....respondents

With

WP(C) 1650/2013

SANATAN BARMAN

S/O LT. LANU BARMAN VILL- KADAMTALA P.O. and P.S. BARAMA

DIST.NALBARI

ASSAM.

.....Petitioner

VERSUS

THE STATE OF ASSAM AND 3 ORS

2:SECRETARY TO THE GOVT. OF ASSAM

RRIGATION DEPARTMENT

DISPUR

GUWAHATI-6.

3:THE CHIEF ENGINEER

IRRIGATION DEPARTMENT

CHANDMARI

GUWAHATI-3.

4:EXECUTIVE ENGINEER

NALBARI

DIVISION NALBARI

..... **Respondents**

With

WP(C) 7552/2013

SAHJAHAN MAZUMDER

S/O- LT. MOJOMIL ALI MAZUMDAR

VILL. and P.O.- SONABARIGHAT- I

DIST.- CACHAR

ASSAM.

.....**Petitioner**

VERSUS

THE STATE OF ASSAM AND 5 ORS

TO BE REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM

IRRIGATION DEPTT.

DISPUR

GHY- 6.

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

FINANCE DEPTT.

DISPUR

GHY- 6.

3:THE CHIEF ENGINEER

IRRIGATION

CHANDMARI

GHY- 1.

4:THE SUPERINTENDING ENGINEER

CACHAR CIRCLE

IRRIGATION

P.O.- SILCHAR

DIST.- CACHAR

ASSAM.

5:THE EXECUTIVE ENGINEER

SILCHAR DIVISION IRRIGATION

KANAKPUR

P.O.- KANAKPUR

DIST.- CACHAR

ASSAM.

6:THE TREASURY OFFICER

SILCHAR

P.O.- SILCHAR

DIST.- CACHAR

ASSAM

..... **Respondents**

BEFORE

HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioner

: Mr. M.U. Mahmud

: Mr. M. Dutta, Amicus Curie.

Advocate for the respondents : Mr. P. Nayak, SC, Finance Department, Mr. N. Upadhyay, SC, Irrigation Department and Mr. R. Dhar, SC, PWD.

Date of hearing : 21.05.2024

Dates of judgment : 25.06.2024

JUDGMENT & ORDER (CAV)

Heard Mr. M.U. Mahmud, learned counsel for the petitioners. Also heard Mr. M. Dutta, learned Amicus Curiae, Mr. P. Nayak, learned Standing counsel, Finance Department, Mr. N. Upadhyay, learned Standing counsel, Irrigation Department and Mr. R. Dhar, learned Standing counsel, Public Works Department, for the respondents.

2. As the issues involved in this bunch of writ petitions are identical, the writ petitions are heard and disposed of by this common judgment and order.

3. The grievance raised by the petitioners in WP(C) 4431/2008 is for a direction to release the regular salary and arrear salary of the petitioners from the month of June, 2006.

4. The writ petitioners, six in numbers, are working as Grade-IV employees in Silchar Sub-Division, Cachar in the Irrigation Department since 22.07.2005 i.e. from the date of regularization of their services without any interruption. Prior to their regularization, they were working as muster roll workers from 1987 to 1992. The State cabinet vide communication dated 22.07.2005 has decided to regularize the services of the work-charged/muster roll workers of different

Government Departments who were engaged prior to 01.04.1993 and are in continuous service without any interruption irrespective of their length of service.

5. Pursuant thereof, the Finance Department has concurred to the creation of 5892 numbers of different work-charged grade posts and 25069 numbers of different Grade-IV posts w.e.f. 22.07.2005 in the different Government Departments which was conveyed to all the departments of the State Government including the Irrigation Department, Govt. of Assam vide communication dated 22.08.2005. It is contended that the petitioners having been qualified to be appointed for the purpose of regularization of their services as they were working as muster roll workers duly engaged prior to 01.04.1993, the respondent authorities issued appointment orders to the petitioners on 06.10.2005 clearly mentioning the place of posting of the petitioners. It is stipulated in the appointment orders that the posts are personal to the incumbent concerned who are holding the post and will be abolished as soon as the concerned incumbent relinquished their post in any manner. On such appointment, the petitioners have joined against their respective posts and have been discharging their duties. The salaries of the petitioners were paid up to the month of May, 2006 and the salary of petitioner No.2 was paid up to May, 2008. During the payment of their salary their respective GPF amount were deposited in their respective GPF account. Thereafter, the respondent authority had failed to pay the salary to the petitioners without assigning any reason. Being aggrieved, the petitioners on several occasions approached the respondent authority for payment of their salary. But the respondent authority has failed to pay the salary to the petitioners. Hence, this petition.

6. In WP(C)7552/2013, challenge is made to the impugned order dated

16.06.2012 issued by the Principal Secretary to the Govt. of Assam, Finance Department, whereby, inter alia, it is provided that no more regularization of service of work-charged, muster roll workers or similarly placed workers can be undertaken by the State Government, even if such workers were engaged prior to 01.04.1993 and rendered continuous service without break, in view of the judgment and order passed by this Court pursuant to the judgment of Hon'ble Supreme Court in the case of **State of Karnataka vs. Uma Devi**, reported in **(2006) 4 SCC 1**. The petitioner prays for a direction to proceed with the Office Memorandum dated 27.07.2013 and for a direction for correction of the anomalies towards regularization of the service of the petitioner for the purpose of release of monthly salary of the petitioner. The petitioner was appointed as muster roll worker on 01.11.1986 in the Irrigation Department. His service was regularised on 06.10.2005. Suddenly, the respondent authorities stopped the salary of the petitioner since June, 2006. After several approaches, the petitioner was informed that unfortunately his regularisation was held to be irregular. Despite various representations for removing the anomaly, neither the anomaly has been removed nor monthly salary has been paid, although the petitioner is continuously rendering his service. The petitioner is also the petitioner No. 6 in WP(C) 4431/2008 herein above.

7. In WP(C) 4273/2016 grievance is for correction of the anomalies towards regularization of services of the petitioner for the purpose of release of monthly salary. The present petitioner is also the petitioner No. 2 in WP(C) 4431/2008 herein above.

8. In WP(C) 1650/2013, the grievance of the petitioner is for a direction to pay monthly salary of the petitioner from the Month of June, 2006. The petitioner entered the service as muster Roll worker on 01.06.1992 in the office

of the Executive Engineer, Irrigation Department, Nalbari. His service was regularised by the Executive Engineer, Nalbari Division. On 14.10.2005, the petitioner joined as helper in the Office of Executive Engineer, Nalbari. Suddenly, the respondent authorities stopped the salary of the petitioner since June, 2006. After several approaches, the petitioner was informed that unfortunately his name was dropped from creation list whereas his name was at serial No. 206 in the creation list of total 251 muster roll workers. Despite various representations for removing the anomaly, neither the anomaly has been removed nor monthly salary has been paid, although the petitioner is continuously rendering his service.

9. In WP(C) 1202/2013, challenge is made to the Office Memorandum dated 16.06.2012 issued by the Principal Secretary to the Government of Assam, Finance Department, whereby, it is, inter alia, provided that no more regularization of service of work-charged, muster roll workers or similarly placed workers can be undertaken by the State Government, even if such workers were engaged prior to 01.04.1993 and rendered continuous service without break in view of the judgment and order of this Court pursuant to the judgment of Hon'ble Supreme Court in the case of **State of Karnataka vs. Uma Devi**, reported in **(2006) 4 SCC 1**. Petitioner prays for a direction to the respondent authorities to regularize/adjust the petitioner in the sanctioned vacancies lying vacant under the PWD in view of the cabinet decision dated 22.07.2005.

10. The petitioner was appointed/engaged as casual employee/muster roll worker on 05.05.1992 in the Office of the Executive Engineer, PWD, Kaliabaror, Rural Road Division, Jakhlabanda, Nagaon, Assam. Since then, the petitioner has been discharging his duty continuously without any break till date and he is receiving the monthly salary as daily wage plus muster roll worker. Pursuant to

the cabinet decision, a list of muster roll worker/casual employee engaged prior to 01.04.1993 was prepared for regularization, which shows that the petitioner was engaged as muster roll worker prior to 01.04.1993 and he has served continuously without any break. Further the name of the petitioner was left out from the list of regularization dated 22.07.2005.

11. It is contended that the State respondents have regularized the services of more than 30,000 similarly situated muster roll workers/work-charged employees on the basis of cabinet decision dated 22.07.2005 even after the judgment and order passed by the Full Bench of this Court in the case of Jitendra Kalita. It is contended that although Hon'ble court restricted the regularization of the service of any employee working in different department under the Office Memorandum dated 20.04.1995 expressing the view that the same is not a valid policy in the case of Jitendra Kalita, the Hon'ble Court did not express any opinion with regard to the validity of the cabinet decision dated 22.07.2005 or its implementation.

12. The petitioner contended that similarly situated muster roll workers of the same department have preferred writ petition being WP(C) 2919/2007 praying for inclusion of the name in the list prepared for regularization dated 24.10.2005 as the name of the petitioner was dropped in the said list, this Court vide order dated 26.05.2009 allowed the writ petition with a direction to the respondent authority to do the needful by incorporating the name of these petitioners in the list of regularization with a further direction to grant all consequential benefits and therefore, the petitioner contended that the case of the petitioner is squarely covered with the aforesaid judgment.

13. Learned counsel for the petitioner referring to the various orders of this Court, contended that in a similarly situated case, this Court has directed for

consideration for regularization whenever it is found that the petitioners were not being included in terms of the policy of the State. It is also the case of the petitioner that though the Hon'ble High Court has expressed its opinion that no regularization can be directed in view of the judgment of the Hon'ble Supreme Court in case of **Uma Devi** (Supra), no ban has been imposed for adopting a policy decision for regularization of the service of the muster roll workers/casual employees of the State. Therefore, the impugned Office Memorandum dated 16.06.2012 is liable to be set aside and a direction may be given to the respondent authority to adjust the service of the petitioner in the sanctioned vacant post in the PWD.

14. Mr. M.U. Mahmud, learned counsel for the petitioners in WP(C) 4413/2008, submits that the petitioners have been working as muster roll workers prior to 01.04.1993 without any interruption and thereafter their services have been duly regularized w.e.f. 22.07.2005 after proper verification of the documents. The petitioners are sincere and regularly rendering their services since the inception and their services are being utilized without payment of salary arbitrarily, which is illegal.

15. Mr. M.U. Mahmud, learned counsel submits that due to non-payment of their salary they have been facing immense financial hardship. Therefore, he submits that since the services of the petitioners have been regularized and is working continuously in the said post, the petitioners are entitled to be paid the regular salary and the arrear salary and as such he submits that a direction may be issued for payment of regular salary and arrear salary w.e.f. June, 2006 and June, 2008 to petitioner No. 2.

16. Mr. M.U. Mahmud, learned counsel, while refuting the counter affidavit filed on behalf of the State respondents, has relied on the judgement of the

Hon'ble Supreme court wherein it has been observed that there may be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. Heavily relying on the above dictum of Hon'ble Supreme Court, he submits that since the services of the 6 (six) petitioners were regularised in terms of the policy of the State following the Cabinet Decision, without there being any cancellation order of regularisation and communication to the petitioners, the Respondent authorities cannot supplement the reasons by way of affidavit.

17. In support of his submissions, Mr. Mahmud, has placed reliance on the following judgements:-

1. **State of Punjab -vs- Bandeep Singh and Ors.**, reported in **(2016) 1 SCC 724**.
2. **Dipak Babaria and another -vs- State of Gujarat and Ors**, reported in **(2014) 3 SCC 502**.
3. **R.S. Garg -vs- U.P. and Ors** reported in **(2006) SCC 6 430**.

18. Mr. P. Nayak, learned Standing counsel, Finance Department, for the respondents, has submitted that in pursuance of the cabinet decision dated 22.07.2005, Finance Department vide letter No.FEC(II)1/2005/66 dated

22.08.2005 concurred to the creation of 5,892 numbers of different work-charged grade posts and 25,069 numbers of different Grade-IV posts for the purpose of regularization of services of equal numbers of eligible work-charged and muster roll workers of 9 (nine) Departments of Government of Assam including 559 numbers of work-charged workers and 7,921 numbers of muster roll workers of Irrigation Department, on the basis of proposal received from the Departments. In the Finance Department's letter dated 22.08.2005, it was clearly mentioned that the posts are personal to the respective work-charged and muster roll workers and as soon as the posts are relinquished by the respective workers, the posts will get abolished.

19. He submits that in pursuance of the Finance Department's letter dated 22.08.2005, the Irrigation Department vide letter No.IGN(E).104/2003/198 dated 03.10.2005 issued sanction, creating the personal posts. It was also mentioned in the above letter dated 03.10.2005 issued by the Irrigation Department that these posts shall not be filled up by any person, other than the respective work-charge/muster roll workers for whom the posts were created.

20. Mr. P. Nayak, learned standing counsel, submits that it however, came to the notice of the Finance Department that the Executive Engineer, Silchar Division (Irrigation) regularized services of some muster roll workers of the division irregularly and without authority. A report on the reported irregularity was called for and after going through the report from the Executive Engineer, Silchar Division (Irrigation), received through the Deputy Commissioner, Cachar, vide letter No.CDG.1/2007/162, dated 16.02.2008, Finance Department found that the Executive Engineer, Silchar Division (Irrigation) regularized services of 6 (six) petitioners irregularly, against the personal posts created for other persons, in violation of the instructions contained in Finance Department's letter dated

22.08.2005 and Irrigation Department's letter dated 03.10.2005. Finance Department, therefore, cancelled the regularization of services of the 6 petitioners vide letter No.FEC(II)60/2007/88 dated 17.04.2008 and asked the Secretary to the Government of Assam, Irrigation Department to take necessary disciplinary action against the concerned Executive Engineer, Silchar Division (Irrigation) and other officers/staff involved in the aforesaid irregularity vide letter No.FEC(II)60/2007/89 dated 17.04.2008. The Treasury Officer, Silchar, however, has, been advised to allow wages to six muster roll workers (the petitioners in WP(C) 4431/2008), if found otherwise entitled vide Memo No.FEC(II)60/2007/88-A dated 17.04.2008.

21. He submits that subsequently, the Irrigation Department vide letter No.IGN(E)88/2008/84 dated 07.12.2009 informed the Finance Department that six numbers of personal posts against which the Executive Engineer, Silchar Division(I), Silchar had unauthorizedly regularized six numbers of muster roll workers has been abolished vide Irrigation Department's Office Order No.IGN(E)88/2008/83, dated 07.12.2009 and the order of regularization of the incumbents against the said posts has also been cancelled by the same order. It was further informed that disciplinary proceedings against the Executive Engineer concerned and other officers and staff, involved in the unauthorized regularization, has already been initiated by the Irrigation Department.

22. It is stated that the proposal for regularization of services of these six petitioners has also been submitted by the Irrigation Department vide their endorsement dated 26.12.2008 in their file No.IGN(E).293/06 along with the proposal for regularization of services of other left out work-charged/muster roll workers engaged by the department prior to 01.04.1993 and have been rendering uninterrupted service since their joining. On scrutiny, it was however

found that in respect of one of the petitioner, viz. Md. Nizam Uddin Laskar, alias Nazimuddin Laskar, required supporting document had not been furnished and hence the Irrigation Department was requested to furnish the same.

23. It is also submitted by the learned counsel for the respondents that no decision regarding regularization of services of left out work-charged, muster roll and similar other workers could be taken because of the restrictions on further regularization imposed by the Hon'ble Gauhati High Court vide its order dated 17.05.2006 passed in WP(C) No.6222/2003 and 173 others (Jitendra Kalita and others –vs- State of Assam & Ors.) reported in 2006(2) GLT 654 and order dated 27.03.2012 passed by the Hon'ble Division Bench in MC No.597/2012 filed in WP(C) (Taken Up) No.24/2007, filed by the State seeking leave to implement its policy of regularization. Lastly, the Hon'ble Division Bench of Gauhati High Court in its judgment and order dated 08.06.2017 passed in WA No.45/2014 (State of Assam vs. Upen Das & 835 others), has held that muster roll workers, work-charged workers and casual workers are not entitled for regularization of their services with consequential benefits, such as pension etc.

24. He submits that the regularization of the services of the petitioners, being effected to by the Executive Engineer, Silchar Division (Irrigation), irregularly and without authority, had been cancelled by the Finance Department vide its letter dated 17.04.2008 and hence they are no longer Government employees to be eligible to salary. The Treasury Officer, Silchar has, however, been requested to allow wages to the petitioners, if otherwise eligible. Further regularization of their services of other petitioners is also not possible in view of the Division Bench judgment dated 08.06.2017 passed in WA No.45/2015 (State of Assam vs. Upen Das & 835 others).

25. Mr. P. Nayak, learned counsel, has relied upon the following judgments:-

1. **Jitendra Kalita and Ors, -vs- State of Assam and Ors**, reported in **2006 (2) GLT 654**.

2. **State of Karnataka and Ors., -vs- M.L. Kesari and Ors**, reported in **(2010) 9 SCC 247**.

26. Due consideration has been extended to the submissions of the learned counsel for the parties and have examined the materials on record.

27. In WP(C) 4431/2008, WP(C) 7552/2013 and WP(C) 4273/2016, the petitioner raises the grievance for payment of regular salary and arrear salary to the petitioner on the ground that the services of the petitioners as muster roll workers/casual employees have been regularized pursuant to the cabinet decision dated 22.07.2005. The writ petitioners in WP(C) 4273/2016 and in WP(C) 7552/2013, have subsequently filed the writ petitions contending that their services were regularized. However, in view of the anomalies in the appointment/ regularization, they have sought for rectification of the same by claiming that their services have been regularized pursuant to the cabinet decision, a policy decision of the State.

28. In the other two writ petitions, the challenge is made to the Office Memorandum dated 16.02.2012, whereby the regularization of muster roll workers/casual employees in the Government department is discontinued in view of the judgment of this Court pursuant to the Hon'ble Supreme Court in the case of **Uma Devi** (supra), on the ground that this Court in similar cases has directed for regularization and there is no bar or prohibition by the Court for implementation of the cabinet decision, a policy decision of the State.

29. Uncontrovertibly, the petitioners were appointed/engaged as work-charged/muster roll workers in the respective Government Departments and

were serving since before 1993.

30. The State cabinet vide dated 22.07.2005 has decided to regularize the services of the work-charged & muster roll workers of different Government Departments who were engaged prior to 01.04.1993 and are in continuous service without any interruption irrespective of their length of service.

31. Pursuant thereof, the Finance Department has concurred to the creation of 5892 numbers of different work-charged grade post and 25069 numbers of different Grade-IV posts w.e.f. 22.07.2005 in the different Government Departments which was conveyed to all the Departments of the State Government, vide communication dated 22.08.2005.

32. On consideration of the matters, it appears that the appointment of the petitioners in WP(C) 4431/2008, WP(C) 7552/2013 and WP(C) 4273/2016, were issued by the Executive Engineer in the Division level, but without there being any approval from the Government in terms of the cabinet decision and consequent policy adopted by the State. It is seen that the policy of the State requires regularization of work-charged/muster roll workers by creating post and a certain parameters has to be followed for such regularization. However, in the instant case in above 3 (three) writ petitions, the parameters for regularization have not been followed and realising such anomalies, the subsequent writ petitions have been filed by the petitioners for correction of anomaly.

33. On such regularisation/appointments, the petitioners have joined against their respective posts and have been discharging their duties. The salaries of the petitioners were paid up to the month of May, 2006 and the salary of petitioner No.2 was paid up to May, 2008. Their respective GPF amount were deposited in their respective GPF account.

34. The regularization of the services of the petitioners, being effected to by the Executive Engineer, Silchar Division (Irrigation), irregularly and without authority, had been cancelled by the Finance Department vide its letter dated 17.04.2008. However, it is not discernable from records that such cancellation was communicated to the petitioners.

35. Regard being had to the challenge made in WP(C)7552/2013 and WP(C) 1202/2013 to the impugned order dated 16.06.2012, no decision regarding regularization of services of left out work-charged, muster roll and similar other workers could be taken because of the restrictions on further regularization imposed by the Hon'ble Gauhati High Court vide its order dated 17.05.2006 passed in WP(C) No.6222/2003 and 173 others (**Jitendra Kalita and others vs. State of Assam & Ors.**) reported in **2006 (2) GLT 654** and order dated 27.03.2012 passed in WP(C) (Taken Up) No.24/2007, filed by the State seeking leave to implement its policy of regularization. This Court vide judgment and order dated 08.06.2017 passed in WA No.45/2014 (**State of Assam vs. Upen Das & 835 others**), where the issue for examination was as to whether the respondents who are working as muster roll/work charged employees prior to 01.04.1993 can be considered for regularization in the light of exception carved out in paragraph 53 of the decision in **Uma Devi (3) case**, has held that muster roll workers, work-charged workers and casual workers are not entitled for regularization of their services with consequential benefits, such as pension etc. Therefore, impugned order dated 16.06.2012, banning further regularisation of services of work-charged, muster roll workers and similar other workers cannot be said to be unsustainable in view of the dictum of the Court. Thus, no specific relief can be given to the petitioners. However, since the grievance of the petitioners has arisen before the passing of the impugned order, in my

considered view, same can be relooked at by the respondent authorities in the interest of justice.

36. A reference may be made to the case of **M.L. Kesari** (Supra), wherein the Hon'ble Supreme court has held, which is reproduced herein under:-

“6. This Court in Umadevi (3) further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below:-

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128], R.N. Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] 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 regularization 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 regularize 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.

7. It is evident from the above that there is an exception to the general principles against 'regularization' 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.

8. Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must

be set in motion within six months from the date of its decision (rendered on 10.4.2006).

9. The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

11. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.”

37. In the case of **Secretary, State of Karnataka and Ors, -vs- Umadevi (3) and ors**, reported in **(2006) 4 SCC 1**, the Hon'ble Supreme court has held, which is

reproduced herein under:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in [S.V. NARAYANAPPA](#) (supra), [R.N. NANJUNDAPPA](#) (supra), and [B.N. NAGARAJAN](#) (supra), and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 regularize 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 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 regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents”

38. The case laws relied on by Mr. M.U. Mahmud, learned counsel are also referred herein below:- In the case of **Bandeep Singh** (Supra), the Hon’ble Supreme court has held, which is reproduced herein under:-

“33. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled [Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi](#) [1978] 2 SCR 272, of which the following paragraph deserves extraction:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We

may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* [1952] 1 SCR 135: Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older”.

39. In **R.S. Garg** (Supra), it is held, which is quoted herein below:-

“33. A discretionary power as is well known cannot be exercised in an arbitrary manner. It is necessary to emphasize that the State did not proceed on the basis that the amendment to the Rules was not necessary. The action of a statutory authority, as is well known, must be judged on the basis of the norms set up by it and on the basis of the reasons assigned therefor. The same cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. {See [Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.](#) [AIR 1978 SC 851, *Commissioner of Police vs. Gordhandas Bhanji* [AIR 1952 SC 16] and also [Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chenai](#) [(2005) 7 SCC 627]}”

40. On the perusal of the cases cited by the learned counsel for the petitioners, I find no relevancy to the facts of the present case and therefore, have no application.

41. Reverting back to present case, as noted earlier, the petitioners were appointed as work charged/muster roll workers in the different Departments of the State Government before 1993. Pursuant to policy decision of the State for regularisation of work charged/ muster roll workers in all the Departments of the State Government, the petitioners in WP(C) 4431/2008, WP(C) 7552/2013 and WP(C) 4273/2016 were irregularly regularised by the Executive Engineer, Irrigation Department, which was subsequently cancelled by Finance Department. The policy of the State requires certain parameters to be followed

in the process of regularisation. It appears that such parameters were not followed and the authority not authorised had regularised the services of the above petitioners. The petitioners have joined and worked continuously thereafter. It is not discernable from the records that the cancellation orders were communicated to the petitioners.

42. In WP(C) 7552/2013 and WP(C) 1202/2013, the petitioners were dropped from the list of workers for regularisation sought be done in terms of the scheme/Policy of the State. The impugned order dated 16.06.2012, has been issued as the decision regarding regularization of services of left out work-charged, muster roll and similar other workers could be taken in view of the dictum of the Court in **Jitendra Kalita** (Supra) followed by judgment and order dated 08.06.2017 passed in WA No.45/2014 (**State of Assam vs. Upen Das & 835 others**), where the issue for examination was as to whether the respondents who are working as muster roll/work charged employees prior to 01.04.1993 can be considered for regularization in the light of exception carved out in paragraph 53 of the decision in **Uma Devi (3) case**, wherein it has held that muster roll workers, work-charged workers and casual workers are not entitled for regularization of their services with consequential benefits, such as pension etc. Therefore, impugned order dated 16.06.2012, banning further regularisation of services of work-charged/ muster roll and similar other workers cannot be said to be unsustainable in view of the dictum of the Court. Thus, no particular relief could be granted at this distant point of time. However, since the grievance of the petitioners has arisen before the passing of the impugned order, in my considered view, same can be relooked at by the respondent authorities in the interest of justice.

43. In view of what has been discussed herein above, I am of the considered

view that it would be suffice to direct the respondent authorities to consider the case of the petitioners taking into consideration of the fact that the grievances of the petitioners have accrued prior to the impugned order dated 16.06.2012 and dictum of the Court. Accordingly, the respondent authorities are directed to consider the case of the petitioners as the petitioners were entitled to be regularised in terms of the policy of the State at the relevant point of time and considering that services of some of the petitioners were irregularly regularised and others were dropped from the list of regularisation at the relevant time within a period not later than 3 months from the date of receipt of this order.

44. This court records its appreciation for the invaluable assistance rendered in the matter by Mr. M. Dutta, learned counsel as Amicus Curiae

45. The writ petitions are disposed of in terms above. No order as to costs.

JUDGE

Comparing Assistant