

GAHC010254142023



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

**Case No. : WP(C)/6582/2023**

NURUL HAQUE BARBHUIYA  
S/O- LATE AMIR ALI BARBHUIYA,  
VILLAGE- BAWARGHAT PART-I,  
P.O.- BAWARGHAT BAZAR,  
P.S. AND DISTRICT- HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS  
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVT. OF ASSAM,  
P.H.E. DEPARTMENT, DISPUR,  
GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
FINANCE DEPARTMENT  
DISPUR  
GUWAHATI- 781006.

3:THE CHIEF ENGINEER  
P.H.E DEPARTMENT  
HENGRABARI  
ASSAM.

4:THE ACCOUNTANT GENERAL ( A AND E) ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI- 781029.

5:THE EXECUTIVE ENGINEER  
HAILAKANDI DIVISION  
ASSAM.

6:TREASURY OFFICER  
HAILAKANDI  
ASSAM

**Advocate for the Petitioner : MR. A M BARBUIYA**

**Advocate for the Respondent : SC, P H E**

Linked Case : WP(C)/5418/2021

SUNIT BHUSAN MAZUMDER  
S/O LATE UPENDRA MAZUMDER  
PUMP OPERATOR (RETIRED ON 30.06.2020) UNDER PHE DIVISION  
HAILAKANDI  
R/O VILL-BISHNUPUR  
P.O.-ANILGARH  
DIST-KARIMGANJ  
ASSAM  
PIN-788156

VERSUS

THE STATE OF ASSAM AND 6 ORS  
COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
DEPARTMENT OF PUBLIC HEALTH ENGINEERING  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

2:THE CHIEF ENGINEER  
PUBLIC HEALTH ENGINEERING  
ASSAM  
HENGRAVARI  
GUWAHATI  
ASSAM  
PIN-781036  
3:THE ADDITIONAL CHIEF ENGINEER  
PHE  
BARAK VALLEY ZONE

SILCHAR  
GUNGUR  
DIST-CACHAR  
ASSAM  
PIN-788014  
4:THE SUPERINTENDENT ENGINEER  
PHE  
HAILAKANDI CIRCLE  
DIST-CACHAR  
ASSAM  
5:THE EXECUTIVE ENGINEER  
PUBLIC HEALTH ENGINEERING  
HAILAKANDI PUBLIC HEALTH ENGINEERING DIVISION  
HAILAKANDI  
DIST-HAILAKANDI  
ASSAM  
6:THE ACCOUNTANT GENERAL  
ASSAM  
MAIDAMGOAN  
BELTOLA  
GUWAHATI  
ASSAM  
PIN-781029  
7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

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Advocate for : MR. A K DUTTA  
Advocate for : SC  
P H E appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/5339/2021

RANJAN BHATTACHARJEE  
S/O LATE JOGESW CHANDRA BHATTACHARJEE  
PUMP OPERATOR (RETIRED ON 31.01.2018) UNDER PHE DIVISION  
HAILAKANDI  
R/O WARD NO. 8  
P.O.  
P.S. AND DIST- HAILAKANDI  
ASSAM  
PIN-788152

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
DEPARTMENT OF PUBLIC HEALTH ENGINEERING  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

2:THE CHIEF ENGINEER  
PUBLIC HEALTH ENGINEERING  
ASSAM  
HENGRAVARI  
GUWAHATI  
ASSAM  
PIN-781036

3:THE ADDITIONAL CHIEF ENGINEER  
PHE  
BARAK VALLEY ZONE  
SILCHAR  
GUNGUR  
DIST- CACHAR  
ASSAM  
PIN-788014

4:THE SUPERINTENDENT ENGINEER  
PHE  
HAILAKANDI CIRCLE  
DIST-CACHAR  
ASSAM  
5:THE EXECUTIVE ENGINEER  
PUBLIC HEALTH ENGINEERING  
HAILAKANDI PUBLIC HEALTH ENGINEERING DIVISION  
HAILAKANDI  
DIST- HAILKANDI  
ASSAM

6:THE ACCOUNTANT GENERAL  
ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI  
ASSAM  
PIN-781029

7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

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Advocate for : MR. A K DUTTA  
Advocate for : SC  
P H E appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/5293/2021

SAMIRAN DAS  
S/O LATE KUNJA MOHAN DAS  
PUMP OPERATOR (RETIRED ON 31.12.2017) UNDER PHE DIVISION  
HAILAKANDI  
R/O B.T. ROAD  
POLALA  
DIST. HAILAKANDI  
ASSAM  
PIN 788163

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF  
ASSAM  
DEPTT. OF PUBLIC HEALTH ENGINEERING  
ASSAM OIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN 781006

2:THE CHIEF ENGINEER

PUBLIC HEALTH ENGINEERING  
ASSAM  
HENGARABARI  
GUWAHATI  
ASSAM  
PIN 781036

3:THE ADDL. CHIEF ENGINEER

PHE  
BARAK VALLEY ZONE  
SILCHAR  
GUNGUR  
DIST. CACHAR  
ASSAM  
PIN 788014  
4:THE SUPERINTENDENT ENGINEER

PHE  
HAILAKANDI CIRCLE  
DIST. CACHAR  
ASSAM.  
5:THE EXECUTIVE ENGINEER

PUBLIC HEATH ENGINEERING  
HAILAKANDI PUBLIC HEALTH ENGINEERING DIVISION  
HAILAKANDI  
DIST. HAILAKANDI  
ASSAM.  
6:THE ACCOUNTANT GENERA

ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI  
ASSAM  
PIN781029  
7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

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Advocate for : MR. A K DUTTA  
Advocate for : SC  
P H E appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/6315/2022

DHIRENDRA ROY @ DHIRENDRA KUMAR ROY  
S/O- LT. RAJENDRA ROY  
PUMP OPERATOR (RETIRED ON 30.11.2021) UNDER PHE DIVISION  
HAILAKANDI

R/O- VILL- NIZ VERNERPUR P.O. VERNERPUR  
P.S. LALA  
DIST.- HAILAKANDI  
ASSAM  
PIN- 788168

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM  
DEPTT. OF PUBLIC HEALTH ENGINEERING  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GHY  
ASSAM  
PIN- 781006

2:THE CHIEF ENGINEER  
PUBLIC HEALTH ENGINEERING  
ASSAM  
HENGARABARI  
GHY  
ASSAM  
PIN- 781036

3:THE ADDL. CHIEF ENGINEER  
PHE  
BARAK VALLEY ZONE  
SILCHAR  
GUNGUR  
DIST.- CACHAR  
ASSAM  
PIN- 788014

4:THE SUPERINTENDENT ENGINEER  
PHE  
HAILAKANDI CIRCLE  
DIST.- CACHAR  
ASSAM

5:THE EXECUTIVE ENGINEER  
PUBLIC HEALTH ENGINEERING  
HAILAKANDI PUBLIC HEALTH ENGINEERING DIVISION  
HAILAKANDI  
DIST.- HAILAKANDI

ASSAM  
6:THE ACCOUNTANT GENERAL  
ASSAM  
MAIDAMGAON  
BELTOLA

GHY  
ASSAM  
PIN- 781029  
7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN- 781006.

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Advocate for : MR. A K DUTTA  
Advocate for : SC  
P H E appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/1501/2023

BAHAR UDDIN MAZUMDER  
S/O LATE HASAN RAJA MAZUMDER  
VILL-DAKHIN SONAPUR  
P.O.-SAMARIKONA  
P.S. AND DIST-HAILAKANDI  
PIN-788155

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM  
PUBLIC HEALTH ENGINEERING DEPARTMENT  
DISPUR  
GUWAHATI-6

2:THE CHIEF ENGINEER  
PUBLIC HEALTH ENGINEER  
ASSAM  
HENGRAVARI  
GUWAHATI  
PIN-781036  
3:THE ADDITIONAL CHIEF ENGINEER (PHE)  
BORAK VALLEY ZONE  
SILCHAR  
GHUNGUR  
DIST-CACHAR  
ASSAM

PIN-788014  
4:THE EXECUTIVE ENGINEER (PHE)  
HILAKANDI PUBLIC HEALTH ENGINEERING DIVISIONM  
HILAKANDI  
PIN-788155  
5:THE ACCOUNTANT GENERAL  
ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI-PIN-781028

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Advocate for : MR. N H MAZARBHUIYAN  
Advocate for : SC  
P H E appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/2563/2023

APURBA CHAKRABORTY  
S/O LATE SACHINDRA CHANDRA CHAKRABORTY  
RETIRED ON 31.01.2023 AS KHALASI (WORK CHARGE) FROM THE OFFICE  
OF THE EXECUTIVE ENGINEER  
CACHAR IVN. (W.R) DIVISION  
BADARPUR  
R/O ITKHOLA ROAD  
SILCHAR  
DIST- CACHAR  
ASSAM  
PIN - 788001.

VERSUS

THE STATE OF ASSAM AND 6 ORA.  
REPRESENTED BY THE SECRETARY  
TO THE GOVT. OF ASSAM  
DEPARTMENT OF WATER RESOURCE  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM PIN - 781006.

2:THE CHIEF ENGINEER  
ASSAM  
WATER RESOURCES DEPARTMENT  
BASISTHA  
GUWAHATI

ASSAM  
PIN - 781029  
3:THE ADDITIONAL CHIEF ENGINEER

CACHAR AND HILLS WATER RESOURCE DEPARTMENT  
SILCHAR  
DIST- CACHAR  
ASSAM  
PIN- 788014  
4:THE SUPERINTENDENT ENGINEER

SILCHAR WATER RESOURCES

CIRCLE  
SILCHAR  
DIST- CACHAR  
ASSAM.

5:THE EXECUTIVE ENGINEER  
CACHAR INV.  
(W AND R)  
DIVISION  
BADARPUR  
DIST- CACHAR  
ASSAM.

6:THE ACCOUNTANT GENERAL  
ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI  
ASSAM

PIN - 781029.

7:THE PRINCIPAL SECRETARY  
TO THE GOVT. OF ASSAM

DEPARTMENT OF PENSION AND PUBLIC GRIEVANCES  
ASSAM CIVIL SECRETARIAT

DISPUR  
GUWAHATI  
ASSAM PIN - 781006

8:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
FINANCE DEPARTMENT  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006.

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Advocate for : MR. A K DUTTA

Advocate for : SC

WATER RESOURCE appearing for THE STATE OF ASSAM AND 6 ORA.

Linked Case : WP(C)/5343/2021

MD. HIBJUR RAHMAN LASKAR  
S/O LATE ABDUL HAMID LASKAR  
PUMP OPERATOR (RETIRED ON 31.08.2018) UNDER PHE DIVISION  
HAILAKANDI  
R/O VILL- KALACHERRA GRANT AND P.O.-JAPIRBOND  
P.S.-LALA  
DIST-HAILAKANDI  
ASSAM  
PIN-788160

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
DEPARTMENT OF PUBLIC HEALTH ENGINEERING  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

2:THE CHIEF ENGINEER  
PUBLIC HEALTH ENGINEERING  
ASSAM  
HENGRAVARI  
GUWAHATI  
ASSAM  
PIN-781036

3:THE ADDITIONAL CHIEF ENGINEER  
PHE  
BARAK VALLEY ZONE

SILCHAR  
GUNGUR  
DIST- CACHAR  
ASSAM  
PIN-788014

4:THE SUPERINTENDENT ENGINEER  
PHE  
HAILAKANDI CIRCLE  
DIST-CACHAR

ASSAM  
5:THE EXECUTIVE ENGINEER  
PUBLIC HEALTH ENGINEERING  
HAILAKANDI PUBLIC HEALTH ENGINEERING DIVISION  
HAILAKANDI  
DIST- HAILKANDI  
ASSAM  
6:THE ACCOUNTANT GENERAL  
ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI  
ASSAM  
PIN-781029  
7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN 781006.

8:THE COMMISSIONER AND SECRETARY TO THE GOVT.OF ASSAM  
DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

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Advocate for : MR. A K DUTTA  
Advocate for : SC  
P H E appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/5417/2021

SRIKANTA MONI SINGHA  
S/O LATE MANYA SINGHA  
PUMP OPERATOR (RETIRED ON 31.12.2018) UNDER PHE DIVISION  
HAILAKANDI  
R/O VILL AND P.O.-NITYANANDAPUR PART-II  
DIST-HAILAKANDI  
ASSAM  
PIN-788168

VERSUS

THE STATE OF ASSAM AND 6 ORS  
COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
DEPARTMENT OF PUBLIC HEALTH ENGINEERING  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

2:THE CHIEF ENGINEER  
PUBLIC HEALTH ENGINEERING  
ASSAM  
HENGRABARI  
GUWAHATI  
ASSAM  
PIN-781036

3:THE ADDITIONAL CHIEF ENGINEER  
PHE  
BARAK VALLEY ZONE  
SILCHAR  
GUNGUR  
DIST-CACHAR  
ASSAM  
PIN-788014

4:THE SUPERINTENDENT ENGINEER  
PHE  
HAILAKANDI CIRCLE  
DIST-CACHAR  
ASSAM  
5:THE EXECUTIVE ENGINEER  
PUBLIC HEALTH ENGINEERING  
HAILAKANDI PUBLIC HEALTH ENGINEERING DIVISION  
HAILAKANDI  
DIST-HAILAKANDI  
ASSAM

6:THE ACCOUNTANT GENERAL  
ASSAM  
MAIDAMGOAN  
BELTOLA  
GUWAHATI  
ASSAM  
PIN-781029

7:THE COMMISSIONER AND SECRETARY TO THE GOVT.OF ASSAM  
DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR

GUWAHATI  
ASSAM  
PIN-781006

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Advocate for : MR. A K DUTTA  
Advocate for : SC  
P H E appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/5345/2021

AHMED HUSSAIN CHOUDHURY  
S/O LATE AKADDAS ALI CHOUDHURY  
PUMP OPERATOR (RETIRED ON 31.01.2019) UNDER PHE DIVISION  
HAILAKANDI  
R/O VILL- ALGAPUR PART-I AND P.O.-KALIBARI BAGAN  
DIST-HAILAKANDI  
ASSAM  
PIN-788150

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
DEPARTMENT OF PUBLIC HEALTH ENGINEERING  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM  
PIN-781006

2:THE CHIEF ENGINEER  
PUBLIC HEALTH ENGINEERING  
ASSAM  
HENGRAVARI  
GUWAHATI  
ASSAM  
PIN-781036  
3:THE ADDITIONAL CHIEF ENGINEER  
PHE  
BARAK VALLEY ZONE  
SILCHAR  
GUNGUR  
DIST- CACHAR  
ASSAM

PIN-788014  
4:THE SUPERINTENDENT ENGINEER  
PHE  
HAILAKANDI CIRCLE  
DIST-CACHAR  
ASSAM  
5:THE EXECUTIVE ENGINEER  
PUBLIC HEALTH ENGINEERING  
HAILAKANDI PUBLIC HEALTH ENGINEERING DIVISION  
HAILAKANDI  
DIST- HAILKANDI  
ASSAM  
6:THE ACCOUNTANT GENERAL  
ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI  
ASSAM  
PIN-781029  
7:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
DEPARTMENT OF FINANCE  
ASSAM CIVIL SECRETARIAT  
DISPUR  
GUWAHATI  
ASSAM PIN-781006

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Advocate for : MR. A K DUTTA  
Advocate for : SC  
P H E appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/4842/2023

KRISHNA KANTA BHOWMIK  
S/O- LATE KALIPAD BHOWMIK

RESIDENT OF HAILAKANDI TOWN  
WARD NO. 7

P.O.  
P.S. AND DIST.- HAILAKANDI

ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS  
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVT. OF ASSAM

P.H.E. DEPARTMENT  
DISPUR

GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
FINANCE DEPARTMENT

DISPUR  
GUWAHATI- 781006.

3:THE CHIEF ENGINEER  
P.H.E. DEPARTMENT  
HENGRAVARI  
ASSAM.

4:THE ACCOUNTANT GENERAL ( A AND E)  
ASSAM  
MAIDAMGAON  
BELTOLA

GUWAHATI- 781029.

5:THE EXECUTIVE ENGINEER  
HAILAKANDI DIVISION  
ASSAM.

6:TREASURY OFFICER  
HAILAKANDI  
ASSAM.

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Advocate for : MR. A M BARBUIYA

Advocate for : SC

P H E appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/5249/2022

CHAYNA BEGUM BARBUIYA  
W/O LATE ISLAM UDDIN BARBUIYA  
R/O VILL-MOHANPUR PART-II  
P.O.-ALGAPUR PT V  
P.S.-ALGAPUR  
DIST-HAILAKANDI  
ASSAM  
PIN-788150

VERSUS

THE STATE OF ASSAM AND 3 ORS.  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
PWD (R) DEPARTMENT  
DISPUR  
GUWAHATI-6

2:THE EXECUTIVE ENGINEER  
PUBLIC WORKS DEPARTMENT  
HAILAKANDI DIVISION  
HAILAKANDI  
ASSAM  
3:THE ASSTT. EXECUTIVE ENGINEER  
PWD  
HAILAKANDI SUB-DIVISION  
HAILAKANDI  
ASSAM  
4:THE ACCOUNTANT GENERAL (A AND E)  
ASSAM  
MAIDAMGAON  
BELTOLA  
GUWAHATI-29

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Advocate for : MR. M U MAHMUD  
Advocate for : SC  
PWD appearing for THE STATE OF ASSAM AND 3 ORS.

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**20.06.2024**

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner in W.P.(C) No. 6582/2023 and W.P.(C) No. 4842/2023; Mr. B. Purkayastha, learned counsel for the petitioner in W.P.(C) No. 5293/2021; W.P.(C) No.8339/2021; W.P.(C) No.5343/2021; W.P.(C) No.5345/2021 W.P.(C) No.5417/2021; W.P.(C) No.5418/2021; W.P.(C) No.6315/2022 and W.P.(C) No.2563/2023; Mr. S. Islam, learned counsel for the petitioner in W.P.(C) No. 5249/2022 and Mr. T.K. Dey,

learned counsel for the petitioner in W.P.(C) No. 1501/2023.

**2.** Also heard Mr. I. Borthakur, learned Standing Counsel, PHE Department for the respondents in all the writ petitions except W.P.(C) No.5249/2022 and W.P(C) No. 2563/2023; Mr. B. Sarma, learned Standing Counsel, Accountant General for the respondents in W.P.(C) No. 6582/2023; W.P.(C) No. 5345/2021 and W.P.(C) No. 5249/2022; Mr. R.K. Talukdar, learned Standing Counsel, Accountant General for the respondents in W.P.(C) No. 5293/2021; W.P.(C) No. 6315/2022 and W.P(C) No. 2563/2023; Mr. C. Boruah, learned Standing Counsel, Accountant General for the respondents in W.P.(C) No. 5339/2021 and W.P.(C) No. 4842/2023; Mr. B. Bhattacharyya, learned Standing Counsel, Accountant General for the respondents in W.P.(C) No. 5343/2021; Mr. B. Chakravarty, learned Standing Counsel, Accountant General for the respondent in W.P.(C) No. 5417/2021; Mr. S.K. Medhi, learned Standing Counsel, Accountant General for the respondent in W.P.(C) No. 5418/2021; Mr. C. Sharma, learned counsel appearing on behalf of Mr. R.M. Das, learned Standing Counsel, Water Resources Department for the respondents No. 1 to 5 in W.P.(C) No. 2563/2023; Ms. M. Das, learned Standing Counsel, PWD for the respondents in W.P.(C) No. 5249/2022 and Mr. A. Chaliha, learned Standing Counsel, Finance.

**3.** This bunch of writ petitions raise similar issues. Therefore the same have been clubbed together and taken up for hearing and disposal.

**4.** These writ petitioners are working as work charged employees in their respective departments from several years. They have rendered continuous services without any break. Some of the employees have also been granted the regular scale of pay. Some of the writ petitioners were put up for regularizations and an order of regularization was issued, however, the same was not accepted by the Government on the ground that it did not have concurrence of the

Finance Department. Subsequently, the matters have not been considered again. In the meantime, the petitioners having rendered their services have all superannuated. Their primary grievance is that their claims for grant of pension have not been considered.

**5.** It is submitted on behalf of the writ petitioners that they having rendered continuous services and have put in several years in service work charged employees and they have been given the regular scale of pay, their services should be deemed to have been regularized and consequently, they are entitled to pension.

**6.** The learned counsel for the petitioner has relied on the Judgment of the Apex Court rendered in *Tulsibhai Dhanjibhai Patel Vs. State of Gujarat (Special Civil Application No. 20185/2018)* as well as the Judgment of the Co-ordinate Bench rendered in *W.P.(C) No. 1777/2015 (Habib Ali Barbhuiya Vs. State of Assam & Ors)*. Relying on the Judgments, the learned counsel for the petitioners submits that the Apex Court as well as this Court has considered the continuous length of service of the petitioners for considering them to be eligible for grant of pension.

**7.** Referring to Rule 31 of the Assam Pension Rules, it is submitted that Rule 31 provides that a person will be entitled to pension if these three conditions are fulfilled, namely, Firstly, that the service must be under Government; Secondly, the employment must be substantive and permanent; Thirdly, that the servant must be paid by Government: Provided that the Governor may, even though either or both of conditions (1) and (2) above are not fulfilled,- (i) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension, and (ii) in individual cases and subject to such conditions as he may think fit to impose in each case, allow service rendered by

an officer to count for pension, are satisfied.

**8.** The learned counsel for the petitioners submits that having rendered continuous service for more than 30 years and having been granted the regular scale of pay, the petitioners must be held to be substantive and permanent employment. They were being paid the regular scale of pay by the Government and their services are under the Government. The learned counsel submits that since the three conditions prescribed under Rule 31 is fulfilled, there is no reason why the petitioners should not be granted the benefit of pension under the Assam Services (Pension) Rules, 1969. Their prayer having been rejected for not being considered by the respective department, they are before this Court praying for suitable orders from this Court. He has also relied on a Judgment of a Co-ordinate Bench rendered in *Habib Ali Barbhuiya* (*supra*) in support of his contention.

**7.** Per contra, Mr. I. Borthakur, learned Standing Counsel, PHE Department disputes the contentions of the learned counsel for the petitioners. He submits that the petitioners do not fulfill the conditions under Rule 31 of the Pension Rules. No doubt, they are working as work charged employees and their salaries are paid by the Government but it cannot be held that they have rendered services in regular capacity. He further submits that the issue that work charged employees are not entitled to pension have already been decided by a Division bench of this Court in a Judgment rendered in *State of Assam Vs. Upen Das & Ors [W.A No. 45/2014]*, reported in 2020 (5) GLT 605. He submits that in view of the law laid down by the *Upen Das* (*Supra*), the claims of the petitioners who are work charged employees cannot be accepted.

**8.** The learned counsel for the parties have been heard. Pleadings on record have been carefully perused. The Judgments placed by the learned counsel for

the petitioner have been carefully perused. The Judgment in *Upendra Das(Supra)* has considered the question whether work charged employees are entitled to pension or not and the Court has answered accordingly that they are not entitled to pension. The relevant paragraphs are extracted below:

*"16. It is in this background, we shall examine whether the respondents who are working as Muster Roll/Work Charged employees prior to 1.4.1993 can be considered for regularization in the light of exception carved out in paragraph 53 of the decision in Umadevi case. For ready reference, paragraph 53 is reproduced as under:-*

*One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan 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 onetime 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 regularization, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further by passing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.*

*21. Lastly, the respondents have cited decisions of the Supreme Court in Nihal Singh vs. State of Punjab, (2013) 14 SCC 65, Malathi Das vs. Suresh, (2014) 1 3 SCC 249*

and Yashwant Arjun More vs. State of Maharashtra, (2014) 13 SCC 264 to convince us that even after Umadevi case, the Supreme Court has directed for regularization even by creating posts although the employees were not working on sanctioned posts. But these decisions are on different facts and the Supreme Court itself has held that the ratio decidendi of Umadevi case was not applicable to them. In the case of Nihal Singh vs. State of Punjab (*supra*), Special Police Officers were appointed under Section 17 of the Police Act to meet the law and order problem. The appointments of Special Police Officers were made in accordance with the statutory procedure contemplated under the Act, but their services were not being regularized on the ground that there were no sanctioned posts. The Supreme Court held that since the initial appointments of such Special Police Officers was made legally under a statute, it cannot be categorized as irregular much less illegal appointment and therefore the principles laid down in Umadevi case were not applicable. It is in this fact situation the Supreme Court directed the State Government to absorb the Special Police Officers by creating necessary posts. Besides this, in Nihal Singh the Supreme Court was not dealing with the issue of regularization of Muster Roll/Work Charged employees like the respondents. In Malathi Das vs. Suresh (*supra*) the Supreme Court in a Contempt Petition merely directed the authorities to comply with the order of the High Court to regularize the employees. The High Court order for regularization was admittedly passed and affirmed by the Supreme Court much prior to the decision of Umadevi. The decision of Umadevi was thus clearly not applicable in the case of Malathi Das. In Yashwant Arjun More vs. State of Maharashtra (*supra*) also non salaried copyists were working in the Revenue and Forest Department of the Government of Maharashtra continuously for 10 or more years and they could not apply for regularization because neither the required examination was held by the Department nor the Staff Selection Board was constituted. The State Government therefore to overcome its lapse decided to absorb such non-salaried copyists on available vacant posts subject to their making applications and holding required educational qualifications. The Supreme Court took note of the fact that non-salaried copyists were victims of the lapse of State Government and held that the ratio of judgment in Umadevi cannot be invoked for denying them the benefit of decision of

*the State Government to absorb them through a selection process. In the case at hand, there is no provision of holding examination of the respondents by any Selection Board for the purposes of their regularization and hence, the State Government cannot be blamed for any lapse. Hence, the decisions cited by the respondents do not help them.*

*22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017.*

*23. For these reasons, we are of the view that in the fact situation of the case, Muster Roll workers, Work Charged workers and Casual workers are not entitled for regularization of their services with consequential benefits, such as, pension etc. We, accordingly, subject to our direction in paragraph 22 of the judgment, allow the appeal and set aside the impugned judgment and order dated 20.1.2.2013 passed by the learned Single Judge."*

**9.** In the Judgment of the Co-ordinate Bench although all other Judgments have been considered, it is seen that the Judgment in Open Das (Supra) has not been referred to or considered. The Judgment of the Open Das(Supra) was rendered on 08.06.2017 and the Co-ordinate Bench had rendered the Judgment

on 05.04.2022. Accordingly, the Judgment of Upen Das(Supra) having been rendered earlier is binding on the Co-ordinate Bench as well as on this Court.

**10.** In view of the decision of the Division Bench, the Judgment of the Co-ordinate Bench cannot be held to be binding on this Court.

**11.** In so far as the Judgment relied upon by the Apex Court in Tulsibhai Dhanjibhai Patel(Supra) is concerned, it is seen that there the question of applicability of Rule 25 of the Gujarat Pension Rules were considered. Rule 25 of the Gujarat Pension Rules provides as under:

*“Rule-25. Qualifying Service : Subject to the provisions of these rules, qualifying service of a Government employee, means and includes, -*

*(i) all service including service on probation rendered on a regular establishment in any capacity whether, temporary or permanent, interrupted or continuous but it shall not include –*

*(a) service in non-pensionable establishment,*

*(b) service paid from contingencies,*

*(c) service rendered in daily rated establishment,*

*(d) actual periods of break in service if any, between spell of service,*

*(e) service prior to resignation, removal or dismissal,*

*(f) service as an apprentice,*

*(g) service on fixed pay basis, and*

*(h) service on contract basis.*

*(ii) all service rendered in work charged establishment provided that the total service put in, as such is five years or more,*

*(iii) ..... to (ix) ....”*

**12.** However, Rule 31 of the Assam Services (Pension) Rules provides as under:

*“31. The service of an officer does not qualify for pension unless it conforms to the following three conditions*

*Firstly, the service must be under Government;*

*Secondly, the employment must be substantive and permanent;*

*Thirdly, the servant must be paid by Government: Provided that the Governor may, even though either or both of conditions (1) and (2) above are not fulfilled,-*

*(i) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension, and*

*(ii) in individual cases and subject to such conditions as he may think fit to impose in each case, allow service rendered by an officer to count for pension."*

**13.** There is no specific provision that pension would be otherwise available for temporary or work charged employees who had rendered continuous services for long years under the Assam Services Pension Rules, 1969 unlike in the Gujarat Pension Rules.

Under such circumstances, this Judgment will not be applicable in the facts of the case.

**14.** The learned counsel for the petitioner has also not urged before this Court that notwithstanding the Judgment of the Open Das(Supra) subsequent Judgment of the Apex Court have been rendered where the Apex Court has laid down a ratio which will override the ratio laid down in Open Das (Supra). No attempt has been made to distinguish the facts of the case of Open Das(Supra) as with the facts of this case save and except that in Open Das(Supra), the claim was for grant of minimum scale of pay whereas the present writ petitioners do not have such prayers as they were already granted their regular scale of pay.

**15.** Be that as it may, a specific issue was raised before the Division Bench of this Court in Open Das (Supra) as to whether Muster Roll Workers/ Work charged employees are entitled to pension. This has been negated by the Judgment of the Division Bench of this Court in Open Das(Supra). The same is therefore binding on this Court. The learned counsel for the petitioners have also placed before this Court an order passed in respect of other similarly

situated worked charge employees who have been considered to be eligible for grant of pension by the Department. Copy of such order is available in this writ petition. The respondents did not file any affidavit in response to such averments nor have they disputed the correctness of the order issued by the competent department.

**16.** Under such circumstances, this Court is of the view that if other worked charge employees working in other or similarly situated departments are extended the benefit of pension then the cases of the writ petitioners may also be considered for grant of such benefits by the Government.

**17.** With the above observations, the writ petitions stands disposed of.

**JUDGE**

**Comparing Assistant**