

GAHC010001832024



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

Case No. : WP(C)/50/2024

JYOTIMONI BORDOLOI
S/O- LATE SASHIDHAR BORDOLOI,
R/O- JAIL ROAD, BARBHETA,
P.O AND DIST- JORHAT, ASSAM, PIN-785004

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER - PRINCIPAL SECRETARY ,
TRANSPORT DEPARTMENT, GOVT. OF ASSAM, DISPUR, GUWAHATI-06

2:THRE COMMISSIONER OF TRANSPORT
GOVT. OF ASSAM
KHANAPARA
GUWAHATI-22

3:THE DISTRICT TRANSPORT OFFICER
JORHAT
DIST- JORHAT

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06

5:THE DIRECTOR OF PENSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-06

6:THE PRINCIPAL ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI-2

Advocate for the Petitioner : MR B SINHA

Advocate for the Respondent : SC, TRANSPORT

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 22/01/2024

Heard Mr. B. Sinha, learned counsel appearing for the writ petitioner. Also heard Ms. M. D. Borah, learned Standing Counsel, Transport Department, Assam, appearing for the respondent nos. 1 to 4, Mr. D. Bora, learned Government Advocate, Assam, appearing for the respondent no. 5 and Mr. R. K. Talukdar, learned Standing Counsel, AG (A&E), Assam, appearing for the respondent no. 6.

The instant writ petition has been filed seeking a Writ of Mandamus directing the respondents to regularize the service of the petitioner and also to grant him all retirement benefit including pension, upon his superannuation.

The facts of the case, in a nutshell, are that the petitioner was initially appointed as a casual worker in the office of the District Transport Officer (DTO), Jorhat, against a Grade-III post on 08/04/1993 and since then, he has been continuing in the said post. The grievance of the petitioner is that although he had rendered more than 10 years of continuous service as a casual employee and notwithstanding the Office Memorandum dated 31/07/2013 issued by the Government of Assam, his services have not been regularized till today. Hence, this writ petition.

Taking note of the grievance expressed by the petitioner's counsel, the learned departmental counsel was asked to obtain instruction in the matter, facilitating disposal of the writ petition at the stage of motion hearing.

Today, when the writ petition was called up, Ms. Borah, learned standing Counsel, Transport Department, Assam, has produced a copy of the written instruction to submit that the petitioner has been drawing his remuneration regularly as per the notification No. FEC(II)4/2014/414 dated 3rd

October, 2019, issued by the Government of Assam, Finance Department. However, according to the departmental authorities, the petitioner is not entitled to pensionary benefits as he was engaged as a casual employee. It is, however, not in dispute that the petitioner was engaged as a casual employee under the Transport Department on 08/04/1993 and his services have not been regularized till today.

Mr. Sinha, learned counsel for the petitioner has vehemently argued that having rendered more than 10 years of service, the respondents ought to have regularized the service of the petitioner in terms of the notification dated 31/07/2013, which notification has been implemented in case of other similarly situated casual employees.

Responding to the above, Ms. M.D. Borah, learned Standing Counsel, Transport Department, Assam, has argued that since the petitioner was engaged after 01/04/1993, hence, in view of the decision rendered in the case of ***State of Assam Vs. Open Das*** reported in **(2017) 4 GLR 493**, he would be entitled to only the minimum of pay scale and other benefits minus pension, which has already been extended to him. According to Ms. Borah, there is no scope of regularization of service of the petitioner, inasmuch as, the notification dated 31/07/2013 was issued as a one time measure, that too, in respect of those employees who came within the purview of the exceptions curved out in paragraph 53 of the decision of the Hon'ble Supreme Court rendered in the case of ***Secretary to the State of Karnataka & others Vs. Uma Devi*** reported in **(2006) 4 SCC 1**.

I have considered the arguments made at the Bar and have also gone through the materials available on record.

It is not in dispute that as per a Cabinet decision of the State of Assam dated 22/07/2005, services of MR/WC workers/casual workers engaged prior to 01/04/1993 were regularized. However, in view of the decision rendered in the case of ***Uma Devi (Supra)*** notification dated 31/07/2013 was issued imposing restriction on regularization of services of WC/MR or other similarly placed casual workers. It is no doubt correct that in para 2 of the OM dated 31/07/2013, it has been provided that the services of those employees can be regularized, who have been working continuously for 10 (ten) years or more as on 10/04/2006 but the said clause in the OM, apparently is in accordance with the directives contained in paragraph 53 of the case of ***Uma Devi (Supra)***.

It is to be noted herein that while ***Uma Devi (Supra)*** had restrained the authorities from regularizing the service of casual employees working in different department, an exception to the aforesaid law was curved out in paragraph 53 of the decision whereby, regularization of those employees, who were qualified persons and had been appointed against sanctioned vacant posts were permitted, if they had continued to work for more than ten years but without the intervention of any

Court or Tribunal. As such, it was directed to initiate appropriate steps in that regard as a one time measure. The petitioner evidently and admittedly does not come within the category of employees envisaged in paragraph 53 of the decision in ***Uma Devi (Supra)*** as he was never appointed against a vacant sanctioned post. As such, a Writ of Mandamus to regularize the service of the petitioner either in terms of the observations made in paragraph 53 of ***Uma Devi (Supra)*** or the OM dated 31/07/2013 cannot be issued by this Court. The observations made in paragraph 53 are reproduced herein below :-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore Vs. S.V. Narayanappa [AIR 1967 SC 1071], R.N. Nanjundappa Vs. T. Thimmiah [(1972) 1 SCC 409], and B.N. Nagarajan Vs. State of Karnataka [(1979) 4 SCC 507], 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.”

On the contrary, it appears that the case of the petitioner is covered by the observations made by the Division Bench of this Court in para 22 of ***Open Das (Supra)***, which are reproduced herein below for ready reference :-

“ 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."

Taking note of the decision of this Court in ***Open Das (Supra)*** the Government of Assam had issued the OM dated 03/10/2019. It is not in dispute that the petitioner has been extended full service benefits as per the decision in ***Open Das (Supra)*** as well as the OM dated 03/10/2019.

There is nothing on record to show that the State of Assam had either framed any scheme for regularization of casual workers/MR/WC employees, who had been engaged after 01/04/1993 nor is there anything to show that save and except compliance with the directions contained in para 53 of ***Uma Devi (Supra)***, the State of Assam has regularized the services of any other casual employees.

Under the circumstances, this Court is unable to accept the submissions of Mr. Sinha that in view of the OM dated 31/07/2013, the petitioner is entitled to a Writ of mandamus directing the respondents to regularize his services. Moreover, in ***Open Das (Supra)***, the Division Bench of this Court has already dealt *in extenso*, the arguments advanced by the learned counsel for the writ petitioner and declined the relief of regularization of service by giving elaborate reasoning. Such findings and observations of the Division Bench are binding on this Court. As such, the prayer made in the writ petition, in the opinion of this Court, cannot be granted.

For the reasons stated herein above, this writ petition is held to be devoid of any merit and the same is accordingly dismissed.

JUDGE

sukhamay

Comparing Assistant