

GAHC010005002013



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

Case No. : WP(C)/1287/2013

LAKSHMI KANTA KHARKATARY
S/O- HANGLA RAM KHARKATARY, R/O- SHEMALAGURI, P.O.-
HUDUKHATA, P.S.- BARPETA ROAD, DIST.- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
DEPTT. OF INDUSTRIES.

2:THE DIRECTOR OF INDUSTRIES
CIVIL INDUSTRIES OFFICER
GUWAHATI
ASSAM.

3:THE EXECUTIVE ENGINEER
CIVIL INDUSTRIES OFFICER
INDUSTRIAL ESTATE
GHY- 21
ASSAM

Advocate for the Petitioner : MR.Z AHMED

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

03.10.2023.

Heard Ms. D Borgohain, learned counsel for the petitioner, who had filed this writ petition in the year 2013 with a prayer for regularization of his service.

2. The case of the petitioner is that he was working as Work Charged employee in the Industrial Area, Rani under the Department of Industry and Commerce and claims to have been working for more than 25 years.

3. Ms. Borgohain, learned counsel, however, submits that she does not have any contact with her client.

4. Shri A Kalita, learned Standing Counsel, Industries and Commerce Department submits that regularization can be done only if an incumbent meets the requirement laid down by the notifications holding the field and by following the principles mentioned in the case of ***State of Karnataka Vs. Uma Devi (3)***, reported in **(2006) 4 SCC 1**.

5. In the case of ***Uma Devi (3)*** (*supra*), the Hon'ble Supreme Court in paragraph 53 has held as follows:

“53. 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

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 regularise 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 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.”

6. This Court has also noticed that while issuing Rule vide order dated 15.03.2013, there was no interim order granted.

7. In that view of the matter and taking into consideration that this matter is pending for more than a decade and also taking a note of the prayer, the writ petition is closed with a direction that any move for regularization of the petitioner if undertaken, the same has to be done by following the principles of law governing the field and the conditions laid down in ***Uma Devi (3)*** (*supra*)

8. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant