

GAHC010026492022



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

Case No. : WP(C)/1229/2022

AZIZUR RAHMAN AND 2 ORS
S/O- LATE SOKIAT ALI @ SOKIOTULLAH SK., R/O- VILL.- JHAGRAPAR
PART-3, P.O. JHAGRARPAPAR, PIN- 783325, P.S. AND DIST. DHUBRI, ASSAM

2: HABIBUL HASAN ALOM
S/O- SOBHAN ALI
R/O- VILL.- JHAGRAPAR PART-3
P.O. JHAGRARPAPAR
PIN- 783325
P.S. AND DIST. DHUBRI
ASSAM

3: ISRAFIL HOQUE
S/O- LATE SOLEMAN ALI
R/O- VILL.- ADABARI PART-2
P.O. CHAGALCHARA
PIN- 783324
P.S. AND DIST. DHUBRI
ASSAM (ALL THE PETITIONERS HAVING COMMON CAUSE OF ACTION
AND COMMON PRAYER)

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR,
GUWAHATI-781006.

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

3: THE DIRECTOR OF HEALTH SERVICES

ASSAM
HENGRABARI
GUWAHATI-781036.

4:THE DEPUTY COMMISSIONER
DHUBRI
P.O. AND DIST. DHUBRI
ASSAM
PIN- 783301.

5:JOINT DIRECTOR OF HEALTH SERVICES CUM MEMBER SECRETARY
DISTRICT HEALTH SOCIETY
DHUBRI DISTRICT
P.O. AND DIST. DHUBRI
ASSAM
PIN- 783301.

6:THE SUPERINTENDENT DHUBRI CIVIL HOSPITAL
DHUBRI
DIST. DHUBRI
ASSAM PIN- 783324.

7:HOSPITAL MANAGEMENT SOCIETY
DHUBRI CIVIL HOSPITAL
REP. BY ITS CHAIRMAN-CUM-DEPUTY COMMISSIONER
DHUBRI
PIN- 783301
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. S ALIM

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

15-09-2023

Heard Mr. S. Alim, learned counsel appearing on behalf of the petitioners.
Also heard Mr. D. Upamanyu, learned Standing Counsel, Health Department

appearing for the respondent nos. 1, 3 & 6, Mr. B. Gogoi, learned Standing Counsel, Finance Department appearing for the respondent no.2, 7 & 5 and Mr. S.R. Boruah, learned Government Advocate, Assam appearing for the respondent nos. 4 & 7.

2. The case of the petitioners herein is that the 3 (three) petitioners were appointed by the respondent authority on contractual basis vide orders dated 05.03.2004, 27.02.2006 and 30.04.2007 respectively. The petitioners have been rendering the service in the office of the Superintendent of the Civil Hospital under the Hospital Management Society since then. Learned counsel for the petitioners submits that the Division Bench of this Court in the case of the *State of Assam vs. Upen Das* reported in (2017) 4 GLR 493 by adopting the principles as laid down by the Supreme Court in the case of the *State of Punjab and Ors. vs. Jagjit Singh and Ors.* reported in (2017) 1 SCC 148 had directed the State Government to pay the minimum of the pay scale to Muster Roll workers, worked charged employees and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 01.08.2017. However, the petitioners have not been paid the said minimum of the pay scale for which the petitioners have approached this Court.

3. It is submitted by the learned counsels for the parties that the issues involved in the present petition stands covered by the decision of a coordinate bench of this Court rendered vide judgment dated 10.11.2022 in WP(C) no.7711/2016 (*Jadumoni Nath & Ors. vs. the State of Assam & Ors.*). As such, the writ petition may be closed in terms of the said judgment of the learned Single Judge passed in WP(C) no.7711/2016 on dated 10.11.2022. The relevant portion of the said judgment is extracted herein below:

“.....

12. In the case of State of Karnataka Vs. Uma Devi (3) & Others, reported in 2006 4 SCC 1, which was decided on 10.04.2006, the Apex Court has held that a temporary, contractual, casual or daily wage employees do not have a legal right to be made permanent, unless they have been appointed in terms of the relevant Rules or in adherence to Article 14 & 16 of the Constitution. However, the Apex Court in paragraph No. 53 of Uma Devi (3) (supra), had directed the Union of India, the State Governments and their instrumentalities to take steps for regularization as a “one-time measure”, the services of irregularly appointed persons, who had worked for 10 years or more in duly sanctioned posts, but not under the cover of the orders of the Courts or of Tribunals. Paragraph No. 53 of the judgment of the Apex Court in Uma Devi (3) (supra) was thereafter clarified by the Apex Court in the case of State of Karnataka & Others Vs. M.L. Kesari, reported in 2010 9 SCC 247, wherein it held that an exception to the general principles against the regularization was allowed in Uma Devi (3) (supra), if the following conditions were 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 post, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular”.

13. The Government of Assam, Finance (EC-II) Department thereafter issued Office Memorandum No. FEC (II) 49 / 2010 /pt/52 dated 27.06.2013 for 2022:GAU-AS:15958 Page No.# 13/17 regularization of services of the Work Charged, Muster Roll and similarly placed workers in pursuance to the order of the Hon’ble Supreme Court in the case of State of Karnataka Vs. Uma Devi (3) & Others, reported in 2006

4 SCC 1, State of Karnataka & Others Vs. M.L. Kesari, reported in 2010 9 SCC 247 and the Gauhati High Court's Order dated 17.05.2006 in WP(C) No. 6222/2003. In the said Office Memorandum dated 27.06.2013, it was stated in paragraph No. 2 that regularization of those workers, as referred to in paragraph No. 53 of the judgment passed in Uma Devi (3)(supra) would be done as a "One time measure", subject to the employees fulfilling the following three conditions. Firstly, they should have been working continuously for 10 years or more as on 10.04.06 i.e. the date of passing of the judgement in Uma Devi's case without the benefit or protection of the interim order of any Court or Tribunal. Secondly, they should have been engaged against sanctioned vacant post. Thirdly, they should have requisite qualification to hold the post.

14. Paragraph No. 2 of the OM dated 27.06.2013 is reproduced as follows:- 2. The State Government will now like to take the "One time measure" for regularization of those workers as referred to in paragraph 53 of the orders in Uma Devi's case readwith M.L. Kesari's case, whereby exception was curved out to regularize all employees who fulfill the following three conditions:- i) Who have been working continuously for 10 years or more as on 10.04.06 i.e. the date of passing of the judgement in Uma Devi's case without the benefit or protection of the interim order of any Court or Tribunal. (ii) Who have been engaged against sanctioned vacant post. (iii) Who have requisite qualification to hold the post."

15. As can be seen from the above, none of the writ petitioners have had service for 10 years or more as on 10.04.2006. In respect of the petitioner No. 8, it is seen that there is a certificate showing that she is a honorary female attendant. There is nothing to show that she has been engaged in a sanctioned vacant post or that she was being paid any remuneration/honorarium or that she was having the requisite qualification to hold the post. There is no proof that the petitioner No. 8 had been working for 10 years as on 10.04.2006, as the date and month of her engagement is not spelt out in the certificate.

16. Besides the above, the Division Bench of this Court in W.A.No. 45/2014 (State of Assam & Others Vs. Sh. Upen Das & 836 Others) has held at paragraph No. 23 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. Further, after discussing the decision of the Apex Court in the case of Secretary, State of Karnataka and Ors. vs. Uma Devi and Ors., reported in (2006) 4 SCC 1 and in the case of State of Karnataka vs. M.L. Kesari, reported in (2010) 9 SCC 247, the Division Bench has held that the State Government cannot create post to regularize the services of the Muster Roll Worker/Work-Charged employees who are not working against sanctioned posts. The Division Bench also held that, the Apex Court in the case of Uma Devi (3)(supra), has clearly held that when the temporary employment or engagement as a contractual or casual worker is not based on a proper procedure for selection, the theory of legitimate expectation cannot be successfully advanced by the temporary, contractual or casual employees.

17. In view of the fact that there is nothing to show that the petitioners have fulfilled the three conditions set out in the judgment of the Apex Court in Uma Devi (3) (supra) and the Office Memorandum dated 27.06.2013 issued by the State Government, besides keeping in view the decision of the Division Bench of this Court in W.A.No. 45/2014, this Court finds that there is no merit in the prayer of the petitioners for regularization of their services.

18. Mr. R.P. Sharma, learned senior counsel for the petitioners submits that he does not wish to press the present case for regularization of the services of the petitioners, as the law is clear in this point. He also submits that the question of regularization of the services of the petitioners could be decided by the State Government at a later stage. He however submits that in terms of paragraph No. 22 of the judgment of the Division Bench of this Court in W.A. No. 45/2014 (State of Assam & Others Vs. Sh. Upen Das & 836 Others), the petitioners should be given the minimum of the pay scale given to regular workers.

19. Mr. B. Gogoi, learned counsel for the State respondents submits that while the petitioners have given up their prayer for regularization of their services, they have not prayed for being given the minimum of the pay scale in terms of paragraph No. 22 of the judgment of the Division Bench of this Court in W.A. No. 45/2014 in the writ petition. Also, the petitioners have not been appointed by the State Government and they have been engaged by the Hospital Management Society, who are not made

parties to the writ petition.

20. He also submits that as per the various certificates that are annexed to the writ petition showing that the petitioners are working in the two Hospitals, there is nothing to show that all the other petitioners are being given any wages. The documents on record show that only the petitioner Nos. 21, 22, 23, 25 and 26 are being given wages. Petitioner Nos. 21 and 22 are being given wages of Rs. 3,000/- per month, while the petitioner Nos. 23, 25 and 26 are being given Rs. 1,500/- per month. Further, some of the petitioners have left their engagements/jobs.

21. As can be seen from the contention of the learned counsels for the parties and the contents of the preceding paragraphs, the only issue left to be decided is as to whether the petitioners are entitled to the payment of minimum scale of pay in terms of the judgment of the Division Bench of his Court in W.A. No. 45/2014. In this respect, it has to be first noted that no prayer to the said effect has been made by the petitioners in the writ petition.

22. Be that as it may, paragraph No. 22 of the Division Bench Judgment & Order dated 08.06.2017 passed in W.A. No. 45/2014 gives a direction to the State Government to pay minimum of the pay scale to Muster Roll Workers, Work-Charged Workers and similarly placed employees working since the last more than 10 years (not in sanctioned post) in light of the decision of the Apex Court in State of Punjab Vs. Jagjit Singh, reported in (2017) 1 SCC 148.

23. As it appears, most of the petitioners have been engaged by the Hospital Management Society and not by the State Government, and only 5 out of the 29 writ petitioners are being given fixed wages. Accordingly, this Court is of the view that the concerned Hospital Management Committee/State respondents will have to consider the giving of minimum scale of pay to the petitioners, provided they are still working in the two Hospitals and are entitled to the same. Consequently, the petitioners are given the liberty to submit individual representations to the Superintendent of the two Hospitals, with regard to their claim for payment of the minimum scale of pay. The concerned Superintendent, being the Member Secretary of the concerned Hospital Management Committee, shall thereafter place the same

before the appointing authority, who shall thereafter consider the case of the petitioners, with regard to payment of the minimum scale of pay and make due payment, if they are entitled to the same. The petitioners should submit their individual representations within three weeks from today. Thereafter, the decision/s on the petitioners' representations should be made within a further period of 3 (three) months from the date of receipt of a certified copy of this order and the petitioners' representations.

24. The writ petition is accordingly disposed of"

4. In that view of the fact that similar issues have been raised in the present writ petition and upon due perusal, it is seen that the judgment of the Co-ordinate Bench passed on 10.11.2022 in WP(C) no.7711/2016 (*Jadumoni Nath & Ors. vs. the State of Assam & Ors.*) will cover the issues raised in the present writ petition. The present writ petition is disposed of in terms of the order direction passed by the learned Single Bench in WP(C) no. 7711/2016 by order dated 10.11.2022. Accordingly, this Court is of the view that the concerned Hospital Management Committee of Dhubri Civil Hospital/State respondents will have to consider the cases of the petitioner for grant of minimum scale of pay to the petitioners, provided they are still working in the said Hospital and are entitled to the same as per provision of law. Consequently, the petitioners are given the liberty to submit individual representations before the Superintendent of the concerned Hospital, with regard to their claim for payment of the minimum scale of pay. The concerned Superintendent shall thereafter place the same before the appointing authority, who shall thereafter consider the case of the petitioners, with regard to payment of the minimum scale of pay and make due payment, if they are entitled to the same. The petitioners shall submit their individual representations within 3 (three) weeks from the date

of receipt of a certified copy of this order. Thereafter, the decision(s) on the petitioners' representations should be made within a further period of 3 (three) months from the date of receipt of a certified copy of this order and the petitioners' representations.

5. In terms of the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant