

GAHC010169342022



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

Case No. : WP(C)/5508/2022

AMZAD ALI
S/O- ELASHI BAUX,
R/O- VILLAGE- KYETH PARA,
P.O.- BAITHAMARI,
P.S.- ABHAYAPURI,
DISTRICT- BONGAIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
THROUGH-
THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,
PWD, DISPUR, GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE CHIEF ENGINEER
PWD (N.H. WORKS)
ASSAM
CHANDMARI
GUWAHATI- 781003.

4:THE EXECUTIVE ENGINEER
PWD (NH)
ABHAYAPURI CONSTRUCTION DIVISION
ABHAYAPURI
DISTRICT- BONGAIGAON
ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : SC, PWD

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 02.08.2023

Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Mr. P. Nayak, learned counsel for the Finance Department, appearing for respondent no.2 and Mr. V. Choudhury, learned standing counsel for the PWD, representing respondent nos. 1, 3 and 4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner is seeking a direction upon the respondent authorities to regularize the service of the petitioner from the year 2005.

3. In brief, the case of the petitioner is that he was engaged as a muster roll worker under the establishment of the respondent no.4 and he had continuously worked in the establishment of the Executive Engineer, PWD (NH), Abhayapuri Construction Division from 01.03.1989 till 31.12.2021, on which date he had superannuated from service. It is projected that a Cabinet decision was taken on 22.07.2005 to regularize the service of muster roll and/ or work charged employee who were engaged prior to 01.04.1993. It is projected that in the approved list which was forwarded to the appropriate government, the name of the petitioner was not included due to an inadvertence.

4. By referring to Annexure-3 to the writ petition which is a copy of letter dated 28.10.2005 issued by the Executive Engineer, PWD, Abhayapuri Construction Division (respondent no.4), it is projected that the said authority

had admitted that the particulars of the petitioner was wrongly quoted in the original list sent earlier through oversight and in the chart appended thereto, it was admitted that the correct date of birth of the petitioner was 21.01.1967 as muster roll labourer and the date of joining was recorded as 01.03.1989. In due course of time, the service of all such muster roll worker who were engaged prior to 01.04.1993 was regularized vide order dated 05.10.2005.

5. The learned counsel for the petitioner has submitted that although the correct particulars were sent by the respondent no.4, the respondent authorities had done nothing for regularization of the service of the petitioner. Therefore, the petitioner had submitted a representation before the respondent no.4 on 17.12.2020 for regularization of his service. The said representation was forwarded to respondent no.3 on 22.07.2021. In the meanwhile, the petitioner had retired from service on 31.12.2021 without getting the benefit of regularization of his service. Hence, this writ petition.

6. Per contra, the learned standing counsel for the Finance Department has submitted that the prayer made by the petitioner is not legally tenable on the ground that the petitioner had already retired from service on 31.12.2021 and therefore, post facto consideration of the prayer for regularization w.e.f. year 2005 cannot be made.

7. It is submitted that the steps taken for regularization of service was one time measure and the process of regularization cannot be entertained at this stage when the petitioner had already superannuated from service. It is also submitted that the State Government had undertaken an exercise of giving the benefit of minimum pay scale to muster roll worker pursuant to order of this Court in the case of *State of Assam Vs. Upen Das and Ors.*, 2020 (5) GLT 605. Therefore, at this stage the consideration of prayer of the petitioner for

regularization of service cannot be entertained. A similar stand is taken by the learned standing counsel for the PWD.

8. In the considered opinion of the Court, the regularization of service of many muster roll workers was done by virtue of order dated 05.10.2005. Therefore, the petitioner is deemed to have accepted his status as muster roll worker for last 17 years without agitating his grievance against the non-regularization of his service by virtue of order dated 05.10.2005 within a reasonable time. In the meanwhile, the petitioner had superannuated from service on 31.12.2021 and thereafter this writ petition was filed on 23.08.2022.

9. In terms of the decision of the Supreme Court of India in the case of *Secretary, State of Kerala Vs. Uma Devi, (2006) 4 SCC 1*, it has been held that the exercise of regularization would be one time exercise and in the subsequent judgment of the Supreme Court of India on the similar point in the case of *M.L. Kesari Vs. Union of India and Ors., (2010) 9 SCC 247*, it had made it clear that exercise of regularization cannot be a continuous process. The relevant paragraph 10 of the *M.L. Kesari (supra)* is quoted below:

“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."

10. From the above, it appears that if the employer had not undertaken the exercise of regularization within 6(six) months of the decision in *Uma Devi (supra)* or that such exercise is undertaken only with regard to limited few, it was held that it would disentitle such other/ rest of the employees, the right to be considered for regularization in terms of the direction contained in the case of *Uma Devi (supra)*, which was ordered as is an one-time measure. Therefore, for the Court to issue a direction to the respondent authorities to consider the case of the petitioner for regularization would run contrary to the directions issued in the case of *Uma Devi (supra)* and *M.L. Kesari (supra)*.

11. The learned counsel for the petitioner has referred to the case of *Sambharu Roy @ Sambaru Roy Vs. The State of Assam and Anr., WA 311/2022*, wherein the Division Bench of this Court by order dated 02.02.2023, had directed the respondent authorities to consider the case of the appellant therein for regularization provided he was eligible for regularization under the scheme irrespective of delay in approaching the Court. The observations made by the Division Bench of this Court in paragraph 8 of the aforesaid case is reproduced below.

"8. Accordingly, we direct that the case of the appellant will be considered for

regularization by the authorities provided he is eligible for regularization under the scheme irrespective of the delay in approaching this Court, if the scheme still continues and the appellant is still eligible to be considered. As to whether the appellant is eligible for regularization or not, is an exercise to be undertaken by the authorities by taking into consideration all the relevant records/documents without referring to the issue of delay.”

12. With utmost respect to the case cited, the Court finds that any direction to the respondent authority to consider the case of regularization of the petitioner would run contrary to the directions contained in paragraph 53 of the case of *Uma Devi (supra)* as well as the case of *M.L. Kesari (supra)*. Therefore, the directions contained in the judgment of the Supreme Court of India will have more precedential value than the directions contained in the case of *Sambharu Roy @ Sambaru Roy (supra)*.

13. Be that as it may, the Court finds that the respondent authorities, pursuant to the decision of this Court in the case of *Upen Das (supra)*, had undertaken an exercise to give the benefit of minimum of pay scale to the muster roll workers who are engaged, amongst others, in the establishment of the PWD. Therefore, the Court is inclined to provide that notwithstanding that petitioner had superannuated from service on 31.12.2021, the respondent authorities in the PWD, Assam would have to take a decision on the entitlement of the petitioner to minimum of pay scale w.e.f. 01.08.2017. Therefore, this exercise would be done in the event the petitioner has not been extended such benefit.

14. Accordingly, this writ petition stands partly allowed by granting relief to the petitioner to the extent that the respondent authorities would consider the case of the petitioner for granting him the minimum of pay scale to the

petitioner w.e.f. 01.08.2017 in terms of judgment of this Court in the case of *Upen Das (supra)*, if such benefit has not already been extended to the petitioner. It is provided that on production of a certified copy of this order by the petitioner before the respondent no.3, the said authority shall take an appropriate decision in the matter within a period of 6(six) weeks from the date of receipt of the certified copy of this order.

15. The payment due to the petitioner shall be calculated and disburse within an outer period of 3(three) months thereafter, if not already paid.

JUDGE

Comparing Assistant