

GAHC010007962012



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

**Case No. : WP(C)/4133/2012**

SMT. KIRAN BHUYAN and 11 ORS  
W/O- SRI DHIREN KAKATI, DIRECTORATE OF AGRICULTURE CAMPUS,  
QTR. NO. VILL. - 2, P.S. - DISPUR, DIST.- KAMRUP, GUWAHATI, ASSAM.

2: AJIT MOHAN  
S/O- SRI JOGEN MOHAN  
DIRECTORATE OF AGRICULTURE CAMPUS  
QTR. NO. VILL.- 2  
P.S.- DISPUR  
DIST.- KAMRUP  
GUWAHATI  
ASSAM.

3: RAJIB SAIKIA  
S/O- LT. SURENDRA SAIKIA  
DIRECTORATE OF AGRICULTURE CAMPUS  
QTR. NO. VILL. - 2  
P.S.- DISPUR  
DIST.- KAMRUP  
GUWAHATI  
ASSAM.

4: AIJUDDIN AHMED  
S/O- LT. ARAB ALI  
VILL.- PAKABANGIPARA  
P.O.- BORDOULGURI  
P.S.- SIPAJHAR  
DIST.- DARRANG  
ASSAM.

5: SONESWAR PATOWARY  
S/O- LT. MOHENDRA CH. PATOWARY  
VILL.- PAKABANGIPARA  
P.O.- BORDOULGURI

P.S.- SIPAJHAR  
DIST.- DARRANG  
ASSAM.

6: BIMALA THAKURIA  
W/O- SRI ASWINI THAKURIA  
BARBARI  
HOUSE NO. 335  
P.O.- HENGRABARI.

7: ALTAF HUSSAIN  
S/O- LT. DHANO ALI  
JYOTIPITH  
HOUSE NO. 37  
BHETAPARA  
P.O.- BELTOLA  
P.S.- HATIGAON  
DIST.- KAMRUP  
ASSAM.

8: PARAMANANDA RAJBONSHI  
S/O- SRI MOHENDRA RAJBONGSHI  
NARBAN BORSOJAI  
BELTOLA  
P.O.- BASISTHA  
DIST.- KAMRUP  
GUWAHATI  
ASSAM.

9: MINU KALITA  
W/O- BASISTHA BORAH  
BARBARI  
H.NO. 76  
P.O.- HENGRABARI  
P.S.- DISPUR  
DIST.- KAMRUP  
ASSAM.

10: HARAMOHAN THAKURIA  
S/O- LT. RAMCHARAN THAKURIA  
VILL. and P.O.- BHOLAPARA  
P.S.- PALASHBARI  
DIST.- KAMRUP  
GUWAHATI  
ASSAM.

11: ANJALI DUTTA  
W/O- SRI PRAFULLA DUTTA

P.O.- KHANNAPARA  
BATAHGHULI  
P.S.- SATGAON  
DIST.- KAMRUP  
ASSAM.

12: UTPALA SAIKIA  
D/O- SRI MAHESH SAIKIA  
SARUMOTORIA  
H.NO.- 126  
P.O. and P.S.- DISPUR  
DIST.- KAMRUP  
GUWAHATI

VERSUS

THE STATE OF ASSAM AND ORS  
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.  
OF AGRICULTURE, DISPUR, GHY- 6.

2:THE SECY. TO THE GOVT. OF ASSAM  
AGRICULTURE DEPTT.  
DISPUR  
GHY- 6.

3:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM  
FINANCE DEPTT.  
DISPUR  
GHY- 6.

4:THE DIRECTOR OF AGRICULTURE  
ASSAM  
KHANAPARA  
GHY- 22

**Advocate for the Petitioner : MR.P N GOSWAMI**

**Advocate for the Respondent : MR.S CHAMARIA**

**Linked Case : WP(C)/5022/2012**

SMT. KIRAN BHUYAN and 11 ORS  
W/O SRI DHIREN KAKATI  
DIRECTORATE OF AGRICULTURE CAMPUS  
QTR. NO. VILL-2  
P.S. DISPUR

DIST- KAMRUP  
ASSAM

2: AJIT MOHAN  
S/O SRI JOGEN MOHAN  
DIRECTORATE OF AGRICULTURE CAMPUS  
QTR. NO. VILL-2  
P.S. DISPUR  
DIST- KAMRUP  
GUWAHATI  
ASSAM

3: RAJIB SAIKIA  
S/O LATE SURENDRA SAIKIA  
DIRECTORATE OF AGRICULTURE CAMPUS  
QTR. NO. VILL -2  
P.S. DISPUR  
DIST- KAMRUP  
GUWAHATI  
ASSAM

4: AIJUDDIN AHMED  
S/O LATE ARAB ALI  
VILL. PAKABANGIPARA  
P.O. BORDOULGURI  
P.S. SIPAJHAR  
DIST- DARRANG  
ASSAM

5: SONESWAR PATOWARY  
S/O LATE MOHENDRA CH. PATOWARY  
VILL PAKABANGIPARA  
P.O. BORDOULGURI  
P.S. SIPAJHAR  
DIST- DARRANG  
ASSAM

6: BIMALA THAKURIA  
W/O SRI ASWINI THAKURIA  
BARBARI  
HOUSE NO.335  
P.O. HENGRABARI

7: ALTAF HUSSAIN  
S/O LATE DHANO ALI  
JYOTIPATH  
HOUSE NO.37  
BHETAPARA

P.O. BELTOLA  
P.S. HATIGAON  
DIST- KAMRUP  
ASSAM

8: PARAMANANDA RAJBONSHI  
S/O SRI MOHENDRA RAJBONSHI  
NARBAN BORSOJAI  
BELTOLA  
P.O. BASISTHA  
DIST- KAMRUP  
GUWAHATI  
ASSAM

9: MINU KALITA  
W/O BASISTHA BORAH  
BARBARI  
H.NO.76  
P.O. HENGRABARI  
P.S. DISPUR  
DIST- KAMRUP  
ASSAM

10: HARAMOHAN THAKURIA  
S/O LATE RAMCHARAN THAKURIA  
VILL and P.O. BHOLAPARA  
P.S. PALASBARI  
DIST- KAMRUP  
GUWAHATI  
ASSAM

11: ANJALI DUTTA  
W/O SRI PRAFULLA DUTTA  
P.O. KHANNAPARA  
BATAHGHULI  
P.S. SATGAON  
DIST- KAMRUP  
GUWAHATI

12: UTPALA SAIKIA  
D/O SRI MAHESH SAIKIA  
SARUMOTORIA  
HOUSE NO.126  
P.O. and P.S. DISPUR  
DIST- KAMRUP  
GUWAHATI  
VERSUS

THE STATE OF ASSAM AND ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
DEPARTMENT OF AGRICULTURE  
DISPUR  
GHY-6

2:THE SECRETARY TO THE GOVT. OF ASSAM  
AGRICULTURE DEPARTMENT  
DISPUR  
GHY-6

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
FINANCE DEPARTMENT  
DISPUR  
GHY-6

4:THE DIRECTOR OF AGRICULTURE  
ASSAM  
KHANAPARA  
GHY-22

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Advocate for : MS.N SULTANA  
Advocate for : SC  
AGRI. DEPARTMENT appearing for THE STATE OF ASSAM AND ORS

**Linked Case : WP(C)/7184/2015**

SMT. KIRAN BHUYAN and 11 ORS.  
W/O. SRI DHIREN KAKATI  
R/O. DIRECTORATE OF AGRICULTURE CAMPUS QTR. NO. VILL-2  
P.S. DISPUR  
DIST. KAMRUP  
GHY.  
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM  
DEPTT. OF AGRICULTURE  
DISPUR  
GHY.-781006.

-----  
Advocate for : MR.I CHOUDHURY  
Advocate for : appearing for THE STATE OF ASSAM AND 3 ORS

**BEFORE  
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**JUDGMENT**

**Date : 19-10-2023**

1. Heard Mr. I Choudhury, learned Senior Counsel assisted by Mr. NJ Khataniar, learned counsel for the petitioners. Also heard Mr. P Nayak, learned standing counsel for the Finance Department.

2. These three writ petitions are taken up for hearing together being arising out of common and interlinked causes of action. The first grievance of the petitioners is their alleged wrong regularization of their services as Grade IV employees whereas it is their contention that they have been engaged as grade-III employees. The second grievance is a challenge to an advertisement whereby grade III posts claimed by the petitioners were advertised and the third grievance is that by an order dated 13.11.2015, the petitioners were directed to revert from their services as Grade-III employees and directed to render their duties as Grade-IV employees.

3. **Background fact of the cases:**

**A. WP(C) 4133/2012:**

The facts leading to the filing of the writ petitions can be summarized as follows:

I. The petitioners were qualified and were engaged temporarily as Typist (Grade-III posts) under the Directorate of Agriculture during the period 1988-1990 and engagements were extended from time to time and finally, without any break their

services were regularized as Grade-IV employees.

II. After such anomalous regularization, they continued to render their services as grade III employees and considering their performance, the respondent No. 4 deputed them for computer training at Edu Soft, Chandmari.

III. Upon completion of training, the petitioners were engaged in all computer related works in their respective branches in the Department of Agriculture.

IV. On 22.07.2005, a Cabinet decision was taken to regularize the services of Work Charged/ Muster Roll workers serving in different departments of the Government of Assam, who were engaged prior to 01.04.1993 and were in continuous service.

V. Respondent No. 3 on 22.08.2005 communicated the said Cabinet decision and decided to regularize 835 persons, who were engaged in the Agriculture Department.

VI. On 05.10.2005, the respondent No. 4, Director of Agriculture, Khanapara, Assam issued an order regularizing altogether 43 Muster Roll/ Work Charged Workers, including the petitioners in their respective establishments as Peons i.e. Grade-IV employees by overlooking the fact that the petitioners were initially appointed as Typist, which is a Grade-III post and as such the order of regularization amounts to reduction in rank.

VII. The respondent No. 4, Director of Agriculture issued again an order on 25.11.2005 directing the petitioners to perform their duties in their respective places as were engaged prior to

their regularization meaning thereby that although the petitioners were regularized as Grade-IV employees they were directed to perform the duties of Grade-III employees.

VIII. As the petitioner's services were utilized as Junior Assistant since their initial appointment in the Department of Agriculture and also considering the fact that the petitioners have the required qualifications to serve as Junior Assistant, the respondent No. 4 sent a proposal on 30.12.2006 to the Government for promotion of the petitioners from Grade-IV to Junior Assistant in the resultant vacancies that arose in the year 2006.

IX. Despite the written communication dated 30.12.2006, issued by the respondent No. 4 to promote the petitioners to the post of Junior Assistant, no action was taken by the Government. As such, the petitioners submitted several representations to the respondent No. 4 and the respondent No. 4 forwarded the representations along with the particulars of the petitioners to the respondent No. 2. Since no action was forthcoming with regard to the representations submitted by the petitioners, the respondent No. 4 wrote a letter to the respondent No. 2 requesting the Government to expedite the decision regarding promotion of Grade-IV employees of the Directorate.

X. On 22.08.2012, the respondent No. 4 requested the respondent No. 2 to consider the case of the petitioners and to accord approval towards promotion of the petitioners against the existing sanctioned vacant posts of Junior Assistant and to take

necessary action to fill up the Grade-III & Grade-IV vacant posts.

XI. Despite several representations and reminders, no action was forthcoming from the respondent. Accordingly, the petitioners filed WP(C) 4133/2012 praying for a declaration to the effect that the petitioners shall be deemed to have been regularized against Grade-III posts from the date of regularization and to grant all consequential benefits including arrears of salary along with a prayer for promotion to the existing vacant Grade-III posts.

**B. WP(C) 5022/2012:**

I. During the pendency of WP(C) 4133/2012, the impugned advertisement dated 11.10.2012 was issued for filling up the 14 numbers of posts of Junior Assistant in the office of the Directorate of Agriculture, Khanapara.

II. Consequently, the petitioners filed WP(C) 5022/2012 challenging the impugned advertisement dated 11.10.2012 and this court granted interim protection to the petitioners, however, the same was subsequently vacated.

**C. WP(C) 7184/2015:**

I. During the pendency of the aforesaid two writ petitions, the Director of Agriculture, Assam issued an order bearing No. Agri/Esstt/7005/2015-16/5 reverting the petitioners to Grade-IV.

II. Challenging the above order of reversion dated 13.11.2015, the petitioners preferred the third writ petition being WP(C) 7184/2015. Such an order of reversion was stayed by this court. The petitioners are still continuing to serve as Grade -III

employees and some of the petitioners are on the verge of retirement.

3. **Argument of Mr. I Choudhury, learned counsel for the petitioners:**

Mr. Choudhury, learned Senior counsel for the petitioners argues the following:

I. By regularizing the petitioners in the Class of Grade-IV employees in spite of having rendered services in the capacity of Grade-III, the respondents have violated the fundamental right of the petitioners with impunity.

II. The Government having extracted the services of the petitioners as typist/ computer operators in the class and cadre of Grade-III employees, it was duty bound to confer status and remuneration that is commensurate with the services so rendered. The same is the mandate of Article 14 and 16 of the Constitution of India.

III. It is submitted that though the petitioner had signed undertakings not to raise any grievance in respect of their regularization, the law in this issue is no longer res-integra. As such, undertaking the petitioners were made to sign would fall in the realm of unconscionable contract making it liable to be struck down by the Hon'ble Court. In support, he relies on the decision of the Hon'ble Apex Court in the case of ***Central Inland Water Transport Corporation Ltd & Anr. Etc. vs Brojo Nath Ganguly***, reported in ***(1986) 3 SCC 156***. He further relies on the decision of this court rendered in ***Usha***

***Rani Goswami & Ors Vs State of Assam & Ors*** reported in ***2011 (2) GLT 51*** and ***State of Assam Vs Usha Rani Goswami & Ors*** reported in ***2017 (3) GLT 811***.

IV. In so far as the alternative prayer for adjusting the services of the petitioners by granting promotion to the Class and Cadre of Grade-III is concerned, Mr. Choudhury, submits the following:

A. It is an admitted position that each of the petitioners possess the necessary qualification and fulfill all other eligibility criteria.

B. It is also an admitted fact that a large number of vacancies exist in the Class and Cadre of Grade-III in the Department of Agriculture.

C. It is a settled position of law that in public employment, a right for career advancement in the career of an employee is a right recognized under Article 16 of the Constitution of India and is also no longer res integra that the right to be considered for promotion is a facet of Article 16 of the Constitution of India.

4. **Argument of Mr. B Choudhury, learned standing counsel for the Agriculture Department:**

I. Mr. Choudhury, learned standing counsel relying on the affidavit filed by the Under Secretary to the Department submits that for absorption of the petitioner in Grade-III posts, there is requirement of creation of posts, however, same has not been created

by the State and therefore, in term of Government Circular dated 22.08.2005 the petitioners were regularized against Grade-IV posts. Mr. Choudhury while admitting that the petitioners have been performing their duties since their engagement as Computer Operator/ typist/ diarist (skill worker clerical works) and though the prayer of the petitioners for their promotion to the Grade-III posts have been forwarded to the Government for consideration, however, such prayers were rejected as the Department of Personnel was of the view that since there is no scope of promotion of Grade-IV employees, who were earlier engaged and whose services were subsequently regularized.

II. It is also contended by Mr. Choudhury that though the petitioners have been performing their duties since engagement as Computer Operator/ typist/ diarist (skill worker clerical works) but it does not mean or cannot be construed that they are holding Grade-III posts and accordingly, they were assigned to the duties of Grade-IV employees by the order dated 13.11.2015.

III. It is also contended that the order dated 13.11.2015 cannot be construed as demotion and it means that the petitioners are released from their present assignments and have been directed to perform duties of Grade-IV employees.

IV. While concluding his argument, Mr. Choudhury submits that the petitioners have not challenged the Cabinet decision in terms of which their services were regularized by creating personal Grade IV posts and therefore, they cannot claim any benefit except as provided in terms of the Cabinet decision of 2005.

5. **Argument of Mr. Nayak, learned counsel for the respondent Finance Department:**

No affidavit has been filed by the finance department, though the matters are pending since the year 2012. Mr. Nayak, learned counsel argues the followings:

I. The State Cabinet in its meeting dated 22.07.2005 decided to regularize the services of Work Charged/ Muster Roll Workers, who were appointed prior to 01.04.1993, by creating 5892 numbers of different Work Charged grade posts and 25,069 numbers of different Grade-IV posts. Accordingly, instructions were issued vide letter No. FEC(II)-1/2005/66, dated 22.08.2005 to 10 numbers of Departments under the State Government and the services of the petitioners were also regularized in terms of the aforesaid instruction. It is submitted that the Cabinet's decision taken in the meeting dated 22.07.2005 was to regularize the services of only Work Charged/ Muster Roll Workers by creating 5892 numbers of different Work Charged grade posts and 25,069 numbers of different Grade-IV posts.

II. Petitioners were considered for regularization as per instruction vide letter No. FEC(II)-1/2005/66, dated 22.08.2005, pursuant to Cabinet decision dated 22.07.2005 as they were working as Muster Roll Workers.

III. That the petitioners have derived benefits of regularization out of the instruction vide letter No. FEC (II)-1/2005/66 dated 22.08.2005 by accepting the same and yielded

to the terms and conditions set down therein and they now cannot be allowed to turn round, submits Mr. Nayak.

IV. It is further submitted that the petitioners have wrongly contended that they were absorbed in substantive capacity. In the instruction, it was clearly stated that the posts so created are personal to the respective Work Charged/ Muster Roll Worker and will be abolished as soon as the incumbents relinquish the posts in any manner.

V. Accordingly, the petitioners cannot claim promotion to the regular posts of Grade-II posts, submits Mr. Nayak, learned counsel for the respondents.

6. **Decision and Determination:**

I. The Finance Department in the State of Assam has not filed any affidavit to controvert the pleadings made by the petitioners in the writ petitions, which were pending for adjudication since the year 2012 and 2016 respectively, though arguments have been advanced on its behalf. The stand of the employer department has also not been controverted by the Finance Department.

II. From the pleadings and affidavit filed by the State of Assam in the Department of Agriculture, certain undisputed facts emerge.

III. The undisputed facts from the pleadings can be summarized as follows:

A. The petitioners were appointed temporarily as

Computer Operator/ typist/ diarist (skill worker clerical works) and they are having the requisite qualifications of being appointed as Computer Operator/ typist/ diarist (skill worker clerical works). The said posts, in a regular term under the State of Assam fall under Grade-III category.

B. The petitioners were working in the same position from the year 1988 to 1990 till 13.11.2015. On 13.11.2015, they were sought to be reverted to Grade-IV, which was stayed by this court in WP(C) 7184/2015 and they are continuing to perform their duties as Computer Operator/ typist/ diarist (skill worker clerical works), till date however, getting the salary of Grade-IV.

C. The Department in their affidavit has admitted that the petitioners were deputed for computer training from time to time.

D. The Department has also admitted the annexure D i.e. order dated 18.03.2004, which shows that an order was issued by the Director of Agriculture of Assam mandating that the petitioners and other similarly situated persons who are trained employees must engage themselves in all computer related works in their respective branches. It was further directed by the said order dated 18.03.2004 that from the date of issuance of the aforesaid order, engagement of computer operators from other branches will not be allowed.

E. From the pleading of the employer department, it is clear that the petitioners' services are required and are essential for the department.

IV. The different annexures annexed by the petitioners to show that the petitioners were engaged and have been performing the duties of Grade-III employees and that they are having qualification to be appointed/ regularized as Grade-III are also admitted by the respondents employer.

V. The annexure G of WP© No. 5022/2012 further clarifies that according to the employer, though the petitioners' services were regularized as Grade IV employees they are required to perform the duties of Grade III employees and accordingly directed the petitioners to continue to work as they were working prior to their regularization.

VI. The annexure O annexed to WP© 5022/2012 is a communication issued by the respondent No. 4 Director, whereby a proposal to the Government was sent for promotion of the petitioners from Grade IV to Junior Assistant in the resultant vacancies that arose in the year 2006. A reading of the aforesaid communication reveals the followings:

A. That the petitioners have been in continuous service since the date of their engagement.

B. That right from the date of their engagement, the services of the petitioners were utilized as Grade III employees.

C. That the petitioners have the necessary

qualification and eligibility for occupying the post of Junior Assistant in Grade III.

D. That the services of the petitioners are required in the department.

E. That large number of vacancies in the cadre of Junior Assistant existed even in 2006 against which the petitioners could have been adjusted.

VII. By annexure P dated 11.07.2012, the employer issued a reminder to expedite its decision regarding the consideration of the case of the petitioners and in fact by the communication dated 21.08.2012 the respondent No. 4 identified 14 nos. of vacant posts of Junior Assistant which were available in the department for accommodation of the petitioners. Such request was once again made by the respondent No. 2 by its communication dated 22.08.2012.

VIII. Thus, from the aforesaid, it is established and admitted by the employer that the petitioners have been performing the duties of Grade III employees, they are having the required qualification of Grade III employees, the Department requires their services as Grade III for smooth functioning of the Department and even after their regularization as Grade IV, they have been performing their duties as Grade III employees and some of the petitioners are on the verge of superannuation. Therefore, their services are essential for the Department as Grade III and therefore, are performing the duties of Grade III.

IX. Having held thus, now this court is to consider the intent of the proposal for regularization, the Cabinet decision and the resultant regularization.

X. The Government of Assam, Finance (EC-II) Department by a communication dated 22.08.2005 (Annexure-E to WP(C) No.7184/2015) addressed all the departments including the Commissioner and Secretary, Agriculture Departments with the subject for regularization of services of Work Charged/ Muster Roll Workers of Different Department of Government engaged prior to 01.04.1993 and the approval thereof.

XI. The salient feature of the communication dated 28.08.2005 can be summarized as follows:

.A. The Cabinet in its meeting held on 22.07.2005 has decided to regularize the services of work charged/ muster roll workers of different State Government department engaged prior to 01.04.1993, who are in continuous service without any break.

B. Accordingly, Cabinet concurred with the creation of 5892 numbers of different work-charged grade III posts.

C. Similarly, Cabinet concurred creation of 25069 different Grade IV posts.

XII. For the purpose of regularization, the guidelines issued and required to be strictly adhered to, which are relevant to the present litigation are the followings:

A. For regularization, the Administrative Department will

create posts in the same grade that the respective incumbent was holding as work-charged worker prior to their regularization.

B. For regularization of Muster Roll workers, only Grade IV posts will be created.

C. The posts are personal to respective work-charged/ muster roll workers and will be abolished as soon as the incumbent relinquished the post in any manner.

XIII. Prior to regularization of the services, an approved list was sought for by the State of Assam in the Department of Agriculture, through its communication dated 06.01.2006 and the same was forwarded by the Director of Agriculture, Assam by its communication dated 17.01.2006, wherein the names of the petitioners found place. The said list reflects that the petitioners were holding the post of typists and they were engaged between the period 01.09.1987 and 21.12.1992 and their educational qualification ranges from HSLC to Bachelor Degree in Science, Arts and Commerce.

XIV. Along with the list of petitioners, a separate list of persons holding the posts of driver/ peon/ electrician/ sweeper were also forwarded. Some of the said persons are having the qualification of matriculate and most of them are non-matriculate.

XV. Therefore, a reading of the proposal and the guidelines issued will show that the petitioners, according to the employer were entitled for regularization against the post they were

holding inasmuch as posts were also created for those categories.

XVI. These persons are trained in a specific field by spending from Government exchequer, they are performing the duties of Grade III since the date of their engagement, however, they are being regularized as Grade IV employees and therefore, in the considered opinion of this Court equity demands that they need to be absorbed by way of creation of either Grade III posts inasmuch as the mandate of the Guidelines for regularization was also that the concerned administrative department will have to create posts in the same Grade that the respective incumbent was holding and the communication dated 22.08.2005 also shows concurrence for the creation of two sets of employees i.e. Grade III and Grade IV and that the names of the petitioners were sent for regularization showing them as Typist etc.

7. From the aforesaid, it is clear that the State as an employer has been extracting services from the petitioner as Grade III employees from the date of their initial engagement which ranges from 1987 to 1992, however, while regularizing their services, they have been regularized as Grade IV employees and even after their regularization they have been rendering and asked by the employer to render their services as Grade III employees till date.

8. The order issued by the Government seeking these persons to revert as Grade IV employees in the year 2016, itself shows that they continued to serve the State as Grade III employees. Therefore, in the

considered opinion of this court, such action on the part of the State, who requires to be a model employer, has violated the right of the petitioners under Article 21 of the Constitution of India inasmuch as right to live with dignity and without deprivation is an integral facet of Article 21.

9. In view of the admission of the employer that the petitioners have been working and serving the department as Grade III employees and that their services are essential for smooth running of the department and they should be accommodated as Grade III employees, in the given fact of the present case, it is the considered opinion of this court that the Government is duty bound to give the status and remuneration commensurate with the services so rendered to the petitioners as Grade III. In this context, this court can gainfully rely on the principles as laid down by the Hon'ble Apex Court in the case of ***State of Punjab and Ors. Vs. Jagjit Singh and Ors.*** reported in ***(2017) 1 SCC 148*** inasmuch as in the present case depriving the petitioners from the benefits of the service they have rendered, more particularly in the backdrop of admitted position of requirement of their services, the action of the State, as held in ***Jagjit Singh (supra)***, strikes at the very foundation of the human dignity and this court is of the unhesitant view that the petitioners are compelled to have the scale of pay of Grade IV employee though their services are extracted as Grade III. This is nothing but an action of exploitation of the petitioners at the hands of the State employer.

10. Therefore, this court is of the view that the petitioners are entitled for benefits of regularization of Grade III from the date when

their services were regularized as Grade IV employees, however, they shall be entitled for all consequential benefits including back wages from the date of their approaching this court by filling the first writ petition being WP(C) No.4133/2012 inasmuch as they have approached this court in the year 2012, though the first cause of action arose in the year 2005.

11. In the case in hand, the State has regularized the services of the petitioners in the Grade IV, though they have been employed and rendering their services as Grade III employees. It is also undisputed that the petitioners are not lacking any qualification or bore any blemish during their employment for over three decades. The facts also remain that in the Irrigation Department, similarly situated persons who were regularized as Grade IV employees have been promoted to Grade III against available sanctioned vacancies and such facts are crystal clear from the annexure N-Colly of WP(C) 5022/2012.

12. In view of the aforesaid, this court is of the view that the petitioners are deprived of their right as discussed hereinabove. Not only equity demands that the petitioners are required to be granted the service benefits, which is made entitled for Grade III employees under the State but also that the petitioners have acquired a right to be treated as so, for the reasons that admittedly, the petitioners are having the required qualifications for service as Grade III employees and that they have been serving as Grade III employees with effect from their initial engagements and continued to perform so till date, evenafter the date of their regularization of services as Grade IV

employees by the authorities. Therefore, this court would be failing in its duty if it does not notice such equitable consideration. Such a failure and any other approach than as discussed hereinabove would render the High Court a normal court of appeal which it is not.

13. In view of the foregoing reason and discussion, this court directs the following:

I. The petitioners shall be deemed to have been regularized as Grade III employees with effect from the date of their regularization i.e. 05.10.2005, taking note of the peculiar facts and circumstances of the present case as discussed hereinabove. If administrative exigency demands, post personal to the petitioners may also be created.

II. They shall also be given all consequential benefits including back wages from the date of their approaching this Court by filing the first writ petition i.e WP(C) 4133/2012 inasmuch as they have approached this Court in the year 2012, though the first cause of action arose in the year 2005.

III. The order dated 13.11.2015 bearing No. AGRI/Esstt./7005/2015/16/5, which is under challenge in WP(C) 7184/2015 whereby the petitioners were asked to work as Grade IV employees, is accordingly set aside.

IV. In view of the aforesaid decision, nothing remains to be decided in WP(C) No.5022/2012 and therefore, the same is closed as infructuous.

V. The entire exercise as directed herein above should be carried out within a period of 6 (six) months from the receipt of

a certified copy of this judgment and order to be furnished by the petitioners before the respondent authorities, more particularly the respondent No.1 and respondent No.3.

VI. While parting with the records, it is made clear that the present order is in respect of the present petitioners only and that same will not cover any other similarly situated person, who have not approached this Court and shall not be treated as precedent.

14. Accordingly, these writ petitions are disposed of with the aforesaid terms. Parties to bear their own costs.

**JUDGE**

**Comparing Assistant**