

GAHC010068152021



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

Case No. : WA/173/2021

PRABHAKAR DAS AND 9 ORS.

S/O- PROMOTHESH CHANDRA DAS, R/O- H/NO. 35, GUNOMOYEE ROAD,
BYE LANE -1, TARAPUR, SILCHAR, CACHAR, ASSAM, PIN- 788003.

2: ARUP KUMAR KANOO
S/O- LATE R.P. KANOO
R/O- R.K. MISSION ROAD
H/NO. 03
SBI ATM BUILDING
SILCHAR
CACHAR
ASSAM
PIN- 788004.

3: PRASENJIT DEY
S/O- LATE HIRENDRA KUMAR DEY
R/O- BHATIGRAM
DURGA NAGAR
PART-IV
DIST.- CACHAR
PIN- 788030.

4: BIVABOSU DAS
S/O- LATE BIBHASH CHANDRA DAS
R/O- LINK ROAD
LANE NO. 12
H/NO. 6B
SILCHAR
DIST.- CACHAR
ASSAM
PIN- 788006.

5: NUPUR CHOUDHURY
S/O- LATE NRIPENDRA KUMAR CHOUDHURY

R/O- AZAD HIND ROAD
BYE LANE NO. 3
DIST. CACHAR
ASSAM
PIN- 788007.

6: RAM BABU GOALA
S/O- LATE DEB NANDAN GOALA
R/O- VILL.- UTTAR KRISHNAPUR PART-III (DURGAPALLY)
SILCHAR MEDICAL COLLEGE
DIST. CACHAR
ASSAM
PIN- 788014.

7: SHANTANU SARKAR
S/O- LATE DHIRENDRA NATH SARKAR
R/O- H/NO. 24
VIVEKANANDA COOPERATING HOUSING SOCIETY LTD.
N.S. AVENUE
SILCHAR
CACHAR
ASSAM
PIN- 788005.

8: SAURAV BHATTACHARYA
R/O- H/NO. 12
NUTANPATTY NEAR SADARGHAT
P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN- 788001.

9: PARTHA PRATIM SAMADDAR
C/O- KALI DAS SAMADDAR
R/O- H/NO. 9
LAND NO. 7
LINK ROAD
SILCHAR
CACHAR
ASSAM
PIN- 788006.

10: AMLAN DEY
C/O- RIPON DEY
R/O- NEAR RICE MILL NEAR E AND D COLONY
TARAPUR
SILCHAR
CACHAR

ASSAM
PIN- 788003

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, DEPARTMENT OF
HEAVY INDUSTRY, UDYOG BHAWAN, NEW DELHI- 110011.

2:THE JOINT SECRETARY TO THE GOVT. OF INDIA
IN THE MINISTRY OF FINANCE
NEW DELHI- 110001.

3:THE CHIEF EXECUTIVE OFFICER AND PROJECT DIRECTOR
NATIONAL AUTOMOTIVE TESTING AND R AND D INFRASTRUCTURE
PROJECT (NATRIP)
NBCC PLACE
NEW DELHI.

4:THE SITE HEAD AND DEPUTY DIRECTOR
NATIONAL INSTITUTE OF AUTOMOTIVE INSPECTION
MAINTENANCE AND TRAINING (NIAIMT)
SILCHAR

For the Appellants	:	Mr. K.N. Choudhury, Sr. Advocate Mr. N. Gautam, Advocate
For the Respondents	:	Mr. P.S. Bhattacharyya, CGC Mr. H. Gupta, CGC

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM

JUDGMENT & ORDER (ORAL)

Date : 07-06-2024

(Suman Shyam, J)

This writ appeal has been presented against the order dated 08-03-2021 passed by the learned Single Judge in W.P.(C) No. 1528/2021 dismissing the writ petition filed by the present appellants. The facts of the case, in a nutshell, are that the ten appellants herein

were appointed on contractual basis in different capacities under the NIAIMT, Silchar on different dates between the period from December, 2009 to June, 2011, pursuant to a selection process conducted by the National Automotive Testing and R&D Infrastructure Project (NATRiP), an autonomous body functioning under the Ministry of Heavy Industries and Public enterprises, Govt. of India. Since then the appellants, who are Mechanical Engineers, have been serving in their contractual appointments. The grievance of the appellants is to the effect that although they have already rendered more than 10 years of continuous service, at the time of filing the writ petition, the respondents have failed consider their case for regularization.

2. Being aggrieved due to non-consideration of their prayer for regularization in service, the appellants had approached this Court by filing W.P.(C) No. 1528/2021, which was dismissed by the learned Single Judge by the impugned order dated 08-03-2021. The relevant part of the order dated 08-03-2021 is reproduced here-in-below for ready reference:-

“Heard Mr. R.M Deka, learned counsel for the petitioners, who submits that the petitioners, who were appointed during 2009 – 2011 on contractual basis at NAIMT-Silchar pursuant to a valid selection process should be regularized.

On perusing the writ petition, the petitioners’ counsel has not been able to show under what Scheme or Rule the services of the petitioners, who are contract employees, can be regularized. Further, in the case of Secretary, State of Karnataka & Ors. V. Umadevi (3) &Ors. reported in (2006) 4 SCC 1, the Apex Court has held that recruitment should not be made de hors the rules and regularization cannot be a mode of recruitment.

The above being said, an exception has been provided by the Apex Court in Umadevi (3) (Supra) in para 53, which has been clarified by the Apex Court in the case of State of Karnataka & Ors. Vs. M.L. Kesari&Ors., reported in 2010 9 SCC 247, for regularization, as a one time measure.

A reading of para 53 of Umadevi (3) (Supra) and para 7 of M.L. Kesari (Supra) shows that as a onetime measure, only those persons who have been in service in a substantive post for a period of 10 (ten) years on the date the judgment in Umadevi (3) (Supra) was rendered, i.e., on 10.04.2006 can be

considered for regularization.

In the present case, the petitioners have been appointed on contract basis in the year 2009 – 2011 and as such, the petitioners case do not come within the exceptions provided for regularization, as enumerated in para 53 of Umadevi (3) (Supra).

For the following reasons, the petitioners' prayer for regularization cannot be considered.

Writ petition is accordingly dismissed."

3. Hence, this writ appeal.

4. Assailing the impugned order passed by the learned Single Judge, Mr. K.N. Choudhury, learned Sr. counsel appearing for the appellants have argued that the Office Memorandums issued by the Govt. of India through the Ministry of Finance and Revenue Departments on 24-03-1976, 19-12-2016 as well as on 27-12-2016 contain provisions for conversion of temporary posts, such as the ones held by the writ appellants, into permanent posts, in the exigencies of service. It is the further submission of Mr. Choudhury that even the Deputy Director (Tech.) & Site Head, NATRiP, Silchar centre had addressed a letter dated 14-03-2017 to the Manager (HR & Admn.), NIAIMT with a request for conversion of the existing employees working at NIAIMT, Silchar into permanent employees, on the basis of the above OM's and the said request is still pending consideration. Mr. Choudhury, therefore, submits that the writ appellants are praying for an order directing the authorities to consider their case for regularization in service by converting the temporary posts into permanent posts in the light of the OM dated 24-03-1976, 19-12-2016 and 27-12-2016.

5. Mr. Choudhury further submits that on an erroneous application of the observations made in paragraph 53 of the decision of the Supreme Court rendered in the case of **Uma**

Devi (Supra), to the facts of this case, the learned Single Judge has dismissed the writ petition by failing to appreciate that appointment of the writ petitioners/ appellants were not illegal and that they are continuing in contractual service for a period more than 10 years, without any break and also without the backing of any order of the court and therefore, in view of the aforementioned OMs issued by the Govt. of India, there was no impediment on the part of the authorities to convert the contractual posts into permanent posts.

6. Contending that contrary to the projection made by the respondents to the effect that the original employer of the appellants, i.e. NIAIMT has been wound up after completion of the project, Mr. Choudhury submits that the NIAIMT has merged with another entity under the department of Heavy Industries, Govt. of India and the said organization as well as the scheme is still in existence. As such, the respondents be directed to consider the prayer for regularization of service made by the appellants by converting the temporary contractual posts into permanent posts in the light of the notifications dated 24-03-1976, 19-12-2016, 27-12-2016.

7. Mr. Gupta, learned CGC, on the other hand, has submitted that the appellants cannot claim any right of regularization in service in view of the decision of the Supreme Court rendered in the case of ***Uma Devi (Supra)*** and therefore, the learned Single Judge has rightly dismissed the writ petition.

8. We have considered the submissions advanced at the Bar and have also gone through the materials available on record. After going through the impugned judgment and order dated 08-03-2021, it appears that the learned Single Judge had discussed the

writ petition filed by the appellant by rejecting the prayer made in the writ petition which, however, did not include the prayer to consider the petitioners' case for regularization by conversion of the temporary posts in terms of the three OMs issued by the Govt. of India. Viewed from that angle, we do not find any infirmity in the impugned order dated 08-03-2021 passed by the learned Single Judge. However, taking note of the submission of Mr. K.N. Choudhury, learned Sr. counsel for the appellants that all that his clients are seeking is for consideration of their prayer for regular absorption by conversion of temporary posts into permanent posts, based on the projections made in the OMs dated 24-03-1976, 19-12-2016 and 27-12-2016 issued by the Govt. of India, we are of the view that the matter requires proper consideration by the competent authority.

9. As such, without commenting on the merit of the claim of the appellants with regard to their prayer for regular absorption in service, we dispose of this writ appeal by providing that within 04 weeks from today, the appellants may submit a representation before the concerned authority, either jointly or individually, by enclosing copies of the OM dated 24-03-1976, 19-12-2016 and 27-12-2016, thus ventilating their grievance in the matter.

If such representation(s) is submitted by the appellants within 04 weeks from today, by enclosing copy of this order, the competent authority may consider the same and dispose of the representation with a speaking order, within a further period of 12 weeks thereafter. Whatever be the outcome of the process, the same be communicated to the appellants, in writing.

With the above observation, this writ appeal stands disposed of.

No order as to cost.

JUDGE

CHIEF JUSTICE

GS

Comparing Assistant