

GAHC010097952024



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

**Case No. : WP(C)/2573/2024**

PRADIP SARKAR  
S/O- LATE DHIRENDRA CHANDRA SARKAR, R/O- DR. SHYAMA PRASAD  
PALLY, BADARPUR, P.O. AND P.S. BADARPUR, DISTRICT- CACHAR,  
ASSAM, PIN- 788806

VERSUS

THE STATE OF ASSAM AND 9 ORS  
REPRESENTED BY COMMISSIONER AND SPECIAL SECRETARY TO THE  
GOVT. OF ASSAM, PUBLIC WORKS DEPARTMENT (N.H AND BUILDING),  
ASSAM SECRETARIAT, DISPUR, PIN- 781006

2:COMMISSIONER AND SPECIAL SECRETARY TO THE GOVERNMENT OF  
ASSAM  
PUBLIC WORKS DEPARTMENT (ROADS)  
ASSAM SECRETARIAT  
DISPUR  
PIN- 781006

3:COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
FINANCE DEPARTMENT  
ASSAM SECRETARIAT  
DISPUR  
PIN- 781006

4:CHIEF ENGINEER (NATIONAL HIGHWAY WORKS)  
CHANDMARI  
GUWAHATI- 781003

5:CHIEF ENGINEER (ROADS)  
CHANDMARI  
GUWAHATI- 781003

6:PRINCIPAL SECRETARY  
BODOLAND TERRITORIAL COUNCIL  
KOKRAJHAR  
B.T.R, PIN- 783370

7:SECRETARY  
BODOLAND TERRITORIAL COUNCIL  
KOKRAJHAR  
B.T.R, PIN- 783370

8:EXECUTIVE ENGINEER  
PWD KOKRAJHAR RURAL ROADS DIVISION  
KOKRAJHAR, PIN- 783370

9:EXECUTIVE ENGINEER  
PWD, KARIMGANJ  
N.H. DIVISION  
SUBHASH NAGAR  
KARIMGANJ  
PIN- 788710

10:PRINCIPAL ACCOUNTANT GENERAL (A AND E)  
MAIDAMGAON  
BELTOLA  
GUWAHATI  
PIN- 78102

**Advocate for the Petitioner : MR. S P CHOUDHURY**  
**Advocate for the Respondent : SC, FINANCE DEPTT.**

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

**ORDER**

**22-07-2024**

Heard Shri S. P. Choudhury, learned counsel for the petitioner. Also heard Shri R. Dhar, learned Standing Counsel, PWD as well as Shri A. Chaliha, learned Standing Counsel, Finance Department.

**2.** Considering the facts and circumstances and the relief claimed for, this writ

petition is taken up for disposal at the admission stage.

**3.** The claim of the petitioner is for regularization of his service which according to the petitioner, he has been rendering his service for the last about 30 years.

**4.** It is submitted by Shri Choudhury, the learned counsel that the petitioner was appointed as Muster Roll Worker on 01.01.1992 in the Lumding Sub-Division of the PWD under the Maibang Division. In 1995, the petitioner had joined the Kachugaon PWD (Roads) Sub-Division in the district of Kokrajhar and was subsequently upgraded to the post of Work Charged Section Assistant on 13.07.1995. The petitioner was also transferred to Silchar and later to Karimganj and he has been continuously rendering his service. The petitioner is aggrieved by non regularization of his service.

**5.** Shri Choudhury, the learned counsel has submitted that similarly situated persons have been given the benefit of regularization of service and in this connection, he has drawn the attention of this Court to the enclosure at Annexure-4. The learned counsel has also relied upon a decision of this Court passed in WP(C) No. 3469/2015 vide order dated 21.09.2018 wherein directions for consideration have been passed.

**6.** *Per contra*, Shri R. Dhar, learned Standing Counsel, PWD has submitted that the scope of issuing any direction towards regularization of service has become circumscribed in view of the law laid down by the Hon'ble Supreme Court in the case of ***State of Karnataka Vs Uma Devi reported in (2006) 4 SCC 1***. He has also relied upon the decision of a Division Bench of this Court in the case of ***State of Assam Vs Upen Das & Ors.*** reported in ***2020 (5) GLT 605***. It is

submitted that the Division Bench had held that Muster Roll/ Work Charged Employees are not entitled to a direction of regularization and it was only on a concession made by the State, a direction was given to pay the minimum pay scale to such employees.

**7.** The rival submissions have been duly considered.

**8.** Though the petitioner appears to have been in service for more than 30 years, there is no formal appointment order of the petitioner. The certificate which has been relied upon that the petitioner has been working since 01.01.1992 is dated 05.02.2024. The petitioner has however annexed an order dated 13.07.1995 of his upgradation from Muster Roll Labour to Work Charged Section Assistant under the Kachugaon PWD Roads Sub-Division in the district of Kokrajhar. Admittedly, there is no formal order of appointment of the petitioner.

**9.** Under those circumstances, it would be necessary to referred to the observations and directions made by the Hon'ble Supreme Court in the case of ***Uma Devi*** (supra) wherein in paragraph 53, the following have been laid down:-

*“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."*

**10.** It also appears that the State Government had initially issued an Office Memorandum dated 27.06.2013 for application of the three criteria laid down in the aforesaid case of ***Uma Devi*** (supra). What is of importance is the direction of the Hon'ble Division Bench in the case of ***Upen Das*** (supra) wherein the claim for regularization has been rejected and in paragraph 22 of the said judgment the following observation has been made:-

*"22. It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in State of Punjab vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017."*

**11.** This Court has however hastens to add that such observation was made on a concession made by the State.

**12.** The direction of this Court in the decision in WP(C) No. 3469/2015 relied

upon was to consider whether the petitioners in that case fulfills the requirements of the Office Memorandum dated 27.06.2013.

**13.** However, in the instant case, there is no initial order of appointment of the petitioner as Muster Roll Labour and only a certificate has been annexed that too issued in the year 2024. In any case, the induction of the petitioner in service as a Muster Roll Worker in the PWD does not appear to be under any sanctioned vacant post which is one of the basic condition laid down in paragraph 53 in ***Uma Devi*** (supra) judgment.

**14.** In view of the above, this Court is of the opinion that the petitioner is not entitled to any direction for consideration for regularization as such claim was expressly rejected by the Hon'ble Division Bench in ***Upen Das*** (supra).

**15.** Writ petition accordingly stands dismissed.

**16.** At this stage, Shri Choudhury, the learned counsel has drawn the attention of this Court to the proposal dated 08.01.2024 which has been annexed as Annexure-6.

**17.** As observed above, this Court cannot issue any mandamus for such consideration. However, if the Government on its own volition consider the same, it can do so however strictly in accordance with law as laid down by the Hon'ble Supreme Court in the aforesaid case of ***Uma Devi*** (supra).

**JUDGE**

**Comparing Assistant**