

GAHC010133012017



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

Case No. : WP(C)/3845/2017

SADHANA BARUAH
W/O- NILANJAN GOGOI, VILL- BHUKTA BARI, P.O- SIPAJHAR, DIST-
DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER OF TRANSPORT, GOVT OF ASSAM, DISPUR ,
GUWAHATI- 781006

2:THE ADDITIONAL CHIEF SECRETARY
TO THE GOVT OF ASSAM
TRANSPORT DEPTT.
DISPUR
GUWAHATI- 781006

3:THE DISTRICT TRANSPORT OFFICER RandL
KAMRUP
ULUBARI
GUWAHATI-7

4:THE PRINCIPAL SECRETARY
GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY
KAMRUP (M)
ASSAM- 781006

Advocate for the Petitioner : MRS.S SULTANA

Advocate for the Respondent : ADDL. AG, ASSAM

Linked Case : WP(C)/2101/2016

MS SADHANA BARUAH
W/O NILANJAL GOGOI
VILL. BHUKTA BARI
P.O. SIPAJHAR
DIST- DARRANG
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER OF TRANSPORT
GOVT. OF ASSAM
DISPUR
GHY-6

2:THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
TRANSPORT DEPTT.
DISPUR
GHY-6

3:THE DISTRICT TRANSPORT OFFICER RandL
KAMRUP
ULUBARI
GHY-7

Advocate for : MS. J HUDA
Advocate for : ADDL. AG
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.04.2024.

Heard Ms. S Naznin, learned counsel for the petitioner. Also heard Ms. MD Bora, learned Standing Counsel, Transport Department, Assam as well as Shri P

Nayak, learned Standing Counsel, Finance Department, Assam.

2. The petitioner was appointed vide an order dated 08.10.2002 as an LDA-cum-Typist in the District Transport Office, Kamrup. The petitioner claims to have continued in the services and in the year 2016, the first writ petition, being WP(C)/2101/2016 was instituted seeking regularization of service. During the pendency of the said writ petition, the salaries were stopped for which, the second writ petition, being WP(C)3845/2017 has been instituted.

3. Ms. Naznin, learned counsel for the petitioner has submitted that the petitioner having been allowed to continue in her service for a long period of time is entitled for regularization of her services. By drawing the attention of this Court to the averments made in paragraph 22 of the WP(C)/3845/2017, it has been contended that the petitioner was not allowed to sign the attendance register and accordingly, not allowed to serve.

4. Subsequently, IA(C)/1752/2021 was filed for impleadment of the Finance Department which was accordingly done vide order dated 19.01.2024.

5. The learned counsel for the petitioner has submitted that the petitioner having continued in service since the date of her appointment in the year 2002, appropriate direction(s) may be issued for allowing the petitioner to continue in her service and also to regularize her service. Ms. Naznin, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Uma Devi***, reported in **(2006) 4 SCC 1**.

6. *Per contra*, Ms. Bora, learned Standing Counsel, Transport Department has submitted that the initial entry of the petitioner in service was not in accordance with law and was only of a very temporary nature in a leave vacancy. It is submitted that as regards the period of service rendered by the petitioner, the salaries of the petitioner have been paid and therefore, no relief, whatsoever is entitled to by the petitioner.

7. Shri Nayak, learned Standing Counsel, Finance Department while endorsing the submissions made on behalf of the Transport Department has submitted that unless the entry into the services is by a properly held recruitment process, no claim would be maintainable.

8. The rival submissions have been duly considered. A bare look at the appointment order dated 08.10.2002 would reveal the following aspects:

i) The appointment was against a leave vacancy;

ii) The appointment was purely temporary and was to be terminated at any time without assigning any reasons; and

iii) The appointment shall not entitle any right for regularization;

9. The petitioner has chosen the said appointment without any objection. It is another aspect that the petitioner was allowed to continue till the year 2017. However, by mere continuation, the aspect of regularization of service of the petitioner, as claimed, cannot be considered in view of the clear stipulation

made by the Hon'ble Supreme Court in a catena of judgments, including the case of ***State of Karnataka Vs. Uma Devi*** (*supra*) which has been placed on record. The entry of the petitioner in the service does not appear to have been done by following the due process of law. In any case, the appointment was a very temporary one against a leave vacancy and only by the fact that the service of the petitioner was extended from time to time will not grant any kind of right to the petitioner to seek regularization or further continuation in service. After all, it is the prerogative of the employer as to how and whether to continue the service of a temporary employee. Further, the entire concept of *ad hocism* and temporary appointment has to be understood to be for a very limited period and is to be followed by a properly held recruitment process by following the due process of law whereby all eligible candidates are to be given a fair opportunity.

10. In view of the aforesaid facts and circumstances and the discussions made, this Court is of the opinion that no reliefs are entitled to by the petitioner and accordingly both the writ petitions are dismissed.

JUDGE

Comparing Assistant