

GAHC010189532023



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

Case No. : WP(C)/5046/2023

MANZURUL HAQUE LASKAR AND 9 ORS
S/O LATE MAHIBUR RAHMAN LASKAR, R/O VILL- MANIKPUR, P.O.-
RAJNAGAR, P.S.-SILCHAR AND DIST- CACHAR, ASSAM

2: LAL MOHAN GOALA
S/O LT. HARIHOR GOALA
R/O FAKIRTILLA
P.O.-REC (NIT)
SILCHAR
DIST- CACHAR
ASSAM

3: MOSARAF HUSSAIN BARBHUIYA
S/O AKADDAS ALI BARBHUIYA
R/O VILL-BARIKNAGAR PT-(I)
P.O.-REC (NIT)
SILCHAR
DIST-CACHAR
ASSAM

4: MRS. KUNTI NUNIA
D/O LATE GAYA PARASAD
R/O FAKIRTILLA
P.O.-REC (NIT)
SILCHAR
DIST-CACHAR
ASSAM

5: SUJASH NATH
S/O LT. JITENDRA CH. NATH
R/O DUDHPATHIL-V
MASUGHAT
DIST-CACHAR
ASSAM

6: TARA BAHADUR TAPA
D/O LAL BAHADUR TAPA
R/O QTR NO. 10
NIT CAMPUS
GD-IV
P.O.-BHARAKHAI (NIT)
DIST-CACHAR
ASSAM

7: SUDAM VERMA
S/O GAURI SANKAR VERMA
R/O FAKIRTILLA
P.O.-REC (NIT)
SILCHAR
DIST-CACHAR
ASSAM

8: MANINDRA SARKAR
S/O LT. LAL MOHAN SARKAR
R/O VILL AND P.O.-SAIDPUR PT-(II)
DIST- CACHAR
ASSAM

9: BIJOY KUMAR BARHI
S/O LT. HARI BARHI
R/O VILL-BHORAKHAI-PT-(II)
P.O.-REC (NIT)
SILCHAR
DIST-CACHAR
ASSAM

10: SEW NANADAN KURMI
S/O LT. MANIK PRASAD KURMI BHORAKHAI TE
FAKIRTILLA
P.O.-REC (NIT)
SILCHAR
DIST-CACHAR
ASSA

VERSUS

THE UNION OF INDIA AND 4 ORS
TO BE REPRESENTED BY THE SECRETARY DEPARTMENT OF EDUCATION,
(HUMAN RESOURCE DEVELOPMENT), SHASTRI BHAWAN, NEW DELHI

2:THE DIRECTOR
NATIONAL INSTITUTE OF TECHNOLOGY

SILCHAR
CACHAR
ASSAM

3:THE CHAIRMAN BOARD OF GOVERNORS
NATIONAL INSTITUTE OF TECHNOLOGY
SILCHAR
CACHAR
ASSAM

4:THE REGISTRAR
NATIONAL INSTITUTE OF TECHNOLOGY
SILCHAR
CACHAR
ASSAM

5:THE NATIONAL TESTING AGENCY
REPRESENTED BY THE DIRECTOR GENERAL
FIRST FLOOR
NSIC-MDBP BUILDING
OKHLA INDUSTRIAL ESTATE
NEW DELH

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : DY.S.G.I.

Linked Case : WP(C)/5406/2023

NIT WORKERS UNION AND 2 ORS.
VIDE REGISTRATION NO. 1027 HAED OFFICE AT PARK ROAD
SILCHAR-01
DIST-CACHAR
ASSAM
REPRESENTED BY ITS SECRETARY SRI CHAMPA LAL GORH
S/O LATE PURAN GORH
VILL- BHORAKHAI TEA GARDEN
P.O.-NIT SILCHAR
PIN-788010

2: CHAMPA LAL GORH
S/O LATE PURAN GORH
VILL- BHORAKHAI
TEA GARDEN
P.O.-NIT SILCHAR
PIN-788010

3: SAHAB UDDIN LASKAR
S/O ANOWAR ALI LASKAR
VILL- BARIK NEEGAR
PT-II
P.O.-NIT
SILCHAR
PIN-788010
ASSAM
VERSUS

THE UNION OF INDIA AND 4 ORS
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NEW DELHI.

2:THE DIRECTOR
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REPRESENTED BY THE DIRECTOR GENERAL
FIRST FLOOR
NSIC-MDBP BUILDING
INDUSTRIAL ESTATE
NEW DELHI
OKHLA

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
J U D G M E N T & O R D E R

Advocates for the petitioners: Shri A.R. Bhuyan, Advocate in [WP(C)/5046/2023]
Shri M.J. Baruah, Advocate in [WP(C)/5406/2023]

Advocates for respondents : Shri K. Gogoi, C.G.C.
Shri S.P. Choudhury, SC, NIT

Date of hearing : 23.07.2024

Date of judgment : 23.07.2024

Both these writ petitions being connected with the same subject matter, the same are taken up for an analogous hearing and are being disposed of by this common judgment and order.

2. The petitioners in both the cases are employees in Group C & D in the NIT (formerly REC Silchar).

3. On the aspect of regularisation of their services, the petitioners had earlier approached this Court by filing WP(C)/719/2007. The learned Single Judge, vide order dated 17.01.2008 had however declined the prayer for regularisation. The petitioners had preferred WA/369/2008. The Hon'ble Division Bench, after discussing the facts and circumstances of the case and also the aspect that the petitioners had rendered more than 30 years of service, had issued a direction for reconsideration of the aspect of regularisation by the NIT, Silchar as well as by the Ministry of Human Resource, Government of India within a period of 6

(six) months and till such decision was taken, the petitioners were required to be allowed to continue in service. It was also stipulated that if the petitioners were aggrieved by any decision to be taken, they would be at liberty to seek legal recourse.

4. The petitioners claimed to have continued in their service in terms of the aforesaid order. However, the reconsideration, as directed has not been done. In the meantime, on 07.07.2023, an advertisement was issued by the NIT, Silchar for filling up various posts. The petitioners were aggrieved that in the posts where they can be accommodated / regularised, if filled up by direct recruitment, the consideration aspect would be frustrated whereby the petitioners would suffer legal prejudice. It is in this context that the present petition has been filed.

5. I have heard Shri A.R. Bhuyan, learned counsel for the petitioners in WP(C)/5046/2023 and Shri M.J. Baruah, learned counsel for the petitioners in WP(C)/5406/2023. I have also heard Shri S.P. Choudhury, learned Standing Counsel, NIT Silchar and Shri K. Gogoi, learned C.G.C. appearing for the concerned Ministry of Human Resource Development, Government of India.

6. The learned counsel for the petitioners have submitted that without a consideration being made in terms of the order dated 05.12.2012 passed by the Hon'ble Division Bench in WA 369/2008, the filling up of the post in which the services of the petitioners can be regularised would not only be unfair but would also amount to circumventing the order of the Court. It is submitted that if the posts are filled up, the petitioners would lose a chance of being fairly considered for their regularisation. It is submitted that though the petitioners have been allowed to continue in service, the continuation in service is not the issue and the issue is for regularisation of their services which is yet to be considered in

terms of the aforesaid order of the Hon'ble Division Bench. The learned counsel for the petitioners have also drawn the attention of this Court to certain resolutions adopted by the NIT on 27.09.2013 which, amongst others were on the aspect of regularisation of the services of the Muster Roll / Daily Wages Workers phase wise, subject to availability and sanction by the MHRD and also to impart proper training to those MR/Daily Wages Worker who did not have the requisite qualification and age in the matter of regularisation. It is submitted that apart from the aforesaid matters which are part of Resolution No.3 and Resolution No. 4, there was another resolution for absorption of 16 nos. or more of Muster Roll / Daily WageS Workers which were duly fulfilled. It is submitted that having taken such resolution, it was incumbent upon the NIT to make a fair consideration in terms of the order of this Court as well as the resolutions adopted and confer the benefit of regularisation to the petitioners.

7. Shri Baruah, the learned counsel has also highlighted the aspect that his clients fulfilled all the three conditions laid down by the Hon'ble Supreme Court in the case of ***Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.*** reported in ***(2006) 4 SCC 1***. It is submitted that his clients were initially appointed in vacant sanctioned post and have the requisite qualifications and their continuation in service is not on account of any interim order passed by any Court.

8. *Per contra*, Shri Choudhury, the learned Standing Counsel, NIT, by referring to the affidavit-in-opposition filed on 10.11.2023 has submitted that the petitioners have been allowed to continue in their service and therefore, no prejudice is caused to them by the advertisement in question. It is also submitted that the petitioners can very well participate in the recruitment process wherein their candidatures would be fairly considered along with

similarly situated candidates. He has however disputed that Resolution No. 5 was acted upon as no persons have been absorbed by the NIT.

9. On the issue of the consideration to be made, the learned counsel has submitted that for such consideration, the input / co-operation of the MHRD is necessary and in spite of request, such input has not been given and therefore, the consideration has not been able to be made. The learned counsel has however submitted that in the affidavit filed by the NIT as mentioned above, the stand of the NIT has been adequately stated which would amount to a consideration of the case of the petitioners.

10. Shri Gogoi, the learned C.G.C. has submitted that the NIT on its own can consider the cases of the petitioners in compliance of the order dated 05.12.2012 in terms of the law governing the field of regularisation.

11. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

12. Though the issue of regularisation is no longer *res integra* and has been settled by the Hon'ble Supreme Court in amongst others in case of ***Umadevi (3)*** (supra), in the instant case, there is an order of the Hon'ble Division Bench dated 05.12.2012 which was rendered after the judgment of ***Umadevi (3)*** (supra). This Court has noticed that the Division Bench, as such, did not issue any Mandamus for the regularisation and the direction was only for a consideration taking into account that the petitioners had served more than 30 years in the NIT and were still continuing in their services. For ready reference, the relevant observations made in the aforesaid order dated 05.12.2012 is extracted herein below:

“Having regard to the above facts that the appellants have already

served for more than 30 years and they are still continuing in service, it will be in the interest of justice that the issue is considered again by the National Institute of Technology, Silchar as well as by the Ministry of Human Resources, Government of India as far as possible within 6 months from the date of receipt of the certified copy of this order. Pending decision on the issue, the appellants may be allowed to continue in service.

If the appellants are aggrieved by the decision, which may be taken, they will be at liberty to take their remedies in accordance with law.

The appeal is disposed of."

13. This Court has noticed that the aforesaid direction for consideration is also qualified by the observations that if the petitioners are aggrieved at the outcome of such consideration, they would be at liberty to seek legal recourse. The aforesaid observations, in unambiguous terms would mean that such a consideration which was directed and for which a time frame was also given was a mandatory direction. However, in spite of passing of more than a decade, such direction has not been fulfilled. Though the learned counsel for the NIT has highlighted that the petitioners have been allowed to continue in their service, the said aspect would not be connected or relevant to the issue which was in the first part of the order requiring a consideration on the aspect of regularisation. The learned counsel for the NIT has also highlighted the aspect that though input was sought for from the Ministry of Human Resource and Development, such input was not forthcoming and it is only for such reasons that the consideration aspect is yet to be done. He has however submitted that the stand of the NIT has been made clear in the affidavit-in-opposition.

14. The pleadings in an affidavit-in-opposition are only with regard to the issue which has been raised in the Court and to contest the writ petition. The same stand cannot be construed to be a stand after consideration of the cases of the

petitioners as directed by the Hon'ble Division Bench in the order dated 05.12.2012.

15. Delaying the issue of consideration is not only detrimental to the interest of the petitioners but also to the interest of the Institute itself as it is not desirable that posts are to be kept vacant as in absence of adequate manpower, the functioning of the Institute would be adversely affected.

16. Taking into consideration the aforesaid facts and circumstances, this Court directs the Ministry of Human Resource and Development to immediately issue a communication indicating the guidelines to be adopted while considering the case of the petitioners in terms of the order dated 05.12.2012 and based on the said guidelines, the NIT, Silchar would consider the cases of the petitioners in accordance with law and also by taking into the aspect that the petitioners have rendered more than 30 years of service and are at the verge of their retirement.

17. The aforesaid exercise be completed as expeditiously as possible and in any case within a period of 45 days from today.

18. As directed by the Hon'ble Division Bench in the order dated 05.12.2012 till the consideration is done, the posts where the petitioners would have a scope for their consideration are not to be filled up by direct recruitment.

JUDGE

Comparing Assistant