

GAHC010245212022



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

Case No. : WP(C)/7880/2022

GOBIN PEGU
S/O- NAREN PEGU,
R/O- VILLAGE AGAM, DOLUNY,
SUB DIVISION- JONAI,
P.O AND P.S- JONAI, DIST- DHEMAJI, ASSAM, PIN-787060

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE DEPARTMENT, DISPUR, GUWAHATI-6

2:THE SECRETARY
GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-6

3:THE INSPECTOR GENERAL OF REGISTRATION
ASSAM
RUPNAGAR
GUWAHATI-781032

4:THE DISTRICT REGISTRAR DHEMAJI
DIST- DHEMAJI
ASSAM

5:THE TREASURY OFFICER
JONAI
DIST- DHEMAJI
ASSAM

6:THE SUB REGISTRAR
JONAI
DIST- DHEMAJI
ASSA

Advocate for the Petitioner : MR. M TALUKDAR

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 25-07-2024

1. Heard Mr. M Talukdar, learned counsel for the petitioner. Also heard Mr. S Dutta, learned Standing Counsel for the Revenue Department, Govt. of Assam and Mr. P Nayak, learned Standing Counsel for the Finance Department, Govt. of Assam representing respondent No.2 and 5. Also heard Mr. J Handique learned counsel for respondent Nos.3, 4 and 6.

2. The present writ petition is filed seeking a writ of mandamus or any direction commanding the respondents to regularize the service of the petitioner, who is working as Extra Writer in the Office of the Respondent No.6. on a daily wage basis.

3. Mr. Talukdar, learned counsel for the petitioner contends that the petitioner was engaged as an Extra Writer on a daily wage basis @ Rs.25/- per day by a competent authority on 15.09.2009 and since then, he has been working in the said position without any regularization inasmuch as, the petitioner is working against a sanctioned vacant post of Extra Writer and in the meantime, he has also been trained by the competent authorities. Accordingly, it is contended by Mr. Talukdar that there is a necessity of absorption of the petitioner against the sanctioned vacancy, the petitioner being a qualified and trained person.

4. Referring to different documents annexed with the writ petition , the affidavit in opposition and the reply filed by the petitioner, Mr. Talukdar contends that the respondent themselves had admitted that the petitioner's engagement should be regularized and he was appointed in a situation, when the post of Extra Writer was vacant in the office of the Sub Register and huge works were pending and the said situation still continues.

5. Referring to the judgment of the Hon'ble Apex Court in the case of ***State of Haryana Vs. Piara Singh and Ors*** reported in ***1992 (4) SCC 118*** the learned Counsel for the petitioner contends that that the appointment of the petitioner cannot be said to be an illegal appointment as he was engaged in exigencies of administration and in the meantime, the petitioner has acquired knowledge and expertise in this regard and therefore, he has acquired the right of regularization.

6. Referring to paragraph 53 of the decision rendered by the Hon'ble Apex Court in the case of ***Secretary, State of Karnataka vs. Uma Devi*** reported in ***(2006) 4 SCC 1***, Mr. Talukdar contends that petitioner is a duly qualified person and there is a sanctioned vacant post and the petitioner has continued to work for more than 10 years without any intervention of any courts or tribunal and he still continues to work and therefore, the petitioner is entitled for regularization.

7. Referring to the judgment of the Hon'ble apex court in ***State of Karnataka Vs. M.L. Kesari*** reported in ***AIR 2010 SC 2587***, the learned counsel contends that the petitioner is entitled for the regularization in the given facts of the present case. In this context Mr. Talukdar has also relied on the decision of the Tripura High Court in the case of ***Basudev Debnath Vs. Union of India*** in WP(C) No.1162/2018.

8. Mr. Talukdar also contends that he is entitled for scales of

pay in terms of ratio laid down by the hon'ble Apex Court in the case of ***State of Punjab Vs. Jagjit Singh*** reported in ***2017 (1) SCC 148***.

9. Per contra, Mr. S Dutta learned counsel representing the Revenue Department contends that the petitioner has approached this court for the third time seeking similar relief, which was not granted to him by this court on earlier two occasions and therefore, this petition is liable to be dismissed *in-limine*.

10. On merit Mr. Dutta argues that in terms of the determination made by the Hon'ble Apex Court in ***Uma Devi*** (supra), the petitioner is not entitled for any relief. According to Mr. Dutta, not only the appointment of the petitioner is illegal but it was a temporary engagement in exigencies of administration. The petitioner had also not completed 10 years of engagement on the date of passing of the judgment of the Hon'ble Apex Court in ***Uma Devi*** (supra), rather, the petitioner was engaged in the year 2009 i.e., post Uma Devi and therefore the petitioner's appointment was *dehors* rules.

11. Mr. J Handique, learned Standing Counsel representing the respondent Nos.3, 4 and 6, while endorsing the argument advanced by Mr. S Dutta, learned counsel further argues that though a proposal for regularization was mooted, however, same cannot create either any legitimate expectation or right upon the petitioner for regularization.

12. Mr. P Nayak, learned Standing Counsel for the Finance Department while adopting the aforesaid arguments advanced by the learned counsel representing the other respondents further argues that the petitioner is not even entitled for any regularization in terms of the decision made by the Division Bench in the case of ***State of Assam Vs. Upen Das*** reported in ***(2017) 4 GLT 493***.

13. This court has given anxious consideration to the arguments

advanced by the learned counsel for the parties including the pleadings made by the parties and the documents that they have relied on. Also perused the instruction received by the Standing Counsel, Revenue Department from its client which is placed on record.

14. On the basis of the aforesaid materials and for proper appreciation of the arguments advanced by the learned counsel for the parties, the following factual aspects are recorded.

I. The Inspector General of Registration, Assam (respondent No.3 (hereinafter referred to as IGR) by its communication dated 15.09.2006, allowed the Sub Registrar, Jonai to engage the petitioner temporarily as daily wage basis Extra Writer for three months @ Rs.25/- per working day to clear up the pending works and in the interest of public service. It was also provided that extension of engagement if made is required to be intimated to the IGR.

II. The petitioner while continuing in the aforesaid position, filed a representation on 20.05.2010 before the IGR through the Sub Registrar, Jonai requesting regularization of his service. Such representation was forwarded by the respondent No.6 to the IGR by its communication dated 30.05.2010.

III. In the meantime, though the petitioner was working, he was not paid his wages and in the aforesaid background, the Sub Registrar, Jonai through the District Registrar, Dhemaji by his communication dated 24.05.2010 requested the IGR to release the pending wages of the petitioner. In the communication it was further intimated that the office is facing a lot of difficulties due to non availability of a regular Extra Writer as the documents have

been pending since 2003 and people are pressing hard to get their original documents. The said officer also requested for regularization of service of the petitioner against the vacant post.

IV. In the meantime on 03.07.2010 the IGR communicated to all the District Registrar to submit a report showing details of engagement of Extra Writers on daily wage basis. Accordingly, the respondent No.6 submitted its report reporting that the petitioner has been engaged since 15.09.2009 and also reported that his service may be regularized against the vacant sanctioned post so as to enable to make payment to the petitioner.

V. At that stage, the petitioner preferred a writ petition registered as WP(C) 581/2011 seeking regularization and to pay the wages to which he was entitled. This court under its order dated 02.02.2011 disposed of the said writ petition with an observation that the petitioner having been appointed on daily wage basis for a limited period of three months to clear pending works, cannot claim for regularization of his service *dehors* the recruitment rules. However, the respondents were directed to clear the payment to which the petitioner is entitled. Subsequently, the wages amounting to Rs. 59,800/- was paid on 11.09.2023 i.e. after 10 years.

VI. The petitioner continued to be engaged and he was also given training on e-payment etc and in the year 2013, the petitioner was also engaged as a Resource Person (technical) to look after the technical works in addition to his normal duties.

VII. Thereafter, the petitioner once again approached this court by filing a writ petition registered as WP(C) 7552/2015 seeking regularization on the basis of his long service and his experience

and training imparted upon him.

VIII. That writ petition was also disposed of by an order dated 23.07.2018 with an observation that the petitioner's engagement being for a specific period, he cannot claim regularization contrary to relevant recruitment rules for appointment of Extra Writer.

However, a direction was issued to the respondents to cause a verification as to whether the petitioner is working as Extra Writer till date and in the event it is found that he is still working, he was directed to be paid his salary within outer limit of three months from the date of receipt of a certified copy of the order.

IX. Alleging non compliance, the petitioner approached this court by filing contempt petition being Cont.Cas(C) 569/2022, however, said contempt petition was dismissed by an order dated 02.11.2022 for the reason of being hit by delay and latches.

X. In the meantime, a status report regarding the position of Extra Writer in the office of the Sub Registrar, Jonai was sought by the IGR and such a report was submitted on 03.06.2022 which reflects that petitioner was working on a daily basis.

XI. The record also reveals that a process of regularization was initiated by the IGR and was placed before the Revenue and Disaster Management Department by a communication dated 14.05.2013. However, such proposal was rejected by the Revenue and Disaster Management Department, on the ground that regularization is not permissible under existing rules and if there is any vacant post, the person engaged may apply for such vacant post if eligible. Such a decision was communicated to the IGR on 29.07.2013.

XII. The communication of Sub Registrar, Jonai dated

02.01.2024 also reflects that the petitioner was still continuing and was engaged as an Extra Writer at daily wage basis of Rs.25.

15. In the case of ***Uma Devi*** (supra), the Hon'ble Apex court, in no un-ambiguity held that the courts cannot countenance appointments to a public office, which have been made against constitutional scheme. A distinction between temporary employees, daily wagers and those irregularly appointed were made and one time relaxation in para 53 of the judgment was granted in favour of irregularly appointed employees. It is apposite to record here that, such one-time measure was subsequently interpreted by the Hon'ble Apex court not to be a one-time measure and had granted regularization of service to employees, who have completed more than 10 years of service on ad hoc basis. Some of the decisions made in this regard are ***State of Jharkhand vs. Kamal Prasad and others*** reported in ***2014 (7) SCC 223, Nisha Mathur Vs. State of Rajasthan [S.B Civil WP(C) No.2329/2014 of Rajasthan High Court], Suman Devi Vs. State of Jharkhand [WP(S) No.5954/2012 of Jharkhand High Court] Sishir Kr. Ganguly Vs. State of West Bengal [WP 16344 (W) of 2014 of Calcutta High Court], Amarkant Rai Vs. State of Bihar*** reported in ***2015 (8) SCC 265, Union of India Vs. Ilmo Devi*** reported in ***(2021) SCC OnLine 899***.

16. From the aforesaid determinations what is emerges is that state can make a scheme for regularization in a situation where there are sanctioned post, such workers are working against such sanctioned post for more than 10 years and such appointments made are not illegal, even if it is irregular. Another condition is that such employees are not working under the umbrella of any order, permanent or interim by any courts of law.

17. In a recent judgment in ***Vinod Kumar and Others Vs. Union of India and Others*** reported in ***2024 INSC 332***, while dealing with

regularization and absorption of temporary Accounts Clerks who were continuously working for a period of more than 25 years and who were selected through a selection process of involving written test and viva voce while directing consideration for regularization of their employees held that the temporary service of the petitioners therein warrant a reclassification to regular status for the reason of their service conditions evolved over time to a regular status. Those petitioners raised such issue initially before the Administrative Tribunal and thereafter before the High court which were rejected, however, the Hon'ble Apex Court held that essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment, when the actual course of employment has evolved significantly over time. Continuous service in the capacity of regular employees, performing duties indistinguishable from those in permanent post, their selection through a process that mirrors of a regular recruitment constitute a substantive departure from the temporary and scheme specific nature of their initial engagement. It was further held that the judgment in Uma Devi distinguishes between irregular and illegal appointments underscoring the importance of considering certain appointments, even if were not made strictly in accordance with the prescribed rules and procedure, cannot be said to have been made illegally if the appointment had followed the procedure of regular appointments such as conduct of written examination or interview.

18. Now coming to the case in hand, it is an admitted position that the claim of the petitioner has already been rejected twice by this court primarily on the ground that a person who is engaged temporarily for a temporary period cannot be regularized. There is no quarrel on such proposition of law inasmuch as, such determination is binding upon this court in the given facts of the present case.

19. The settled propositions of law relating to regularization in services as discussed hereinabove, do not permit any such direction of regularization, more particularly for the reason that the initial engagement of the petitioner cannot be said to be an regular/irregular appointment rather, it was an engagement on daily wage basis in the exigencies of administration, though in the meantime, the petitioner has completed more than 10 years of engagement. The nature of engagement of the petitioner will not entitle him for a writ of mandamus for regularization. Thus, no writ of mandamus can be issued commanding the respondents to regularize the service of the petitioner.

20. From the discussions made herein above and the facts recorded, there is no doubt in the mind of this court that the state has adopted a policy of *ad-hoc-ism*. Instead of filling up the post regularly, they are continuing to get the job/work done through a daily wager that too paying a daily wage in derogation of the Minimum Wages Act, 1948. In the considered opinion of this court, such course of action is nothing but exploitation.

21. Yet another aspect of the matter is that admittedly, the petitioner is having the required qualifications for being appointed as an Extra Writer and he has been doing the job of an Extra Writer on a daily wage basis since the year 2009. Admittedly his engagement was made in the public interest against a sanctioned vacant post, which still remains vacant and without there being any regular appointment, since for the last 15 years till date, the service of the petitioner is being utilized, even without he being paid the minimum wages mandated under law. In the aforesaid context, this court is now to consider the argument of Mr. M Talukdar, learned counsel for the petitioner, as regards entitlement of scale of pay in terms of the judgment of ***Jagjit Singh(supra)***

22. The Hon'ble Apex Court in the case of ***Jagjit Singh (supra)***, while dealing with the applicability of equal pay for equal work to the temporary employees, after elaborately discussing different previous decisions in this regard concluded the following:

- a. Constitution bench in Uma Devi (supra) distinguish the issue of pay parity and regularization in service, it was held that on the issue of pay parity, the concept of "equality" would be applicable but principle of equality could not be invoked for absorbing temporary employees in government service or for making temporary employees regular/permanent. In Uma Devi the constitution bench unambiguously held that on the issue of pay parity, the High court ought to have directed the daily wage workers be paid wages equal to the salary at the lowest grade of their cadre.
- b. To apply the principle of equal pay for equal work, in relation to temporary employees, including daily wage employees, adhoc appointees, employees appointed on casual basis, contractual employee, the sole factor that requires to be determined is whether the employees concerned before the court are rendering similar duties and responsibilities as are being discharged by regular employees holding the same corresponding post;
- c. If such a position is in affirmative, the concerned employee would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale) extended to regular employees holding the post.

23. It is well settled that the onus of proof of parity in duties and responsibilities of the subject post with the reference post, under the principle of equal pay for equal work, lies on the person who claims it and

that the Courts not being expert cannot make such a determination. However, in the case in hand, there shall not be any difficulty on the part of this court, on the basis of admitted facts as recorded at paragraph 13 hereinabove, in holding that the petitioner who is a daily wage employee has been rendering similar duties and responsibilities as were/are being discharged by regular Extra Writer holding the same post inasmuch as, it is an admitted position that petitioner was engaged as Extra Writer in the interest of public service against one sanctioned post of Extra Writer, which is still lying vacant and petitioner is still performing the duties against the said sanctioned vacant post of Extra Writer.

24. Accordingly, for the reasons discussed hereinabove, this court is of the firm view that the petitioner shall be entitled to draw wage at the minimum of the pay scale (at the lowest grade in regular pay scale) extended to a regular Extra Writer. Such wages be paid to the petitioner from the date of delivery of this judgment.

25. Now coming to the determination made in *Upen Das* (supra) by the Division Bench, in the considered opinion of this court, the Division Bench has not laid down any proposition of law that except under the scheme formulated by the State for payment of minimum scale of pay, no temporary employees are entitled for parity in pay as determined by the Hon'ble Apex Court in ***Jagjit Singh*** (supra) nor the Hon'ble Division Bench in ***Upen Das*** had issued any direction to the state to frame any scheme of pay parity for the temporary employees. Rather the Division Bench at paragraph No.22 had appreciated the scheme proposed by the state of Assam which is quoted herein below:

“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”

26. Therefore, the argument of Mr. Nayak that petitioner is not entitled for any benefit in terms of the determination made by the Division Bench in ***Upen Das*** (supra) cannot be accepted in the given facts of the present case.

27. In view of the discussion made and reasons recorded hereinabove, the prayer of the petitioner for a writ of mandamus commanding the respondent to regularize his service stands rejected. However, it is directed that the respondents more particularly, the respondent No.3, 4 and 6 shall pay the petitioner wages at the minimum of the pay scale (at the lowest grade in regular pay scale) extended to a regular extra writer from the date of delivery of this judgment.

28. The directions be complied with within a period of four weeks from the date of receipt of a certified copy of this judgment and order.

JUDGE

Comparing Assistant