

GAHC010265982022



2024:GAU-AS:7707

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

Case No. : WP(C)/8306/2022

BALABHADRA DAS AND 31ORS.
S/O LATE SWARGESWAR DAS,
R/O VILLAGE AND P.O -BONDA,
DISTRICT -KAMRUP (M), ASSAM,
PIN - 781026.
PRESENTLY POSTED AT CHANDMARI ELECTRICAL SUB - DIVISION,
APDCL, GUWAHATI, PIN -781003.

2: PRATAP CHANDRA KALITA

S/O LATE TARUN KALITA

R/O VILLAGE -BORAGAON

P.O -GERUA
DISTRICT -KAMRUP (M)

ASSAM.
PRESENTLY POSTED AT ULUBARI ELECTRICAL SUB - DIVISION
APDCL
GUWAHATI
PIN -781007.

3: MD. SIRAJUDDIN AHMED

S/O NAJANUL HOQUE

R/O VILLAGE -HAJO

P.O/P.S -DAMPUR

DISTRICT -KAMRUP (M)
ASSAM.
PRESENTLY POSTED AT CAPITAL ELECTRICAL SUB - DIVISION

APDCL
DISPUR

PIN -781005.

4: DIPENDRA KUMAR SARMA

S/O SHRI BHRIGU NATH SARMA

VILLAGE -SIMALIYA
P.O -CHAMATA
DISTRICT -NALBARI
ASSAM.

PRESENTLY POSTED AT CAPITAL ELECTRICAL SUB - DIVISION
APDCL
DISPUR

PIN -781005.

5: SUBHASHEH DAS

S/O LATE KANTA DAS

R/O VILLAGE/P.O -BHELAMANI

P.S -HAJO
DISTRICT -KAMRUP
ASSAM.

PRESENTLY POSTED AT HAJO ELECTRICAL SUB - DIVISION
APDCL
HAJO

PIN -781102.

6: PRADIP MALAKAR

S/O LATE RATIRAM MALAKAR

R/O VILLAGE -SATDOLA
P.O -HAJO

DISTRICT -KAMRUP
ASSAM.

PRESENTLY POSTED AT HAJO ELECTRICAL SUB - DIVISION
APDCL
HAJO

PIN -781102.

7: RAMANI KANTA GOSWAMI
S/O SHRI PRANESWAR GOSWAMI

R/O VILLAGE -MANRA
P.O/DISTRICT -NALBARI
ASSAM.
PRESENTLY POSTED AT NALBARI ELECTRICAL SUB - DIVISION
APDCL
NALBARI
PIN -781335.

8: RATUL BHARALI

S/O SHRI MUNINDRA NATH BHARALI

R/O VILLAGE/P.O -SUALKUCHI

DISTRICT -KAMRUP
ASSAM.
PRESENTLY POSTED AT NARENGI ELECTRICAL SUB - DIVISION
APDCL
GUWAHATI
PIN -781026.

9: SAMARENDRA MEDHI

S/O LATE CHANDRA KANTA MEDHI

R/O VILLAGE/P.O -BAHARIHAT

NIZ BAHARI
DISTRICT -BARPETA
ASSAM.
PRESENTLY POSTED AT BARPETA ELECTRICAL SUB - DIVISION
APDCL
BARPETA
PIN -781301.

10: MUNINDRA NATH DAS

S/O LATE CHABIN CH. DAS

R/O VILLAGE/P.O -GANAK KUCHI

DISTRICT -BARPETA
ASSAM -781314.
PRESENTLY POSTED AT BARPETA ELECTRICAL SUB - DIVISION

APDCL
BARPETA
PIN -781301.

11: CHANDI CHARAN TALUKDAR

S/O SHRI DURGADHAR DAS

R/O VILLAGE -SARUTAPA
P.O/DISTRICT -BARPETA
ASSAM - 781352.
PRESENTLY POSTED AT BARPETA ELECTRICAL SUB - DIVISION
APDCL
BARPETA
PIN -781301.

12: PRADIP KUMAR DAS

S/O LATE ACHYUT CH. DAS

R/O VILLAGE -FATAHATI

P.O/DISTRICT -BARPETA
ASSAM.
PRESENTLY POSTED AT BARPETA ELECTRICAL SUB - DIVISION
APDCL
BARPETA
PIN -781301.

13: BALABHADRA PATHAK

S/O LATE SARBEWAR PATHAK

R/O VILLAGE -KUJIRDAHATI
P.O/DISTRICT -BARPETA.
PRESENTLY POSTED AT BARPETA ELECTRICAL SUB - DIVISION
APDCL
BARPETA
PIN -781301.

14: BAIKUNTHA BAISHYA

S/O LATE DEBEN BAISHYA

R/O VILLAGE -PUB DHARAPUR

P.O -DHARAPUR

DISTRICT -KAMRUP
GUWAHATI -17.
PRESENTLY POSTED AT AZARA ELECTRICAL SUB - DIVISION
APDCL
AZARA

PIN -781017.

15: JOGEN DAS

S/O LATE HARESWAR CHANDRA DAS

R/O VILLAGE -CHECHAMUKH KUMARPARA
P.O -HAJO
DISTRICT -KAMRUP
ASSAM -781104.
PRESENTLY POSTED AT SONAPUR ELECTRICAL SUB - DIVISION
APDCL
SONAPUR
PIN -785690.

16: SMTI JURI KOCH
W/O LATE BROJEN KOCH

R/O VILLAGE/P.O -BANMUKH

DISTRICT -SIBSAGAR
ASSAM - 785663.
LEGAL HEIR OF LATE BROJEN KOCH

LAST PLACE OF POSTING AT SIBSAGAR ELECTRICAL SUB -DIVISION
APDCL
SIBSAGAR
PIN -785640.

17: MD. DIDAROTDDIN AHMED

S/O MD. BOSHIRUDDIN AHMED

R/O VILLAGE -NA-ALI

P.O/DISTRICT -SIBSAGAR
ASSAM

PIN - 785640.
PRESENTLY POSTED AT SIBSAGAR ELECTRICAL SUB -DIVISION
CIRCLE -I
APDCL

SIBSAGAR
PIN -785640.

18: CHITRA DUTTA

S/O LATE DILIP DUTTA

R/O VILLAGE -JAYANAGAR

P.O -JOYSAGAR
DISTRICT -SIBSAGAR

ASSAM
PIN - 785665.
PRESENTLY POSTED AT SIBSAGAR ELECTRICAL SUB -DIVISION
CIRCLE -I
APDCL
SIBSAGAR
PIN -785640.

19: RUPJYOTI DUTTA

S/O BIPIN CH. DUTTA

R/O VILLAGE -JALUGAON

P.O -METEKA
DISTRICT -SIBSAGAR

ASSAM
PIN - 785697.
PRESENTLY POSTED AT SIBSAGAR ELECTRICAL SUB -DIVISION
CIRCLE -II
APDCL
SIBSAGAR
PIN -785640.

20: NOREN CHETIA

S/O BAHADUR CHETIA

R/O VILLAGE/P.O -BHANUMUKH
DISTRICT -SIBSAGAR
ASSAM - 785663.
PRESENTLY POSTED AT SIBSAGAR ELECTRICAL SUB -DIVISION
CIRCLE -I
APDCL
SIBSAGAR

PIN -785640.

21: ABBAS ALI

S/O LATE SOLEMAN SK

R/O VILLAGE -MOTIRCHAR

P.O -HOWRAPUR
DISTRICT -DHUBRI

ASSAM

PIN - 783324.

PRESENTLY POSTED AT DHUBRI ELECTRICAL SUB -DIVISION
APDCL
DHUBRI

PIN -783301.

22: PANKAJ SARKAR

S/O LATE PHANINDRA NATH SARKAR

R/O MASTERPARA WARD NO. 4

P.O -GAURIPUR
DISTRICT -DHUBRI

ASSAM

PIN - 783331.

PRESENTLY POSTED AT GAURIPUR ELECTRICAL SUB -DIVISION
APDCL
GAURIPUR
PIN -783331.

23: ARUN CH. DAS

S/O SHRI ANIL CH. DAS

R/O VILLAGE -KALDOBA
PAR -2

P.O -AGOMONI
DISTRICT -DHUBRI

ASSAM

PIN - 783335.

PRESENTLY POSTED AT AGOMONI ELECTRICAL SUB -DIVISION
APDCL
DHUBRI
PIN -783335.

24: TARUN KUMAR BARUA

S/O LATE GIRISH CH. BARUA

R/O BARUPATTI
P.O -GAURIPUR
WARD NO. 3
DISTRICT -DHUBRI
ASSAM

PIN - 783331.
PRESENTLY POSTED AT GAURIPUR ELECTRICAL SUB -DIVISION
APDCL
GAURIPUR
PIN -783331.

25: GOVINDA DUTTA

S/O LATE BRAJA GOPAL DUTTA

R/O VILLAGE/P.O -BASUGAON
BTC ROAD
DISTRICT -CHIRANG
ASSAM

PIN - 783372.
PRESENTLY POSTED AT GOSAIGAON ELECTRICAL SUB -DIVISION
APDCL
GOSAIGAON
PIN -783360.

26: DIPAK KR. GHOSH

S/O LATE KALI CHARAN GHOSH

R/O VILLAGE -GHOSHPARA
WARD NO. 14
P.O -BIDYAPARA
DISTRICT -DHUBRI
ASSAM
PIN - 783324.

PRESENTLY POSTED AT DHUBRI ELECTRICAL SUB -DIVISION
APDCL
DHUBRI

PIN -783301.

27: JATIN CH. BORA

S/O LATE MADHURAM BORA MUHURAM

R/O VILLAGE -KHETRIGAON

P.O -CHAKALAGHAT

DISTRICT -NAGAON
ASSAM

PIN - 782142.

PRESENTLY POSTED AT CHORAIBARI ELECTRICAL SUB -DIVISION
APDCL
SIBSAGAR
PIN -785640.

28: MANO RAM DAS

S/O ANA RAM DAS

R/O VILLAGE -SWAHIDNAGAR

P.O -NOONMATI
DISTRICT -KAMRUP

ASSAM

PIN - 781020.

PRESENTLY POSTED AT NARENGI ELECTRICAL SUB -DIVISION
APDCL
NARENGI
PIN -781026.

29: NARAYAN CH. RAJBONSHI

S/O LATE SUMBOR RAJBONSHI

R/O VILLAGE/P.O -GANDHIBORI

P.S -RAHA
DISTRICT -NAGAON
ASSAM

PIN - 782103.

PRESENTLY POSTED AT LANKA ELECTRICAL SUB -DIVISION
APDCL
NAGAON

PIN -782001.

30: SANATAN RAJBONGSHI

S/O LATE KAMALAKANTA RAJBONGSHI

R/O VILLAGE/P.O -KENDUKUCHI

DISTRICT -NALBARI
ASSAM

PIN - 781341.
PRESENTLY POSTED AT NALBARI ELECTRICAL SUB -DIVISION
APDCL
NALBARI
PIN -781335.

31: KHAIROZ ZAMAN HAZARIKA

S/O LATE ABDUL MAZID

VILLAGE -PACHIM MUKUNDA ALI

P.O -MITHA PUKHURI PAR

P.S -JUIA
DISTRICT -NAGAON

ASSAM
PIN - 782124.
PRESENTLY POSTED AT NAGAON ELECTRICAL SUB -DIVISION
CIRCLE -I
APDCL
NAGAON
PIN -781335.

32: MUNINDRA KALITA

S/O LATE PRABHAT CH. KALITA

R/O VILLAGE -MAJKUCHI

P.O -PATBAUSI
DISTRICT -BARPETA

ASSAM
PIN - 781314.
PRESENTLY POSTED AT BARPETA ELECTRICAL SUB -DIVISION
APDCL

BARPETA
PIN -781301

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LTD. AND 2 ORS.
REP. BY THE CHAIRMAN, BIJULEE BHAWAN, PALTAN BAZAR, GUWAHATI-
781001.

2:THE MANAGING DIRECTOR

ASSAM POWER DISTRIBUTION COMPANY LTD.
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI - 781001.

3:THE CHIEF GENERAL MANAGER (HRA)

ASSAM POWER DISTRIBUTION COMPANY LTD.
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI - 781001

Advocate for the Petitioner : MR. P BHOWMICK, MR. D THAOSEN

Advocate for the Respondent : SC, APDCL,

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri P. Bhowmick

Advocates for the respondents : Shri KP Pathak, SC-APDCL

Date of hearing : **07.08.2024**

Date of Judgment : **07.08.2024**

JUDGMENT & ORDER

The instant petition filed under Article 226 of the Constitution of India is on

the claim that the petitioners should be treated under the Old Pension Scheme (OPS) in connection with the service rendered by them with the Assam Power Distribution Company Ltd. (APDCL). As per the facts projected, the petitioners were initially appointed by the erstwhile ASEB in the period 1989 to 1995. Pertaining to the aspect of regularization of their service and parity of pay, the petitioners had approached this Court along with similarly situated persons in a number of writ petitions, the lead case being WP(C)/1234/2008 (***Abdul Kadir and Another. Vs. Central Assam Electricity Distribution Company***). The said writ petitions were disposed of vide a judgment and order dated 11.12.2012. As per the petitioners, there was a direction for regularization of their service pursuant to which, in the year 2014, their services were regularized. The grievance of the petitioners, as indicated above, is regarding placing them under the New Pension Scheme. The petitioners claimed that since their initial appointments were prior to the introduction of the New Pension Scheme, they should be covered / given benefit under the Old Pension Scheme (OPS).

2. I have heard Shri P. Bhowmick, learned counsel for the petitioners. I have also heard Shri KP Pathak, learned Standing Counsel, APDCL. Shri Pathak has also submitted that affidavit-in-opposition has been filed on 21.07.2023. This Court has noticed that the petitioners have also filed rejoinder affidavit on 07.08.2023.

3. Shri Bhowmick, learned counsel for the petitioners has submitted that though the regularization of the services of the petitioners may be after the introduction of the New Pension Scheme, it is their initial appointment which is to be taken into consideration for determining under which Pension Scheme they should fall. It is submitted that there is no manner of dispute or doubt that

the initial appointments of the petitioners were in the period 1989 to 1995, which is much prior to the introduction of the New Pension Scheme and therefore, the claim is reasonable, *bona fide*, which is liable to be allowed by this Court. The learned counsel has also referred to a Memorandum of Understanding when the erstwhile ASEB was converted into a Corporation APDCL wherein it was stated that the service conditions of the persons shall not be adversely affected. He has also drawn the attention of this Court to an order dated 05.09.2020, whereby it is claimed that similarly situated persons were brought under the Old Pension Scheme. It is submitted that 199 nos. of persons were regularized on 01.06.2005 and it is only the petitioners who were given the benefit of regularization in the year 2014 in accordance with the judgment and order dated 11.12.2012 of this Court mentioned above. He accordingly submits that a case of discrimination is made out as well as unreasonable action of the respondent authorities, warranting interference of this Court.

4. *Per contra*, Shri Pathak, learned Standing Counsel, APDCL has, at the outset, submitted that the very basis of the claim is a non-existing one and made on an incorrect assumption of the aspect of their entry into the services of the petitioners. By drawing the attention of this Court to the documents pertaining to their initial entry into service in the period 1989 to 1995, the learned Standing Counsel has submitted that the initial entry was by means of outsourcing and was not against a regular vacant and sanctioned post. It is submitted that the orders passed in the year 2014 were not orders of regularization of the services of the petitioners but of fresh appointments. It is submitted that when the appointment was done after introduction of the NPS, there is no reason to give the benefit of the OPS which has been replaced by the NPS in the interest of public service. The learned Standing Counsel for the

respondents has also drawn the attention of the appointment letters in which it was clearly stipulated that the petitioners would be under the NPS. In this connection, the appointment letters annexed to the writ petition as Annexure 3 series have been pressed into service.

5. Shri Pathak, learned Standing Counsel has also submitted that though much reliance has been placed by the petitioners on the earlier judgment and order dated 11.12.2012 passed by this Court, there is a clear observation in the said judgment and order that the petitioners do not meet the requirement as 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***. In this connection, the observations made by this Court in the said judgment in paragraph 25 has been relied upon. The learned Standing Counsel further submits that in any case, the penultimate paragraph of the said judgment and order would show that only a consideration was to be made for those incumbents who fulfill the requirement laid down in paragraph 53 of the ***Umadevi (3)*** (supra). It is submitted that admittedly the petitioners did not fulfill the three requirements as laid down in ***Umadevi (3)*** (supra) and therefore, the question of regularization of their services did not arise at all. He reiterates that the appointments made in the year 2014 are fresh appointments and therefore, the claim is without any basis.

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

7. The entire claim for the benefit of the Old Pension Scheme is based upon the judgment and order of this Court dated 11.12.2012. As such, it would be apposite to refer to the relevant observations made by this Court in the aforesaid judgment. The said writ petitions were on the issue of regularization

of the services of the petitioners which is evident from a reading of the judgment and order. This Court was also considering the said claim on the touchstone of the principles laid down by the Hon'ble Supreme Court in various cases including the case of **Umadevi (3)** (supra). In fact, the conditions laid down in **Umadevi (3)** (supra) have been reproduced in paragraph 17 of the said judgment. In the case of **Umadevi (3)** (supra), the relevant observations made in the said case are extracted hereinbelow-

“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.”

8. This Court in the said judgment dated 11.12.2012 had come to a categorical finding that the petitioners were not appointed by following a common recruitment rule and some of them were appointed on a fixed pay basis due to exigency of service and without initiating any process of selection. For ready reference, the observation made in paragraph 25 is extracted hereinbelow-

“25. The petitioners herein were not appointed by following a common recruitment rules. Some of them were engaged by the erstwhile ASEB and some by the APDCL on a fixed pay basis, due to exigencies of service and without initiating any process of selection. That being the position, they are not entitled to the parity in pay with that of the regular Meter Readers and Bill Clerks.”

9. In paragraph 27 of the said judgment of this Court, a direction has been made to identify such persons who have been working for 10 years without any intervention of the Court and consider their cases for regularization by following the principles laid down in the case of **Umadevi (3)** (supra). Admittedly, the paragraph 25 in the said judgment has come to a clear finding that the initial appointment of the petitioners do not appear to be against any sanctioned vacant post. The aforesaid observation made in the judgment is also not the subject matter of challenge in any further proceeding and therefore, attained

the finality. It becomes clear that the petitioners were not entitled for regularization in terms of the observations made in the said judgment read with the principles laid down in the case of ***Umadevi (3)*** (supra). This Court is therefore, required to look into the order of appointments which have been annexed as Annexure 3 series. A bare look at the said orders would indicate that the said appointments were done after the selection on a regular basis. The appointments cannot relate back to the initial engagements of the petitioners done in the year 1989 to 1995 as the petitioners had gone through a fresh selection process in which they appear to have been selected and thereafter appointed. The appointment being post introduction of the NPS, any claim to be brought under the OPS does not appear to this Court to be with any substance.

10. In view of the aforesaid facts and circumstances and the discussions made, the claim made in the instant petition is held to be unsustainable and accordingly, the writ petition is dismissed.

JUDGE

Comparing Assistant