

(2012) 12 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1234 and 4723 of 2008, WP (C) No. 4085 of 2011, WP (C) No. 97 of 2012

Abdul Kadir and another

APPELLANT

Vs

The Central Assam Electricity Distribution Company Ltd.

 Sri Drona Hazarika and others Vs Assam State
Electricity Board and others
 Md. Abdul Kadir and 22
others Vs The State of Assam and others
 Dhirendra
Chandra Nath Vs The Assam Power Distribution Company
Ltd. and others

RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 39(d)

Citation : (2013) 2 GLD 502 : (2013) 2 LLJ 171

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : Rajkhowa in WP C Nos. 1234/2008, 4085/2011, 6096/2011, 60/2012, 3614/2012, Mr. N. Sharma, Mr. A.M. Mazumdar, Mr. B.N. Sarma, Mr. S. Ahmed in WP C Nos. 1234/2008, Mr. M. Sarma, Mr. K.M. Haloi in WP C No. 2398/2012, Mr. A. Dasgupta in WP C Nos. 4723/2008, 4355/2009, 318/2012, 2398/2012, Dr. B. Ahmed in WP C Nos. 4085, 4594/2011, 6420/2011, 889/2012, 4729/2012, Mr. I.H. Barbhuyan in WP C No. 3614/2012, Mrs. Rajkhowa in WP C No. 4085/2011, Mr. A. Choudhury, Mr. S. Sarma, Mr. N. Dutta in WP C Nos. 4148/2011 and 2495/2012, Mr. B.N. Gogoi, Mr. P. Borah, Mr. S. Borthakur, Mr. B.D. Goswami in WP C No. 4210/2011, Mr. N. Haque, Mr. K. Uddin in WP C No. 4729/2012, Mr. H.I. Choudhury in WP C Nos. 4594/2011, 6420/2011, 4729/2012, Mr. S.K. Deori in WP C Nos. 4594/2011 and 4729/2012, Mr. S.R. Barbhuiya in WP C No. 4594/2011, Mr. M. Das in WP C Nos. 4820/2011, 83/2012, Mr. S. Deka in WP C Nos. 4820/2011, 4148/2011, 1390/2012, 1792/2012, Mr. A. Sarma in WP C Nos. 4820/2011, 4148/2011, Mr. H. Sarma in WP C Nos. 4820/2011, 4148/2011, 1390/2012, 1792/2012, 3416/2012, Mr. B. Mahajan in WP C No. 4820/2011, Mr. M. Ahmed in WP C No. 1852/2012, Mr. A.R. Sikdar in WP C No. 1852/2012, Md. S. Islam, Mr. M.H. Talukdar in WP C No. 1852/2012, Mr. D.K. Medhi in WP C No. 4828/2011, Mr. R.K. Talukdar, Mr. C. Boruah, Ms. U. Borgohain in WP C No. 5874/2011, Mr. P.N. Choudhury, Mr. R. Phukan in WP C No. 5893/2011, Mr. I.H. Barbhuyan, Ms. R. Rajkhowa in WP C Nos. 6090/2011, 6096/2011, 60/2012, 3614/2012, Mr. N. Haque, Mr. A.M. Buzarbaruah in WP C No. 4729/2012, Miss M. Barman, Mr. S.K. Deori, Mr. K.

Uddin in WP C No. 6420/2011, Mr. L.R. Mazumder, Mr. M. Dutta in WP C No. 83/2012, Mr. A.B. Choudhury, Mr. Wise Imran, Md. K. Rahman, Mr. M.K. Sharma in WP C No. 97/2012, Mr. B.N. Gogoi, Mr. B.D. Goswami, Mrs. A.B. Gogoi in WP C No. 105/2012, Mr. S.C. Keyal, Mr. S.K. Ghosh, Mr. N. Choudhury, Mr. S.P. Choudhury, Ms. A. Bhattacharjee in WP C No. 313/2012, Ms. B. Das in WP C Nos. 318/2012 and 2398/2012, Mr. S. Dey in WP C No. 889/2012, Mr. N.N. Jha in WP C Nos. 1467/2012, 1585/2012, Mr. S. Sahu in WP C No. 1585/2012, Mr. T.U. Laskar, Mr. E. Ahmed, Md. A. Hussain in WP C No. 1713/2012, Mr. A. Kalam, in WP C Nos. 1852/2012, Mr. R. Kalita, Mr. B.D. Konwar, Miss P. Choudhury, Mrs. J.M. Konwar, Ms. G. Ghosh in WP C No. 1951/2012, Dr. N.G. Goswami, Ms. D. Das, Mr. P.K. Barman in WP C No. 2242/2012, Mr. P. Borgohain, Mr. B. Talukdar in WP C No. 2495/2012, Mr. J. Islam, Mr. A.M.S. Mazumder, Mr. A.A.R. Karim in WP C No. 2546/2012, Mr. K. Baruah, Mr. N.K. Barua in WP C No. 2608/2012, Mr. D. Duara in WP C No. 3120/2012, Mr. M. Islam, Ms. T. Kalita in WP C No. 3416/2012 and Mr. N. Hoque in WP C No. 4729/2012, for the Appellant; B. Dutta, H.K. Sarma in WP (C) Nos. 4210/2011, 3416/2012, Mr. D. Das in WP (C) No. 60/2012, Mr. B.D. Das (Sr. Advocate) in WP (C) Nos. 83/2012, 313/2012, 318/2012, 1390/2012, 2608/2012, 3614/2012, 4729/2012, SC, APDCL WP (C) Nos. 97, 313/2012, 1792/2012, 1951/2012, 4729/2012, Mr. D. Nath in WP (C) No. 97/2012 and SC, Finance in WP (C) No. 4729/2012, for the Respondent

Judgement

B.P. Katakey

1. The petitioners, who are the Meter Readers and Bill Clerks, engaged on casual basis by the Executive Engineers of various divisions of erstwhile Assam State Electricity Board (ASEB) and claim to be continuing as such under the Assam Power Distribution Company Ltd. (APDCL), have filed these petitions challenging the advertisement dated 19.07.2011 issued by the Deputy General Manager (HR), APDCL, for recruitment of Meter Readers and Bill Clerks basically contending that the said process initiated by the aforesaid advertisement cannot be undertaken without first regularizing their services as Meter Readers and Bill Clerks, in view of the judgment passed by the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . In some of the writ petitions they have also claimed the salary in the pay scale attached to the Meter Readers and Bill Clerks, on the principle of equal pay for equal work. The petitioners in WP (C) No. 4729/2012 have also challenged the office memorandum dated 16.06.2012 issued by the Principal Secretary to the Govt. of Assam, Finance Department, deciding not to regularize the services of the Work Charged, Muster Roll or similarly placed workers, apart from challenging the APDCL's decision dated 30.06.2012 not to regularize the services of the Meter Readers and Bill Clerks. The said Government office memorandum has been put to challenge, as the same was taken into consideration by the APDCL while taking the decision on 30.06.2012 not to regularize the services of outsourced persons, namely, the Meter Readers and Bill Clerks and also on the ground that such decision of the Government is contrary to the pronouncement of the Apex Court in Umadevi (supra). The main prayer in all the writ petitions being for regularization in

service, those are taken up together for hearing and disposal, as agreed to by the learned counsel appearing for the parties. I have heard Mr. N. Dutta, learned Sr. counsel; Mr. A. Dasgupta, Mr. N. Choudhury, Mr. A.M. Buzarbaruah and Dr. B. Ahmed, learned counsel appearing for the petitioners and Mr. B.D. Das, learned Sr. counsel appearing for the respondent company and its officers as well as Mr. D. Saikia, learned Addl. Advocate General appearing for the Govt. of Assam.

2. Mr. Dutta, learned Sr. counsel appearing for the petitioners submits that the Meter Readers and Bill Clerks are working for a long period of time initially under the ASEB and thereafter under APDCL, some of whom even for more than 10 years, against the sanctioned post, whose services the respondent authorities have utilized and who have also discharged their duties and responsibilities to the full satisfaction of the respondent authority and without any blemishes. It has been submitted that the Board of Directors of the respondent company having considered the fact that the petitioners and other Meter Readers and Bill Clerks, who were engaged against the sanctioned post due to shortfall of adequate manpower because of the retirement of substantial number of regular Meter Readers and Bill Clerks and also their length of service, apart from their performance, decided in its meeting dated 29.03.2012 to look into the claim of the petitioners and other similarly placed persons for their regular absorption and accordingly the Chairman-cum-Managing Director was authorized to form a Committee for that purpose, so that the claim of the petitioners for regularization in service, having due regard to the amount of skill in the field of work they have acquired, can duly be considered. It has also been submitted that the Chairman-cum-Managing Director accordingly constituted a Committee comprising of 6(six) members, which has submitted a report dated 27.06.2012 recommending retention of most of the qualified and experienced persons on a one time basis, having regard to the fact that the retention of such Meter Readers and Bill Clerks, who are competent and acquired experience, would extremely be advantageous for APDCL. It has further been submitted that the said recommendation of the Committee was placed before the Board of Directors of APDCL in its meeting dated 30.06.2012 and though the Board was sympathetic to the Meter Readers and Bill Clerks for regularization in service but because of the Government's office memorandum dated 16.06.2012 directing its departments not to regularize the services of Work Charged, Muster Roll or Casual employees, the Board took a decision in its meeting dated 30.06.2012, purportedly in view of the observation made by the Apex Court in Umadevi (supra), not to regularize the services of the Meter Readers and Bill Clerks and instead to give due weightage for the experience as well as the period of service they have rendered apart from relaxation of upper age limit, in the regular recruitment process.

3. Mr. Dutta submits that the decision of the Board of Directors of APDCL is contrary to the directions issued by the Apex Court in Umadevi (supra), more particularly in paragraph 53 thereof, as the APDCL by taking such decision has refused to consider the cases of those Meter Readers and Bill Clerks, who on the

date of delivery of the judgment in Umadevi completed 10(ten) years continuous service without the aid of any Court's order and were appointed against the sanctioned post and have the requisite qualification for recruitment as Meter Reader and Bill Clerk. The learned Sr. counsel submits that the Apex Court in Umadevi (supra), though has held that the regularization of casual labour, daily wage earner and temporary employee is contrary to the constitutional scheme of public employment, the Apex Court, however, has carved out an exception in respect of such employees who were engaged against the sanctioned vacant post, worked for 10(ten) years or more without the cover of the orders of the Courts or Tribunals and have the requisite qualification by directing the Union of India, State Government and their instrumentality to take steps to regularize their services as one time measure, process of which was directed to be set in motion within 6(six) months from the date of delivery of judgment.

4. Mr. Dutta further submits that the Apex Court in State of Karnataka and Others Vs. M.L. Kesari and Others, has explained its earlier direction in Umadevi (supra) to the effect that each department or the instrumentality of the State must undertake a one time exercise and prepare a list of all casual, daily wage or adhoc employees, who have been working for more than 10(ten) years without the intervention of the Courts or Tribunals and subject them to a process of verification as to whether they were working against vacant posts and possess the requisite qualification for the post and if so, to regularize their services. The learned Sr. counsel submits that despite the aforesaid decision of the Apex Court, the Board of Directors of APDCL has adopted the aforesaid decision dated 30.06.2012, without undertaking the one time exercise for regularization of services of those Meter Readers and Bill Clerks, who have been working for more than 10(ten) years without the intervention of the Courts or the Tribunals against the sanctioned vacant posts and possess the requisite qualification.

5. The learned Sr. counsel referring to the Full Bench decision of this Court in Jitendra Kalita Vs. State of Assam and Others, has submitted that the Full Bench has never directed the State or its instrumentalities not to undertake the one time exercise of regularization of those classes of employees as directed by the Apex Court in Umadevi (supra) and M.L. Kesari (supra), and the issue before the Full Bench being whether the decision of the Govt. of Assam as reflected in the office memorandum dated 20.04.1995 is the policy decision, there was no occasion for the Full Bench to deal with the said question of regularisation. The Full Bench, according to the learned Sr. counsel, has held that the said office memorandum having not been preceded by any policy decision taken by the Government, no regularization can be made pursuant to the said office memorandum. The learned Sr. counsel, therefore, submits that the respondent APDCL may be directed to initiate the process for regularization of those outsourced Meter Readers and Bill Clerks, who have been working for 10(ten) years or more without the intervention of any Courts or Tribunals against the sanctioned vacant post and have requisite qualification, before finalization of the process initiated by issuing the advertisement dated 19.07.2011 to fill up the

posts of Meter Readers and Bill Clerks by direct recruitment.

6. Mr. Dasgupta, the learned counsel adopting the arguments advanced by Mr. Dutta, learned Sr. counsel, further submits that since the outsourced Meter Readers and Bill Clerks are discharging the same duties as has been discharging by the regular Meter Readers and Bill Clerks of APDCL, they are entitled to the salary in the pay scale attached to the said post, on the principle of equal pay for equal work, during the period prior to regularization, which is the essence of Article 39(d) of the Constitution. The learned counsel further submits that since the respondent APDCL has extracted the services of the petitioners for a long period of time, who have discharged their duties to the satisfaction of all concerned, they cannot be thrown out of the employment and the respondent authority is duty bound to formulate the scheme for their regularization.

7. Mr. N. Choudhury, the learned counsel in addition to the submissions advanced by the other learned counsel, as noticed above, has also submitted that the Meter Readers and Bill Clerks being the employees of the erstwhile ASEB and now of APDCL, they are entitled to all benefits available to them including regularization in service, they having worked for more than 240 days, otherwise it would amount to unfair labour practice within the meaning of the Industrial Disputes Act, there being no dispute that the APDCL is an industry. The learned counsel in support of his contention has placed reliance on the decision of the Apex Court in *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, .

8. Mr. Buzarbaruah, the learned counsel appearing for the petitioners in some of the writ petitions while adopting the arguments advanced by other learned counsel, has submitted that like in the case of the recruitment to the post of Sahayak, where the respondent authority has decided to fill up 50% of the regular vacancy by absorbing the existing casual or outsourced employees, 50% of the vacancies of Meter Readers and Bill Clerks is also required to be filled up from amongst the outsourced Meter Readers and Bill Clerks, as there is no justification to apply different standard for absorption of the casual Sahayaks and outsourced Meter Readers and Bill Clerks.

9. Dr. Ahmed, the learned counsel also submits that the decision of the Board dated 30.06.2012 is contrary to the decision of the Apex Court in *Umadevi*. It has also been submitted that the Board though was sympathetic and started a process for regularization of outsourced Meter Readers and Bill Clerks by constituting a Committee for making necessary recommendation in that regard, it has, however, took a decision on 30.06.2012 not to initiate any process for regularization of service, basically in view of the Government's office memorandum dated 16.06.2012, which is contrary to the Apex Court judgment in *Umadevi*. Dr. Ahmed also submits that there is no justification to treat the outsourced Sahayaks and the outsourced Meter Readers and Bill Clerks differently, as has been done by the APDCL in the matter of their absorption. The learned counsel submits that since the APDCL has decided to fill up 50% of the

vacancies of Sahayaks by absorption of the outsourced Sahayaks, the same principle should also be followed in the matter of outsourced Meter Readers and Bill Clerks.

10. Mr. Saikia, learned Addl. Advocate General, defending the Government's decision as reflected in the office memorandum dated 16.06.2012, has submitted that the said office memorandum has been issued pursuant to the cabinet decision not to regularize the Work Charged, Muster Roll and Casual employees, even those who are engaged prior to 01.04.1993, in consonance with the decision of the Apex Court in *Umadevi* (supra) as well as the decision of the Full Bench in *Jitendra Kalita* (supra), wherein it has been held that such regularization would be against the constitutional scheme of public employment. It has also been submitted that the said decision was taken, having regard to the fact that in none of the Government departments those classes of employees were engaged against any sanctioned vacant posts. Mr. Saikia further submits that the question as to whether there was any Casual, Work Charged or Muster Roll employees in any department of Govt. of Assam working for 10(ten) years or more without the intervention of the Courts or Tribunals and against the sanctioned post being not the question in the present batch of writ petitions, this Court may not scrutinize the legality and validity of the Government's decision as reflected in the office memorandum dated 16.06.2012.

11. Mr. Das, learned Sr. counsel appearing for the respondent APDCL, has submitted that though the argument has been advanced by the learned counsel appearing for the petitioners in the present batch of writ petitions that they are entitled to consider for regularization, as one time measure, they having rendered services for 10(ten) years or more against the regular vacant post and having requisite qualification, the pleadings in that respect in the present writ petitions are devoid of material particulars. The learned Sr. counsel further submits that the Board of Directors of respondent APDCL, having regard to the decision of the Apex Court in *Umadevi* (supra), decided not to regularize the services of the outsourced persons and at the same time to give due weightage for the experience and skill they have acquired apart from for the period of service they have rendered and also to give age relaxation, in the regular process of recruitment, thereby giving the benefit they deserve. The learned Sr. counsel further submits that the Board of Directors of APDCL has decided to initiate the process for recruitment of 750 Meter Readers and Bill Clerks and accordingly the advertisement was issued laying down the eligibility criteria and giving the aforesaid benefit to the existing outsourced persons. It has also been submitted that in case of the outsourced persons, the educational qualification has also been relaxed. Mr. Das further submits that there are 250 more posts of Meter Readers and Bill Clerks, process for filling up of the same shall be initiated by the APDCL shortly, apart from the process already initiated for recruitment of 750 such persons. It has also been submitted that there are only 60 Meter Readers and Bill Clerks, out of 1530 nos., who have rendered their services for 10(ten) years or more as on 01.07.2012, all of whom would also not be eligible

for consideration for regularization in service, in view of the Apex Court judgment in Umadevi.

12. The learned Sr. counsel, however, has submitted that the APDCL shall certainly undertake the process for regularization of services of the Meter Readers and Bill Clerks, if any, as one time measure, who have completed 10(ten) years or more without the intervention of the orders of the Courts or Tribunals as on the date of delivery of the judgment in Umadevi and who were engaged against the sanctioned vacant post and have requisite qualification. Mr. Das, therefore, submits that since there are 250 more posts of Meter Readers and Bill Clerks available, the process of recruitment of which is going to be initiated shortly, the respondent APDCL may be allowed to complete the process of recruitment initiated vide advertisement dated 11.07.2011 for recruitment against 750 posts of Meter Readers and Bill Clerks. It has also been submitted that in the said process already initiated and the process to be initiated for such recruitment, the Meter Readers and Bill Clerks who are not eligible for consideration for regularization in terms of the decision of the Apex Court in Umadevi, would be given the benefit of the decision of the Board of Directors taken in its proceeding dated 30.06.2012 i.e. the due weightage for their experience, skill and length of service apart from relaxing the upper age limit.

13. Countering the arguments advanced by Mr. Dasgupta, it has been submitted by Mr. Das, learned Sr. counsel that the petitioners are not entitled to the salary in the same scale of pay attached to the Meter Readers and Bill Clerks, on the principle of equal pay for equal work, as the method of recruitment, nature of work and the educational qualification are different. Mr. Das further submits that the temporary or casual employees, who have been engaged by the APDCL without undergoing the process of selection, cannot claim parity in pay. That apart according to the learned Sr. counsel as because they are serving for more than 240 days, they are not entitled to regularization, as it would amount to backdoor entry into the service and also against the law laid down by the Apex Court in Umadevi. The learned Sr. counsel also submits that the decision to fill up 50% of the available vacancies of Sahayak from amongst the outsourced Sahayak was taken, having regard to the non-availability of experienced and skilled persons as well as their expertise apart from the requirement and as such the same principle cannot be followed in the matter of recruitment to the post of Meter Readers and Bill Clerks. The learned counsel further submits that any process initiated for regularization of Meter Readers and Bill Clerks, who do not come within the exception carved out by the Apex Court, would be contrary to the law laid down in Umadevi. Mr. Das, therefore, submits that the submission of Mr. Choudhury that the non-regularization of the services of the Meter Readers and Bill Clerks would amount to unfair labour practice within the meaning of Industrial Disputes Act also cannot be accepted in view of the law laid down by the Apex Court. Mr. Das in support of his contention has placed reliance on the decisions of the Apex Court in State of Madhya Pradesh and Others Vs. Yogesh Chandra Dubey and Others, and in State of Rajasthan and Others Vs. Daya Lal

and Others, .

14. I have considered the submissions made by the learned counsel for the parties. I have also perused the pleadings of the parties .

15. The petitioners who are admittedly the outsourced temporary employees and claim to be working as Meter Readers and Bill Clerks for a long time, initially under ASEB and thereafter on formation of APDCL under it, have filed these petitions claiming consideration for regularization in service against the existing vacancies of Meter Readers and Bill Clerks, 750 of which posts have been advertised vide advertisement dated 11.07.2011 for recruitment, apart from claiming parity in pay. As noticed above, the basic contention of the petitioners is that since they are working for more than 10(ten) years without the aid of any order passed by any Court or Tribunal and against the sanctioned vacant post and they have requisite qualification for recruitment as Meter Readers and Bill Clerks, their cases are required to be considered for regularization, in terms of the judgment passed by the Apex Court in Umadevi. The further contention of the petitioners is that as they are discharging the same work as has been discharging by the regular Meter Readers and Bill Clerks, they are also entitled to the parity in pay. The petitioners have challenged the advertisement dated 11.07.2011, on the ground that the same has been issued without considering their cases for regularization, as well as the decision of the APDCL dated 30.06.2012 not to consider their cases for regularization, apart from the Government's office memorandum dated 16.06.2012.

16. The Apex Court in Umadevi (supra) has held that the Courts ordinarily should not issue directions for absorption, regularization or permanent continuance of temporary or adhoc employees unless the recruitment itself was made regularly and in terms of the constitutional scheme. It has further been held that the orders for absorption, regularization or permanent continuance of the temporary, contractual, casual or daily wage employees cannot be passed in exercise of the power under Article 226 of the Constitution as the same would defeat the concept of social justice and equal opportunity for all and amounts to preventing regular selection or recruitment at the instance of such persons. It has also been held that such order would also defeat the very constitutional scheme of public employment. The Apex Court, therefore, has held that there cannot be any regularization in service of those classes of persons. The Apex Court has further held that unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any right on the appointee. It has also been held that because a temporary employee or a casual worker has continued for a time beyond the term for his employment, he would not be absorbed in regular service or made permanent, merely on the strength of such continuance, if the appointment was not made by following a due process of selection as envisaged by the relevant rules. While holding so the Apex Court has, however, carved out an exception in paragraph 53 of the said report which reads as follows:-

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 para 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 the 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 regularize as a one-time 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 the 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 bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

17. The direction issued by the Apex Court in *Umadevi*, curving out an exception in respect of the employees who have worked for more than 10(ten) years against the duly sanctioned posts without the intervention of any Court or Tribunal and having requisite qualification, came to be considered by the Apex Court in *M.L. Kesari (supra)*, wherein it has been held that the term "one-time measure" occurring in *Umadevi* has to be understood in its proper perspective, which means that after the decision in *Umadevi*, each department or each instrumentality should undertake a one time exercise and prepare a list of all casual, daily-wage or ad hoc employees, who have been working for more than 10(ten) years without the intervention of Courts or Tribunals and subject them to a process of verification as to whether they are working against vacant posts and possess the requisite qualification for the post.

18. In the instant case, as noticed above, the petitioners claim to be appointed against the sanctioned vacant post and some of them claimed to have been worked for more than 10(ten) years without the intervention of the Court or Tribunal. They have also claimed that they have the requisite qualification. Though the said claim of the petitioners relating to their engagement against the regular vacant post has been denied by the respondent APDCL, it appears from the notification dated 09.04.2012 issued by the APDCL that in view of the shortfall of the adequate manpower due to retirement of substantial number of Meter Readers and Bill Clerks, the local authorities at field level outsourced the job of meter reading and preparing of energy bills to some local agencies/ persons at a fixed rate on contractual/daily wage basis over a period of time, which notification, therefore, signifies engagement of certain Meter Readers and

Bill Clerks at fixed rate against the existing vacancies.

19. As discussed above, the Apex Court in *Umadevi* has carved out an exception for consideration for regularization, as one time measure, of those employees who were irregularly appointed and have worked for 10(ten) years or more in duly sanctioned posts, but not under cover of the orders of the Courts or Tribunals and having requisite qualification. Such 10(ten) years or more has to be reckoned on the date of delivery of the judgment by the Apex Court i.e. 10.04.2006. The direction contained in paragraph 53 of *Umadevi* has to be carried out by the State and their instrumentality and in the present case by the APDCL, which is an instrumentality of the State. It is apparent from the arguments advanced by the learned counsel appearing for the APDCL and also the materials placed before the Court that despite the aforesaid direction issued by the Apex Court, such an exercise has not been carried out till date, though the APDCL is duty bound to undertake such exercise as one time measure. It also appears from the pleadings of the APDCL that 750 posts of Meter Readers and Bill Clerks have already been advertised vide advertisement dated 11.07.2011 and other 250 of such posts are still lying vacant, process for recruitment against which is going to be initiated soon. The averments made by the APDCL in the additional affidavit that only 60 persons as on 01.07.2012 have been working for 10(ten) years or more as Meter Readers and Bill Clerks, have not been disputed by any of the petitioners by filing any reply affidavit.

20. A Full Bench of this Court in *Jitendra Kalita* (supra), placing reliance on *Umadevi* has also held that the long continuance of the employees on irregular basis do not vest any legal right to claim regularization. In the said case the issue was whether the office memorandum dated 20.04.1995 issued by the Govt. of Assam for regularization of Muster Roll and Work Charged employees was issued pursuant to any policy decision and hence any such employee can claim for regularization in view of such office memorandum. The Full Bench has held that such office memorandum was not issued pursuant to any policy decision of the Government and as long continuance of the employees on irregular basis does not vest any legal right to claim regularization, there cannot be any regularization of service of Muster Roll and Work Charged employees. In the said case it was being not the claim of any of the petitioners that they are entitled to be considered for regularization in view of the exception carved out by the Apex Court in *Umadevi*, there was no occasion for the Full Bench to deal with the said question.

21. As discussed above, in view of the Apex Court judgment in *Umadevi* (supra) and *M.L. Kesari* (supra), the APDCL is duty bound to consider as one time measure, those irregularly appointed Meter Readers and Bill Clerks for regularization in service, who have completed 10(ten) years or more continuous service as on 10.04.2006 [date of delivery of judgment in *Umadevi*] without the intervention of the Court, and were appointed against the sanctioned vacant post and have requisite qualification. The APDCL, however, cannot consider other

Meter Readers and Bill Clerks for regularization, who do not fulfill the aforesaid three criterion. The vacancies of the Meter Readers and Bill Clerks have to be filled up by initiating the process of recruitment as required under the constitutional scheme of public employment, except those, which are required to be filled up by regularization of services of the aforesaid irregularly appointed Meter Readers and Bill Clerks.

22. The contention of the learned counsel for the petitioners that if they are not regularized in service, that would amount to unfair labour practice also does not merit acceptance, in view of the law laid down by the Apex Court in *Umadevi* and also on the ground that if they are directed to be regularized in service, it would amount to backdoor entry into the service, thereby depriving the other eligible persons for being considered for selection in a regular recruitment process initiated by the respondent authority, which in turn would amount to violation of the constitutional scheme of public employment. In *Indian Overseas Bank* (supra) the issue was whether the canteen workers of Canteen Cooperative Society promoted by the bank employees and facilitated by the bank are workmen and, if so, whether the closure of such canteen was justified, consequently whether such workmen are entitled for reinstatement. The Apex Court having regard to the facts involved in the said case has held that the canteen workers are workmen of the bank and as such are entitled to be reinstated in service as the closure was found to be illegal. The issue was not relating to the regularization in service. Hence the ratio laid down in the said decision, as cited by the learned counsel, is not applicable in these cases.

23. This leads to the question as to whether the petitioners are entitled to parity in pay. To claim the parity in pay, the petitioners must demonstrate that they are discharging the same duties and functions as has been discharging by the regular Meter Readers and Bill Clerks and they have the equal responsibilities. The persons claiming parity in pay must also demonstrate that their method of recruitment is same, apart from the educational qualification. In the case in hand, the petitioners were not engaged by following any recruitment process. On the other hand, the regular Meter Readers and Bill Clerks are appointed by following the recruitment process. Hence the mode of recruitment of the petitioners and the regular Meter Readers and Bill Clerks are different, though they may be discharging the similar nature of duties and functions and having equal responsibilities. The Apex Court in *Yogesh Chandra Dubey* (supra) has held that a person, who had been appointed by State upon following the recruitment rules, enjoys a status. The State within the meaning of Article 12 of the Constitution of India, while offering public employment must comply with the constitutional and also the statutory requirements. The appointment to the post must be made in terms of the existing rules and the regularization is not a mode of appointment. It has further been held that if any recruitment is made by way of regularization, the same would mean a backdoor appointment which does not have any legal sanction. Having held so, the Apex Court has rejected the claim of the employee therein for the parity in pay. In *Daya Lal* (supra) the question of

regularization of the temporary or adhoc or daily wage employee as well as the claim for parity in pay came to be considered by the Apex Court. Upon consideration of its earlier pronouncements including *Umadevi*, the Apex Court in paragraph 12 has summarized the law as under:-

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularization of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cutoff date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

The Apex Court in clear terms has held that the part-time temporary employees in the State-run institutions cannot claim parity in salary with regular employees

of the Government on the principle of equal pay for equal work. The right to claim a particular salary against the State must arise under a contract or under a statute.

24. 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.

25. The challenge made to the office memorandum dated 16.06.2012 issued by the Govt. of Assam, in the present batch of writ petitions, cannot be gone into in the absence of the claim by any of the temporary, casual or daily wage earner employed in any office of the Govt. of Assam and also in the absence of any material particulars supplied by the petitioners relating to the existence of that class of persons in whose favour an exception was carved out in Umadevi. That apart, despite the aforesaid office memorandum dated 16.06.2012 issued by the Govt. of Assam, the APDCL, as held above, is duty bound to consider the cases of the irregularly appointed Meter Readers and Bill Clerks for regularisation as one time measure, who have completed 10(ten) years or more service as on the date of delivery of judgment in Umadevi without the intervention of any Court or Tribunal and engaged against the sanctioned vacant posts and having requisite qualification, which has admittedly not been done so far by the APDCL.

26. In view of the aforesaid discussion, the APDCL is directed to initiate the process of identification of the Meter Readers and Bill Clerks, if any, who have been working for 10(ten) years or more as on 10.04.2006 [date of delivery of judgment in Umadevi] without the intervention of the Courts or Tribunals, engaged against the sanctioned vacant posts of Meter Readers and Bill Clerks and having requisite qualification for being recruited as such and to consider their cases for regularization, in terms of the direction issued by the Apex Court in Umadevi. The said process shall be initiated forthwith and completed within a period of 6(six) months from today. The APDCL shall for that matter issue notice in two local dailies, one in English and the other in vernacular (Assamese), published from Guwahati and having wide circulation in the State of Assam, requiring the Meter Readers and Bill Clerks to file their respective applications, subject to fulfillment of the aforesaid conditions, claiming regularization with necessary particulars, fixing a last date for submission of such applications. The petitioners and other similarly placed persons, who have fulfilled the aforesaid conditions, on publication of such notice or even prior to that may file their applications furnishing the necessary particulars in support of their claim before the General Manager (HR), APDCL, who shall scrutinize such applications and particulars and take necessary follow up action relating to the claim for regularization. The APDCL while is allowed to complete the process of recruitment of the Meter Readers and Bill Clerks initiated vide advertisement dated 11.07.2011, however, is directed to keep 60 posts of Meter Readers and

Bill Clerks vacant for consideration for regularization of irregularly engaged Meter Readers and Bill Clerks, if any, since the stand taken by the APDCL in the additional affidavit filed that only 60 Meter Readers and Bill Clerks as on 01.07.2012 have served for 10(ten) years or more, though for the purpose of consideration for regularization in terms of the decision of the Apex Court in Umadevi, the cut-off date for serving for 10(ten) years or more without the intervention of the Court is 10.04.2006. The remaining vacancies in Meter Readers and Bill Clerks shall be filled up in accordance with the constitutional scheme of public employment i.e. by following the recruitment rules. It is, however, needless to say that since the APDCL vide its decision dated 30.06.2012 has decided to give the weightage for experience and skill acquired by the outsourced Meter Readers and Bill Clerks apart from the period of service rendered and also to give age relaxation, the same shall be extended to the outsourced Meter Readers and Bill Clerks while recruiting persons against the vacancies of Meter Readers and Bill Clerks by following the constitutional scheme of public employment. The writ petitions are accordingly disposed of.