

(2023) 08 GAU CK 0035
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 934 Of 2011

Md. Altaf Khan And 5 Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2023) 08 GAU CK 0035

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : S. Borthakur, S. Todi

Final Decision : Disposed Of

Judgement

1. The instant writ petition has been filed by six petitioners seeking a direction upon the Respondent Authorities i.e. NEEPCO to regularize the services of the petitioners in terms with the Memorandum of Undertaking dated 14.07.1999 with retrospective effect and/or not to transfer their services to NHPC and/or to stop all process of transferring the Petitioners' service to NHPC.

2. The facts involved in the instant writ petition are that the Petitioners herein were appointed as Muster Roll workers during the period from 1989 and 1995 in the Brahmaputra Board and were engaged in Tipaimukh Dam Project. The said project was handed over to the North Eastern Electric Power Corporation Ltd. (for short NEEPCO) on the basis of a decision by the Central Government.

3. It appears from the Annexure-A to the writ petition which is a Minutes of the meeting between Brahmaputra Board and NEEPCO in connection with the transfer of the Tipaimukh Dam Project held on 14.07.1999. In Clause No.3 of the said Minutes of the meeting, it was agreed by the Chairman cum Managing Director (for short "CMD"), NEEPCO to pay the salary and wages of the existing work-charged/casual staff along with the Sub-Divisional staff deployed at Tipaimukh for maintenance of the existing assets till formal handing over of the

project. In terms with Clause No.5, the CMD, NEEPCO stated that the clearance of the project by the PIB after other statutory clearances will take some time and as such, the construction activity can be started after that only. The CMD, NEEPCO therefore assured that the Brahmaputra Board Engineers and other staff would be taken as and when the PIB clearance was received by them as per the requirement of the project. It was further mentioned that the recruitment will be done in phased manner in consultation with the Brahmaputra Board. It was also mentioned that the selection and appointment will be done by NEEPCO in consultation with the Brahmaputra Board initially on deputation basis leading to permanent absorption. Further to that, it was also recorded in the said Minutes that taking people on permanent basis would be in the interest of both the organizations subject to recruitment policy.

4. Pursuant thereto, there was another meeting held between the Officials of NEEPCO and the Brahmaputra Board which was held on 09.08.1999. It is however relevant to take note of that in the said Minutes of the Meeting, the transfer of personnel from the Brahmaputra Board to NEEPCO was also a point for discussion. Clause-1 of the said Minutes being relevant is reproduced hereinbelow:

"1. Transfer of personnel from Brahmaputra Board to NEEPCO (As per Point No.5 of Minutes of Meeting with Chairman, Brahmaputra Board).

(a) The list of personnel, both regular and W/C, engaged against the existing Tipaimukh Dam Invt. Sub-Division, were shown to the team from NEEPCO. As per the list there were 8 Nos. regular employees consisting of Officer and staff and 33 Nos. W/C staff.

The team from NEEPCO noted down the details of all the regular staff under Tipaimukh Dam Invt. Sub-Division as per the list (8 Nos.) from the Service Books. From the list of W/C staff consisting of 33 Nos. staff members, the details of those 10 (ten) members who were physically working as on 14.07.1999 (i.e. the date of signing of the minutes between the Chairman, Brahmaputra Board and CMD, NEEPCO at Head Office, Ghy) were noted from the Service Books by the team from NEEPCO.

(b) The list of Casual Workers engaged against Tipaimukh Dam Project during the pre-construction works as well as at present comprising of 48 Nos. workers were also shown to the team from NEEPCO. The names & addresses of only 14 Nos. of this list of Casual Workers who were physically working at Tipaimukh as on 4.7.1999 were noted down by the team from NEEPCO.

(c) The team from NEEPCO were also shown the list of 26 Nos. regular staff who were engaged during the pre-construction works of the Tipaimukh Dam Project as well as the list of 80 Nos. W/C staff who were deployed at Tipaimukh in pre-construction works during 1993-1995."

5. It is further seen that the responsibility to pay the salaries of the Petitioners

thereupon was taken over by the NEEPCO and the Petitioners continued to render their services. During the course of the argument, this Court had also put a specific query upon the learned counsel appearing on behalf of the Petitioners as to what is the present status of the Petitioners taking into account that the writ petition was filed way back in the year 2011. Mr. S. Borthakur, the learned counsel appearing on behalf of the Petitioners submitted upon instructions that the Petitioners still continue to render services as Muster Roll employees.

6. In the backdrop of the above factual matrix, the issue which has been raised in the instant writ petition is as to whether the Petitioners herein on the basis of the Minutes of Meeting referred to hereinabove would be entitled for a direction for regularization and thereby to be permanently absorbed in the affairs of NEEPCO. Ms. S. Todi, the learned counsel appearing on behalf of the NEEPCO submitted that in the meantime, the said project has been handed over the National Hydroelectric Power Corporation (NHPC) i.e. the Respondent No.5. She further submitted that at present, as the Petitioners' services are no longer retained by the NEEPCO, no direction therefore ought to be issued upon NEEPCO.

7. It is further relevant to take note of that vide an order dated 25.05.2022 passed by this Court in I.A.(Civil) No.1499/2022, the National Hydroelectric Power Corporation (NHPC) was impleaded as the Respondent No.5. Although the name of the counsel appearing on behalf of NHPC is duly shown in the Cause List but none have chosen to appear on behalf of the Respondent No.5.

8. The issue involved herein is as to whether this Court can issue a direction upon NHPC i.e. the Respondent No.5 that the Petitioners' services be regularized and the Petitioners be permanently absorbed by the Respondent No.5 to its services. The issue so raised in the instant proceedings touches on the jurisdiction of this Court to issue a direction upon the Respondent No.5 for regularization of the services of the Petitioners thereby to permanently absorb the Petitioners in the affairs of the Respondent No.5. This Court also finds it relevant to take note of that even after it has been brought to the attention of this Court on the earlier occasion that the Respondent No.5 had taken over the project, there has been no amendment made in the writ petition seeking a direction upon the Respondent No.5.

9. Be that as it may, the question as regards the issuance of a direction for regularization stands concluded by the judgment of the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka Vs. Umadevi and Others reported in (2006) 4 SCC 1 wherein two issues arose for consideration before the Constitution Bench i.e. (i) the right of the employees seeking regularization on the strength of long and continuous work and (ii) the correctness of the directions issued by the Courts for regularization of employees under Article 226 of the Constitution. The Constitution Bench of the Supreme Court in the case of Umadevi (supra) decided both the issues against the employees holding inter alia that there is no right of the employees seeking regularization on the strength of long and continuous work and further holding

that it is beyond the jurisdiction of the High Court to issue directions for regularization of employees under Article 226 of the Constitution. This aspect of the matter had also been taken note of in a subsequent judgment of the Supreme Court in the case of State of Jammu and Kashmir and Others Vs. District Bar Association, Bandipora reported in (2017) 3 SCC 410 wherein at paragraph No.10 and 11, the Supreme Court dealt with the above aspects of the matter. It is however relevant to take note of that the Supreme Court in the case of the District Bar Association, Bandipora (supra) had also observed that the judgment of the Constitution Bench of the Supreme Court in the case of Umadevi (supra) was not an authority for the proposition that the executive or the legislature cannot frame a scheme for regularization. Paragraph Nos. 10 and 11 of the said judgment in the case of District Bar Association, Bandipora (supra) being relevant are reproduced hereinunder:

"10. The issue which arises must be viewed bearing in mind the essence of the judgment of the Constitution Bench in State of Karnataka v. Umadevi (3) and subsequent judgments which followed it. In the judgment of the Constitution Bench, the following two issues primarily fell for consideration:

(i) The right of employees seeking regularisation on the strength of long and continuous work; and

(ii) The correctness of directions issued by courts for regularisation of employees under Article 226 of the Constitution.

11. The decision in Umadevi (3) dealt firstly with the right claimed by temporary employees to be regularised in service on the basis of long continuance, legitimate expectations, employment under the State and the Directive Principles. The second salient question which the Constitution Bench was called upon to answer was whether courts would be justified in issuing directions for regularisation based on such features such as equality and long spells of service. On both counts the Constitution Bench held against the temporary employees. However, Umadevi (3) is not an authority for the proposition that the executive or the legislature cannot frame a scheme for regularisation. Umadevi (3) does not denude the State or its instrumentalities from framing a scheme for regularisation. In para 53 of the decision, this Court held as follows : (SCC p. 42)

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa, R.N. Nanjundappa v. T. Thimmiah and B.N. Nagarajan v. State of Karnataka 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 regularisation 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 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 regularisation, 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 regularising or making permanent, those not duly appointed as per the constitutional scheme.”

10. It is further relevant to take note of that although the Supreme Court in the case of District Bar Association, Bandipora (supra) had observed that the judgment in the case of Umadevi (supra) was not an authority for the proposition that the executive or the legislature cannot frame a scheme for regularization, but the Supreme Court in the said judgment in the case of District Bar Association, Bandipora (supra) had observed that though the State and its instrumentalities can consider framing up of a scheme for regularization but the formulation of such scheme cannot accord the status of an enforceable right and as such, a writ cannot be issued commanding the State to frame a scheme for regularization. In that regard, this Court finds it relevant to take note of paragraph No.26 of the judgment in the case of District Bar Association, Bandipora (supra) which is reproduced hereinunder:

“26. The principles will have to be formulated bearing in mind the position set out in the above judgments. Regularisation is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Articles 14 and 16 of the Constitution. Essentially a scheme for regularisation, in order to be held to be legally valid, must be one which is aimed at validating certain irregular appointments which may have come to be made in genuine and legitimate administrative exigencies. In all such cases it may be left open to courts to lift the veil to enquire whether the scheme is aimed at achieving the above objective and is a genuine attempt at validating irregular appointments. The State and its instrumentalities cannot be permitted to use this window to validate illegal appointments. The second rider which must necessarily be placed is that the principle as formulated above is not meant to create or invest in a temporary or ad hoc employee the right to seek a writ commanding the State to frame a scheme for regularisation. Otherwise, this would simply reinvigorate a class of claims which has been shut out permanently by Umadevi (3). Ultimately, it would have to be left to the State and its instrumentalities to consider whether the circumstances warrant such a scheme being formulated. The formulation of such a scheme cannot be accorded the status of an enforceable right. It would perhaps be prudent to leave it to a claimant to establish whether he or she falls within the exceptions carved out in para 53 and falls within the ambit of a

scheme that may be formulated by the State. Subject to the riders referred to above, a scheme of regularisation could fall within the permissible limits of Umadevi (3) and be upheld.”

11. From the above enunciation of law laid down by the Supreme Court, it is clear that this Court cannot issue a direction to the Respondent Authorities for regularization of the services of the Petitioners. It is also clear that this Court further cannot issue a direction upon the Respondent Authorities to frame a scheme for regularization of its employees. Therefore, the relief which has been sought for in the instant writ petition cannot be granted by this Court.

12. Mr. S. Borthakur, the learned counsel appearing on behalf of the Petitioner however submits that taking into account that the Petitioners have been rendering their services since their date of appointment, a legitimate expectation had accrued upon the Petitioners for the purpose of their case be considered for being permanently absorbed in the services of the Respondent No.5.

13. This Court have given anxious consideration to the matter and is also of the opinion that taking into account that the Petitioners have been rendering their services in the Tipamukh project, the project presently taken over by the Respondent No.5, the Petitioners herein have legitimate expectation that their case would be considered by their employees who are Respondents herein to be permanently absorbed in their services. This Court therefore grants the liberty to the Petitioners to submit a representation before the Chairman and Managing Director of the Respondent No.5 and upon such representation so submitted, this Court requests the Chairman and Managing Director of the Respondent No.5 to take a compassionate view to the representation so submitted and pass appropriate orders as deem proper in the exigency of the services of the Respondent No.5.

14. Mr. S. Borthakur, the learned counsel appearing on behalf of the Petitioners submitted that the Petitioners would be filing their representation within 30 (thirty) days from today. It is observed that if the representation is submitted within 30 (thirty) days from today, the Respondent No.5 shall do the needful within a period of 6 (six) months therefrom.

15. With above observations and directions, the instant writ petition stand disposed of.