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**(2018) 12 MAN CK 0005**  
**In the Manipur High Court**  
**Case No : Writ Petition (c) No. 738 Of 2017**

Salam Chandra Singh And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

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**Date of Decision :** 17-12-2018

**Acts Referred:**

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

**Citation :** (2018) 12 MAN CK 0005

**Hon'ble Judges :** Kh. Nobin Singh, J

**Bench :** Single Bench

**Advocate :** R.K. Nokulsana, Sanajaoba, Momota Oinam, Beedyasaree M

**Final Decision :** Disposed Off

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## Judgement

Kh.Nobin Singh, J

[1] Heard Shri R.K Nokulsana, learned Senior Advocate assisted by Shri Sanajaoba, learned Advocate appearing for the petitioners and Smt. Momota Oinam, learned Addl. Advocate General, Manipur assisted by Ms. Beedyasaree, learned Advocate appearing for the respondents.

[2] By the instant writ petition, the petitioners have prayed for issuing a writ of mandamus or any other appropriate writ to the respondents to show cause as to why the services of the petitioners shall not be regularized or in the alternative, the services of the petitioners shall not be converted into work-charged establishment.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioners were appointed/ engaged vide various orders issued by the competent authority against the sanctioned posts after undergoing a selection process. After having received the appointment / engagement orders, the petitioners joined their services and since then, they have been serving without any break to the satisfaction of their superior officers. The fact that the petitioners did render their services without any break and had completed more

than 30 years on Muster Roll basis, is verified by the Assistant Engineers and after proper verification, the Executive Engineer of the respective division issues certificates of engagement/ appointment of the petitioners.

[3.2] The petitioners approached the concerned authorities, on many occasions, praying for regularization of their services or converting their services into work-charged establishment. On the direction of the State Government, the Chief Engineer, PWD issued a Notification dated 26th September, 2016 for recruitment of 245 posts in different disciplines for which the names of the candidates were required to be sponsored by the employment exchange. On the same day, the Chief Engineer addressed a letter to all the Executive Engineers, PWD, requesting them to inform the willing Muster Roll employees, who have already applied and are to be applied, to get themselves compulsorily registered at the district employment exchange for sponsoring their names.

[3.3] A similar action was taken by the State Government vide its letter dated 18.08.2016 for recruitment of 137 posts in different discipline in the IFC Department, Manipur. Being aggrieved by the said letter dated 18.08.2016, some Muster Roll employee of the IFC Department approached this Court by way of a writ petition being WP(C) No.907 of 2016 wherein this Court, while issuing notice to the respondents, was pleased to pass an interim order to the effect that the posts which were being held by them therein, might not be filled up without the leave of this Court. Prior to that, similar writ petitions being WP(C) 655 of 2016 and WP(C) No.902 of 2016 had been filed by some other Muster Roll employees of the IFC Department. All the said writ petitions were disposed of by this Court vide its order dated 10.02.2017 with the direction that the State Government should examine the case of the petitioners therein for conversion to the work-charged establishment against the posts as mentioned therein. A similar order dated 26.04.2017 was passed by this Court disposing of another writ petition being WP(C) No.290 of 2017 filed by as many as 14 Muster Roll employees of the IFC Department. The aforesaid orders passed by this Court were complied with by the IFC Department by issuing an office order dated 25th July, 2016 by which 9 Muster Roll employees were converted into work-charged establishment.

[3.4] Since the posts held by the present petitioners have been advertised by the State Government for direct recruitment, they do have an apprehension that they will be thrown out of their services when the posts are filled up by the direct recruitment. Being aggrieved by the inaction on the part of the respondents, the instant writ petition has been filed by the petitioners on the inter-alia grounds that since they are on the verge of retirement, they cannot participate in the selection process and that since the petitioners possess the essential qualification prescribed for the posts, their services could be regularized in terms of the law laid down by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1 and State of Karnataka and ors. Vs M.L. Kesari and ors, AIR 2010 SCC 2587.

[4] Denying the averments made in the writ petition, an affidavit-in-opposition

on behalf of the respondent No.1, has been filed wherein it has been stated that the Muster Roll employees are generally engaged as and when required in the construction of work undertaken by the Department from time to time. The Muster Roll employees so engaged are disengaged as and when such projects are completed. In other words, the Muster Roll employees are engaged for a specific work or project and therefore, they are not appointed against the sanctioned and vacant posts. No personal interview and the examination of qualification are held by the Department through requisition from the employment exchange as is done in respect of the appointment on regular basis. An opportunity was given to the petitioners to participate in the recruitment process vide various letters dated 02-09-2016 and 26-09-2016 issued by the Chief Engineer and after the selection process, initiated pursuant thereto, being completed, the appointment orders have been issued. At present, there is no scope of conversion of the Muster Roll employees into work-charged establishment for want of adequate fund and the necessary conversion shall be considered as and when sufficient fund is available.

[5] It may be noted that it is specifically averred in the writ petition that the appointment /engagement of a person on Muster Roll basis in Engineering Departments in Manipur is done by inviting applications from amongst the eligible and qualified persons and the competent authority, not below the rank of Executive Engineer, undertakes the process for appointment/ engagement by conducting personal interview and examination of qualification of the candidates. In other words, it has been contended that the petitioners were appointed/ engaged after following due process of selection. However, the averments made in the writ petition have been denied by the respondents and the stand taken by the respondents is that the Muster Roll employees are generally engaged as and when required in the construction of work undertaken by the Department and are disengaged when the projects are completed. They are not appointed/ engaged against the sanctioned posts. No selection process was undertaken by the Department. It may further be noted at this juncture that the petitioners have not referred to the provisions of any law where under their appointment/ engagement orders are made on Muster Roll basis nor have they produced copies of their appointment/ engagement orders issued by the competent authority. The documents on the basis of which the petitioners did claim that they were appointed / engaged, are the copies of the certificates issued by the Executive Engineers to the effect that they are serving as Muster Roll employees.

[6] Article 16 of the Constitution of India provides for equal opportunity in matters relating to public employment. What is constitutional scheme has been succinctly explained by a constitution bench of the Hon'ble Supreme Court in Uma Devi case (supra). What the constitutional scheme envisages, in short, is that while making public employment, the procedure established by law in that behalf ought to be followed and in other words, the procedure ought to include many things and in particular, the creation of post by the Government; an advertisement to be issued inviting applications from eligible candidates and the selection to be made by a Selection board. In the present case, there is no

material on record to show that the aforesaid procedure has been followed by the authority concerned while engaging/ appointing the petitioners on muster roll basis. Copies of the appointment/ engagement orders issued in favour of the petitioners are not produced before this court nor is a copy of the advertisement, issued in that regard, produced by the petitioners. It is not clear as to whether the posts were created by the State Government against which the petitioners were appointed/ engaged. In the absence of such materials, this court is unable to accept the case of the petitioners that they have been appointed/ engaged against the sanctioned and vacant posts. However, referring to what has been averred in the writ petition, it has been submitted by the learned counsel appearing for the petitioners that in terms of the law laid down by the Hon'ble Supreme Court in Uma Devi case and in particular, para 53 which provides that the State Government should take steps to regularize the services of those whose appointments are irregular.

[7] As has been observed hereinabove, what is constitutional scheme has been laid down in Uma Devi case and in M.L.Kesari case (supra), the decision rendered in Uma Devi case has been summarized as under:

"4. In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re- engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court, however, made one exception to the above position and the same is extracted below:

The para 53 of the decision rendered in Uma Dev case wherein an exception has been made, reads as under:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa 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 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 regularizing or making permanent, those not duly appointed as per the constitutional scheme."

In *M.L. Kesari*, the Hon'ble Supreme Court has observed that the exception to the general principles against "regularization" enunciated in *Uma Devi* case, will apply, if the following conditions are fulfilled:

"(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

[8] Coming to the facts of the present case, since all the relevant materials are not placed on record, it is impossible for this court to give a clear cut finding on the issue as to whether the petitioners have served more than ten years against the sanctioned posts. But the averment made in the petition that they have served more than thirty years on Muster Roll basis, is not denied in the counter affidavit and therefore, it can be prima facie assumed that they might have served more than ten years. In other words, the first condition can be said to have been fulfilled by the petitioners. But the problem arises in respect of the second condition. There is no material on record to show if the posts held by the petitioners had really been sanctioned by the State Government. On top of that, the specific stand of the State Government as indicated in its affidavit-in-opposition, is that the petitioners are not appointed/ engaged against the sanctioned posts. The stand of the State Government appears to be correct for the reason that the engagement on Muster Roll basis as envisaged in the CPWD Manual which is adopted in the State, is made for a temporary purpose keeping in mind the requirement of a project. Moreover, sometime in the year, 1999,

there was a scheme in the engineering departments of the State of Manipur where under a Muster Roll employee can be converted into work-charged establishment which can again be converted into regular establishment after certain period of time, say, ten years. The said scheme was continued for few years only and had been abolished thereafter. If the petitioners were really appointed/ engaged in the year 1979-81 as claimed by them, it is hard to understand as to why they were not converted into work-charged establishment while the scheme was in force. The fact that they were not converted to work-charged establishment under the said scheme, shows that they appeared to have not been appointed/ engaged initially against the sanctioned posts. This Court is of the view that the second condition is not fulfilled by them and therefore, the exception to the general principle as laid down in Uma Devi case is not applicable to the facts of the present case.

[9] One corollary point which the learned counsel appearing for the petitioners has emphasized, is that in respect of the IFC Department, many Muster Roll employees have been regularized in compliance with the orders passed by this court and that since the present petitioners were similarly situated with them, they are also entitled to be regularized against the posts held by them. But it is not clear to this court from the materials placed on record whether they are similarly situated or not and therefore, no order can be passed by this court in respect of this point.

[10] In view of the above, the instant writ petition is disposed of with the direction that the respondents shall examine as to whether the present petitioners are similarly situated with the Muster Roll employees of the IFC Department who have been regularized as aforesaid, or not and if yes, the benefit of regularization shall be extended to the present petitioners.