

(2014) 09 MEG CK 0037
In the Meghalaya High Court
Case No : W.A. No. 70 of 2014

State of Meghalaya and Others

APPELLANT

Vs

Nilotpall Bhattacharjee

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 165

Citation : (2014) 5 GLT 357

Hon'ble Judges : Uma Nath Singh, Acting C.J.; T. Nandakumar Singh, J

Bench : Division Bench

Advocate : N.D. Chullai, Senior Govt. Advocate and N.G. Shylla, Govt. Advocate, Advocates for the Appellant; M. Chanda, Advocates for the Respondent

Judgement

Uma Nath Singh, Actg. C.J.

1. Heard learned counsel for parties and perused the records. Brief facts of the case leading to the filing of this writ appeal is that the respondent being a Diploma Holder (Civil Engineer) of 3(three) years course from Shillong Polytechnic was initially appointed as Work Charged Overseer Grade-III by the Chief Engineer (PWD) with effect from 1st August 1988. Thereafter, he was engaged temporarily as Work Charged Sub-Engineer Grade-I vide order dated 09.12.1988 by the Chief Engineer, PWD (R & B) at Baghmara Division. Subsequently, the respondent also passed professional examination in Civil Engineering and Accounts held on 22nd October 2005 under the supervision of the PWD (R & B) Department, Shillong vide notification No. PW/Admn-28/97/226 dated 17.03.2006.

2. In the year 2007 the MPSC issued an advertisement for recruitment of Junior Engineers (Civil) and vide the letter No. MPSC/D-32/1/2005-06/61 dated 1st August 2007, the respondent was also called for interview by the MPSC, but he failed to clear the interview, and thus, was not selected. The gradation list of Junior Engineers (Civil and mechanical) dated 1st August 2007 was released. As per gradation list, most of the Work Charged Junior Engineers (Civil) were

regularized, duly confirmed and included in the Cadre of Junior Engineers. However, the name of respondent/writ petitioner did not find mention in the list. Thus, he filed WP(C) No. 50(SH) 2008 before the Gauhati High Court, Shillong Bench, for redressal of his grievances. The High Court vide order dated 28.03.2008 directed the writ appellant/State to consider the representation which the petitioner was granted liberty to submit. Thus, the representations were submitted to the Chief Engineer, PWD (Roads), Shillong and to the State which were considered and after detailed discussion vide the order dated 14.08.2009 rejected by the Chief Engineer, PWD (Roads). Thereafter, vide memo No. PW/Admn/37/2008/115 dated 10.11.2009 the respondent/writ petitioner was transferred as Work Charged Junior Engineer in the National Highway Bye Pass Division, Shillong. The respondent/petitioner then submitted a representation dated 26.05.2010 to the Principal Secretary, PWD (R & B), Meghalaya, Shillong, for regularization in service. Pursuant thereto the Administrative Officer PWD, (Roads) vide the letter dated 22.06.2010 forwarded a copy of the letter of Executive Engineer, PWD (Roads), N.H. Shillong Bye Pass Division dated 19.05.2010 to the Under Secretary PWD (R & B), Admn. Shillong for issuance of necessary instruction relating to regularization of services of the respondent/writ petitioner. The respondent/writ petitioner also submitted another representation dated 02.07.2010 to the Chief Secretary, Government of Meghalaya and the Principal Secretary, PWD (R & B), Meghalaya for regularization of his service.

In the meantime, the respondent/writ petitioner vide notification dated 10.11.2010 passed the examination and interview for the post of Junior Engineer (Civil) in the Public Works (R & B) Department conducted by the MPSC, and he was placed at Sl. No. 76. Thus, the respondent/writ petitioner submitted a representation dated 23.02.2011 to the Secretary PWD (R & B) Meghalaya vide the letter dated 08.03.2011 informing them that his case was to be considered in general quota as per the Reservation Policy of the State of Meghalaya and also that his case for regularization with other Work Charged employees of Department of PWD (R & B) was under consideration.

3. Upon receiving the letter dated 08.03.2011 the respondent/writ petitioner vide letter dated 18.03.2011 written to the Deputy Secretary, PWD (R & B) contended that he was lone general category candidate and non-absorption of his service in regular Cadre establishment under the general quota as per Reservation Policy of the State was not acceptable. The Reservation Policy of the State provides for reservation of 15% for the general category. As such, non-absorption of respondent's services would be in derogation of the provisions of article 14 and 165 of the Constitution of India. The respondent/writ petitioner also contended that the Department had regularized the appointment of 19(nineteen) Work Charged Junior Engineers out of 28 and brought them to regular Cadre while only excluding the respondent/writ petitioner. And since the respondent/petitioner had followed and undergone the recruitment procedure of the State Government for regular appointment by the MPSC the decision rendered by Hon''ble the Supreme

Court in the case of "State of Karnataka & Ors. Vs. Smti Uma Devi & Ors." would not be applicable in his case as contended by the State. The respondent/writ petitioner also contended that vide office memorandum dated 12.07.1993 issued by the Government of Meghalaya, Finance Department Work Charged employees who have completed five years or more of continuous service may be regularized by creating suitable post subject to the condition that consequential vacancies in the Work Charged Establishment would stand lapsed and under new appointments against such posts should be made. According to the respondent/writ petitioner he has been stagnating on the post of Work Charged Junior Engineer for the past about 24(twenty four) years since 09.12.1988 without promotion as a result of his non regularization of his services.

4. However, the learned Single Judge after hearing the parties vide impugned judgment and order dated 26.03.2014 was pleased to dispose of the writ petition with observations that the service of respondent be regularized within one month from the date of receipt of the order. The respondent/writ petitioner had raised the following contentions in the writ petition:

3.1 That the Respondent/Petitioner had passed the departmental in (i) Junior Engineering and (ii) Accounts vide Notification dated 17.03.2006 which entitled the Respondent/Petitioner for regularization and confirmation.

3.2 That as per the Gradation List of Junior Engineer (Civil & Mechanical) dated 01.08.2007, most of the Work Charge Junior Engineers (Civil) have been regularized duly confirmed and included in the cadre of Junior Engineer but the Respondent/Petitioner was not included in the same.

3.3 That in compliance with the directions of the Hon"ble Gauhati High Court, Shillong Bench vide order dated 28.03.2008, the Respondent/Petitioner had submitted a representation dated 07.04.2008 to the Chief Engineer PWD (Roads) for consideration of the Respondent/Petitioner's absorption as Junior Engineer but the same was not considered.

3.4 That the Respondent/Petitioner had appeared for the examination and interview conducted by the M.P.S.C. for recruitment of Junior Engineer in the year 2010 and vide Notification dated 10.11.2010 the Respondent/Petitioner was declared successful at Sl. No. 76. However, the Respondent/Petitioner was not within the zone of the general quota as per Reservation Policy of the State.

3.5 That vide letter dated 08.03.2011 issued by the Deputy Secretary PWD (R & B) the Respondent/Petitioner was informed that his case for regularization along with other work charged employees of the Department was being considered but the same was yet to be considered.

3.6 That non consideration for the absorption of the Respondent/Petitioner under regular cadre despite being a successful candidate goes against the provisions of Articles 14 & 16 of the Constitution of India.

3.7 That an appropriate writ be issued directing the Appellants/Respondents to

regularize the service of the Respondent/Petitioner as Junior Engineer Grade-I in view of the fact that he is the sole general candidate out of the 99 candidates selected by the M.P.S.C. vide Notification dated 10.11.2010.

5. The writ appellants namely the State of Meghalaya had submitted the reply thereto as under:

4.1 That the Respondent/Petitioner was initially attached to Baghmara Division as Work Charge Overseer Grade-III vide Order dated 22.08.1988 and subsequently was temporarily appointed as Work Charge Overseer Grade-III vide Order dated 22.08.1988. He was later appointed as Work Charge Sub-Engineer Grade-I and attached in the same Division vide Order dated 09.12.1988.

4.2 That Office Memorandum dated 12.07.1993 provides that the Department was to regularize Work Charged employees who have completed 5(five) years service or more on or before 12.07.1993 i.e. those who have joined on or before 12.07.1988. The Respondent/Petitioner was not included then as he was appointed as Work Charge Sub-Engineer Grade-I only on 09.12.1988.

4.3 That it is a fact that the Respondent/Petitioner had passed the Professional Examination in Civil Engineering & Accounts held on 22.10.2005. However, passing of Professional Examination in Civil Engineering & Accounts does not pave way for regularization and confirmation of service on conditions laid down in O.M. No. PW/Admn/Estt./67/81/1 dated 09.04.1981 read with O.M. No. PW/Admn/Estt./67/81/5 dated 07.05.1981 which regulate the Professional Examination in Accounts and Engineering which are specifically for the purpose of crossing the Efficiency Bar and promotion of a regular Subordinate Engineer Grade-I (re-designed as Junior Engineer) to the next higher rank.

4.4 That the Gradation List of Junior Engineer (Civil) issued on 01.08.2007 is a complete inter-se Seniority List of regular Junior Engineers appointed by the Department based on the merit list as recommended by the M.P.S.C. The name of the Petitioner was not included in this particular list as his service is still under Work Charge Establishment and in a regular cadre.

4.5 That in compliance with the directions of the Hon''ble Gauhati High Court, Shillong Bench vide Order dated 28.03.2008, the Appellants/Respondents had examined Respondent's/Petitioner's case and vide Order dated 14.08.2009 had rejected the representation of the Respondent/Petitioner for reasons stated therein.

4.6 That on receipt of the representation dated 26.05.2010 from the Respondent/Petitioner and letter dated 11.06.2010 from the Administrative Officer, Office of the Chief Engineer PWD (Roads) along with letter dated 19.5.2010 from the Executive Engineer N.H. Shillong Bye Pass Division, the matter was taken up by the Appellants/Respondents whereby the crossing of Efficiency Bar increment of the Respondent/Petitioner may be allowed subject to his performance and fulfillment of conditions prescribed by the Department.

4.7 That the Respondent/Petitioner was not absorbed in the regular cadre despite having cleared the M.P.S.C. Examination in 2010 and placed in Sl. No. 76 as he did not fall within the zone of the General Quota as per the Reservation Policy of the State. The Department had considered the first 13(thirteen) candidates from the recommended list of the M.P.S.C. for the quota of general category as per the Reservation Policy of the State.

4.8 That the 19(nineteen) Work Charge Junior Engineers regularized by the Department was on receipt of the M.P.S.C. list of successful candidates where the Respondent's/Petitioner's was not reflected.

4.9 That the Department is processing with the Personnel Department for regularization of the Work Charge employees who have joined service after 12.07.1988 including that of the Respondent/Petitioner.

6. The points for decision by the learned Single Judge were as to:

5.1 Whether the Respondent/Petitioner who was appointed as Work Charge Sub-Engineer Grade-I only on 09.12.1988 was eligible for regularization of service when the Office Memorandum dated 12.07.1993 provides that the Department was to regularize only Work Charged employees who have completed 5(five) years service or more on before 12.07.1993 i.e. those who have joined on or before 12.07.1988.

5.2 Whether the Respondent/Petitioner who had passed the Professional Examination in Civil Engineering & Accounts held on 22.10.2005 was eligible for regularization of service when passing of Professional Examination in Civil Engineering & Accounts does not pave way for regularization and confirmation of service on conditions laid down in O.M. No. PW/Admn/Estt./67/81/1 dated 09.04.1981 read with O.M. No. PW/Admn/Estt./67/81/5 dated 07.05.1981 which regulate the Professional Examination in Accounts and Engineering which are specifically for the purpose of crossing the Efficiency Bar and promotion of a regular Subordinate Engineer Grade-I (Re-designed as Junior Engineer) to the next higher rank.

5.3 Whether the Respondent/Petitioner despite having cleared the M.P.S.C. Examination in 2010 and placed in Sl. No. 76 was eligible for regularization of service when he did not fall within the zone of the General Quota as per the Reservation Policy of the State.

5.4 Whether the Appellants/Respondent could overlook the law which provides for the Reservation Policy in the State to accommodate the Respondent/Petitioner and regularize his service.

5.5 Whether the fact that had the service of the Respondent/Petitioner has been regularized, the same would have deprived a candidate of his/her right to service as per the Reservation Policy of the State.

7. The learned Single Judge in the conclusive paragraph of the judgment

impugned herein has held as follows:

"9. Therefore, I am of the considered view that the whole process of filling-up the posts of Junior Engineer, the respondent has adopted a pick and choose policy, hence, such arbitrary act on the part of the respondent is highly illegal and discriminatory as well as against the basic principle of the Constitution of India. In the case of State of Karnataka and Others Vs. M.L. Kesari and Others, are reproduced herein under:

11. The object behind the said direction in para 53 of Umadevi (3)1 is twofold. First is to ensure those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3)1 was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the directions is that all persons who have worked for more than ten years as on 10.4.2006 [the date of decision in Umadevi (3)1] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi (3)1 or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi (3)1 as one - time measure.

12. These appeals have been pending for more than four years after the decision in Umadevi (3)1. The appellant (Zila Panchayat, Gadag) has not considered the cases of the respondents for regularization within six months of the decision in Umadevi (3)1 or thereafter.

13. The Decision Bench of the High Court has directed that the cases of the respondents should be considered in accordance with law. The only further direction that needs to be given, in view of Umadevi (3)1, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, as a general one - time regularization exercise, to find out whether there are any daily - wage/casual/ad hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi (3)1. If they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of Respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one - time exercise within three months. It is needless to say that if the respondents do not fulfill requirements of para 53 of Umadevi (3)1, their services need not be regularised. If the employees who have completed ten years"

service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularisation in suitable lower posts.

10. After considering the submission advance by the Learned Counsel and after taking into consideration the facts and circumstances of the case keeping in mind the guidelines given by the Hon''ble Apex Court as referred to above, I hereby direct the respondent to regularize the service of the petitioner within a month from the date of receipt of this Order.

11. With these observations and directions, this instant petition is allowed and matter stands disposed of."

8. The grounds on which the impugned judgment of the learned Single Judge have been challenged are set out as:

7.1 For that the learned single Judge failed to appreciate that the Respondent/Petitioner was appointed as a Work Charge Sub-Engineer Grade-1 vide Office Order dated 09.12.1988.

7.2 For that the learned single Judge failed to appreciate that passing of Professional Exams in Engineering & Accounts does not pave the way for regularization and confirmation of service.

7.3 For that the learned single Judge failed to appreciate that the Respondent/Petitioner is still under Work Charge Establishment and not in a regular cadre to enable reflection of the Respondent''s/Petitioner''s name in the Gradation List of Junior Engineer (Civil) issued on 01.08.2007.

7.4 For that the learned single Judge failed to appreciate that the Respondent/Petitioner had failed to clear the interview for recruitment of regular Junior Engineer in the year 2007.

7.5 For that the learned single Judge failed to appreciate that vide Order dated 14.08.2009 the Appellant/Respondents had explained in detail as to why the Respondent''s/Petitioner''s services could not be regularized.

7.6 For that the learned single Judge failed to appreciate that as per the State Quota of General Category as per Reservation Policy of the State, the Respondent/Petitioner at Sl. No. 76 could not be considered for regular appointment as Junior Engineer (Civil).

7.7 For that the learned Single Judge failed to appreciate the present law laid down by the Hon''ble Supreme Court in State of Karnataka and others v. Uma Devi with regard to regularization of temporary employees.

7.8 For that the learned single Judge failed to appreciate that the Appellants/Respondents had acted in good faith by complying with the law/rules/guidelines with regard to appointments of deserving candidates to vacant posts.

7.9 For that the learned Single Judge failed to appreciate that the Writ Appellants/

Respondents had not acted in an arbitrary manner in disposing off the representations of the Respondent/Petitioner taking into consideration the contentions and issues raised by the Respondent/Petitioner.

7.10 For that the learned single Judge failed to appreciate the entire matter in its true perspective which required that the laws/rules/guidelines could mandatory followed for regularization of the service of the Respondent/Petitioner.

7.11 For the learned single Judge overlooked the principles of justice Equity and good conscience in regularizing the service of the Respondent/Petitioner which were squarely applicable and that the non-consideration of the salient points while disposing the matter has resulted in grave miscarriage of justice.

7.12 For that the learned Single Judge erred in law in disposing of the writ petition being WP(C) No. 166 of 2012 by Judgment and Order dated 26.03.2014.

9. During the course of arguments, learned counsel for the appellant reiterated the aforesaid averments made in the grounds while contending that the respondent/writ petitioner continues to be under the Work Charge establishment right since his joining the employment on 09.12.1988. Clearance of professional examination in Engineering and Accounts would not create a ground for regularization and confirmation in service. The Respondent/writ petitioner is still not in a regular cadre. He had also failed to clear the interview conducted for recruitment of regular Junior Engineer in the year 2007. As the respondent/petitioner was placed at Sl. 76 in the merit list of the examination that he cleared for direct appointment held by the MPSC, he could not have been appointed in the category of 18% reservation for the general category candidates. It is also a contention that the judgment of Hon'ble the Supreme Court passed in Secretary, State of Karnataka and Others Vs. Umadevi and Others, would create a bar to regularization of service of the respondent/petitioner, and his matter has been dealt with in accordance with the law, rules and guidelines applicable in the case.

10. On the other hand, learned counsel for the respondent tried to justify the impugned judgment.

11. On due consideration of rival submissions, we do not find any merit in the writ appeal for the reason that though, the respondent was initially appointed under the Work Charged establishment Grade-III by Chief Engineer, PWD w.e.f. 1.8.1988, he was promoted within a period of four months to Work Charged Overseer Grade I vide order dated 9.12.1988. Thereafter, he also passed departmental examination in Civil Engineering and Accounts vide Notification dated 17.3.2006. In 2007, there was an advertisement by Meghalaya Public Service Commission for recruitment of regular Junior Engineer. The petitioner, thus, applied for, appeared and passed the screening test and was called for interview. However, the Commission did not select him only for the reason that he had already served for 19 years, and thus he would loose his seniority incase of fresh selection as Junior Engineer Grade I. As such, liberty was given to the respondent/writ petitioner to move the department for regularization. But, the

department did not do anything. Hence, the petitioner filed WP(C) No. 50 (SH) 2008 for redressal of his grievances. The High Court directed the appellant State vide its order dated 28.3.2013 to consider afresh the representation to be submitted by the respondent within a time frame of 2(two) weeks with further directions to dispose of the said representation within further 2(two) months from the date of receipt thereof, by passing a speaking order. The order dated 28.3.2008 is reproduced as under:

"BEFORE THE HON"BLE MR JUSTICE K MERUNO WP(C) No. 50 (SH) 2008

28.3.2008

Heard Mr. M. Chanda, learned counsel for the petitioner and Mr. S. Sen, learned Government Advocate for the State-respondents.

Mr. M. Chanda, learned counsel for the petitioner submits that the petitioner was initially appointed as Work-Charged Overseer Grade-III (Civil) vide office order dated 1.8.88 against a regular vacancy. Subsequently, the petitioner alongwith 27 others were appointed as Work-Charged Sub-Engineers Grade-I, now re-designated as Junior Engineers vide an office order dated 9.12.1988. He submits that 27 of the said persons were absorbed on regular basis during 1993/94 and the petitioner was left out and has not been absorbed even inspite of his unblemished service rendered for about 19 years. Being aggrieved of the said actions of the respondents for not granting him the absorption, he has filed two representations dated 25.3.2004, 2.4.2007 and 10.5.2007. Mr. Chanda submits that the writ petition may be disposed at this stage with a direction to the respondents to dispose off the said representation filed by the petitioner.

After hearing the submissions of the learned counsel for the parties, this Court is of the opinion that this writ petition can be disposed of with a simple direction to the respondents. It is, therefore, directed that the respondents shall consider the fresh representation which will be submitted by the petitioner within 2 weeks. The respondents, on receipt of the said representation, shall dispose of the representation within a period of 2 months from the date of receipt of the said representation by a speaking order.

In this view of the matter, this writ petition stands disposed as indicated above. Copy of this order may be furnished to Mr. S. Sen, learned Government Advocate.

Sd/- JUDGE"

12. Thus, the petitioner submitted a fresh representation on 7.4.2008. Chief Engineer concerned vide his letter dated 14.8.2009 disposed of the representation towards compliance of High Court's order. The main reason, inter alia, given for rejection of the representation vide order dated 14.8.2009 by Chief Engineer, PWD (Roads) was that the appointment of respondent was made by then Chief Engineer, PWD (R & B), Meghalaya, Shillong, without following the constitutional scheme in the matter of public employment, and also held that in terms of judgment of Hon"ble the Supreme Court in Uma Devi's case (Supra), a

temporary employee even after a long period of employment would not become entitled to seek absorption in regular service or could be made permanent merely on the strength of length of service, if the original appointment was not regularly made by following the process of selection. Thus, such employment would be dehors the constitutional scheme of public employment. The said order on reproduction would read as:

"GOVERNMENT OF MEGHALAYA OFFICE OF THE CHIEF ENGINEER, PWD (ROADS)
ESTABLISHMENT BRANCH

No. PW/CE/Estt/14/2008/35

Dated: Shillong, the 14th August, 2009

In pursuance to Order dated 28.03.08 passed by the Hon'ble High Court in WP(C) No. 50(SH)08, I propose to dispose of the representation dated 7.4.08 submitted by Shri Nilotpai Bhattacharjee, Jr. Engineer (Work Charge) as under:

The records revealed that Shri Nilotpai Bhattacharjee was attached to Baghmara Division as Work Charge Grade-III (Civil) vide Order No. Vide Office Order No. PW/CE/Estt/12/88/42, dated 09.12.1988, Shri Nilotpai Bhattacharjee along with 27 others were appointed temporarily as Work Charge Sub-Engineer, Gr-I. The appointment of Shri Nilotpai Bhattacharjee to the post of mentioned was done without following the constitutional scheme of public employment and his appointment was purely temporary and he had accepted the condition of appointment knowing fully well the nature of his appointment.

The appointment to regular post of Jr. Engineer (Civil) can be made only after a person passes or qualifies the examination conducted by MPSC. However, in the case of Shri Nilotpai Bhattacharjee he had not passed or qualified the examination conducted by the MPSC.

During the year 1991-1997 about 19 Work Charge, Jr. Engineers out of 27 were brought to the regular cadre after the said persons had passed and qualified the examination conducted by the MPSC, however, in the case of Shri Nilotpai Bhattacharjee as stated earlier he had not passed the examination conducted by the MPSC and his service remains as Work Charge.

On receipt of the Order dated 28.3.08 passed by the Hon'ble High Court in WP(C) No. 50(SH)08, the representation of Shri Nilotpai Bhattacharjee was forwarded to the Under Secretary to the Govt. of Meghalaya, PWD (R & B) Administrative Branch, Meghalaya, Shillong, vide letter No. PW/CE/Estt/14/8/3, dtd. 26.05.08. On receipt of the said letter No. PW/CE/Estt/14/08/3, dtd. 26.05.08, the Under Secretary to the Govt. of Meghalaya, PWD (R & B), Meghalaya, Shillong, requested this office to instruct Shri Nilotpai Bhattacharjee to furnish the copy of the order in which 27 Jr. Engineer have been regularized by the Govt. as stated by him in his representation dtd. 07.04.08. On receipt of the said letter No. PW/Admn/37/2008/11, dtd. 03.06.08, the Administrative Officer PWD (Roads), Meghalaya, Shillong, vide letter No. PW/CE/Estt/14/08/5, dtd.

03.07.08 requested Shri Nilotpal Bhattacharjee to furnish the copy of the Order in which 27 numbers of Jr. Engineer have been regularized by the Govt. The Administrative Officer, PWD (Roads), Meghalaya, Shillong, vide letter No. PW/CE/Estt/14/08/9, dtd. 23.02.09 again requested Shri Nilotpal Bhattacharjee to furnish the copy of the Order in which 27 numbers of Jr. Engineer which have been regularised by the Govt. Shri Nilotpal Bhattacharjee was also reminded of the same vide letter No. PW/CE/Estt/14/08/11, dtd. 06.04.09, the Administrative Officer PWD (Roads), Meghalaya, Shillong, was informed by Shri Nilotpal Bhattacharjee that he (Shri Nilotpal Bhattacharjee) expressed his inability to furnish the Order of regularization of 27 numbers of Jr. Engineers as mentioned by him in his representation.

In view of the action taken by the Department and the correspondence made in the matter amongst the Administrative Officer, PWD (Roads), Meghalaya, Shillong, the Under Secretary to the Govt. of Meghalaya, PWD (R & B), Meghalaya, Shillong, and Shri Nilotpal Bhattacharjee, the representation submitted by Shri Nilotpal Bhattacharjee for regularizing his service on permanent basis to the post of Jr. Engineer Gr-I, could not be disposed of within a period of two months as directed by the Hon''ble High Court vide Order dtd. 28.03.08.

As mentioned earlier, the appointment of Shri Nilotpal Bhattacharjee was made by the Chief Engineer, PWD (R & B), Meghalaya, Shillong, without following the constitutional scheme in the matter of public employment. This type of appointment has drawn the attention of the Hon''ble Supreme Court. In the case of Secretary, State of Karnataka & Ors. vrs. Smti Uma Devi & three Ors., the Hon''ble Supreme Court held that merely because a temporary employee has continued for a long time he would not be entitled to absorbed in the regular service or made permanent merely on the strength of such continuance if the original appointment was not made by following a due process of selection and de hors the constitutional scheme of public employment.

Keeping in view the decision of Hon''ble Supreme Court in the case of Secretary, State of Karnataka & Ors. vrs. Smti Uma Devi & three Ors., I am of the considered view that the representation dtd. 07.04.08 submitted by Shri Nilotpal Bhattacharjee for regularization of his service on permanent basis to the post of Jr. Engineer Gr-I cannot be accepted and accordingly shall stand rejected.

Sd/- (P.S.G. Lyngdoh) Chief Engineer, PWD (Roads) Meghalaya, Shillong"

13. Simply saying that the appointment of the respondent was made by then Chief Engineer by not following the process would not be ground to deny regularization in service unless it is shown as to in what manner it is irregular? Besides, if the process of appointment of the respondent under the Work Charged establishment was not as per the due process of selection, then in that case, on what ground was he promoted to the post of Overseer/Junior Engineer Grade-I after a short gap of four months of his joining service? That apart, if the

respondent/writ petitioner was not duly appointed Junior Engineer, then, perhaps, he could not have been allowed to clear the departmental examination in Engineering and Accountancy. As regards the ground for rejection of representation of the respondent/writ petitioner by saying that he was not regularly appointed by then Chief Engineer, and thus, the judgment of Uma Devi (Supra) may create a bar to regularization of his services, Hon"ble the Supreme Court has discussed and clarified the position in para 53 of the judgment as:

"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".

14. Thus continued employment of the respondent/writ petitioner for over two decades coupled with grant of promotion to Grade-I Overseer/Junior Engineer just after a gap of four months as also grant of permission to appear in departmental examination in Engineering and Accountancy, which he cleared and also in the absence of information as to in what manner his appointment is irregular, the reasons given for denying regularization of the respondent's service would not be acceptable. Moreover, nowhere in the impugned rejection order, as above, passed by Chief Engineer on 14th August, 2014, it is noted that appointment of the respondent is irregular as well as illegal. In addition there to, the petitioner also qualified the examination for direct appointment as Jr. Engineer and was placed at Sl. No. 79, and being the only candidate in 18% reserved category for General category he also became entitled to get regular appointment. Out of the merit list, it is said that his juniors have already been given regular appointment. The only difference between the two modes of giving regular appointment, is that, if the respondent's services are regularized in terms of direction given by the Gauhati High Court for a fresh consideration of his case for regularization, then he would get the seniority of his past long years

of service which, he would, perhaps, not get as a direct recruit Junior Engineer Grade-I. Thus, in view of the aforesaid discussion, the impugned judgment passed by the learned Single Judge does not call for interference in appeal. As such, this writ appeal is hereby dismissed and the impugned judgment and order is affirmed.