
(2022) 01 GAU CK 0006
In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1241, 1354, 1359, 1362, 1370 Of 2020

Sudipta Bhattacharjee

APPELLANT

Vs

Assam Power Distribution Company Ltd. And 5 Ors

RESPONDENT

Date of Decision : 03-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2022) 01 GAU CK 0006

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : D Musahary, N K Kalita

Judgement

1. Heard Mr. N.K. Kalita, learned counsel for the petitioners. Also heard Mr. K.P. Pathak, learned Standing counsel APDCL.

2. The petitioners claim that they were earlier appointed as outsourced labourers/ Meter Reader/Bill Dispatcher in the respondent APDCL on

contractual basis and on the basis of such engagement they are presently working in various Sub Divisional Offices under the APDCL. Without

providing any further details the petitioners make a statement that they have been rendering service as such for more than 10 years.

3. An advertisement dated 14.08.2018 was issued by the respondent APDCL inviting applications from candidates who either did not have any earlier

experience with the APDCL or having some experience in the power sector to fill up certain posts of Office cum Field Assistant, Sahayak and Mali.

The advertisement provides that 1000 posts would be under consideration for Office cum Field Assistant, 872 for Sahayak and further 60 posts for

Assistant Accounts Officer, 25 for Light Vehicle Driver and 2 for Gardener or Mali. The advertisement also provides the breakup of the vacancies by

applying the law of reservation.

4. The respondent APDCL in their affidavit in opposition filed in a similar matter, i.e. WP(C) 1351/2020, which is relied upon in this case, has annexed

the detailed employment notice bearing MD/APDCL/HR/REC(2017-18)/2017/85/119 & 120 dated 14.08.2018, wherein it is provided that the eligibility

criteria would also require an experience of having worked as contractual workers under the APDCL/AEGCL/APGCL or any other power sector

PSU where they may have been engaged as Meter Reader, Sahayak etc. as the case may be, but having rendered service of not less than 5 years as

on 01.04.2018.

5. We take note that although the recruitment process was for the fresh candidates as well as the candidates who earlier worked with the

APDCL/AEGCL/APGCL, but the qualifications prescribed for the recruitment from the two sources are different and for the purpose of direct

recruitment from the open market the qualification stipulates some higher educational qualification. But in respect of those candidates who earlier

worked with the APDCL/AEGCL/APGCL the required qualification was put up at a slightly lower level. Accordingly, as a lower educational

qualification has been fixed for recruitment of the experienced candidates, a further eligibility have also been put in place that they must have an

experience of atleast 5 years. The petitioners participated in the selection process which ultimately culminated in the short list of candidates published

by the notice dated 10.02.2020. The grievance of the petitioners is that although their names appeared in the short list of candidate dated 10.02.2020

but in order of merit their names appeared much below in the list and taking note of the number of vacancies available, they may not be offered an

appointment. We have gone through the writ petition of the petitioners and do not find any averment to indicate that the process of selection is vitiated

in any manner or that for some given acceptable reason the names of the petitioners ought to have been higher up in order of merit in the short list of

candidates.

6. But what we take note is that in paragraph-16 of the writ petition there is a prayer by the petitioners that having worked for more than 10 years,

their services are required to be regularized by the authorities. As regards the

prayer for regularization, no averment has been made in the writ petition that the petitioners were appointed in any irregular manner against any sanctioned vacant posts and that they have continued to work for more than 10 years without the aid of any Court order up to the date of decision of Supreme Court in *Secretary, State of Karnataka vs- Umadevi & Others*, reported in (2006) 4 SCC 1. All that the petitioners seek for is that in the meantime they have worked for more than 10 years and therefore, are entitled to be regularized. The question of regularizing such contractual employees appointed in an irregular manner had been dealt with by the Supreme Court as well as this Court in *WA 45/2014, State of Assam Vs. Upen Das and ors.*

7. There is a decision of this Court in *WP(C) 482(AP)/2011* wherein, all the relevant laws including pronouncement of the Supreme Court in *Umadevi (supra)*, *State of Punjab vs- Jagjit Singh* reported in (2017) 1 SCC 148 *Nihal Singh & Ors vs- State Of Punjab & Ors* reported in (2013) 14 SCC 65 were taken into consideration, and the following principles were culled out in the judgment dated 17.01.2017 in *WP(C) 482 (AP)/2011* which are extracted as below:-

“The employees who had been working continuously for more than ten years up to the date of the judgment in *Umadevi*’s case i.e. 10.04.2006, without the aid and benefit of any interim order/order(s) of any Courts or Tribunals, against sanctioned posts, although appointed in an irregular manner, are entitled to be regularized as an one time measure. The exercise of one time measure is to be made department or institution wise and where appointments may have been made without any selection process, but from amongst duly qualified candidates and against sanctioned posts are to be considered as irregular appointments. Employees engaged on a daily wage basis, and required to perform the same nature, quality and quantity of work as that of the regular employees working against sanctioned vacant posts, are entitled to a salary, at least in the minimum of the pay scale, that are paid to the regular employees. Posts are required to be created by the State depending upon the need to employ people having regard to various functions that the State undertakes to discharge and that the posts are to be sanctioned and created by the State by a conscious choice on the basis of a rational assessment of the need.

Any act on the part of the State compelling the employee to take a lesser wage and perform the same work as is being done by the regular

employees, by taking advantage of its dominant position and the unemployment scenario prevailing in the Country, would constitute an act of

exploitative enslavement, which will also be a violation of Article 21 of the Constitution of India. A stand on the part of the State respondent authorities

that such temporary employees had accepted the offered employment at a lower wage on their own volition and that they are not working against any

sanctioned posts, and as such, not entitled to a regular scale of pay, or regularization, is as such, not acceptable.â??

8. In the instant case also as it is the claim of the petitioners that they have been working as contractual employees for more than 10 years and

therefore would be entitled to the benefits as indicated in the above extracted portion of the judgment dated 17. 01.2017.

9. Accordingly, the respondent APDCL is directed to consider the cases of the individual petitioners and if they are found to have been working for

more than 10 years up to the judgment of Umadevi (supra) i.e. 10.04.2006 and were working against the sanctioned vacant post, an onetime measure

may be made for their regularization. If any of the petitioners are found not to have worked for more than 10 years upto 10.04.2006, but have worked

for more than 10 years in the meantime, the respondents may consider them for a benefit of providing them the salary atleast in the minimum pay

scale that are otherwise payable to an equivalent regularly appointed employee, which again would be consistent with the directions of the Division

Bench of this Court in the judgment dated 08.06.2017 passed in WA 45/2014, State of Assam Vs. Upen Das and ors.

10. As regards any of the petitioners who may not have satisfied the requirement of having worked continuously for 10 years, we request the

respondent APDCL to also consider their case and find out a suitable economic package for them as per the acceptability of the respondent APDCL.

Ordered accordingly.