

## **CENTRAL ADMINISTRATIVE TRIBUNAL**

### **GUWAHATI BENCH**

Original Application No. 040/00070/2015

Date of Order: This, the 08<sup>th</sup> day of January 2020

**THE HON'BLE SMT. MANJULA DAS, MEMBER (J)**

**THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**



1. Adam Malik Ali, Son of Late Rahmat Ali  
Vill – Fakirtola, P.O. – Hajo  
District – Kamrup, Assam.
2. Shri Deben Kalita, Son of Late Gobinda Kalita  
Vill – Tilana, P.O. – Mug Kunchi  
District – Nalbari, Assam.
3. Shri Sushil Deka, Son of Late Prabhat Deka  
Village & P.O. – Kachua Gaon  
District – Nalbari, Assam.
4. Shri Srikanta Deka, Son of Sri Abhiram Deka  
Village & P.O. – Chapai Chowk  
District – Darrang, Assam.

#### **.....Applicants**

By Advocates: Sri U.K. Nair, Sr. Advocate , A. Chetri, H.K. Das & P. Dutta

-Versus-

1. The Union of India represented by  
The Secretary to the Government of India  
Ministry of Finance, Department of  
Revenue, New Delhi – 110001.
2. The Principal Chief Commissioner  
Of Income Tax, having his offices at  
1<sup>st</sup> Floor, Aayakar Bhawan, Christian Basti  
G.S. Road, Guwahati, Assam  
Pin Code – 781005.

3. The Chief Commissioner of Income Tax Having his offices at 1<sup>st</sup> Floor, Aayakar Bhawan, Christian Basti, G.S. Road Guwahati, Assam, Pin Code – 781005.
4. The Chief Commissioner of Income Tax (CCA), NER, having his offices at the office of the Chief Commissioner of Income Tax, Aayakar Bhawan Christian Basti, G.S. Road, Guwahati Assam, Pin Code – 781005.
5. The Joint Commissioner of the Income Tax Head Quarters, having his offices at the office of the Chief Commissioner of Income Tax, Aayakar Bhawan Christian Basti, G.S. Road, Guwahati Assam, Pin Code – 781005.

**...Respondents.**



By Advocate:- Sri S.K. Ghosh, Addl. CGSC

**ORDER**

**NEKKHOMANG NEIHSIAL, MEMBER (A)**

This is second round of litigation, so far as this Tribunal is concerned. The case was last heard on 21.11.2019 and reserved for orders.

2. In the previous O.A. No. 040/00057/2014, this Tribunal vide its order dated 04.02.2015, after quoting para 53 of the Hon'ble Apex Court's judgment rendered in **Secretary, State of Karnataka & Ors. V. Uma Devi & Ors.** [Reported in **2006 (4) SCC 1**] directed as under:-

“Applicants have completed the ten (10) years of service. Their engagement was prior to the decision of **Uma Devi** (supra). In our view the said decision is applicable in the present case. Hence, we direct the respondents to consider the case of the applicants herein in the light of paragraph 53 of the judgment rendered in the case of **Uma Devi** (3) (supra) within a period of four months from the date of receipt of the copy of the order.”



3. The respondent authorities accordingly, considered the case of the applicants and issued details speaking order dated 03.07.2015 rejecting the case of the applicants. As per the respondent authorities, three essential conditions have to be fulfilled to get the benefits of the order of the Hon'ble Apex Court in **Uma Devi & Ors.** as under:-

- (i) The person sought to be regularised, must be duly qualified to otherwise hold the post.
- (ii) He/She must have been appointed as Casual Labour against a **duly sanctioned but vacant post.**
- (iii) He/She must continuously work for 10 years or more, but without the intervention of order of Courts or Tribunals, on the date of the **Uma Devi** Decision.

4. Since the conditions of being appointed as casual labourers against duly sanctioned but vacant posts were not available for the applicants, the respondent authorities are not able to regularize the

services of the applicants. Accordingly, their cases have been rejected.

5. In the present case, the applicants are seeking the following reliefs:-

- “8.I To quash and set aside the impugned order dated 12.02.2015 in respect of the applicants with all consequential benefits.
- 8.A To quash and set aside the impugned order dated 03.07.2015 with all consequential benefits.
- 8.IB To direct the respondents to regularize the service of the applicants as one time measure from the date of other similarly situated persons.
- 8.2 Any other relief/reliefs that the applicant may be entitled to.”



6. In this O.A., the applicants sought relief on the ground that the action of the respondent authorities is against the spirit of the law laid down by the Hon'ble Apex Court in the case of **Uma Devi & Ors.** and discriminatory. They have completed 10 years or more as on 10.04.2006 as daily wage/casual labourers without intervention of the court of Tribunal.

7. They further submitted that mere perusal of the minutes of the meeting of the selection committee held on 22.02.2010 clearly goes to establish that the applicants are eligible for regularization of their services

in terms of the aforesaid judgment (supra). The reason for rejecting their cases only on the ground that there exists no vacancy/vacant post is cryptic, perverse and untenable in the eye of law.

8. The respondent authorities filed their written statement on 10.04.2015. Same argument has been put forward by them as contained in the speaking order dated 03.07.2015 citing the judgment of the Hon'ble Apex Court in **Secretary, State of Karnataka & Ors. V. Uma Devi & Ors.** and also the case of **State of Bihar V. Upendra Narayan Singh & Ors. (2008) 5 SSC 69** in support of their contention.

9. Apart from giving detail hearing to both the parties, we have carefully gone through the submissions and documents made available to the court. It is not disputed fact that in compliance to the Hon'ble Apex Court's order in **Uma Devi's** case (supra), the respondent authorities processed the cases of daily wage/casual labourers in the department. On recommendation of the Screening/Selection Committee held on 22.02.2010, the respondent authorities have already regularised 46 individuals vide



their order No. 22 of 2010 dated 17.03.2010. On perusal of this Minutes of the Selection Committee dated 22.02.2010, vacancy position of various cadre of Group-D as placed before the Selection Committee has been recorded as under:-



	Cadre				Total
	Peon	NWM	Safaiwala	Farash	
Sanctioned Strength as on 31.03.2001	77	77	07	03	164
Less:- <b>Abolition</b>	<b>35</b>	<b>35</b>	<b>03</b>	<b>01</b>	<b>74</b>
	42	42	04	02	90
Less:- Working Strength as on 01.02.2010	25	13	02	02	42
Cadre Wise Vacancy	17	29	02	00	48
Less:- Vacancies earmarked for Compassionate Appointment.	02	00	00	00	02
Vacancies available for Regularization	15	29	02	00	46

10. As per notification dated 17.01.2011 of the Gazette of India Extraordinary, the total number of Multi Tasking Staff has been indicated as 7456 (2010) subject to variation dependent on workload. In this context, it has to be appreciated that the applicants are asking for the benefits under the Hon'ble Apex Court's order in **Uma Devi** case (supra). This order was delivered by the



Hon'ble Apex Court on 10<sup>th</sup> April 2006 and notified by the DoPT in their O.M. dated 11.12.2006. As per the order of Hon'ble Apex Court's in **Uma Devi** (supra), this exercise of regularization has to be done within a period of six months. The persons to be covered under this order for scrutiny and regularization are those who have completed 10 years of service/engagement as on 10.04.2006, engaged against the sanctioned vacant post and eligible for appointment to the posts to which they have been engaged. It is observed that the respondent authorities have carried out this exercise only in 2010 i.e. nearly after four years. In the meantime, as per Minutes of the Selection Committee dated 22.02.2010, it has been indicated that 74 posts have been abolished (35+35+03+01).

11. Now the issue is whether abolished 74 posts have been done before or after the judgment of Hon'ble Apex Court dated 10.04.2006 in **Uma Devi** (supra). One of the conditions for regularization was that the vacant sanctioned post should have been available against the engaged applicants. The claim of these applicants has been rejected so far as vacant posts were not



available on the date of regularization done in 2010. If these 74 posts have been abolished after the delivery of the judgment of the Hon'ble Apex Court in the case of **Uma Devi** (supra), denying them the benefits of regularization only because sanctioned post is not available as on the date of process of selection, which has done after nearly four years, would not be fair to them. This would amount arbitrariness due to the administrative decision of the respondent authorities. As such, we are of the considered view that the case of the present applicants should be re-examined once again with reference to the number of vacant posts available as on 10.04.2006 and if vacant posts are available on that date, they should be given the benefit of regularization under the scheme of **Uma Devi** case (supra). Ordered accordingly.

12. The above action may be completed by the respondent authorities within a period of four months from the date of receipt of a copy of this order.

13. Accordingly, O.A. stands disposed of. No order as to costs.

**(NEKKHOMANG NEIHSIAL)**  
**MEMBER (A)**

**(MANJULA DAS)**  
**MEMBER (J)**

