

7. Shri. Preetimon Riahtam,

8. Shri. Pronoy Kar,

9. Smti. Mamta Mishra,

.....

10.Smti. Trilian Jyrwa,

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11.Shri. Bikram Singh,

12.Smti. Bina Sangma,

13.Shri. Jiban Paul,

14.Shri. Kalban Kaur,

...Writ Petitioners

-Versus-

1. The Union of India represented by the Secretary, Ministry of Power.
2. The North Eastern Electric Power Corporation Ltd., Shillong.
3. The Chairman and Managing Director of the North Eastern Electric Power Corporation Ltd., Shillong.

...Respondents.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. R.Jha, Adv.

For the Respondent(s) : Dr. N.Mozika, DSGI with
Ms. A.Pradhan, Adv. for R 1.
Mr. V.K.Jindal, Sr. Adv. with
Ms. B.Jyrwa, Adv. for R 2 & 3.

i) Whether approved for reporting in Law journals etc: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. The writ petitioners, numbering 14 in Nos. in this third round of litigation has sought for regularization of their services as permanent workers under the respondent No. 2.

2. The brief facts are that the petitioners are stated to be part-time Cleaners and Sweepers with the respondent Corporation, and have been employed on various dates commencing from the year 1985, with the last employment being in 2008, which are as follows:

Sl.No.	Name	Post	Initial date of joining
6.	Shri. Gurdip Singh	Sweeper	01/02/1989
7.	Smti. Mamta Mishra	Cleaner	03/07/1995
8.	Shri. Suraj Rai	Cleaner	03/07/1995
11.	Smti. Bina Sangma	Cleaner	01/05/2008
16.	Smti. Vimi Dorjee	Cleaner	16/10/1990
17.	Smti. Preetimon Riahtum	Cleaner	24/05/1996
18.	Smti. Sabitri Lama	Cleaner	08/04/1985
24.	Shri. Jibon Paul	Cleaner	03/07/1995
25.	Shri. Pronoy Kar	Cleaner	06/02/1996
27.	Shri. Ajay Singh	Sweeper	03/07/1995

28.	Smti. Trilin Jyrwa	Sweeper	01/04/2000
29.	Smti. Kalbon Kaur	Sweeper	01/01/1987
30.	Shri. Gurmit Singh	Sweeper	03/07/1995
32.	Shri. Bikram Singh	Sweeper	01/04/2002

3. The basis of their claim is that though the writ petitioners have been working for a considerable period of time, they have not been considered for regularization against sanctioned posts, as was done to 26 other employees wherein, for the same or similar posts, the 26 employees were given regular employment.

4. Mr. R.Jha, learned counsel for the petitioner has submitted that the very fact that the petitioners have rendered services commencing from 1985 and so forth, will entitle them as per law to consideration for regularization as given in the judgment of Uma Devi, inasmuch as, the Corporation has been using their services continuously, and as the same is required, there is no question of them being denied their due service benefits. It is further submitted that the stand of the respondents that there are no sanctioned posts of Sweepers, is belied by the very fact that on an affidavit by the respondent Corporation filed on 01-03-2024, it has been shown that the appointment of 5 persons from the list of 26 were Sweepers in a regular scale of pay under the Corporation. He therefore, submits that

the writ petitioners have been discriminated in not being afforded regular employment and inspite their services have been used by the respondent Corporation till date.

5. Mr. V.K.Jindal, learned Sr. counsel assisted by Ms. B.Jyrwa, learned counsel for the respondent Nos. 2 & 3, has submitted that the terms of appointment of the writ petitioners is on a different footing altogether and they were employed strictly on a part-time basis. It is further submitted that such employment is purely casual in nature and not against any regular sanctioned posts. Further, it is submitted that the entry of the writ petitioners into service as part-time workers was also not through due selection process, which is necessary for regular employment. It is further submitted that it is not a question of the writ petitioners holding any adhoc posts on a temporary basis against any posts, to vest them with any right to regular employment.

6. He concludes, by submitting that the writ petitioners having no vested rights are not entitled to any relief prayed for, and moreover, this being the third round of litigation on the same relief, the writ petition is barred by the principle of res judicata.

7. Heard learned counsel for the parties and seen the materials on record. Admittedly, the writ petitioners were employed by the respondent Corporation since the dates mentioned hereinabove, and further the factum

that they continued in employment is also not disputed by the respondent Corporation. The only fact that distinguishes them from other regular employees is that the mode of recruitment was not through a regular selection process, and further were employed only on a part-time basis. A perusal of one such appointment order dated 11th April, 2022 of the petitioners, reflects that the terms of engagement were purely on a part-time basis at a fixed rate and fixed working hours, i.e. only morning and evening on working days.

8. The writ petitioners on entering this engagement, therefore, were well aware about the nature of the employment and also as to whether they were to be eligible for regularization. In the backdrop of these facts, the appointment of the writ petitioners as part-time workers stands on a different plank altogether from the 26 regularly appointed persons referred thereto, and as such, no parity can be claimed by the writ petitioners. It is also settled law that there is an estoppel against challenging the nature of appointment, once having duly accepted the same. The writ petitioners therefore, in the considered view of this Court, on the terms of employment and as the same not being against any sanctioned posts, nor adhoc in nature, but purely part-time, are not entitled to the reliefs as claimed.

9. However, it is disconcerting to note that the respondent Corporation has repeatedly maintained the stand that there are no sanctioned posts of Sweepers in the Corporation. As the learned Sr. counsel for the respondent Corporation has again made submissions that, at the time when the writ petition was filed, and before the affidavit was filed, there were no sanctioned posts. It would be expedient to reproduce paragraph 4 (iii) of the affidavit filed by the respondent Corporation on 27-06-2022, which reads as follows:

*“4 (iii) It is the settled law that any regularization of services after casual engagement tantamount to back door entry and is against the principle of providing equal opportunity enshrined in the Constitution of India. Further, the case of the Petitioners even does not fall within the exception of Uma Devi Case in as much as the exception carved out by the Constitution Bench of India, in Uma Devi case (2006) 4 SCC 1 is only with respect to duly qualified workman in duly sanctioned post who had continued for 10 (ten) years or more. **But in the case of the Petitioners, the post in question i.e. the post of regular full time Sweeper or Cleaner does not even exist or sanctioned and they were only engaged on temporary basis as Part Time Sweeper or Cleaner on a consolidated fixed wage of Rs. 4,000/- per month, hence question of regularization of the services of the Petitioners in this case does not arise.**”*

(emphasis supplied)

10. The same stand is again noticed in the speaking order dated 20th March, 2020, answering the representation dated 30th September, 2019,

which had been filed pursuant to the orders of this Court dated 22-07-2019, in WP(C). No. 263 of 2019. In the said speaking order, at para iv thereto, the Deputy General Manager of the respondent Corporation has stated as follows:

“iv. There is no such regular post of either sweeper or cleaner and no such post is ever sanctioned by the NEEPCO and you also do not hold any such post on adhoc or temporary basis and as such there is no question of regularization of your services on the post which does not exist.”

(emphasis supplied)

11. Strangely, on the last affidavit dated 01-03-2024, filed by the respondent Corporation, at Annexure-A to the said affidavit, 5 persons have been shown to be appointed vide appointment order dated 05-11-1990, as sweepers in the regular posts. The stand of the respondent Corporation which is contradictory and misleading, is therefore deprecated by this Court. It is therefore, not expected from a Public Sector Undertaking which is regarded as a model employer to adopt such double standards. Though this Court refrains at this stage from imposing any cost, it is expected that in any such matters, there should be a level playing field, and persons eligible be permitted to participate for selection to such posts, especially considering the fact that their services are being used for the benefit of the Corporation.

12. Though the writ petitioners in view of the nature of their appointment are not entitled to be considered for regularization, inasmuch as, the initial appointment is clearly as part-time workers, to balance the equities and as it has been submitted that they are engaged for the entire working day, it is directed that the respondent Corporation pay the said employees Minimum Wages as prevalent under law, and further considering the nature of the services rendered by the petitioners, calculate the arrears, which will be payable from the date the writ petition was instituted i.e. 19th April, 2022 till date.

13. With the above directions, this writ petition is closed and disposed of.

Judge

Meghalaya
24.04.2024
"Samantha PS"