

IN THE GAUHATI HIGH COURT
**(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL
PRADESH)**

ITANAGAR PERMANENT BENCH
(NAHARLAGUN)

WP (C) 55 (AP) 2017

1. Shri Taing Tarin,

Son of Late Taying Tarri,
C/o Capital Electrical Division,
Itanagar Sub-Division-IV, Department
of Power [Assistant Engineer (E)],
District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

2. Sri Khagendra Nath Barman,

Son of Late S. R. Barman,
C/o Assistant Engineer (E), CESD-IV,
R. K. Mission, District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

3. Smti. Manashi Dutta,

Daughter of Late Mohuram Dutta,
C/o Assistant Engineer (E),
CESD-IV, Jollang Feeder,
District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

4. Smti. Ngubi Doke (Tang),

Wife of Tang Ashok,
C/o Assistant Engineer (E),
CESD-IV, Jollang Feeder,
District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

5. Smti. Hage Sunya,

Daughter of Hage Tassar,
C/o Assistant Engineer (E),
CESD-IV, Itanagar, District Papum Pare,
Arunachal Pradesh,

PIN – 791111.

6. Miss Hembi Lomi,

Daughter of Late T. Lomi,
C/o Assistant Engineer (E),
CESD-IV, Itanagar, District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

7. Sri Sabin Bora,

Son of Sri Gopal Bora,
C/o Assistant Engineer (E),
CESD No.I, Itanagar, District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

8. Smti. Kabita Peyang,

Wife of T. Peyang,
C/o Assistant Engineer (E),
CESD-I, Itanagar, District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

9. Sri Mohan Rajbongshi,

Son of Late Lakheswar Rajbongshi,
C/o Assistant Engineer (E),
CESD-I, Itanagar, District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

10. Smti. Kompu Dini,

Son of Late Lakheswar Rajbongshi,
C/o Assistant Engineer (E),
CESD-I, Itanagar, District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

11. Sri Subodh Dad,

Son of Late K. Das,
C/o Assistant Engineer (E),
CESD-II, Itanagar, District Papum Pare,
Arunachal Pradesh,
PIN – 791111.

12. Sri Nabam Tamar,

Son of late Nabam Tallo,
C/o Assistant Engineer (E),

CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

13. Sri Prem Lal Chetry,

Son of Late R. B. Chetry,
C/o Assistant Engineer (E), CESD-IV, Chandra
Nagar Control Room,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

14. Sri Jivan Medhi,

Son of Diparu Medhi,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

15. Sri Mahendra Borah,

Son of Late Nobin Borah
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

16. Sri Pobitra Barman,

Son of Late Upen Barman
C/o Assistant Engineer (E), CESD-IV, Chandra
Nagar Control Room,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

17. Sri Bibekananda Sharma,

Son of Late P.N. Sharma
C/o Assistant Engineer (E), CESD-IV, V. V.
Feeder, District Papum Pare,
Arunachal Pradesh.
Pin-791111

18. Sri Rubul Gohain,

Son of Late Lakheswar Gohain,

C/o Assistant Engineer (E),
CESD-IV, V. V. Feeder
District Papum Pare,
Arunachal Pradesh.
Pin-791111

19. Smti Swarna Borah,
Wife of Late A. Borah,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

20. Smti Jaya Borah
Wife of Golak Chandra Borah,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

21. Smti Koj Dinsung,
Wife of Koj Loder,
C/o Assistant Engineer (E), CESD-I, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

22. Smti. Dipa Hidung,
Daughter of Sunandra Pegu,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin- 791111.

23. Md. Mannan Hussain,
Son of Late Lal Mohmad
C/o Assistant, Engineer (E),
CESD-IV, G. D. I. Feeder,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

24. Sri Golap Kakoti,

Son of Late Ananda Kakoti
C/o Assistant Engineer (E), CESD-I, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

25. Sri Sajawal Singh,

Son of late Surja Singh
C/o Assistant Engineer (E),
CESD-IV, R. K. Mission,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

26. Sri Dulal Debnath,

Son of Late Budaru Debnath,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

27. Sri Sambhu Das,

Son of Late Akadakh Das,
C/o Assistant Engineer (E),
CESD-IV, V/Vihar Feeder,
District Papum Pare,
Arunachal Pradesh.
Pin-791111

28. Sri Trilok Thakur,

Son of Munna Thakur,
C/o Assistant Engineer (E),
CESD, G.S.I. Feeder,
District Papum Pare,
Arunachal Pradesh.
PIN-791111

29. Sri Lakhi Kanta Upadhyay,

Son of Late Uma Kanta Upadhyay,
C/o Assistant Engineer (E), CESD-IV,
R. K. Mission, District Papum Pare,
Arunachal Pradesh.
PIN-791111

30. Sri Nokelal Rai

Son of Late Jagadeo Rai,
C/o Assistant Engineer (E), CESD-IV,
Chandra Nagar Control Room
District Papum Pare,
Arunachal Pradesh.
PIN-791111

31. Sri Aleshwar Rai,

Son of Bholan Rai,
C/o Assistant Engineer (E), CESD-IV,
Chandra Nagar Control Room
District Papum Pare,
Arunachal Pradesh.
PIN-791111

32. Sri Khemlal Sharma,

Son of Late Rabilal Sharma,
C/o Assistant Engineer (E),
CESD-IV, V/Vihar Feeder,
District Papum Pare,
Arunachal Pradesh,
PIN-791111

33. Md. Aman Hussain,

Son of Late Lal Mohammad,
C/o Assistant Engineer (E), CESD-IV
Workshop, District Papum Pare,
Arunachal Pradesh.
PIN-791111

34. Md. Mojibur Rahman,

Son of Late Manbor Ali,
C/o Assistant Engineer (E),
CESD-I, Panchali Feeder,
District Papum Pare,
Arunachal Pradesh.
PIN-791111

35. Sri Kishan Kumar Yadav,

Son of Late Ram Prashad Yadav,
C/o Assistant Engineer (E),
CESD-IV, R. K. Mission Feeder,
District Papum Pare,

Arunachal Pradesh.
PIN-791111

36. Sri Harendra Rai,

Son of Lalita Rai,
C/o Assistant Engineer (E),
CESD-IV, R. K. Mission Feeder,
District Papum Pare,
Arunachal Pradesh.
PIN-791111

37. Sri Pradeep Singh,

Son of Late Suraj Singh,
C/o Assistant Engineer (E),
CESD-IV, R. K. Mission,
District Papum Pare,
Arunachal Pradesh.
PIN-791111

38. Sri Tarik Darung,

Son of Late Tamu Darung,
C/o Assistant Engineer (E),
CESD-IV, R. K. Mission Feeder,
District Papum Pare,
Arunachal Pradesh.
PIN-791111

39. Sri Ajoy Deka,

Son of Late Garga Deka,
C/o Assistant Engineer (E)
CESD-I, Raj Bhawan Feeder,
District Papum Pare,
Arunachal Pradesh.
PIN- 791111

40. Sri Vijit Kumar Rai,

Son of P. S. Rai,
C/o Assistant Engineer (E), CESD-IV,
V.V. Feeder, District Papum Pare,
Arunachal Pradesh.
PIN- 791111.

41. Sri Akhilesh Prasad Singh,

Son of Siva Nandan Singh,
C/o Assistant Engineer (E),
CESD-IV, G. S. I. Feeder,

District Papum Pare,
Arunachal Pradesh.
PIN-791111

42. Sri Taba Chada,

Son of Taba Tajum,
C/o Assistant Engineer (E), CESD-IV,
Jollang Feeder, District Papum Pare,
Arunachal Pradesh.
PIN-791111

43. Sri Narayan Sharma,

Son of Late Diliram Sharma,
C/o Assistant Engineer (E), CESD-I,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN-791111

44. Sri Hari Prasad Sharma,

Son of Late Tank Prasad Sharma,
C/o Assistant Engineer (E),
CESD-I, Itanagar,
District Papum Pare,
Arunachal Pradesh.
PIN-791111

45. Sri Lakheswar Das,

Son of Late Bhutung Das,
C/o Assistant Engineer (E), CESD-I,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN-791111

46. Sri Bhaben Boro,

Son of Late Khargeswar Boro,
C/o Assistant Engineer (E),
CESD No. 1, Itanagar,
District Papum Pare,
Arunachal Pradesh,
PIN-791111

47. Sri Amresh Kumar Choudhury,

Son of Late M.P Choudhury,
C/o Assistant Engineer (E),
CESD No. I, Itanagar,

District Papum Pare,
Arunachal Pradesh.
PIN-791111

48. Smti Gadak Yanya,
Wife of Late Godak Sala,
C/o Assistant Engineer (E),
CESD No. I, Itanagar,
District Papum Pare,
Arunachal Pradesh.
PIN-791111

49. Sri Ramendra Pawe,
Son of Late Raja Pawe,
C/o Assistant Engineer (E), CESD-IV,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN-791111

50. Smti Tumtar Jini,
Daughter of Late Muktum Jini,
C/o Capital Electrical Division,
Itanagar Sub-Division-I, Assistant Engineer
(E), District Papum Pare Arunachal Pradesh.
PIN- 791111

51. Sri Prabansh Rai,
Son of Late Bhabani Rai,
C/o Assistant Engineer (E),
CESD-IV, R.K. Mission Feeder,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN-791111

52. Sri Kamal Singh,
Son of Late Maniraj Singh Gahtraj,
C/o Assistant Engineer (E),
CESD-IV, R.K. Mission Feeder,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN-791111.

53. Sri Jiut Prasad,
Son of Late Prabhunath Prasad,
C/o Assistant Engineer (E), CESD-IV,
Itanagar, District Papum Pare,

Arunachal Pradesh
PIN – 791111

54. Smti Kalpana Borah,
Daughter of Late Kumud Borah,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh,
PIN – 791111

55. Sri Swapan Kumar Das,
Son of Late M. C. Das,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh,
PIN – 791111

56. Smti Padi Pubyang,
Daughter of Late Padi Bida,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh,
PIN – 791111

57. Smti Hage Onya,
Wife of Hage Richo,
C/o Assistant Engineer (E),
CESD-IV, Itanagar,
District Papum Pare,
Arunachal Pradesh,
PIN – 791111

58. Sri Sunil Sarkar,
Son of Late Bosanta Sarkar,
C/o Assistant Engineer (E), CESD-IV,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN – 791111

59. Sri Parimal Chakraborty,
Son of Late Surendar Chakraborty,
C/o Assistant Engineer (E), CESD-IV,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN – 791111

60. Sri Achyut Hazarika,

Son of Sri Thaneswar Hazarika
C/o Assistant Engineer (E), CESD-IV,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN – 791111

61. Sri Ram Baran Chaudhuri,

Son of Late Hiralal Chaudhuri,
C/o Assistant Engineer (E), CESD-IV,
Itanagar, District Papum Pare,
Arunachal Pradesh.
PIN – 791111

62. Smti Nangki Jamoh,

Daughter of Late T. Taring
C/o Assistant Engineer (E), Capital
Electrical Division, Itanagar Sub-
Division-I, District Papum Pare,
Arunachal Pradesh.
PIN – 791111

63. Smti. Amar Taring,

Daughter of Late T. Taring
C/o Assistant Engineer (E), Capital
Electrical Division, Itanagar Sub-
Division-I, District Papum Pare,
Arunachal Pradesh.
PIN – 791111.

64. Sri Madan Biswakarma,

Son of Karabahadur Biswakarma,
C/o Assistant Engineer (E), Capital
Electrical Division, Itanagar Sub-
Division-IV, District Papum Pare,
Arunachal Pradesh.
PIN – 791111

65. Smti Tech Meena,

C/o Assistant Engineer (E), Capital
Electrical Division, Itanagar Sub-
Division-IV, District Papum Pare,
Arunachal Pradesh.
PIN – 791111

66. Sri Masine Chetry,

Son of Mon Bahadur Chetry,
C/o Assistant Engineer (E), Capital
Electrical Division, Itanagar Sub-
Division-IV, District Papum Pare,
Arunachal Pradesh.

PIN – 791111

67. Smti. Ranju Kuli,

Daughter of Sri Bogan Kuli,
C/o Assistant Engineer (E), Capital
Electrical Division, Itanagar Sub-
Division-IV, District Papum Pare,
Arunachal Pradesh.

PIN – 791111

68. Sri Paresh Saikia,

Son of Late Maheswar Saikia,
C/o Assistant Engineer (E), CESD-IV,
Itanagar, District Papum Pare,
Arunachal Pradesh.

PIN – 791111

.....petitioners.

-VERSUS-

1. The State of Arunachal Pradesh,

Represented by the Commissioner &
Secretary to the Government of Arunachal
Pradesh, Department of Power, Itanagar,
Arunachal Pradesh.

2. The Chief Engineer (E),

Circle-I Western Zone, Department of Power
(Vidyut Bhaban),
Itanagar, Arunachal Pradesh.

3. The Superintending Engineer (E),

Department of Power, Naharlagun,
District Papum Pare,
Arunachal Pradesh.

4. The Executive Engineer (E),
Capital Electrical Division, Itanagar,
District Papum Pare,
Arunachal Pradesh.

5. The Assistant Engineer (E)
Capital Electrical Sub-Division No. I,
Itanagar, District Papum Pare,
Arunachal Pradesh.

6. The Assistant Engineer (E)
Capital Electrical Sub-Division No. IV,
Itanagar, District Papum Pare,
Arunachal Pradesh.

.....respondents.

By Advocates:

For the petitioners:

Mr. K. Gogoi,
Mr. A. R. Tahbildar,

For the respondents:

Mr. S. Tapin, learned Senior Government Advocate,

:::BEFORE:::
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : **19.12.2017.**

Date of Judgment : **07.02.2018.**

JUDGMENT & ORDER

Heard Mr. K. Gogoi, learned counsel appearing for the petitioners and Mr. S. Tapin, learned Senior Government Advocate appearing for the State respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioners, who are casual workers with various trade designations, have

prayed for a direction to the employer respondent authorities-the Department of Power, Arunachal Pradesh to regularize their services with all the benefits thereof by setting aside the impugned Memorandum vide No.SE/APEC-1E-V/WC-95/2016-17/3092-159, dated 23.11.2016, issued by the respondent No.3 – The Superintending Engineer (E), Department of Power, Naharlagun, District Papum Pare, Arunachal Pradesh, whereby the representation of the petitioners, dated 01.11.2016, for regularization of their services has been disposed of. The petitioners have also prayed to strike down the Regulatory Scheme vide No.CE(T & D)/EWC/V/21/7973-91, dated 09.12.2004, passed by the respondent No.2- the Chief Engineer (T & D), Department of Power, Arunachal Pradesh holding the same to be unauthorized and *ultra vires* to the mandate of Article 309 of the Constitution of India and further, to direct for protection of their right to the pensionary benefits keeping in consideration of their long and uninterrupted periods of service as casual workers.

3. The grievance of the petitioners, in a nutshell, is that they have been working as casual Grade-IV and Grade-III staff continuously for more than 10(ten) to 20(twenty) years, without interruption against sanctioned vacant posts in the department of Power, Arunachal Pradesh. Vide Office Memorandum, dated 13.08.2007, the Government of Arunachal Pradesh adopted a policy decision to regularize the services of such casual employees and accordingly, some of the similarly situated employees in their department and in other departments were regularized, but the case of the petitioners has not been considered, despite various representations were made to the authority. The petitioners have further contended that they filed writ petitions vide WP(C)No.180(AP)2016;WP(C)No.53(AP)2016 and WP(C)No.554(AP)2015, for redressal of their grievances and accordingly, this Court vide the common order, dated 01.08.2016, directed the department of Power, Arunachal Pradesh to consider their claim for regularization of service, in terms of the Office Memorandum and other guidelines, if any.

4. It is the case of the petitioners that pursuant to the aforesaid order, dated 01.08.2016, the respondent No. 3, the Superintending Engineer (E), Department of Power, Naharlagun issued the impugned Memorandum, dated 23.11.2016, whereby the question of regularization of their services was bypassed stating simply that by holding certain tests earlier, some of the similarly situated Casual Workers were promoted, illegally following the incompetent standing guidelines in this regard, although their case was for regularization of service only, being eligible to be appointed in Grade-II and Grade-IV post, on regular basis, in apparent contravention of the mandate of Article 309 of the Constitution of India and contrary to the policy decision of the Government of Arunachal Pradesh issued vide Office Memorandum, dated 13.08.2007.

5. The respondents, in their common affidavit and Mr. S. Tapin, learned Senior Government Advocate appearing for the State respondents submitted that the petitioners along with many others were enrolled under Capital Electrical Division, Department of Power, Arunachal Pradesh as casual workers, during various periods of time as per necessity at sites, their wages being chargeable to the works like maintenance works under various heads only and not against the duly sanctioned posts of the department and that they were not appointed by following the set procedure in this regard in public employment. It has been further submitted that the petitioners as casual workers under various works as unskilled workers in different periods of time against vacancies in casual roll necessitated due to promotion/resignation/death/termination etc. of the regular employees of the department, based on either on their individual applications for such employment or previous employment on site by the Sectional in-Charge. The respondents have averred that the department never engaged the petitioners on consideration of their eligibility for Grade-III/IV posts and regularization of the casual staff is being done in phase-wise manner by conducting DPC/Trade Test against sanctioned vacancies as per the Office Memorandum, issued on

01.11.1996 and the Regulatory Scheme, dated 09.12.2004, which are in operation.

6. It is noticed that this is the second round of litigation pertaining to non-regularization of services of the petitioners, who are Casual Workers working for 10-20 years, without interruption, in the Deptt. of Power, Govt. of Arunachal Pradesh, the earlier writ petitions were being WP(C)NO.180(AP)2016;WP(C)NO.53(AP)2016 & WP(C)NO.554(AP)2015, which were disposed of by a common order, dated 01.08.2016. By the said order dated, 01.08.2016 this court passed the following direction-

"Accordingly, the State Respondents are directed to examine and consider the petitioners' case for regularization of their services in terms of Office Memorandum dated 13.08.2007 and any other Guidelines/parameters, they may have for the same.

The entire exercise should be carried-out by the State Respondents within a period of 4(four) months from the date of receipt of a certified copy of this order."

7. Mr. K. Gogoi, learned counsel for the petitioners, submitted that vide the cabinet decision, dated 07.06.2007, the Govt. of Arunachal Pradesh had approved a scheme, which was recommended by a High Power Committee for regulating the appointment, promotion and services of Work Charged staff and Casual Workers under the Public Works Department, Arunachal Pradesh and extended implementation of the aforesaid recommendation to all Works Departments and accordingly, the other Works Departments were also directed to notify similar schemes. However, the Power Department, Govt. of Arunachal Pradesh has not implemented the said scheme for regularization of the casual services of the petitioners, who were so engaged against the existing sanctioned posts. Mr. Gogoi, the learned counsel further submitted that the respondent authorities, in terms of the above order of this court has not taken any steps for re-examination and consideration of the petitioners' case for regularization of their services in terms of the Office Memorandum, dated 13.08.2007 and other guidelines/parameters, instead thereof notified the Office Memorandum, dated 23.11.2016,

issued by the Respondent No.3 - the Superintending Engineer(E), Capital Electrical Division, Itanagar, whereby it has been stated that the Department has been following the Regulatory Scheme framed for regulating appointment/promotion of workers by phase-wise regularization as well as promotion of Work Charged Employees of lower cadres to higher cadres in their respective trades, as and when vacancies arise and duly sanctioned by the competent authority, which is analogous to the Office Memorandum, dated 13.08.2017, illegally referring further to the recently conducted Trade Tests/DPC of certain Employees on the basis of their respective performance, some Casual Workers were promoted to Work Charged Grade 'C' posts. Mr. Gogoi, emphatically submitted that the petitioners never approached this court for their promotion, but for regularization of their services without holding further Trade Test of any sort which has not been done. According to Mr. Gogoi, if the petitioners are again asked to appear in the departmental Trade Test etc. for regularization of their services that would be against the established principles of Administrative Law and fair play. Therefore, Mr. Gogoi submitted that the impugned Regulatory Scheme is liable to be struck down as the same is against the Government policy adopted vide Office Memorandum, dated 13.08.2007, and the Regulatory Scheme dated 09.12.2004, being not issued by the competent authority within the meaning of Article 309 of the Constitution of India nor the same is approved by the Government in any manner.

8. Mr. S. Tapin, learned Sr. Govt. Advocate, submitted that none of the petitioners and many others were not engaged as Casual Workers against any duly sanctioned posts, but engaged as such, under various works, as unskilled workers in various periods of time in casual roll caused due to promotion/resignation/death/termination etc. Mr. Tapin submitted that they were so engaged on their applications submitted to the Office of the Respondent No. 3 and some of them were engaged by the Sectional In-charge depending on exigency. According to Mr. Tapin, the Department of Power never engaged the petitioners on consideration that they possessed qualifications for appointment to Grade III/IV posts. Mr.

Tapin further submitted that the wages of the petitioners are being revised from time to time as per Govt. orders. Mr. Tapin submitted that the regularization of services of the Casual Staff is being done following the regulatory guidelines, issued on 01.11.1996 and Regulatory Scheme, dated 09.12.2004, which have been implemented by the Department of Power. Mr. Tapin also submitted that the Department of Power under the purview of the Regulatory Scheme has been regularizing the services of the Casual Workers, evolving their own scheme, in phase-wise manner by conducting DPC/Trade Test against sanctioned vacancies.

9. It needs to be reiterated that the law regarding regularization of temporary appointments or Casual Workers of Government Departments has been settled by the Apex Court more particularly in the ***Secretary, State of Karnataka & Ors. Vs. Umadevi (3)***, reported in ***(2006) 4 SCC 1*** and ***State of Karnataka Vs. M. L. Kesari***, reported in ***(2010) 9 SCC 247***. In the aforesaid case of Umadevi, the Apex Court held that though regular appointment as per the Constitutional Scheme for public employment must be the rule, there is nothing in the Constitutional Scheme which prohibits the Governments or their instrumentalities from engaging persons temporarily or on daily wages, in spite of the Constitutional Scheme governing public employment, without following the required procedure, to meet the needs of the situation. The Apex Court further held that when regular vacancies in post are to be filled up, a regular process of recruitment or appointment has to be resorted to as per the Constitutional Scheme and cannot be done in a haphazard manner, based on patronous or other considerations and that equality of opportunity is the hall mark, and the Constitution has provided for affirmative action to ensure that unequals are not treated as equals. The Apex Court also held that casual or temporary employees, who have been continuing in service on irregular basis in public employment, they cannot claim that they are discriminated against those who have been regularly recruited on the basis of the relevant rules, or claim to be treated at par with the latters and that such employees do not have any enforceable right to be permanently absorbed for which reason, a mandamus cannot

be issued in favour of such employees, directing the Government to make them permanent or salary to be paid to them at par with the regular employees.

10. In the instant case, it appears that the petitioners were not engaged as Casual Workers in the Department of Power, Government of Arunachal Pradesh, observing any relevant Recruitment Rules and there is no evidence to show that they have been so engaged and allowed to continue for long years against clear sanctioned posts, but to meet the temporary exigency. Therefore, their appointments were being irregular, despite they have worked for 10(ten) years or more, their service regularization can only be considered on merits, which can be tested by holding Trade Test/DPC. It is seen that on the basis of performance in such tests, which has been done by the Respondent, Department of Power as reflected in the Office Memorandum, dated 23.11.2016, which is in tune with the Office Memorandum, dated 13.08.2007, and the Regulatory Scheme, in phase manner.

11. In the impugned Office Memorandum, dated 23.11.2016, issued by the Respondent No. 3, the Superintending Engineer (E), Department of Power, Naharlagun, stated, *interalia*, as follows-

"... It is reiterated that in the absence of approved vacancies random regularization of the petitioners cannot be done. Their promotions have not been effected only because of the fact that they were not coming under the zone of considerations for promotion in the Trade Tests conducted so far since the implementation of the aforesaid scheme and that their promotion cases shall be considered only on their coming under the zone of consideration as well as their performance in the Trade Test at par with all other Co-Casual workers in the Division/Department as some of their senior counterparts are also still working as Casual workers, in a phase-wise manner under the provisions of the Regulatory Scheme.

..... It is further reiterated that the Department of Power has been sincerely and honestly considering the promotional aspects of the writ petitioners in the aforesaid writ petition at par with all other Casual workers from time to time and particularly in view of the Hon'ble court judgment Dtd. 01.08.2016, that is, as and when Trade Tests are conducted by assessing their particulars viz., ACRs and Performance Reports etc., so as to ascertain their eligibility and qualifying into the zone of consideration visa-vis as per provisions of the Regulatory Scheme and shall continue to do so and shall undoubtedly extend benefits that are entitled to the petitioners. But their cases shall be considered in the event of DPC/Trade Test against sanctioned vacancies within the parameters of the Regulatory Scheme provided they fall under the zone of consideration."

12. The above Office Memorandum, of course, mentioned the word 'promotion' instead of regularization of services of the petitioners. However, on reading of the whole document, it is understood that thereby process has been undertaken to regularize the petitioners' service observing the set Rules flowing from the Regulatory Scheme, dated 09.12.2004, adopted in this regard by the department, as the Casual workers are not regulated under the regular service rules/laws for which regulatory guidelines of the Government have been followed in case of the petitioners.

13. In view of the law laid down in Umadevi's case (supra), as the petitioners were not appointed through a procedure normally adopted in the public employment, no indefeasible right accrued in their favour for automatic regularization of their casual/purely temporary services against any sanctioned vacancy. The petitioners' grievance that the similarly situated casual workers and charged staff of Public Works Department (PWD), Arunachal Pradesh have been regularized as per the Office Memorandum, dated 13.08.2007 or the Central Public Works Department

(CPWD) Manual, that does not mean application of the same procedure to their case as in the aforesaid Office Memorandum, it was clearly stated that the other works departments shall evolve their own schemes. Therefore, there is no place of any arbitrary or bias treatment of the petitioners, who are in public employment as casual workers.

14. Therefore, the impugned Memorandum, dated 23.11.2016 and the Regulatory Scheme, dated 09.12.2004, having not suffered from any legal infirmities, the same cannot be struck down.

15. Consequently, the writ petition stands **dismissed**.

16. It is observed that the respondent-authorities have an obligation in the above context, therefore, necessary action may be initiated, at their fair discretion, to fill up the existing vacant posts or create sufficient number of sanctioned posts in the relevant grades as per norms/requirements, so that the long standing grievances of the petitioners for regularization of their services can be redressed, adhering to the recruitment policy/guidelines etc. adopted by the Department and complete the aforesaid exercise as early as possible.

JUDGE

Lipak