

GAHC010257822017



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5711/2017

BIREN MALO DAS
S/O- LATE PARIKHIT MALA DAS, R/O- VILL LALMATI HAZARIKACHUK,
P.O- TEZPUR, DIST- SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM and 3 ORS.
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT OF
ASSAM, HEALTH AND FAMILY WELFARE DEPARTMENT, DISPUR,
GUWAHATI- 06

2:THE DIRECTOR OF HEALTH SERVICES
ASSAM
HENGRABARI
GUWAHATI- 781036

3:THE JOINT DIRECTORATE OF HEALTH SERVICES
SONITPUR
TEZPUR
DIST- SONITPUR
ASSAM

4:THE OFFICER-IN-CHARGE
DISTRICT MEDICAL STORE
SONITPUR
TEZPUR
DIST- SONITPUR
ASSA

Advocate for the Petitioner : MS.A DAS, MR.P BISWAS,MR.P S BISWAS,MR.S C
BISWAS,MR.I HUSSAIN

Advocate for the Respondent : , SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 22.01.2026

1. Heard Ms. U Nanda, learned counsel for the petitioner. Also heard Ms. S Sarma, learned Standing counsel for Department of Health & Family Welfare, Govt. of Assam appearing for all the respondents.

2. The petitioner, by way of instituting the present writ petition, has prayed for a direction upon the respondent authorities for regularization of his services against the post of Night Chowkidar, the work of which he was discharging since 31.03.2002 on honorary basis.

3. A permanent post of Night Chowkidar (Grade-IV) having fallen vacant at the District Medical Store, Sonitpur, Tezpur upon retirement of the incumbent, therein, on 31.03.2002, the petitioner applied for the said post and on consideration of a such application, the petitioner was allowed to work as Night Chowkidar in the said establishment on temporary basis at a monthly honorarium of Rs. 2000/-. The petitioner, accordingly, joined his services and continued to discharge his duties as a Night Chowkidar in the establishment of the District Medical Store, Sonitpur, Tezpur. The petitioner further projects that a recruitment process was instituted for filling up the post of Night Chowkidar, the work against which he was engaged on ad hoc basis in the year 2005, however, the same was not taken to its logical conclusion.

4. The petitioner having rendered his services on ad hoc basis for a considerable period of time had approached the respondent authorities praying

for regularization of his services and also for authorizing to him, a regular scale of pay. The representations, as submitted by him in the matter, having not evoked any response, the petitioner has instituted the present proceedings.

5. Ms. U Nanda, learned counsel for the petitioner, by reiterating the facts noticed hereinabove, has submitted that petitioner having rendered his services in the establishment of the District Medical Store, Sonitpur, Tezpur since 31.03.2002 without break till date, and there being a continued necessity for engaging the petitioner, he is entitled to have his services regularized against the post, the works of which he is presently discharging. She submits that the post of Night Chowkidar which had fallen vacant on 31.03.2002 continues to remain vacant till this date. Ms. U Nanda, learned counsel prays that considering the fact that the petitioner, for the last 23 years, have been discharging his duties continuously against the post of Night Chowkidar in the establishment of the District Medical Store, Sonitpur, Tezpur, a direction be issued upon the respondent authorities for consideration of the case of the petitioner for regularization of his services with retrospective effect.

6. Per contra, Ms. S Sarma, learned Standing counsel for Department of Health & Family Welfare, Govt. of Assam submits that the petitioner was not recruited against the post of Night Chowkidar in pursuance to a process of selection. The petitioner was engaged on an ad hoc basis by the authorities considering the necessity for having a hand to man the works of the post of Night Chowkidar. Ms. S Sarma, learned Standing counsel for Department of Health & Family Welfare, Govt. of Assam further submits that the prayer of the petitioner for regularization of his services would not mandate acceptance in view of the decision of the Division Bench of this Court in the case of ***State of Assam V. Upen Das & Ors., reported in 2020 (5) GLT 605***. She submits

that the petitioner would only be entitled to the benefits as flowing from the said judgment to persons appointed on casual/ad hoc basis. Accordingly, she submits that the prayer of the petitioner for regularization of his services would not mandate an acceptance from this Court.

7. I have heard the learned counsel for the parties and also perused the materials available on record.

8. It is an admitted position that the petitioner was engaged on ad hoc basis with effect from 31.03.2002 to discharge the duties of a Night Chowkidar in the establishment of the District Medical Store, Sonitpur, Tezpur. It is also not disputed by the respondents that after such engagement on 31.03.2002, the petitioner is continuously discharging his duties in the said capacity. However, the claim of the petitioner for regularization of his services would not mandate an acceptance in view of the decision of the Division Bench of this Court in the case of **Upen Das (Supra)**. In the case of **Upen Das (Supra)**, the Division Bench of this Court, appreciating the concession given in the matter by the State Government not to terminate the services of Muster Roll, Work Charge and other similarly placed employees working since last more than 10 years not against sanctioned posts till their normal retirement, except on disciplinary ground or on ground of criminal offences, proceeded to direct the respondent authorities to pay the minimum of the pay scale to Muster Roll workers, Work Charge workers and other similarly placed employees working since more than 10 years, with effect from 01.08.2017. The directions passed by the Division Bench of this Court in this connection being relevant is extracted hereinbelow:

“It is, however, heartening to learn that the State Government has agreed not to terminate the Muster Roll, Work Charged and similarly placed employees working since last more than 10 years (not in

sanctioned post) till their normal retirement, except on disciplinary ground or on ground of criminal offences. The State Government has also agreed to enlist such employees in Health and Accidental and Death Insurance Scheme, which will be prepared in consultation with the State Cabinet. We appreciate this positive stand of the State Government taken as welfare measures for the betterment and security of the employees, in question. We, accordingly, direct the State Government to implement the measures without further delay. Besides this, we, in the light of decision of the Supreme Court in Stute of Punjab Vs. Jagjit Singh, (2017) 1 SCC 148, also direct the State Government to pay minimum of the pay scale to Muster Roll workers, Work Charged workers and similarly placed employees working since last more than 10 years (not in sanctioned post) with effect from 1.8.2017.

For these reasons, we are of the view that in the fact situation of the case, Muster Roll workers, Work Charged workers and Casual workers are not entitled for regularization of their services with consequential benefits, such as, pension etc. We, accordingly, subject to our direction in paragraph 22 of the judgment, allow the appeal and set aside the impugned judgment and order dated 20.12.2013 passed by the learned Single Judge."

9. In view of the above decisions of the Division Bench of this Court in the case of ***Upen Das (Supra)***, and also restrain placed upon the respondent authorities from regularizing the services of persons similarly situated like the petitioner, this Court rejects the prayer of the petitioner for regularization of his services. However, the Division Bench, having extended the benefit of minimum scale of pay to the Muster Roll, Work Charge and other similarly placed employees with effect from 01.08.2017, the petitioner, herein, being in continuous service with effect from 31.03.2002 and he having completed more than 10 years of service as of 01.08.2017, the petitioner is directed to be paid his remuneration in the minimum of the scale of pay as authorized to the post of Night Chowkidar with effect from 01.08.2017 along with the other benefits as flowing from Paragraph 22 of the decision of the Division Bench of this Court in the case of ***Upen Das (Supra)***. The arrears due to the petitioner, with effect from 01.07.2017, be computed and released to him

within a period of 3(three) from the date of receipt of a certified copy of this order after deducting the honorarium paid to him, in the meanwhile.

10. With the above observations and directions, the present Writ Petition is disposed of.

JUDGE

Comparing Assistant