

Sukhendu Bhattacharjee and Others

v.

The State of Assam and Others

(Civil Appeal No. 4514 of 2025)

21 May 2026

[Vikram Nath and Sandeep Mehta,* JJ.]

Issue for Consideration

Whether the appellants can be denied the benefit of regularization solely on the ground that they were not appointed against sanctioned posts and that the decision in *Umadevi* case prohibits such regularization.

Headnotes[†]

Service Law – Regularization – Denial of, on the ground that initial appointment was not against sanctioned posts, despite having rendered continuous service for decades and regularization of similarly situated workers – Impermissibility – Appellants engaged as Muster Roll workers under various departments of the Government of Assam prior to 01.04.1993 had rendered long and continuous service extending over decades, and were identically placed as the 30,000 workers whose services were regularized pursuant to the Cabinet decision dtd.22.07.2005 to regularize Work Charged and Muster Roll workers engaged prior to 01.04.1993 – However, due to administrative lapses and clerical omissions on the part of the State, several eligible workers, including the appellants, were left out of the exercise – Multiple writ petitions filed before High Court, Single Judge directed regularization along with consequential benefits in favour of the appellants – Order set aside by Division Bench *inter alia* holding that since the appellants were not appointed against duly sanctioned vacant posts therefore, did not satisfy the requirements of the exception carved out in *Umadevi* case – Interference with:

Held: Impugned judgment unsustainable – Engaging workers on muster rolls was a consistently employed policy of the State which continued for prolonged period of time – Appellants were not engaged for sporadic or seasonal purposes but were taken on

* Author

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muster rolls and have rendered continuous service for decades in departments performing regular governmental functions – State having engaged the appellants prior to 01.04.1993, utilised their services continuously for decades and itself acknowledged the magnitude of the issue and framed a Cabinet policy to regularize similarly situated workers, acting upon it in respect of nearly 30,000 employees – In such circumstances, to deny consideration to the fraction of remaining eligible workers including the appellants, by taking shelter under a rigid or technical reading of *Umadevi* would defeat the very principles of fairness and non-arbitrariness – In absence of any cogent distinction or reasoned decision justifying such exclusion, the action of the State is manifestly arbitrary – It is inconsistent with its obligation to function as a model employer and does not withstand scrutiny u/Art.14 of the Constitution – The contention of the State that the appellants cannot be granted regularization on the ground that they were not initially appointed against duly sanctioned posts, rejected – Impugned judgment set aside and that of the Single Judge is affirmed – Directions issued – Constitution of India – Art.14. [Paras 77-79]

Constitution – Art.14 – Standards of fairness and accountability expected of the State and its instrumentalities – Refusal to regularize the eligible workers who stood on the same footing/ identically placed as those 30,000 workers whose services were regularized by policy decision in 2005, violation of Art.14:

Held: Equals must be treated equally, and if persons similarly placed are treated differently without a rational basis, it would amount to a violation of Art.14 of the Constitution – If two sets of employees stand on the same footing in terms of date of engagement, nature of duties, length of service and eligibility under a declared policy, the State cannot extend a benefit to one large group and deny it to the smaller group without demonstrating a valid distinction – Equality does not allow selective or partial implementation of a policy – Once a policy decision is taken to benefit a defined class, it must be applied uniformly to all who satisfy the prescribed conditions – State itself framed a policy in 2005 to regularize Work Charged and Muster Roll workers engaged prior to 01.04.1993 – Pursuant to the aforesaid policy decision, approximately 30,000 workers were regularized – Appellants belong to that very category – They were engaged prior to the cut-off date and have rendered long and continuous service in the same manner as those who were

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regularized – There is no distinguishing feature shown which separates them from the beneficiaries of the 2005 decision – Once the State chose to regularize such a large body of workers forming one identifiable class, it was under a constitutional obligation to treat all eligible members of that class alike – The remaining workers who were left out, though otherwise eligible, cannot be excluded and denied the same benefit – Moreover, the exclusion of the appellants from being granted the benefit of the 2005 decision is not attributable to the appellants but is rather predicated in the actions of the State machinery which, on account of inadvertent errors or clerical mistakes, did not include the appellants in the list of beneficiary covered by the said government decision – Once the State confers a benefit upon a particular class, it cannot arbitrarily deny the same benefit to others who are identically situated – Thus, the State, having regularized nearly 30,000 workers under its own policy decision, could not refuse to regularize the remaining eligible workers who stood on the same footing – To do so amounts to treating equals unequally, which is impermissible u/Art.14 of the Constitution. [Paras 60, 61, 63]

Service Law – Regularization – Long and continuous service, a relevant consideration – State cannot rely upon the mere form of engagement to deny fair and equitable treatment to employees who served for long years – Division Bench set aside the order of the Single Judge thus, reversing the direction of regularization and consequential benefits granted in favour of the appellants *inter alia* holding that since the appellants were not appointed against duly sanctioned vacant posts therefore, did not satisfy the requirements of the exception carved out in *Umadevi* case:

Held: In the facts of the present case, reliance placed by the Division Bench on *Umadevi* and *M.L. Kesari* was misplaced – Paragraph 53 of *Umadevi* carved out a limited exception for those employees who had worked for more than ten years in duly sanctioned posts without the protection of Court orders – However, the appellants were not seeking regularization on the basis of that one-time exception – Their claim was rooted in the Cabinet decision dtd.22.07.2005, by which the State consciously decided to regularize the services of Work Charged and Muster Roll workers engaged prior to 01.04.1993, and pursuant to which nearly 30,000 similarly situated employees were in fact regularized

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by creation of posts – Appellants claimed parity with that very class and sought equal treatment u/Art.14 – Therefore, the issue is not one of invoking the limited exception carved out in *Umadevi*, but of ensuring that employees who stand on the same footing are treated alike – State cannot rely upon the mere form of engagement to deny fair and equitable treatment to employees who have served it for long years – *Umadevi* cannot be invoked as a blanket barrier to justify prolonged and continued engagements of a temporary or *ad hoc* nature, especially where the employees have been discharging essential and recurring functions of the State – The distinction between “illegal” and “irregular” appointments must be kept in view, long and continuous service is a relevant consideration, and the State, as a model employer, is under a constitutional obligation to act with fairness, consistency and reasonableness – The practice of retaining employees for decades under deceptively titled designations, while simultaneously extracting regular work integral to the administration, has been disapproved consistently – Constitution of India – Art.14. [Paras 59, 76]

Constitution of India – Art.14 – Doctrine of legitimate expectation – Rooted in the principles of fairness and non-arbitrariness u/Art.14 – Role of State as a model employer:

Held: Once the Cabinet had taken a considered decision and acted upon it for a large number of employees, it was incumbent upon the State to act in furtherance thereof fully, and not to introduce measures that undermine or circumvent it – State which is expected to act as a model employer cannot be permitted to resile from, or seek shelter against its own decisions through subsequent executive decisions – To allow such a course would be contrary to principles of administrative fairness, consistency, and good governance – The 2012 O.M. appears to have been designed in a manner that effectively defeats and dilutes the very object and purpose of the Cabinet decision – State as a model employer is under a higher constitutional obligation to ensure that its actions are just, reasonable and non-arbitrary – Constantly giving undertakings before a constitutional Court and thereafter resiling from them does not comport with the standards expected of a model employer – An undertaking recorded by a Court is not a casual statement, but is a solemn representation on the basis of which judicial orders are passed – The State cannot approbate and reprobate – Repeated undertakings given by the State before

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the High Court, coupled with the earlier implementation of the Cabinet decision in favour of nearly 30,000 similarly situated workers, gave rise to a legitimate expectation in the minds of the appellants who were deprived of the benefits of the policy – In the maze of administrative deficiencies, they were entitled to expect that the policy decision would be implemented in a fair, complete and non-discriminatory manner, and that their cases would also be considered as part of the same exercise – Though legitimate expectation does not create a vested right, it is firmly rooted in the principles of fairness and non-arbitrariness that flows from Art.14 – State's own policy decision and subsequent undertakings before the High Court constituted clear representations that the cases of the left-out workers would be duly considered – State could not thereafter retract from its earlier position in a selective or inconsistent manner. [Paras 66-68, 70]

Undertakings, given in Court – Significance:

Held: An undertaking recorded by a Court is not a casual statement, but is a solemn representation on the basis of which judicial orders are passed – State cannot approbate and reprobate – It cannot, on the one hand, secure time and indulgence from the Court on the assurance that a policy will be implemented and, on the other, avoid implementation by citing precedents that were already in existence at the time the undertakings were furnished. [Para 67]

Policy Decisions/Executive Decisions – Implementation of – Role of Courts – Confined to judicial review, Courts do not grant prior approval to executive decisions – Regularization, an executive function and falls within the domain of policy and administration:

Held: Single Judge rightly held that there was no requirement for the State to seek permission of the Court to implement its own policy decision – Any solution to the issue of regularization must be undertaken by the State as a policy measure – Regularization, where permissible in law, is an executive function – It falls within the domain of policy and administration – Courts do not grant prior approval to executive decisions – The role of the Court is confined to judicial review, that is, to examine whether a policy or action is constitutionally valid, fair and reasonable – It is not for the Court to authorise the executive to exercise powers which already vest in it – In the present case, seeking permission in the manner done

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by the State amounted, in effect, to a surrender of its executive authority – The executive cannot abdicate its responsibility by placing the burden upon the Court to approve or disapprove the implementation of its own policy – Course adopted by the State was neither necessary nor justified – Service Law – Regularization. [Paras 71, 72]

Service Law – Writ Proceedings – Recording adverse finding without hearing – Impermissibility – In Civil Appeal No. 4519 of 2025; Civil Appeal No. 4520 of 2025, neither the appellant-association nor its members were impleaded as parties in the writ proceedings culminating in the impugned judgment – Grievance of the appellant confined to the limited facet of the impugned judgment insofar as it treated Work Charged employees at par with Muster Roll and Casual workers, without an independent examination of their distinct legal and factual status:

Held: No adverse finding ought to be recorded against a class of persons without hearing them, more particularly when the *lis* affects the monetary rights of the group of employees – Impugned judgment, to the limited extent, cannot be sustained – Impugned judgment passed by the Division Bench has already been set aside in Civil Appeal No. 4514 of 2025 hence, the observations contained therein shall not operate to prejudice or foreclose the independent claims of Work Charged employees, if any – Work Charged employees shall be treated as a distinct class, and their entitlement to pension and other post-retiral benefits shall not be adversely affected by the observations made in the impugned judgment. [Paras 95, 96]

Service Law – Denial of pensionary benefits – In Civil Appeal No. 4523 of 2025, writ petition was filed by the appellants-Muster Roll workers who were paid grade pay, dearness allowance, medical allowance and other service benefits in a manner similar to regular employees, but were denied pensionary benefits – Dismissed by High Court on the ground that the issue stood concluded by an earlier Division Bench decision in *State of Assam v. Upen Das* (impugned judgment in Civil Appeal No. 4514 of 2025 and Civil Appeal No. 4519 of 2020), holding that the appellants were not entitled to pensionary benefits – Challenge to:

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Held: Since the judgment passed in *Upen Das* which was relied by the Division Bench has been set aside in Civil Appeal No. 4514 of 2025, the impugned judgment cannot be sustained and is accordingly set aside – Appellants at liberty to agitate their claims for pensionary benefits before the appropriate authority/forum in accordance with law and the applicable policy framework. [Paras 104, 105]

Case Law Cited

Secretary, State of Karnataka v. Umadevi [2006] 3 SCR 953 : (2006) 4 SCC 1; *State of Karnataka & Others v. M.L. Kesari & Others* [2010] 9 SCR 543 : (2010) 9 SCC 247 – held not applicable.

Jaggo v. Union of India [2024] 12 SCR 1235 : 2024 SCC Online SC 3826; *Shripal v. Nagar Nigam* [2025] 1 SCR 1427 : 2025 SCC Online SC 221; *Dharam Singh v. State of Uttar Pradesh* [2025] 8 SCRT 1026 : 2025 SCC OnLine SC 1735; *Azam Jahi Mill Workers Association v. National Textile Corporation Ltd.* [2021] 11 SCR 321 : (2022) 17 SCC 797; *Pawan Kumar and Others v. Union of India and Others*, 2026 INSC 156; *Bhola Nath v. State of Jharkhand and Others*, 2026 INSC 99; *National Buildings Construction Corporation v. S. Raghunathan* [1998] 1 Supp. SCR 156 : (1998) 7 SCC 66 – relied on.

State of Assam v. Upen Das, 2017 SCC OnLine Gau 360 – disapproved.

Jitendra Kalita & Ors. v. State of Assam & Ors., 2006 (2) GLT 654; *Ramani Deka and Others v. State of Assam and Others*, W.P. (C) No. 1271 of 2006 – referred to.

List of Acts

Constitution of India.

List of Keywords

Regularization; Work Charged workers; Muster Roll workers; Work Charged employees; Regularization of Work Charged workers; Regularization of Muster Roll workers; Denial of regularization; Appointment not against duly sanctioned posts; Not duly sanctioned posts; Not appointed against sanctioned posts; Initial appointment; Not engaged for sporadic or seasonal purposes; Rendered continuous service for decades; Performed regular governmental

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functions; Long and continuous service; Work of permanent and essential nature; Identically situated; Persons similarly placed; Similarly situated workers; Two sets of employees; On same footing; Long years of service; Unequal and arbitrary treatment; Casual workers; Engagement prior to cut-off date; Engaged prior to cut-off date; One identifiable class; Inadvertent errors; Clerical mistakes; Differential treatment discriminatory; Same relief; Excluded employees; Standards of fairness and accountability; Legitimate expectation; Not vested right; Principles of fairness; Non-arbitrariness; Article 14 of the Constitution; Equals to be treated equally; Cabinet policy; Create supernumerary posts; Ferry services; Prolonged and continued engagements; Temporary or ad hoc nature; Essential and recurring functions; Administrative deficiencies; Administrative lapses; Clerical omissions; Policy Decisions; Executive Decisions; Domain of policy; Policy measure; Executive function; Abdication of responsibility by Executive; Adverse finding without hearing; Workers and field supervisors; Maintenance of official works; Development of public roads; Sub divisions of State of Assam; Policy for regularization.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4514 of 2025

From the Judgment and Order dated 08.06.2017 of the Gauhati High Court in WA No. 45 of 2014

With

Civil Appeal No(s). 4516, 4515, 4517, 4518, 4519, 4520 and 4523 of 2025

Appearances for Parties

Advs. for the Appellant(s):

Ms. Anitha Shenoy, B K Sharma, Manish Goswami, Sr. Advs., Siddhartha Jha, Kartik Jha, Ms. Nitika Sud, Avijit Roy, Ms. Srishti Agnihotri, Ms. Sadhana Madhavan, Ms. Kavana Rao, D. P. Singh, Ms. Anchal Kanthed, Ms. Sanjana Grace Thomas, Seema Sharma, Utkarsh Kumar, Somiran Sharma, Dr. Mrs. Vipin Gupta, R B Phookan, Ms. Neha Tandon, Gautam Talukdar, Ms. Tapasya Kakaty, Nilim Sharma, Subhra Jyoti Sharma, Gaurav Shukla, Rameshwar Prasad Goyal.

Sukhendu Bhattacharjee and Others v. The State of Assam and Others*Advs. for the Respondent(s):*

Chinmoy Pradip Sharma, Sr. A.A.G., Jaideep Gupta, B.K Sharma, Sr. Advs., Ankit Roy, Ms. Nimisha Menon, Irfan Hasieb, Vijay Deora, Aditya Agarwal, Ms. Mrinalini Ramesh, Ms. Diksha Rai, Ms. Nimisha Menon, Piyush Vyas, Ms. Purvat Wali, Riddhi Bose, Mrs. Rishi Agarwal, Mrs. Racheeta Chawla, Mrs. Sampriti Baksi, Bharadwaj S., Manish Raghav, Nitin Jain, Ms. Anisa Jain, Ms. Sangita Tahbildar, Lokesh Sharma, Brijesh Kumar Tamber, Kaushik Choudhury, Saksham Garg, Jyotirmoy Chatterjee, Nilim Sarma.

Judgment / Order of the Supreme Court**Judgment**

Mehta, J.

Civil Appeal No. 4514 of 2025; Civil Appeal No. 4516 of 2025; Civil Appeal No. 4515 of 2025; Civil Appeal No. 4517 of 2025 and Civil Appeal No. 4518 of 2025

1. Delay condoned in filing application for setting aside of abatement. Abatement is set aside. Delay condoned in filing application(s) for substitution. Application(s) for substitution is/are allowed. Applications for impleadment are dismissed.
2. In matters concerning long-standing administrative arrangements, particularly where the State and its instrumentalities, over time, continue to utilize the services of certain categories of workers in the discharge of its functions, Courts are often required to examine whether executive action conforms to constitutional standards of fairness and consistency. The exercise of public power cannot be divorced from practical realities created by sustained governmental reliance on such workers. Where governmental authorities derive the benefit of prolonged service and thereafter adopt positions that appear inconsistent with earlier policies or representations, the scrutiny of the Court is directed not merely at the outcome, but at the manner in which discretion has been exercised. The touchstone remains whether the action of the State is reasoned, non-arbitrary and in harmony with the constitutional mandate. It is within this broader constitutional perspective that the present issues fall for consideration.

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3. The instant batch of appeals takes exception to common judgment and order dated 8th June, 2017 passed by Division Bench of the Gauhati High Court¹ in Writ Appeal No. 45 of 2014, whereby the Division Bench of the High Court, set aside the judgment and order dated 20th December, 2013 passed by the learned Single Judge, thereby reversing the direction of regularization and consequential benefits granted in favour of the appellants.
4. Since these appeals arise out of a common impugned judgment and involve identical questions of law and fact, the same are being heard together and disposed of by this common judgment.
5. Civil Appeal No. 4514 of 2025 is treated as the lead matter and reference to facts and issues is being made therefrom for the purpose of adjudication of the instant batch of appeals.

Brief Facts: -

6. In view of the growing requirement of manpower, including workers and field supervisors, for construction, maintenance of official works, and development of public roads across different subdivisions of the State of Assam, the State Government had been engaging Muster Roll workers since the year 1980. Consequently, a large number of persons, including the appellants herein were engaged as Muster Roll workers under various departments of the Government of Assam.
7. On 23rd September, 1983 the Government of Assam took a Cabinet decision to the effect that all Muster Roll workers, working in different departments of the State of Assam, who had completed 15 years of service or more, would be regularized as Grade-IV employees. The manner in which the said Cabinet decision was proposed to be implemented, remained unclear, save and except that the Chief Secretary to the Government of Assam, by communication dated 15th March, 1984 informed the General Secretary of the PWD Employees Union that Muster Roll workers of the Public Works Department and other Engineering Departments, who had completed 15 years of continuous service, were to be regularized with effect from 1st August, 1984.

1 Hereinafter, referred to as "High Court".

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8. By the very same communication, it was further conveyed that Work Charged employees of the Engineering Departments, who had completed 5 years of continuous service, were to be brought under the regular establishment. However, admittedly, no scheme or guidelines were framed laying down a structured procedure for execution of the Cabinet decision dated 23rd September, 1983.
9. The position remained uncertain till 1995, when the then Chief Secretary addressed a communication *vide* Memo No. ABP 176/91/ Pt-1/188 dated 20th April, 1995² to all Commissioners and Secretaries of the Government of Assam, recording that despite the earlier decision of the State Government to regularize Work Charged and Muster Roll workers, no meaningful action had been taken towards such regularization. The aforesaid communication is reproduced hereinbelow for ready reference:-

“GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL:::PERSONNEL (B)
DISPUR, GUWAHATI

No. ABP. 176/91/Pt. I/188

Dated Dispur, the 20th April, 1995

From:- Shri Arunadoy Bhattacharjya, IAS

Chief Secretary to the Government of Assam

To:- All Commissioner and Secretaries/Secretaries to the Government of Assam

Sub:- REGULARIZATION OF SERVICES OF
WORKCHARGED AND MUSTER- ROLL WORKERS

Ref:- This Department's letter No. ABP 64/90/13, dated
24-4-1990

Sir,

I am directed to say that for regularization of services of Work Charged and Muster Roll Workers state Government have issued instruction from time to time to all concerned. It has, however, been brought to the notice of the state Government by Sodou Asom Karmachari Parishad that

² Hereinafter, referred to as “1995 O.M.”.

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in spite of State Government's instruction, no action for regularization of services of such workers has been taken by the certain departments besides, it has also been represented that such workers are also not getting their wages regularly. It is therefore, reiterated that all concerned Department for early regularization of the services of such workers who were engaged in service prior to 01.04.1993 and also to take steps for payment of their wages regularly.

Further, while taking steps regularization of the services of Work-Charged and Muster Roll Workers, the Department concerned must ensure with proper justification on evidence that only the case of these workers who were entertained before 01.04.1993 are considered for regularization in consultation with Finance Department. It has also been decided that in case of any violation of the Government direction of manipulation action will be taken against the officer concerned for such violation or manipulation of records

Yours faithfully
Sd/-

Chief Secretary to the Government of Assam

Memo No. ABP 176/91/pt. I/188-A, Dated Dispur, the 20th April, 1995

Copy forwarded to: -

The Finance EC (II) Department with reference to their letter No. EC (III) 24/92/37, dated 30-5-94. They are requested to take necessary steps for payment of wages to Muster Roll and Work Charged who were appointed before 01.04.1993 regularly.

By order
Sd/-

Joint Secretary to the Government of Assam,
Personnel (B) Department."

10. Accordingly, all concerned departments were directed to initiate necessary steps, in consultation with the Finance Department, for early regularization of Work Charged and Muster Roll workers who had been engaged prior to 1st April, 1993.

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11. The aforesaid Office Memorandum was followed by another Office Memorandum dated 11th October, 1995 whereby strict instructions were issued to the State Government officials to not engage any further Work Charged or Muster Roll workers after 1st April, 1993.
12. A further clarification dated 13th October, 1995 was issued by the State Government stating that the 1995 O.M. would operate only in respect of such Work Charged/Muster Roll workers who had not been discharged or terminated on or before 20th April, 1995.
13. On the strength of the 1995 O.M., several writ petitions came to be instituted before the High Court seeking regularization on the ground that the writ petitioners therein had been engaged prior to 1st April, 1993 and had rendered long years of service. The High Court *vide* common order dated 23rd September, 1998, while directing regularization of those engaged prior to 1st April, 1993 held that the persons engaged after the said date did not have any legally enforceable right to claim regularization.
14. Subsequent to the 1995 O.M., the Under Secretary to the Government of Assam, Personnel (B) Department issued a circular dated 29th August, 1998 reiterating the decision of the Government to regularize the services of the Muster Roll/Work Charged/Casual workers and to take immediate steps for regularization. The said circular is reproduced hereinbelow for ready reference:-

“
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL:::PERSONNEL (B)
DISPUR, GUWAHATI

No. ABP. 30/98/10

Dated Dispur, the 29th August, 1998

From:- Shri G.N. Saikia

Under Secretary to the Government of Assam

Personnel (B) Department

To:- (1) All Commissioner and Secretaries to the Government of Assam.

(2) All Secretaries to the Government of Assam

(3) Deputy Commissioners

(4) Sub-Divisional Officers

(5) Heads of Department

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Sub:- REGULARIZATION OF SERVICES OF WORK-CHARGED AND MUSTER- ROLL WORKERS AND RETENTION PERMANENCY OF POSTS/OFFICES

Sir,

I am directed to forward herewith an extract of minutes of discussion held on 10-7-98 between Commissioner and Secretary, personnel and Assam state Employees' Federation, Guwahati and to say that Government in Personnel (B) Department issued an instruction to all concerned for regularization of Work Charged persons and M.R. workers engaged prior to 01.04.1993. But it has been observed that many of these Administrative Departments as well as Heads of Departments have not taken steps for regularization of those work charged persons and M.R. Workers engaged prior to 01.04.1993. In terms of the discussion, it is again impressed upon to all concerned that the work Charged persons and M.R. Workers who were engaged prior to 01.04.1993 should be regularized immediately as per instructions contained in this Department letter No. ABP. 176/91/pt.1/ 213, dated 13.10.1995. Action taken thereon may please be intimated expeditiously. As regards decision taken at para-8 of the minutes, necessary steps may be taken by the concerned Administrative Departments and Heads of Departments for retention / permanency of posts /offices expeditiously, in terms of existing Government instructions in this regard. Action taken position on this may please be furnished early.

Yours faithfully

Sd/-

Under Secretary to the Government of Assam
Personnel (B) Department."

15. The Commissioner and Secretary to the Government of Assam, Personnel Department issued another circular dated 3rd November, 2000 whereby all the Principal Secretaries, Commissioner, Secretaries of Government of Assam and all the Departmental heads were requested to implement the Government policy on priority basis with reference to the seniority of the Work Charged and Muster Roll workers, taking into consideration the length of continuous

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engagement for regularization of their services. The said circular is reproduced hereinbelow for ready reference:-

“
GOVERNMENT OF ASSAM
DEPARTMENT OF PERSONNEL:::PERSONNEL (B)
DISPUR, GUWAHATI

No. ABP. 30/98/144

Dated Dispur, the 3rd November, 2000

From:- Dr. B.K. Gohain, IAS

Commissioner and Secretary to the Government of
Assam, Personnel Department.

To:- (1) All Principal Secretary/Commissioner and
Secretaries, Government of Assam.

(2) All Deputy Commissioner

(3) All Heads of Departments

Sub:- REGULARIZATION OF SERVICES OF WORK-
CHARGED AND MUSTER-ROLL WORKERS

Ref:- This Department's letter No. ABP. 176/91/pt. I/188,
dated 20.04.1995 and No. ABP. 122/96/143 dated
05.10.1999

Sir,

I am directed to say that for regularization of services of Work Charged persons and Muster Roll Workers, State Government in personnel Department have been issuing instructions from time to time to all concerned, as above, to regularizes the Work Charged persons and Muster Roll Workers who were engaged prior to 01.04.1993. It has come to the notice of the Government that certain Departments have not given due attention in implementation the clear cut Government policy in this regard. Either there have been no attempt to regularize the existing work charged persons and Muster Roll workers or the Junior Level workers at the cost of seniors in violation of the Government direction. You are, therefore, requested to implement the Government policy on priority basis with reference to the seniority of work Charged persons and Muster Roll workers taking

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into consideration the length of continuous engagement, while moving the Finance Department for regularization of such workers engaged prior to 01.04.1993 subject to clearance of SLEC positively.

Yours faithfully

Sd/-

Commissioner and Secretary to the
Government of Assam (II)
Personnel Department.”

16. In the meantime, in relation to the Transport Department, a selection process was undertaken for filling up Grade-III posts, wherein conflicting orders came to be passed by the High Court with one set directing regularization of ad-hoc/casual workers appointed prior to 1st April, 1993, and another set directing appointment of the selected candidates strictly as per the merit list. Owing to these conflicting views, the issue regarding legality and validity of the 1995 O.M. was referred to a Full Bench of the High Court in the case of ***Jitendra Kalita & Ors. v. State of Assam & Ors***³.
17. While the adjudication in ***Jitendra Kalita*** (*supra*) was still pending, the State Cabinet on 22nd July, 2005 reiterated the decision to regularize the services of Work Charged and Muster Roll workers who were engaged prior to 1st April, 1993 and pursuant thereto, an order came to be issued by the competent authority with the concurrence of the Finance Department for creation of over 30,000 posts against which such regularizations were proposed to be effected. The said communication dated 22nd July, 2005 issued by the State Cabinet is reproduced hereinbelow for ready reference:

“

GOVERNMENT OF ASSAM
FINANCE (EC-II) DEPARTMENT
DISPUR

NO. FEC(II)1/2005/66

Dated Dispur, the 22nd July, 2005

From: Shri D.N. Saikia, IAS,
Commissioner & Secretary to the Government of Assam,
Finance Department, Dispur.

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To: The Commissioner & Secretary/ Secretary to the Government of Assam.

- (1) Agriculture Department, Dispur.
- (2) Animal Husbandry & Veterinary (Veterinary), Department, Dispur.
- (3) Animal Husbandry & Veterinary (Dairy Development) Department, Dispur.
- (4) Water Resources Department, Chandmari, Guwahati-3.
- (5) Transport (IWT) Department, Dispur.
- (6) Irrigation Department, Chandmari, Guwahati-3.
- (7) Public Health Engineering Department, Hengerabari, Guwahati.
- (8) Soil Conservation department, Dispur.
- (9) Handloom, Textile and Sericulture (Sericulture) Department, Dispur.
- (10) Public Works Department, Dispur

Sub: Regularization of the services of Work Charged/ Muster Roll Workers of different Government Departments engaged prior to 01.04.1993- approval thereof

Sir,

I am directed to say that the Cabinet in its meeting held on 22nd July, 2005 has decided to regularize the services of Work charged/Muster Roll Workers of different State Government Departments, who were engaged prior to 01.04.1993 and are in continuous service without interruption/ break irrespective of their length of services. Consequent upon the aforesaid decision of the Cabinet, Finance Department, subject to availability of non-plan fund under proper head of account during 2005-06, concur to the creation of 5892 (Five thousand Eight hundred and Ninety two) numbers of different Work Charged Grade posts and 25,069 (Twenty-five thousand and sixty nine) numbers of different Grade-IV posts for the period up to 28.02.2006 with effect from 22.07.2005 as per detailed

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particulars furnished by you Department, for regularization of the services of 5892 (Five thousand Eight hundred and Ninety two) numbers of different categories of Work Charged workers and 25,069 (Twenty-five thousand and sixty nine) numbers of Muster Roll who were engaged prior to 01.04.1993 and are continuous service without interruption/ break irrespective of their length workers respectively, of services, as detailed below.

.....

The services of those workers whose names were forwarded by the Department but could not be considered of for regularization are detailed at Annexure 'A'.

For the purpose of regularization, the following guidelines should be strictly adhered to:-

1. For regularization of the services of Work Charged workers, concerned Administrative Department will create posts in the same grade that the respective incumbents have been holding as work-charged workers prior to their regularization and for regularization of the services of Muster Roll workers, only the Grade-IV posts (specifying the name of Grade-IV Posts) will be created.
2. The scale of pay against each post should be indicated
3. Specifically as per scale of pay prescribed in the relevant R.O.P. Rules. For regularization of 6 (Six) numbers of Work Charged workers and 42 (forty two) nos. of Muster Roll workers in P.W.D. 1 (one) number of Muster Roll Worker in Water Resources department and 12 (Twelve) numbers of Muster Roll Number in Handloom Textile and Sericulture Sericulture) Department, who had been engaged prior to 01.04.1993 and had either attained the age of superannuation or expired after rendering continuous services, the respective Administrative Departments will create supernumerary posts in appropriate grade (in respect of Work Charged workers) or in Grade-IV (in respect of Must Roll Workers) for 1 (One) day only immediately receding the date of superannuation/ death (as the case may be).

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4. In respect of work Charged/ Muster Roll workers who have already expired, orders regularizing their services will be issued by the respective Appointing Authorities on obtaining death certificates from the competent Authority.
5. The posts are personal to respective Work Charged/ Muster Roll workers and will be abolished as soon as the incumbents relinquish the posts in any manner.
6. The posts will not be filled up by persons other than those Work Charged/ Muster Roll workers for whom the posts have been created.
7. There will be no change in the approved list of Work Charged/ Muster Roll workers. A copy of the list received from your Department since approved and duly authenticated by the Finance Department, is enclosed.
8. Discrepancy if found in the lists of 5892 numbers of Work charged workers and 25069 numbers of Muster Roll Workers may be referred to the respective Control Branch of Finance Department.
9. The ban on fresh engagement of Work Charged/ Muster Roll workers and workers of similar nature with effect from 01.04.1993 shall continue. Any deviation of this shall be dealt with seriously under the relevant provisions of the Assam Fiscal Responsibility and Budget Management Act, 2005.
10. Before issuing sanction regularizing the services of Work Charged/ Muster Roll workers on the strength of this concurrence, the Department will ensure that services of no Work Charged/ Muster Roll workers engaged on or after 01.04.1993 are regularized.
11. For retention of the posts so created, concerned Administrative Department will move respective Control Branch of Finance Department with names of incumbents every year till relinquishment of these personal posts by the concerned incumbents. These posts, in no case, will be retained by the Department as per provisions of the Delegation of Financial Power Rules.

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12. The concerned Administrative Departments will issue sanction for creation of the post as approved, as per following draft model sanctions enclosed.

Draft Model Sanction No. I (Annexure 'B')	Regarding sanction to the creation of posts for regularizing services of Work Charged/Muster Roll Workers who are still continuing.
Draft Model Sanction No. II (Annexure 'C')	Regarding sanction to the creation of supernumerary posts for retired/expired Work charged/ Muster Roll Workers.

13. The concerned appointing authority while issuing order of appointment for the purpose of regularization of the services of Work Charged/ Muster Roll workers, as approved, will attach a copy of sanctioning letter (creating posts) issued by the concerned Administrative Department in this regard with the appointment order/ letter and shall invariably forward copy of the appointment order/ letter to the concerned Treasury Officer along with others. Also, in the appointment order/ letter, date of engagement and date of retirement should be indicated specifically along with others.

I am to request you kindly to take immediate action for regularizing the services of 5892 (Five thousand Eight hundred and ninety two) numbers of work Charged workers and 25,069 (Twenty Five thousand and sixty nine) numbers of Muster Roll workers on the strength of above concurrence of Finance Department.

I am further to add that this regularization process should be completed as early as possible and not later than 3 (three) months from 22.07.2005 as per Decision of the Cabinet.

This issues with the approval of Finance (SIU) Department vide their U.O. No. FSI/110/05, dated 22.08.2005.

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Yours faithfully,

D.N. Saikia

Commissioner & Secretary to the Govt. of Assam,
Finance Department

Memo NO. FEC. (II)1/2005/66-A,

Dated Dispur, the 22nd July, 2005"

18. During the course of proceedings in ***Jitendra Kalita*** (*supra*), the Chief Secretary to Government of Assam filed an affidavit dated 14th November, 2005 informing the Court about the Cabinet decision dated 22nd July, 2005.
19. The Full Bench *vide* order dated 17th May, 2006 passed in ***Jitendra Kalita*** (*supra*) held that the 1995 O.M. did not reflect a valid policy decision of the State for regularization of Work Charged and Muster Roll workers. While the Full Bench did not disturb those who had already been regularized on humanitarian considerations, however, it declared that there would be no further regularization in terms of the 1995 O.M.
20. It is pertinent to note that the Full Bench did not express any opinion regarding the validity or implementation of the State Cabinet decision dated 22nd July, 2005.
21. A subsequent communication dated 22nd August, 2005 issued by the Finance (EC-II) Department and the Office Memorandum dated 31st July, 2010 issued by the Pension and Public Grievances Department would indicate that the State Government created 5,892 Work Charged grade posts and 25,069 Grade-IV posts for Muster Roll workers, and thereafter approximately 30,000 Work Charged and Muster Roll workers were regularized.
22. It needs to be noted that a large number of Work Charged and Muster Roll workers, though placed at par to those persons whose services were regularized pursuant to the Cabinet decision dated 22nd July, 2005, were left out of the regularization process. Such exclusion was primarily attributed to clerical lapses, including errors in the spelling of names and/or inadvertent omission from the lists of eligible workers, which led to the filing of a barrage of writ petitions before the High Court. The core grievance raised in these writ petitions was that, despite engagement prior to the cut-off date of 1st April, 1993 and long and continuous service, in many cases exceeding twenty-five

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years, the benefit of regularization was denied to the employees while it was extended to other similarly placed workers.

23. One such batch of petitions came to be considered by the High Court in W.P. (C) No. 1271 of 2006, titled ***Ramani Deka and Others v. State of Assam and Others***, wherein the petitioners, who were engaged as Work Charged/ Muster Roll workers prior to 1st April, 1993, sought regularization on the strength of the Cabinet decision dated 22nd July, 2005, contending that they had been unjustly excluded despite fulfilling the prescribed criteria.
24. In the course of proceedings in ***Ramani Deka*** (*supra*), the State Government submitted before the High Court that on the basis of information collated from 29 departments, approximately 3,720 Work Charged, Muster Roll and other similarly placed workers engaged prior to 1st April, 1993 were still in service and were eligible for regularization. It was further stated that, after due examination, the State Government would frame a policy for regularization of services of such workers within a period of three months. Accepting the stand taken by the State, the High Court, *vide* order dated 6th September, 2010, directed that consequential action be taken and completed within the stipulated time frame.
25. In a similar writ petition being W.P. (C) No. 24 of 2007, which pertained to regularization of Muster Roll workers, the Chief Secretary to the Government of Assam, during the course of proceedings, filed an affidavit dated 10th December, 2010 in the High Court submitting that the State Government had formulated a draft policy for regularization of services of Work Charged and Muster Roll workers who had been engaged prior to 1st April, 1993 and were left out from the regularization process earlier, by appointing them against posts to be created purely personal to them. The affidavit further stated that similar enabling provisions had been incorporated in the draft policy to extend the benefit of regularization to other categories of temporary workers (other than Work Charged/Muster Roll) who had also been engaged prior to 1st April, 1993.
26. Parallely, in another writ petition being W.P. (C) (Taken up) No. 24 of 2007, wherein the High Court was examining issues relating to prison conditions in the State of Assam, including adequacy of staffing and allied matters, a Division Bench, *vide* order dated 30th July, 2010, directed the State Government to frame a policy for regularization

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of casual workers in terms of the Full Bench decision in ***Jitendra Kalita*** (*supra*). In the aforesaid proceedings, learned Additional Advocate General appearing for the State of Assam submitted that such a policy would be framed within eight weeks. Subsequently, on 1st November, 2010, the learned Additional Advocate General submitted that an undertaking had already been given by the State in the matter of ***Ramani Deka*** (*supra*) to frame a policy within three months. In view of the said undertaking, the Division Bench observed that no further steps were required to be taken pursuant to the order dated 30th July, 2010.

27. When ***Ramani Deka*** (*supra*) was taken up for hearing on 14th December, 2011, it was submitted on behalf of the Finance Department that the matter of regularization was under active consideration in coordination with the Departments of Health, Public Works, Directorate of Zoology and Mining, Water Resources and others, and that the outcome of such deliberations was likely to be favorable to the writ petitioners.
28. However, notwithstanding the aforesaid undertakings given before the High Court, the State thereafter filed a miscellaneous application⁴ in W.P. (C) (Taken up) No. 24 of 2007 seeking leave of the High Court to implement its policy for regularization, contending that the judgment of this Court in ***Secretary, State of Karnataka vs. Umadevi***⁵ had created a legal embargo on such regularization. A Division Bench of the High Court, *vide* order dated 27th March, 2012, declined to grant the said prayer, observing that if the State was unable to regularize casual workers in accordance with the law laid down by the Hon'ble Supreme Court, the High Court could not issue directions to adopt a policy which might be in violation of the said judgment.
29. Immediately following the order dated 27th March, 2012 the Finance (EC-II) Department, Government of Assam issued Office Memorandum dated 16th June, 2012⁶, whereby it was decided that no further regularization of services of Work Charged, Muster Roll or similarly placed workers would be undertaken by the State

4 M.C. No. 597/2012

5 (2006) 4 SCC 1

6 Hereinafter referred to as "2012 O.M."

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Government, even if such workers had been engaged prior to 1st April, 1993 and had rendered continuous service without break. It was further decided that no regularization would be granted by creating *ex post facto* supernumerary posts in respect of those Work Charged or Muster Roll workers who had been engaged prior to 1st April, 1993 but had either died or attained the age of superannuation after rendering continuous and uninterrupted service.

30. Several writ petitions, including those filed by the appellants, assailing the validity of the 2012 O.M. came up for consideration before the learned Single Judge.
31. The learned Single Judge *vide* judgment dated 20th December, 2013 allowed the writ petitions and thereby quashed the 2012 O.M. and resultantly directed regularization along with consequential benefits to the eligible workers whose engagement was prior to 1st April, 1993. Some of the key observations made by learned Single Judge while allowing the writ petitions are summarized hereinbelow:-
 - i. Work-charged and Muster Roll workers constitute a recognised and permissible mode of engagement under the Assam Financial Rules and the PWD Code. Such engagement, though not against sanctioned posts and not intended to be indefinite, cannot *ipso facto* be treated as illegal, void, or *non-est*. It would be an over-simplification to contend that all such engagements were without any authority of law, and therefore cannot be excluded from consideration of regularization merely on the ground that they were outside the regular stream of employment.
 - ii. The Constitution Bench judgment in ***Umadevi*** (*supra*) bars Courts, post 10th April, 2006 (date of judgment in ***Umadevi***), from issuing directions for regularization of temporary, ad-hoc, daily-wage or casual workers, save and except the limited exception carved out in paragraph 53. As explained in ***State of Karnataka & Others v. M.L. Kesari & Others***⁷, employees who had completed ten years of continuous service as on 10th April, 2006 without the protection of interim Court orders and who possessed the requisite qualifications, remain entitled to consideration under a one-time regularization exercise.

7 (2010) 9 SCC 247.

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- iii. Prior to the pronouncement in ***Umadevi*** (*supra*), the State of Assam had taken a conscious Cabinet policy decision on 22nd July, 2005 to regularize Work Charged and Muster Roll workers engaged prior to 1st April, 1993. Acting upon this decision, approximately 30,000 similarly situated workers were regularized by creation of equivalent Grade-IV posts. The said Cabinet decision has never been challenged and was not interdicted or nullified by ***Umadevi*** (*supra*).
- iv. The writ petitioners were admittedly covered by the Cabinet decision dated 22nd July, 2005 but were excluded from regularization due to oversight, inadvertence, or clerical lapses on the part of the State. Such workers cannot be made to suffer for the State's failure to conduct the regularization exercise in a full, fair, and comprehensive manner, particularly when identically placed workers were granted the benefit.
- v. Through affidavits and statements made by the Chief Secretary and other senior officers, the State unequivocally undertook before the Court to regularize the services of the left-out eligible workers. Judicial directions were issued on the basis of such undertakings. Thus, the State was bound by these commitments and could not subsequently resile from its position by taking shelter of ***Umadevi*** (*supra*) or by issuing the 2012 O.M.
- vi. ***Umadevi*** (*supra*) does not denude the executive of its constitutional power to frame and implement a policy decision for regularization. The State's contention that Court's permission was required to implement a Cabinet decision is legally misconceived and amounted to an unwarranted surrender of executive authority.
- vii. Neither ***Umadevi*** (*supra*) nor ***Jitendra Kalita*** (*supra*) bars the State from granting pension or family pension to long-serving Work Charged/Muster Roll workers who retired or died in harness. The long-standing practice of creating a supernumerary post personal to the incumbent even for one day, solely to confer pensionary and terminal benefits, is statutorily supported by the proviso to Rule 31 of the Assam Services (Pension) Rules, 1969. Pension being a valuable right and a facet of socio-economic justice in a welfare State, denial of such benefit after decades of continuous service is arbitrary, unjust, and constitutionally impermissible.

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32. Accordingly, the learned Single Judge directed the State to take follow-up steps for regularization of eligible Work Charged and Muster Roll workers in terms of the Cabinet decision dated 22nd July, 2005 and the earlier undertakings given to the Court.
33. Aggrieved by the judgment and order dated 20th December, 2013 passed by the learned Single Judge, the State of Assam preferred an intra Court appeal being Writ Appeal No. 45 of 2014, before the Division Bench of the High Court.
34. The Division Bench *vide* impugned judgment dated 8th June, 2017 allowed the writ appeal and set aside the order of the learned Single Judge. Some of the key observations made by the Division Bench in the impugned judgment are summarized hereinbelow:-
 - i. None of the writ petitioners were appointed against, or were working on, duly sanctioned vacant posts. Their engagement as Muster Roll, Work Charged or Casual workers was *de hors* the regular cadre. In view of **Umadevi** (*supra*), regularization is impermissible where employees are not working against sanctioned posts, except within the narrow exception.
 - ii. Exception under paragraph 53 of **Umadevi** (*supra*), as explained in **M.L. Kesari** (*supra*) applies only to irregular and not illegal appointments of duly qualified persons working against sanctioned posts for more than ten years without any Court's protection. Since the writ petitioners were never appointed against sanctioned posts, they did not satisfy the threshold condition for invoking the one-time regularization exception.
 - iii. Although the State had taken a Cabinet decision on 22nd July, 2005 and regularized about 30,000 similarly placed workers, post 10th, April 2006 [date of judgment in **Umadevi** (*supra*)], the State could not continue or extend regularization by creating posts, as that would amount to bypassing the constitutional requirement of public employment. The Cabinet decision could not be enforced contrary to binding constitutional law.
35. The aforesaid judgment and order dated 8th June, 2017 passed by the Division Bench is subject matter of challenge in the present batch of appeals.

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36. Shri Manish Goswami and Ms. Anitha Shenoy, learned senior counsel representing the appellants strenuously contended that the action of the State in denying regularization to the appellants, despite extending identical benefit to approximately 30,000 similarly placed Work Charged and Muster Roll workers, is manifestly arbitrary and violative of Article 14 of the Constitution. It was contended that admittedly the appellants were engaged prior to 1st April, 1993 and had rendered long and continuous service extending over decades, and were identically placed as those nearly 30,000 workers whose services were regularized pursuant to the Cabinet decision dated 22nd July, 2005. Learned senior counsel urged that the appellants, for no fault of theirs, ought not to be made to suffer for clerical errors, inadvertent omissions, administrative lapses or apathy on the part of the State.
37. Shri Goswami further submitted that the State, having given a clear and unequivocal undertaking before the High Court, could not thereafter be permitted to resile from the same. In the proceedings in ***Ramani Deka*** (*supra*) and connected matters, categorical statements were made on behalf of the State, through the Chief Secretary, that a policy for regularization of eligible Muster Roll and Work Charged workers engaged prior to 1st April, 1993 was under active consideration and would be implemented within a stipulated time frame. Acting on such representations, the High Court issued directions calling for consequential action. It was urged that an undertaking given to a constitutional Court is a binding commitment, and the State cannot subsequently take a contrary stand by citing inapplicable legal dispositions which were pre-existing at the time when the undertaking was furnished. It was further urged that the issuance of the 2012 O.M., seeking to completely rule out any further regularization, was arbitrary and legally unsustainable, as it marked a clear departure from the stand earlier taken by the State before the High Court and had the effect of undermining the very basis on which the judicial directions had been passed. To this extent, the State's action is hit by the principle of approbate and reprobate.
38. Learned senior counsel submitted that the judgment in ***Umadevi*** (*supra*) does not impose an absolute embargo on regularization in all cases. Reliance was placed on paragraph 53 of ***Umadevi*** (*supra*) to

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contend that an exception has been expressly carved out in respect of employees who have rendered long years of continuous service. It was further submitted that the appellants do not seek judicial mandate for regularization contrary to the constitutional scheme, but only seek implementation of an existing executive policy, namely the Cabinet decision dated 22nd July, 2005, which was taken prior to the decision in **Umadevi** (*supra*) and was in fact acted upon by the State in respect of a substantial section of the workforce. The prayer made by the appellants is imbibed in the letter and spirit of Article 14 of the Constitution and the stand of the State Government in opposing such prayer is arbitrary and totally divergent to its own stance in the earlier litigation pertaining to similarly placed employees.

39. Learned senior counsel placed reliance on the judgment of **M.L. Kesari** (*supra*), to submit that the “one-time measure” contemplated in **Umadevi** (*supra*) cannot be treated as exhausted merely because the State undertook a partial or incomplete exercise. It was contended that **M.L. Kesari** (*supra*) clearly held that employees who were otherwise entitled to consideration but were left out due to oversight or administrative reasons do not lose their right to be considered for regularization. According to the learned senior counsel, the State itself had admitted before the High Court that several of eligible workers engaged prior to 1st April, 1993 were left out of the regularization exercise owing to clerical errors in the spelling of names and therefore denial of consideration to the appellants defeats the very object underlying paragraph 53 of **Umadevi** (*supra*)._
40. Further reliance was placed by learned senior counsel on recent judgments of this Court in **Jaggo v. Union of India**⁸, **Shripal v. Nagar Nigam**⁹ and **Dharam Singh v. State of Uttar Pradesh**¹⁰, to contend that the State cannot be permitted to take advantage of its own inaction or failure. It was urged that where workers have been allowed to continue in service for long years and the State has consistently utilized their labour, it would be inequitable and unjust to deny them the benefit of regularization on hyper technical or procedural grounds. It was thus, submitted that long and continuous

8 2024 SCC Online SC 3826.

9 2025 SCC Online SC 221.

10 2025 SCC OnLine SC 1735.

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service under the State is a relevant consideration which cannot be brushed aside mechanically.

41. Based on the aforesaid submissions, learned senior counsel prayed that the instant appeals deserve to be allowed, the impugned judgment and order dated 8th June, 2017 passed by the Division Bench be set aside, and the appellants be granted the benefit of regularization in terms of the Cabinet decision dated 22nd July, 2005, along with all consequential benefits.

Submissions on behalf of the respondents

42. *Per contra*, Shri Jaideep Gupta, learned senior counsel appearing for respondent No.1-State of Assam vehemently and fervently opposed the submissions advanced by the counsel for the appellants and supported the impugned judgment dated 8th June, 2017 passed by the Division Bench to the hilt.
43. Shri Gupta, contended that the appellants, admittedly engaged as Muster Roll/Work Charged/Casual workers, were never appointed against duly sanctioned posts nor were they employed through any selection process recognized by law, and therefore do not acquire any enforceable right to seek regularization. Reliance placed by the appellants on the Cabinet decision dated 22nd July, 2005 was branded to be misconceived, as executive instructions or Cabinet decisions cannot override the constitutional scheme under Articles 14 and 16 of the Constitution, particularly after the authoritative pronouncement of the Constitution Bench in ***Umadevi*** (*supra*).
44. It was submitted that the Constitution Bench in ***Umadevi*** (*supra*) has categorically held that Courts cannot issue directions for regularization of employees appointed *de hors* sanctioned posts or without following the prescribed recruitment procedure, and that any such direction would amount to perpetuating illegality and defeating equality of opportunity in public employment.
45. Learned senior counsel, emphasized that the exception carved out in paragraph 53 of ***Umadevi*** (*supra*) is a narrowly tailored one, applicable only to irregular (and not illegal) appointments of duly qualified persons working against sanctioned vacant posts for ten years or more without the protection of Court orders. According to the State, the appellants' engagement squarely falls in the category

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of illegal appointments, as they were neither appointed against sanctioned posts nor through any recognized process, and hence the exception is wholly inapplicable.

46. Learned senior counsel further submitted that the reliance placed on ***M.L. Kesari (supra)*** is also misplaced. It was contended that ***M.L. Kesari (supra)*** does not dilute or expand the ratio of ***Umadevi (supra)***, but merely clarifies the manner of implementation of paragraph 53 thereof. The benefit of ***M.L. Kesari (supra)*** can accrue only to those workers who otherwise satisfy the foundational requirements laid down in ***Umadevi (supra)***, namely engagement against sanctioned posts and possession of requisite qualifications. In the absence of these essential preconditions, the appellants cannot claim consideration for regularization under the guise of a continuing one-time exercise.
47. On the plea of discrimination and violation of Article 14 of the Constitution, Shri Gupta submitted that the principle of equality is a positive concept and cannot be invoked to perpetuate an illegality. It was submitted that the fact that some similarly placed workers may have been regularized in the past does not confer a legal right on others to claim parity, particularly when such past regularizations cannot be continued in view of the binding dictum of ***Umadevi (supra)***.
48. With respect to the appellants' reliance on undertakings given by the State before the High Court, learned senior counsel submitted that no undertaking contrary to law can bind the State. Any statement or assurance made before the Court must necessarily be read subject to constitutional limitations and binding judicial precedents. Once ***Umadevi (supra)*** had laid down an express prohibition against regularization of employees appointed *de hors* sanctioned posts, the State was legally precluded from implementing any policy or undertaking that would run contrary thereto. The filing of the Miscellaneous Application in 2012 and the subsequent issuance of the 2012 O.M. were thus defended as *bona fide* steps taken by the State to bring its actions in conformity with constitutional mandates, rather than acts of arbitrariness.
49. Learned senior counsel submitted that the judgments of this Court in ***Jaggo (supra)***, ***Shripal (supra)*** and ***Dharam Singh (supra)***, relied by the counsel for the appellants are distinguishable as those decisions were rendered in materially different factual and legal scenarios, where appointments were either traceable to statutory provisions,

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sanctioned posts, or identifiable lapses on the part of the State which were absent in the present case. It was further submitted that none of those judgments dilute the binding force of *Umadevi* (*supra*) or permit regularization of employees appointed illegally and *de hors* the constitutional scheme.

50. Shri Gupta urged that Courts cannot direct the creation of posts, including limited tenure supernumerary posts or the formulation of regularization schemes, as such matters fall squarely within the executive domain and involve policy choices with significant financial and administrative implications. It was further urged that any direction to create posts for the purpose of accommodating the appellants would amount to judicial encroachment into executive functions.
51. Learned senior counsel contended that granting regularization to the appellants would entail a serious and unforeseen financial burden on the State exchequer and, if extended beyond the present appellants, would open the floodgates for similar claims by hundreds of others, thereby unsettling the entire framework of public employment in the State.
52. Shri Gupta fervently urged that the instant appeals do not merit acceptance; the impugned judgment dated 8th June, 2017 be affirmed; and no directions for regularization or consequential benefits be issued in favour of the appellants.

Discussion

53. We have heard and considered the submissions advanced by learned counsel for the parties and have gone through the impugned judgment and the material placed on record.
54. There is no dispute that the appellants had been engaged as Work Charged/Muster Roll workers much prior to 1st April, 1993 and had continuously discharged their duties over a prolonged period of time. Their position is, in no manner, distinguishable from those Work Charged/Muster Roll workers whose services were regularized pursuant to the Cabinet decision dated 22nd July, 2005. The appellants were left out from the exercise of regularization owing to inadvertent mistakes, clerical errors and administrative discrepancies on the part of the State. Hence, the appellants cannot be faulted for denial of the benefits flowing from the aforesaid Cabinet decision under which nearly 30,000 similarly situated workers were regularized. The core

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question, therefore, which arises for consideration is whether, in the aforesaid circumstances, the appellants can be denied the benefit of regularization solely on the ground that they were not appointed against sanctioned posts and that the decision in *Umadevi (supra)* prohibits such regularization.

55. The key reason assigned by the Division Bench in overturning the judgment of the learned Single Judge was that the employees were not appointed against duly sanctioned vacant posts and, therefore, did not satisfy the requirements of the exception carved out in paragraph 53 of *Umadevi (supra)*. The Division Bench held that regularization is permissible only in cases of irregular (and not illegal) appointments of duly qualified persons working against sanctioned vacant posts for ten years or more without the protection of Court orders. Since, according to the State, none of the respondents therein were appointed against sanctioned posts, the benefit of the one-time measure contemplated in *Umadevi (supra)*, and explained in *M.L. Kesari (supra)*, was held to be inapplicable to them.
56. Paragraph 53 of *Umadevi (supra)* would be relevant for consideration of the *lis* and the same is reproduced hereinbelow:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa (supra)*, *R.N. Nanjundappa (supra)*, and *B.N. Nagarajan (supra)*, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. **In that context, the Union of India, the State Governments, and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those**

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vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

(Emphasis supplied)

57. The one-time exception as carved out in paragraph 53 of *Umadevi* (*supra*) was further elaborated and explained in *M.L. Kesari* (*supra*) wherein this Court observed as follows: -

“9. The term ‘one-time measure’ has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi*, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of Courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in *Umadevi*, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in Courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in *Umadevi*, will not lose their right to be considered for regularization,

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merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of *Umadevi* has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of Courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of *Umadevi*, but did not consider the cases of some employees who were entitled to the benefit of para 53 of *Umadevi*, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of *Umadevi*, are so considered.

11. The object behind the said direction in para 53 of *Umadevi* is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or tribunals, before the date of decision in *Umadevi* was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in *Umadevi*) without the protection of any interim order of any Court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in *Umadevi* or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to

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be considered for regularization in terms of the above directions in *Umadevi* as a one-time measure.”

(Emphasis supplied)

58. What can be deduced from paragraph 53 of *Umadevi (supra)*, as clarified in *M.L. Kesari (supra)*, is that the Union of India and the State Governments were directed to undertake a one-time exercise to regularize employees who had worked for ten years or more in duly sanctioned posts, without the protection of Court or tribunal orders. This direction was to be implemented after the decision in *Umadevi (supra)*, i.e., after 10th April, 2006. The exception carved out in paragraph 53 was therefore intended to operate prospectively and within the framework laid down therein.
59. In our considered view, the reliance placed by the Division Bench on *Umadevi (supra)* and *M.L. Kesari (supra)* was misplaced in the facts of the present case. Paragraph 53 of *Umadevi (supra)* carved out a limited exception for those employees who had worked for more than ten years in duly sanctioned posts without the protection of Court orders. However, the appellants were not seeking regularization on the basis of that one-time exception. Their claim is rooted in the Cabinet decision dated 22nd July, 2005, by which the State consciously decided to regularize the services of Work Charged and Muster Roll workers engaged prior to 1st April, 1993, and pursuant to which nearly 30,000 similarly situated employees were in fact regularized by creation of posts. The appellants claimed parity with that very class and sought equal treatment under Article 14 of the Constitution. The issue, therefore, is not one of invoking the limited exception carved out in *Umadevi (supra)*, but of ensuring that employees who stand on the same footing are treated alike.
60. It is a settled principle that equals must be treated equally, and if persons similarly placed are treated differently without a rational basis, it would amount to a violation of Article 14 of the Constitution¹¹. If two sets of employees stand on the same footing in terms of date of engagement, nature of duties, length of service and eligibility under a declared policy, the State cannot extend a benefit to one large group and deny it to the smaller group without demonstrating a valid

11 Azam Jahi Mill Workers Association v. National Textile Corporation Ltd., (2022) 17 SCC 797.

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distinction. Equality does not allow selective or partial implementation of a policy. Once a policy decision is taken to benefit a defined class, it must be applied uniformly to all who satisfy the prescribed conditions.

61. In the present case, the State itself framed a policy in 2005 to regularize Work Charged and Muster Roll workers engaged prior to 1st April, 1993. Pursuant to the aforesaid policy decision, approximately 30,000 workers were regularized. The appellants belong to that very category. They were engaged prior to the cut-off date and have rendered long and continuous service in the same manner as those who were regularized. There is no distinguishing feature shown which separates them from the beneficiaries of the 2005 decision. Once the State chose to regularize such a large body of workers forming one identifiable class, it was under a constitutional obligation to treat all eligible members of that class alike. The remaining workers who were left out, though otherwise eligible, cannot be excluded and denied the same benefit. It is crucial to note that the exclusion of the appellants from being granted the benefit of the 2005 decision is not attributable to the appellants but is rather predicated in the actions of the State machinery which, on account of inadvertent errors or clerical mistakes, did not include the appellants in the list of beneficiary covered by the said government decision.
62. Recently, in ***Pawan Kumar and Others v. Union of India and Others***¹² this Court considered a similar situation wherein certain employees had been regularized but others, though similarly placed, were left out. This Court held that such differential treatment was discriminatory and accordingly granted the same relief to the excluded employees.
63. Once the State confers a benefit upon a particular class, it cannot arbitrarily deny the same benefit to others who are identically situated. Applying the principle in the present case, the State, having regularized nearly 30,000 workers under its own policy decision, could not refuse to regularize the remaining eligible workers who stood on the same footing. To do so amounts to treating equals unequally, which is impermissible under Article 14 of the Constitution.
64. The present appeals could have been allowed on the basis of discussion made hereinabove, as the unequal and arbitrary treatment

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meted out to the appellants is apparent on the face of the record. However, the facts and circumstances of the present case necessitate certain observations regarding the manner in which the State has handled the issue of regularization. The way in which assurances were extended, policies were formulated and partially implemented, and thereafter altered, warrants closer scrutiny so as to ensure adherence to the standards of fairness and accountability expected of the State and its instrumentalities.

65. It is not in dispute that nearly 30,000 workers were regularized pursuant to the Cabinet decision dated 22nd July, 2005. However, as noted above, due to administrative lapses and clerical omissions on the part of the State, several eligible workers, including the appellants, were left out of the exercise. This led to the filing of multiple writ petitions before the High Court. In those proceedings, particularly in **Ramani Deka** (*supra*) and connected matters, the State, through affidavits sworn by the Chief Secretary and other senior officers, expressly acknowledged that a substantial number of workers engaged prior to 1st April, 1993 had been left out in the exercise of regularization. The Court was informed that the Government was actively considering their cases and that an appropriate policy would be framed within a stipulated period, with the outcome likely to be in favour of such workers. Acting upon these categorical representations, the High Court passed an order requiring the State to take consequential steps.
66. In this backdrop, the subsequent filing of a Miscellaneous Application seeking nod from the High Court to implement the very policy under consideration, on the ground that the law laid down in **Umadevi** (*supra*) created a legal embargo on such regularization, appears wholly unwarranted. It is not as though the State was unaware of the decision in **Umadevi** (*supra*) at the time it furnished undertakings before the High Court. The judgment in **Umadevi** (*supra*) had already been delivered in April 2006. The undertakings given by the State before the High Court, acknowledging the existence of a large number of left-out workers and committing to frame a policy for their regularization, were furnished much thereafter. This clearly indicates that the State was fully conscious of the decision in **Umadevi** (*supra*) and its implications at the time it made those representations. If the State genuinely apprehended any legal impediment arising from **Umadevi** (*supra*), it ought to have raised such concerns at the first

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instance. Instead, it continued to assure the Court that a policy for regularization of left-out workers was under active consideration. It was only in 2012 that the State sought leave of the Court, citing **Umadevi** (*supra*) as a hurdle. The 2012 O.M. appears to have been designed in a manner that effectively defeats and dilutes the very object and purpose of the Cabinet decision dated 22nd July, 2005. Once the Cabinet had taken a considered decision and acted upon it for a large number of employees, it was incumbent upon the State to act in furtherance thereof fully, and not to introduce measures that undermine or circumvent it. The State which is expected to act as a model employer cannot be permitted to resile from, or seek shelter against its own decisions through subsequent executive decisions. To allow such a course would be contrary to principles of administrative fairness, consistency, and good governance.

67. The conduct of the State must also be examined in light of its status as a model employer. The State is under a higher constitutional obligation to ensure that its actions are just, reasonable and non-arbitrary. Recently, this Court in **Bhola Nath v. State of Jharkhand and Others**¹³ reiterated that the State, as a model employer, bears a heightened constitutional obligation in the discharge of its functions. It must act with probity, fairness and candour, and cannot cloud the disputes involving its employees under narrow technical grounds divorced from their broader constitutional context. A model employer is expected to uphold the dignity of its employees more so who are at the lowest pedestal of the hierarchy and to avoid exploiting their vulnerability or precarious position. This obligation flows directly from the Constitution and is not discretionary. Constantly giving undertakings before a constitutional Court and thereafter resiling from them does not comport with the standards expected of a model employer. An undertaking recorded by a Court is not a casual statement, but is a solemn representation on the basis of which judicial orders are passed. The State cannot approbate and reprobate. It cannot, on the one hand, secure time and indulgence from the Court on the assurance that a policy will be implemented and, on the other, avoid implementation by citing precedents that were already in existence at the time the undertakings were furnished.

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68. The repeated undertakings given by the State before the High Court, coupled with the earlier implementation of the Cabinet decision in favour of nearly 30,000 similarly situated workers, clearly gave rise to a legitimate expectation in the minds of the appellants who were deprived of the benefits of the policy. In the maze of administrative deficiencies, they were entitled to expect that the policy decision would be implemented in a fair, complete and non-discriminatory manner, and that their cases would also be considered as part of the same exercise. Though legitimate expectation does not create a vested right, it is firmly rooted in the principles of fairness and non-arbitrariness that flows from Article 14 of the Constitution.
69. A three-judge bench of this Court in ***National Buildings Construction Corporation v. S. Raghunathan***¹⁴ explained the doctrine of legitimate expectation in the following terms:-

“The doctrine of “legitimate expectation” has its genesis in the field of administrative law. **The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of “legitimate expectation” was evolved which has today become a source of substantive as well as procedural rights.** But claims based on “legitimate expectation” have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

(Emphasis supplied)

70. The principle laid down in the aforesaid decision applies to the present case as well. The State’s own policy decision and subsequent undertakings before the High Court constituted clear representations that the cases of the left-out workers would be duly considered. The

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State could not thereafter retract from its earlier position in a selective or inconsistent manner.

71. Even otherwise, as correctly observed by the learned Single Judge, there was no requirement for the State to seek permission of the Court to implement its own policy decision. The Full Bench in ***Jitendra Kalita*** (*supra*) had itself observed that any solution to the issue of regularization must be undertaken by the State as a policy measure. Regularization, where permissible in law, is an executive function. It falls within the domain of policy and administration. Courts do not grant prior approval to executive decisions. The role of the Court is confined to judicial review, that is, to examine whether a policy or action is constitutionally valid, fair and reasonable. It is not for the Court to authorise the executive to exercise powers which already vest in it.
72. We find merit in the observation of the learned Single Judge that seeking permission in the manner done by the State amounted, in effect, to a surrender of its executive authority. The executive cannot abdicate its responsibility by placing the burden upon the Court to approve or disapprove the implementation of its own policy. Once a Cabinet decision had been taken and implemented in major proportions, and once undertakings had been given before a constitutional Court, the State was expected to act in furtherance of its intent expressly declared in the policy, subject of course to constitutional confines. The course adopted by the State, in the facts of the present case, was neither necessary nor justified.
73. As regards the contention of Shri Gupta that after the decision in ***Umadevi*** (*supra*) no regularization can be effected in respect of employees who were not appointed against duly sanctioned posts, we are unable to accept such a sweeping proposition in the facts of the present case. The submission proceeds on the premise that ***Umadevi*** (*supra*) lays down an absolute and inflexible embargo against all forms of regularization irrespective of the surrounding circumstances. Such an interpretation, in our considered view, does not reflect the true scope and ratio of the decision.
74. This Court in ***Jaggo*** (*supra*), deprecated the tendency of the State to take mechanical shelter under ***Umadevi*** (*supra*) to deny relief to employees who had been performing work of a permanent and essential nature for long years. This Court observed as follows: -

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“12. Despite being labelled as “part-time workers,” the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants’ tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants’ termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

19. It is evident from the foregoing that the appellants’ roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not

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illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in *Vinod Kumar v. Union of India*, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed “temporary” but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers’ rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. **When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.**

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

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- **Misuse of “Temporary” Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as “temporary” or “contractual,” even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.
- **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service. • **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.
- **Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.
- **Denial of Basic Rights and Benefits:** Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is

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regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in *Uma Devi* (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment’s explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment’s spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization’s functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.

(Emphasis supplied)

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75. Recently, this Court in ***Bhola Nath*** (*supra*) while relying on the judgment of ***Jaggo*** (*supra*), ***Shripal*** (*supra*), and ***Dharam Singh*** (*supra*) observed as follows:-

“13.6. This Court has, on several occasions, deprecated the practice adopted by States of engaging employees under the nominal labels of “part-time”, “contractual” or “temporary” in perpetuity and thereby exploiting them by not regularizing their positions. In ***Jaggo v. Union of India***, this Court underscored that government departments must lead by example in ensuring fair and stable employment, and evolved the test of examining whether the duties performed by such temporary employees are integral to the day-to-day functioning of the organization.

13.7 In ***Shripal v. Nagar Nigam***, and ***Vinod Kumar v. Union of India***, this Court cautioned against a mechanical and blind reliance on ***Umadevi*** (*supra*) to deny regularization to temporary employees in the absence of statutory rules. It was held that *Umadevi* (*supra*) cannot be employed as a shield to legitimise exploitative engagements continued for years without undertaking regular recruitment. The Court further clarified that ***Umadevi*** itself draws a distinction between appointments that are “illegal” and those that are merely “irregular”, the latter being amenable to regularization upon fulfilment of the prescribed conditions.

13.8. In ***Dharam Singh v. State of U.P.***, this Court strongly deprecated the culture of “ad-hocism” adopted by States in their capacity as employers. The Court criticised the practice of outsourcing or informalizing recruitment as a means to evade regular employment obligations, observing that such measures perpetuate precarious working conditions while circumventing fair and lawful engagement practices.

13.9. The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery of the State continues to function. They are not

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merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are guided by fairness and reason.”

(Emphasis supplied)

76. What emerges from the principles enunciated in the aforesaid decisions is that the State cannot rely upon the mere form of engagement to deny fair and equitable treatment to employees who have served it for long years. The consistent thread running through these judgments is that *Umadevi* (*supra*) cannot be invoked as a blanket barrier to justify prolonged and continued engagements of a temporary or ad hoc nature, especially where the employees have been discharging essential and recurring functions of the State. The Court has repeatedly emphasised that the distinction between “illegal” and “irregular” appointments must be kept in view, that long and continuous service is a relevant consideration, and that the State, as a model employer, is under a constitutional obligation to act with fairness, consistency and reasonableness. The practice of retaining employees for decades under deceptively titled designations, while simultaneously extracting regular work integral to the administration, has been disapproved consistently.
77. Applying these principles to the present case, it is evident that engaging workers on muster rolls was a consistently employed policy of the State which continued for prolonged period of time. The appellants were not engaged for sporadic or seasonal purposes but were taken on muster rolls and have rendered continuous service for decades in departments performing regular governmental functions. The State itself acknowledged the magnitude of the issue and framed a Cabinet policy to regularize similarly situated workers, acting upon it in respect of nearly 30,000 employees. In such circumstances, to deny consideration to the fraction of remaining eligible workers including the appellants, by taking shelter under a rigid reading of *Umadevi* (*supra*) would defeat the very principles of fairness and non-arbitrariness that this Court has consistently upheld.

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78. In the aforesaid backdrop, we are unable to accept the contention of the State that the appellants cannot be granted regularization on the ground that they were not initially appointed against duly sanctioned posts. The State, having engaged the appellants prior to 1st April, 1993, utilised their services continuously for decades, and having itself framed and implemented a Cabinet policy regularizing nearly 30,000 similarly situated workers, cannot now exclude the appellants by taking shelter behind a rigid or technical reading of *Umadevi (supra)*. In absence of any cogent distinction or reasoned decision justifying such exclusion, the action of the State is manifestly arbitrary. It is inconsistent with its obligation to function as a model employer and does not withstand scrutiny under Article 14 of the Constitution.

Conclusion

79. In view of the discussion made hereinabove, the impugned judgment dated 8th June, 2017 passed by the Division Bench cannot be sustained and is set aside and the judgment of the learned Single Judge dated 20th December, 2013 is affirmed.

Consequently, we pass the following directions:-

- I. The appellants shall be treated as regularised in service in terms of the Cabinet decision dated 22nd July, 2005 and from the date on which similarly placed 30,000 employees were given benefit of the said Cabinet decision.
- II. The State of Assam shall identify and verify the eligible appellants and, where necessary, create supernumerary posts to facilitate their regularization.
- III. Upon regularization, the appellants shall be entitled to all consequential benefits, including fixation of pay in the regular scale, continuity of service, and all applicable pensionary and post-retiral benefits in the same terms, as were extended to similarly situated 30,000 employees.
- IV. In case of retired appellants, they shall be granted notional regularization with consequential monetary benefits and arrears from the relevant date until their superannuation for the purpose of recalculating pension, gratuity, and terminal dues.
- V. In case of deceased appellants, arrears and other benefits shall be released to their legal heirs in accordance with law.

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- VI. The entire exercise, including the calculation and payment of all financial arrears, shall be completed within a period of one year from the date of this judgment.
- VII. We make it clear that the benefit of the above directions shall only be applicable to the appellants who were working in the departments of the State before the cut-off date prescribed in Cabinet decision dated 22nd July, 2005 *i.e.* before 1st April, 1993.
- 80. The appeals are allowed accordingly. No order as to costs.
- 81. Pending application(s), if any, shall stand disposed of.

Civil Appeal No. 4519 of 2025; Civil Appeal No. 4520 of 2025

- 82. The instant appeals have been preferred by All Assam Work Charge Employee Association¹⁵, a registered State-wide association representing the interests of Work Charged employees serving under various departments of the Government of Assam, assailing the judgment and order dated 8th June, 2017 passed by the Division Bench of the High Court in Writ Appeal No. 45 of 2014 whereby the Division Bench set aside the judgment and order dated 20th December, 2013 passed by the learned Single Judge, and reversed the direction of regularization, pensionary and other benefits passed in favour of Work Charged and Muster Roll employees.
- 83. The appellant-association is aggrieved by the impugned judgment to the limited extent that the Division Bench, while adjudicating upon the claims of Muster Roll and Casual workers, proceeded to treat Work Charged employees as forming part of the same class as Muster Roll workers and thereby foreclosed their entitlement to pension and other consequential benefits, without independently examining their distinct factual and legal position, and without the appellant-association or its members having been impleaded as parties or afforded an opportunity of being heard before the High Court. In particular, the appellants are aggrieved by the observations made by the Division Bench in paragraph 23 of the impugned judgment, which read as follows:-

“For these reasons, we are of the view that in the fact situation of the case, Muster Roll workers, **Work**

¹⁵ Hereinafter, referred to as “appellant-association”.

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Charged workers and Casual workers are not entitled for regularization of their services **with consequential benefits, such as, pension etc.**”

84. Aggrieved by the adverse findings recorded in the impugned judgment, the appellant-association preferred Review Petition No. 150 of 2019 before the High Court seeking reconsideration of the observations contained in the impugned judgment, particularly to the extent the same affected the rights of Work Charged employees who were not party to the proceedings. However, in view of the pendency of special leave petitions before this Court assailing the same impugned judgment, the High Court, *vide* order dated 27th July, 2023, permitted the appellant-association to withdraw the review petition. Thereafter, the appellant-association approached this Court by filing the present special leave petition along with an application for permission to file which was granted by this Court *vide* order dated 1st December, 2023.

Submissions

85. Shri Manish Goswami and Ms. Anitha Shenoy, learned senior counsel appearing for the appellant-association submitted that the appellant-association and its members were never impleaded as parties in the writ proceedings before the High Court which culminated in the impugned judgment, and consequently had no opportunity to present their case, particularly in relation to their entitlement to pension and other post-retiral benefits. It was submitted that the observations made in paragraph 23 of the impugned judgment, insofar as they relate to Work Charged employees, were rendered without hearing the affected class and without examining their distinct factual and legal position.
86. Learned senior counsel submitted that the claim of the Work Charged employees for pension and other post retiral benefits is based upon Office Memoranda issued by the Government of Assam, including O.M. No. FMP.48/83/40 dated 10th August, 1983; O.M. No PPG(P)196/92/35 dated 12th September, 1996; and O.M. No PPG(P) 196/92/61 dated and 6th September, 2003, which continue to remain in force and provide for grant of pensionary benefits to temporary Government employees who have rendered the prescribed period of continuous service. It was urged that these Office Memoranda were neither placed before nor considered by the High Court while rendering

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the impugned judgment. It was further urged that Work Charged employees are governed by applicable service rules and protections, including the Assam Services (Discipline and Appeal) Rules, 1964, Fundamental Rules and Supplementary Rules, and are extended service benefits such as grade pay, allowances, maintenance of service records, and deductions towards GPF and GIS.

87. Learned senior counsel contended that Work Charged employees constitute a distinct class of Government employees, and the High Court erred in treating them at par with Muster Roll and Casual workers without examining their separate legal status. It was submitted that the appellant-association seeks only a limited clarification that the observations contained in paragraph 23 of the impugned judgment shall not foreclose the independent remedies and entitlements of Work Charged employees under applicable rules and executive instructions.
88. Accordingly, learned senior counsel prayed that the impugned judgment be modified to the aforesaid limited extent, so as to permit Work Charged employees to pursue their claims for pension and other consequential benefits in accordance with law.
89. *Per contra*, Shri Jaideep Gupta, learned senior counsel appearing on behalf of the State of Assam submitted that the present appeals are not maintainable at the instance of the appellant-association as it had failed to disclose the identity, service particulars, or other relevant details of its alleged members, and in the absence of such foundational material, the claims made in the present proceedings remain unverified and unsubstantiated. Shri Gupta further submitted that the appellant-association was never a party to the writ proceedings before the High Court and had not independently instituted any writ petition raising its grievances. The issues and factual assertions now sought to be urged have not been adjudicated by any Court and without the benefit of pleadings or findings of the writ Court, the present appeals cannot be adjudicated for the first time in proceedings under Article 136 of the Constitution.
90. Learned senior counsel contended that no blanket directions or observations should be issued at the instance of the appellant-association, as the same would cause serious administrative and financial prejudice to the State. Accordingly, learned senior counsel prayed that the present appeals be dismissed and the impugned judgment be affirmed.

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91. Having heard learned senior counsel appearing for the parties and upon perusal of the material placed on record, it is evident that the grievance of the appellant–association is confined to a limited facet of the impugned judgment dated 8th June 2017 passed by the Division Bench of the High Court, insofar as it treats Work Charged employees at par with Muster Roll and Casual workers, without an independent examination of their distinct legal and factual status.
92. We may note that we have already set aside the impugned judgment in entirety while adjudicating the appeals of the Muster Roll and Casual workers in Civil Appeal No. 4514 of 2025.
93. It is not in dispute that neither the appellant–association nor its members were impleaded as parties in the writ proceedings culminating in the impugned judgment. Consequently, the Work Charged employees neither individually nor in representative capacity had an opportunity of being heard, particularly on the issue of their entitlement to pensionary and other consequential benefits. The observations made in paragraph 23 of the impugned judgment, to the extent they pertain to Work Charged employees were, thus, recorded without affording an opportunity to the affected class and without consideration of the relevant Office Memoranda and applicable service framework governing such employees.
94. Further, it is pertinent to note that there was no independent adjudication before the High Court concerning the distinct claims and service conditions of Work Charged employees and despite the absence of any specific pleadings or consideration on the issue, adverse observations came to be recorded against them.
95. In this backdrop and having regard to the settled principle that no adverse finding ought to be recorded against a class of persons without hearing them, more particularly when the *lis* affects the monetary rights of the group of employees, this Court is of the considered view that the impugned judgment, to the limited extent indicated above, cannot be sustained. We may reiterate that the impugned judgment dated 8th June 2017 passed by the Division Bench has already been set aside in Civil Appeal No. 4514 of 2025 and hence the observations contained therein shall not operate to prejudice or foreclose the independent claims of Work Charged employees, if any.

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Conclusion

96. Accordingly, it is clarified that Work Charged employees shall be treated as a distinct class, and their entitlement to pension and other post-retiral benefits shall not be adversely affected by the observations made in the impugned judgment.
97. The members of the appellant–association, if they so desire, shall be at liberty to agitate their claims for pensionary and other consequential benefits before the State Government. However, this order shall not be treated as conferring any specific right or entitlement on any such employee.
98. The appeals are disposed of accordingly. No order as to costs.
99. Pending application(s), if any, shall stand disposed of.

Civil Appeal No. 4523 of 2025

100. The instant appeal has been preferred assailing order dated 19th June, 2024 passed by the Division Bench of the High Court in Writ Appeal No. 197 of 2024 whereby the Division Bench, dismissed the writ appeal and affirmed the order dated 10th May, 2024 passed by the learned Single Judge holding the appellants ineligible for pensionary benefits.
101. The appellants herein are Muster Roll workers serving in different ferry services under the office of the Executive Engineer, IWT, Silchar, having been appointed between the years 1993 and 1995. They have been paid grade pay, dearness allowance, medical allowance and other service benefits in a manner similar to regular employees, but pensionary benefits have not been extended to them. In a meeting dated 22nd September, 2023 between the State authorities and the Sadou Assam Karmachari Parishad, it was resolved that a proposal for extending pensionary benefits to Muster Roll employees would be submitted by the Administrative Department to the Finance Department. However, no proposal including the names of the appellants were forwarded. The appellants submitted representations dated 8th January, 2024 and 22nd February, 2024, however, the same remained unanswered.
102. Aggrieved thereby, the appellants filed Writ Petition No. 1946 of 2024 seeking a direction to the administrative department to place the proposal before the Finance Department in terms of the decision

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taken on 22nd September, 2023. During the pendency of the writ petition, another meeting was held on 15th March, 2024, wherein it was decided that the State would favourably examine the case of casual, Muster Roll and minimum pay scale employees for coverage under the New Pension Scheme, subject to their willingness to contribute the prescribed premium. Notwithstanding these developments, the High Court dismissed the writ petition *vide* order dated 10th May, 2024 on the ground that the issue stood concluded by an earlier Division Bench decision in ***State of Assam v. Upen Das***¹⁶ (impugned judgment in Civil Appeal No. 4514 of 2025 and Civil Appeal No. 4519 of 2020), and consequently held that the appellants were not entitled to pensionary benefits.

103. The appellants preferred a writ appeal against the order of the learned Single Judge, which also came to be dismissed *vide* order dated 19th June, 2024, which is the subject matter of challenge in the present appeal.
104. Since the judgment dated 8th June, 2017 passed in ***Upen Das*** (*supra*), which was relied by the Division Bench has been set aside in Civil Appeal No. 4514 of 2025, the impugned judgment dated 19th June, 2024 cannot be sustained and is accordingly set aside.
105. The appellants shall be at liberty to agitate their claims for pensionary benefits before the appropriate authority/forum in accordance with law and the applicable policy framework.
106. The appeal is disposed of accordingly.
107. Pending applications, if any, shall stand disposed of.

Result of the case: Civil Appeal No(s). 4514, 4516, 4515, 4517 and 4518 of 2025, allowed; Civil Appeal No(s). 4519, 4520 and 4523 of 2025, disposed of.

[†]*Headnotes prepared by: Divya Pandey*