

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 796 of 2021

1. Okram Memthoi Devi, aged about 44 years w/o O. Tomba Singh resident of Thoubal Mayai Leikai, P.O, P.S & District, Thoubal, Manipur.
2. Khagembam Bigu Singh, aged about 34 years, S/o (L) Khagembam Tomba Singh, R/o Thoubal Wangataba College Road, P.O. & P.S. Thoubal, District Thoubal, Manipur.
3. Waikhom Shanta Singh, aged about 47 years, S/o (L) Waikhom Babudhon Singh, R/o Thoubal Wangataba College Road, P.O. & P.S. Thoubal, District Thoubal, Manipur.
4. Chanambam Yaiskul Singh, aged about 56 years, S/o, R/o Thoubal Kshetri Leikai, P.O. & P.S. Thoubal, District Thoubal, Manipur,
5. Waikhom Medha Devi, aged about 37 years, D/o Waikhom Ito Singh, R/o Thoubal Wangataba College Road, P.O. & P.S. Thoubal, District Thoubal, Manipur.
6. Takhellambam Rajen Singh, aged about 37 years, S/o, R/o Thoubal Wangataba College

Road, P.O. & P.S. Thoubal, District Thoubal, Manipur.

7. Phurailatpam Bikramjit Sharma, aged about 52 years, S/o (L) Phurailatpam Totobi Sharma, R/o Thoubal Wangataba College Road, P.O. & P.S. Thoubal, District Thoubal, Manipur.
8. Takhellambam Romio Singh, aged about 37 years, S/o Takhellambam Joy Singh, R/o Thoubal Wangataba College Road, P.O. & P.S. Thoubal, District Thoubal, Manipur.
9. Okram Dhiren Singh, aged about 31 years, S/o Okram Ibomcha Singh, R/o Thoubal Okram, P.O. & P.S. Thoubal, District Thoubal, Manipur.
10. Tekcham Santa Singh, aged about 44 years, S/o (L) T. Angou Singh, R/o Lamding Mamang Leikai, P.O. Wangjing, P.S. Thoubal, District Thoubal, Manipur.
11. Narengbam Naoba Singh, aged about 38 years, S/o (L) Narengbam Mangi Singh, R/o Wangjing S.K. Leikai, P.O. Wangjing, P.S. Thoubal, District Thoubal, Manipur.
12. Pukhrambam Indrakumar Singh, aged about 34 years, S/o P. Nimai Singh, R/o Kakching Chumang Leikai, P.O. Kakching Bazar, P.S. Kakching, District Kakching, Manipur.

13. Kshetrimayum Romeshcandra Singh, aged about 38 years, S/o Kshetrimayum Mohandash Singh, R/o Kakching Makha Leikai, P.O. & P.S. Kakching, District Kakching, Manipur.
14. Shahida Banu, aged about 47 years, D/o Ashraf Ali, R/o Lilong Hangamthabi, P.O. & P.S. Lilong, District Thoubal, Manipur.
15. Md. Aziz Ahmed, aged 31 years, S/o Tahir Ali Khan, R/o Lilong Hangamthabi, P.O. & P.S. Linong, District Thoubal, Manipur.
16. Ismatum, aged about 30 years D/o Salaqwi Rahman, R/o Lilong Hangamthabi, P.O. & P.S. Lilong, District Thoubal, Manipur.
17. Md. Danish Shah, aged about 30 years, S/o Md. Abdul Hakim, R/o Usoipokpi, P.O. & P.S. Lilong, District Thoubal, Manipur.
18. Dilorjan Shahani, aged about 33 years, D/o Md. Alimuddin, R/o Lilong Sanyai Sumang, P.O. & P.S. Lilong, District Thoubal, Manipur.
19. P. Romendro Singh, aged about 48 years, S/o P. Kullachandra Singh, R/o Bishnupur Ward No. 7, P.O. & P.S. Bishnupur, District Bishnupur, Manipur.

20. Meikam Loken Singh, aged about 53 years, S/o Meikam Ibobi Singh, R/o Haobam Marak Keisham Leikai, P.O. Imphal, P.S. Singjamei, District Imphal West, Manipur.
21. Soraisam Sunil Singh, aged about 35 years, S/o Soraisam Bungobi Singh, R/o Kwakeithel Lamdong Leikai, P.O. Imphal, P.S. Singjamei, District Imphal West, Manipur.
22. Th. Dwijamani Singh, aged about 37 years, S/o Th. Suranjoy Singh, R/o Langjing Achouba Makha Leikai, P.O. & P.S. Lamphel, District Imphal West, Manipur.
23. Th. Nobochandra Singh, aged about 56 years, S/o (L) Th. Modanjao Singh, R/o Singjamei Chirom Leikai, P.O. Singjamei, P.S. Singjamei Kakwa, District Imphal West, Manipur.
24. Mutum Ibotombi Mangang, aged about 49 years, S/o M. Jugindro Singh, R/o Nambol Kongkham Awang, P.O. & P.S. Nambol, District Nambol, Manipur.

... Petitioners

– Versus –

1. The State of Manipur through the Commissioner (Hr. & Tech. Edn.), Government of Manipur, New

Building, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.

2. The Director of University & Higher Education, Govt. of Manipur, Nityaipat Chuthek, P.O. & P.S. Imphal, District Imphal West, Manipur-795001.

...Respondents

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioners :: Mr. Kh. Tarunkumar, Advocate

For the respondents :: Mr. Y. Ashang, GA

Date of Hearing and
reserving Judgment & Order :: 01.09.2022

Date of Judgment & Order :: **29.09.2022**

JUDGMENT AND ORDER
(CAV)

This writ petition has been filed seeking to quash the impugned notification dated 22.9.2021 in respect of the posts of Laboratory Attendant, Laboratory Assistant, Chowkidar, Sweeper, Peon-cum-Mali, Office Assistant, Computer Operator, as the same is not sustainable in the eye of law and to direct the respondents to regularize the services of the petitioners by absorbing them into the Government service.

2. Heard Mr. Kh. Tarunkumar, learned counsel for the petitioners and Mr. Y. Ashang, learned Government Advocate for the respondents.

3. Assailing the impugned notification, Mr. Kh. Tarunkumar, the learned counsel for the petitioners submitted that the petitioners have been continuously serving in the non-teaching posts as Laboratory Attendant, Sweeper, Peon-cum-Mali, Chowkidar, Laboratory Assistant, Office Attendant etc. in the Government Colleges as for more than 10 years against the duly sanctioned vacant posts without any interim protection from the Court order. He would submit that some of the petitioners have completed 10, 16, 17, 19, 20, 23 and 24 years of service respectively and they have not been regularized till date.

4. The learned counsel further submitted that the Principals of the respective Colleges have initiated steps for regularization of the services of the petitioners and details were also submitted to the Director, University and Higher Education, Government of Manipur. However, without consideration of those details submitted by the Principals of the Colleges, the Director, University and Higher Education issued the impugned

notification calling for applications from open market to fill up the vacancies against which the petitioners have been serving for the last many years by enjoying their meagre amount as their salaries.

5. The learned counsel urged that all the appointments were made with the knowledge of the Director, University and Higher Education and the said authority has not taken any steps to declare the appointments of the petitioners as illegal and the petitioners are discharging their duties without any disturbance from any angle till date.

6. The learned counsel next submitted that once the vacancies are filled by fresh candidates, certainly the petitioners will be thrown out from their services and if they are removed from their services, they will be as good as street beggars and that they have already crossed the upper age limit for Government service also. Thus, taking into consideration the long continuous service and sufferings faced by the petitioners, the learned counsel prayed for a direction on the respondents to regularize the services of the petitioners by setting aside the impugned notification. To fortify his submissions, the learned counsel relied upon the decision of the Apex Court in the case

of ***Amarkant Rai v. State of Bihar and others, (2015) 8 SCC 265.***

7. Per contra, Mr. Y. Ashang, the learned Government Advocate appearing for the respondents submitted that the engagement of some of the petitioners were purely on temporary basis by the Principals concerned and some were engaged on contract basis without the approval of the Competent Authority. He would submit that some of the petitioners were engaged by the Principals on purely temporary basis out of the College fund/Non-Government funds. As such, their engagements were made against no posts also.

8. The learned Government Advocate further submitted that the notified/advertised number of 182 posts is only half of the actual number of total vacant posts of the non-teaching staff available under the Department and that the need to reserve the posts of the petitioners out of 182 advertised posts of non-teaching staff at this stage is not necessary and uncalled for. In fact, the petitioners are not affected by the notification dated 22.9.2021 issued by the second respondent and thus, the writ petition is premature, as the petitioners are not aggrieved and the same. Thus, a prayer is made to dismiss

the writ petition. In support, the learned Government Advocate relied upon the decision of the Apex Court in the case of ***State of Karnataka and others v. M.L.Kesari and others, (2010) 9 SCC 247.***

9. This Court considered the rival submissions and also perused the materials available on record.

10. The case of the petitioners is that they have been continuously serving in various cadres, viz., Lab Assistant, Chowkidar, Watchman, Sweeper, Office Attendant, Computer Operator, Lab Attendant for more than 10, 16, 17, 19, 20, 23 and 24, respectively, without any protection of the order of this Court and they have also possessed the requisite qualification prescribed for the said posts. Instead of absorbing the services of the petitioners, the second respondent issued the impugned notification for recruitment of various Grade-IV posts from open market. Such an action of the second respondent is highly illegal and arbitrary.

11. On the other hand, it is the say of the respondents that since the petitioners were engaged on contract, temporary and casual basis, they do not have a legal right to seek regularization unless they have been appointed in terms of the

relevant rules or in adherence of Articles 14 and 16 of the Constitution of India. Further, the nature of their appointments in different capacities of their respective Colleges is purely out of their respective College funds without the approval of the Competent Authority.

12. The following facts are not disputed by the respondents:-

- Petitioners 1 to 9 have been continuously serving in their capacities for more than 10 years without any interim protection of this Court.
- Petitioners 10 and 11 have been continuously serving as Office Attendant and Chowkidar for more than 14 and 18 years respectively without any break by enjoying a meagre amount of salary without any protection from this Court.
- Petitioners 12 and 13 have been continuously serving as Chowkidar and Computer Operator for more than 12 and 13 years without any protection of this Court.

- Petitioners 14 to 18 have been continuously serving as Lab Assistant, Chowkidar/ Watchman, Sweeper, Chowkidar and Office Attendant for more than 12, 16, 21 and 23 years respectively without any protection of this Court.
- Petitioners 19 to 24 have been continuously serving as Chowkidar and Lab Attendant for more than 12, 16, 19, 21 and 26 years without any protection of this Court.

13. It is also admitted by the respondents that the Deputy Secretary (Hr. & Tech. Edn.), Government of Manipur, has already informed the second respondent to seek comments from the Principals of the concerned Colleges regarding absorption of non-teaching staff appointed by the Principals into Government service. Thereafter, the second respondent sought comments from all Government Colleges on 24.2.2021 to furnish a detailed report for taking further action. Pursuant to the communication of the second respondent dated 24.2.2021, the Principals of the Colleges have submitted detailed reports of

the petitioners to the second respondent for taking necessary action for absorption into Government service.

14. Though the respondents contended that the engagements/ appointments of the petitioners in different capacities in their respective Colleges are purely out of their College fund without the approval of the Competent Authority, nothing has been produced by the respondents to prove the same. Further, the plea of the respondents that the petitioners were not engaged against any sanctioned posts is also not supported by any documentary proof.

15. The writ petition has been filed mainly on the ground that all the appointments were made with the knowledge of the second respondent and despite repeated requests made by the petitioners, the respondent authorities have not initiated steps for regularization till date. Further, once the vacancies are filled by the fresh candidates, certainly the petitioners will be thrown out from their services.

16. In **Amarkant Rai**, supra, the Apex Court held:

“9. The Human Resources Development, Department of Bihar Government, vide its Letter dated 11-7-1989 intimated to the Registrar of all

the Colleges that as per the settlement dated 26-4-1989 held between Bihar State University and College Employees' Federation and the Government it was agreed that the services of the employees working in the educational institutions on the basis of prescribed staffing pattern are to be regularised. As per sanctioned staffing pattern, in Ramashray Baleshwar College, there were two vacant posts of Class IV employees and the appellant was appointed against the same. Further, Resolution No. 989 dated 10-5-1991 issued by the Human Resources Development Department provides that employees working up to 10-5-1986 shall be adjusted against the vacancies arising in future. Although, the appellant was appointed in 1983 temporarily on the post that was not sanctioned by the State Government, as per the above communication of the Human Resources Development Department, it is evident that the State Government issued orders to regularise the services of the employees who worked up to 10-5-1986. In our considered view, the High Court ought to have examined the case of the appellant in the light of the various communications issued by the State Government and in the light of the circular, the appellant is eligible for consideration for regularisation.

10. As noticed earlier, the case of the appellant was referred to a three-member Committee and the three-member Committee rejected the claim of the appellant declaring that his appointment is not in consonance with the ratio of the decision laid down by this Court in *Umadevi (3) case* [(2006) 4 SCC 1]. In *Umadevi (3) case* [(2006) 4 SCC 1], even though this Court has held that the appointments made against temporary or ad hoc are not to be regularised, in para 53 of the judgment, it provided that irregular appointment of duly qualified persons in duly sanctioned posts who have worked for 10 years or more can be considered on merits and steps to be taken as a one-time measure to regularise them. In para 53, the Court observed as under: (SCC p. 42)

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore v. S.V. Narayanappa*, AIR 1967 SC 1071, *R.N. Nanjundappa v. T. Thimmiah*, (1972) 1 SCC 409 and *B.N. Nagarajan v. State of Karnataka*, (1979) 4 SCC 507 and referred to in para 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 the courts or of tribunals. The question of regularisation 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 aboveresferred 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 regularise 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 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

(emphasis in original)

The objective behind the exception carved out in this case was to permit regularisation of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who had served the State Government and their instrumentalities for more than ten years.

11. Elaborating upon the principles laid down in *Umadevi (3) case* [(2006) 4 SCC 1] and explaining the difference between irregular and illegal appointments in *State of Karnataka v. M.L. Kesari* [(2010) 9 SCC 247], this Court held as under: (*M.L. Kesari case* [(2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826], SCC p. 250, para 7)

“7. It is evident from the above that there is an exception to the general principles against ‘regularisation’ enunciated in *Umadevi (3)* [(2006) 4 SCC 1], if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service

voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

.....

13. In our view, the exception carved out in para 53 of *Umadevi (3)* [(2006) 4 SCC 1] is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bore any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularisation viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of clerk was regularized w.e.f. 1987. The

appellant although initially working against unsanctioned post, the appellant was working continuously since 3-1-2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits to be paid from 1-1-2010.”

17. In the decision in ***M.L.Kesari***, supra, relied upon by the learned Government Advocate, the Apex Court held:

“6. This Court in *Umadevi (3)* [(2006) 4 SCC 1] further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below: (SCC p. 42, para 53)

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore v. S.V. Narayanappa*, AIR 1967 SC 1071, *R.N. Nanjundappa v. T. Thimmiah*, (1972) 1 SCC 409 and *B.N. Nagarajan v. State of*

Karnataka, (1979) 4 SCC 507 and referred to in para 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 the courts or of tribunals. The question of regularisation 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 abovereferred 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 regularise 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 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.”

(emphasis in original)

7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in *Umadevi*

(3) [(2006) 4 SCC 1] , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. *Umadevi* (3) [(2006) 4 SCC 1] casts a duty upon the Government or instrumentality concerned, to take steps to regularise the services of those irregularly appointed

employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. *Umadevi (3)* [(2006) 4 SCC 1] directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10-4-2006).

9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi (3)* [(2006) 4 SCC 1] , 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, regularise their services.

10. At the end of six months from the date of decision in *Umadevi (3)* [(2006) 4 SCC 1] , 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 regularisation 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 (3)* [(2006) 4 SCC 1] , will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of *Umadevi (3)* [(2006) 4 SCC 1] has expired. The one-time exercise should consider all daily-wage/ad hoc/casual 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 (3)* [(2006) 4 SCC 1] , but did not consider the cases of some employees who were entitled to the benefit of para 53 of *Umadevi (3)* [(2006) 4 SCC 1] , 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 (3)* [(2006) 4 SCC 1] , are so considered.”

18. It is not the case of the respondents that the appointment of the petitioners was irregular/illegal appointments and they are not qualified for the posts which they held. As could be seen from the appointment orders, the petitioners were appointed/engaged by the Principals of the Colleges on need-based temporary basis and without any break in service, they continued till date. To show that till date, they are serving, the petitioners have also produced the experience certificate issued the respective College Principals, wherein the Principals certified that the conduct and character of the petitioners are good. No adverse remarks against the petitioners have been produced by the respondents.

19. In ***Secretary, State of Karnataka and others v. Uma Devi and others, (2006) 4 SCC 1***, a Constitution Bench of the Apex Court held that irregular appointments of duly qualified persons against duly sanctioned vacant posts, not being illegal appointments, may be regularized, as a one-time measure, by the Union of India, the State Governments and their instrumentalities, provided such appointees worked for 10 years or more without the protection of orders of Courts or Tribunals.

The Bench also stated that there should be no further bypassing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme. It appears to have been the intention of the Bench that the State should discontinue the practice of engaging even such irregular appointees by resorting to regular recruitment, but that stage has not come to pass.

20. In ***Union of India and others v. All India Trade Union Congress and others*, (2019) 5 SCC 773**, the Apex Court held that it is the sole prerogative of the Government to frame a scheme for regularization and it is not only in exceptional cases that the Court would consider it proper to issue appropriate mandatory directions.

21. In ***Amarendra Kumar Mohapatra and others v. State of Orissa*, (2014) 4 SCC 583**, the Apex Court pointed out that ***Uma Devi*** (supra) permitted a one-time exception for regularizing services of an employee who had been irregularly appointed and not illegally. Three essentials were spelt out for such regularization, under the exception carved out in ***Uma Devi*** (supra): (1) the employees should have worked for 10 (ten) years or more; (2) they should have worked in duly

sanctioned posts without the benefit or protection of orders of any Court or Tribunal; and (3) they should possess the minimum qualifications stipulated for appointment. On facts, the Apex Court held that the enactment granting regularization of service to irregularly appointed Stipendiary Engineers did not call for interference.

22. Here, in the case on hand, the petitioners have worked for over 10 to 26 years and are working in the duly sanctioned posts without protection of the Court orders and also possessed requisite qualifications stipulated for appointment.

23. At this juncture, the learned Government Advocate submitted that the notified number of 182 posts is only the half of the actual number of total vacant posts available under the Department and, as such, the need to reserve the posts of the petitioners out of 182 advertised posts is not necessary. It means that the notification was issued only in respect of 182 posts and vacancies available are more and therefore the question of disturbing them does not arise. If that being the argument of learned Government Advocate, the question would be how long the petitioners would be serving on temporary basis without regularisation. As stated supra, the petitioners

are serving more than 10 years in their respective Colleges. Keeping the petitioners who are working without the protection of Court orders as temporary/ casual/ daily wage employees/ contract employees for several years is against the settled law.

24. It is to be pointed out that the respondents admitted the fact that the Deputy Secretary (Hr. & Tech. Edn.), Government of Manipur already informed the Director, University and Higher Education to seek comments from the concerned College Principals qua the absorption of non-teaching staff appointed by the Principals into Government service. Thereafter, the Director of University and Higher Education also sought comments from all Government College Principals to furnish a detailed report for taking further action. Accordingly, the College Principals have also submitted a detailed reports of the petitioners to the Director, University and Higher Education for taking up necessary action for absorption of the petitioners into Government service.

25. At this juncture, it is apposite to highlight that in similar situation, this Court in W.P.(C) No.835 of 2018 dated 14.1.2021 [*Yaikhom Joykumar Singh v. The State of Manipur through the Principal Secretary/Commissioner/Secretary*

(Revenue), Government of Manipur] directed the respondent State to regularize the services of the petitioner who was serving as Peon for more than 20 years. As against the said judgment, the State has preferred W.A.No.34 of 2021. By the judgment dated 18.4.2022, a Division Bench of this Court while dismissing the appeal observed that the positive direction of the learned Judge was not only desirable, but very much required. The decision of the Division Bench of this Court is squarely applies to the case on hand. Nothing has been produced by the respondent State to show that as against the said judgment of the Division Bench, an appeal has been preferred before the Apex Court. In the absence of any appeal, the judgment of the Division Bench has attained finality and thus the decision in the writ appeal is a binding precedent.

26. Placing the aforesaid decision in the case of *Yaikhom Joykumar Singh*, supra, the learned counsel for the petitioners submitted that since the petitioners are serving continuously for more than 10-20 years without any protection from this Hon'ble Court, their services are entitled to be regularized as has been done in W.P.(C) No.895 of 2018. It is also the submission of the learned counsel for the petitioners

that there are enough vacancies against which the services of the petitioners can be regularized. The argument of the learned counsel for the petitioners merit consideration.

27. In the factual scenario aforesaid and also taking into consideration the long continued service rendered by the petitioners i.e. more than 10-20 years or more, the respondent authorities ought to have considered the claim of the petitioners for regularization. The act of the respondent authorities in not regularizing the petitioners to the posts they held though there is a regular vacancies available is unlawful. The fact also remains that all along the petitioners worked diligently, sincerely, regularly and with devotion without any blemish. Therefore, the same should be taken into consideration for regularization.

28. It is pertinent to note that nobody questioned the appointment/engagement of the petitioners till date. Therefore, the reasoning given by the respondent authorities for the non-consideration of the regularization is unacceptable and the same has been stated by the respondent authorities for the sake only. Therefore, the interest of justice warrants the petitioners to be regularized considering their pathetic situation.

29. Considering the submissions raised by learned counsel appearing for the parties and also upon perusal of the materials produced, the apprehension expressed by the petitioners that once the vacancies are filled by fresh candidates pursuant to the impugned notification, they will be thrown out from their services is quite natural. Therefore, taking into consideration of the petitioners' long continuous service, the respondent authorities ought to have considered regularization of their services, as their appointments were not illegal/irregular and they are qualified persons in the duly sanctioned posts and they have continued to work for more than 10-20 years or more but without the intervention of orders of the Courts or of Tribunals.

30. Once the vacancies are filled up by fresh candidates, certainly, the petitioners will be thrown out from their services and if they are removed from their services they will be stood as street beggars. It is made clear that the petitioners have put up their services for more than 10-20 years and they spent their life in this temporary services and hence, they crossed the upper age limit for Government also. Taking into consideration the long continuous service and sufferings

faced by the petitioners, it is just and necessary to set aside the recruitment impugned notification with the direction to regularize the petitioners' service, then the Respondents may proceed further for the recruitment to the remaining post.

31. In the result,

- a) *The writ petition is allowed.*
- b) *The impugned notification dated 22.09.2021 is set aside.*
- c) *The respondents are directed to regularize the services of the petitioners taking note of their long continuous service.*
- d) *The said exercise shall be completed within a period of 8 (eight) weeks from the date of receipt of a copy of this order.*
- e) *No order as to cost.*

JUDGE

FR/NFR

Sushil