



**J U D G E M E N T**

The instant application has been filed praying for the following reliefs :

- I. For that the applicant having been a Government servant with designation as work-assistant in the work-charged establishment at S.D.O. Irrigation Office at Amta and having worked for more than ten years after being confirmed in the post on 18-06-1993, he is entitled to all service benefits including West Bengal Health Scheme 2008 and provision of employment of any heir of the employee on Compassionate Ground in the event he dies in harness as an employee of regular establishment.**
- II. For that the applicant is appointed to the whole time work charged post and has been confirmed in the said post and as such he is entitled to usual benefits of permanency including West Bengal Health Scheme 2008 opportunity and employment of any heir of the employees in the event of he dies in harness in view of Memorandum No. 6059 F Finance Department (Audit Branch), Government of West Bengal on 25-06-1979 like employees in the Regular establishment.**
- III. For that the applicant does not come under the mischief of Umadevi Case decided by the Supreme Court as the**

**applicant is a confirmed work-Assistant for more than 10 years and his appointment was made in accordance with the existing Service Rules and as such Umadevi Case cannot stand in the way of absorbing him in regular establishment.**

- IV. For that it is an arbitrary act on the part of the authorities not to absorb him in regular establishment though he was servicing more than 10 years and confirmed as work assistant in work-charged establishment but others workers having the same background have been absorbed in regular establishment.**
- V. For that it is an arbitrary act on the part of the authorities to deprive the employee like the petitioner by Order dated 27-01-2012 on the Ground that in view of Umadevi case decision the petitioner cannot be absorbed in regular establishment though in the facts and circumstances of the case in petitioner's case cannot come under the mischief of Umadevi.**
- VI. For that it is most discriminatory and wholly arbitrary to deny the absorption of the petitioner in regular establishment though the authorities have regularized and absorbed casual workers in regular establishment even after coming into force of Umadevi Case.**

**7(a) An order directing the Respondents that an order be issued in favour of the applicant that he is entitled to be absorbed in regular establishment.**

**7(b) Issuance of any other order or orders as the Hon'ble Tribunal deems fit and proper.**

2. As per the applicant, he was engaged to the post of work assistant in the work-charged establishment in the office of Executive Engineer, Howrah, Irrigation and Waterways Directorate vide order dated 15-06-1990 issued by the Superintendent Engineer, Western Circle (Annexure-A). Subsequently, he joined his duty on 18-06-1990 and was transferred to the office of Executive Engineer, Howrah, Irrigation Division at Mirja Galib Street, Kolkata (Annexure-B). The applicant was further confirmed in the said office as Work Assistant w.e.f. 18-06-1993 under the work-charged establishment. Thereafter he continued to the said post and on 2005, he submitted a representation to the Superintendent Engineer, Western Circle I (Irrigation) with a prayer for change of establishment i.e. from work-charged to regular establishment. The said representation was forwarded by the Executive Engineer, Howrah Irrigation Division to the Superintending Engineer, Western Circle I (Irrigation) (Annexure-C). However his representation was kept pending and thereafter by notification dated 27-01-2012 issued by the Irrigation and Waterways Department, Govt. of West Bengal issued by the Assistant Secretary with regard to the regularization of work-charged employees wherein by the aforesaid general notification, the claim of the applicant was rejected on the ground that the Finance Department express their inability to regularize the view of the Hon'ble Apex Court judgment by Umadevi (Annexure-D).

3. As he was not informed personally about the said order and came to know on 10-10-2014 only immediately he made a demand justice and thereafter he has filed the instant application. As per the applicant, he has been serving continuously more than 10 years after confirmation and is still continuing. Therefore he should be absorbed in the same capacity in the regular establishment as has been done in case of Tapas Kumar Roy (Annexure-F). It has been further submitted by the applicant that he is governing by the Memorandum dated 22-04-1974.

4. Though no reply has been filed by the State respondents. However the Counsel for the respondents has vehemently submitted that as the work-charged establishment is temporary in nature and not a part of regular establishment since any payment made for the work-charged establishment comes from contingency fund. Therefore he has no right to claim for absorption in regular establishment unless and until he would be selected through proper channel.

5. We have both the parties and perused the records. It is an admitted fact that the respondents had rejected the claim of the applicant along with others dated 27-01-2012 with an intimation to the Superintendent Engineer, Western Circle I with a direction to take necessary action for giving intimation to all concerned. Therefore the applicant cannot claim that he is not aware of the said notification in 2012. Further the applicant is working admittedly under work-charged establishment and after decision of Umadevi, the applicant has no right to claim in regular establishment even where he never worked at all as he is working

under the work-charged establishment on temporary basis. Further, even the applicant has not challenged the said notification dated 27-01-2012. Apart from that, after submitting representation in 2005, he did not take any steps to get information with regard to his representation or to challenge the same for the non-action on the part of the government before this Court as alleged.

6. Thus in our considered view, since the applicant has not challenged the said notification by which his claim has been rejected, therefore he cannot claim for absorption thereof unless there is a specific scheme for that purpose or being appointed through proper selection process.

7. Accordingly, the OA is dismissed with the above observations being devoid of merit with no order as to cost.

**P. RAMESH KUMAR**  
**MEMBER (A)**

**URMITA DATTA(SEN)**  
**MEMBER(J)**

