

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.146 of 2023

Sri Dipak Deb, S/o Sri Jagadish Chandra Deb, Vill. Dhaja Nagar, P.O. & P.S.-
R.K. Pur, Tepania, Udaipur, Dist. Gomati Tripura, Pin-799120.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Secretary, Rural Development Department, Government of Tripura, Secretariat Building, P.O. Secretariat, P.S. NCC, Agartala, Dist. West Tripura, Pin-799010.
2. The D.M. & Collector, Udaipur, P.O & P.S.- Radhakishorepur, Gomati District, Tripura State, Pin-799120.
3. The Chief Executive Officer (D.M. & Collector), District Rural Development Agency (DRDA), Udaipur, P.O & P.S.- Radhakishorepur, Gomati District, Tripura State, Pin-799120.
4. Project Director, (ADM & Collector), District Rural Development Agency (DRDA), Udaipur, P.O & P.S. Radhakishorepur, Udaipur, Gomati District, Tripura State, Pin-799120.
5. Zilla Sabhadipati, Gomati Zilla Parishad DRDA, Gomati District, Udaipur, Tripura.

..... Respondent(s).

For Petitioner(s)	: Mr. A. R. Barman, Advocate.
For Respondent(s)	: Mr. K. De, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

18/08/2023

Heard learned counsel for the parties.

[2] As per the case of the petitioner he has been engaged as Class-IV cum Driver from 27.12.1999 in District Rural Development Agency (DRDA), South Tripura now DRDA, Gomati Tripura with a specific assignment of

driver. He claims to have been regularized in Group-D from 24.12.2012 but without any specific post or designation. He has continued to perform his duty as driver. Despite several representations made for promotion to the post of driver and recommendation of the Departmental Promotion Committee (DPC) under the DRDA, the petitioner has not been granted promotion till date. Petitioner had earlier approached this Court in WP(C) No.197 of 2021 seeking redressal of his grievances. The learned writ Court vide order dated 11.05.2022 i.e. Annexure-1 disposed of the writ petition in the following manner:

"Having appreciated the records, this court is of the view that the newly constituted Departmental Promotion Committee (DPC) has recommended only the name of the petitioner but mere recommendation does not create any right in favour of any selected person to get the appointment. But such recommendation shall be given due weightage and, thereafter, the order of appointment shall be issued. The respondents have not disputed any factual matrix as led by the petitioner. As such, this court is persuaded to direct the respondent No.2 to consider the promotion of the petitioner within a period of 6(six) weeks from today.

A copy of this order shall be furnished by the petitioner to the respondents forthwith.

In terms of the above, this writ petition stand disposed of.

There shall be no order as to costs."

[3] It is the case of the petitioner that vide impugned order dated 13.07.2022, the claim of the petitioner for promotion to the higher post of driver, even after recommendation of the Departmental Promotion Committee (DPC), has been rejected on the plea that the post of driver has been abolished in DRDA, Gomati. Therefore, the petitioner has approached this Court.

[4] Mr. A. R. Barman, learned counsel for the petitioner submits that petitioner has been working all along in the DRDA, Gomati District and being made to work as a driver, though as per the respondents there is no post of driver. In fact, it is a compulsory exaction of work from an employee, which is against the basic tenets of service jurisprudence by the State, which is supposed to be a model employer. In such circumstances, the respondent-department cannot refuse to accede to the recommendation made by the DPC of the DRDA for his promotion to the post of driver. Therefore, the impugned communication may be set aside and a direction be issued upon the respondents to accord approval to the DPC recommendation and appoints/promote him as a driver.

[5] Counter affidavit has been filed by the respondents No.1 to 4. The respondents have taken the following stands at paragraph 7, 8, 9 and 10 which is extracted hereunder:

"7. That, with regard to statements made in para 2 of the writ petition, I say that, there is no such post in the form of DRW Driver has been created in the DRDA. But there is a post Gr-D DRW in DRDA Gomati, where the Petitioner was engaged as DRW Gr-D employee.

8. That, with regard to para 4, I say that, no post was created in DRDA, Gomati for engagement DRW cum Driver as stated by the petitioner. Department is not aware about the appointment of Sri Dipak Deb as DRW cum Driver. It is also beyond the Jurisdiction of Project Director, DRDA, Gomati to appoint Sri Deb as DRW cum Driver without prior approval of the Rural Development Department. The Petitioner was enrolled as DRW Driver of DRDA Gomati of Sl. No.700 of the memo issued from the Finance Department vide No.F.10(12)-FIN(G)/2007(Part-I) dated 15.12.2012 with regulation of service of DRWs/Casual etc workers of the DRDA, Gomati in the year 2012.

9. That, the department has received the proposal from the DRDA, Gomati to regularized service of Sri Dipak Deb, DRW Driver as Group-D without having anything mentioned that he was appointed as DRW cum Driver. Accordingly, his proposal was sent to the Finance Department as Group-D with the approval of the Finance Department Memorandum vide No.F.10(12)-FIN(G)/2007(Part-I) dated 15.12.2012 of the Joint Secretary, Finance Department with prior approval of the RD Department File No. F.11(25)RD-SGSY/2012(P)/119-37 on dated 09.12.2012

10. That, in response to para 5 of the writ petition I say that, after receiving the representation of the petitioner, a DPC was held on 30.08.2020 where the name of the petitioner as Group-D was considered for promotion to the post of Driver subject to approval of the Administrative Department. And the same was communicated to the Chairman (Zilla Sahbadipari, Zilla parishad, Gomati District) DRDA, Gomati vide letter No. 1(160) DRDA (G)/ESTT/2012-13/48-49 dated 21.08.2020. The Chairman (Zilla Sahbadipari, Zilla Parishad, Gomati District), has vetted vide his letter No. 1(2) DRDA (G)/ESTT/2018-19/66-67, dated 26.08.2020 with direction to take necessary action as per rule. Accordingly after receiving the aforesaid letter from the Chairman the matter was sent to the Director (Projects), SIMC of SGSY, RD Department vide this office letter No.1(160)DRDA(G)/ESTT/2012-13/70-71 dated 08.09.2020.

Copy of the vide letter No.1(160)DRDA(G)/ESTT/2012-13/48-49 dated 21.08.2020 is annexed hereto and marked as **Annexure R/1.**

Copy of the vide letter No.1(2) DRDA (G)/ESTT/2018-19/66-67, dated 26.08.2020 is annexed hereto and marked as **Annexure R/2.**

Copy of the letter No.1(160)DRDA (G)/ESTT/2012-13/70-71 dated 08.09.2020 is annexed hereto and marked as **Annexure R/3.**

10. That, in response to para 6, 7 and 8 of the writ petition I say that, DRDA, Gomati had constituted DPC and

recommended for promotion of the petitioner, Group-D to the post of Driver, Group-C without prior permission of RD Department or Finance Department. It is also to be mentioned here that the temporary post of Driver in Gomati DRDA was remained vacant since February, 2005 and abolished as per the memo issued of Finance Department vide No.9(2)-FIN(C)/2017/2265-2409, dated 07.12.2019. The State Government vide Memo No.F.2(24)/GA(P&T)/05/Voll-II) dated 01.04.2017 decided to hold up promotion till disposal of the petitions pending before the Hon'ble Supreme Court or until further order whichever is earlier.

Copy of the Memo vide No.9(2)-FIN(C)/2017/2265-2409, dated 07.12.2019 is annexed hereto and marked as **Annexure R/4**.

Copy of the Memo vide No.F.2(24)/GA(P&T)/05/Voll-II) dated 01.04.2017 is annexed hereto and marked as **Annexure R/5**.

[6] It is also averred in the later paragraphs that in the judgment in WP(C) 197 of 2021 this Court clearly observed that mere recommendation of DPC does not constitute any right of promotion. DPC, DRDA Gomati was constituted on 20.08.2020 to recommend the promotion of Sri Deb but they have not followed the due process as the State Government has held up promotions till disposal of the petitions pending in the Supreme Court. Meanwhile, the promotional post of driver has got abolished in DRDA, Gomati. Therefore, the benefit of promotion to the post of driver may not be extended to Sri Dipak Deb, Group-D, DRDA, at Gomati.

[7] It has been further averred that DRDA Administration Scheme was discontinued with effect from 01.04.2022 by the Ministry of Rural Development, Govt. of India vide letter No.R20015/2/2020-DRDA. It is also stated that the petitioner was appointed under DRDA as Daily Rated Worker

(DRW). He was regularized on 24.12.2012 as Group-D employee. However, after abolition of DRDA, the Ministry has not released any fund and disbursed the monthly salary of all the staffs of DRDA who were deputed in Tripura Livelihood Mission (TRLM) as well as in Rural Development Department. Under the above circumstances, the Department is not in a position to bear the extra financial burden by considering promotion of the petitioner.

[8] Mr. K. De, learned additional Government Advocate relying upon the contents of the counter affidavit has strongly opposed the prayer of the petitioner for grant of promotion to the post of driver in DRDA, Gomati on the basis of recommendation of the DPC of DRDA, Gomati District. It is submitted that learned writ Court has on the previous occasion also observed that mere recommendation by the DPC does not create a legal right for seeking promotion on the post of driver in DRDA, Gomati District.

[9] I have considered the submissions of the learned counsel for the parties and taken note of the pleadings placed from the records. The facts and documents noticed hereinabove, do clearly make out that the DRDA Administration Scheme has been discontinued with effect from 01.04.2022 by the Ministry of Rural Development, Govt. of India. The Ministry has not released any fund or disbursed the monthly salary of all the staffs of DRDA who were deputed in Tripura Rural Livelihood Mission as well as in Rural Development Department. The Department has also taken a stand that the DRDA could not have recommended the promotion of petitioner to the Rural Development Department without its approval in the absence of any sanction post of driver in DRDA or any financial burden being undertaken by the

department for payment of salary and other allowances to such an employee of DRDA. The employees of DRDA are not in the rolls of the State Government.

[10] It, therefore, appears that only on the basis of recommendation of a DPC constituted by DRDA, the claim of petitioner for promotion to the post of driver has been recommended to the Rural Development Department. Since there is no post in existence in the DRDA for driver and the DRDA Administration Scheme has been discontinued with effect from 01.04.2022 by the Ministry of Rural Development, Government of India, the respondent State-Authorities cannot be saddled with the financial liability and administrative responsibility to bear the burden which is likely to be created on account of promotion of an employee of the DRDA to the post of driver which is non-existent. The stand of the respondents-State, therefore, appears to be unambiguous having sound legal basis. In such circumstances, as has also been observed by the writ Court in the previous writ petition i.e. WP(C) No.197 of 2021, writ petitioner cannot claim a legally enforceable right for being promoted to the post of driver in DRDA. As such, this Court does not find any merit in the writ petition.

[11] However, at the end Mr. Barman, learned counsel for the petitioner submits that in the absence of a regular sanctioned vacant post of driver, the DRDA may be directed not to compel the petitioner to work on a nonexistent post of driver in the DRDA. Since the observations and the reasons recorded hereinabove are confined to the main relief prayed for by the writ petitioner regarding promotion to the post of driver in DRDA, Gomati District, this Court does not intend to make any observations on the instant plea of the

petitioner. It is for the petitioner to raise his grievances in this regard before the competent authority of DRDA, Gomati District who may take a call thereupon, as per law.

- [12] As such, the writ petition, being devoid of merit, is dismissed.
Pending application(s), if any, also stands disposed of.

Aparesh Kumar Singh
(APARESH KUMAR SINGH), CJ