HIGH COURT OF TRIPURA
AGARTALA

WP(C) 213 OF 2022

Mausumi Khan Vrs. The State of Tripura & 5 Ors.

For the petitioner(s) : Mr. P. Roy Barman, Sr. counsel.
Mr. Koomar Chakraborty, Advocate.

For the respondent (s) : Mr. D. Sarma, Addl. G.A.

HON'BLE MR. JUSTICE ARINDAM LODH

12.12.2023

Order

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Addl. G.A. appearing for the State-respondents and Mr. Soumen Roy, learned counsel appearing for the respondent nos. 4 and 5.

This is a petition filed by the petitioner for regularization of her service as Data Entry Operator. It is pertinent herein that the post of Data Entry Operator by various notifications of the Government has subsequently been re-designated/re-nomenclatured as Senior Computer Assistant on fixed pay basis. The petitioner was initially appointed on contract basis and thereafter the designation was changed to fixed pay basis.

Mr. Koomar Chakraborty, learned counsel has relied upon a Notification dated 28th April, 2010 in support of the claim of the petitioner for regularization of her service.

Learned counsel for the petitioner had relied upon Clause 2 (a)(i)(ii) of the Notification dated 28th April, 2010. For convenience, said provision may be reproduced here-in-below:

> *"(a) The existing Data Entry Operators or Computer Operators or Computer Assistants who are working in different Depts. on fixed pay or consolidated pay or as DRW etc. shall be classified into following categories, namely:*
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> *i) Those who are undergraduate but at least Madhyamik pass, having certificate of computer education from recognized Institution and working on fixed pay or consolidated remuneration or as DRW at the time of publication of these Rules shall be re-designated as fixed pay LDC or LDA, as the case may be, in the concerned Depts. They shall be entitled to get fixed pay by computation of 75% of the entry level pay in the Pay Band 2 and Grade Pay of Rs.1800/- admissible for LDC or LDA, as the case may be, as a part of revision. While taking steps for re-designation under aforesaid manner, they would be*

accommodated in the seniority list of LDC or LDA (fixed pay) next below the seniority position of the other LDCs or LDAs already working in the Department, so that their future promotion prospect is not hampered. After re-designation, they shall also be considered for regularization in compliance of existing Govt. policy applicable for employees recruited on fixed pay basis against fixed pay posts created by keeping abeyance the regular scale posts subject of fulfillment of other required criteria.

ii) Those who are having degree in Computer Application or Graduate with one year Diploma or at least 'O' Level certificate in Computer Application from a recognized Institution and working on fixed pay or consolidated remuneration or as DRW at the time of publication of TSCS(RP) Rules, 2009, shall be re-designated as fixed pay Senior Computer Assistant in the concerned Depts. They shall be entitled to get fixed pay by computation of 75% of the entry level pay in the Pay Band 2 and Grade Pay of Rs.2100/- admissible for UDC or UDA, as the case may be, as a part of revision. They shall also be considered for regularization in compliance of existing Govt. policy applicable for employees recruited on fixed pay basis against fixed pay posts created by keeping abeyance the regular scale posts subject of fulfillment of other required criteria. While re-designating the incumbents as Senior Computer Assistant on fixed pay basis and at the time of their subsequent regularization as per Govt. policy, posts personal for the incumbents shall be created for accommodating them."

The language used by the makers of the Rules under this Notification dated 28th April, 2010 had categorically held that prior to the regularization of Data Entry Operator/Senior Computer Assistant on fixed pay basis posts are to be created. This Court has put a clear question to Mr. Chakraborty, learned counsel appearing for the petitioner whether any post exists or not. Mr. Chakraborty, learned counsel has replied that it is the obligation of the respondents to create posts.

Furthermore, Mr. Sarma, learned Addl. G.A. has submitted that the petitioner is the employee of an Agency, namely, DRDA which is not guided by the Govt. of Tripura.

On this aspect also, the petitioner is not entitled to get the benefit of Government Schemes since she is the employee of DRDA, a project based organization.

Mr. Roy, learned counsel appearing for the respondents-DRDA has submitted that the project has been stopped and for the interest of employees they have been brought under a different project, namely, TRLM, (Tripura Rural Livelihood Mission).

In my opinion, Mr. Chakraborty, learned counsel has rightly said that it is the incumbent upon the Government to create posts. It is settled principle of law that the Court cannot pass any direction to create posts. It is absolutely within the domain of the employer. Since there is no post exists at present, this Court cannot pass any direction to regularize the service of the petitioner because the Notification dated 28th April, 2010 has clearly envisaged that prior to regularization, posts personal for the incumbents had to be created. Since at present there is no sanctioned post of Computer Assistant on fixed pay basis, this Court is not inclined to pass any direction for regularization of the service of the petitioner.

With the aforesaid observation, the instant writ petition stands dismissed.

JUDGE

HIGH COURT OF TRIPURA
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