

**HIGH COURT OF TRIPURA
AGARTALA**

WA 102 of 2021

1. The State of Tripura,

To be represented by the Principal Secretary,
Department of Forest, Govt. of Tripura,
New Secretariat Complex, Kunjaban,
Agartala, West Tripura, PIN: 799010

2. The Principal Chief Conservator of Forest, Tripura,

Govt. of Tripura (PCCF), Aranya Bhavan, P.N. Complex, Gorkhabasti,
Agartala, West Tripura, PIN: 799006

3. The DFO Khowai,

South Tripura, Dharmanagar, North Tripura, Gomati District,
Govt. of Tripura, Notices to be served through the office of the PCCF,
Aranya Bhavan, P.N. Complex, Gorkhabasti, Agartala, West Tripura,
PIN: 799006

4. The SDFO Teliamura,

Mandai, Sabroom, Karbook, Kanchanpur, Dharmanagar, Govt. of Tripura,
(Notices to be served through the office of the PCCF, Aranya Bhavan, PN
Complex, Gorkhabasti, Agartala, West Tripura, PIN: 799006)

---Appellant(s)

Versus

1. **Sri Sujit Roy**, S/o – Sri Sushil Roy, Vill-Netaji Nagar, PO-Teliamura, Sub-Division- Teliamura, District- Khowai Tripura, PIN: 799205
2. **Bijoy Krishna Dey**, S/0: Sri Nitai Chandra Dey, Vill: Rajnagar, No-4, PO & PS: Teliamura, District- Khowai Tripura, PIN: 799205
3. **Sri Angshuman Datta**, S/o- Lt. Swadesh Rn. Datta, Vill: Joynagar, PO & PS: Teliamura,, District: Khowai Tripura, PIN: 799205
4. **Sri Rupak Deb**, S/o: Lt. Nripendra Deb, Vill: Joynagar, PO: & PS: Teliamura, District: Khowai Tripura, PIN: 799205
5. **Sri Biplab Roy**, S/0; Lt. Naresh Ch. Roy, Vill: Maiganga, PO: Maiganga, Sub-Division: & PS: Teliamura, District: Khowai Tripura, PIN: 799205
6. **Sri Mangal Hari Jamatia**, S/o: Rati Mohan Jamatia, Vill: Sinabil, PO: Ghilatali, PS: Kalyanpur, Sub-Division: Teliamura, District: Khowai Tripura, PIN: 799205
7. **Sri Prodyut Chowdhury**, S/o: Subrata Chowdhury, Village & PO: Harina, PS: Manu Bazar, Sub-Division: Sabroom, District: South Tripura, PIN: 799145
8. **Sri Shyam Saha**, S/o- Dipak Saha, Vill: Silachari, PO & PS: Silachari, Sub Division: Karbook, District: Gomati Tripura
9. **Sri Bappa Paul**, S/o: Bijan Kanti Paul, Village- Uttar Krishnapur, PO: Krishnapur, PS: Dharmanagar, PIN: 799270

10. **Sri Koushik Ch. Paul**, S/o- Kriparnoy Paul, Village: Uttar Krishnapur,
PO: Krishnapur, PS: Dharmanagar, PIN: 799253

---Respondent(s)

For Appellant(s)	: Mr. D. Sharma, Addl. GA.
For Respondent(s)	: Mr. P. Roy Barman, Sr. Adv. Mr. S. Bhattacharjee, Adv.
Date of hearing & date of delivery of judgment and order	: 19.07.2023
Whether fit for reporting	: No

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH

Judgment Order (Oral)

This is an appeal under Rule 2 of Chapter VA of Gauhati High Court Rules Read with Article 226 of the Constitution of India, against the impugned judgment and order dated 07.01.2021 passed by the Hon'ble Single Bench in WP(C) 623 of 2020.

[2] The reliefs sought for in WP(C) No.623 of 2020 may be reproduced here-in-below:

- (i) *Issue Rule upon the respondents to show cause as to why Writ in the nature of mandamus and/or Order or direction of lie nature shall not be issued whereby directing the Respondents to absorb the petitioners as Permanent Labourers in terms of Rule 4 & 5 of the Tripura Government, Sepahijala Biological Complex/ any other complex, Institution Permanent Labourers (Recruitment and Condition of Service) Rules, 1990.*
- (ii) *Pass an interim order, directing the respondents to allow the petitioners to resume their duty as Casual Workers and to continue as such till their absorption as Permanent Labourer.*
- (iii) *Make the rule absolute.*
- (iv) *Pass any other Oral Orders as may be considered fit and proper by the Hon'ble High Court.*
- (v) *Award cost incidental to the writ petition.*

[3] After hearing the learned counsel for the parties, the learned Single Judge has observed in the following manner while allowing the petition of the petitioner:

"The respondents have not raised any serious dispute about the factual data provided by the petitioners particularly with respect to their initial date of engagement, their qualification and the fact that all of them had put in more than 240 days of actual work in each of the 3(three) years under consideration. The dispute about the petitioners being engaged against the project has already been examined in the previous litigation in case of Gopesh Malakar and cannot be reopened now. The sole surviving objection pressed by

the Additional Government Advocate was that the said Rules were later on repealed in 2020. The rights of the petitioners flow from events much prior to the repeal of the Rules, Such existing rights cannot be taken away by subsequent repeal.

In the result, petitions are allowed, the respondents shall absorb the petitioners as permanent labourers in the Forest Department w.e.f. 11.01.2018."

[4] Being aggrieved by and dissatisfied with the impugned judgment and order, the respondents in WP(C) 623 of 2020 have preferred the present writ appeal before this court.

[5] The case of the petitioners as narrated in earlier writ petitions that the petitioners have prayed for the directions to the respondents to absorb them as permanent labourers in terms of Rules 4 & 5 of Tripura Government Sepahijala Biological Complex/any other Complex/Institution Permanent Labourers (Recruitment and Condition of Services) Rules, 1990 (hereinafter to be referred as the said Rules). The petitioners placed heavy reliance on a judgment of this Court in case of Gopesh Malakar and others versus State of Tripura and others in WP(C)NO.450 of 2019 which was decided in favour of the petitioners. The respondents had challenged the said judgment of this court of Gopesh Malakar in Writ Appeal No.192 of 2020 which has been dismissed by a judgment dated 22.12.2020.

[6] The respondents (the appellants herein) filed their reply and clearly contended that the Rules namely "Tripura Sepahijala Biological Complex/any other Complex/Institution Permanent Labourers (Recruitment and conditions of Service) Rules, 1990" has already been repealed vide No.F.2(350)/For/Estt-2017/Part/6448-520 dated 28/05/2020 before filing of the Writ petition. As the Rules was repealed already, thus the question of absorption as permanent labourers as per term and conditions in reference to the said Rules does not stand at all. The workers those who are engaged under any scheme/project could not claim for absorbing them as Permanent Labourer in the Government

Department as per Rules. There was no scope to absorb the petitioners as Permanent Labourers & there are no vacancies of Permanent Labourers, which was approved for 363 permanent labourers against specific names. After hearing the Hon'ble single Judge allowed the writ petition. Hence this writ appeal.

[7] Heard learned counsel for the parties.

[8] Mr. D. Sharma, learned Addl. GA appearing for the appellants has submitted before this court that the petitioners in WP(C) 623 of 2020 have never been engaged and worked as Casual Workers in the Forest Department. All these petitioners have been engaged as contractual workers and performed as Documentation Assistant under JICA Project. The JICA project is an extremely aided time bound project which was substantially funded by external agencies. The said project was sanctioned for a period w.e.f. 2007 to 2018. There were around 500 nos. contractual workers worked in the JICA project earlier. All of them have been discontinued immediately after closure of the project.

[9] It is further contended by the learned Addl. GA for the appellants that all the petitioners in WP(C) 623 of 2020 were engaged under JICA Project so the "Tripura Government Sepahijala Biological Complex/any other Complex/Institution Permanent Labourers (Recruitment and Condition of Service) Rules, 1990" shall never be applied to those contractual workers.

[10] In course of his submission, learned Addl. GA has also contended that learned Single Judge while issuing the order dated 07.01.2021 neither scrutinize required documents etc nor passed any order to the Forest authority to scrutinize all required documents of the petitioners. The Forest authorities did not recommend their name at any time by any selection committee like similarly situated other cases. In any Government establishment there is a mandatory process of scrutinizing

the documents to be submitted by the petitioners at the very initial state of selection of candidate. After scrutiny at the local level the eligible candidate would be recommended for absorption in the department which is not done here in the instant case.

[11] Mr. D. Sharma, learned counsel Addl.GA appearing for the appellants has relied on a judgment of the apex court in ***The State of Gujarat and Others vs. R.J. Pathan and Others*** reported in **2022 LiveLaw(SC) 313** which has been passed in the light of the "**Umadevi**" case. Reliance has been placed on the following paragraphs which is extracted herein under:

8. Now, so far as the reliance placed upon the decision of this Court in the case of *Umadevi (supra)* and the subsequent decision of this Court in the case of *Narendra Kumar Tiwari (supra)*, relied upon by the learned counsel appearing on behalf of the respondents is concerned, none of the aforesaid decisions shall be applicable to the facts of the case on hand. The purpose and intent of the decision in *Umadevi (supra)* was, (1) to prevent irregular or illegal appointments in the future, and (2) to confer a benefit on those who had been irregularly appointed in the past and who have continued for a very long time. The decision of *Umadevi (supra)* may be applicable in a case where the appointments are irregular on the sanctioned posts in regular establishment. The same does not apply to temporary appointments made in a project/programme.

9. Even otherwise, it is to be noted that though not required, the State, instead of putting an end to the services of the respondents, graciously placed the respondents in the Indian Red Cross Society. No duty was cast upon the State to transfer them to another establishment in a case where it is found that the employees are appointed in a temporary unit and on a temporary contractual basis and on a fixed term salary and on closure of the temporary unit, their services are not required. However, the State Government was gracious enough to place the respondents in the Indian Red Cross Society, which the respondents did not accept.

10. From the impugned order passed by the Division Bench of the High Court it appears that the High Court has observed hereinabove that in the peculiar facts and circumstances of the case, it is directed that the order of absorption and regularization and if necessary, by creating supernumerary posts, will not be treated as a precedent in other cases. Even such a direction could not have been passed by the Division Bench of the High Court as there were no peculiar facts and circumstances which warranted the above observation. No such order of absorption and/or regularization even if required for creating supernumerary posts and not to treat the same as precedent could have been passed by the High Court in exercise of powers under Article 226 of the Constitution of India.

[12] On the contrary, Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the respondents herein has submitted before this court that their solitary

cause for approaching this court to absorb the petitioners in WP(C) 623 of 2020 as permanent labourers. According to learned senior counsel, the appellants herein have not only denied to the legitimate rights of the respondents herein but also the benefit of absorption as permanent labourer. The appellants herein have rather taken away their means of livelihood by not allowing them to continue as casual workers w.e.f 18.03.2018.

[13] Mr. P. Roy Barman, learned senior counsel has also pointed out that there are recommendation in favour of the petitioners in WP(C) 623 of 2020 indicating that petitioners are entitled for absorption as the permanent labour since they have sufficient qualification for absorption as the casual worker.

[14] In view of the above discussion, we are of the opinion that the order of the learned single judge is liable to be set aside. Accordingly, the order dated 07.01.2021 of the learned single judge is set aside. However, it is further seen from the record that except one petitioner, no other petitioners have approached the respondents seeking relief for absorption by the respondents. Admittedly, there is no impugned order which is under challenge. This court is very conscious with regard to its jurisdiction and it cannot fit into the shoes of the administrative authority nor as the appellate capacity.

[15] Without expressing any opinion on merit of the case, this writ appeal is disposed of giving liberty to the petitioners in WP(C) 623 of 2020 to approach the respondents by way of making their representations along with all relevant documents in support of their claim, if so advised. On receipt of such representations, the respondents shall consider their case in accordance with law within a period of three months from the date of receipt of such representations.

[16] In view of the above, the instant writ appeal stands allowed and thus disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any also stands closed.

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