

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.254 of 2022

1. Nripendra Chakraborty

S/O Pran Kumar Chakraborty,

R/O- Bhattapukur, Agartala, District- West Triura, Age-55

2. Ratan Debnath

S/O Late Gouranga Debnath

R/O Vill-South Badharghat, Ramthakur Para, P.O- Charipara, P.S.- Amtali, A.D. Nagar, Agartala, District- West Tripura, Age-57

3. Sripada Acharjee

S/O Late Chitta Ranjan Acharjee, R/O- Vill.- South Badharghat, P.O.+P.S.- Amtali, Agartala, District- West Tripura, Age-56 years.

4. Swapan Kr. Dutta

S/O Late Sukesh Dutta, R/O- Sripalli, Badharghat, P.O- ONGC, Agartala, District- West Tripura, Age-58 years.

5. Sushil Debnath

S/O Kshirod Debnath, R/O Vill.+P.O- West Bhubanban, Agartala, District- West Tripura, Age-57 years.

6. Jayanta Choudhury,

S/O- Late Nimai Choudhury, R/O- Vill- North Indranagar, Near 79 Tilla, Sarat Palli, P.O.- Indranagar, Agartala, District- West Tripura, Age-55 years.

....Petitioner(s)

Versus

1. The State of Tripura

to be represented by the Secretary, Health Department, Govt. of Tripura, New Capital Complex, New Secretariat Building, Agartala, West Tripura, Pin-799001.

2. The Director of Health Services

Govt. of Tripura, P.N. Complex, Agartala, West Tripura.

3. The Secretary

Finance Department, Govt. of Tripura, New Capital Complex, New Secretariat Building, Agartala, West Tripura, Pin-799001

....Respondent(s)

For the Petitioner(s)	:	Mr. Kawsik Nath, Advocate Mr. Samarjit Bhattacharjee, Advocate
For the Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
Date of hearing & Delivery of Judgment & Order	:	08.12.2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

Heard Mr. Kawsik Nath, learned counsel along with Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioners. Also

heard Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents-State.

2. The fact of the case is that the petitioners were initially engaged as Slip Workers/Casual workers in the year 1991-1995 under the respondents and were getting their pay as daily wages. Petitioners have submitted repeated representations for regularization of their services to the Directorate of Health Services, Government of Tripura, but in vain. The Director, Health Services, Govt. of Tripura vide Memorandum dated 30.03.2010 declared all the petitioners as Casual Workers notionally w.e.f. 01.01.2010.

3. They have filed the present writ petition for regularization of their services. The petitioners filed the present writ petition in the year 2022 claiming regularization of their services on the basis of the memoranda which were repealed by the government in the year 2018.

4. The petitioners have relied upon certain schemes, introduced by the Government of Tripura for regularization of the services of DRWs/PTWs/Casual/ Contingent, etc. workers which have already been repealed under order dated 31.07.2018 issued by the State.

5. In the light of above facts, Mr. Kawsik Nath, learned counsel for the petitioners has strenuously argued that for such long continuation of services, the services of the petitioners may be regularized. It is further submitted by learned counsel for the petitioners that the right of the petitioners for regularization was matured long back, but, it was not considered by the respondents.

6. I have considered the submissions of learned counsel appearing for the parties.

7. After perusal of the documents annexed with the writ petition, I find that the petitioners have failed to justify that they had been appointed against any regular sanctioned vacant posts. Even the petitioners have not produced any document to show that they were appointed by the competent authority of the respondents. They were appointed simply by an officer of the department. Moreso, the petitioners had been appointed illegally without

following the established procedure of law. Furthermore, the petitioners ought to have approached the court within the realm of the scheme and during the existence of the scheme before the date when those were repealed. The delayed approach and lackadaisical attitude of the petitioners would not entail them to get the benefit of repealed schemes. In the opinion of this Court, this petition is absolutely barred by delay and laches. Moreover, the nature of appointment of the petitioners is not only irregular but illegal also. Further, regularization is not a matter of right but a right to be considered by the employer/Government and equality clause enshrined in Indian Constitution must be followed in *sensu stricto*. Another important aspect to be noticed that the petitioners have failed to place any material that at present there are sanctioned vacant posts exist in the Health department, Government of Tripura for their absorption or regularization.

8. Above all, equality clause as enshrined under Articles 14 and 16 of the Constitution of India in the matter of public employment cannot be frustrated or flouted for an indefinite period. As per direction of the Apex Court in *State of Karnataka vs. Uma Devi (3) and Ors.*, reported in (2006) 4 SCC 1, the State Government had formulated guidelines for regularization of Casual/Contingent/Daily Rated workers in the year 2008 with revised guidelines, and, those were continued for long 10(ten) years; however, those were repealed by a policy decision of the Government in the year 2018.

9. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly, judgment passed on wrong premise in favour of one individual does not entitle other to claim similar benefits.

10. I have also considered the directions given by the Constitutional Bench of the Hon'ble Apex Court in the case of *Uma Devi(3)(supra)* wherein at para 53 it was held thus:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore vs. S.V. Narayanappa*, reported in (1967) 1 SCR 128, *R.N. Nanjundappa vs. T. Thimmiah*, reported in (1972) 1 SCC 409, *B.N. Nagarajan vs. State of Karnataka*, reported in (1979) 4 SCC 507, and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 above referred 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 regularize 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 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 regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

11. A Division Bench of this Court in *State of Tripura vs. Suprava Debnath*, reported in **2023 SCC Online Tri 833**, did not find any illegality or arbitrariness in the policy decision of the government repealing the policy of regularization formulated in the year 2008.

12. Another noticeable feature is that even the dates of engagements of the petitioners were considered w.e.f. 01.01.2010, they have not completed 10(ten) years of service as Casual Workers before 2018 when all the guidelines for regularization had been repealed by the said policy decision of the Government.

13. This Court in *WP(C) No.5 of 2023* titled as *Sri Satya Ranjan Dey and Anr. Vs. The State of Tripura and 4 Ors.* decided on 06.09.2023 had passed a detailed order referring many judgments of the Hon'ble Apex Court and held that the petitioners of that writ petition were not entitled to get their services regularized and therefore, dismissed the writ petition.

14. Thereafter, a Division Bench of this Court (presided over by Justice Aparesh Kumar Singh, Chief Justice and myself) in *Suprava Debnath (supra)* had an occasion to deal with the similar issue on **regularization** wherein after observing all factual and legal aspects, by a detailed order had dismissed the writ petition.

15. Accordingly, I do not find any merit in the present writ petition and the same stands dismissed.

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JUDGE

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