

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.60/2022

1. The State of Tripura, to be represented by the Principal Secretary, Department of Health Government of Tripura New Secretariat Building, New Capital Complex, P.O.-Kunjaban, P.S.-New Capital Complex, Agartala, West Tripura, PIN-799010.
2. The Director, Department of Health, Government of Tripura, Gurkhabasti, P.S.-Kunjaban, West Tripura, PIN-799010.
3. The Director of Civil Defence, Government of Tripura, Agartala, West Tripura.
4. The District Magistrate & Collector, Government of Tripura, Agartala, West Tripura.
5. The Secretary, Department of Finance, Government of Tripura, New Secretariat Building, New Capital Complex, P.O.-Kunjaban, P.S.-New Capital Complex, Agartala, West Tripura, PIN-799010.
6. The Superintendent, AGMC & GBP Hospital, Government of Tripura, Agartala, West Tripura.
7. The Superintendent, IGM Hospital, Government of Tripura, Agartala, West Tripura.

.....Appellant(s).

V E R S U S

1. Smt. Rita Karmakar, W/O.-Sri Sankar Das, Resident of 79 Tilla, Sarada Pally, P.O.-Kunjaban, P.S.-New Capital Complex, Agartala, West Tripura, PIN-799010.
2. Smt. Suprita Sarkar, W/O.-Sri Pradip Das, Resident of Camper Bazar, P.O.-S.D. Mission Colony, P.S.-A.D. Nagar, Agartala, West Tripura.
3. Smt. Soma Malakar, W/O.-Sri Bijoy Das, Resident of Dashamighat, Joynagar, Ramsundar Nagar, P.O.-Agartala, P.S.-West Agartala, Agartala, West Tripura.
4. Smt. Bandana Deb, D/O.-Late Sukumar Deb, Resident of Village West Pratapgarh, Bardowali, P.O.-A.D. Nagar, Agartala, West Tripura.

..... Respondent(s).

For Appellant(s)	: Mr. Debalay Bhattacharya, G.A., Mr. Soumyadeep Saha, Advocate.
For Respondent(s)	: Mr. P. Roy Barman, Sr. Advocate, Mr. Samarjit Bhattacharjee, Advocate, Mr. Kawsik Nath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH

Date of hearing and judgment: **01st May, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Debalay Bhattacharya, learned Government Advocate assisted by Mr. Soumyadeep Saha, learned counsel appearing for the appellants-State and Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the writ petitioners/private respondents.

2. The writ petitioners, 4(four) of them, private respondents herein, were undisputedly enrolled as Civil Defence Volunteers on 05.01.2004 (petitioner No.1); 03.11.2003 (petitioner No.2); 16.12.2004 (petitioner No.3) and 05.01.2004 (petitioner No.4) respectively, i.e. after 31.03.2003, the cutoff date laying a complete ban on engagement of DRWs/Casual/Contingent

Workers etc. as per the Finance Department, Government of Tripura resolution dated 21.01.2009 which prescribes conditions for regularization of services of DRWs/Casual/Contingent Workers on the next date of completion of 10 years of service (Annexure-13, page-60 of the memo of appeal). Petitioners approached the Writ Court seeking their engagement as daily rated workers in the same terms as the order dated 07.12.2012 whereunder about 50 Civil Defence Volunteers were engaged as daily rated worker. Petitioners also made out a case that one Amit Dey was engaged after 31.03.2003 as daily rated worker (DRW) and as such, petitioners who were engaged much prior to him as Civil Defence Volunteers ought to be engaged as DRW. This led to a case of arbitrariness and discrimination in engagement of the petitioners as daily rated worker though being similarly situated to 50 other Civil Defence Volunteers who were engaged as daily rated worker. Petitioners also had a claim of legitimate expectation at the hands of the Government and fairness in treatment vis-à-vis other similarly situated Civil Defence Volunteers who have been engaged as daily rated worker.

3. Learned Single Judge after considering the case of the parties and also taking note of the cutoff date of 31.03.2003 in the order dated 07.12.2012 whereunder other Civil Defence Volunteers were engaged as daily rated worker, however, proceeded to direct the respondents to consider the

engagement of the petitioners as daily rated worker within a stipulated period of three months holding, *inter alia*, as under:

"09. True it is that, it is difficult to accept the said analogy as correct, as pointed out by the Director of Civil Defence that the date of enrolment and date of engagement are for different purposes. The method for selecting the Civil Defence Volunteers for engagement in the post of DRW suffers from defect of transparency and reasonableness. It may be true that on completion of training when a civil defence volunteer is enrolled he is equipped to discharge his duty in hospitals or in the emergency services. But enrolment for purpose of engagement as DRW can hardly be perceived as the basis. If that was so done, such action would not have survived the test of Article-14 of the constitution. Since the engagement of the other Civil Defence Volunteers are not under challenge in this case, this court is not inclined to direct a scrutiny whether their engagements were in contravention of Article-14 of the constitution. As it has been revealed that the petitioners were engaged as Civil Defence Volunteers much before some of the selectees, the respondents shall consider the petitioners for their engagement as DRW. After serving for more than a decade the petitioners may legitimately expect that they would be treated fairly. Even in the Note No.171 of the Finance Department, the Finance Department has considered in the premises that the persons who have been engaged as DRWs were engaged prior to 31.03.2003, but for all the persons such observation is not valid, as from the letter of the Director of Civil Defence, it has been clearly transpired that one Amit Dey was engaged as a

Civil Defence Volunteer in the year 2008, and he has been engaged as DRW leaving the petitioners at lurch. As the petitioners were engaged much prior to him, the petitioners ought to have been engaged along with him or before him, but that has not happened."

4. The aggrieved State of Tripura is in appeal before us. We have heard learned Government Advocate appearing for the appellants-State and learned senior counsel representing the writ petitioners/private respondents. The sheet anchor of the case of the Appellant - State is based on the resolution of the Department of Finance dated 21.01.2009 fixing a cutoff date of 31.03.2003 for imposing a complete ban on engagement of DRWs/ Casual/Contingent Workers etc. The appellants have sought to distinguish the case of the present petitioners from the rest of 50 Civil Defence Volunteers who were engaged as daily rated worker by order dated 07.12.2012 (Annexure-3, page-43 of the memo of appeal) on the ground that all those 50 Civil Defence Volunteers were enrolled as Civil Defence Volunteers before 31.03.2003 as would also appear from the list forwarded by the Director of Civil Defence, Tripura (at Pages-36 to 41 of the memo of appeal). The case of Amit Dey has also been distinguished on the ground that Amit Dey was enrolled as a Civil Defence Volunteer on 10.10.2001 though he was engaged in the hospital on 12.06.2008.

5. Learned Government Advocate submits that the yardstick for engagement of Civil Defence Volunteers as daily rated worker is uniform and no discrimination has been made vis-à-vis the petitioners. The Finance Department of the State of Tripura has come out with the resolution dated 21.01.2009 on the basis of which any claim for engagement of Civil Defence Volunteers as daily rated worker could have been raised. In matters of regularization, it is the employer who has the authority and jurisdiction to lay down the cutoff date. The purpose of laying down of a cutoff date as 31.03.2003 is also to stop engagement of Casuals/Contingent/Daily Rated Worker in an irregular manner in teeth of the judgment rendered by the Apex Court in case of *Secretary, State of Karnataka and others vrs. Umadevi (3) and others* reported in (2006) 4 SCC 1.

6. It is submitted that the letters of Director of Civil Defence such as, dated 08.06.2010, 19.11.2012, 19.12.2012, the letter of the District Magistrate & Collector, West Tripura dated 23.01.2015 or the further letter of Director of Civil Defence dated 14.05.2018 are only recommendations which cannot form the basis of any claim, legal right or legitimate expectation for being engaged as daily rated worker by the writ petitioners who have been enrolled as Civil Defence Volunteers after the cutoff date, i.e. 31.03.2003.

The recommendations do not take note of the policy decision of the State Government contained in the memorandum dated 21.01.2009 imposing a cutoff date of 31.03.2003 and are, therefore, in breach of the State Government's resolution. Therefore, the impugned direction passed by the learned Single Judge requires interference by this Court as no legal right or case of arbitrariness or discrimination have been made out by the writ petitioners to claim parity in matters of engagement as daily rated worker.

7. Learned Government Advocate has also pointed out that the engagements of Civil Defence Volunteers are at a fixed stipendiary rate, i.e. Rs.118/- w.e.f. 01.03.2012 vide memorandum dated 30.04.2012. The rate of stipend has been increased to Rs.200/- per day vide office memorandum dated 10.08.2018 with concurrence of the Finance Department. It does not compare itself from either temporary workers engaged on minimum wages or any skilled or unskilled labourer. As such, writ petitioners did not have a case for seeking a writ of mandamus for their engagement as daily rated worker.

8. Mr. P. Roy Barman, learned senior counsel appearing for the writ petitioners/private respondents, has painfully taken this Court through the recommendation letters of the Director of Civil Defence, Tripura referred to above. One such recommendation dated 08.06.2010 encloses a list of 57 Civil

Defence Volunteers engaged in GBP Hospital/IGM Hospital/District Control Room, Agartala/State Control Room, Agartala/Agartala Circuit House/D.M., West office. Learned counsel for the writ petitioners has referred to the names of the writ petitioners at Sl. Nos.22, 34, 35 and 45 respectively (not in order of the numbering of the writ petitioners) to show that these petitioners also are like those Civil Defence Volunteers who have been engaged as daily rated worker by order of the Director of Health Services dated 07.12.2012.

9. It is submitted that despite further recommendations made by the Director of Civil Defence through letters dated 19.11.2012 and 19.12.2012, letters of District Magistrate & Collector, West Tripura dated 23.01.2015 and 02.06.2016, 14.05.2018, the respondent-department has chosen to ignore the cases of these persons in matters of their engagement as daily rated workers. This is not only arbitrary but denies the legitimate expectations of the petitioners being similarly situated with those who have been engaged as daily rated worker on account of their long engagement as Civil Defence Volunteers.

10. Learned senior counsel for the writ petitioners has also pointed out that there is no nexus from the date of enrolment as a Civil Defence Volunteer for fixing a cutoff date, i.e. 31.03.2003 instead of the date of their

engagement in the respective hospitals or other offices. He has also referred to the case of Amit Dey, a Civil Defence Volunteer, who was engaged as a volunteer in 2008 but has been engaged as a daily rated worker by the same office order dated 07.12.2012 though the writ petitioners were engaged prior to him and specially one Soma Malakar, respondent/writ petitioner No.3 herein, has been engaged in the year 1999 itself.

11. Learned senior counsel for the petitioners submits that the writ petitioners have been serving for 8 hours or more as per the terms of their engagement and have been rendering valuable service to the different hospitals/organizations on a meager stipend which is exploitative in nature. Petitioners do not at this stage even stake a claim for their regularization but only engagement as a daily rated worker. The State should not act arbitrarily in continuing to take their services as Civil Defence Volunteer but refusing to engage them as daily rated workers.

12. It is submitted that the learned Single Judge took note of the case of the writ petitioners and the unfair stand of the respondent-department while issuing a direction for their engagement as daily rated worker which view may not be substituted in appellate jurisdiction as the impugned judgment does not suffer from any illegality or perversity on facts.

13. We have considered the submissions of learned counsel for the parties at length. We have also gone through the relevant materials placed from the Writ Court records. We have perused the impugned judgment of the learned Single Judge.

14. The chronology of facts which are not in dispute, need no reiteration. There are no letters of engagement of the writ petitioners as Civil Defence Volunteers. Their cases are based upon the recommendation letter of the Director, Civil Defence. However, enrolment as a Civil Defence Volunteer and engagement in different organizations such as, some hospitals in the State or the office of the District Magistrate etc. does not give rise to a legitimate expectation to engage them as daily rated worker as there was no promise on the part of the State to convert their engagement as daily rated worker after a length of time. The engagement was on stipendiary basis for certain number of hours, i.e. 8 hours a day. The Department of Finance, Government of Tripura formulated a scheme as per the ratio rendered by the Apex Court in the case of *Umadevi* (supra) laying down a cutoff date of 31.03.2003 and imposing a ban on engagement of any Daily Rated Workers/Casual/Contingent Workers etc. without concurrence from the Finance Department. Certain other conditions have also been laid down in the

memorandum dated 21.01.2009 which deals with the subject of regularization of services of DRWs/Casual/Contingent Workers on the next date of completion of 10 years of their engagement. Such a resolution is intended to stop irregular engagement of daily rated worker or conversion of persons enrolled as Civil Defence Volunteers as daily rated worker by the Heads of different departments under the State as it would be in teeth of the principles enshrined under Articles 14 and 16 of the Constitution of India. The practice of backdoor entry into public employment was deprecated by the Apex Court in the case of *Umadevi* (supra) and stands reiterated in later judgments of the Apex Court.

15. It is beyond cavil that the power to lay down a scheme for regularization is upon the employer, i.e. the State of Tripura in this case. On facts, it is noticed that none of these writ petitioners were enrolled as Civil Defence Volunteers after 31.03.2003 as per the resolution dated 21.01.2009 of the Finance Department. The case of Amit Dey relied upon by the learned Single Judge is distinguishable on facts as his enrolment as Civil Defence Volunteer was on 10.10.2001 prior to the cutoff date of 31.03.2003. As such, not even on grounds of parity or equality in treatment, the writ petitioners stood on equal footing as that of the other Civil Defence Volunteers or who

were engaged as daily rated worker by order dated 07.12.2012 including that of Amit Dey. The employer in the present case has laid down a cut-off date i.e. 31.03.2003 for reckoning the date of enrolment as a Civil Defence Volunteer which resolution is not under challenge in the writ petition. The reference to the date of enrolment for the purposes of engagement as daily rated worker cannot be said to be irrational so as to fail the test of classification under Article 14 of the Constitution of India. Taking into account the material facts on record and the reasons recorded hereinabove, we are of the considered opinion that the impugned judgment cannot be sustained in the eye of law or on facts.

16. Accordingly, the impugned order dated 02.03.2021 passed by the learned Single Judge in WP(C) No.774 of 2020 is set aside. The instant writ appeal is allowed, however, with no order as to costs.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ