

**HIGH COURT OF TRIPURA
AGARTALA**

Cont.Cas(C) No.80 of 2023

Sri Ajit Chakraborty
..... Petitioner(s).
Versus
Sri Saradindu Choudhury and Ors.
..... Respondent(s).

Cont. Cas(C) No.81 of 2023

Sri Radheshyam Paul
..... Petitioner(s).
Versus
Sri Saradindu Choudhury and Ors.
..... Respondent(s).

Cont. Cas(C) No.82 of 2023

Sri Manik Paul
..... Petitioner(s).
Versus
Sri Saradindu Choudhury and Ors.
..... Respondent(s).

Cont. Cas(C) No.83 of 2023

Sri Swapan Chandra Rudra Paul
..... Petitioner(s).
Versus
Sri Saradindu Choudhury and Ors.
..... Respondent(s).

Cont. Cas(C) No.84 of 2023

Sri Bimal Chandra Paul
..... Petitioner(s).
Versus
Sri Saradindu Choudhury and Ors.
..... Respondent(s).

Cont. Cas(C) No.86 of 2023

Sri Abdul Hasem
..... Petitioner(s).
Versus
Sri Saradindu Choudhury and Ors.
..... Respondent(s).

Cont. Cas(C) No.87 of 2023

Sri Panulal Das

..... Petitioner(s).

Versus

Sri Saradindu Choudhury and Ors.

..... Respondent(s).

For Petitioner(s) : Ms. R. Guha, Advocate,
Mr. M. Debnath, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, Sr. Advocate,
Mr. D. Sarma, Advocate,
Mr. Rajib Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

08/09/2023

Heard Ms. R. Guha, learned counsel for the petitioners and Mr. Debalay Bhattacharya, learned senior counsel assisted by Mr. D. Sarma, learned counsel for the respondents.

2. All these contempt petitions arise from the common judgment and order dated 12.04.2022 passed in WP(C) No.707/2020 and other analogous cases.

3. The learned Writ Court disapproved of the abrupt disengagement of the petitioners who were under contractual engagement. A direction was issued upon the respondents, except the private respondents, to re-engage the petitioners within a stipulated period. Para 22 to 25 of the judgment and order is extracted hereunder :

“22. It appears that the BDO has the substantial control over the engagement of the petitioner, but in no case he had issued the termination letter. True it is that the engagement of the petitioner cannot be tantamount to holding of a civil post and as such, the petitioners cannot claim any right over the post for continuance beyond the period as prescribed by the contract of engagement. But in the present case, the respondents have definitely acted arbitrarily and/or they have allowed such action to continue, even though, such action is unsustainable under the rule of law. The Constitutional methods have been given a go bye and hence, this Court does not have any other alternative but to observe that the abrupt disengagement of the petitioners are unsustainable and hence those actions

are interfered with and set aside. A pattern that surfaced is grossly against the tenets of the rule of law.

23. Hence, the respondents, except the private respondents, shall reengage the petitioners within a period of 1(one) month from the date of receiving the order of this court. If there is any complaint against the petitioner in respect of their service as the Pump Operator, the concerned Block Development Officer be forwarded with the said complaint. On initial scrutiny of the said complaint if there appears any substance prima facie, the BDO shall issue show cause to the concerned Pump Operator so that he can make his response substantively against such complaint. Thereafter, the BDO may enquire and decide appropriately. So far the issue of resignation is concerned, wherever is applicable, the concerned Block Development Officer shall issue a specific show cause asking whether such resignation has been tendered by the Pump Operator voluntarily or at all and after the response is received from the concerned pump operator, the appropriate order be passed by the BDO.

24. It is really shocking to note that no public authority had come forward to lift the veil of the allegations made by the petitioners. In the replies filed by the Official-respondents it has not been clearly denied in order to state that there had been no intimidation at all. What they have stated is that the police was not reported and in one case the police did not find any evidentiary material to hold that there was intimidation. But the element of intimidation loses its relevance when this court has noted that the petitioners were unceremoniously disengaged without any notice or in one case without deciding the reply filed by the petitioner.

25. Fairness in the action is the core value of the rule of law. The public servant cannot be the instrument of any action which goes against the fairness of action. The public servants shall, at all the time, remind themselves that they are obligated by the constitution to protect the rule of law and not to subvert it. Thus, they should reverse all actions which might come in the way of reengagement of the petitioners as directed. However, under the circumstances, this court is not inclined to grant any back wage to the petitioners, but the wages of the working period shall be released within 30 (thirty) days from the day of receiving a copy of this order from the petitioners.

In terms of the above all the writ petitions are allowed.

There shall be no order as to costs.”

4. By order dated 19.05.2023, this Court directed Mr. Bhattacharya, learned senior counsel to seek instructions from the concerned Block Development Officer as to whether the order has been complied with or not and to file a show cause. The Block Development Officer concerned filed an affidavit. However, on 06.07.2023, this Court observed that the order had not been fully complied with. The Director of Panchayat, Government of Tripura was asked to serve copies of the contempt petitions upon respondent No.3, who are the Pradhans of the concerned Gram Panchayats, and the learned senior

counsel for the respondents, was also directed to seek instructions from the Director of Panchayat, Government of Tripura as regards compliance of the order.

5. In each of these contempt petitions, an affidavit has been filed by the respondent No.2-Director of Panchayat. Para 3 thereof is common in all the contempt petitions. The respondent No.2, in all the contempt petitions, has referred to the resolutions passed by the concerned Gram Panchayat regarding re-engagement of the respective petitioners. In Cont.Cas(C) No.80/2023, however the Director, Panchayat has also stated that the engagement of the petitioner therein as Part-time Pump Operator lies within the jurisdiction of the Public Works Department (Drinking Water and Sanitation) and not with the Panchayat Department. But the Block Development Officer has informed him of the resolution of the Gram Panchayat regarding engagement of the said petitioner. Similar statement has been made by the Director of Panchayat in Cont.Cas(C)No.82/2023, Cont.Cas(C)No.83/2023 and Cont.Cas(C)No.84/2023. However, the Director of Panchayat has also stated that the concerned Block Development Officer has informed him of the resolution of the Gram Panchayat to re-engage the petitioners. In rest of the contempt petitions, the respondent No.2 has stated that necessary permission has been conveyed to the Block Development Officer on the resolution to re-engage the petitioners. Since there are two categories of petitioners; one whose engagement is as a Part-time Pump Operator i.e. in Cont.Cas(C) No.80/2023, Cont.Cas(C) No.82/2023 , Cont.Cas(C) No.83/2023 and Cont.Cas(C) No.84/2023, the relevant statement in similar terms made by the respondent No.2 in one such contempt petitions [Cont.Cas(C) No.80/2023] is extracted hereunder :

“3. That I humbly submit that, the petitioner is a Part-time Pump Operator under the Drinking water Scheme of Public Works Department (Drinking Water & Sanitation). In this connection, it is pertinent to mention here that Drinking water Scheme is not related to the Panchayat Department.

The BDO, Tepania RD Block informed that the Karaiyamura Gram Panchayat adopted a resolution for re-engagement of Sri Ajit Chakraborty, S/O-Bipad Chakraborty, as PTPO, in the DWS scheme at Damdama Para under Karaiyamura G.P. **(Copy resolution enclosed as Annexure-R/1)**

From the above context, it is to state here with due sincerity that the Director of Panchayats, Tripura do not have any such intention to disobey or to non-comply of the kind order of the Hon'ble High Court.”

6. In other contempt petitions, the respondent No.2-Director, Panchayat has categorically stated that permission has been granted for re-engagement of the petitioners by the Directorate of Panchayat vide resolution at Annexure-R/1, which is also in similar language in the rest of the contempt petitions i.e. Cont.Cas(C)No.81/2023, Cont.Cas(C)No.86/2023 and Cont.Cas(C)No.87/2023; and the resolution at Annexure-R/1 in one of the contempt petitions [Cont.Cas(C) No.87/2023] is extracted hereunder:

No.F.3(5-252)-GL/PR/2023/13136-39
GOVERNMENT OF TRIPURA
DIRECTORATE OF PANCHAYATS
Website : panchayattripura.gov.in

Dated Agartala the 17th August, 2023.

To
The Block Development Officer
Matabari R.D. Block
Gomati District.

Subject: Approval for engagement of Part Time Pump Operator for Pitra LI-V scheme at Pitra Gram Panchayat under Matabari RD Block.

Sir,

With reference to your letter vide No.F.2(374)/BDO/MTB/JDL/2022-23/558 dated 17/06/2023, I am to convey the approval of the government in the RD (Panchayat) Department for engagement of **Sri Panulal Das, S/o- Lt. Jogesh Das**, as Part Time Pump Operator (PTPO) with effect from **08-08-2023** for Pitra LI-V scheme at Pitra Gram Panchayat under Matabari RD Block.

(2) further it is also added here that this approval is a onetime measure for compliance of the Hon'ble High Court order and no PTPO will be engaged in the mentioned schemes, even if one of the PTPO position becomes vacant either due to surrender, retirement or removal.

(3) The necessary fund for payment of remuneration of the newly engaged Part Time Pump Operator will be placed in due course. You are requested to inform the concerned Gram Panchayat to take necessary action accordingly.

Yours faithfully,
Sd/-
(D. Reang)
Director of Panchayats
Government of Tripura

7. In Cont.Cas(C) No.87/2023, it appears that inadvertently the same letter dated 17.08.2023 [Annexure-R/1] in the case of Sri Abdul Hasem in Cont.Cas(C) No.86/2023 has been annexed. Mr. Debalay Bhattacharya, learned senior counsel for the respondents, has however supplied the relevant copy of the permission granted by the Director, Panchayat for the Court's records and to the learned counsel for the petitioners in respect of Sri Panulal Das [Petitioner in Cont.Cas(C) No.87/2023].

8. Mr. Bhattacharya, learned senior counsel for the respondents, submits that after much deliberation and pursuant to the resolutions taken by the concerned Gram Panchayats, recommendation by the Block Development Officer the decision to re-engage the individual petitioners in the scheme which is operative has been taken and petitioners have been asked to join. As such, the judgment and order passed by the learned Writ Court has been complied with. Petitioners were working under a scheme; the life of which has come to an end in some of the cases. Therefore, in some cases, their re-engagement has been done in another scheme.

9. Ms. R. Guha, learned counsel for the petitioners, submits that the actual re-engagement of the individual petitioners, and in some cases, payment of their contractual dues have not yet been made out in the spirit of the judgment and order of the Writ Court.

10. I have considered the submission of learned counsel for the parties and taken note of the proceedings of the contempt petitions as regards compliance of the judgment and order dated 12.04.2022 passed in WP(C) No.707/2020 and other analogous cases in the case of individual writ petitioners.

11. From the latest affidavit/show cause filed by the Director, Panchayat in individual contempt petitions, this Court is satisfied that the decision to re-engage the petitioners in contractual capacity has been taken and formal permission has also been granted by the Director of Panchayat in some of the cases. Since some petitioners have been engaged as Part-time Pump Operator which lies under the Public Works Department (Drinking Water and Sanitation), formal permission was required from the concerned department. That department has not been impleaded as party. Learned senior counsel for the respondents has however assured that the order of this Court has been carried out in letter and spirit, and that individual petitioners in each of the contempt petitions have been re-engaged under a scheme in contractual capacity. The process of payment of their contractual remuneration, etc. shall however follow the necessary formalities.

12. In such circumstances, this Court is satisfied that the order passed by the Writ Court has been duly complied with. The petitioners are supposed to join their re-engaged post. In case, the respondents have not formally accepted rejoining of the individual petitioners in some cases, they are allowed outer time limit till 30.09.2023 to permit their re-joining.

13. Let an affidavit be filed by the respondent No.2 in the individual contempt petitions by 16.10.2023, with a copy to Ms. R. Guha, learned counsel for the petitioners, to the effect that the individual petitioners have been allowed to rejoin in contractual capacity, subject to cooperation by the concerned petitioners. If the respondents failed to allow their rejoining in

individual case, if any, the concerned petitioner is allowed liberty to revive the contempt petition.

14. With these observations, the instant contempt petitions are disposed of. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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MUNNA SAHA

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