

HIGH COURT OF TRIPURA AGARTALA

WP(C) No.383 of 2022

1. **Sri Abhijit Das**, S/o: Lt. Gopal Das, R/o: Vill: Rabindra Palli, P.O: R.K. Pur, Udaipur, Gomati District, Pin: 799120, Age: 36 years.
2. **Sri Kamal Deb**, S/o: Sri Subhankar Deb, R/o: Vill: Dukli, Chandimata, P.S: Amtali, P.O: Dukli, Agartala, West Tripura, Pin: 799003, Age: 40 years.
3. **Sri Rajib Debnath**, S/o: Late Prafulla Debnath, R/o: Vill: Fulkumari No.2, P.O: Udaipur Court, Gomati District, Pin: 799120, Age: 33 years.
4. **Sri Bimalendu Tripura**, S/o: Sri Narendra Tripura, R/o: Vill: East Sabroom, P.O & P.S: Sabroom, South Tripura, Pin: 799145, Age: 32 years.
5. **Sri Asis Debnath**, S/o: Lt Sachindra Debnath, R/o: Vill: Sarashima, Belonia, South Tripura, Pin: 799155, Age: 48 years.

.....Petitioner(s)

-VERSUS-

1. **The State of Tripura**, to be represented by the Secretary, Department of Revenue, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S.: New Capital Complex, Agartala, West Tripura, PIN: 799010.
2. **The Secretary**, Department of Finance, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S.: New Capital Complex, Agartala, West Tripura, PIN: 799010.
3. **The Under Secretary**, Revenue Department, Government of Tripura.
4. **The DM & Collector**, South Tripura District, Belonia.

.....Respondent(s)

For Petitioner(s)	:	Mr. P.Roy Barman, Sr. Advocate Mr. S. Bhattacharjee, Advocate Mr. D. Paul, Advocate
For Respondent(s)	:	Mr. Kohinoor N. Bhattacharyya, GA
Date of hearing & Delivery of judgment & order	:	11.12.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH JUDGMENT & ORDER (ORAL)

By way of filing the present writ petition, the petitioners have sought for regularization of their services under the respondents in pursuance of the scheme formulated in the year 2008.

2. Shortly stated, all the petitioners herein were engaged as drivers and Care Takers on daily rated basis, who were initially appointed on

contract basis, against available vacancy of posts, which will be evident from the communication dated 17.05.2014 issued by the District Magistrate & Collector, South Tripura, Belonia addressed to the Deputy Secretary, Revenue Department, Government of Tripura(Annexure-1 to the writ petition). No engagement letters were issued in favour of the petitioners. Thereafter, under memorandum dated 29.06.2015(Annexure-2 to the writ petition), the District Magistrate & Collector, South Tripura, Belonia, having taken *ex post facto* approval from the Finance Department, had engaged the petitioners as Daily Rated Workers(DRW) from their dates of joining to the post. Since then the petitioners no.1, 2, 3 and 4 have been discharging their duties as drivers and petitioner no.5 has been discharging his duties as Care Taker under the respondents. For the purpose of regularization, the petitioners have relied upon the schemes for regularization formulated by the Government of Tripura in the year 2008, which is revised in the year 2009. From the memorandum dated 31.07.2018(Annexure-6 to the writ petition), it appears that the policy decision on regularization of the services of DRWs/Casual/Contingent/PTW, etc. in Government establishments, State PSUs and Autonomous Bodies, including AMC/NPs, was reviewed and it was observed by the law makers of the State that there were some shortcomings in those instructions for regularization of services of DRWs/Casual/Contingent employees affecting institutional efficiency and individual productivity due to different reasons. After reviewing the situations and to ensure transparent public employment policy for engagement of employees for such services, the Government of Tripura had repealed all the memoranda as mentioned in the writ petition for the purpose of regularization.

3. On the aforesaid facts, I have heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioners. Also heard Mr. Kohinoor N. Bhattacharyya, learned GA appearing for the respondents-State.

4. Mr. Roy Barman, learned senior counsel for the petitioners has submitted that the engagements of the petitioners should not be treated as illegal, but irregular since they had been engaged as DRWs against the available existing 69 vacancies created for newly established 4(four) districts in the State of Tripura. Mr. Roy Barman, learned senior counsel has strongly

argued that repealing of the schemes for regularization by the Government of Tripura was contrary to the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of *Secretary, State of Karnataka and Ors. vs. Umadevi (3) and Ors.*, reported in (2006)4 SCC 1. According to Mr. Roy Barman, learned senior counsel for the petitioners, in the case of *Umadevi(3)(supra)*, the Constitution Bench of the Hon'ble Supreme Court has categorically held that the process of regularization of irregularly appointed employees would have to be continued till the services of all such irregularly appointed employees are regularized.

5. The second fold of submission of Mr. Roy Barman, learned senior counsel is that even if the petitioners are not entitled to regularization, the petitioners are entitled to get equal pay as those of regularly appointed drivers under the Revenue Department in view of the principle of equal pay for equal work.

6. Opposing the submissions of learned senior counsel for the petitioners, Mr. Kohinoor N. Bhattacharyya, learned GA for the respondents- State has submitted that the petitioners have no right to claim regularization of their services even under the then schemes because considering their engagement in the year 2011, the petitioners have not completed 10(ten) years of service as on the date of repealing of the schemes. According to Mr. Bhattacharyya, learned GA, the appointments of the petitioners are not only irregular but also illegal. The appointments have been made at the whims and volitions of some of the authorities. Learned GA has further submitted that the Constitution Bench of the Hon'ble Supreme Court has strongly deprecated the concept of engagement of persons without following the constitutional schemes of equality enshrined in Articles 14 and 16 of the Constitution of India.

7. Drawing my attention to paragraph 7 of the counter affidavit, learned GA has submitted that the petitioners have been appointed on contract basis against the available vacancies of the department during the year 2011-2012 under exceptional circumstances.

8. I have considered the rival submissions of learned counsel appearing for the parties. I have gone through the documents enclosed/annexed to the writ petition as well as the counter affidavit.

9. Admittedly, no public employment notification i.e. advertisement was issued while engaging the petitioners under the respondents as DRWs. The Hon'ble Supreme Court in a catena of decisions repeatedly held that employment notification or advertisements must be published irrespective of the nature of the posts or nature of the appointment. Any appointment or engagement *dehors* the constitutional schemes or the statutory rules is illegal and not irregular. Furthermore, the petitioners had not completed 10(ten) years of service as required under the scheme for regularization formulated by the Government of Tripura till the repealing of the schemes in the year 2018 as noted here-in-above. There cannot be any quarrel to the principle that every government has a right to review its own policy considering the socio-economic scenario of the State.

10. In the instant case, the government reviewed the matter and found shortcomings in those schemes and intended to follow the established norms of employment as enshrined under Articles 14 and 16 of the Constitution of India. At para 43 of the case of *Umadevi(3)(supra)*, the Constitution Bench of Supreme Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.

11. It was also clarified in the same para that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

12. It was further held that it is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment do not acquire any right.

13. The Constitution Bench has further held that the High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless

the recruitment itself was made regularly and in terms of the constitutional scheme.

14. At para 45 of the case of *Umadevi(3)(supra)*, the Hon'ble Supreme Court held thus:

“45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible…….”

15. It is clear from the schemes that the Government of Tripura had continued the process of regularization under the realm of the schemes for long 10(ten) years depriving a large section of candidates/unemployed youths of the State. In the case of *Umadevi(3)(supra)*, the Constitution Bench has categorically held that there should not be any such appointment *dehors* the constitutional scheme after the date of pronouncement of the judgment. In *Umadevi(3)(supra)*, the Hon'ble Supreme Court directed the State Governments to formulate a scheme for regularization of services of those employees who have completed minimum 10(ten) years of service as on the date of the pronouncement of judgment in the *Umadevi(3)(supra)* or as on the cut-off date to be fixed by the respective State Governments.

16. In the instant case, the concerned authority has flouted not only the directions of the Constitution Bench of the Hon'ble Supreme Court but also the petitioners were appointed in flagrant violation of the established norms of public employment and *dehors* the constitutional schemes enshrined under Articles 14 and 16 of the Constitution of India not only after the date of pronouncement of the judgment in *Umadevi(3)(supra)* but also

after 7(seven) years of the cut-off date fixed by the Government of Tripura in the scheme for regularization.

17. Coming to the contention of Mr. Roy Barman, learned senior counsel for the petitioners that the petitioners are entitled to pay parity on the principle of equal pay for equal work, I am of the view that since the initial appointments of the petitioners were illegal and *dehors* the constitutional scheme of the employment, they cannot claim parity in pay scales as those of the regular drivers under the establishment of Revenue Department, Government of Tripura.

18. ***This is settled proposition of law that Article 14 provides for positive equality and not negative equality and is not meant to perpetuate illegality.*** Further Article 16(1) of the Constitution provides for “equal opportunity for all citizens in matters relating to employment or appointment to any office under the State”. Therefore, there should not be any quarrel that every appointment has to be made only after adhering to the process of advertisement and due process of selection. In *National Fertilizers Ltd. vs. Somveer Singh*, (2006)5 SCC 493, the Apex Court has held that issuance of advertisement for appointment is a pre-condition. To develop the law in this regard, the Hon’ble Supreme Court in *Renu vs. District and Sessions Judge, Tis-Hajari*, (2014)14 SCC 50: 2014 SCC OnLine SC 123: AIR 2014 SC 2175 has reasserted the said principle observing that any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular, but also illegal and cannot be sustained. Even, in the case of *Renu(supra)*, the Hon’ble Supreme Court has disapproved the appointment of an employee by the Hon’ble Chief Justice of a High Court exercising the power conferred upon him under Article 229 of the Constitution of India holding that “to say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any inquiry or following the principles of natural justice/Rules, etc. for as per Section 16 of the General Clauses Act, 1897 power to appoint includes power to remove/suspend/dismiss. (vide : *Pradyat Kumar Bose vs. High Court of Calcutta*, AIR 1956 SC 285 and *Chief Justice of A.P. vs. L.V.A. Dixitulu and Ors.*, AIR 1979 SC 193). [SCC p. 65 para 27].

(emphasis supplied)

19. At para 44 of the case of *Umadevi(3)(supra)*, the Constitution Bench of the Hon'ble Supreme Court has delineated the principle of equal pay for equal work in the manner as under:

“44. The concept of “equal pay for equal work” is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity.....”

20. As a corollary, in my opinion, since the initial appointments of the petitioners were illegal and *dehors* the constitutional scheme of employment, they are not entitled to claim pay parity as those of the employees/drivers who have been appointed on regular basis following the established norms of public employment.

21. In view of this, I repel the submission of learned senior counsel appearing for the petitioners. In the case of *Umadevi(3)(supra)*, at para 48 it is clearly held that those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant recruitment rules. It was further held that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. If such employees are allowed to be absorbed or directed to be paid regular scales of pay, it would amount to treating the unequals as equals.

22. *Here, the petitioners are the backdoor entrants. So, they cannot complain discrimination as they simply are not equal to those of the employees appointed through regular selection process against the regular sanctioned vacant posts. The appointments made dehors the established norms of public employment and in violation of the statutory rules does not confer any right upon any person for similar treatment, and an order made*

in favour of a person in violation of the prescribed statutory procedure cannot form a legal basis for any other person to claim pay parity.

(emphasis supplied)

23. That apart, in my opinion, no such scheme which has been made for giving some concession to some of the employees or a class of employees who have been appointed irregularly without following constitutional scheme of public employment should be allowed to perpetuate for an endless period. It must be stopped within a reasonable period to open the doors providing opportunity to thousands of job aspirants who have been waiting for several years to participate in the competition for selection to government posts.

24. In the instant case, the government has continued the schemes for appointment of irregularly appointed employees for long 10(ten) years. In my opinion, this period is enough and it shall not be continued for further time.

25. Mr. Roy Barman, learned senior counsel for the petitioners has referred to the decisions of the Hon'ble Supreme Court in *Narendra Kumar Tiwari and ors. vs. State of Jharkhand and ors.*, reported in (2018) 8 SCC 238 and *Nihal Singh & Ors. vs. State of Punjab & Ors.*, reported in (2013)14 SCC 65, where two Judge Benches of Supreme Court held differently and on the stake of those decisions, Mr. Roy Barman, learned senior counsel has urged this Court to pass an order to regularize the petitioners.

26. I am unable to accept the submission of learned senior counsel. At para 54 of the case of *Umadevi(3)(supra)*, the Constitutional Bench of the Hon'ble Supreme Court has categorically held that:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

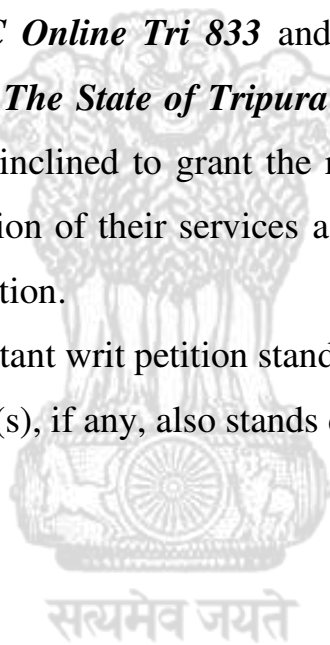
27. In view of this clear direction and dictum of the Constitution Bench of the Hon'ble Supreme Court, this Court would refrain itself to take a contrary view and by-pass the ratio and the directions passed in *Umadevi(3)(supra)* unless and until the said judgment is overruled by a Constitution Bench. In the case of *State of Karnataka vs. M.L. Kesari*, reported in (2010) 9 SCC 247, the Hon'ble Supreme Court reiterated the

principles settled in the case of *Umadevi(3)(supra)* and deprecated the decisions which run counter to *Umadevi(3)(supra)* and *dehors* the constitutional scheme as enshrined under Articles 14 and 16 of the Constitution of India. In the opinion of this Court, any direction of regularization ignoring the directions and the ratio laid down in *Umadevi(3)(supra)* would render the judgment of the Constitution Bench otiose.

28. In the light of above, keeping in mind the ratio laid down in *Umadevi(3)(supra)* and the subsequent decisions of the Hon'ble Supreme Court in *M.L. Kesari (supra)* and *Renu(supra)* and in view of the decision passed by a Division bench of this Court in *State of Tripura vs. Suprava Debnath*, reported in 2023 SCC Online Tri 833 and by this Court in *Sri Satya Ranjan Dey and Anr. vs. The State of Tripura and 4 Ors.* passed in WP(C) No.5 of 2023, I am not inclined to grant the reliefs claimed by the petitioners herein for regularization of their services as well as the claim of pay parity in the present writ petition.

Accordingly, the instant writ petition stands dismissed.

Pending application(s), if any, also stands dismissed.



JUDGE

Snigdha

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