

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WA. No.159 of 2021

The State of Tripura and 2 Others

.....Appellants

_V_E_R_S_U_S_

Sri Ranajit Dey

.....Respondent

For Appellant(s)	:	Mr. D. Bhattacharjee, G.A. Mr. Soumyadeep Saha, Advocate.
For Respondent(s)	:	Mr. Raju Datta, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

_F_I_N_A_L_O_R_D_E_R_

21/06/2023

Heard Mr. D. Bhattacharjee, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the appellants also heard Mr. Raju Datta, learned counsel appearing for the respondent.

[2] This appeal has been filed under Article-226 of the Constitution of India read with Rule-2 Chapter-VA of the Gauhati High Court Rules, as adopted by this Court against the order dated 09.02.2021 passed by the learned Single Judge in WP(C) No.161 of 2018.

[3] The facts in brief is that the petitioner, the respondent herein, being qualified for the post of driver had applied for the post and was duly selected and appointed to the post of Laboratory Technician vide order of appointment dated 11.08.2011. The said appointment was made on contract basis for a period up to 10.07.2012 initially but, subsequently the appointment was continued year after year. Suddenly, the respondent of the writ petition by issuing notice dated 04.09.2017 terminated the service of the petitioner w.e.f.

3rd October 2017. Thereafter, the respondent petitioner filed writ petition before this Court and the Court allowed the writ petition with certain direction.

[4] Hence, against the learned Single Judge's order dated 09.02.2021, the present appeal has been filed.

[5] Learned G.A. appearing for the appellant herein, has submitted that the respondent herein was the Laboratory Technician and he was appointed to the post of Laboratory Technician vide order dated 11.08.2011. The said appointment was made on contract basis for a period up to 11.08.2011 to 03.09.2017. The nature of the service of the respondent-petitioner is contractual engagement based on satisfactory performance of the respondent-petitioner. The service of the respondent-petitioner is under central government scheme namely, National Rural Health Mission or Mobile Medical Unit (MMU).

[6] Thereafter, vide notice dated 04.09.2017 issued by the Chairman of the Executive Committee, District Health & Family Welfare (H&FW) Society has terminated the respondent-petitioner by giving one month notice as because Government of India has not approved the MMU component in the ROP & has not sanctioned any fund for it.

[7] The respondent-petitioner filed WP(C) No. 161 of 2018 by challenging the notice dated 04.09.2017 issued by the Chairman of the Executive Committee, District H&FW Society. Subsequently, this Court by order dated 09.02.2021 disposed of the writ petition with the following directions. For the purpose of reference, the same is extracted hereinbelow:

“Having confronted with these facts, this Court would direct the respondents to consider the engagement of the writ petition of WP(C) No.161 of 2018 as the Laboratory Technician under District Health and Family Welfare Society in view of the law enunciated by the Apex Court in Mohd. Abdul Kadir (Supra). Such consideration shall be made within a period of three months from the date when a copy of this order will be made available to the respondents.”

[8] It has been submitted that the learned Single Judge failed to consider that the service of the petitioner of the writ petition is purely contractual engagement. The nature of the service of the petitioner is under the central government scheme with subject to condonation that, if the scheme is stopped their service will be automatically terminated by giving one month notice. The learned Judge has failed to consider that the government of India has not approved the MMU component in the ROP and has not sanctioned any fund for it and the detailed status of the MMU Scheme under NHM, Govt. of Tripura.

[9] The MMU scheme under National Rural Health Mission (NRHM) was launched by Ministry of Healthy & Family Welfare, Govt. of India for implementation across States/Union Territories to supplement health care services in un-served and underserved areas to fill up void of health care infrastructure, diagnostics, manpower and medicines. Under the scheme, 4 MMUs comprising three vehicles (Essential Facility, Diagnostic Facility & Medical Team carrying vehicles) each were allotted for four erstwhile districts of the State during FY 2007-2008. Capital cost fully supported by Government of India.

[10] One number of MMU for the West District, Tripura (erstwhile) and area of coverage of services after bifurcation of districts during January, 2012 is West Tripura, Khowai and Sepahijala and base location of MMU is Agartala. One number of MMU for the South District Tripura (erstwhile) and area of coverage of services after bifurcation of districts during January, 2012 is South Tripura and Gomati and base location of MMU is Udaipur. One number of MMU for the North District, Tripura (erstwhile) and area of coverage of services after bifurcation of districts during January, 2012 is North Tripura and Unakoti and base location of MMU is Kailashahar and another number of MMU for the Dhalai District Tripura (erstwhile) and area of coverage of services after bifurcation of districts during January, 2012 is Dhalai and base location of MMU is Ambassa.

[11] It has been further contended that the operation of the MMUs funds are also supported by the government of India under NRHM to meet expenditure incurred towards, manpower (driver and paramedical staff) POL, vehicle maintenance, medicines and reagents from FY 2008-09 onwards. During FY 2015-16 i.e. after 8 years of operationalisation, it has been observed by the government of India in the record on proceeding of FY 2015-16 that the State needs to condemn non-functional MMUs following appropriate procedures based at Udaipur (Gomati district), Kailashahar (Unakoti district) and Ambassa (Dhalai district).

[12] Subsequently, during FY 2016-17, State's pursuance to make the MMUs functional and continuing the project under NHM was supported by the Government of India for all four districts namely, West Tripura, Gomati, Unakoti and Dhalai. In the supplementary record on proceeding for the FY 2017-18, it was considered for approval for two districts i.e. Gomati and Dhalai under NHM. Operationalisation of MMU in West Tripura and Unakoti districts discontinued as no fund was approved and similarly, in the record on proceeding for FY 2018-19 and FY 2019-20 approvals were accorded for the two districts of Gomati and Dhalai as the MMU vehicles were functional. From FY 2020-21 onwards, the MMU scheme is non-operational in any districts hence, no fund approved under NHM for the scheme.

[13] In view of above and after hearing the learned counsel appearing for the parties, this Court is of the view that if the temporary or ad-hoc engagement or appointment is in connection with a particular project or a specific scheme, the ad-hoc or temporary service of the persons employed under the project or scheme would come to an end, on completion/closure/cessation of the said project or the scheme. The fact that the scheme had been in operation for some decades or that the employee concerned has continued on ad-hoc basis for one or two decades would not entitle the employee to seek permanency or regularization. Even if the posts are sanctioned with reference to the scheme, such sanction is for ad-hoc or

temporary posts, coterminous with the scheme and not of permanent nature. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularization in some other project or service.

[14] The contention made by the learned counsel that while discontinuing the petitioner from service by order dated 04.09.2017 and subsequently initiated for fresh recruitment, is a colourable exercise by the government which cannot be accepted. It is seen from the record that no right has been accrued upon the petitioner to continue for an indefinite period even after the expiry of the scheme by efflux of time or cessation and issuing fresh proceeding for recruitment, do not restrain the petitioner from applying afresh. The subsequent proceeding seeking an appointment is not the continuity of service. The petitioner cannot claim it as a matter of right or the contractual obligation in the given case.

[15] In that view of the matter, the present appeal stands allowed. Consequently, the order dated 09.02.2021 passed in WP(C) No.161 of 2018 stands set aside. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

JUDGE

JUDGE

A. Ghosh

**ANJAN
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