

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.498 of 2023

- 1. Prasenjit Banerjee** (age- 50 years)
S/O Sri Sukhamoy Banerjee, resident of Banerjee Para,
PO: Agartala, Pin- 799001, District- West Tripura.
- 2. Smt. Tandra Shil** (age 49 years)
W/O Sri Swapan Roy, resident of Nandan Nagar,
PO- Nandan Nagar, District- West Tripura.
- 3. Smt. Mitali Das**, (age-47 years)
W/O Sri Narayan Rudra Paul,
resident of Lanka Mura (Near Panchayat).
- 4. Smt. Jhutan Debnath** (age- 43 years)
W/O Sri Samiran Majumder, resident of Shiv Nagar, PO- Agartala,
College, Pin- 799004, District- West Tripura.
- 5. Smt. Arati Datta** (age- 47 years)
W/O Sri Asish Das, resident of Town Indra Nagar, Dhaleswar, Road
No.3, PO- Dhaleswar, Pin-799007.
- 6. Smt. Khela Dey** (age- 48 years)
W/O Sri Samir Datta, resident of Vill.- Sidhai, PO-Kalagachia,
Mohanpur, District- West Tripura.
- 7. Sri Soumitra Chakraborty** (age- 37 years)
S/O Sri Sushen Chakraborti, resident of Indranagar, PO-Indranagar,
Vill.-Indranagar, District- West Tripura.
- 8. Smt. Uma Deb (Roy)** (age- 47 years)
W/O Sri Subrata Roy, resident of East Dukli, PO- East Pratapgarh,
PS- Amtali, District- West Tripura.

....Petitioner(s)

Versus

- 1. The State of Tripura**
to be represented by the Secretary, Health Services,
Govt. of Tripura, New Secretariat Complex,
PO- Secretariat, West Tripura, Pin-799010,
Agartala District- West Tripura.
- 2. The Secretary,**
Finance Department, Government of Tripura,
New Secretariat Complex,
PO- Secretariat, Pin- 799010,
Agartala, District- West Tripura
- 3. The Director of Health Services**
Government of Tripura, PN Complex,
Gurkhabasti, PO- Kunjaban, Pin-799006,
District- West Tripura.

....Respondent(s)

For the Petitioner(s)	:	Mr. C.S. Sinha, Advocate
For the Respondent(s)	:	None
Date of hearing and Delivery of Judgment & Order	:	14/09/2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

Heard Mr. C.S. Sinha, learned counsel appearing for the petitioners. None appears for the respondents.

2. By way of filing the instant writ petition under Article 226 of the Constitution of India, the petitioners have urged this Court for directing the respondents to consider regularization of service of the petitioners from the dates of their joining in the service with all consequential benefits.

3. Put it shortly, it is the case of the petitioners that they were engaged as Civil Defence Volunteers in the office of the Director of Civil Defence(DM & Collector) on different dates starting from 1995 to 2001 and since their engagement they were rendering their service.

4. It is also the case of the petitioners that the Joint Secretary to the Finance Department, Government of Tripura by a communication dated 26.06.2012 addressed to the Director of Civil Defence(DM & Collector, West Tripura District) and the Director of Health Service had informed that the Finance Department in principle agreed to consider the representation of the petitioners treating them as DRW and requested the Directors of Civil Defence and Health Services to send proposal of those Civil Defence Volunteers who were enrolled as C.D. Volunteers upto 31.03.2003 to the Finance Department for taking further necessary steps. Extract of the communication reads thus:-

“Subject:- Regarding representation of Civil Defense Volunteers for declaration of Civil Defence Volunteers as Casual Worker.

Sir,

The undersigned is directed to inform that Finance Department in principle agreeable to consider C.D. Volunteers as DRW, who were enrolled as CDE Volunteers up to 31-02-2003, and who were presently deployed at AGMC & GBP Hospital & IGM Hospitals, Agartala under Health Department and at the State Emergency Operation Centre(previously State Control Room), Agartala Circuit House(Protocol Cell) and District Control Room under Revenue Department.

2. The undersigned is also directed to request the concerned department to send proposal, for taking those C D Volunteers who were enrolled as C D Volunteers up to 31-03-2003 only and presently deployed under their Department, to Finance Department for further order.”

5. Thereafter, the Director of Health Services, Government of Tripura vide order dated 07.12.2012 engaged the petitioners as DRW(Group-D) purely on temporary basis from the dates of their joining.

6. It is the further case of the petitioners that in the year 2016, the Government of Tripura in the Health & Family Welfare Department by a communication dated 11.05.2016 had taken a policy decision that the casual workers who are having qualification of Madhyamik passed and above shall be treated as Casual Worker(Group-C) and those who do not have qualification of Madhyamik passed, shall be treated as Casual Worker(Group-D).

7. Pursuant thereto, the Under Secretary to the Government of Tripura, Health & Family Welfare Department by issuing a memorandum dated 27.01.2017 converted the job status of the petitioners from DRW(Group-D) to DRW(Group-C). Extract of the Memo. dated 27.01.2017 is reproduced hereunder for convenience:

“In pursuance of the concurrence vide U.O. No.1676/FIN(G)/2016 dated 30.12.2016 of the Finance Department, Government of Tripura, the undersigned is directed to order that the job status of the following 24(twenty-four) Daily Rated Worker(DRW) who had acquired Madhyamik passed qualification as on or before the date of engagement is converted from DRW(Group-D) to DRW(Group-C) and entitled to existing wages rate of DRW(Group-C) subject to revision of wages rate from time to time. This will take immediate effect.”

Noticeably, in the said Memo. dated 27.01.2017, the dates of engagement of the petitioners were shown as 07.12.2012 and 12.11.2013.

8. The bone of contention of the petitioners is that since the Finance Department, Government of Tripura by issuing communication dated 26.06.2012 had agreed in principle to consider the Civil Defence Volunteers as DRWs, who were enrolled as C.D. Volunteers upto 31.03.2003, so they are entitled to be regularized from the next date of completion of ten years from the dates of their engagement, in terms of Memo. dated 31.07.2018. It would be apposite to reproduce the Memo dated 31.07.2018 issued by the Finance Department, Government of Tripura, for convenience, in *extenso*:

"GOVERNMENT OF TRIPURA DEPARTMENT OF FINANCE Dated:- the 31 st July, 2018 MEMORANDUM Subject: Policy decision of regularization of service of DRWs/Casual/Contingent/PTW etc. Workers in Government Establishment and State PSUs and Autonomous bodies including AMC/NPS. Finance Department has issued instructions from time to time as given for regularization of service of DRWs/Casual/Contingent/PTW etc. workers on the date completion of 17 years/15 years/10 years of services. The memorandums are as follows:		
Sl.No.	Memo No.	Issues
1	No.F.10(2)-Fin(G)/05, Dated 04.03.2006	Regularization of DRWs/Contingent etc. workers on completion of 17 years of service as on 31.03.2005 allowing effect from 01.02.2006
2	No.F.10(2)-Fin(G)/05, Dated 22.02.2007	Regularization of DRWs/Casual/Contingent etc. workers on completion of 15 years of service as on 31.03.2006 allowing effect from 01.01.2007
3	No.F.10(2)-Fin(G)/08(part), Dated 01.09.2008	Regularization of DRWs/Casual/Contingent etc. workers on completion of 10 years of service as on 31.03.2008 allowing effect from 01.07.2008
4	No.F.10(2)-Fin(G)/08(part), Dated 21.01.2009	Regularization of DRWs/Casual/Contingent etc. workers from the next date of completion of 10 years of service
5	No.F.34(3)-Fin(G)/2012, Dated 04.09.2012	Regularization of DRWs/Casual/Contingent etc. workers working in State PSUs and Autonomous bodies including AMC/NPs on completion of 10 years of service
6	No.F.10(12)-Fin(G)/7(part-1), Dated 07.11.2012	Engagement of PTWs etc. as DRWs (Group-D) working in different Departments of the Government for 2/3/4 hours who were engaged on or prior to 31.03.2003 and have completed 10 years of service w.e.f. 01.12.2012

2. Recently, the matter has been further reviewed it has been observed that there are some shortcoming in these instructions for regularization of the service of DRWs/Casual/contingent staff affecting institutional efficiency and individual productivity due to different reasons.
3. With a view to ensure transparent public employment policy for engagement of staff for such services, all the memorandums as mentioned above is repealed.
4. All the concerned are required to ensure the implementation of above decision with immediate effect.
Under Secretary to
Government of Tripura
Finance Department"

9. In the aforementioned background facts and circumstances, Mr. Sinha, learned counsel for the petitioners has urged this Court for directing the respondents to regularize the service of the petitioners as DRW(Group-C)

from the dates of their joining in the post with all consequential service benefits.

10. In the context of the case, it will be worthy to take note of the decision of the Constitution Bench of the Supreme Court in *State of Karnataka and Ors. Vs. Uma Devi (3), (2006) 4 SCC 1* whereby and whereunder directed the Central and State Governments to formulate schemes for regularization of the services of those employees who were engaged/appointed irregularly, but not illegally and further held as under:-

“43. In M.P. State Coop. Bank Ltd. Bhopal vs Nanuram Yadav and others, reported in (2007) 8 SCC 264, the Hon’ble Supreme Court held that: [SCC pp. 274, 275, Para 24]

“24) It is clear that in the matter of public appointments, the following principles are to be followed:

1) The appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Arts. 14 & 16 of the Constitution of India.

2) Regularisation cannot be a mode of appointment.

3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.

4) Those who come by back door should go through that door.

5) No regularization is permissible in exercise of the statutory power conferred under Art. 162 of the Constitution of India if the appointments have been made in contravention of the statutory Rules.

6) The Court should not exercise its jurisdiction on misplaced sympathy.

7) If the mischief played so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”

44. Again, the Hon’ble Supreme Court in *Vibhuti Shankar Pandey vs. State of Madhya Pradesh & Ors.*, reported in *(2023)3 SCC 639* had set aside the order of learned Single Judge of Madhya Pradesh High Court directing the State to regularize the service of the petitioner who was appointed on daily rated basis under a project and not against any sanctioned post as it was noticed that the initial appointment of the petitioner/appellant was not made by the competent authority

and the appointment was not made against a sanctioned post. The Hon'ble Supreme Court in **Vibhuti Shankar(supra)** has reiterated the principle laid down in **Umadevi (supra)**. [SCC p 640 para 4]. As I said earlier, in the case in hand, the initial appointment of the petitioners was not made by the competent authority of the Corporation and there is no evidence that they were appointed against sanctioned vacant post.

45. In a recent decision, the Hon'ble Supreme Court in **Government of Tamil Nadu & Anr. vs. Tamil Nadu Makkal Nala Paniyalargal & Ors., 2023 SCC Online SC 393**, relying upon the judgments of the Supreme Court in **Chander Hass(supra)** and **Maharashtra State Road Transport Corporation(supra)** reiterated the principles that the creation of posts is not within the domain of judicial functions and it pertains to the executive or legislature. In the case of **Government of Tamil Nadu(supra)**, the Hon'ble Supreme Court has categorically held that in absence of sanctioned posts, the State cannot be compelled to create the post and absorb the persons who are continuing in service of the State.”

11. The Supreme Court in **State of M.P. Vs. Lalit Kumar Verma, (2007) 1 SCC 575** has made a distinction between “irregular appointment” and “illegal appointment” as under:-

“12. The question which, thus, arises for consideration, would be : is there any distinction between “irregular appointment” and “illegal appointment”? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is “State” within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to.”

12. Again, in *Siraj Ahmed Vs. State of U.P.* by judgment dated 13.12.2019 passed in Civil Appeal No.9412/2019, the Supreme Court reiterated the same principle and held as under:-

“12. It can thus be seen that this Court has held that the distinction between irregular appointment and illegal appointment is clear. It has been held that in the event appointment is made in total disregard to the constitutional scheme and the recruitment rules framed by the employer, where the employer is “State” within the meaning of Article 12 of the Constitution of India, the recruitment will be illegal one. It has, however, been held that where although, substantial compliance with the constitutional scheme, as also the Rules have been made, the appointment would become irregular inasmuch as some provisions of some rules have been adhered to.

13. Subsequently, another Bench of this Court in State of Karnataka v. M.L. Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] also had an occasion to consider the issue. The Court observed thus: (SCCp. 250, para 7)

“7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3) [State of Karnataka v. Umadevi(3), (2006) 4 SCC 12006 SCC(L&S) 753], if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against

sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

14. This court held in M. L. Kesari Case [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] that where the appointment are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointment will be considered to be illegal. However, when the person employed possessed the prescribed qualifications and is working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

13. Thus, the upshot of the matter is as to whether appointment/engagement of the petitioners was in consonance with the mandate of Articles 14 and 16 as well as in the spirit of the law laid down in *Uma Devi (3)(supra)* and subsequent decision cited here-in-above.

14. In the instant case, after perusal of the documents annexed to the writ petition, I find that the petitioners have failed to justify that they had been appointed against any regular sanctioned vacant posts. It is revealed that they have been appointed under a scheme only and their services were discontinued thereafter by issuing a corrigendum which was, however, withdrawn later on. There is no evidence to show that the petitioners had possessed the requisite qualifications for holding the post they have sought for. Moreso, the petitioners had been appointed illegally without following the procedure prevalent at that time *vis a vis de hors* the constitutional schemes of public employment.

15. True it is, the petitioners’ right to claim regularisation was ripened during the existence of the schemes, that is, prior to 31.07.2018 when those schemes were repealed by the Government of Tripura after continuation

of long 10(ten) years. This Court and other Co-ordinate Benches had passed orders directing regularization of many DRW/Casual/Contingent workers without taking into account the various parameters and conditionalities mentioned in the schemes as well as in total disregard to the spirit of law laid down in *Uma Devi (3)* (Supra).¹ As such, those judgments and orders cannot be treated as precedent. Furthermore, in *Uma Devi (3)* (Supra), the Apex Court strongly deprecated the idea of such irregular appointments and asked the Central and State Governments to adhere to the constitutional schemes of public employment as enshrined in Articles 14 and 16 of the Constitution of India in Government jobs, however, permitted the Governments to regularize the services of such irregularly appointed employees as “one-time measure” who had completed 10(ten) years of service or had been continuing in service for more than 10(ten) years without the intervention of orders of the Court or Tribunals in duly sanctioned posts. Here, it would be apposite to refer Para 53 of the judgment, which is reproduced hereunder:-

“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

¹ *[underlined for emphasis]*

*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.”*

16. Moreso, the process of regularization undertaken by the Governments in compliance with the directions passed in the case of ***Uma Devi (3)*** (supra) is a kind of special drive to regularize irregularly appointed Daily Rated Workers/Contingent Workers/Casual workers, etc under different schemes.

17. In the opinion of this Court, this special drive cannot be allowed to continue for years together, which, needless to say, will defeat the Constitutional schemes of public employment. In the process of regularization under different schemes for long 10(ten) years, thousands of eligible job aspirants have already been deprived of public employment through open competition, and if such process is permitted to be continued in the years to come, then, it will demolish the basic features of equality clauses as enshrined in Articles 14 and 16 of the Constitution of India, which will be enough to ultimately create unrest in the matter of public employment. Obviously, this was not the object of the case of ***Uma Devi (3)***(supra). It is pertinent to mention herein that the State of Tripura has continued with those special schemes for long 10(ten) years till 31.07.2018. It must be stopped, so that thousands and thousands of job aspirants can avail the opportunity of public employment within the framework of the Constitution.

18. In my considered view, the petitioners being the entrants through back door, if desirous to get the benefit of the schemes which were framed for the purpose of regularisation of irregularly appointed employees “as one time measure”, had to raise their claims within the realm and existence of the scheme, and not after the schemes are repealed.

19. There is yet another aspect, which is essential to notice in the facts of the case in hand. The petitioners were appointed on different dates between 1995 and 2001. Only in the year 2023 suddenly they woke up from the slumber to claim regularisation after decades. Law will not come to the rescue of those who are negligent and careless. It is well-recognized principle of law that those who sleep over their rights and allow their rights to be obliterated and that of others to be ripened into full fledged rights would not be helped by the Courts in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India. The Courts of Law will help those who help themselves. The above view of mine is fortified by a decision of the Supreme Court in *State of Orissa Vs. Pyarimohan Samantaray and Ors.* (1977) 3 SCC 396 where their Lordships had observed that:-

“6. It would thus appear that there is justification for the argument of the Solicitor General that even though a cause of action arose to the petitioner as far back as 1962, on the rejection of his representation on November 9, 1962, he allowed some eleven years to go by before filing the writ petition. There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in Rabindra Nath Bose v. Union of India, the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the meantime a number of other appointments were also made to the Indian Administrative Service by promotion from the State Civil Service, some of the officers received promotions to higher posts in that service and may even have retired.

Those who continued to serve could justifiably think that as there was no challenge to their appointments within the period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. The High Court therefore erred in rejecting the argument that the writ petition should be dismissed because of the inordinate and unexplained delay even though it was “strenuously” urged for its consideration on behalf of the Government of India”

20. In this context of the case, I may also gainfully refer the case reported in ***AIR 1987 SC 251, State of M. P. v. Nand Lal Jaiswal*** where it was held that *“It is well settled that the power of the High Court to issue an appropriate writ under Art. 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties.”*

21. Following the aforesaid principles, it would not be wrong to hold that the delayed approach and lackadaisical attitude of the petitioners would not entail them to get the benefit of non-existent schemes. In the opinion of this Court, this petition is absolutely barred by delay and laches. That apart to re-iterate, the nature of appointment of the petitioners is not only irregular but illegal.

22. This Court while dealing with similar issue 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 dismissed the writ petition.

23. Before I conclude, I should say that we must not forget, the Hon'ble Supreme Court in a catena of decisions has categorically iterated and ruled that regularisation of irregular or illegally appointed persons cannot become an alternative mode of recruitment to public service. So, after continuation of scheme for regularisation for long 10(ten) years and with its repeal on 31.07.2018, in my opinion, the Government should not be asked to reopen the scheme and to continue the same for uncertain period because we cannot close our eyes to the fact that thousands of competent job aspirants are waiting in the queue for participating in the fair competition.

24. Like WP(C) 376/2023, I do not find any merit in the present writ petition and the same stands dismissed.

JUDGE

SANJAY
GHOSH
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by SANJAY
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Rohit