

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.747 of 2022**

Smt. Jyostna Shil, W/o: Sri Moti Lal Shil, resident of Purba Pratapgarh, Shil Tilla, P.O: East Pratapgarh-799004, P.S. East Agartala, District- West Tripura

.....Petitioner(s)

-VERSUS-

- 1. The State of Tripura**, to be represented by the Principal Secretary, Department of Agriculture & Farmers' Welfare, Government of Tripura, P.O. Kunjaban, P.S.: New Capital Complex, Agartala, District- West Tripura, PIN: 799006.
- 2. The Principal Secretary**, Department of Finance, Government of Tripura, P.O. Kunjaban, P.S.: New Capital Complex, Agartala, District- West Tripura, PIN: 799006.
- 3. The Director of Agriculture & Farmer's Welfare**, Krishi Bhawan, Government of Tripura, P.O. Agartala-799001, P.S. West Agartala, District- West Tripura.
- 4. The Superintendent of Agriculture**, Dukli, Government of Tripura, P.O. Madhuban (Dukli)-799003, P.S. Amtali, District- West Tripura.

.....Respondent(s)

For Petitioner(s)	:	Mr. A. Bhaumik, Advocate
For Respondent(s)	:	Mr. D. Sarma, Addl. GA
Date of hearing & delivery of judgment & Order	:	11.12.2023
Whether fit for reporting	:	Yes/No

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

By way of filing the present writ petition, the petitioner has sought for regularization of her service under the respondents in pursuance of the scheme formulated in the year 2009.

2. Shortly stated, the petitioner herein initially was engaged as Cleaner on contract basis w.e.f. 01.03.2000, which will be evident from the communication dated 28.02.2000 issued by the Director of Agriculture, Government of Tripura(Annexure-1 to the writ petition). Thereafter, she had been shown as Daily Rated Worker (DRW) from the date of her engagement as Cleaner, which will be evident from the Memorandum dated 19.08.2004 (Annexure 3 to the writ petition) issued by the Director of Agriculture, Government of Tripura, with the concurrence of the Finance Department, Government of Tripura. Since 19.08.2004 the petitioner had been

discharging her duties for eight hours in a day as Cleaner (DRW) under the respondents. It is the case of the petitioner that she had completed her ten years of service as DRW as on 19.08.2014. The petitioner has relied upon the scheme for regularization formulated by the Government of Tripura vide Memorandum dated 21.01.2009 (Annexure 7 to the writ petition) issued by the Finance Department. It is the further case of the petitioner that she was entitled to be engaged as DRW w.e.f. 01.12.2012 as per Memorandum dated 07.11.2012 (Annexure-5 to the writ petition) issued by the Finance Department, Government of Tripura. From the Memorandum dated 07.11.2012, it appears that by that memorandum it was decided that all Part Time Workers (PTWs) working in different departments of Government for two hours/three hours/four hours and who were engaged on or prior to 31.03.2003 and had completed ten years of service would be engaged as Daily Rated Workers (DRWs), Group-D, w.e.f. 01.12.2012 with certain conditions, as enumerated in the aforesaid Memorandum.

3. On the aforesaid facts, I have heard Mr. A. Bhaumik, learned counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Additional GA appearing for the respondents-State.

4. Mr. Bhaumik, learned counsel for the petitioner at the very outset has submitted that the petitioner is entitled to be regularized in service since she had been initially engaged as Cleaner on contract basis on fixed wages w.e.f. 01.03.2000 and thereafter from 19.08.2004 in terms of the Memo dated 19.08.2004 she had been discharging her duties for eight hours as Cleaner under the respondents. Mr. Bhowmik, learned counsel has further submitted that as she was discharging her duties for eight hours from 19.08.2004 on her completion of ten years of service w.e.f. 19.08.2004 till 18.08.2014, she was entitled to be regularized in view of the schemes formulated by the Government of Tripura for regularization of DRWs/PTWs/Casual workers etc. Mr. Bhowmik, learned counsel has also urged that the petitioner is entitled to receive all service benefits including arrears of financial benefits arising out of her regularization.

5. Opposing the submissions of learned counsel for the petitioner, Mr. D. Sarma, learned Additional GA for the respondents-State has submitted that the petitioner is not entitled to be regularized since she was not engaged against any regular vacant posts. She was only engaged as

Cleaner for discharging two hours duty without following the established procedure of selection. According to Mr. Sarma, learned Additional GA, the appointment of the petitioner is not only irregular but also illegal. The appointment has been made at the whims and volitions of some of the authorities. Learned Additional GA has also submitted that there is no document to show that the petitioner has been considered as DRW by the department and the letter dated 19.08.2004 (Annexure 3 to the writ petition) is a forged one and has been done intentionally. Learned Additional GA has also submitted that Annexure-4 to the writ petition is simply a proposal sent to the Directorate for updating the Employees' profile regarding Memorandum dated 07.11.2012 and so the said document is not a valid official document. Learned Additional 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.

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

7. Admittedly, no public employment notification i.e. advertisement was issued while engaging the petitioner under the respondents as DRW. 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 are illegal and not irregular. 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.

8. It is not disputed that the Government reviewed the earlier schemes 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 *Secretary, State of Karnataka and others vs. Uma Devi (3) and others, reported in (2006) 4 SCC 1*, the Constitution Bench of the Hon'ble 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 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.

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/her appointment, he/she 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.

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.

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.

9. 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.....”

10. It is clear from the schemes formulated by the Government 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 also 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.

11. 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 petitioner was 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.

12. As a corollary, in my opinion, since the initial appointment of the petitioner was illegal and *dehors* the constitutional scheme of employment, she is not entitled to claim financial benefits as those of the employees/Cleaners who have been appointed on regular basis following the established norms of public employment. In view of this, I repel the submission of learned counsel appearing for the petitioner.

13. 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.

14. *Here, the petitioner is the backdoor entrant. So, she cannot complain discrimination as she simply is 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)

15. 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.

16. In the instant case, the government 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.

17. 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 to 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.

18. 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 & ors. 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 petitioner herein for regularization of her service as well as service benefits including arrears in the present writ petition.

Accordingly, the instant writ petition stands dismissed.

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

JUDGE



SAIKAT KAR

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