

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.769 of 2022

1. **Smt. Mita Bhattacharjee,**
W/o: Sujit Chakraborty,
R/o: Arjya Samaj Para, Belonia, P.O-Belonia,
Pin: 799155, Age-33 years.
2. **Smt. Sankhamita Paul,**
W/o: Madhab Dhar, R/o:Kazirgaon, Kailasahar,
P.O: Kailasahar, Pin: 799277, Age: 34 years.
3. **Sri Souvik Saha,**
S/o: Bijoy Kumar Saha, R/o: No.2 Fulkumari,
Poultry Road, Udaipur, P.O-Radha Kishorepur,Gomati,
Tripura, Pin: 799120, Age-32 years.
4. **Sri Sujay Dey,**
S/o: Samiran Dey, R/o: Vill: Kajirgaon, P.O: Kailasahar,
Dist: Unakoti Tripura, P.S: Kailasahar, Pin: 799277,
Age:36 years.
5. **Sri Rahul Nath,**
S/o-Rajendra Kumar Nath, R/o:Vill+P.O: Bhagabannagar,
Kailasahar, Tripura(North), Pin:799279, Age:40 years.
6. **Sri Rajib Majumder,**
S/o:Lt. Raimohan Majumder, R/o: Vill: Kacharghat,
Near Netaji Vidyapith English Medium School,
P.O: Kailasahar, P.S: Kailasahar, Unakoti, Tripura(North),
Pin: 799277, Age:44 years.
7. **Smt. Anindita Datta,**
W/o: Amar Mallik, R/o: Vill: Sarashima, P.O: Sarashima,
Tripura(South), Pin:799155, Age: 40 years.
8. **Md. Ariful Haque,**
S/o: Md Masuk Ali, R/o: Yeazekhowra, P.O: Baburbazar,
P.S:Irani, Kailasahar, Pin: 799281, Age: 42 years.
9. **Sri Ajoy Das,**
S/o: Dhananjoy Das, R/o: Vill: North Nayapara Road-Pragati,
P.O: Dharmanagar, North Tripura, Pin: 799250, Age: 37 years.
10. **Sri Sudip Das,**
S/o: Lt. Samir Ranjan Das, R/o: Vill: North Chandrapur,
P.O: South Chandrapur, P.S: R.K. Pur, Udaipur, Gomati,
Tripura, Pin: 799013, Age: 41 years.
11. **Smt. Mousumi Debnath,**
D/o: Sri Samir Debnath, R/o: Vill: South Jolaibari, P.O:
Madhya Pilak, P.S: Baikhora, Pin: 799141, Age: 31 years.
12. **Sri Dhananjoy Biswas,**
S/o: Laxmikanta Biswas, R/o: Vill: South Bhuratali,
P.O: Fulchari, Sabroom, South Tripura, Pin: 799143,
Age: 34 years.
13. **Sri Rajesh Bhowmik,**
S/o: Haradhan Bhowmik, R/o: Vill: South Murapara,
P.O: Murapara, Udaipur, Gomati, Pin: 799013, Age:35 years.
14. **Sri Prasenjit Nama,**

S/o: Lt. Ruhidas Nama, R/o: Vill+P.O: Indranagar, Satsangha Chowmuhani, ITI Road, Agartala, Pin: 799006, Age: 36 years.

15. **Sri Bhaskar Dey,**
S/o: Lt. Bhulan Ch. Dey, R/o: Subhashnagar, East Pratapgarh, Agartala, P.O: Purba Pratapgarh, P.S: East Agartala, Pin: 799004, Age: 31 years.

....Petitioner(s)

Versus

1. **The State of Tripura**
To be represented by the Secretary, Department of Health & Family Welfare Department, Govt. of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN 799010.
2. **The Mission Director,**
National Health Mission, Govt. of Tripura, State Health & Family Welfare Society, Palace Compound, Agartala, Pin-799001
3. **The Director of Health Services,**
Govt. of Tripura, Gurkhabasti, Agartala
4. **The Union of India,** (To be represented by the Secretary, Ministry of Health & Family Welfare, Govt. of India)
5. **The Director(NRHM-II),** Ministry of Health & Family Welfare, Govt. of India, Nirman Bhavan, New Delhi-110108

....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Nath, Advocate
For the Respondent(s)	:	Mr. D. Bhattacharya, GA Mr. Soumyadeep Saha, Advocate Mr. B. Majumder, Dy. SG
Date of hearing and delivery of judgment & order	:	06.07.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioners. Also heard Mr. D. Bhattacharya, learned GA assisted by Mr. Soumyadeep Saha, learned counsel appearing for the respondents-State and Mr. B. Majumder, learned Dy. SG appearing for the respondents-Union of India.

FACTS:

2. By means of filing the present writ petition, the petitioners have prayed for passing necessary direction upon the respondents to give regular pay scale to the petitioners in the posts of Pharmacist(Allopath) on completion of five years of their service in the said post under the National Health Mission, Tripura and also have prayed for passing direction upon the respondents to regularize the service of the petitioners in the posts of Pharmacist(Allopath) on completion of 10 years of their service in the post of Pharmacist(Allopath) under the National Health Mission, Tripura.

3. It is the case of the petitioner that they were appointed in the post of Pharmacist(Allopath) under the National Health Mission, Tripura on contract basis and they have been discharging their duties and responsibilities sincerely and honestly and to the utmost satisfaction of their authorities.

4. It is further the case of the petitioners that the petitioner nos.1, 2, 3, 4, 5, 6, 7 were appointed on 03.01.2011 and they had joined their service on 07.01.2011. The petitioner nos.8 and 9 were appointed on 03.01.2011 and they had joined their services on 10.01.2011. The petitioner nos.10, 11, 12, 13, 14 and 15 was appointed on 06.01.2009, 27.09.2013, 20.10.2016, 27.12.2013, 30.12.2016 and 12.09.2017 respectively.

5. **Submissions on behalf of the petitioners:**

5.1. Referring to notification dated 04.02.1991 issued by the Deputy Secretary to the Govt. of Tripura, Health & Family Welfare Department, Mr. Roy Barman, learned senior counsel has submitted that in exercise of the powers conferred by the proviso of Article 309 of the Constitution of India, the Governor of Tripura has made rules regarding the method of recruitment and qualification necessary for appointment to the post of Pharmacist(Allopathy) under the Health & Family Welfare Department, Govt.

of Tripura. Along with the said notification, Recruitment Rules for 293 plus posts of Pharmacist(Allopath) were created from time to time, which are selection posts and method of recruitment in the said post through direct recruitment. As per the recruitment rule, minimum qualification required is Madhyamik or its equivalent examination passed and Diploma in Pharmacy(2 years) course from any recognized Institute.

5.2. Mr. Roy Barman, learned senior counsel has further submitted that the petitioners who were appointed in the post of Pharmacist(Allopath) under National Health Mission is an integral part of the Health & Family Welfare Department and they were/are performing same duties and responsibilities like the Pharmacist(Allopath) who have been appointed under the aforesaid recruitment rules and serving in the Health & Family Welfare Department.

5.3. Further, the petitioners submitted representations before the Mission Director, National Health Mission, Tripura to regularize their services in the post of Pharmacist(Allopath) w.e.f. the date on which they have completed five years of service since their initial engagement under the Mission Director, NHM, the respondent no.2 herein.

6. Contentions on behalf of the respondents:

6.1. On the other hand, Mr. Bhattacharya, learned GA for the respondents-State drawing my attention to para 6 of counter affidavit has contended that the appointment of the petitioners is purely on contract basis for a period of 11(eleven) months only from the date of joining and the petitioners accepted the employment in the post of Pharmacist(Allopath) under the National Health Mission, Tripura fully knowing the terms and conditions of their engagement. The relevant portion of the terms and conditions are reproduced hereunder:

“I. The appointment is purely on contractual basis for a period of 11(Eleven) months only from the date of joining.

II. This will not confer any right to the candidate for regular appointment under the Society or under the State/Central Government.....”

6.2. It is submitted that the averments made by the petitioners in regard to the terms and conditions of the employment of the 293 posts of Pharmacists recruited directly under the Health & Family Welfare Department, Govt. of Tripura is completely different from that of the posts of Pharmacists appointed under the National Health Mission, Tripura. Moreover, there is no provision under the National Health Mission for creating any regular posts. All posts under the National Health Mission are contractual in nature and continuation of such contractual posts depends upon the requirements of a particular programme to implement different programmes to be organized by the National Health Mission.

7. Analysis of the submissions:

7.1. Having considered the submissions of the learned counsel appearing for the parties and after perusal of the Memorandum dated 03.01.2011, it comes to fore that the appointment of the petitioners in the post of Pharmacist(Allopath) is purely on temporary and contractual basis under the aegis of National Health Mission and is liable to be terminated at any time without assigning any reason thereof with 1(one) month's notice from either side. In the engagement /appointment letter itself it was clearly stated that the appointees would have no right to claim permanency. To say it otherwise, their appointments would not confer any right to claim regularization.

7.2. Another aspect necessary to be dealt with herein in respect of the fact that none of the posts held by the petitioners are created and sanctioned by any authority of law. That apart, mode of recruitment of

Pharmacists(Allopath) under the Department of Health and Family Welfare, Government of Tripura and those of the petitioners appointed under National Health Mission scheme is completely different. The recruitment of 293 plus pharmacists under the State Government is governed by prescribed Recruitment Rules framed under Article 309 of Constitution of India, which is not in the case of the petitioners.

7.3. The petitioners have also prayed for granting regular pay scale applicable to the post of Pharmacists(Allopath) under the State Government. The legal position of granting regular pay scale to an employee is well-settled. Hon'ble Supreme Court in *Orissa University of Agriculture & Technology and Anr. vs. Manoj K. Mohanty, (2003) 5 SCC 188* has held that for placement in a regular pay scale, the claimant has to be a regular appointee. The claimant should have been selected on the basis of a regular process of recruitment. An employee appointed on a temporary basis cannot claim to be placed in the regular pay scale. This enunciation of law has been re-iterated by the Apex Court in *State of Punjab & Ors. vs. Jagjit Singh & Ors., (2017) 1 SCC 148 [SCC. P 207, para 42.6]*.

In the instant case, as I said earlier, the nature of appointment of the petitioners is contractual and they do not hold any permanent statutory posts. As such, they are not entitled to claim regular pay scales as those of the Pharmacists appointed under the State Government. This Court in exercise of its writ jurisdiction cannot direct the respondents to regularize the services of the petitioners in absence of any sanctioned posts supported by any statute under the National Health Mission project.

8. Conclusion:

8.1. For the reasons stated and discussed here-in-above, and keeping in mind the nature of employment of the petitioners, I cannot direct the

respondents to regularize the services *vis-à-vis*, to grant the regular pay scales to the petitioners.

Accordingly, the instant writ petition stands dismissed.

However, before I part with the judgment, I may request the respondents to explore the feasibilities for regularization and granting of regular pay scales to the petitioners by way of formulating a scheme considering the length of services the petitioners rendered under them.

JUDGE



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