

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.1111 of 2022**

Sri Shibu Chandra Das, S/o: Sri Suresh Chandra Das, Vill: Fulkumari, No.1, P.O. Fulkumari, P.S.: R.K. Pur, Dist.: Gomati Tripura, at present residing at Vill: Kumaritilla, Quarter No. Type 1/3, P.O.: Kunjaban, P.S.: NCC, Dist.-West Tripura.

.....Petitioner(s)

-VERSUS-

- 1. The State of Tripura**, represented by the Secretary to the Government of Tripura, Rural Development Department, Agartala.
- 2. The State of Tripura**, represented by the Secretary to the Government of Tripura, Finance Department, Agartala.
- 3. The Chief Engineer**, Government of Tripura, Rural Development Department, Gurkhabasti, Agartala, West Tripura.
- 4. The Executive Engineer**, Rural Development Department, Store Division, Gurkhabasti, Agartala, West Tripura.
- 5. The District Magistrate & Collector**, West Tripura District, Agartala.

.....Respondent(s)

For Petitioner(s)	:	Mr. B. Banerjee, Advocate
For Respondent(s)	:	Ms. K. Reang, Advocate
Date of hearing & Delivery of judgment & order	:	12.12.2023
Whether fit for reporting	:	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 his service under the respondents.

2. Shortly stated, the petitioner was engaged as DRW(Driver) on fulltime basis in the year 2003. The grievance of the petitioner is that even though he has completed 10(ten) years of service from the date of engagement as DRW, his service has not been regularized. For the purpose of regularization, the petitioner has relied upon the memoranda dated 21.01.2019 and 03.01.2014 issued by the Government of Tripura.

3. From the memorandum dated 31.07.2018(Annexure-R1 to the writ petition), it appears that the policy decision on regularization of the

services of DRWs/Casual/Contingent/PTW, etc. workers in Government establishments, State PSUs and Autonomous Bodies, including the 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transparent public employment policy for engagement of employees for such services, the Government of Tripura had repealed all the memoranda as mentioned in the writ petition for the purpose of regularization.

4. On the aforesaid facts, I have heard Mr. B. Banerjee, learned counsel appearing for the petitioner. Also heard Ms. K. Reang, learned counsel appearing for the respondents-State.

5. Mr. Banerjee, learned counsel for the petitioner has prayed for consideration of the regularization of the service of the petitioner since he has been serving for a long period. Mr. Banerjee, learned 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. Banerjee, learned counsel for the petitioner, 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.

6. On the other hand, Ms. Reang, learned counsel for the respondents-State has submitted that the petitioner was not appointed against any regular vacant sanctioned post. The petitioner was also not engaged by the competent authority and the petitioner is a backdoor entrant. This kind of appointment cannot be said irregular appointment, rather it is an illegal appointment.

7. 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.

8. Admittedly, no public employment notification i.e. advertisement was issued while engaging the petitioner 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. In the case of *State of Karnataka vs. M.L. Kesari*, (2010) 9 SCC 247, the Hon'ble Supreme Court has made a clear distinction between irregular and illegal employees. In the case of *Uma Devi(3)(supra)*, the Constitution Bench of the Hon'ble Supreme Court has directed the Central and the State Governments to formulate scheme for irregularly appointed employees, but not for the employees who are appointed illegally.

9. In the present case, Mr. Banerjee, learned counsel for the petitioner has failed to justify that the petitioner was appointed against any regular sanctioned vacant post. The engagement letter also is not found in the writ petition. Only a certificate in his name has been enclosed as annexure (Annexure-1 to the writ petition), wherein the petitioner's engagement was recorded as DRW. Moreover, the petitioner has filed the present writ petition in the year 2022 claiming regularization of his service on the basis of the memoranda which were repealed by the government in the year 2018. The petitioner did not approach the court of law to raise his grievance for not considering his regularization of service. Only in the year 2022, the petitioner suddenly woke up from the slumber and approached this Court for regularization of his service. In my opinion, the present writ petition is absolutely barred by delay and laches.

10. 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 vs. District and Sessions Judge, Tis-Hajari*, (2014)14 SCC 50: 2014 SCC OnLine SC 123: AIR 2014 SC 2175 and in view of the decisions 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 petitioner herein for regularization of his services.

11. In the result, the present writ petition stands dismissed being devoid of merit.

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

JUDGE

Snigdha

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