

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.10/2023

1. Sri Sukradhan Chakma, S/O. Lt. Purnamashi Chakma, R/o. Vill- Shibnagar, Gachuba, P.S.- Kanchanpur, North Tripura, PIN-799270, aged-56 years.
 2. Smt. Nilati Reang, W/O. Debaprasad Chakma, Vill- Netaji Nagar, Dasda, P.S.- Kanchanpur, North Tripura, Pin-799270, aged-52 years.
 3. Sri Khanaram Reang, S/O. Lt. Maiyaha Reang, R/o. Ulemcherra, P.S.- Ganganagar, Ambassa, Dhalai, Tripura, Pin-799289, aged-51 years.
 4. Smt. Banabati Tripura, W/O. Jamadhan Tripura, R/o. Ananda Para, P.S. Ganganagar, Ambassa, Dhalai, Tripura, PIN-799289, aged-47 years.
 5. Sri Man Kumar Chakma, S/O. Lt. Sukradhan Chakma, R/o. Vill. Dopatacherra, Kanchanpur, North Tripura, Pin-799270, aged-42 years.
 6. Sri Bimal Suklabaidya, S/O. Lt. Subodh Suklabaidya, R/o. Sreerampur, Kanchanpur, North Tripura, Pin-799270, aged-53 years.
 7. Sri Sunil Biswas, S/O. Lt. Jadunandan Biswas, R/o. Santi Nagar, Near Prtilata ICDS centre, Teliamura, Khowai, Pin-799205, aged-57 years.
 8. Smt. Kanchan Sarkar (Giri), W/O. Indrajit Giri, R/o. Vill-Karailong, Teliamura, Dist.- Khowai, Pin-799205, aged-55 years.
- Appellant(s).

V E R S U S

1. The State of Tripura, To be represented by the Secretary, Department of Finance, Govt. of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S.- New Capital Complex, Agartala, West Tripura, PIN-799010.
 2. The Director, Directorate of Secondary Education, Govt. of Tripura.
 3. The Headmaster, Kanchanpur H.S. School, Kanchanpur, North Tripura.
 4. The Headmaster, Ganganagar High School, Ambassa Dhalai, Tripura.
- Respondent(s).

For Appellant(s)	: Mr. P. Roy Barman, Sr. Advocate, Ms. A. Debbarma, Advocate.
For Respondent(s)	: Mr. Dipankar Sarma, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Date of hearing and judgment: **05th March, 2024.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Ms. A. Debbarma, learned counsel appearing for the appellants and Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondents-State.

2. WP(C) No.1017 of 2022 preferred for regularization or absorption of these petitioners in service was dismissed by the impugned judgment dated 28.11.2022 as there is no policy of the Government for absorption.

3. **Contention of the petitioners/appellants:**

(i) The appellants contended that since 01.03.1997, 01.03.1997, 26.01.1999, 26.01.1999, 01.03.2002, 01.08.2002 & 05.09.1993 respectively till date they are serving under the respondents.

(ii) The appellants also contended that they have become entitled for regularization of their service in Group-D posts w.e.f. the date when they have completed 10 years as DRW.

(iii) The appellants further contended that they have requisite qualifications to be regularized in Group-D post on completion of 10 years service as DRW since 01.03.1997, 01.03.1997, 26.01.1999, 26.01.1999, 01.03.2002, 01.08.2002 & 05.09.1993 respectively.

(iv) The appellants also contended that since their engagement the appellants are discharging beyond 8 hours duty per day.

(v) The appellants also contended that they are discharging their duties and responsibilities of a Group-D post without being paid in the pay scale pertaining to the said post.

(vi) The appellants also contended that they are entitled to minimum wages as per the Minimum Wages Act, 1956.

4. On the basis of the aforesaid assertion that they were engaged as Daily Rated Workers on 01.03.1997, 01.03.1997, 26.01.1999, 26.01.1999, 01.03.2002, 01.08.2002 & 05.09.1993 respectively, petitioners have contended that in view of the regularization scheme framed by the Government of Tripura on 21.01.2009, they were entitled for regularization in service on completion of 10 years of service. Their cases were under consideration when the regularization scheme was repealed by memorandum dated 31.07.2018 (Annexure-R/1). It is also apparent from the affidavit of the State that proposal for regularization of the services of these petitioners from the concerned Head of Office and Drawing and Disbursing Officers were sent to Finance Department for concurrence. The Finance Department gave their concurrence on 15.12.2017 for regularization of services of 20 DRWs (including petitioners No.1 to 8) out of proposed 23 names of DRW subject to the conditions:

(a) Approval of Council of Ministers is required for one time relaxation of age bar/Educational Qualification required for entering into regular Government service.

(b) Before regularization, the Department has to verify the relevant documents along with original certificates.

(c) Upon approval of Council of Ministers, the Department is requested to send the file to Finance Department for necessary entry in Finance Department's database along with prescribed format duly authenticated by the Gazetted Officer.

5. After concurrence of the Finance Department for regularization of service of the petitioners, a memo was issued for verification of certificates/documents of all 20 DRWs vide letter dated 04.01.2018. After completion of verification of certificates/documents with the original documents of all 20 DRWs (including petitioners No.1 to 8), a proposal was placed before the Council of Ministers along with a draft Cabinet Memorandum for approval of the Cabinet of Ministers for one time relaxation of age bar/educational qualification for entering into regular Government service, but the file was returned from the office of the Principal Secretary, Education (School) Department for discussion with the Director, Directorate of Secondary Education with a direction to place the file after the General Election, 2018. After completion of General Election process of Tripura Legislative Assembly, 2018, the file was again placed before the authority on 26.03.2018 for placing before the Council of Ministers. In the meantime, in another similar file which was placed for regularization of services of DRWs, the then Chief Secretary intimated the Directorate that in view of GA(P&T) memo dated 14.03.2018 it may be kept in abeyance until review is completed. Thereafter, vide memorandum dated 31.07.2018 the State Government had reviewed the decision of regularization of services of Daily Rated Workers/Casual Workers/Contingent Workers and repealed all the memoranda issued in connection with regularization of services of such Daily Rated Workers/Casual Workers/Contingent Workers, etc. The regularization of services of the petitioners has also been stopped in view of the memorandum dated 31.07.2018 and subsequent memorandum dated 01.08.2018 (Annexure-R/1 and R/2 respectively).

6. The respondents have taken a plea that at present there is no policy of the Government for absorption. The petitioners approached before the Writ Court after repeal of the scheme of regularization by memorandum dated 01.08.2018 only in the year 2022. The learned Single Judge, therefore, held that in the absence of any scheme for absorption the petitioners could not get any relief.

7. Learned senior counsel for the petitioners submits that the case of the petitioners cannot be defeated only on the ground that the scheme of regularization/absorption had been repealed though their cases were under consideration at the Government level before the repeal of the scheme. A valuable right had accrued in their favour for regularization in view of the judgment of the Apex Court in the case of *Secretary, State of Karnataka and others vrs. Umadevi (3)* reported in (2006) 4 SCC 1, the regularization scheme dated 21.01.2009 and also in view of the judgment rendered by the Apex Court in the case of *Narendra Kumar Tiwari and others vrs. State of Jharkhand and others* reported in (2018) 8 SCC 238. It is submitted that delay in approaching this Court cannot defeat their rights. In this regard, he has placed reliance upon the decision of the Apex Court in the case of *Pandurang Sitaram Jadhav and others vrs. State of Maharashtra through its Dairy Manager and another* reported in (2020) 17 SCC 393 (para-12).

It is, therefore, submitted that the impugned judgment may be set aside. The respondents be directed to regularize/absorb the services of the petitioners since they have been working as Daily Rated Workers for more than two decades. They have not been disengaged even after repeal of the scheme.

8. Learned Addl. Government Advocate Mr. Dipankar Sarma has made the following objections:

(i) That, there is no scheme prevalent under the State Government for regularization of such employees. The scheme was a one time measure initiated in the year 2009 and all those who were entitled for regularization, their cases were duly considered. However, the scheme of regularization has been repealed by a conscious decision of the State Government as it could not go for infinity in view of the decision of the Apex Court in the case of *Umadevi* (supra) itself at para-53. It could be only a one time measure.

(ii) The mere consideration of the case of the petitioners and processing of their files in the department could not clothe them with a legal right to claim regularization when the regularization scheme has itself been repealed. He has referred two decisions of the Apex Court:

In the case of *Vibhuti Shankar Pandey vrs. State of Madhya Pradesh and others* reported in (2023) 3 SCC 639; and

In the case of *Government of Tamil Nadu and another vrs. Tamil Nadu Makkal Nala Paniyalargal and others* reported in 2023 SCC OnLine SC 393.

(iii) That, the petitioners have not approached the Court within time. The writ petition was filed in the year 2022, 4 years after the repeal of the regularization scheme. Therefore, it is barred on grounds of delay and laches.

It is further submitted that since regularization scheme has been repealed on 01.08.2018, no relief should be granted in favour of the petitioners, otherwise it may open floodgates for all those persons who have been sleeping

over their rights and did not approach the Court within time. Delay defeats rights and remedies both.

9. We have given consideration to submission of learned counsel for the parties in the gamut of the foundational facts placed on record. We are of the considered view that the plea of the petitioners for regularization cannot be allowed primarily for two reasons: (i) that, the regularization scheme was abolished in the year 2018 itself; (ii) the petitioners if at all had a legitimate expectation and claim have not approached this Court in time. The writ petition was filed after 4 years of the abolition of the scheme.

10. The scheme for regularization was framed by different State instrumentalities and authorities in view of the specific directions of the Apex Court in para-53 in the case of *Umadevi* (supra). This had to be a one-time measure. The State of Tripura had framed the regularization scheme on 21.01.2009. The State of Tripura had come into existence in 1972 itself. Anyone who had been engaged in an irregular manner and worked for 10 years in duly sanctioned posts but without intervention of any Court could have a legitimate claim for regularization during the subsistence of the scheme. Though it appears that the case of the petitioners were being processed in the department but no final decision by the competent authority, i.e. the Council of Ministers have been taken. Whether the petitioners fulfilled the criteria prescribed under the regularization scheme of 2009 and were eligible for regularization was dependent upon the decision of the competent authority during the subsistence of the regularization scheme. It is true that during the process of movement of files, the State Government took a decision to repeal

the regularization scheme by issuance of memorandum dated 01.08.2018 by the Finance Department, Government of Tripura. Petitioners, if aggrieved, did not approach this Court in the year 2018 or much thereafter till the year 2022. As such, petitioners can also be blamed for sleeping over their rights and legitimate claims, if any.

11. Reliance has been placed on behalf of the petitioners in the case of **Narendra Kumar Tiwari** (supra) which arose from the regularization scheme of 2015 framed by the State of Jharkhand which had a cutoff date of reckoning 10 years as on 10.04.2006, i.e. the date of the judgment in the case of **Umadevi** (supra). The Apex Court took into account the context germane to those petitioners that nobody would have completed 10 years of engagement as a daily rated worker to claim regularization under the 2015 scheme framed by the State of Jharkhand whereby a cutoff date of 10.04.2006 was fixed since the State of Jharkhand had been created on 15.11.2000 itself.

12. The Apex Court also referred to the case of **State of Karnataka and others vrs. M.L. Kesari and others** reported in (2010) 9 SCC 247 and observed that the State of Jharkhand had continued with the irregular appointment for almost a decade after a decision in **Umadevi** (supra) which was a form of exploitation of the employees. In those circumstances, the Apex Court observed that regularization rules must be given a pragmatic interpretation and the appellants if had completed 10 years of service on the date of promulgation of the regularization rules they ought to be given the benefit of the service rendered by them unless there is valid objection to their regularization like misconduct etc. As is apparent from the decision in the case

of *Narendra Kumar Tiwari* (supra), the regularization rules were of 2015 and no one would have completed the period of 10 years of their engagement by 01.04.2006. Therefore, the Apex Court allowed the fixing of cutoff date as the date of promulgation of the Rules in 2015. State of Tripura, on the other hand, had framed the regularization scheme in 2009 itself. The scheme continued for a period of 9 years till it was repealed by a memorandum dated 01.08.2018. Any person seeking to claim regularization on the basis of regularization scheme of 2009 framed by the State of Tripura could have raised his cause of action till the scheme was prevalent. After repeal of the scheme, this Court cannot direct absorption or regularization in service as framing of the scheme is not within the domain of the Courts. At the same time the State and its instrumentalities are not supposed to continue with irregular appointments in view of the decisions in *Uma Devi*, *M.L. Kesari* and *Narendra Kumar Tiwari* (Supra).

13. Learned counsel for the petitioners has also placed reliance upon the decision of *Pandurang Sitaram Jadhav* (supra) in support of his submission that delay in preferring the claim could not come in the way of benefit of regularization except that their absorption could be made prospectively from the date of the judgment. We, however, find that the case of *Pandurang Sitaram Jadhav* (supra) arose out of the Industrial Disputes Act wherein the appellants had lodged complaint before the Industrial Court, Maharashtra claiming that they had been working with the respondent for a period of more than 240 days continuously over a long period of time and had not been given regular status. This amounted to unfair labour practice. In those circumstances, the matter travelled up to the Apex Court.

It was, therefore, held that if the appellants were engaged over a long period of time for several years and for more than 240 days in a calendar year not granting permanence to their service would amount to unfair labour practice. In those circumstances, the Apex Court observed that delay in preferring the claim by those workmen would not lead to denial of the benefit of regularization. The petitioners herein have approached this Court in writ jurisdiction. As on date, the regularization scheme is not in vogue. Regularization in service or absorption could only be made against a sanctioned vacant post. This Court in such circumstances cannot direct creation of sanctioned vacant post more so, when the regularization scheme has been abolished.

14. Having regard to the totality of the facts and circumstances and the reasons discussed hereinabove, we do not find any reason to interfere in the impugned judgment. Accordingly, the instant appeal is dismissed.

Pending application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

Pulak

PULAK BANIK Digitally signed by PULAK BANIK
Date: 2024.03.14 15:49:20
+05'30'