

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.27 of 2022

Sri Nikhil Biswas

S/O Late Upendra Kumar Biswas, resident of South Takmachara Habitation,
South Takmachara, Village Council, Bokafa Block, P.O Manpathar, PIN 799144,
P.S. Santirbazaar, District South Tripura.

..... Appellant(s)

V E R S U S

1. The State of Tripura

Represented by the Secretary, Department of Forest, Government of
Tripura, New Secretariat Complex, P.O. Kunjaban-799006, P.S. New
Capital Complex, District West Tripura

2. The State of Tripura

Represented by the Secretary, Department of Finance, Government of
Tripura, New Secretariat Complex, P.O. Kunjaban-799006, P.S. New
Capital Complex, District West Tripura

3. The Principal Chief Conservator of Forest

Government of Tripura, Aranya Bhawan, P.O. Kunjaban-799006, P.S. New
Capital Complex, District West Tripura

4. The Executive Director

Tripura Forest Development & Plantation Corporation Limited, Registered
office at Abhoynagar, Agartala, P.O. Kunjaban-799006, P.S. New Capital
Complex, District West Tripura

5. The Managing Director

Tripura Forest Development & Plantation Corporation Limited, Registered
office at Abhoynagar, Agartala, P.O. Kunjaban-799006, P.S. New Capital
Complex, District West Tripura

6. The Divisional Manager

Factory Division, P.O. Uttar Takmachara via Satirbazar, Takmachara, South
Tripura

..... Respondent(s)

For Appellant(s)	:	Mr. P. Roy Barman, Senior Advocate. Mr. Samarjit Bhattacharjee, Advocate. Mr. Kawsik Nath, Advocate.
For Respondent(s)	:	Mr. K. De, Addl. G.A.
Date of hearing	:	11th January, 2024
Date of delivery of Judgment	:	1st February, 2024
Whether fit for reporting	:	NO

**HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER

[S. Datta Purkayastha, J.]

The appeal arises from the judgment dated 07.12.2021 passed by Ld. Single Judge in WP (C) No.45 of 2021.

[2] As averred by the appellant-petitioner, he had been serving as a Pump Operator at Latex Centrifugal Factory and Crepe Mill, Takmacherra on casual basis from 29.07.1992 under respondent No.6. Later on, vide order dated 07.06.2016, he was given the status of permanent worker w.e.f. 07.06.2016. His grievance is that vide memorandum No.F.10(2)-FIN(G)/2008(Part) dated 21.01.2009 issued by the Finance Department, Government of Tripura, the services of DRWs/Casual/Contingent workers who completed 10 years of service without any break were regularized. Thereafter, vide another memorandum bearing No.F.34(3)-FIN(G)/2012 dated 04.09.2012, the Finance Department extended the benefit of regularization of DRWs/MRWs/Contingent workers etc. to the State PSUs and other autonomous bodies including AMC/NPs but the service of the appellant-petitioner was not regularized.

[3] Earlier thereto, in the year 2011, some workers appointed on contractual basis by the Managing Director, Tripura Forest Development and Plantation Corporation Ltd. (for short TFDPC Ltd.) filed WP(C) No.325 of 2011 for regularization of their services and finally vide judgment dated 07.07.2015, Ld. Single Judge disposed of the matter with the following observations:

“9. Having regard to that aspect of the matter, the respondents are directed to frame a scheme within their

resources to regularise the petitioners in a phased manner. As corollary to this observation, the Tripura Forest Development & Plantation Corporation Limited, the respondent No.2 is directed to explore the most suitable scheme and to notify that scheme by 31.03.2016. Thereafter, in terms of that scheme the petitioners shall be considered for their regularisation.”

[4] Accordingly, a scheme titled as ‘Scheme for Workers of Factories of TFDPC Ltd.’ (Annexure 5 to the writ petition) was framed on 28.12.2015 and pursuant to that scheme, the petitioner has been made permanent worker under TFDPC Ltd. As per the said scheme, the designated permanent workers enjoy some facilities like enjoyment of holidays, sick leave, overtime allowance, service gratuity, terminal leave, maternity benefits, medical reimbursement etc.

[5] In view of framing of above said scheme, Ld. Single Judge dismissed the writ petition of the appellant-petitioner bearing No.WP(C) No.45 of 2021 on 07.12.2021 (as under challenge herein) with the following observations:

“In the writ petition, there is no challenge against the said scheme being in contrast to the direction of this court or any other grounds. On the contrary the petitioner has referred those memoranda, as referred before, claiming the regularization. On the first blush, such submission may appear very attractive but this court is constrained to observe those memoranda carve out a policy of the government for regularization of its contingent or daily rated workers working under the government departments cannot apply to the workers working under the TFDPC Ltd. Moreover, in those schemes, even the permanent labourers working under the Government of Tripura have been excluded from the benefit of those policies, and as such, the petitioner does not have any indefeasible right to claim regularization in any post. The issue of regularization falls within the exclusive domain of the TFDPC Ltd.

In the course of the submissions, however, Mr. Biswas, learned senior counsel has submitted that even the petitioner is not getting any benefit being engaged as the permanent worker. But in this regard there is no averment and absence of such

averment restrains this court to pass any specific direction over the respondents.

However, if it is found that the benefits that have been declared by the said scheme (Annexure-5 to the reply, filed by the respondents) are not being provided to the petitioner, those shall be provided to the petitioner from the date of his engagement as the permanent worker and if any payment stands outstanding such payment shall be made within a period of three months from today.

In terms of above, this writ petition stands disposed of.

Before parting with the records, this court would like to note that in terms of the directions contained in the judgment dated 07.07.2015 pertaining to regularization, as perceived in the ordinary parlance, the Tripura Forest Department and Plantation Corporation Ltd., has framed a scheme only to give certain benefits by declaring some workers as the permanent worker.

The respondents should explore to give the permanent workers the benefit of regular employees of the Corporation by formulating the further policy within their resource or by taking the aid of the State Government. But this court does not have any jurisdiction to issue a mandamus to that effect."

[6] At the time of hearing, Mr. P. Roy Barman, learned senior counsel for the appellant, contended that in view of the notifications dated 21.01.2009 and 04.09.2012, TFDPC Ltd. is under legal obligation to regularize the service of the appellant. Learned senior counsel also argued that the scheme as framed by TFDPC Ltd. does not provide any scope for regularization of the services of the factory workers like the present appellant despite the directions given in the judgment passed in WP(C) No. 325 of 2011. According to Mr. Roy Barman, learned senior counsel, the memorandum dated 04.09.2012 of the Finance Department is squarely applicable in the case of the appellant.

[7] Mr. K. De, learned Addl. G.A., in reply submitted that there were workers in TFDPC Ltd. working under the Plantation Labour Act or the Factories Act, as applicable. Like them, the appellant was also engaged as a

worker to work in the Latex Centrifugal Factory and Crepe Mill of TFDPC Ltd. at Takmacherra. According to him, there is no post creation, namely the post of 'Pump Operator' in the said factory, and therefore, the question of regularization of the service of the appellant does not arise. Mr. De, learned Addl. G.A., tried to clarify that the nomenclature 'Pump Operator' is not of any sanctioned post; rather, it is one of the category of worker and any worker can be assigned with that work of Pump Operator. The engagement of the appellant as Pump Operator, according to the respondents, was not made by the principal employer of the Corporation i.e. the Managing Director and such engagement of worker is made on need basis and resource basis. Moreover, workers like the appellant are given benefits like Bonus, PF, Gratuity, leave with wages, accidental compensation (if any), etc under various labour laws. Therefore, according to Mr. De, learned Addl. G.A., the appellant cannot claim any sort of regularization of his service.

[8] Already, in pursuance of the direction given in WP(C) No.325 of 2011, a scheme has been framed by the TFDPC Ltd., as discussed above, notwithstanding the fact that as per that scheme, there is no scope for regularization of the service of any worker rather it makes provision for absorption of worker as permanent workers. But, said scheme is not under challenge in the writ petition.

[9] The memorandum dated 21.01.2009 of the Finance Department is regarding regularization of services of DRWs/Casual/Contingent workers on completion of 10 years of their service but the same is relating to the workers working in different Government Departments. The permanent workers were

excluded from taking benefit of said memorandum by the memorandum itself. Similarly, vide memorandum dated 04.09.2012, necessary order was passed by the Finance Department in respect of regularization of DRWs/MRWs/Contingent/Casual workers/Consolidated fixed pay/Fixed pay workers of State PSUs and other autonomous bodies including AMC/NPs but nothing is indicated in the said memorandum that TFDPC Ltd. was also included therein. The appellant has also failed to show that said memorandum was made applicable in case of TFDPC Ltd. inasmuch as in the contents of that memorandum it is indicated that the list of DRWs/MRWs/Contingent workers/Casual workers etc. of PSUs/autonomous bodies, was enclosed and communication was made through that memorandum to the concerned administrative departments to confirm as to whether those workers were still in service or whether the name of any genuine worker was left out from the list. But no such list has been submitted by the appellant to show that workers of TFDPC found place in that list. Considering thus, this Court finds no reason to interfere with the judgment passed by Ld. Single Judge, impugned herein.

[10] In the result, the writ appeal is dismissed being devoid any merit.

No order as to costs.

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

(S.D. PURKAYASTHA, J)

(ARINDAM LODH, J)

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