

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.12 of 2023

Sri Tapan Das

..... Appellant(s)

V E R S U S

Tripura State Electricity Corporation Ltd. and others

..... Respondent(s)

WA No.13 of 2023

Smt. Kajal Rani Bhowmik

..... Appellant(s)

V E R S U S

Tripura State Electricity Corporation Ltd. and others

..... Respondent(s)

For Appellant(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. D. Sarma, Addl. GA,
Mr. N. Majumder, Advocate.

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

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12/03/2024

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath, learned counsel for the writ petitioners/ appellants. Also, heard Mr. N. Majumder, learned counsel for the respondent-Corporation.

[2] These two appellants were regularized in services by virtue of the offer of appointment issued in their favour along with 50 others vide office order No.F.6(151)-TSECL/Corp.Office/2015/32217-311 dated 10.09.2015 issued by order of the Chairman-cum-Managing Director, Tripura State Electricity Corporation Limited (TSECL) under the signature of General Manager (Finance)

& Company Secretary, TSECL, Agartala. This order of regularization was preceded by an exercise undertaken by the corporation pursuant to the letter dated 10.08.2010 issued by the Finance Department, Government of Tripura asking for proposal for regularization of eligible cases out of the list sent earlier along with the details and after obtaining approval of the Boards/ Executive Committees/ Governing Bodies within a period of 2(two) weeks. Vide letter dated 28.02.2011 (Annexure-2) the particulars of Daily Rated Workers (DRW)/ Contingent/ Casual/ Part-time workers were sent by the Deputy General Manager, Electrical Division No. IV, Udaipur, South Tripura to the Deputy General Manager (Corporate), Corporate Office, TSECL, Tripura, Agartala. Thereafter, by order dated 10.09.2015 offer of appointment were issued to the writ petitioners and several others. The offer of appointment indicates that in accordance with the decision of the Finance Department, Government of Tripura the corporation has decided to regularize the services of the persons named in the list enclosed as DRW/ Contingent worker for the post of Helper Grade-II and appoint them on purely temporarily basis in the scale of pay of PB-1, Rs.4840-13000/-, Grade Pay Rs.1400/- plus other allowances as admissible to the employees of TSECL. The candidates were directed to submit his/ her joining report as Helper Grade-II to his/her place of posting on or before 17th September, 2015. Candidates were also asked to submit attested copies of all required certificates/ documents etc. as per terms and conditions enclosed with the attestation form. It is not in dispute that both the writ petitioners/ appellants herein submitted their joining on 17th September, 2015(Annexure-5). However, in the next date i.e. on 18.09.2015 (Annexure-6) the order dated 10.09.2015 (Annexure-3) was kept in abeyance until further order due to unavoidable circumstances and administrative reasons. This order dated 18.09.2015 was

revoked by letter No.F.6(151)-TSECL/Corp.office/21959-20075 dated 07.08.2017 issued by order of the Chairman cum Managing Director, TSECL under the signature of the Director (Finance) & Company Secretary, TSECL with immediate effect. Writ petitioners approached this Court in the year 2017 along with several others seeking payment of arrears of salary applicable *with effect from* the date of furnishing their acceptance to offer of appointment i.e. 17.09.2015 as their representation remained un-redressed.

[3] The respondent-corporation *inter alia* took the following plea in their counter affidavit at paragraph Nos.9 to 11 which are extracted hereunder:

“9. That, in reply to the averments and/or contentions made in para 7, 8 & 9 of the writ petition I state that the petitioner has submitted his joining report on 17.09.2015 to the office of the Senior Manager, ESD Dhajanagar, the joining of petitioner as forwarded by the concern DGM to the Director (Finance) & Company Secretary TSECL but not accepted by the authority as the offer of appointment was issued against his vide No.F.6(151)-TSECL/ Crop.Office/ 2015/32,217-311 Dated 10.09.2015 has kept in abeyance due to unavoidable and Administrative reason. The said memorandum dated 18.09.2015 was given to the petitioner. Due to some official enquiry the said offer of appointment as issued on 10.09.2015 has kept in abeyance. But subsequently on 07.08.2017 the said order dated 18.09.2015 for keeping in abeyance of appointment of the petitioner and along with 51 persons was withdrawn. On 06.01.2018 the Director (Fin.) and Company Secretary, TSECL, Agartala issued an office order to give direction to all the DDOs under TSECL to release the pay and allowances as admissible w.e.f. 07.08.2017. It is mentioned that as per the balance sheet during the assessment year 2017-18 of Tripura State Electricity Corporation Ltd. it reveals the loss for assessment year is 39440,46,504/-. As such the Corporation is not in a position to take extra financial burden.

Copy of the office order dated 07.08.2017 & 06.01.2018 and Copy of the balance sheet during the assessment year 2017-18 are annexed herewith and marked as **Annexure-R1, R2 & R3.**

10. That, with regard to the statements made in para 10 of the writ petition I state that the answering respondents already withdrawn the previous order dated 18.09.2015 and issued order for releasing the pay and allowances as admissible w.e.f. 07.08.2017. It is vehemently denied by the answering respondents the respondents are acting arbitrarily and illegally as a result the accrued right to the petitioner has been inference by the respondents.

11. That, in reply to the averments and/or contentions made in para 11 of the writ petition I state that due to some Administrative enquiry in respect of the petitioner as well as other 51 persons and some Administrative reasons the offer of appointment issued on 10.09.2015 had been kept in abeyance. It is vehemently denied by the respondents that most illegally and arbitrarily without any reason the impugned memorandum dated 18.09.2015 has been issued Director (Finance) & Company Secretary, TSECL, Agartala.”

[4] After taking note of the case of the parties, the learned Single Judge dismissed the writ petition *inter alia* holding as under:

“[6] The grievances of the petitioners are that despite repeated representations, the corporation did not disburse the arrears of pay which they are entitled from the date of submitting their acceptance in response to offers of appointment.

[7] Ms. Deb (Gupta), learned counsel appearing for the TSECL and Mr. M. Debbarma, learned Addl. G.A. appearing for the State-respondents have submitted that though the decision was taken to regularize the services of the DRWs, but, the Government had kept this memorandum in abeyance for a certain period due to financial constraints and for administrative reasons.

[8] Mr. Nath, learned counsel appearing for the petitioners has submitted that with the withdrawal of office order dated 07.08.2017, all the petitioners were allowed to get the regular pay-scale w.e.f. 07.08.2017. I find, the petitioners were not appointed through the established procedure of public employment. There was no advertisement, none of the petitioners had faced any interview and they were appointed at the choice of some officers of the Corporation and as such, these appointments were totally illegal. In-spite of that, the Government has given some concessions to such DRWs so that they can get the regular pay-scale.

[9] Considering the entire facts and circumstance of the cases, I do not find any error or illegalities in the decision of the Government keeping the process of regularization in abeyance for a certain period for the reasons as stated above. As such, these writ petitions being devoid of merits are accordingly dismissed.

[10] The original file produced by TSECL may be returned to Mrs. Deb (Gupta), learned counsel appearing for the TSECL, the respondent No.2.”

[5] Being aggrieved these two writ petitioners alone have preferred these two appeals. We have considered the submissions of the learned counsel for

the parties. On behalf of the appellants it has been contended that once the decisions to regularize the services of the writ petitioners was issued and writ petitioners have duly submitted their joining, their contract of service as a regular employee came into existence. Though it was kept in abeyance by office order dated 18.09.2015 but the office order was revoked unconditionally with immediate effect from 07.08.2017. The decision to regularize has not been revoked. The office order dated 07.08.2017 also does not say that it would be made effective prospectively. Therefore, the decision to regularize and the offer of appointment issued thereunder on 10.09.2015 stood revived *with effect from* the date on which the petitioners submitted their joining on 17.09.2015. Though the respondents have taken the plea of administrative reasons and inquiries in the counter affidavit but the learned Single Judge has erroneously accepted the submissions made on behalf of the Corporation that these writ petitioners were appointed at the choice of some officers of the Corporation and, therefore, these appointments were illegal. It is submitted that apart from the plea of financial constraints taken by the Corporation in their counter affidavit, there cannot be any other basis to deny relief to the writ petitioners regarding the arrears of regular scale of pay from the date on which they joined upon issuance of offer of acceptance. It appears that other petitioners have not laid any challenge to the impugned judgment and may have accepted it as a *fait accompli*. Since the writ petitioners have been agitating their grievances before this Court in continuation of the original writ proceedings, the petitioners/Appellants may be granted the due relief.

[6] Learned counsel for the Corporation has strongly opposed the prayer. He has drawn the attention of this Court to the grounds raised in their

counter affidavit which has been extracted hereinabove as well. He submits that certain enquiries were being made before the order of abeyance dated 18.09.2015 was revoked by office order dated 07.08.2017. The corporation has also taken a plea of financial losses as per the balance sheet during the assessment year 2017-18. Therefore, the learned Writ Court has rightly refused to grant the relief of arrears of salary *with effect from* their date of joining till the revocation order dated 07.08.2017. Learned counsel for the respondents has, however, not been able to show from the counter affidavit as to how such submission was made that these persons were appointed at the choice of some of the officers of the Corporation and as such, their appointments were totally illegal.

[7] We have considered the submissions of the learned counsel for the parties and taken note of the relevant material facts from the pleadings on record. We have also gone through the impugned judgment. The sequence of facts narrated in the forgoing part of this order undeniably indicates that the services of these writ petitioners were regularized as they had completed the minimum years of engagement as DRW or Contingent worker under the Corporation. Such decision was taken after instructions from the Finance Department and that too at the level of the Chairman-cum-Managing Director of the Corporation. Both the writ petitioners had duly submitted their joining by the cut-off date i.e. 17.09.2015. As such, on acceptance of the offer of appointment, their status as a regular employee had come into existence. It appears that for some administrative reasons the office order dated 10.09.2015 was kept in abeyance till further orders vide memorandum dated 18.09.2015. This order was, however, revoked by office order dated 07.08.2017 with immediate effect. The office order dated 07.08.2017 (Annexure-R/1) reads as under:

“TRIPURA STATE ELECTRICITY CORPORATION LIMITED
(A Govt. of Tripura Enterprise)

Office Order

The order for keeping in abeyance of appointments of 52(Fifty two) nos Helper Gr-II due to unavoidable circumstances and administrative reason vide No.F.6(151)-TSECL/Crop.office/2015/32870-32983. Dt, 18.09.2015 of the General Manager (Finance) & Company Secretary, TSECL, Agartala is hereby withdrawn with immediate effect.

By order of the
Chairman cum Managing Director, TSECL
Sd-
Director (Finance) & Company Secretary
TSECL : Agartala”

[8] This office order does not indicate that the joining of the writ petitioners as regular employees would be treated with prospective effect from the date of issuance of the office order i.e. 07.08.2017. If the writ petitioners gain the status of regular employee and work has been taken from them thereafter there was no reason why the arrears of salary for the period as a regular employee should not have been paid by the Corporation. Writ petitioners approached this Court in the year 2017 itself being aggrieved by denial of arrears of regular scale of pay since 17.09.2015 once the office order dated 18.09.2015 keeping the offer of appointment in abeyance was revoked on 07.08.2017. The learned Single Judge seems to have taken note of the submission of the learned counsel for the respondent-Corporation that these appointments were illegal as well since they did not face any interview or regular recruitment process under an advertisement and were appointed at the choice of some of the officers of the Corporation. However, the counter affidavit of the respondent-Corporation does not contain such averments that these engagements were illegal. Had it been illegal, there would have been no occasion to regularize the appointments. Irregular appointments can only be regularized as is the ratio in the case of *Secretary, State of Karnataka and others versus Umadevi and others* reported in (2006) 4

SCC 1. The plea of financial loss taken by the Corporation in paragraph-9 of the counter affidavit also does not relate to the assessment year 2015-16 or 2016-17 when the Appellants were regularized by office order dated 10.09.2015. It is in relation to the year 2017-18. Therefore, this plea also does not merit acceptance.

[9] As such, we are of the considered view that the impugned judgment passed by the learned Single Judge in respect of these two writ petitioners/appellants deserves to be interfered. As it appears rest of the writ petitioners have not preferred any appeal and are satisfied with the impugned judgment. Accordingly, the prayer of the writ petitioners/appellants deserves to be allowed. The respondent-Corporation is obliged to make payment of arrears of regular salary for the period 18.09.2015 to 07.08.2017 after deduction of the payments already made to the present appellants within a period of 6(six) weeks from the date of receipt of copy of this order. Let it be made clear that since the other writ petitioners are not aggrieved by the impugned judgment, the reliefs are confined to the present writ petitioners/appellants only.

Accordingly, the instant appeals are allowed. Pending application(s) if any, also stands disposed of.

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ