

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.34 of 2023

Sri Satyendra Sarkar

.....Appellant(s);

Versus

The State of Tripura & others

.....Respondent(s).

WA No.35 of 2023

Sri Bikash Singha

.....Appellant(s);

Versus

The State of Tripura & others

.....Respondent(s).

For Appellant(s)

: Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate,
Ms. A. Debbarma, Advocate.

For Respondent(s)

: Mr. D. Sharma, Addl. G.A.,
Mr. N. Majumdar, Advocate.

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

Order

26/03/2024

Both the appeals arise out of the separate orders of the same date i.e. 21.03.2023 passed in WP(C) No.83/2021 and WP(C) No.84/2021 by the learned Writ Court. They are being taken up and disposed of together as they raise same issues.

2. Both the writ petitioners have been converted as Daily Rated Worker (DRW) by office order No.F.HRM/3.12(2)/TSECL/2019-20/17789-802 dated 14.06.2019 and office order No.F.HRM/3.12(1)/TSECL/2019-20/17803-16 dated 17.06.2019 issued by the Director (Finance), TSECL, Agartala, Tripura [Annexure-1 to the Counter Affidavit]. This conversion of their status as DRW from Part Time Worker (PTW) took place pursuant to the

directions passed by the Writ Court in the first round of litigation i.e. WP(C) No.1117/2016 and WP(C) No.1121/2016 in their respective cases. The learned Writ Court at the first instance directed the Corporation to conduct an inquiry by a senior Administrative Officer to find out whether the petitioners served 8(eight) hours a day as Contingent Worker in Group-C and Group-D categories as claimed by them. If the petitioners, even if they were not paid their wages for full time service, were found to have discharged their duties for 8(eight) hours a day, they shall be treated as the full time contingent workers and they shall be regularized in terms of the memorandum dated 01.09.2008 or 21.01.2009 on completion of their 10(ten) years of service. They would be entitled to get the full pay and allowances from the next date of the completion of 10(ten) years of service in terms of those memoranda. The Corporation was directed to complete the inquiry based on the records produced with the writ petitions and other records maintained by the officers under whom they are working. This inquiry was to be completed within a stipulated period and on completion of the inquiry, if the petitioners were found to have served the Power Department and the Corporation for 8(eight) hours a day as claimed, they shall be regularized within the next three months.

3. The inquiry conducted by the Enquiry Committee found that they were working as PTW, who on completion of ten years in that capacity, were entitled for being upgraded to DRW as per memorandum dated 07.11.2012 issued by the Finance Department. The writ petitioners approached the Court in the second round of litigation i.e. WP(C) No.83/2021 and WP(C) No.84/2021 with a grievance that they have been discharging duties as DRW and not as

PTW and, therefore, they were entitled to be regularized or absorbed in service. Learned Writ Court refused to enter into this issue considering it to be a disputed question of fact. The writ petitions were accordingly dismissed. Being aggrieved, writ petitioners are in appeal before this Court.

4. In the first appeal i.e. WA No.34/2023, appellant/writ petitioner has referred to the document dated 18.06.1997 [Annexure-1] issued by the S.D.O. (Electrical), Transmission Sub-Division, Dhalabil, Khowai addressed to the Executive Engineer, Transmission Division, Agartala in order to submit that petitioner was engaged with effect from 09.06.1997 on a daily rated basis at the rate of Rs.31.50/- per day. He has also placed the letter dated 24.07.1997 issued by the S.D.O. (Electrical), Transmission Sub-Division, Dhalabil, Khowai in favour of the Executive Engineer, Transmission Division, Agartala to indicate that his engagement was as DRW (Tech). He has also referred to the letter dated 30.01.2008 issued by the Deputy General Manager, Electrical Division No-X, Khowai, Tripura (W) addressed to the Deputy General Manager, Transmission Division (TSECL), Agartala in order to show that petitioner's designation was wrongly written as PTW in the Finance Department memorandum dated 09.06.2004. He was allowed wages of Rs.2279/- as DRW. Seven numbers of documents/certificates were enclosed with that letter for necessary action.

5. Mr. Kawsik Nath, learned counsel for the petitioner/appellant herein, has drawn the attention of this Court to the recommendation of the Enquiry Committee [Page 100 to the memo of appeal] which conducted the scrutiny of the papers of the petitioner pursuant to the directions passed by the

Writ Court in the first round of litigation. It is submitted that the report dated 19.01.2018 though indicates his type of work as “Part Time Worker”, but the wages received by him before 31.03.2003 was Rs.713/- per month whereas the present wages was found to be Rs.4,200/- per month. This report is not in consonance with the documents referred to earlier which show the status of the petitioner as a DRW.

6. In the second appeal i.e. WA No.35/2023, learned counsel for the appellant has drawn the attention of this Court to the report of the Chairman, Enquiry Committee, at Column No.8 of which contains the endorsement regarding the working hours - “Schedule working hour is 4(four) hours, but as reported by the Senior Manager, he is working full office hours. His present wages is Rs.4483/- per month.” It is submitted that this endorsement also show that petitioner was working on full time basis. If that be so, the observations of the learned Writ Court in the first round of litigation that even though the petitioner may not have been paid wages for full time service, but has been found to discharge duty for eight hours a day, he shall be treated as full time contingent worker and consequently ought to be regularized in terms of office memorandum dated 01.09.2008 or 21.01.2009 on completion of ten years of service was required to be given effect.

7. In both the cases, therefore, the Enquiry Committee has wrongly come to a finding that they were working as Part Time Workers. Learned Writ Court however did not appreciate the factual issue in correct perspective and declined to grant relief treating it to be a disputed question of fact. Learned counsel for the appellants submits that in such a case, the reports of the Enquiry

Committee are fit to be discarded and the appellants should be treated as DRW fit to be regularized in service from the date they completed 10 years of engagement as DRW.

8. Mr. N. Majumdar, learned counsel for the Corporation, on the other hand has strongly opposed the prayer. He has also referred to the two reports enclosed with both the writ appeals at Page 100. He submits that the documents have been duly scrutinized by the Enquiry Committee and the status of these petitioners/appellants herein have been found to be PTW as per their engagement in the database of the Finance Department of the Corporation. As such, they have been upgraded as DRW on completion of ten years of their engagement in terms of the office memorandum dated 07.11.2012. Therefore, the contention of the appellants is far-fetched. He submits that the learned Writ Court has rightly refused to interfere in the matter as disputed question of fact was being raised.

9. We have considered the submission of learned counsel for the parties and taken note of the relevant material facts placed from the record.

The issue herein is whether the reports of the Enquiry Committee treating the petitioners/appellants herein as PTW for the purposes of their upgradation as DRW is correct on facts or not. Both the writ petitioners have placed documents from the record which have been referred to in the foregoing paragraphs of this order. We are not inclined to enter into the determination of a question of fact in the appellate jurisdiction. However, these documents are placed on affidavit by both the parties. It is also apparent that such inquiry was conducted on the basis of orders passed at the first instance by the learned Writ

Court in order to come to a finding as to whether these writ petitioners worked on full time basis for eight hours even if they were not paid wages for performing duty for eight hours, they ought to be considered for regularization. Therefore, much hinges upon the reports of the Enquiry Committee. The Enquiry Committee's reports may or may not have taken into account the official documents which have been referred to by the writ petitioners. Their status as DRW or permanently absorbed employee would depend upon correct appreciation and scrutiny of the official documents relating to their engagement from inception. The number of duty hours that they discharged for periods in question and whether they had completed ten years of engagement as DRW having worked for eight hours a day.

10. Having regard to the documents referred to in the foregoing part of the order, we deem it proper to direct the respondents to re-examine the relevant records once again to come to a considered finding. Appellants are allowed liberty to file a fresh representation enclosing all the relevant official records in support of their claim that they have worked on full time basis for eight hours a day in the capacity of DRW for being absorbed or regularized in service. On their representation through proper channel, the competent authority would examine their cases afresh and take a decision in accordance with law within a period of 4(four) months from the date of receipt of copy of this order. Needless to say, if such exercise entails review of their earlier decision to upgrade the appellants as DRW, they shall proceed to consider the cases of the appellants for absorption/regularization from the due date since the

cause of action has remained alive till date and the appellants had approached this Court first time in the year 2016 itself.

11. The appeals stand disposed of while interfering in the impugned orders to the extent indicated hereinabove.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



MUNNA SAHA Digitally signed by MUNNA SAHA
Date: 2024.04.01 17:26:07 +05'30'

Pijush/