

**HIGH COURT OF TRIPURA
AGARTALA**

WA 59 of 2022

The State of Tripura and Ors

---Appellant(s)

Versus

Sri Gopendra Suklabaidya

---Respondent(s)

For Appellant(s)	: Mr. H. Deb, Advocate.
For Respondent(s)	: Mr. P Roy Barman, Sr. Advocate. Ms. A. Debbarma, Advocate.
Date of hearing	: 27.02.2024.
Date of pronouncement	: 06.03.2024.
Whether fit for reporting	: Yes

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgement & Order

(T.Amarnath Goud, J)

This is an appeal under Chapter V-A of High Court Rules against the order dated 07.10.2021 and 15.11.2021 passed by Hon'ble Single Judge in writ petition No.762 of 2020.

[2] The brief fact of the case is that the respondent served as casual worker under the appellants w.e.f. 19.04.2003 till 01.03.2020 uninterruptedly. He sought for regularization of his service and also necessary direction upon the appellants to restore his engagement as casual worker which has been arbitrarily taken away w.e.f. 01.03.2020. He also sought for further direction upon the appellants for releasing his held up wages for the month of October 2019 to February, 2020. The Finance Department vide their order No.F.10(2)-FIN(G)/2008 (Part) dated 21.01.2009 has instructed all the departments to put complete ban on engagement of DRW/Casual/Contingent workers after 31.03.2003. Accordingly, the department has circulated a formal order to all the Head of Office/colleges to discontinue the DRW/Casual/Contingent workers who are engaged after the prescribed cut-off-date of the Finance Department (i.e.31.03.2003). The petitioner i.e. the respondent herein was verbally engaged by the Principal on 19.04.2003 after the cut-off date of 31.03.2003,

fixed by the Finance Department for regularization of services of casual worker. Sri Gopendra Suklabaidya was engaged on 19.04.2003 which is after 31.03.2003. As such, his regularization does not come under the purview of the said order. The Hon'ble Single Judge passed order dated 07.10.2021 and 15.11.2021 directing the appellants to restore the service of the respondent as casual worker in which capacity he was working under the Principal, Government Degree College, Dharmangar within 3(three) weeks from the date of receipt of the copy of this order. Being aggrieved by and dissatisfied with the order of the Hon'ble Single Judge, the appellants preferred the present appeal seeking the following reliefs:

- (i) *Admit the appeal*
- (ii) *Issue Notice upon the respondent*
- (iii) *Call for records from the file of Hon'ble Single Judge in Connection with case no.W.P(C)762 of 2020 disposed of vide judgment and order dated 07.10.2021 and 15.11.2021.*
- (iv) *After hearing of the parties Your Lordship would be graciously pleased to set aside the judgment and order dated 07.10.2021 and 15.11.2021.*
- (v) *Also be pleased to pass any other necessary order/orders as Your Lordship deem fit and proper.*

[3] Mr. H. Deb, learned counsel appearing for the appellants has submitted that it is a fact that engagement/regularization of any DRW/Casual/Contingent workers after 31.03.2003 without prior concurrence of the Finance Department has been banned w.e.f. 2009 and since then the Finance Department has brought up revised instructions from time to time in review of their earlier orders. A memorandum bearing No.F.10(2)-FIN(G)/2008 (part) dated 01.08.2018 has been circulated by the Finance Department stating that the policy decision of the Govt. for regularizing the service of DRW after 10 years of services has been reviewed and memo has been issued with No.F.10(2)FIN(G)/2018(P) dated 31.07.2018 and it has been decided that there shall not be any engagement of DRW/Casual Contingent workers in any office under State Govt. without concurrence of the Finance Department, Payment of salary/wages/remuneration or any type of Financial benefit is fully prohibited. Subsequently, the Government after further review of such policy decision in terms of engagement/regularization of DRW/Casual/Contingent workers, has repealed all earlier

Memorandum with a view to ensure transparent public employment policy for engagement of staff for such service.

[4] Mr. Roy Barman, learned Sr. counsel has submitted that the service of the petitioner as Casual Worker should be regularized granting regular pay scale applicable for a Group 'D' employee. Admittedly, the petitioner was engaged as a Casual Worker on 19.04.2003 and he did not come within the purview of the policy declared by the State respondents vide Memorandum dated 1st September, 2008 and 21st January, 2009, which provided that the persons who were irregularly engaged as Casual/Contingent/Daily Rated Worker with financial concurrence and completed 10 years of service as on 31.03.2008 would be eligible for regularization. However, the State-appellants i.e. the Finance Department, Government of Tripura had taken policy dated 03.01.2014 after being noticed that some of such Casual/Contingent/Daily Rated Workers were engaged after 31.03.2003 and the State-appellants in their own wisdom had taken a policy to regularize the services of those Casual/Contingent/Daily Rated Workers who had completed 10 years of service on their engagement after 31.03.2003 with prior concurrence of the Finance Department. Admittedly, the petitioner was engaged on 19.04.2003 i.e. after 31.03.2003. The competent authority under which the respondent was engaged had made correspondence with the Director of School Education informing him that the respondent was engaged on 19.04.2003 as Casual Worker and has been serving the department with the consent of the Finance Department of the State Government and also had completed 10 years of service. As per the policy decision of the Government dated 03.01.2014, the service of the respondent ought to have been regularized w.e.f. the next date of completion of 10 years of service i.e. w.e.f. 20.04.2013.

[5] In pursuance of the policy dated 03.01.2014, the Principal, Government Degree College, Dharmanagar, North Tripura, made a communication dated 27th January, 2014 to the Director of Higher Education, Government of Tripura wherein he was informed about the status of the respondent. But for certain reasons the service of

the respondent was not regularized. But, admittedly, the service of the respondent was continued by the appellants and his wages were being paid. Abruptly, the Principal, Government Degree College, Dharmanagar, North Tripura vide communication dated 4th December, 2019 had informed the respondent that his salary was held up from October, 2019 in view of the Memorandum dated 31st July, 2018, which was issued by the Under Secretary, Government of Tripura, Finance Department. It is noticed that the State-appellant to ensure transparent public employment policy for engagement of staff for such services, all the memorandums were repealed. The wages of the respondent was held up and he was not allowed to continue his service under the Principal, Government Degree College, Dharmanagar, North Tripura.

[6] It is further contended by the counsel for the respondent that though the respondent served as DRW during the Months of October, November, December, 2019 and January, February, 2020 but most arbitrarily the wages of the respondent for those months has been held up purportedly in pursuance with Memo, dated 31.07.2018. By the said memo, existing memorandums for regularization of the DRW, Casual and similar other workers were repealed. But the said memorandum did not ask the authority to disengage/discontinue DRW/Casual Workers who have been working for many years against the existing vacancies in Group D/Group C Posts.

[7] For ready reference, it is apposite to revisit the communication dated 09.06.2014 made by the Principal-in-Charge, Government Degree College, Dharmanagar North Tripura addressed to the Director of Higher Education, Government of Tripura, (Estt Non Gazetted Section), Agartala West Tripura. The relevant portion of the communication dated 09.06.2014 is extracted herein below:

“Information on daily-Rated/Casual/Contingent Workers engaged by the department on full-time basis.

Name of department – DEPART OF HIGHER EDUCATION (Govt. Degree College, Dharmanagar)

Sl. NO.	Name of the person	Engaged at which office	Working Since (date)	Details of concurrence of Finance Department.	If no concurrence was obtained, authority who approved the	Remark

					engagement	
1	2	3	4	5	6	7
1.	***		***	***	***	***
2.	Sri Gopendra Suklabaidya, Casual Worker	Govt. Degree College Dharmanagar	19.04.2003	No.345/FIN (Edn.Cell) 08, dated 26.03.2008	--	--

[8] Heard learned counsel appearing for the parties.

[9] It is seen from the record that the name of the respondent is found in the recommendation list however it was subject to the confirmation from the Finance Department. Since there is no confirmation received from the Finance Department, the case of the respondent was not considered.

[10] Mr. H. Deb, learned counsel for the appellants contended that the concurrence number as reflected in the communication dated 09.05.2014 is yearly continuation report regarding DRW/Casual Worker/Part Time Worker etc. According to Mr. H. Deb, learned counsel this concurrence is only from year to year basis and it does not indicate that any necessary instruction was given to regularize the service of the respondent herein. This attitude of the appellants cannot be appreciated. Moreover, the Concurrence No.345/FIN/(Edn.Cell)/08, dated, 26.03.2008 is also not placed on record. For the wrong committed by the appellants herein, the innocent respondent – writ petitioner cannot be put to hardship. It becomes the responsibility of the employer for obtaining necessary concurrences and also to pursue the matter with the government on the administrative side.

[11] Having considered the submission as advanced by the learned counsel for the parties and also perusing the entire records so placed before us, we are of the opinion that the respondent herein has fulfilled all his criteria which makes him eligible for regularization of his service. The appellants had utilized his service for almost 16(sixteen) years and all on a sudden they cannot shirk their responsibilities from extending all the benefits that is due to him. Service rendered by respondent for such a

long year cannot be taken for advantage by the appellants. Moreover, his demand is legitimate and not exorbitant which would compel the State-appellant to revamp their policies with regard to the regularization of the service of all DRWs/Casual Workers/Part Time Workers etc

[12] With the above observation and direction, we dismiss the present appeal confirming the order dated 07.10.2021 and 15.11.2021 passed by the learned Single Judge in writ petition no.762 of 2020.

[13] As a sequel, stay if any stands vacated. Pending application(s), if any, also stands closed.

JUDGE

JUDGE



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